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WINNEBAGO COUNTY RECORDER

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2004 MAR 23 AM 9:01

JOANN BARTLESON
RECORDER

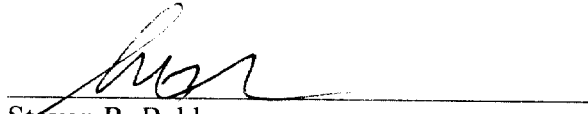
DOC. NO. **040590**

Prepared by: Steven R. Bakke, Bakke and Reiter Law Office, 150 North Clark Street, Forest City, IA 50436 Telephone: 641-585-2530

CERTIFICATE

I, Steven R. Bakke, hereby do depose and state, that the attached 28E Agreement and Contract for Fire Protection and Emergency Response Services between City of Forest City, Iowa, City of Leland, Iowa, the Townships of Mount Valley, Forest, Linden, and Newton all in Winnebago County, Iowa, the Townships of Madison and Ellington, all in Hancock County, Iowa was filed with the Secretary of State on March 19, 2004.

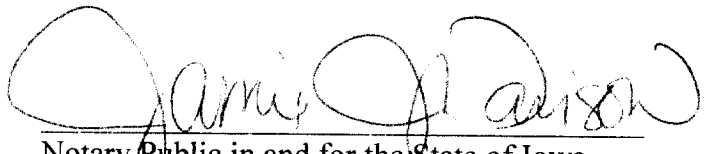
Dated this 23rd day of March, 2004.



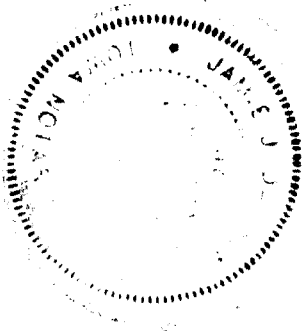
Steven R. Bakke

STATE OF IOWA :
: SS
COUNTY OF WINNEBAGO :

On this 23rd day of March, 2004, before me, a Notary Public in and for the State of Iowa, personally appeared Steven R. Bakke to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



Notary Public in and for the State of Iowa



28E AGREEMENT AND CONTRACT FOR FIRE PROTECTION AND EMERGENCY RESPONSE SERVICES BETWEEN CITY OF FOREST CITY, IOWA, CITY OF LELAND, IOWA, THE TOWNSHIPS OF MOUNT VALLEY, FOREST, LINDEN, AND NEWTON ALL IN WINNEBAGO COUNTY, IOWA, THE TOWNSHIPS OF MADISON AND ELLINGTON, HANCOCK COUNTY, IOWA

SECRETARY OF STATE
IOWA

Mar 19 8 00 AM '04

1. Public Entities

This agreement and contract shall be between the City of Forest City hereafter referred to as "Forest City"; the City of Leland hereinafter referred to as "Leland"; Mount Valley Township hereinafter referred to as "Mount Valley"; Forest Township hereinafter referred to as "Forest"; Linden Township hereinafter referred to as "Linden"; Newton Township hereinafter referred to as "Newton"; Madison Township hereinafter referred to as "Madison"; and Ellington Township hereinafter referred to as "Ellington". The Townships of Mount Valley, Forest, Linden, Newton, Madison and Ellington shall hereinafter collectively be referred to as the "Townships" and shall include only the unincorporated areas of said Townships.

2. Area Served

The legal description of the area to be afforded fire protection and emergency response services as provided by this Agreement is attached as Exhibit "A" to this Agreement.

3. District

There is hereby created by this Agreement the Forest City Rural Fire District (hereinafter "District") which shall hereafter own equipment, trucks and other items used in providing emergency response services transferred to the District or titled in the name of the District. All such equipment, trucks and other items used in providing emergency response services shall be used by the Forest City Fire Department to provide emergency response services. The District shall be managed by the Townships. The District shall be governed by the Forest City Rural Fire District Board which shall consist of 3 board members elected from the Townships' trustees. Each board member shall have one vote. The District shall own assets transferred to it during the term of this Agreement. The Townships are the sole members of the District, the City shall not be a member of the District. All maintenance of the assets of the District and other expenses shall be paid by the City pursuant to the budget approved by the City and the Townships.

4. Services Provided

It is agreed that the City will provide emergency response services as set forth in Exhibit "B" for all property and persons within the area as described in Exhibit "A". The term "emergency response services" shall include all fire calls, calls for the Jaws of Life, calls as a result of chemical spills and other emergency responses, but shall not include ambulance calls. A map of the area described in Exhibit "A" to be served is attached as Exhibit "C" to this Agreement. From time to time, the emergency response services may be expanded in writing by mutual agreement of the parties.

5. Equipment

It is agreed, for insurance purposes, the City will title all trucks in its name and maintain, house and staff the fire protection and other emergency equipment used under this Agreement. The annual costs to maintain the trucks and the equipment and to maintain, house and staff the fire protection and other emergency equipment shall be paid by the City in accordance with the budget approved pursuant to this Agreement.

6. Agency Contribution

It is agreed that all parties to this Agreement will pay a percent share of the annual operating expenses and capital expenditures based upon the cost sharing formula as outlined in Paragraph 7. Payment of hydrant rental, if any, shall not be considered as a cost under this Agreement, but shall be the sole responsibility of the City.

7. Cost Sharing Formula

The percent share that each party to this Agreement shall pay shall be based on the following formula:

$$\text{Share of costs} = \frac{\%TC + \%Pop}{2}$$

Where: TC = Average of total emergency calls to area served
Pop= Population of area served

The formula shall be recalculated annually and is calculated for all entities receiving fire protection and emergency services by the City.

A running average of fire and emergency calls (but excluding ambulance calls) from the most recent three (3) years shall be applied to the formula. However for the next seven years, on an annual basis, the running average of fire and emergency calls (but excluding ambulance calls) will have one year added to the formula until such time as the average contains ten years. After ten years the running average of fire and emergency calls shall be recalculated on an annual basis with the oldest year dropped and the latest year added so as to create a ten-year running average.

For purposes of this Agreement, population figures shall be based on the most recent federal census or special federal census, whichever is latest, for each Township and each city provided protection. The first calculation pursuant to this formula is attached hereto as Exhibit "D".

8. Payments

Fiscal Year 2002-2003

In exchange for the transfer by the Townships of all of its trucks to the City of Forest City, the Fiscal Year 2002-2003 payment as traditionally paid in December 2003 in the approximate amount of \$23,800.00 shall not be required to be paid by the Townships.

Fiscal year 2003-2004

As this agreement shall not commence until July 1, 2004 all payments for the fiscal Year 2003-2004 will be paid in December of 2004 pursuant to tradition and any prior agreements, whether oral or written.

Fiscal Year 2004-2005 and thereafter

It is agreed that the Townships Secretary/Treasurer shall promptly transmit, beginning with the fiscal year commencing July 1, 2004, on a biannual basis thereafter by November 15 and May 15, payment of their share of the costs under this Agreement pursuant to the formula set forth in Paragraph 7. Payments shall be sent to the City Clerk of the City of Forest City. The City of Forest City shall pay its share of the costs under this Agreement pursuant to the formula by allocating the required funds required in its budget.

9. Budget

The Chief of the Forest City Fire Department will submit in December of each year a written budget to the Safety Committee of the City and to the three board members of the District. The Safety Committee of the City and the three board members of the District shall review the proposed budget with the Chief of the Forest City Fire Department prior to submission of the budget to the City Council. In January of the following year, there will be a joint meeting of the City of Forest City Council and the three board members of the District to approve the annual budget for the operation of the Forest City Fire Department and for all-major expenses and purchases of the fire vehicles. The City Council shall have a 60% vote for approval of said budget and the three board members of the District shall have a 40% vote for approval of said budget. Except in extreme financial circumstances, the budget must contain a line item for capital expenditures and truck replacement so that sufficient revenues are generated each year for the replacement of fire vehicles and equipment in a timely fashion. In the event the majority of the parties, as determined by their respective voting shares, reduce the amount of the capital expenditures, the balance of the parties hereto shall reduce their capital expenditures pro rata. Funding for said budget shall be according to the formula set forth in Paragraph 7 above, provided, however, that the portion of the funding by the Townships shall not exceed the tax levy limitations set forth in Iowa Code §359.43, and any amendments thereto.

10. Title to Equipment

The City shall retain title of its fire vehicles. The Townships, formerly doing business in the name of the Forest City Rural Fire Department, shall transfer title of its fire vehicles to the City. The City shall pay all expenses for all vehicles according to the budget approved in accordance with Paragraph 9. It is contemplated that within two years, Forest City will purchase a pumper with funds currently in its possession, said pumper will be titled in the City's name. All future vehicle purchases shall be titled in the name of the City. Except for said pumper and the vehicles transferred to the City from the Forest

City Rural Fire Department, all future vehicle purchases shall be subject to the buy-out provision in Paragraph 22 below.

11. Mutual Aid Agreements

The City agrees to participate in and develop mutual aid agreements with surrounding area fire and emergency service departments. It is also agreed that the District's fire equipment may be used in fire protection areas outside the area covered by this Agreement in accordance with mutual aid agreements between the City and other emergency service departments to assist each other in the event of an extraordinary emergency.

12. Service To Other Areas

If the City wishes to serve an Agency, Township or other city not a party to this Agreement on an annual basis, it may do so provided the fee assessed and collected is equal to an assessment under the formula used for the original entities involved herein.

13. Insurance Coverage

In accordance with the budget approved pursuant to Paragraph 9 above, the City shall provide and maintain the following insurance coverage, including fire vehicles, as required by state law, from companies and agents properly licensed and authorized to do business by the State of Iowa.

- A. Public Liability: Including coverage for direct operations, independent contractors, contractual liability and completed operations, with limits not less than:
 - 1. Bodily Injury Liability - \$1,000,000.00 each person
\$2,000,000.00 each occurrence
 - 2. Property Damage Liability - \$1,000,000.00 each occurrence
\$2,000,000.00 aggregate
- B. Workers' Compensation: Including employers liability in accordance with the Workers' Compensation Laws of the State of Iowa.
- C. Malpractice/Errors & Omissions. Coverage for all fire fighters and officers and other personnel for errors and omissions in the performance of duties with a minimum limit of no less than \$1,000,000.00.
- D. Property Loss. The City shall obtain casualty insurance for the actual cash value at the time of loss of equipment, trucks and other items used in providing emergency response services.

14. Liability and Indemnification

The public entities that are parties to this Agreement shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold one another harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury

to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from any action or inaction related to either entity which is deemed by a court of law or arbitrator not to be an action or inaction of the other entity. Notwithstanding the above, each entity at all times reserves the right to retain counsel of its own to defend its respective interests.

15. Terms of Agreement

The entities agree that this Agreement is the complete agreement of the parties and nothing further may be utilized to explain, contradict or nullify the agreement. The parties further agree that this document is seven (7) pages and encompasses twenty-three (23) numbered sections. Each party has had ample opportunity to seek independent advice with regard to its terms. If there are to be any changes to this Agreement, they shall be done in writing and signed by all entities.

16. Jurisdiction, Venue, and Attorney's Fees

In the event there are any disputes that arise between the entities, all entities hereby consent and agree to the jurisdiction of the State of Iowa and the venue of Winnebago County, Iowa. All disputes shall be decided according to the laws of the State of Iowa and the prevailing entity shall be entitled to reasonable attorney's fees.

17. Article Headings

The article headings contained in this Agreement are for reference purposes only and shall not affect the meaning or the interpretation thereof.

18. Execution of Documents

The parties agree to timely execute any documents necessary to carry out the terms of this Agreement. The parties further agree that this document may be executed outside the presence of the other party and in separate counterparts.

19. Amendments

As required by Section 28E.8, Code of Iowa, this Agreement before going into effect must be filed with the Secretary of State and recorded with the County Recorders of Winnebago and Hancock Counties, Iowa

The City Clerk of Forest City shall cause this Agreement to be recorded in the offices of the hancock and Winnebago County Recorders and filed with the Secretary of State prior to the effective date of this Agreement which shall be deemed effective fifteen days subsequent to the last date of approval, below, by the governing bodies designated. Any amendment, before adoption, must receive 75% approval, pursuant to the percentages as contained in paragraph 7, of the governing bodies of the public entities that are signatories to this Agreement. An amendment is required to add another public agency as a signatory party to this Agreement. Any duly approved amendments to the Agreement shall be filed with the secretary of State and recorded in the office of the Winnebago County Recorder and the Hancock County Recorder.

20. Term of Agreement

This Agreement shall begin on July 1, 2004 and shall be in effect until June 30, 2014, and may only be amended by all parties by resolutions of the governing bodies of the parties to this Agreement made prior to the first day of January of any year during the term of this Agreement. This Agreement as amended shall renew for successive ten (10) year periods automatically unless written notice is given at least six months prior to the last day of this agreement or renewals thereof.

21. Termination prior to end of the Term

In the event that any public entity that is a party to this Agreement shall desire to withdraw or terminate this Agreement prior to the end of any 10-year term, a written notice of withdrawal shall be completed and delivered to all other public entities by hand delivery or certified mail by the first day of February and said termination shall be effective on the following June 30, and provided further, that said withdrawal or termination under this paragraph shall not become effective until state law as to the 911 system is complied with, and all current and outstanding payments for services have been made by the withdrawing party to the District. The withdrawing parties interest in all fire vehicles, equipment, and capital funds accumulated, whether purchased or acquired prior to or subsequent to the commencement of this Agreement, shall be forfeited by the withdrawing party.

22. Termination at the end of the Term

In the event that any public entity that is a party to this Agreement shall desire to withdraw or terminate this Agreement at the end of any 10-year term of this Agreement, a written notice of withdrawal shall be completed and delivered to all other public entities by hand delivery or certified mail by the first day of February prior to the expiration date of this Agreement as stated in Section 20.

In the event that a Township, or portions of that Township, withdraws from or terminates this Agreement, all fire vehicles, equipment, and capital funds accumulated, whether purchased or acquired prior to or after the commencement of this Agreement, shall be forfeited by the withdrawing party.

In the event that all of the Townships or the City elect to withdraw or terminate this agreement at the end of any 10-year term, the Townships and the City shall have the right to purchase all property acquired during the term of this Agreement using the formula in Paragraph 7, whether purchased with capital contributions or purchased by the Forest City Fire-Fighters Association, Inc. Upon termination pursuant to this paragraph, the parties shall have a buy-out provision to purchase the other party's interest using an alternating option to buy at then appraised value. The first party to have the right to buy shall be determined by a flip of a coin. The first item to be subject to the right to buy shall be the highest appraised item. The other party shall the have the right to buy the item with the next highest appraised value and alternate until all items have been sold. For purposes of this buy out, the Townships shall be considered as one party and the City, with Leland, shall be considered as one party.

In accordance with Paragraph 10, the pumper purchased by the City and the trucks transferred to the City from the Forest City Rural Fire Department shall not be subject to this buy-out provision.

Any withdrawal or termination under this paragraph shall not become effective until June 30th of the year in which the termination is given, and provided further that state law as to the 911 system is complied with, and all current and outstanding payments for services have been made by the withdrawing party.

23. Additional Parties

Additional parties may be added by the affirmative vote of a majority, said majority will be determined pursuant to Paragraph 6 and 8.

Approved by the City Council of the City of Forest City, Iowa, the City Council of the City of Leland, Iowa, Mount Valley Township, Forest Township, Linden Township, Newton Township, in Winnebago County, Iowa, Madison Township and Ellington Township in Hancock County, Iowa.

Date Mon. 8, 2004

CITY OF FOREST CITY, IOWA

George Wilson
George Wilson, Mayor

Attest: Paul D. Boock
Paul D. Boock, City Clerk

MOUNT VALLEY TOWNSHIP

Paul M. Nelson
By one of its Trustees

Steven C. Knudtson
Attest: Steven C. Knudtson, Clerk

LINDEN TOWNSHIP

[Signature]
By one of its Trustees

Gary Graber
Attest: Gary Graber, Clerk

ELLINGTON TOWNSHIP

Donald Westenberg
By one of its Trustees

Ted D. Hall
Attest: Ted Hall, Clerk

CITY OF LELAND, IOWA

[Signature]
Mayor

Attest: [Signature]
City Clerk

FOREST TOWNSHIP

[Signature]
By one of its Trustees

Riley Lewis
Attest: Riley Lewis, Clerk

MADISON TOWNSHIP

[Signature]
By one of its Trustees

Susan Reese
Attest: Susan Reese, Clerk

NEWTON TOWNSHIP

Carl R. Wagner
By one of its Trustees

Andrew Roper
Attest: Andrew Roper, Clerk

EXHIBIT A

Winnebago County

All of Forest Township

All of Mount Valley Township

Sections 25, 34, 35, and 36 in Newton Township

Sections 12, 13, 24, 25, 35 and 36 in Linden Township

Hancock County

Sections 1 – 25 inclusively in Madison Township

Sections 1 – 25 inclusively in Ellington Township

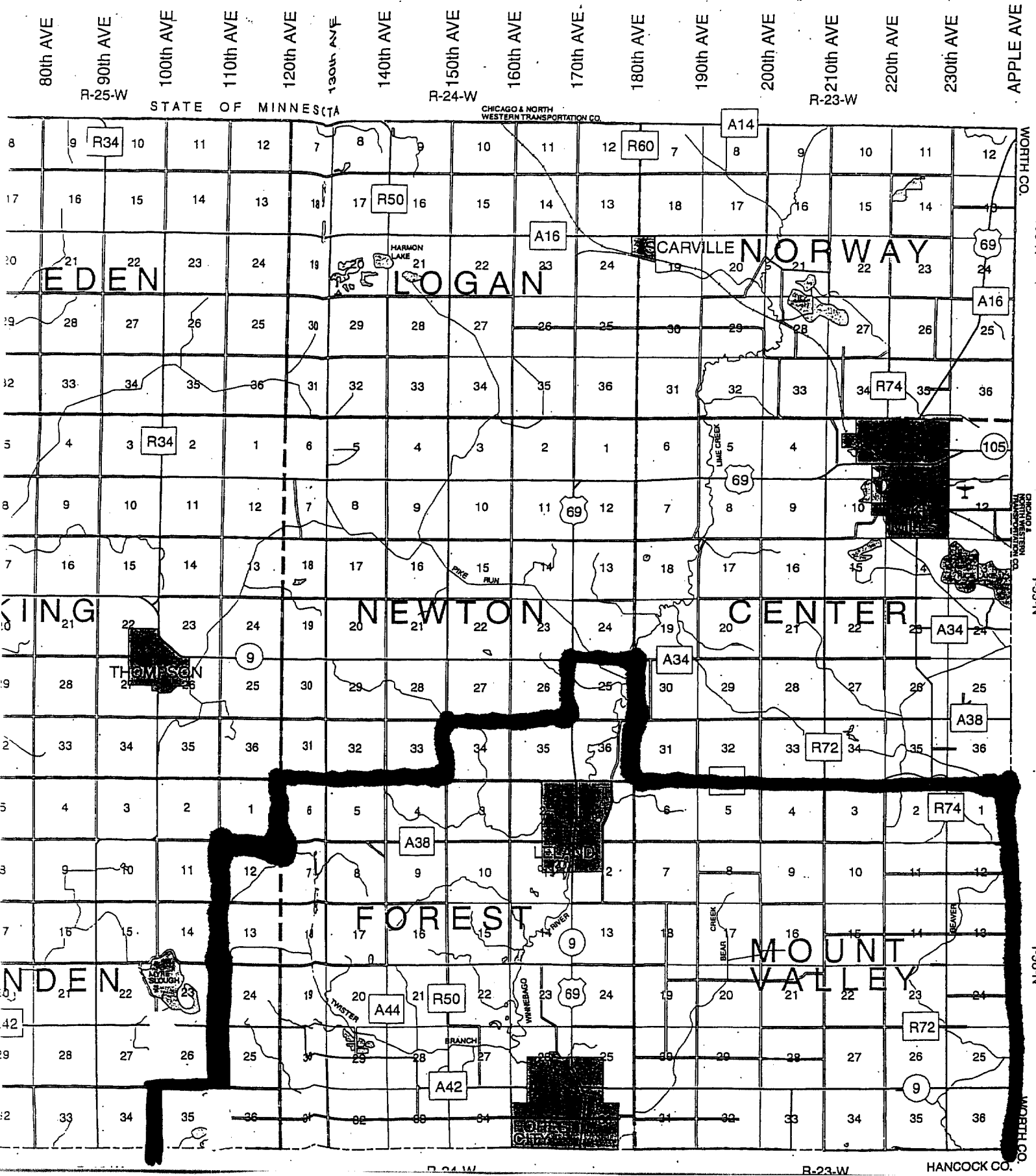
EXHIBIT B

Fire Protection

Hazardous Materials Emergencies

Jaws of Life Emergencies

EXHIBIT "C-1"



STATE OF MINNESOTA

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

80th AVE

90th AVE

100th AVE

110th AVE

120th AVE

130th AVE

140th AVE

150th AVE

160th AVE

170th AVE

180th AVE

190th AVE

200th AVE

210th AVE

220th AVE

230th AVE

APPLE AVE

R-25-W

R-24-W

R-23-W

WORTH CO. N-100-N

CHICAGO & NORTH WESTERN TRANSPORTATION CO. N-99-N

N-96-N

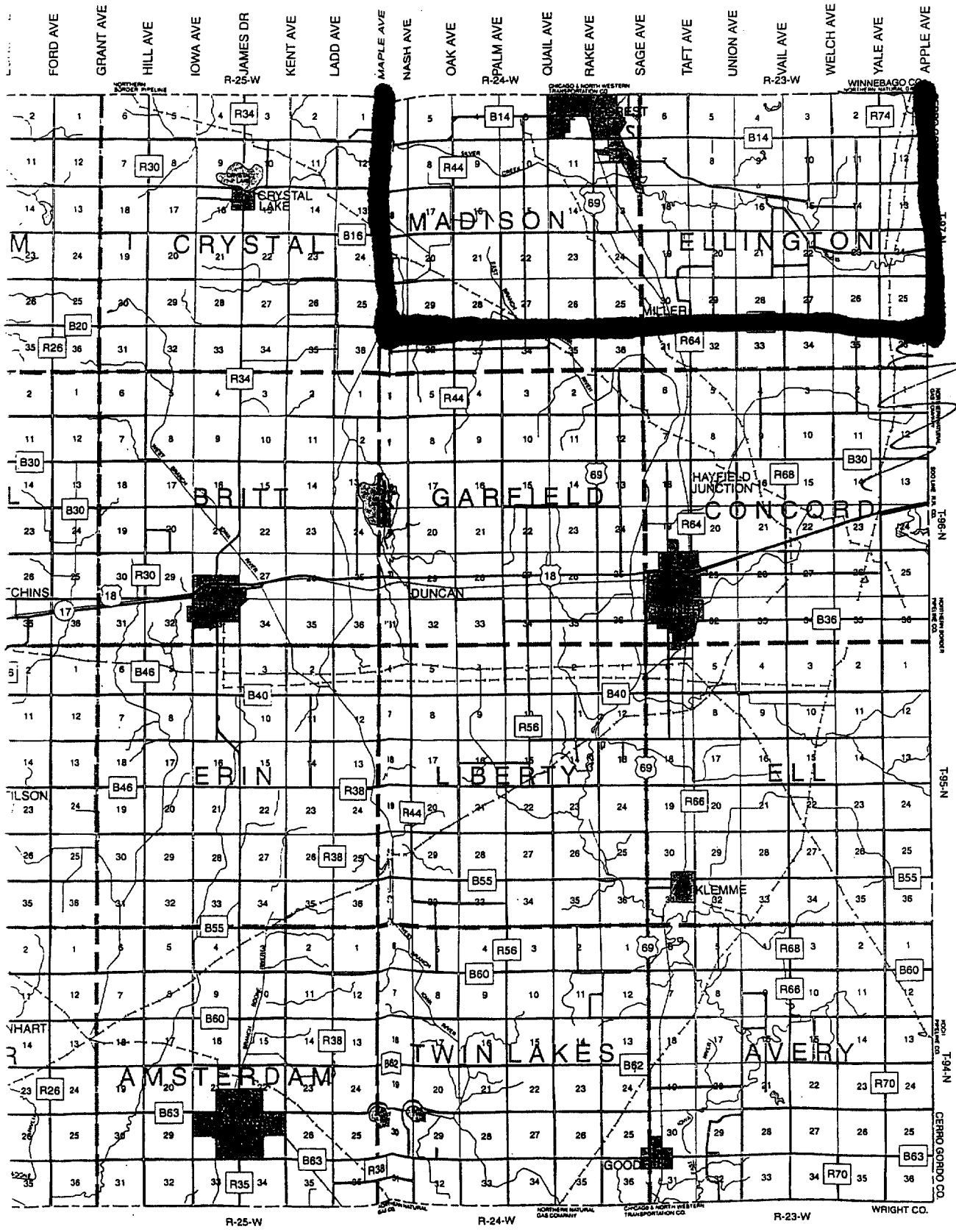
WORTH CO. HANCOCK CO.

R-24-W

R-23-W

HANCOCK CO.

EXHIBIT "C-2"



4. CALCULATE COST SHARE

EXHIBIT "D"

CITY 1 FOREST CITY

$$\underline{\hspace{1cm}} (\%AV) + \underline{37.90} (\%TC) + \underline{65.57} (\%POP) = \underline{103.47} = \underline{51.73} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

CITY 2 LELAND

$$\underline{\hspace{1cm}} (\%AV) + \underline{8.06} (\%TC) + \underline{3.88} (\%POP) = \underline{11.94} = \underline{5.97} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOWNSHIP A MADISON

$$\underline{\hspace{1cm}} (\%AV) + \underline{8.06} (\%TC) + \underline{5.28} (\%POP) = \underline{13.34} = \underline{6.68} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOWNSHIP B ELLINGTON

$$\underline{\hspace{1cm}} (\%AV) + \underline{14.52} (\%TC) + \underline{6.88} (\%POP) = \underline{21.40} = \underline{10.70} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOWNSHIP C MOUNT VALLEY

$$\underline{\hspace{1cm}} (\%AV) + \underline{14.52} (\%TC) + \underline{9.43} (\%POP) = \underline{23.95} = \underline{11.98} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOWNSHIP D FOREST

$$\underline{\hspace{1cm}} (\%AV) + \underline{11.30} (\%TC) + \underline{8.01} (\%POP) = \underline{19.31} = \underline{9.65} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOWNSHIP E LINDEW

$$\underline{\hspace{1cm}} (\%AV) + \underline{2.42} (\%TC) + \underline{0.47} (\%POP) = \underline{2.89} = \underline{1.44} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOWNSHIP F NEWTON

$$\underline{\hspace{1cm}} (\%AV) + \underline{3.72} (\%TC) + \underline{0.48} (\%POP) = \underline{3.70} = \underline{1.85} \% \text{ of Total Cost } (\$ \underline{\hspace{2cm}})$$

$\frac{\times}{2}$

TOTAL COST OF EMERGENCY RESPONSE \$