



## MAYOR AND COUNCIL COMMUNICATION

DATE: 5-17-16

**CONSENT**

ITEM #: 5

**AGENDA ITEM:** Mutual Aid Agreement

**SUBMITTED BY:** Mike Bent, Building Official

**THROUGH:** Mike Bent, Building Official

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

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**SUMMARY AND ACTION REQUESTED:** As part of its Consent Agenda, the City Council is asked to accept the mutual aid agreement with the City of Woodbury. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

**STAFF REPORT:** The City of Lake Elmo has entered into a delegation agreement with the Minnesota Department of Labor and Industry to perform plan review and inspections of state owned facilities, public and charter schools, and state licensed facility projects. The state recommends a system of back-up be in place to inspect delegation projects. This mutual aid agreement will provide the recommended two-deep inspection capability for delegation projects.

**RECOMMENDATION:** Based on the aforementioned, the staff recommends the City Council accept the Mutual Aid Agreement with the City of Woodbury for inspections of state delegation projects.

## MUTUAL AID AGREEMENT

This Mutual Aid Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Lake Elmo, a Minnesota municipal corporation (“Lake Elmo”) and the City of Woodbury, a Minnesota municipal corporation (“Woodbury”).

**WHEREAS**, Lake Elmo employs a full time building official and building inspector for the purpose of performing building plan review and building inspections; and

**WHEREAS**, Woodbury also employs a full time building official and building inspectors for these purposes; and

**WHEREAS**, Minnesota Statutes Section 471.59 authorizes the joint and cooperative exercise of powers common to contracting parties; and

**WHEREAS**, both parties are desirous of having their respective building officials and building inspectors, equipment and other resources available for the purpose of providing assistance for state delegation projects;

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

### 1. Definitions

1.1 “Party” means Woodbury or Lake Elmo.

1.2 “Requesting Official” means the person designated by a Party who is responsible for requesting Assistance from the other Party.

1.3 “Requesting Party” means a party that requests Assistance from other Party.

1.4 “Responding Official” means the person designated by a Party who is responsible to determine whether and to what extent that Party should provide Assistance to a Requesting Party.

1.5 “Responding Party” means a Party that provides Assistance to a Requesting Party.

1.6 “Assistance” means building inspections personnel and equipment for state delegation projects.

### 2. Procedure

**2.1 Request for Assistance.** Whenever, in the opinion of a Requesting Official, there is a need for Assistance from the other Party, the Requesting Official may call upon the Responding Official of the other Party to furnish Assistance.

**2.2 Response to request.** Upon the request for Assistance from a Requesting Party, the Responding Official may authorize and direct his or her party's personnel to provide Assistance to the Requesting Party. This decision will be made after considering the needs of the Responding Party and the availability of resources.

**2.3 Recall of Assistance.** The Responding Official may at any time recall such Assistance when in his or her best judgment or by an order from the city council of the Responding Party, it is considered to be in the best interests of the Responding Party to do so.

**3. Workers' compensation.**

Each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing Assistance pursuant to this Agreement. Each Party waives the right to sue the other Party for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.

**4. Damage to equipment.**

Each Party shall be responsible for damages to or loss of its own equipment. Each Party waives the right to sue the other Party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of the other Party or its officers, employees, or volunteers.

**5. Liability**

5.1 For the purposes of the Minnesota Municipal Tort Liability Act (Minn. Stat. 466), the employees and officers of the Responding Party are deemed to be employees (as defined in Minn. Stat. 466.01, subdivision 6) of the Requesting Party.

5.2 The Requesting Party agrees to defend and indemnify the Responding Party against any claims brought or actions filed against the Responding Party or any officer, employee, or volunteer of the Responding Party for injury to, death of, or damage to the property of any third person or persons, arising from the performance and provision of Assistance in responding to a request for Assistance by the Requesting Party pursuant to this Agreement.

5.3 Under no circumstances, however, shall a Party be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Party. The limits of liability for some or all of the Parties may not be added together to determine the maximum amount of liability for any Party.

5.4 The intent of this subdivision is to impose on each Requesting Party a limited duty to defend and indemnify a Responding Party for claims arising within the Requesting Party's jurisdiction subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense

of claims by eliminating conflicts among defendants, and to permit liability claims against multiple defendants from a single occurrence to be defended by a single attorney.

5.5 Neither party to this Agreement nor any officer of any Party shall be liable to any other Party or to any other person for failure of any Party to furnish Assistance to the other Party, or for recalling Assistance, both as described in this Agreement.

## **6. Charges to the Requesting Party.**

6.1 No charges will be levied by a Responding Party to this Agreement for Assistance rendered to a Requesting Party under the terms of this Agreement unless that Assistance continues for a period of more than 48 hours. If Assistance provided under this Agreement continues for more than 48 hours, the Responding Party will submit to the Requesting Party an itemized bill for the actual cost of any Assistance provided after the initial 48 hour period, including salaries, overtime, materials and supplies and other necessary expenses; and the Requesting Party will reimburse the Party providing the Assistance for that amount.

6.2 Such charges are not contingent upon the availability of federal or state government funds.

## **7. Duration.**

This Agreement will be in force for a period of five years from the date of written above. Either Party may withdraw from this Agreement upon providing 30 days' written notice to the other Party.

## **8. Government Data Practices.**

Both Parties must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement.

## **9. Governing Law.**

This Agreement is to be governed by and construed in accordance with the laws of the State of Minnesota. The venue for all legal proceedings arising out of this Agreement, or its breach, shall be in the appropriate state or federal court with competent jurisdiction in Washington County, Minnesota.

## **10. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties. There are no other agreements, either oral or written, between the Parties. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding

only if evidenced in writing signed by each Party's representatives with signatory authority to enter into agreements.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the date and year written above.

**CITY OF WOODBURY**

By: \_\_\_\_\_

Its: Mayor

By: \_\_\_\_\_

Its: City Administrator

**CITY OF LAKE ELMO**

By: \_\_\_\_\_

Mike Pearson

Its: Mayor

By: \_\_\_\_\_

Kristina Handt

Its: City Administrator