

Middlebury Township Resolution 2016-08

OMESA - FIRST AMENDED ARTICLES OF INCORPORATION - APPROVAL

WHEREAS, in late 2002, the township of Middlebury, along with the township of Ovid and the then-village of Ovid, joined together as incorporating municipalities in forming the Ovid-Middlebury Emergency Services Authority (OMESA) for the purpose of providing fire and ambulance services to the OMESA service-area residents, including Middlebury Township;

WHEREAS, the village of Ovid was re-formed and incorporated as a city in late 2015, an action which changed the existing OMESA funding arrangement and necessitated consideration of modifying the administrative direction, funding obligations, nature of services to be provided, and political balance of the OMESA governing board; and

WHEREAS, following such consideration, the OMESA board of trustees has drafted and put forward for approval and ratification by the incorporating municipalities new articles of incorporation for OMESA, specifically, its "First Amended Articles of Incorporation," designated to take effect, contingent upon ratification by all three incorporating municipalities, on January 1, 2017:

WHEREFORE, BE IT RESOLVED that Middlebury Township approves of and hereby ratifies the proposed January 1, 2017 "First Amended Articles of Incorporation" of the Ovid-Middlebury Emergency Services Authority.

Resolution moved by: M. Herendeen

Seconded by: R. Semans

Upon a roll call, the following voted:

Aye: Stevens, Semans, Kiger, Brown, Herendeen

Nay:

The Supervisor declared the resolution: Adopted Not Adopted.

Date: December 14, 2016

Rose Brown
Rose Brown
Middlebury Township Clerk

**ADOPTION BY
MIDDLEBURY TOWNSHIP**

The foregoing Amended Articles of Incorporation for the Ovid-Middlebury Emergency Services Authority were adopted by the Board of Trustees of Middlebury Township, Shiawassee County, Michigan, at a meeting duly held on the 14th day of December, 2016.

Rose Brown

Clerk of Middlebury Township

M. L. Lezendeen

Supervisor of Middlebury Township

**FIRST AMENDED ARTICLES OF INCORPORATION
OVID-MIDDLEBURY EMERGENCY SERVICES AUTHORITY**

The Township of Ovid, the Township of Middlebury, and the City of Ovid have associated themselves for the purpose of reconstituting their Fire and Emergency Medical Services Authority under the Emergency Services to Municipalities Act, 1988 PA 57, MCL 124.601 et seq., and adopt the following Amended Articles of Incorporation.

**ARTICLE 1
Name**

The name of this corporation is the Ovid-Middlebury Emergency Services Authority (hereinafter also referred to as "OMESA," "Authority," or "the Authority").

**ARTICLE 2
Incorporating Municipalities**

The incorporating municipalities are the Township of Ovid, the Township of Middlebury and the City of Ovid. Any other county, city, village, or township may become a part of the Authority by amendment to these Articles of Incorporation, adopted by the legislative body of the municipality that desires to become an incorporating municipality and by the legislative body of every current incorporating municipality of the Authority.

**ARTICLE 3
Objects, Purposes, and Powers**

The Authority's business includes the following objects, purposes, and powers:

- A. To provide a fire department and firefighting services for the Authority's service area as defined in Article 5. Fire department services may include a "fire rescue" component to provide limited emergency medical response as determined by the Authority's board of trustees. The Authority may continue to provide ambulance service until April 1, 2017.
- B. To adopt a budget for each fiscal year to provide for the Authority's operations.
- C. To acquire, hold, manage, control, sell, exchange, lease, mortgage, or accept by donation real estate and such personal property and equipment as may be necessary to further the Authority's lawful purposes, as may be authorized by law.
- D. To apply for and accept grants, loans, or contributions from the Federal government or any of its agencies, the State of Michigan, any incorporating municipality, or any other public or private agencies or individuals to carry out the purpose of the Authority.
- E. To hire employees, attorneys, accountants, and consultants as necessary to carry out the purposes of the Authority.

- F. To enter into any contract not prohibited by law to further the purposes of the Authority, including contracts with any incorporating municipality, non-incorporating municipality, or private entity for the provision of emergency services.
- G. To adopt bylaws and rules of administration or procedure to accomplish the purposes of the Authority.
- H. To do everything else necessary and proper authorized by law for the accomplishments of any of the purposes mentioned above, either alone or in association with other individuals and/or public or private entities, and in general to perform those things and transact that business in connection with the above stated objects that are not inconsistent with law.
- I. To provide for an annual audit of the financial affairs of the authority.
- J. To levy taxes, with the approval of the electors of the incorporating municipalities, pursuant to and in accordance with requirements of Section 12 of the Emergency Services of Municipalities Act, 1988 PA 57, MCL 124.612.

ARTICLE 4
Property

Effective concurrent with the effective date of these Amended Articles of Incorporation, the incorporating municipalities shall transfer to the Authority title and possession of such equipment as may be in their ownership and possession prior to the effective date of these Articles, unless all such equipment has already been transferred under a previous version of these Articles. If any equipment is to be transferred, it will be set forth in an Attachment hereto which is incorporated by reference as if fully set forth herein.

ARTICLE 5
Service Area

The Authority's service area includes the total territory within the jurisdictional boundaries of its incorporating municipalities. The service area may also include such areas beyond these boundaries to the extent the Authority may agree to provide services by way of contract or mutual aid arrangements.

ARTICLE 6
Nature of Corporation

This corporation shall be a Municipal Emergency Services Authority as provided in the Emergency Services to Municipalities Act, 1988 PA 57, MCL 124.601 et seq. The Authority shall have no stock, and no dividends or pecuniary profits shall be declared or paid to its officers, employees, or other private individuals, and all of its funds shall be used to further the purposes of the Authority as set forth above. The duration of the Authority shall be perpetual unless dissolved by act of the parties or by law, provided that the Authority shall not be dissolved if such dissolution could operate as an impairment of any of its contracts. The Board of Trustees may adopt a corporate seal, and may thereafter alter, or use the seal in any manner deemed appropriate by the Board of Trustees.

ARTICLE 7
Officer Liability

The officers and trustees of the Authority shall not be individually liable for its debts or other liabilities, and the private property of such individuals shall be exempt from any of the Authority's debts or liabilities.

ARTICLE 8
Board of Trustees

The control and management of the Authority shall be vested in a Board of Trustees.

- A. *Formation.* The Board of Trustees shall have six members, designated as follows:
- (a) The Ovid Township Supervisor, or his or her designee.
 - (b) The Middlebury Township Supervisor, or his or her designee.
 - (c) The Mayor of the City of Ovid, or his or her designee.
 - (d) Three members, appointed one each by the Board of Trustees for Ovid Township, the Board of Trustees for Middlebury Township, and the City Council for the City of Ovid.
- B. *Qualifications.* In addition to any other qualifications applied by these Articles:
- (a) All trustees shall be qualified electors of their appointing municipalities.
 - (b) No trustee shall be an employee of any emergency service operated or administered by the Authority, except that this provision does not apply to a trustee who is classified or considered an employee solely by reason of serving or being compensated as a trustee.
 - (c) All trustees shall take the oath of office required by Article 11, Section 1 of the Michigan Constitution. An inadvertent failure to administer the oath of office to an otherwise qualified trustee shall be corrected promptly upon discovery, but shall not invalidate any otherwise valid action of the Board in which the trustee participated.
 - (d) Where a city mayor or a township supervisor is not qualified under these Articles, the mayor or supervisor shall name a qualified individual as his or her designee to serve as trustee.
 - (e) The appointing city council or township board (or designating mayor or supervisor, if applicable) shall expeditiously appoint (or designate) a qualified individual to replace a trustee that is discovered not to be qualified under these Articles.
- C. *Removal.* Appointed trustees may be removed by the Board or Council that appointed them with or without cause. Designee trustees, if any, may likewise be removed with or without cause by the ex-officio Supervisor or Mayor that designated them.
- D. *Political Activity.* The Authority shall be non-partisan and shall not take part in or lend its influence, either directly or indirectly, to the nomination, election, or appointment of any candidate for public office, nor shall it sponsor or participate in any meetings of a political nature, except for millage elections or issues regarding public safety or directly affecting its

operations. Employees who attempt to explicitly exploit their position with the Authority, or who assert or imply endorsement by the Authority, in a political campaign without the express approval of the Board may be subject to discipline. This provision does not apply to an employee merely identifying himself or herself as a member of the Authority, including the making of objectively truthful assertions concerning the nature or character of his or her service, such as rank, position, length of service, experience, skills, job duties, certifications, and so forth.

- E. *Quorum.* No action shall be taken except at a meeting at which a quorum of Trustees is present. A quorum shall consist of not less than a majority of the duly appointed Trustees.
- F. *Voting.* All actions taken by the Board shall require approval of not less than a simple majority of the Trustees present at a meeting where a quorum is present. When specifically provided elsewhere in these Articles, the Authority's bylaws, the Authority's rules of procedure, or applicable law, a greater majority may be required to approve the specified action.
- G. *Limitation.* Final approval of contracts for goods, equipment, services, maintenance, construction, or remodeling in excess of \$20,000 in value, or to hire any employee for a term other than "at will," shall require approval of a majority of all Trustees then serving on the Board.
- H. *Meetings.* Regular Meetings of the Board shall be held not less than monthly, but may be held more often, in accordance with a schedule of meetings adopted, changed if necessary, and posted in accordance with the provisions of the Open Meetings Act, 1976 PA 267, MCL 15.261 et seq. Regular meetings may be rescheduled by the Board. Special meetings may be called by the Chair, or by any two Trustees. Except in the case of regularly scheduled meetings, or in the case of an emergency, or where waived by the Trustees, notice of the time, place and matters to be discussed shall be given to each Trustee at least 48 hours in advance of such meeting and posted in accordance with the provisions of the Open Meetings Act. In the case of an emergency, notice shall be given by phone or in person as may be practicable. Any Trustee may waive notice in writing, either before or after the meeting, and attendance at a meeting by a Trustee shall be deemed waiver of notice by that Trustee.
- I. *Bylaws.* The Board shall adopt bylaws for the administration and operation of the Authority. The bylaws shall include a section providing for and describing provisions, terms, and limits of indemnification and defense for incorporating municipalities, trustees, officers, employees, and other persons or entities as may be designated. Once adopted, any amendment, replacement, repeal, or other modification of the bylaws shall require both (1) a notice describing the nature of the proposed modification in accordance with the notice requirement of the meeting at which the modification will be considered, and (2) the affirmative vote of at least a two-thirds majority of the Trustees present at a meeting where a quorum is present, such number of affirmative votes to also include a majority of all Trustees then serving in office.
- J. *Rules of Procedure.* The Board shall adopt rules of procedure for the conduct of its meetings and certain administrative processes. The rules of parliamentary procedure as contained in the latest edition of "Robert's Rules of Order" shall govern the Board in all procedures to

which they are applicable, except where they conflict with these Articles, the Bylaws, the Rules of Procedure, applicable law, or where they may occasionally be temporarily set aside during a meeting by acquiescence or action of the Board. The Board may appoint a parliamentarian.

- K. *Fiscal Year.* The Board shall establish, and may thereafter change, the fiscal year for the Authority by resolution. Establishing a change in the fiscal year may not take effect until the end of the fiscal year in which the change is approved. The Board shall provide by resolution for the financial procedures to be followed regarding the funds and property of the Authority, and likewise shall determine by resolution the persons responsible for following those procedures and performing the financial transactions of the Authority.
- L. *Investment Policy.* The Board shall adopt an investment policy consistent with the requirements of the investment policies of the incorporating municipalities.
- M. *Compensation.* Trustees and officers may be compensated as established by the Board.
- N. *Vacancy.* In the event of a vacancy on the Board, the governing body of the municipality who selected the said trustee (or the ex-officio supervisor or mayor who designated the trustee) shall fill the vacancy as expeditiously as possible. Vacancies not filled within 31 days shall not be numbered among the trustees then serving for purposes of quorum and determining majority votes until the vacancy has been filled by a qualified trustee. In addition to resignation, disqualification, removal, death, or incapacitation, an appointed or designee Trustee, but not an ex-officio supervisor or mayor, who has missed three of any five consecutive regular meetings may be determined by the Board to have vacated the office of Trustee.

ARTICLE 8A Budget and Funding

The Board shall adopt a Budget for each fiscal year which shall generally segregate anticipated revenues into accounts designed to meet expected expenditures. The Budget shall balance anticipated revenues with expected expenditures and contingency accounts. No expenditure may be authorized if it will result in an actual budgetary account deficit or is at a rate which will lead to an actual budgetary account deficit prior to the end of the fiscal year. The Board shall amend the Budget to meet deviations in expected revenues or authorized expenditures.

- A. As referenced in Article 3 above, the Authority may levy taxes with the approval of the electors of the incorporating municipalities pursuant to the requirements of Section 12 of the Emergency Services of Municipalities Act, 1988 PA 57, MCL 124.612, for the purpose of funding, in whole or in part, its operations in accordance with these Articles.
- B. Instead of, or as augmentation to, levying taxes as described in Section A above, the Board may provide funding by requiring contribution from each incorporating municipality, as follows:
 - (a) The Board shall determine the amount of each incorporating municipality's financial contribution to the Authority for the fiscal year pursuant to a formula based upon the ratio of each municipality's most recent final taxable value to the total sum of the most recent taxable value of all of the incorporating municipalities combined.

- (b) The resulting amount of the contribution required from each municipality will be expressed in terms of a "millage rate" of its most recent final taxable value. Even though the amount is expressed as a millage rate, this term as used herein is simply to describe the method of calculating the amount of each municipality's required contribution, which expressly is not dependent upon, nor does the term imply any requirement of, the municipality to actually levy any specific or dedicated tax in order to fund its OMESA obligation.
- (c) The dates established for payment to the Authority of the required contributions by the incorporating municipalities shall be the same for all incorporating municipalities. Unless otherwise established by resolution of the OMESA Board, each incorporating municipality shall pay to the Authority its total annual contribution no later than the last day of March each year. The preceding provisions of this subsection notwithstanding, the City of Ovid shall pay to the Authority its total annual contribution no later than the last day of September each year, such payment to be for the same fiscal year for which the other municipalities were obligated to pay their contributions in March.
- (d) (1) Where the Authority requires contribution instead of levying any taxes with the approval of the electors as referenced in Section A above, the millage rate calculation for the required contribution amount shall not exceed 1.75 mills. (2) Where the Authority requires contribution to augment a tax levy of less than 1.75 mills, the total required contribution may not exceed a rate of 1.75 mills when combined with all taxes levied by the Authority. (3) Where the Authority has levied taxes of 1.75 mills or more, no further contribution may be required from the incorporating municipalities.
- (e) The preceding subsection (d) notwithstanding; and provided there is unanimous agreement by the incorporating municipalities that includes specific agreement as to each method, rate, amount and duration of a proposed required contribution; the Authority may require a millage-rate based contribution from the municipalities in an amount that exceeds the total required contribution limits of Subsection (d), or may require a per capita contribution based upon the population of each municipality, either alone or in combination with a millage-rate based contribution, in any lawful amount.

ARTICLE 9 Officers

The primary officers of the Authority shall be the Chair, Vice-Chair, Secretary, and Treasurer, whose duties shall include as follows:

- A. *Chair.* The principal duties of the Chair shall be to preside at all meetings of the Board of Trustees and to have general day-to-day supervision over the Authority's affairs in accordance with the direction and policies of the Board of Trustees. The Chair shall be elected from among the appointed Trustees.
- B. *Vice-Chair.* The principal duties of the Vice-Chair shall be to discharge the duties of the Chair in the event of the absence or disability for any cause of the Chair. The Vice-Chair shall be elected from among the appointed Trustees.
- C. *Secretary.* The principal duties of the Secretary shall be to countersign all contracts and leases executed by the Authority, affix the seal of the Authority to all papers required or

directed to be sealed, to keep the records of the proceedings of the Board of Trustees, to call and/or administer elections as permitted and required by law, and to safely and systematically keep all books, papers, records and document belonging to, or in any way pertaining to the Authority, except the books and records incidental to the duties of the Treasurer. All records shall be made available to the public in the accordance with the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231 et seq. The Secretary shall be elected from among the appointed Trustees.

- D. *Treasurer.* The principal duties of the Treasurer shall be to keep an account of all monies, credits, and property of the Authority which come into his or her hands, and to keep an accurate record of all monies received and disbursed and of proper vouchers for monies disbursed into render all accounts, statements, and inventories of monies received and disbursed and of money and property on hand, to prepare for annual audits and generally of all matters pertaining to the office of Treasurer, as required by the Board of Trustees. The Treasurer shall be bonded through the Authority. The Treasurer may or may not be selected from among the Trustees. If the Treasurer is not selected from among the Trustees, the Treasurer shall not be considered a Trustee and will serve without a vote.
- E. *Other Officers.* The Board of Trustees may provide for the appointment of additional officers as it deems to be in the Authority's best interest. The officers shall perform additional or different duties as may be required by the Board of Trustees or prescribed by the bylaws.

ARTICLE 10 Employees

The Board of Trustees shall be responsible for hiring all employees of the Authority. The duty may be delegated to designated chiefs or other administrative officers at the discretion of the Board of Trustees, although any agreement to hire any employee for a term other than "at will" must be expressly approved by the Board.

ARTICLE 11 Publication

The Secretary, Chair, or other designated Authority trustee or employee shall cause these Articles of Incorporation to be published in a newspaper of general circulation in the Authority's service area, and printed copies to be certified and filed as provided in Section 2 of the Emergency Services to Municipalities Act, 1988 PA 57, MCL 124.602.

ARTICLE 12 Dissolution

- A. The Authority may be dissolved upon a two-thirds majority vote of the Trustees, provided, however, that the dissolution shall be effective only if ratified in writing by the governing bodies of two-thirds of the incorporating municipalities.
- B. In the event the Authority is dissolved, each municipality shall remain liable for a proportion of the debts and liabilities of the Authority equal to the ratio of the then most recent taxable

value of each municipality to the then most recent taxable value of all of the incorporating municipalities combined at the time of the dissolution.

- C. All outstanding obligations of the Authority shall be liquidated within one hundred and eighty (180) days of the dissolution date.
- D. Assets of the Authority in excess of its liabilities shall be distributed pursuant to unanimous agreement by the incorporating municipalities, provided that in the event that such agreement cannot be reached, the assets of the Authority shall be disbursed among the incorporating municipalities with each receiving value approximately equal to the ratio of the then most recent taxable value of each municipality to the then most recent taxable value of all of the incorporating municipalities combined at the time of the dissolution.
- E. (a) Where at the time of dissolution all incorporating municipalities have either submitted in full their required contributions for the fiscal year, or all incorporating municipalities have not yet submitted any portion of their required contributions for the fiscal year, no adjustment for this factor need be afforded when determining the liabilities and/or distributing the assets as described in the preceding sections of this Article. (b) Where at the time of dissolution there is variance in the submission of the required contributions among the incorporating municipalities, then the amounts of contribution submitted by each incorporating municipality shall be credited back to that same municipality when determining the liabilities and/or distributing the assets as described in the preceding sections of this Article. (c) This provision may be enforced by the Authority or any affected incorporating municipality.

ARTICLE 13

Withdrawal of an Incorporating Municipality

Unilateral withdrawal of an incorporating municipality must be by resolution of the governing body of the withdrawing municipality with the Authority thereafter promptly notified in writing of the same.

- A. Unless negotiated to a lesser obligation with unanimous agreement by the incorporating municipalities, a municipality unilaterally withdrawing from the Authority shall remain liable for a proportion of the debts and liabilities of the Authority incurred while the municipality was a part of the Authority, based upon the formula set forth in Article 12 above. The liabilities of the withdrawing municipality shall include, without proration or proportionment, its entire required contribution for the fiscal year in which it withdraws.
- B. Unless negotiated otherwise with unanimous agreement by the incorporating municipalities, a withdrawing municipality relinquishes all claims to any assets, equipment and/or property of any kind owned by the Authority, including the withdrawing municipality's entire required contribution, without proration or proportionment, for the fiscal year in which it withdraws.
- C. The withdrawal of an incorporating municipality shall not take effect until the end of the fiscal year in which the municipality withdraws unless the withdrawing municipality unequivocally asserts it will not be accepting services from the Authority. In either circumstance, however, the withdrawing municipality is obligated to the Authority for any unpaid portion of its entire required contribution, without proration or proportionment, for

the fiscal year in which it withdraws. This provision may be enforced by the Authority or any affected incorporating municipality.

- D. The trustees of a withdrawing municipality will be disqualified and the positions will not thereafter be numbered among the trustees then serving for purposes of quorum and determining majority votes.
- E. The trustees of an incorporating municipality that has not submitted its required contribution to the Authority within 60 days of the date such payments are due will be temporarily disqualified from serving as trustees. On a majority vote of the remaining trustees, the incorporating municipality in arrears may be determined by the Board to be withdrawing from the Authority.

ARTICLE 14

Resident Agent and Principal Office

The principal office of the Authority shall be located at 114 E. Front Street, Ovid, Michigan 48866, or at such location within the Service Area of the Authority as the Board may from time to time establish by resolution. The name of the initial resident agent for the purposes of accepting service of process shall be the Clerk of the City of Ovid. The resident agent may be changed as the Board from time to time provides by resolution.

ARTICLE 15

Merger, Severability, Amendment

- A. *Merger.* There are no other oral or written agreements or understandings between the incorporating municipalities with regard to these Articles except as are stated herein. Any prior agreements or understandings on matters addressed in these Articles are hereby rescinded, revoked, or terminated.
- B. *Severability.* These Articles shall be interpreted in a manner consistent with applicable law. If any portion is held to be illegal, invalid, or otherwise unenforceable, the remainder of the Articles shall be deemed severable and remain in full force and effect, so long as it is practicable without the unenforceable portions.
- C. *Amendment.* These Articles may only be amended by adoption of proposed amendments by the legislative body of every incorporating municipality. Amendments shall be endorsed and published, and certified printed copies shall be filed in the same manner as the original Articles of Incorporation, except that the filed printed copies shall be certified by the Secretary of the Board of Trustees.

ARTICLE 16

Effective Date

These Articles of Incorporation are effective January 1, 2017. All emergency services currently provided by the Authority, including ambulance service, shall continue to be provided by the Authority until April 1, 2017.

**ADOPTION BY
THE CITY OF OVID**

The foregoing Amended Articles of Incorporation for the Ovid-Middlebury Emergency Services Authority were adopted by the City Council of the City of Ovid, Clinton County, Michigan at a meeting duly held on the _____ day of _____, 20__.

Clerk of the City of Ovid

Mayor of the City of Ovid

**ADOPTION BY
OVID TOWNSHIP**

The foregoing Amended Articles of Incorporation for the Ovid-Middlebury Emergency Services Authority were adopted by the Board of Trustees of Ovid Township, Clinton County, Michigan, at a meeting duly held on the _____ day of _____, 20__.

Clerk of Ovid Township

Supervisor of Ovid Township

**ADOPTION BY
MIDDLEBURY TOWNSHIP**

The foregoing Amended Articles of Incorporation for the Ovid-Middlebury Emergency Services Authority were adopted by the Board of Trustees of Middlebury Township, Shiawassee County, Michigan, at a meeting duly held on the _____ day of _____, 20__.

Clerk of Middlebury Township

Supervisor of Middlebury Township