

CHARTER AND AGREEMENT ESTABLISHING FALL CREEK FIRE DISTRICT

This is an agreement made and entered into by and between the following municipalities:

Village of Fall Creek, Eau Claire County, Wisconsin
Town of Lincoln, Eau Claire County, Wisconsin
Town of Ludington, Eau Claire County, Wisconsin.

Together, said Municipalities shall hereinafter be referred to as "the Parties," and, when referred to individually, as a "Party." When referred to by name, the Parties shall be referred to as "Fall Creek," "Lincoln," or "Ludington."

WHEREAS, Section 60.55 of the Wisconsin Statutes requires the town board of each town to provide fire protection for the town and permits any town in the State of Wisconsin to join another town, village, or city to establish a joint fire department to provide fire protection for the town or any portion of the town; and

WHEREAS Sections 60.55(1)(a)2 and 61.65(2)(a)3 of the Wisconsin Statutes provide for the creation and operation of such Joint Fire Departments; and

WHEREAS, Section 66.30 of the Wisconsin Statutes provides that any Party may contract with other Parties for the receipt of furnishing services or the joint exercise of any power or duty required or authorized by law; and

WHEREAS, said Section 66.30 of the Wisconsin Statutes further provides that any such contract may provide a plan for administration of the function or project which may include, without limitation because of enumeration, provisions as to prorating of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets, creation of a Board, selection and removal of Commissioners, formation and letting of contracts; and

WHEREAS, said Parties have negotiated a contract pursuant to Section 66.30 of the Wisconsin Statutes and the governing board of each Party has considered said contract so negotiated and each board has approved said contract and authorized its execution and delivery;

NOW, THEREFORE, the above Parties jointly establish a joint fire department for the purpose of furnishing fire fighting services and such other emergency services, and any ancillary or supplementary services related thereto, as the joint Board of Fire Commissioners shall determine, to the territory included within the District to be maintained and operated in accordance with the following terms, conditions, and plan:

1. JOINT FIRE DEPARTMENT NAME. The name of the joint fire department shall be Fall Creek Area Fire District (hereinafter called "the District").

2. PRINCIPAL OFFICE. The principal office of the District shall be located in the fire station in Fall Creek.

3. TERRITORY INCLUDED. The area to be included in the District and served by the fire fighting equipment and supplies of said service shall be:

A. All property lying within the Village of Fall Creek

B. All property lying within the Town of Ludington

C. All property lying within the Town of Lincoln

4. TERM. The initial term of this Agreement shall be from the first day of the first month following the execution of this agreement by the last Party to do so, until midnight, December 31, 2010. However, all operations of the Village of Fall Creek Fire Department (hereinafter called "the Department"). shall continue through midnight, December 31, 2000, at which time all property to be transferred to the District shall be so transferred, the organizational and command structure of the District shall become fully effective, and the District shall take on all duties described herein. This agreement shall automatically renew for successive renewal terms of ten years, unless one or more Parties give notice to the others of a desire to renegotiate or terminate the agreement. Such notice shall be given not more than 18 months nor less than 12 months before the last day of a term. In the event the District shall be dissolved, the net assets remaining after payment of all liabilities shall be distributed pursuant to Paragraph 34.

5. PURPOSE. The purpose of the District shall be to provide fire protection, fire prevention, fire suppression, and first responder services for all persons and properties within the District boundaries. The Parties acknowledge:

A. That greater protection against fire losses can be secured by contributing to the joint purchase and ownership of fire fighting equipment; and

B. That more effective fire protection can be promoted by the joint and mutual cooperation of the Parties; and

C. That the cost of fire protection can be more equitably shared pursuant to the terms of this Agreement.

If the board determines to provide additional services which would require the expenditure of more than ten thousand dollars in any year, such services shall not be provided and such expenditure shall not be made until approved by the governing bodies of each of the Parties.

6. FIRE BOARD. The District herein created shall be governed by a joint Board of Fire Commissioners (the Board) consisting of six (6) voting commissioners:

- A. Two commissioners appointed by the Fall Creek Village President
- B. Two commissioners appointed by the Ludington Town Board
Chairperson
- C. Two commissioners appointed by the Lincoln Town Board
Chairperson
- D. The Fire Chief of the District shall be a non-voting commissioner.

7. TERMS. Each Commissioner shall serve a term of three years except that some initial terms shall be shorter, as provided below. The terms shall be staggered so only two commissioner terms, representing different municipalities, will expire each year. As soon as possible after execution of this agreement, representatives of the Parties shall meet and draw lots to determine which Party receives each of the designations below:

- A. Party A shall appoint Commissioners for initial terms of one year and two years.
- B. Party B shall appoint Commissioners for initial terms of two years and three years.
- C. Party C shall appoint Commissioners for initial terms of ~~two~~ ^{one} years and three years.

8. ALTERNATE COMMISSIONER. Each Party may appoint an alternate Commissioner to serve in place of any Commissioner who is unable to attend one or more scheduled meetings of the Board. Any such alternate shall not acquire any of the powers or duties which the absent Commissioner may have

*J.M.S.
M.S.
J.W.*

by virtue of being an officer of the District.

9. ALL EXPENDITURES. All expenditures of the District, except for petty cash which the Fire Chief shall regulate and for which the Fire Chief shall be responsible, shall be approved by four (4) of six (6) Commissioners.

10. MAJORITY VOTE CONTROLS. All decisions of the Board shall require the vote of four (4) of six (6) Commissioners, except as otherwise provided herein.

11. POWERS OF THE BOARD. The Board shall have all the powers of a joint board of fire commissioners provided in Sections 60.55(1)(a)2, 61.65(2)(a)3, and 62.13 of the Wisconsin Statutes. Such Board shall not have the independent right or power to levy taxes, to borrow monies, or to finance the acquisition of equipment or facilities. The participating Parties will be the sole source of funds for such purposes. The Board shall have all powers necessary or desirable to manage and direct the District, except as otherwise limited herein, said powers including but not limited to the following:

A. Approve expenditures of the District, and act as agent of the Parties, if requested to do so, in the purchase of apparatus, equipment and supplies for the District.

B. Approve rules and regulations of the District.

C. Approve the Fire Chief's appointment of, or dismissal of, any or all volunteer firefighters, hereinafter called "Members" of the District, by vote of five (5) of six (6) Commissioners. The Fire Chief may make interim appointments which are effective until the Board takes formal action on the appointment.

D. Appoint, by vote of five (5) of six (6) Commissioners, the Fire Chief, after considering any nomination by a majority vote of the fire District Members. The terms of appointment of Members and the Fire Chief shall be three (3) years.

E. Dismiss for cause any Fire Chief upon a vote of five (5) of six (6) Commissioners, after notice to the affected individual and a hearing before the Board.

12. BOARD MEETINGS. All meetings of the Fire Board shall be held at the Fire Hall Meeting Room, the Fall Creek Village Hall meeting room, the Lincoln

Town Hall, or the Ludington Town Hall, as the board shall determine from time to time.

A. Regular meetings of the Board shall be held quarterly at 8:00 PM on the 4th Monday of January, April, July, and September.

B. The Board meeting for the month of April shall also be the annual meeting of the Board.

C. The Board meeting for the month of September shall also be the budget meeting of the Board.

D. All meetings including emergency meetings, shall be held in accordance with the Wisconsin Open Meetings Law.

E. The rules contained in the latest comprehensive edition of Robert's Rules of Order¹ shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with any special rules or order the Board may have adopted.

F. A majority of the Commissioners shall constitute a quorum for all purposes excepting as otherwise specifically provided by this Agreement.

G. Upon execution of the Agreement and appointment and certification of all Commissioners, the Commissioners shall forthwith hold an organizational meeting for the purposes of organizing, including the election of officers.

13. OFFICERS. The Board shall have and elect at its annual meeting a president, vice president, secretary, and treasurer. The secretary and treasurer may be the same person and need not be Commissioners.

A. PRESIDENT. The president shall be the chief executive officer of the Board, and subject to control of the Board, shall in general supervise all of the business and affairs of the District. The president shall preside at all meetings of the Board and shall see that all orders and resolutions are carried into effect. The president shall execute all contracts and agreements authorized by the Board and shall perform such additional duties as may be prescribed from time to time by the Board.

¹Robert's Rules of Order Newly Revised, Henry M. Robert III and William J. Evans, Scott Foresman and Company, 1990, as of the date of this Charter.

B. VICE PRESIDENT. The vice president shall discharge the duties of the president in the event of the absence or disability of the president and shall perform such additional duties as may be prescribed from time to time by the Board.

C. SECRETARY. The secretary shall keep the meeting minutes of the Board, see that all notices are duly given and be custodian of the District records. The secretary shall keep and maintain an inventory of all real and personal property of the District, and shall provide each of the Parties with a copy of said inventory at least annually. The secretary shall make required reports to state agencies and to the governing bodies of the Parties and shall perform such additional duties as may be prescribed from time to time by the Board.

D. TREASURER. The treasurer shall have charge and custody of and be responsible for all funds of the District, receive and give receipts for monies paid to the District from any source whatsoever, deposit all monies in the name of the District in such banks or other depositories as shall be selected or designated by the Board, and disburse such funds from time to time in the manner as hereinafter provided and shall perform such additional duties as may be prescribed from time to time by the Board. Before taking office or receiving any funds, the treasurer shall file with the Board a public official's fidelity bond in an amount at least as great as the anticipated District Budget for the succeeding year.

E. OTHER OFFICERS. The Board may appoint an assistant secretary or assistant treasurer by resolution of the Board to have such duties, powers and responsibilities as specifically prescribed therein.

14. DEPOSITORIES, ACCOUNTING AND DISBURSEMENT OF FUNDS. The Board shall designate a public depository or depositories for all accounts. All funds of the District shall be considered public deposits. The Board shall maintain a system of accounting in conformity with generally accepted accounting methods appropriate for such a District.

A. The Board President shall appoint an audit committee of two (2) Commissioners prior to the April annual meeting. The audit committee shall review the books as prepared by the Treasurer and, at each regular meeting of the Board, certify to the full Board of the District that the books are in proper order. Not less than annually, the accounts of the District shall be audited by a qualified independent auditor applying appropriate municipal audit standards.

B. A copy of the annual financial report and the annual audit report shall be given to each Commissioner and to the clerk of each Party within 90 days of the end of the District's fiscal year, which shall be from 12:01 a.m. January 1 through 12:00 p.m. December 31 of each year.

C. Funds shall be disbursed by order check and it is hereby provided that Section 66.042 of the Wisconsin Statutes shall apply to the Board regarding approval and authorization of disbursements and the procedure of payment through order check.

15. COMPENSATION OF COMMISSIONERS. The Commissioners shall receive \$30.00 per meeting for service as a Commissioner and shall be reimbursed for actual out-of-pocket expenses incurred pursuant to policies adopted by resolution of the Board.

16. INSURANCE. The Board shall secure, or otherwise provide for, adequate and appropriate insurance for all District operations, including, without limitation because of enumeration, (a) Casualty Insurance for all District property and all property of others in the District's care, such as equipment, apparatus, supplies, vehicles, and the fire station, (b) public liability insurance insuring the District, the Parties, and Members of the District for claims made by any Party arising from District operations or related matters; and (c) worker's compensation insurance covering all Members of the District.

17. CONTRACTS. Contracts of the District shall be in the name of the District and shall be approved by four (4) of six (6) Commissioners.

18. ADMINISTRATIVE AND PROFESSIONAL SERVICES. The Board may employ or contract for clerical, secretarial, and professional consultant services as the Board may deem necessary. The Board may contract with any of the Parties for such services.

19. ACQUISITION OF EQUIPMENT AND SUPPLIES.

A. PERSONAL PROPERTY. The Parties hereby agree that as of the commencement date of this Agreement, without necessity of bill of sale, title to the possession of all of the fire fighting vehicles, equipment and supplies then in possession of the Fall Creek Fire Department shall be considered the sole and exclusive property of the District, except that the pumper for which there is an outstanding loan shall not be transferred until the loan is paid, at which time Fall Creek will transfer the same to the District without charge. Until said transfer takes place, the District

shall lease the pumper from Fall Creek for a rental which covers the principal, interest, and administrative costs and payment attributable to that vehicle only.

B. CASH AND ACCOUNTS. When the District commences operations, Fall Creek will transfer to it the funds, accounts receivable, and debts and obligations of the Village of Fall Creek Fire Department, which has been maintained as an "enterprise fund," separate from the general fund of Fall Creek.

C. REAL ESTATE. In addition, after the loan which financed the construction of the Fire Hall in 2000 is paid, and when all conditions of the Grant which was used in part for said construction are satisfied, Fall Creek will transfer title, without cost except for "closing costs," of said Fire Station building and the lot or site on which it is situated, to the District; if such a transfer is not at that time lawful, title shall be transferred to a corporation or other legal entity which shall be owned by the Parties in proportion to their contributions toward the Fire Hall construction and debt service compared to all such contributions.

20. FINANCING. The financing of the costs of operation and capital acquisitions and improvements of and for the District shall be provided by the Parties pursuant to the following terms and conditions:

A. BUDGET. On or before September 15 of each year, the Board shall submit to the governing boards of the Parties, a budget setting forth the proposed expenses to be incurred by the District for the ensuing calendar year. If the Parties do not approve the budget as presented, the Parties must each approve the same budget, however different from the one proposed by the District. If the Parties are unable to agree on a budget, dissolution of the District shall commence, and any Party contributing more than its share of District cost in the year prior to dissolution shall be repaid its excess contribution before any distribution is computed or made to the Parties pursuant to Paragraph 34.

B. DIVISION OF COST. Each Party shall bear its share of the budgeted costs of the District as follows:

1. Budgeted cost. The budgeted costs shall be paid by each Party in proportion to the amount that the most current assessed value of all real and personal property taxed by the Party, as equalized for State purposes, bears to the most current assessed value of all real and

personal property taxed by all the Parties, as equalized for State purposes.

2. Payments of the District. The payments to be made to the District by each Party for its respective share of the budgeted costs shall be made to the Board Treasurer at least as often as the first month of each quarter. Additional funding may be required due to emergency or other unforeseen conditions, which shall be provided only if all the Parties so agree, and then provided in proportion to the allocation formula in effect for that year.

21. FIRE DISTRICT OPERATIONS. Subject to the Board's general authority and supervisory powers over the District, the Fall Creek Area Fire District, under the command of the Fire Chief or his designee, shall man and operate the fire fighting and other equipment of the District and provide the fire fighting and first responder services to the territory included in the District.

22. DEDICATED USE. All equipment and supplies shall be used exclusively for fire protection, prevention, and first responder purposes except that the Board may authorize use for promotional or fund raising purposes which accrue directly to the benefit of the District. The Board may also authorize use of the second tanker or second pumper for municipal or town purposes or for non-profit organizations within the District. The Fire Chief must approve of any such use prior to the equipment being so used. No other equipment may be used for such purposes, and all equipment used for such purposes shall be operated only by Members of the District under the direction of the Fire Chief.

23. RECEIPTS. Fire related funds received by the Parties shall be handled as follows:

A. FIRE DUES. The District shall perform all inspection and other services necessary to qualify the Parties to receive state administered fire department dues. The District and the Parties shall do all acts necessary to qualify for the receipt of fire department dues as provided in §§101.14, 101.573, and 101.575, Wisconsin Statutes. Such dues received by each Party shall be given to the District, which shall use them according to law. No Party may be charged by the District for any fire inspection or public education services performed by the District.

B. OTHER RECEIPTS. The costs of suppressing fires on or originating on highways or railroads shall be considered the cost of the municipality in which the fire occurred, and that municipality may collect any fees due for said

suppression. Those fees, and any other damages, forfeitures, or costs recovered by any Party, net of the costs of collection, for services performed by the District shall be used for funding the collecting Party's share of the District's budget for the following year.

24. MUTUAL AID PACTS. By execution of this Agreement, all mutual aid pacts of which the Fall Creek Fire Department was a Party are confirmed in the name of the District.

25. CONTRACT FOR DISPATCH SERVICES. The Board shall contract with Eau Claire County for dispatch services.

26. LEASE OF FIRE STATION. The Board shall negotiate with Fall Creek for a written lease of the present fire station and any auxiliary buildings for a term and at such rental and on such conditions as the Board may negotiate from time to time. The Board shall enter into an agreement with Fall Creek to occupy and contribute toward the amortization cost of the fire station to be constructed in 2000, which agreement may, but need not, take the form of a lease, but shall incorporate all of the obligations of the Parties contained in the "Interim Agreement" between them and executed during the month of April, 2000. The initial term of that agreement shall end when the transfer provided in Paragraph 19.C occurs.

27. ADDITIONAL AREA. Additional area outside of the Parties, or additional Parties, may be added, but only by amendment of this Agreement approved and executed by all Parties.

28. WITHDRAWAL BY PARTY. In the event a Party wishes to withdraw from the Fire District, for any reason whatsoever, it shall serve written notice thereof on the Board and the other Parties no fewer than one hundred eighty (180) days in advance of the date of such proposed withdrawal. Until such withdrawal is effective, the rights and responsibilities of the withdrawing Party shall continue unabated. The remaining Parties shall each pay the amount necessary to purchase the equity of the withdrawing Party in the manner and at the prices as indicated below. The amount each Party shall pay shall be determined by applying the "fractional interest" formula in Paragraph 30, below. In the event that Fall Creek wishes to withdraw, it shall be obligated to purchase the District's equity² in any capital improvements to the current facility,

²The District's equity, for purposes of this agreement, is defined as the cost of said improvements minus any outstanding debt incurred for the construction thereof, without regard to the identity of the actual title holder to the facility.

including the fire station building, which were provided at the expense of the Fire District. The purchase price shall be paid on the first day of the first January after the effective date of withdrawal or two hundred seventy (270) days after the effective date of withdrawal, whichever is later.

29. INVOLUNTARY TERMINATION: In the event a Party fails to make payments or to perform other obligations required of it by this agreement, the remaining Parties may, 90 days after service of a description of the default and a demand that it be cured upon the clerk of the defaulting Party, terminate this agreement as to that Party by service of notice to that effect on said Party. Until such termination is effective, the rights and responsibilities of the terminated Party shall continue unabated. Said termination shall be effective on the date stated therein, but not fewer than one hundred eighty (180) days from the date it is served on the clerk of the defaulting Party. Until such withdrawal is effective, the rights and responsibilities of the withdrawing Party shall continue unabated. On or before that date of termination, the defaulting Party will pay the District the full amount of all debt of the District and all debt incurred by any Party for the benefit of the District, without discount for present value. The District may exercise its right of set-off against any or all of said payments, if the terminated Party is indebted to the District. The remaining Parties shall each pay the amount necessary to purchase the equity of the withdrawing Party in the manner and at the prices as indicated below. The amount each Party shall pay shall be determined by applying the "fractional interest" formula in Paragraph 30, below. The terminated Party shall be paid the amount due it on the first day of the first January after the effective date of termination or two hundred seventy (270) days after the effective date of termination, whichever is later.

30. AMOUNT OF PAYMENT TO DEPARTING PARTY.

A. The total of each Party's past contributions to the cost of construction and debt service for the Fire Hall shall be fixed annually by the Board at its annual meeting.

B. The fractional interests of the Parties in all the property of the District shall be fixed annually by the Board at its annual meeting, based on the cumulative contribution of each of the Parties to the budget of the District since this agreement was executed; but after the agreement has been in effect for more than ten years, only the contributions for the previous ten years shall be counted. If the Parties fail to re-determine a total of contributions or fractional interests, the last previously stipulated values shall control.

C. The payment to a withdrawing or terminated Party shall be 80% of the fractional interest of that Party in the inventoried assets of the District.

31. ARBITRATION. The Parties agree that in the event of a dispute over the interpretation or implementation of any aspect of this Agreement, the dispute will be resolved by binding arbitration pursuant to Chapter 788, Wisconsin Statutes. The procedure for arbitration shall be as follows:

A. Either Party may request arbitration;

B. Within ten days of a request for arbitration, unless the Parties have agreed in writing on a single arbitrator, each Party shall select one person to serve on a panel of three arbitrators.

C. The decision of the Arbitrator or Arbitrators shall be final and binding on the Parties, except as provided in said Chapter 788.

32. AMENDMENTS. This Agreement may be amended at any time by an instrument in writing executed by the authorized officers of all of the Parties supported by a certified copy of a Municipal Resolution duly adopted by a majority vote of the Municipal governing board of each Party.

33. NOTICE. Any notice under this Agreement to be served upon any of the Parties hereunder by any of the other Parties shall be in writing and shall be served upon the clerk of any of the Parties by certified mail or personal service and shall be signed by the entity giving the notice, being the Clerk of the particular Party or the Secretary of the District.

34. DISSOLUTION. If the District is, at any time, dissolved, the debts of the District shall be paid and the remaining assets, if any, shall be distributed in proportion to the sum of the equalized valuation for each Party for the preceding ten years divided by the sum of the equalized valuation for all Parties which are still a fully Participating Party to this agreement at the time of dissolution. If the Parties agree, rather than distribute the assets, one Party may pay the other Party for its share of the assets.

35. VALUATION. If District property must be valued upon dissolution or otherwise, the value shall be the value determined by an appraiser of real estate and an appraiser of fire apparatus, agreed upon by the Parties. In the absence of their agreement on such appraisers, the District shall select an appraiser and the withdrawing Party shall select an appraiser. The two appraisers so selected shall select a third appraiser. The three appraisers so

selected shall, by majority decision, agree upon an appraised value of the property. If a Party has not selected an appraiser within thirty (30) days of a written request by the other Party to do so, then the other Party may select such appraiser. In the event that the three appraisers cannot reach an agreement by majority decision, then each of the appraisers shall submit an appraised value for each share and the resulting arithmetic mean shall be deemed to be the appraised value of the property. The withdrawing Member shall receive an amount not to exceed eighty percent (80%) of the agreed upon valuation. Appraisal costs shall be the responsibility of the Member(s) appointing the appraiser.

36. Realizing that this Charter cannot contain descriptions of all of the steps necessary to implement and manage it, each of the Parties agrees to execute such documents and perform other acts necessary or convenient to the implementation of this agreement and the formation of the District and thereafter..

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by its authorized officers, all as of the day and year set forth opposite its Municipal name.

Dated:

VILLAGE OF FALL CREEK

9-25, 2000

Leonard Madsen
Leonard Madsen, Village President


Renee Roemhild
Renee Roemhild, Village Clerk

Dated:

TOWN OF LINCOLN

9-1, 2000


John Welke, Sr., Town Board Chairperson



Lorraine Schiefelbein, Town Clerk

Dated:

TOWN OF LUDINGTON

9-22, 2000


Merle Solberg, Town Board Chairperson


Emma Weggen, Town Clerk