

**Mutual Aid Agreement Between
City of Waukesha and Lake Country Fire & Rescue Fire Board
For Exchange of Rescue Services**

This intergovernmental cooperation agreement, referred to herein as the “Agreement,” is entered into under the authority of Wis. Stat. §66.0301 by and between the City of Waukesha (hereinafter “City”) and the Lake Country Fire & Rescue Fire Board (hereinafter “Board”).

Recitals

The purpose of this Agreement is to effectuate and set the parameters for a mutual exchange of services between the City and the Board, where in return for assistance from the City of Waukesha Fire Department with technical rescue services, Lake Country Fire & Rescue shall provide assistance to the Waukesha Fire Department with dive rescue services.

The parties desire to assist each other and share these services without requiring additional payment or any further obligation, monetary or otherwise.

Now, therefore, in consideration of the mutual covenants and promises contained herein, the parties agree as follows

- 1. Definitions.** For purposes of this Agreement, capitalized terms are defined as follows:
 - a.** Aiding Agency. The Agency furnishing Rescue Services equipment and personnel to the Requesting Agency pursuant to this Agreement.
 - b.** Agency. The department of each party entering into this Agreement tasked with providing fire and emergency rescue services to their respective jurisdiction. When used in relation to the City, “Agency” refers to the City of Waukesha Fire Department. When used in relation to the Board, “Agency” refers to Lake Country Fire & Rescue.
 - c.** Chiefs. The Chief of the Fire Department of each Agency.
 - d.** Dive Rescue. Underwater diving and related activities conducted as part of search and rescue efforts of victims of accidents, disasters, and other emergency events.
 - e.** Incident. A situation threatening health, welfare or safety of a person or persons or property giving rise to the need for Dive Rescue services or Technical Rescue services under the terms of this Agreement.
 - f.** Lake Country Fire & Rescue. The Fire Department created by the Lake Country Fire and Rescue Intermunicipal Agreement.

- g. Lake Country Fire & Rescue Intermunicipal Agreement. The agreement between the Villages of Chenequa, Nashotah, Oconomowoc Lake, and Wales; Towns of Delafield and Genesse; and City of Delafield for provision of fire and paramedic protection by a joint fire department, duly approved and executed by said municipalities on September 29, 2020.
 - h. Lake Country Fire & Rescue Fire Board. The Board responsible for overseeing the operation of Lake Country Fire & Rescue created by the Lake Country Fire and Rescue Intermunicipal Agreement, which authorizes the Board to enter into this Agreement under Article III, section (E)(3).
 - i. Rescue Services. Dive Rescue provided by Lake Country Fire & Rescue and/or Technical Rescue provided by the Waukesha Fire Department under the terms of this Agreement.
 - j. Requesting Agency. The Agency responsible for the jurisdiction in which an Incident occurs necessitating a request for Rescue Services pursuant to this Agreement.
 - k. Technical Rescue. For purposes of this Contract, Technical Rescue Services means the provision of personnel, materials and equipment for rescue in incidents meeting the technician level as specified in NFPA 1670 Operations and Training for Technical Search and Rescue Incidents (2014 edition) chapters 5 (Rope Rescue), 6 (Structural Collapse Search and Rescue), 7 (Confined Space Search and Rescue) and 11 (Trench and Excavation Search and Rescue).
2. **Agreement to Effectuate Mutual Aid.** Each Agency is authorized to participate in the provision of Rescue Services according to the following:
- a. Whenever an Incident involving the type of Rescue Services described by this Agreement of sufficient magnitude and consequence arises so that it is deemed advisable by the incident commander of the Requesting Agency to request assistance of the Aiding Agency, he or she is authorized to do so under the terms of this Agreement.
 - b. The on-duty shift commander of the Aiding Agency is authorized to and shall take the following action upon receipt of a request for aid pursuant to this Agreement:
 - i. Promptly determine what Agency resources are required to respond to the request.
 - ii. Promptly determine if the required equipment and personnel may be committed in response to the request.
 - iii. If the required equipment and personnel may be committed in response to the request, promptly dispatch the personnel and equipment required to the

Requesting Agency in accordance with the Aiding Agency's policies and procedures.

- c. The rendering of assistance under the terms of this Agreement is not mandatory. For example, the on-duty shift commander of the Aiding Agency may elect not to respond if the available personnel and equipment are required at that time for the protection of the Aiding Agency. In that event, the Aiding Agency must promptly notify the Requesting Agency of the same. The judgment of the on-duty shift commander of the Aiding Agency shall be final. This Agreement is for the initial response of on duty personal and does not obligate the agency providing aid to respond with a full team that includes off duty personnel.
 - d. The Requesting Agency's fire department will be the incident commander at all incidents governed under the terms of this agreement. If possible, the Aiding Agency will become a rescue branch that is part of the incident command structure for the incident. The Aiding Agency will provide the incident commander with a liaison officer as needed. The Aiding Agency shall have sole discretion and authority over operations that are related to services being provided under the provisions of this agreement.
 - e. Aiding Agencies will be released and return to duty in their own community as soon as the situation is restored to the point which permits the Requesting Agency to adequately handle it with its own resources. Aiding Agencies may also return to duty in their own community at any time, upon notifying the incident commander of the Requesting Agency at the scene of the emergency, if the on-duty shift commander of the Aiding Agency determines the required equipment and personnel should no longer be committed to the Incident.
3. **Statutory Authorities.** This Agreement is entered into pursuant to Wis. Stat. §66.0301. The following statutory rights and responsibilities shall apply.
- a. Wisconsin Statute §66.03125: Fire departments; mutual assistance.
 - b. Wisconsin Statute §895.35: Expenses in actions against municipal and other officers.
 - c. Wisconsin Statute §895.46: State and political subdivisions thereof to pay judgments taken against officers.
 - d. To ensure compliance with State law and to avoid ambiguity, all future amendments and recodification of the foregoing statutes, and judicial interpretations thereof, are incorporated herein and shall apply.
4. **Payment for Rescue Services.** By this Agreement, the City agrees to provide Technical Rescue services in exchange for receipt of Lake Country Fire & Rescue Dive Rescue services, and the Board agrees to provide Dive Services in exchange for receipt of City of

Waukesha Fire Department Technical Rescue services. The parties shall at all times be responsible for their own respective employees for the payment of wages and other compensation, including injury or death benefits, and for carrying worker's compensation upon said employees, as though the service had been rendered within the limits of the entity where he or she is regularly employed. Each party shall be responsible for its own personnel and equipment and shall bear the risk of loss therefore. This Agreement constitutes an "agreement... for the payment of services" governed by Wis. Stat. §66.03125(2)(b)1., and therefore the Requesting Agency is not responsible for personnel or equipment costs incurred by the Aiding Agency under Wis. Stat. §66.03125(2)(b)2. No other monetary payment is required for exchange of services under this Agreement unless it is set forth elsewhere in this Agreement or expressly required by law.

5. **Cost recovery for disposable supplies and equipment:** The Requesting Agency shall reimburse the Aiding Agency for the actual costs of supplies and disposable equipment used during the response to the incident. The Requesting Agency shall be responsible to pay for the costs of obtaining specialized equipment not provided by the Aiding Agency that be that may be needed to effect rescue or mitigate an Incident unless the Aiding Agency is reimbursed for such costs by the party responsible for the Incident.
6. **Cost recovery for labor:** If the Requesting Agency can invoice or is reimbursed from the responsible party for the cost of labor associated with responding to the incident, that agency will include the labor costs for the aiding agency and reimburse the agency based on the actual funds collected. The Aiding Agency shall provide an invoice setting forth the labor costs it incurred when responding to the Incident upon request by the Requesting Agency for this purpose.
7. **Insurance.** Each Agency shall maintain insurance coverage to protect against risks arising out of this Agreement, which shall include general liability coverage, automobile liability coverage, workers compensation coverage, and such additional coverage and amounts as further specified by the Chiefs. Such coverage shall be endorsed, if necessary, to cover claims arising out of contractual liabilities.
8. **Waiver/Liability.** Each party to this Agreement waives all claims (except those arising from the intentional or reckless acts of the other party) against the other party for compensation for any loss, damage, personal injury, or death occurring as a consequence of this Agreement.
 - a. The parties shall each indemnify and hold the other harmless from any and all third-party (including the parties' respective employees) claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, the acts or omissions of the parties' respective employees, contractors and agents occurring in the performance of this Contract,

including court costs and actual attorney fees.

- b. There shall be no liability of either party to the other party of this Agreement for failure or refusal to render assistance or for withdrawal of assistance once provided.
 - c. Nothing contained within this Agreement is intended to be a waiver or estoppel of the parties' or their insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes Sections 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, the parties or their insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law. Any obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. The parties also agree that they are not waiving any other immunities or defenses available to them under state, federal or administrative law.
9. **No Third-Party Beneficiaries.** This Agreement is solely between the City and the Board, each of whom acts individually in the performance of this Agreement. There are no third party beneficiaries to this Agreement. No separate entities are created by this Agreement.
10. **Parties Are Independent Contractors.** Nothing in this Agreement shall be construed to create any relationship between the parties other than independent contractors, contracting pursuant to Wis. Stat. §66.0301. Unless specifically provided in this Agreement, the parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
11. **Costs of Enforcement.** The parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching party will pay the non-breaching party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
12. **Term.** This Agreement shall remain in full force and effect for one (1) year upon execution by the parties and will automatically renew on an annual basis unless a party desiring to terminate this Agreement serves written notice upon the other party of its intention to terminate. Such notice shall be served not less than sixty (60) calendar days prior to the end of the term.
13. **Termination.** Either party may withdraw from this Agreement at any time by notifying the Chief of the other Agency in writing, whereupon the withdrawing Agency will terminate participation sixty (60) calendar days from the date of the written notice.
14. **Notices.** Any written notice required by this Agreement shall be addressed as follows:

As to the City:

Steve Howard, Fire Chief
City of Waukesha Fire Department
130 W. St. Paul Ave.
Waukesha, WI 53188

As to the Board:

Matt Fennig, Fire Chief
Lake Country Fire & Rescue
115 Main St.
Delafield, WI 53018

15. **Amendments.** No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all parties to this Agreement.
16. **Assignment.** Neither party shall assign, in whole or in part, any of the rights, obligations, or benefits of this Agreement without the prior written consent of the other party.
17. **Severability.** If any term of this Agreement is unenforceable under law for any reason, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it shall be so severed, and the remainder of this Agreement shall remain in effect and enforceable.
18. **Governing Law and Jurisdiction.** This Agreement will be construed and enforced according to the laws of Wisconsin. The parties agree that if a lawsuit is necessary with respect to this Agreement, it will be filed in the Circuit Court for Waukesha, Wisconsin. The parties consent to personal jurisdiction and waive all jurisdictional defenses.

City of Waukesha:

By: _____
Shawn N. Reilly, Mayor

Date: _____

Attest: _____
Gina L. Kozlik, City Clerk

Date: _____

Lake Country Fire & Rescue Fire Board:

By: _____
Rob Bennett, President

Date: _____