



DATE: November 3, 2021  
**CONSENT**

**AGENDA ITEM:** MNSPECT Contract Amendment

**SUBMITTED BY:** Kristina Handt, City Administrator

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**BACKGROUND:**

The city approved a contract with MNSPECT in April 2019. Our new building official began in October and does not have state delegation since this is his first building official job in Minnesota. In order to allow MNSPECT to do work on state projects (school buildings, state licensed facilities, etc), the Department of Labor and Industry is asking to have our contract with MNSPECT amended to reflect that option.

**ISSUE BEFORE COUNCIL:**

Should the council approve the contract amendment with MNSPECT?

**PROPOSAL:**

A copy of the proposed contract amendment is included in your packet. I've also included a copy of the 2019 contract for reference. The amendment would add the state delegation option to the list of services under paragraph 1.

**FISCAL IMPACT:**

No change in the fee structure is proposed. The state delegation will allow the city, rather than the state, to collect the building permit fees. MNSPECT is paid 75% of the plan review fee.

**OPTIONS:**

- 1) Approve the contract amendment with MNSPECT
- 2) Amend and then Approve the contract amendment with MNSPECT
- 3) Do not approve the contract amendment with MNSPECT

**RECOMMENDATION:**

If removed from the consent agenda:

***“Motion to approve the contract amendment with MNSPECT.”***

**ATTACHMENTS:**

- MNSPECT Amendment
- 2019 MNSPECT Contract

**AMENDMENT to**

**AGREEMENT FOR BUILDING INSPECTION AND BUILDING OFFICIAL SERVICES**

THIS AMENDMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021  
to Section 1, adding item E to the agreement dated April 16, 2019.

- E. Until such time as City has designated a Building Official that has been approved for delegated work on public buildings and State-licensed facilities (as defined in MN Rule 1300.0070 subparts 19a, 25, and 26) by the MN DLI, Inspector shall continue to perform all plan reviews and inspections for such facilities. The fees for plan review will be as set forth in section 6B. The fees for inspections shall be as set forth in section 6C ii.

All other terms and conditions of the agreement shall remain in effect.

**IN WITNESS THEREOF**, the parties have executed this agreement in duplicate this  
\_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF LAKE ELMO**

**MNSPECT, LLC**

By: \_\_\_\_\_  
Charles Cadenhead, Mayor

By: \_\_\_\_\_  
Scott Qualle, General Manager

Attest: \_\_\_\_\_  
Julie Johnson, City Clerk

## **AGREEMENT FOR BUILDING INSPECTION AND BUILDING OFFICIAL SERVICES**

**THIS AGREEMENT** is made and entered into this 16<sup>th</sup> day of April, 2019 by and between the City of Lake Elmo, Minnesota, a Minnesota municipal corporation (City) and MNSPECT, LLC, a Minnesota Limited Liability Company (Inspector).

### **WITNESSETH:**

**WHEREAS**, the City is desirous of contracting with Inspector for the performance of the hereinafter specified Building Official and inspection services with the City; and

**WHEREAS**, Inspector is agreeable to rendering services on the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, the parties hereto agree as follows:

#### **1. Building Official and Inspection Services.**

Inspector will provide the following building official and inspection services (Services) for the City of Lake Elmo:

- A. Inspector shall provide an individual who meets the statutory qualifications for a Designated Building Official found in the relevant Minnesota Statutes and Rules to serve as the City's Designated Building Official during times when the City does not have a satisfactory internal designee to serve as the City's Designated Building Official. During the time Inspector is acting as the Designated Building Official, Inspector shall be responsible for all duties set forth in Minnesota Rules, Chapter 1300, including items B-D below.
- B. Perform Plans Examination services for all eligible permit applications received under this agreement.
- C. Perform field inspections for all inspections requested.
- D. Prepare and provide inspection records and other necessary information to the City for it to maintain permanent records of all services performed by Inspector.

Inspector shall complete all permit and plan reviews for applications related to residential properties within ten (10) days of receipt of a complete submittal of the permit application or relevant plans and shall complete all permit and plan reviews for applications related to commercial properties within fifteen (15) days of receipt of a complete submittal of the permit application or relevant plans.

#### **2. Qualifications of Inspector's Employees and Contractors; Independent Contractor.**

All Services provided by Inspector shall be performed by qualified individuals certified by the State of Minnesota as Building Officials or Limited Building Officials.

City and Inspector acknowledge and agree that Inspector is an independent contractor contracting with the City to perform the Services pursuant to this Agreement and is not an employee of the City. Inspector shall have control over the manner in which the Services are performed under this Agreement. Inspector shall supply, at its own expense, all personnel, materials, supplies, equipment, and tools required to provide the Services contemplated by this Agreement. Inspector shall not be entitled to any benefits from the City, including without limitation, insurance benefits, sick and vacation leave, workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency relationship between the Parties. Inspector shall be responsible for all individuals performing Services on behalf of Inspector pursuant to this Agreement.

It is understood that the City may have one or more employees working in the inspections department. The day-to-day management of those employees, including work hours, work load, compensation, benefits, insurance, training, discipline, hiring, and termination decisions, along with the provision of necessary vehicles, tools, and equipment shall be the responsibility of the City. The quality and character of the work performed under the auspices of the MN State Building Code shall be the responsibility of Inspector.

As the designated Building Official, Inspector shall perform all duties for all State delegation projects delegated to the City using plans examiners and inspectors qualified and authorized to do so as determined by MN Dept. of Labor & Industry staff.

### 3. Insurance

Inspector, at its expense, shall procure and maintain in force for the duration of this Agreement, the following minimum insurance coverages:

- A. General Liability. Inspector agrees to maintain commercial general liability insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. The City shall be endorsed as additional insured.
- B. Automobile Liability. If Inspector operates a motor vehicle in performing the Services under this Agreement, Inspector shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000 combined single limit.
- C. Professional (Errors and Omissions) Liability Insurance. Inspector will maintain professional liability insurance for all claims the Inspector may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Inspector's professional services required under this Agreement. Inspector is required to carry the

following minimum limits: \$1,000,000. The retroactive or prior acts date of such coverage shall not be after the effective date of this Agreement, and Inspector shall maintain such insurance for a period of at least three (3) years following completion of the Services. If such insurance is discontinued, extended reporting period coverage must be obtained by Inspector to fulfill this requirement.

D. Workers' Compensation. Inspector agrees to provide workers' compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. The Contractor shall also carry employer's liability coverage with minimum limits as follows:

- i) \$500,000 – Bodily Injury by Disease per employee
- ii) \$500,000 – Bodily Injury by Disease aggregate
- iii) \$500,000 – Bodily Injury by Accident

Inspector shall, prior to commencing the Services, deliver to the City a Certificate of Insurance as evidence that the above coverages are in full force and effect. The insurance requirements may be met through any combination of primary and umbrella/excess insurance. Inspector's policies shall be the primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of Contractor's performance under this Agreement. The Contractor's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days advanced written notice to the City.

4. Effective Date of Agreement.

The effective date of this Agreement shall be April 17, 2019.

5. Termination of Agreement.

This agreement shall remain in force and effect from the effective date until cancelled by either party upon thirty (30) days advance written notice. In the event of termination, City shall only be responsible to pay for the Services satisfactorily performed by the Inspector to the effective date of termination. Discontinuance of selected services listed in Paragraph 1 (above), shall not require termination of the contract, but notice of intent to discontinue selected services shall be communicated with 15 days written notice.

6. Cost to the City for Services.

The City shall pay Inspector for Services performed by Inspector within 30 days of submission of a written invoice to the City for the following Services at the following rates:

- A. The fee to act as the Designated Building Official (DBO) shall be \$750 per week or portion thereof, which shall include up to 5 billable DBO hours per week.
- B. The fee for the performance of plans examination shall be 75% of the plan review fee as listed in the City's fee schedule (65% of permit fee).

C. For the services listed below, a trip charge of \$50.00 shall be imposed when the time spent in the City is less than 4 contiguous hours in a given work day. The fee for inspection personnel and services shall be as follows:

- |   |             |
|---|-------------|
| i. Designated Building Official (Qualle)      | \$150.00/hr |
| ii. Inspector with State Delegation           | \$125.00/hr |
| iii. Certified Building Official (commercial) | \$105.00/hr |
| iv. Fire Inspector                            | \$105.00/hr |
| v. Limited Building Official (residential)    | \$85.00/hr  |

Inspector shall submit logs with its invoices for services rendered under this subsection.

7. Amendments and Assignment.

Any modification or amendment to this Agreement shall require a written agreement signed by both Parties. Inspector may not assign any of its rights or duties under this Agreement without the prior written consent of the City.

8. Indemnification.

To the fullest extent permitted by law, Inspector agrees to defend, indemnify, and hold-harmless the City and its employees, officials, and agents from and against all claims, actions, damages, losses, and expenses, including reasonable attorney fees, arising out of the Inspector's negligence or Inspector's performance or failure to perform its obligations under this Agreement. Inspector's indemnification obligation shall apply to Inspector's subcontractor(s), or anyone directly or indirectly employed or hired by Inspector, who performs Services on behalf of Inspector, or anyone for whose acts Inspector may be liable. Inspector agrees this indemnity obligation shall survive the completion or termination of this Agreement. This indemnification requirement is subject to the provisions of MN Rule 1300.0110, Subpart 9. Indemnification shall not extend to any City employees performing services under the authority of this agreement.

9. Legal Compliance.

Inspector agrees to comply with all federal, state, and local laws and ordinances applicable to the Services to be performed under this Agreement, including safety standards. Inspector shall be solely responsible for the safety of all persons and property during performance of the Services. Inspector represents and warrants that it has the requisite training, skills, and experience necessary to provide the Services and is appropriately licensed by all applicable agencies and governmental entities and will perform the Services with reasonable skills and care. This section applies to Inspectors' employees only, and not to City staff.

10. Ownership of Documents; Data Privacy.

All reports and other documents produced by Inspector in the performance of Services under this Agreement shall be the property of the City. Inspector agrees

to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statutes, Chapter 13, and all other applicable state or federal rules, regulations, or orders pertaining to privacy or confidentiality. Inspector understands that all of the data created, collected, received, stored, used, maintained, or disseminated by Inspector in performing those functions that the City would perform is subject to the requirements of Chapter 13, and Inspector will cooperate with City to furnish or provide requested data to City. This does not create a duty on the part of Inspector to provide the public with access to public data if the public data is available from the City, except as required by the terms of this Agreement.

11. Entire Agreement.

This is the entire agreement of the parties and supersedes all other agreements.

12. Choice of Law.

This agreement shall be governed and construed in accordance with the State of Minnesota Law.

13. Representation of Authority.

The undersigned executing this agreement for MNSPECT, LLC, represents and warrants that he has been duly authorized to execute this agreement on behalf of MNSPECT, LLC, by the organization's Board of Directors, and that this agreement shall bind it to the terms and obligations contained herein.

**IN WITNESS THEREOF**, the parties have executed this agreement in duplicate this 16<sup>th</sup> day of April, 2019.

**CITY OF LAKE ELMO**

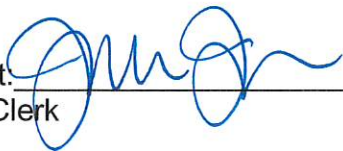
By:   
Mike Pearson  
Mayor

**MNSPECT, LLC**

By:   
Scott Qualle, President

Attest:

City Clerk





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Bates Insurance Group 7400 Metro Boulevard Suite 100 Edina MN 55439	<b>CONTACT NAME:</b> Jereme Bates <b>PHONE (A/C, No, Ext):</b> (952) 944-5044 <b>FAX (A/C, No):</b> (952) 942-6964 <b>E-MAIL ADDRESS:</b> jereme@batesinsurancegrp.com																					
<b>INSURED</b> MNSPECT LLC 235 W 1st St Waconia MN 55387-1302	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>ACE Fire Underwriters Insurance Co</td><td>20702</td></tr><tr><td>INSURER B:</td><td>Harleysville Worcester Ins Co</td><td>26182</td></tr><tr><td>INSURER C:</td><td>Evanston Insurance Company</td><td>35378</td></tr><tr><td>INSURER D:</td><td>ACE Property &amp; Casualty Insurance Co</td><td>20699</td></tr><tr><td>INSURER E:</td><td>Chubb National Ins Co</td><td>10052</td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	ACE Fire Underwriters Insurance Co	20702	INSURER B:	Harleysville Worcester Ins Co	26182	INSURER C:	Evanston Insurance Company	35378	INSURER D:	ACE Property & Casualty Insurance Co	20699	INSURER E:	Chubb National Ins Co	10052	INSURER F:		
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**COVERAGES****CERTIFICATE NUMBER:** CL1852701851**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		D5274393A3N	05/29/2018	05/29/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		BA 00000084527X	05/29/2018	05/29/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED \$ RETENTION \$ <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE		D527439413N	05/29/2018	05/29/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	19) 7176-80-71	05/29/2018	05/29/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Professional Liability		EO870779	05/29/2018	05/29/2019	Occurrence 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

City of Lake Elmo 3800 Laverne Ave N  Lake Elmo MN 55042	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  Jereme Bates
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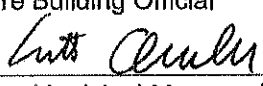
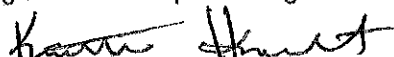


Minnesota Department of Labor and Industry  
Construction Codes and Licensing Division  
Attention: Doug Nord  
443 Lafayette Road North, St. Paul, MN 55155  
Phone: 651-284-5838 Fax: 651-284-5749  
Web: [www.dli.mn.gov](http://www.dli.mn.gov)



**Municipal Delegation Agreement Application**  
**BOTH PLAN REVIEW AND INSPECTIONS – PART 1 of 3**  
**Building Code Administration on Public Buildings and State Licensed Facilities**

Please complete and return this application (with **REQUIRED** information in Parts 2 and 3). You will be contacted when your application is received.

Municipality Name Lake Elmo	Type: <input checked="" type="checkbox"/> City <input type="checkbox"/> Township <input type="checkbox"/> County	
Building Official Name Scott Qualle	Work Phone 952-442-7520 Cell Phone 763-458-6926 Email <a href="mailto:scott@mnspect.com">scott@mnspect.com</a>	
Mailing Address 235 First Street W	City State Zip Code Waconia MN 55387	
Signature Building Official 	Certification No. BO002643	Date 4/17/2019
Signature Municipal Manager/Administrator 	Date 4/19/19	

**CONDITIONS OF AGREEMENT:**

- A. Municipality will attend to all aspects of State Building Code administration, including:
- conduct plan review of buildings, grounds, and fire protection systems with written plan review comments;
  - interpret, apply, and enforce all applicable code provisions;
  - issue permits and maintain all records;
  - approve and oversee Special Inspections;
  - document and maintain files of all equivalencies and modifications to the code as required by Minnesota Rule 1300;
  - adhere to all applicable written division Plan Review Policies. See <http://www.dli.mn.gov/CCLD/Opinion.asp>;
  - perform all required inspections including those required for fire protection systems;
  - review change orders and addendums for code compliance;
  - will issue certificate of occupancy where applicable and/or final inspection of project.
- B. To conduct fire protection system inspections and plan review, the individual needs to have a minimum of 5 years of experience, or a written notice from the State of Minnesota Fire Marshal's Office transferring sprinkler plan review and inspection authority.
- C. Your normal permit and plan review fees may be charged under this agreement.

Parts 2 and 3 must also be completed and submitted with this application to Doug Nord at:  
[doug.nord@state.mn.us](mailto:doug.nord@state.mn.us)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/30/2019

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**COVERAGES** **CERTIFICATE NUMBER:** CL1952901765 **REVISION NUMBER:**

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PIP-Basic	\$																				
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			D52743941	05/29/2019	05/29/2020	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 1,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	AGGREGATE	\$ 1,000,000		\$								
	EACH OCCURRENCE	\$ 1,000,000																			
AGGREGATE	\$ 1,000,000																				
	\$																				
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	(20)71768071	05/29/2019	05/29/2020	<table border="1"><tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 500,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 500,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 500,000</td></tr></table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER		E.L. EACH ACCIDENT	\$ 500,000	E.L. DISEASE - EA EMPLOYEE	\$ 500,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000						
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C	Professional Liability			ANE4157097.19	05/29/2019	05/29/2020	<table border="1"><tr><td>Occurrence</td><td>1,000,000</td></tr><tr><td>Aggregate</td><td>1,000,000</td></tr></table>	Occurrence	1,000,000	Aggregate	1,000,000										
Occurrence	1,000,000																				
Aggregate	1,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> City of Lake Elmo 3800 Laverne Ave N  Lake Elmo MN 55042	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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