

**SWARTZ CREEK – CLAYTON TOWNSHIP
AMENDED AND RESTATED
2019 – 2022 FIRE DEPARTMENT AGREEMENT**

THIS AGREEMENT is made this 19th day of September, 2019, by and between the City of Swartz Creek, a Michigan Municipal Corporation, with principal offices at 8083 Civic Drive, Swartz Creek, Michigan 48473 ("City") and the Charter Township of Clayton, a Michigan Public Body Corporate, with principal offices at 2011 South Morrish Road, Swartz Creek, Michigan 48473 ("Township").

WHEREAS, the City and the Township have, for many years, jointly provided fire protection services to their geographical areas; and

WHEREAS, the joint provision of such fire protection services was covered by a written Agreement; and

WHEREAS, the current Agreement between the City and the Township extends through November 1, 2019 but both the City and the Township desire to amend terms for the provision of fire protection services prior to the commencement of budgetary processes for fiscal year 2018; and

WHEREAS, the Michigan Urban Cooperation Act of 1967, 1967 PA 7 (Ex Sess) [MCL 124.501 et seq] ("UCA") authorizes two (2) Municipalities to enter into an interlocal Agreement by which they agree to exercise jointly "any power, privilege, or authority that the agencies share in common and that each might exercise separately;" and

WHEREAS, Section 7 of the UCA [MCL 124.507] provides that such an interlocal Agreement "may provide for a separate legal or administrative entity to administer or execute the Agreement which may be a Commission, Board or Council constituted pursuant to the Agreement," and that such administrative entity "shall be a Public Body, Corporate or Politic for the purposes of this act;" and

WHEREAS, the City and the Township share in common the power and authority to establish and maintain a Fire Department and provide fire protection services; and

WHEREAS, as empowered to do so by the UCA, the City and the Township wish to continue to jointly provide fire protection services and operate a Fire Department to serve the City and the Township and to do so under the terms and conditions of this Agreement;

NOW, THEREFORE, the parties hereto acting pursuant to the authority of resolutions duly adopted by their respective legislative bodies, **HEREBY AGREE AS FOLLOWS:**

1. POWERS AND DUTIES OF THE SCAFD BOARD

Pursuant to the authority of Section 7 of the UCA [MCL 124.507] there is hereby established an administrative entity to administer and execute this interlocal Agreement; such entity to be known as the "Swartz Creek Area Fire Board" ("Board").

2. NAME

The Board shall provide its fire protection services and shall conduct its business under the name, "Swartz Creek Area Fire Department," and shall file a "d/b/a" certificate to that effect with the Genesee County Clerk.

3. GOVERNANCE OF SCAFD

- A. The SCAFD shall be governed by a Board consisting of seven (7) members ("Board") who shall be appointed as follows:
- 1) Beginning in calendar year 2018, three (3) members shall be appointed by the City, two (2) of whom shall be members of the City Council. The other City appointees shall be residents of the City and shall hold no other elective City Office. These members shall be appointed for two year terms at the first regular city council meeting following each general election of the City.
 - 2) Beginning in calendar year 2018, three (3) members shall be appointed by the Township, two (2) of whom shall be members of the Township Board. The other Township appointees shall be residents of the Township and shall hold no other elective Township Office. These members shall be appointed for two year terms at the first regular township board meeting following each general election of the Township.
 - 3) The seventh member shall be appointed on an alternating basis between the parties with the Township making the appointment in odd numbered years. Such member shall be appointed as and be designated as the "at-large" member. The "at-large" member shall be appointed for a term of one (1) year commencing on April 1 of each year and, at the completion of said term, the appropriate appointing authority shall designate its appointee as the "at-large" member.
 - 4) Except as provided in Subparagraph (5) below, no active Swartz Creek Area Fire Department Firefighter, volunteer or otherwise, shall be eligible for appointment to the Board.
 - 5) The Fire Chief shall be an Ex-Officio Member of the Board, but shall have no right to vote on matters coming before the Board.
 - 6) Each of the appointees, including the "at-large" member, shall hold office until their replacement is appointed as provided herein.

- 7) Vacancies shall be filled by the appropriate appointing authority consistent with the provisions contained herein related to appointees to the Board.
- B. The Board shall have the exclusive authority to manage and operate the provision of fire protection services to the City and Township and shall have, except as otherwise provided or limited by the terms of this Agreement, such power as may be required for the faithful performance of its duties.
- C. The Board shall develop and maintain a command structure for the Fire Department, which shall be headed by a Fire Chief who shall be appointed by a majority vote of both the Township Board and the City Council and who shall serve at the pleasure of the Board. The terms and conditions of the employment for the Fire Chief shall be set forth in a separate employment Agreement. The termination of the Fire Chief shall require a super majority vote of the Fire Board. Such termination may be overruled by a majority vote of both the Township Board and the City Council, but such votes must occur within sixty (60) days of the termination.

The SCAFD Chief shall seek and interview paid, on-call firefighters and shall recommend, in writing to the SCAFD Board, the hiring of all employees. All employees shall be hired by a majority vote of the SCAFD Board. The number of employees shall be limited by the budget allocated to the SCAFD by the Township Board and the City Council. Employees of the SCAFD may only be terminated following a written recommendation to the SCAFD Board by the SCAFD Chief. Employees of the SCAFD may only be terminated by a majority vote of the SCAFD Board.

No member of the Township Board or the City Council shall be eligible for the appointment to, or to serve as an employee of the SCAFD, including in the capacity as either a full or part time Firefighter, whether paid, on-call or volunteer.

- D. The Board shall provide the fire protection services provided for, herein, through the use of paid, on-call Firefighters; provided, however, that the Board shall not have the authority to hire or otherwise retain full-time or part-time personnel without there being funds in the budget for such hiring or retention. Nothing contained herein shall prohibit the Board from contracting with a volunteer or on-call organization for services on an "as needed basis".
- E. The SCAFD Board and its Members shall be responsible for reasonable reporting requirements and providing information to the Township or the City as requested.

4. BYLAWS

The SCAFD Board shall establish its own Officers and adopt bylaws to govern the conduct of its meetings. The SCAFD Board shall not adopt any rules or regulations that exceed the provisions of this Agreement or the provisions of [MCL 124.501 et al].

The SCAFD Board shall only operate and conduct business with a quorum of five (5) members present and by a majority vote of the entire board membership. (5 votes)

5. FIRE HALLS

- A. The Township hereby provides the fire hall located at 1494 Seymour Road in the Township at the disposal of the SCAFD Board for its use during the effective period of this Agreement.
- B. The City hereby provides the fire hall located at 8100-B Civic Drive in the City at the disposal of the SCAFD Board for its use during the effective period of this Agreement.
- C. Such use shall be subject to the following:
 - 1) The City and Township shall each retain ownership of, or lease rights to, the fire halls so designated and the Board shall have no power to use or authorize the use of the fire halls for any use other than the provision of fire protection services to the City and Township; unless authority for such other use or activity is obtained in writing, or by email with receipt confirmation, from the City (as to the City's fire hall) or the Township (as to the Township fire hall).
 - 2) The Board shall not engage in any activity or take any action which will result in a lien, mortgage, or other encumbrance on the title of the City or the Township to their respective fire halls or the land on which they are located.
 - 3) The Board shall be responsible for payment of all utilities for the designated fire halls during the effective period of this Agreement.
 - 4) No additions and/or alterations to said fire halls may be made by the Board without the express prior written approval of the governmental unit owning said structure; provided, however, that, upon termination of this Agreement, such additions and/or improvements shall become the property of the governmental unit owning the structure.

6. TOWNSHIP MINI PUMPER & TAHOE

The 1979 Mini Pumper, Serial No. W41CT9138438 and the 2006 Chevy Tahoe 1GNEK13Z96J119966, presently owned by the Township, shall be, and is hereby placed at the use of the Board for the provision of fire services as provided for in this Agreement, subject to the following conditions:

- A. The Board shall be responsible for, and maintain public liability and property damage insurance, upon said vehicle with the Township being named as a co-insured.

- B. Said vehicle shall remain titled in the name of the Township.
- C. Upon dissolution of the Board, said vehicle shall be returned to the Township and/or the Township shall have the right to summary repossession of said vehicle. The Board shall have no control whatsoever over said vehicle upon dissolution of the Board.

7. CITY MINI PUMPER

The 1979 Mini Pumper, Serial No. CKL339B160091, presently owned by the City, shall be, and is hereby placed, at the use of the Board for the provision of fire services as provided for in this Agreement, subject to the following conditions:

- A. The Board shall be responsible for, and maintain public liability and property damage insurance, upon said vehicle with the City being named as a co-insured.
- B. Said vehicle shall remain titled in the name of the City.
- C. Upon dissolution of the Board, said vehicle shall be returned to the City and/or the City shall have the right to summary repossession of said vehicle. The Board shall have no control whatsoever over said vehicle upon dissolution of the Board.

8. SCAFD ASSETS

- A. Except as may be provided above as to the fire halls and the mini pumpers, the City and Township shall each have an undivided one-half (1/2) interest in and to all assets of the SCAFD. An inventory of said assets shall be prepared annually by the Board and filed with the City Clerk and the Township Clerk as provided in Subparagraph (D), below.
- B. All of the assets of the SCAFD shall be housed at the fire halls designated within this Agreement in such quantities, as shall, within the discretion of the Board, provide maximum efficient fire protection services for the areas to be provided such service.
- C. Assets that are determined by the Board to have no value, due to age or damage, shall be destroyed. Assets that have value, but are no longer needed by the SCAFD, shall be sold by sealed bid, RFP, auction or online internet auction to the highest bidder. The Board shall create and implement a policy for disposal of such assets. Assets that have been sold shall be logged as such on the annual inventory for at least one (1) year.
- D. The Board shall file an annual inventory of such assets with the City and the Township no later than February 15th of each year. The inventory should include individual assets valued at \$500.00 or more at time of purchase or donation and like-kind assets that, in their aggregate, are valued at \$500.00 or more. The form of the inventory should contain the following, if possible:
 - 1. Description
 - 2. Cost per Item
 - 3. Quantity

4. Purchase date
5. Life of asset
6. Serial Number
7. Model Number
8. Location
9. Asset Condition
10. Manufacturer if applicable
11. Disposal Information when asset no longer in service – date retired, proceeds from disposal
12. Insurance information if relevant – insurer, policy expiration, policy number, insured value

9. ADDITIONAL ASSETS

Nothing contained herein shall prohibit the City or the Township from acquiring such additional equipment and/or providing such additional services as it sees fit to be used within its boundaries. Such additional equipment and/or services provided shall not be subject to the terms of this Agreement and ownership of same shall not be shared.

10. INSURANCE

The Board shall secure, and keep in force and effect during the effective period of the Agreement, appropriate property damage and public liability insurance insuring its activities in such amounts as it sees fit. However, in no instance shall such limits of insurance be less than One Million Dollars (\$1,000,000.00) Single Limit Public Liability and Property Damage Policy, with a Three Million Dollar (\$3,000,000.00) Umbrella. In addition, thereto the Board shall secure and keep in force and effect during the effective period of the Agreement, appropriate Workman's Compensation Insurance coverage and any other insurance coverage required by law.

11. SERVICES TO OTHER GOVERNMENTAL UNITS

The SCAFD shall not provide fire protection services to other governmental units, by contract or otherwise, without first obtaining the approval of the City and the Township before such services are rendered; provided, however, that such prohibition shall not extend to the participation by the Board in a mutual aid pact with other units of government. Pursuant to the SCAFD Evaluation, all current mutual aid pacts should be reviewed by the SCAFD Board to redefine the terms under which automatic mutual aid is provided to obtain a more equitable balance of services. All aid agreements currently in place shall become attachments to this Agreement. Any future aid agreements shall be approved by the City and the Township.

12. BOOKS AND RECORDS; ANNUAL AUDIT

- a. The Board shall provide for the keeping of books and records regarding its operation. The keeping of such books and records shall conform to generally accepted accounting principles.
- b. The Board shall provide for an annual audit of its revenue and expenditures. The auditing firm shall be selected through competitive bidding every three (3) years and the same firm shall not be selected for than two (2) consecutive terms.
- c. The audit shall be completed no later than ninety (90) days following the close of the SCAFD's fiscal year, and a copy of said audit shall be submitted to the City Clerk and the Township Clerk within seven (7) days after its completion.

13. FISCAL YEAR; BUDGET

- a. The fiscal year of the SCAFD shall be from January 1 through December 31.
- b. Beginning no later than August 1 of each year, the City Manager and the Township Supervisor shall meet with the Fire Chief and develop a draft budget. Such draft shall reasonably reflect the findings and recommendations set forth in the Swartz Creek Area Fire Department Evaluation adopted in January 2008 by the City and the Township. The draft budget shall be submitted to the SCAFD Board no later than October 1.
- c. The Board shall review the proposed budget of its anticipated expenses, including any suggested amendments, and shall, upon a super majority vote of the Board, forward same to the City Council and Township Board for approval no later than October 31 of each year. The City and the Township may approve the budget as presented or may approve it with amendments. The final budget shall be in such form as shall be approved by both the City and the Township.
- d. Upon approval of the final budget, the City and the Township shall each appropriate its share of the funding for said budget, and such funds shall be transmitted to the SCAFD Board for its use. Once the final budget is approved, such sums, as each party are required to contribute, shall be a debt of each notwithstanding any subsequent disagreement between the parties.
- e. The SCAFD shall expend funds pursuant to the adopted budget; provided, however, the Board shall have the authority within a single year, without the approval of the city and Township, to amend line item expenditures by an amount not to exceed ten percent (10%) of the amount provided for the subject line item in the final budget as approved by the City and the Township, so long as the total budget is not exceeded. Line item budget amendments exceeding ten percent (10%), singularly or cumulatively in a single fiscal year, shall require approval of both the City and the Township.
- f. The Board shall not exceed the budget as approved by the City and the Township without express prior approval by both the City and the Township who, concurrent with such approval, shall appropriate such sums as are necessary to finance such

increased expense. No additional budget line items shall be added or included in approved budgets without approval of the legislative bodies of both municipalities.

14. CAPITAL IMPROVEMENT FUND

Pursuant to the Swartz Creek Area Fire Department Evaluation, accepted in January 2008 by the City and the Township, a Capital Improvement Program Fund (CIPF) is hereby established. The budget for the CIPF shall be established annually in the same manner and, at the same time, as the annual operating budget. The City and the Township shall determine an amount to be contributed to the CIPF, said contribution to be appropriated each year at the same time as the annual appropriation for operation of the SCAFD is made at the beginning of each unit's fiscal year. CIPF funds contributed by the City and the Township shall be held, and independently accounted for, by the Board and shall be invested in an interest bearing account. The Board shall adopt an investment policy that conforms to the State of Michigan's authorized and suitable investments for local units of government (1988 Public Act 239, M.C.L. 129.91). The Board may not use or expend any funds in the CIPF without the prior approval by a majority vote of both the Township Board and the City Council. The City and the Township, by mutual agreement of the majority of each governing Boards, may elect to deposit any unspent operating funds left over from a previous year budget, into the CIPF.

The SCAFD Board shall exhaust all CIPF funds prior to seeking any financing for capital purchases from the Township or the City.

15. COSTS OF FIRE RUNS; LABOR COSTS

Except as to the labor costs attendant with each fire run, the entire cost of providing fire protection services as agreed to herein shall be borne by the City and the Township equally. As to labor costs attendant with each fire run, it is hereby agreed that such cost shall be borne solely by the party, City or Township, wherein the service is provided. Such costs shall be provided for in the budget required by Paragraph (13) hereof. The City and the Township, as suggested in the January 2008 Fire Department Evaluation, shall work to develop a cost recovery ordinance that both municipalities can adopt and implement.

16. EFFECTIVE DATE; TERM; EXPIRATION OF TERM

The effective date of this Agreement is November 1, 2019. The term of this Agreement shall be November 1, 2019 through October 31, 2022. The expiration of the Agreement shall not operate to relieve the City or the Township of their financial obligations hereunder. The financial obligations of each party shall continue until all termination activities set forth in Paragraph (17), below, are completed.

17. TERMINATION

Upon termination of this Agreement, the Board shall proceed as follows:

- a. At least sixty (60) days prior to the termination date, the Board shall cause its last annual inventory to be made current.
- b. The Board shall cause an appraisal to be made of all of the jointly owned assets under its control other than the fire halls and the mini pumpers described in section 7 and 8. Said appraisal shall be made no later than thirty (30) days prior to the date of termination and shall be submitted to the City Clerk and the Township Clerk forthwith.
- c. The Board shall attempt to assign the assets to the parties consistent with the provisions and intent of this Agreement. Upon completion of such asset assignment, the Board shall recommend same to the City and the Township. Upon Agreement of the City and the Township, the Board shall assign the assets to the parties.
- d. Notwithstanding, the termination date and/or its attempts to assign the assets, the Board shall continue to perform its duties and obligations until the effective date of the termination of this Agreement.

18. NEGOTIATED ASSIGNMENT

The parties need not wait for the recommendation of the Board as to the division and assignment of assets, but may commence negotiations relative to such division and assignment at any time prior to the termination date; provided, however, that the parties by and through their respective governing bodies, shall meet no less than sixty (60) days prior to effective date of termination, if Agreement or assignment of assets has not otherwise occurred, to negotiate assignment of assets and/or the providing for an orderly transition and continuing of fire protection services beyond the termination date.

19. NOTICES

Any notice, demand, or communication required, permitted, or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by certified mail addressed as follows:

If to the City:

City of Swartz Creek
C/O City Manager
8083 Civic Drive
Swartz Creek, MI 48473
Attention: City Manager

If to the Township:

Charter Township of Clayton

C/O Township Supervisor
2011 South Morrish Road
Swartz Creek, MI 48473
Attention: Township Supervisor

The parties may, by notice given hereunder, designate any further or different address to which subsequent notices, demands, or communications may be given.

20. SEVERABILITY

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

21. ENTIRE AGREEMENT

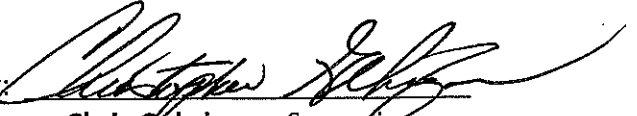
This Agreement supersedes all previous or contemporaneous negotiations and/or Agreements and constitutes the entire Agreement between the parties with respect to the joint provision of fire protection services in the City and the Township. No verbal statements or prior written materials not specifically incorporated in the Agreement have been relied upon by the parties in entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

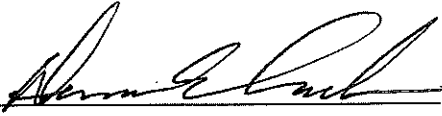
(Signature Page Follows)

TOWNSHIP OF CLAYTON

Dated: 9.17.19

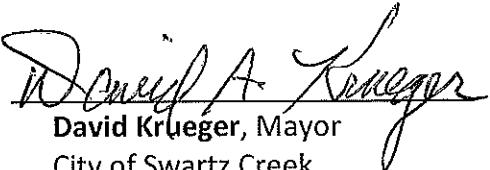
By: 
Chris Gehringer, Supervisor
Charter Township of Clayton

Dated: 9/17/19

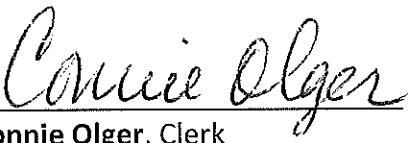
By: 
Dennis Milem, Clerk
Charter Township of Clayton

CITY OF SWARTZ CREEK

Dated: 9/19/19

By: 
David Krueger, Mayor
City of Swartz Creek

Dated: 9/17/19

By: 
Connie Olger, Clerk
City of Swartz Creek