

AGREEMENT AND CONTRACT FOR FIRE PROTECTION

THIS AGREEMENT AND CONTRACT made and entered into this 15 day of October, 2002 by and between the City of Long Lake a municipal corporation of the County of Hennepin and State of Minnesota (hereinafter referred to as Long Lake), the City of Orono, a municipal corporation of the County of Hennepin and State of Minnesota (hereinafter referred to as the Contracting City), and the City of Medina, a municipal corporation of the County of Hennepin and State of Minnesota (hereinafter referred to as the Contracting City), and witnesseth:

WHEREAS, the City of Long Lake has the facilities and equipment and is willing and able to provide fire protection service to the Contracting City, and

WHEREAS, the Contracting City does desire to have fire protection service furnished by the City of Long Lake Fire Department.

NOW, THEREFORE in consideration of the covenants herein contained the parties hereto agree as follows:

1. Definitions

- A. The term Contracting City or the Contracting Cities means any city which is a party to this Agreement or similar Agreement which by its terms is interrelated with this Agreement for the purposes of sharing the costs and the services of fire protection provided by the Long Lake Fire Department. The Contracting Cities are Orono, Medina and Long Lake.
- B. City Fire Service Area is the area within a Contracting City receiving fire protection from the Long Lake Fire Department. (City Fire Service areas are shown in Appendix A. attached.) The Total Fire Service Area is the sum of all City Fire Service Areas.

2. Services to be Rendered

During the term of this agreement Long Lake shall furnish all the fire fighting services, rescue/medical rescue services, and related fire protection services to the Contracting Cities for the Total Fire Service Area outlined in red on the attached map marked Exhibit A hereinafter referred to as "The Total Fire Service Area." All of said Total Fire Service Area is located within the corporate limits of the Contracting Cities.

3. Level of Service

Long Lake through its fire department shall endeavor to provide the services listed in paragraph 2 above, including but not limited to, protecting and saving life and property from destruction by fire in the City Fire Service Area of each Contracting City to the

same extent as it does within the City Fire Service Area of Long Lake. In the event of two fire calls received within the same time frame, the call first received shall have priority and the second call shall be answered as soon as possible. Long Lake will furnish sufficient staff to each call to safely, legally and effectively operate all necessary vehicles and equipment and provide all necessary services.

4. Command Responsibility

Subject to the terms of this agreement, the Fire Chief of Long Lake or the Chief's designee shall have the sole and exclusive right and responsibility to prescribe the manner and method of giving the alarm for fire within the Total Fire Service Area and to prescribe the manner and method of responding to calls and rendering the services contemplated. The said Fire Chief or designee shall immediately upon arriving at the scene of any alarm or fire emergency have the sole and exclusive responsibility and authority to direct and control any and all fire fighting and the emergency operations at such scene or scenes.

5. Volunteer Fire Fighters of the City of Long Lake

Personnel assigned to provide fire protection services in the Contracting Cities shall be volunteer firefighters of the City of Long Lake, which City shall assume all obligations with regard to Worker's Compensation, Firemen's Relief Association, withholding tax, insurance, etc. for such volunteer firefighters, if any.

The cost of such obligations shall be a part of the costs attributed to the operation of the Long Lake Fire Department and will be included in the Annual Fire Services Budget Package.

6. Nature of Long Lake Undertaking

In no event shall this agreement be construed to fix upon Long Lake any responsibility or liability to the Contracting Cities or to third parties which are greater or different in kind than the responsibilities and liabilities borne by the Contracting Cities if they were providing such services through their own fire departments.

7. Liability Insurance

Long Lake shall carry liability insurance in an amount no less than \$1,800,000.00 protecting itself and the other Contracting Cities against damage claims of its fire fighters for personal injury sustained while in service within the said limits of the Contracting Cities as hereto set forth. The amount of the insurance coverage shall be reviewed annually and if determined to be inadequate the amount of the coverage shall be adjusted accordingly. And further, Long Lake shall carry liability insurance in an amount no less than \$1,800,000.00 saving the contracting cities harmless so far as acts of the City of Long Lake, its fire department and its fire fighters are concerned. The City of Long Lake shall review the amount of the coverage annually and if determined to be inadequate, the

amount of the coverage shall be adjusted accordingly. The cost of such insurance shall be a part of the costs attributed to the operation of the Long Lake Fire Department and will be included in the Annual Operating Budget. Nothing in this contract shall be construed as waiving the statutory liability limits of any city, which is a party to this contract.

8. Long Lake Operational Responsibility

The City of Long Lake shall be responsible for managing the operation of the Long Lake Fire Department, and for managing the on-going operation and maintenance of the Long Lake fire station. This includes carrying builders risk insurance during construction of the new Fire Station and carrying hazard insurance on the Fire Station thereafter. Long Lake shall charge an annual Administrative Fee for these services. The Administrative Fee of \$17,200 for 2002 includes Long Lake's administrative overhead expenses. The Administrative Fees may be adjusted from year to year through the Annual Fire Services Operating Budget review and approval process. The costs related to the operation of the Fire Department, including the on-going operation and maintenance of the Fire Station, shall be included in the Annual Fire Services Operating Budget.

9. Budget Package

The Long Lake Fire Department's annual operating expenditures will be controlled through an Annual Fire Services Operating Budget. When the Annual Fire Services Operating Budget is approved, the expenditures may not exceed the level set in the Budget without the approval of all parties to the contract. If, during the 20-year term of the agreement, a Contracting City chooses not to approve a proposed Annual Fire Services Operating Budget, the Annual Fire Service Operating Budget increase will be limited to the average annual General Fund Budget increase of the Contracting Cities, until a new Annual Fire Services Operating Budget is approved by all Contracting Cities.

9.1 Definitions

- A. The Annual Fire Services Operating Budget refers to the calendar year operating budget of the Long Lake Fire Department. This budget will become the official Annual Fire Services Operating Budget upon ratification by the Contracting Cities. The Annual Fire Services Operating Budget incorporates all costs of departmental operations including, but not limited to, the costs of the on-going operation and maintenance of the fire station, Long Lake's Administrative Fee as defined in Section 8 of this Agreement, and annual contributions to the Long Lake Volunteer Fire Relief Association Retirement Fund.
- B. The Annual Fire Services Capital Budget refers to the calendar year capital budget of the Long Lake Fire Department. The Annual Fire Services Capital Budget includes Major Equipment items and major repairs/rehabilitation of the Fire Station.

9.2 Budget Process

By August 15 of each year during which this agreement remains in effect, the City of Long Lake will provide an Annual Fire Services Operating Budget and an Annual Fire Services Capital Budget covering the costs related to the provision of fire protection for the next year. The budgets presented to the Contracting cities must have been presented to the Joint Advisory Committee prior to August 1 for discussion and review. Although it is expected that the Annual Fire Services Operating and Capital Budgets which are provided to the Contracting Cities by the City of Long Lake will have the consensus support of the Joint Advisory Committee, that is not a requirement since each Contracting City has the opportunity for final ratification or rejection.

10. Term of this Agreement

This Agreement covers the period January 1, 2002 through December 31, 2020. A contract year covers the period January 1 through December 31 of a calendar year.

This Agreement will become effective upon ratification by the Contracting Cities. The term of this agreement will be extended for a period of five years unless this Agreement is terminated as provided in Section 20 of the Agreement.

11. Capital Expenditures

Capital expenditures include major equipment and major maintenance, repair, or rehabilitation to the fire station. Major equipment is defined as "rolling stock" or similar major equipment assets required for performing the fire department mission in the Fire Protection Area. To qualify as major equipment, such assets must have an initial purchase value of at least \$10,000. To qualify as major maintenance, repair, or rehabilitation, the cost must be at least \$10,000.

The City of Long Lake and the Long Lake Fire Department shall prepare a 15-year major equipment replacement plan, and a 15-year plan for major maintenance, repair, or rehabilitation items related to the fire station. These 15-year plans will be the basis for the preparation of an annual capital budget. Neither the approval nor lack of disapproval of the 15-year plans by the Contract Cities creates any obligation for final approval or funding of any specific capital expenditure. Final approval of capital expenditures occurs as part of the Annual Fire Services Capital Budget approval process.

Capital expenditures must be approved by a minimum of two cities and the combined funding shares of the two cities must be greater than 60%. Once this level of approval is obtained, all Contract Cities are obligated to fund their share of the expenditures.

The final approval of capital expenditures occurs as part of the Annual Fire Services Capital Budget approval process. When a city approves the Annual Fire Services Capital Budget, the city is also agreeing to pay its share of the cost of capital expenditures

included in the Annual Fire Services Capital Budget up to the budgeted amount, for the items budgeted.

Each Contracting City agrees to maintain its own fund for capital expenditures. When a capital expenditure is to be made, the following process for sharing the funding will be used:

- A. Long Lake will have the option of funding any percentage of the total, which is equal to or greater than the average of its last three City Budget Percentages including the current calendar year.
- B. Orono will have the option of funding the remaining amount. If Medina does not wish to fund the total of the remaining amount, it must fund at least the average of its last three City Budget Percentages including the current calendar year and may fund more if it chooses.
- C. Medina will fund the balance remaining to be funded after Long Lake and Orono have specified their funding amounts.

11.1. Disposition of Major Equipment Upon Termination

In the event that this Agreement is terminated as provided in section 20 of this Agreement, Long Lake will have the right to purchase each Contracting City's ownership share of each Major Equipment item for cash at the original amount funded by that city. In the event Long Lake does not exercise its right to acquire the major equipment items within sixty (60) days of termination, it will have waived its right to acquire full title to the equipment. If Long Lake waives its right to acquire full title to a particular Major Equipment item, the Contracting City with the largest ownership share of that item shall have the right to acquire full title to the item by paying the amount funded by each of the other Contracting Cities. If that City declines to acquire full title, the remaining Contracting City may acquire title on the same terms. In the event that no Contracting City wishes to acquire full title to a particular Major Equipment item, it shall be sold and the proceeds of the sale divided between the Contracting Cities pro-rata to their original funding. All Major Equipment items funded during the term of the contract, including extensions, will be covered by this terminating procedure.

The dissolution language applies to all equipment purchased, and fund balances accrued, since January 1 of 1993. This language is not intended to address any claim cities may have regarding equipment purchased prior to January 1, 1993.

No contracting city shall have the right to transfer or encumber any major equipment purchased after January 1, 1993.

12. Emergency Expenditures

When there is a need for emergency major equipment repair or emergency building repair, or other emergency need that will have a substantial negative impact on the operational capabilities and/or safety of the firefighters or of the fire station if not immediately addressed, the emergency expenditures may be authorized by the Long Lake City Administrator and the Long Lake Fire Chief, or their designees. If these costs exceed the approved budget amounts, the Long Lake City Administrator and/or the Fire Chief will, within thirty days of the expenditures, notify the Contracting Cities of the expenditure, including an explanation of the emergency need. Emergency expenditures will be shared according to the cost sharing formula set out in this contract. Any reimbursement of the emergency expenditures through insurance, emergency/disaster assistance funding, or other sources will be credited to the Contract Cities in the same manner as the costs were shared.

13. Annual Audit of Actual Costs

The Contracting City understands and agrees that it is impossible to project with complete accuracy the actual costs of labor and equipment as well as the service to be required by each Contracting City for the forthcoming contract year and thereby hereby agrees to a yearly audit to adjust the prior year's estimated cost of service as set forth above to the actual costs incurred by the City of Long Lake. On or before April 30th of each year the City of Long Lake will tabulate the actual cost of the fire department budget for the prior contract year and will submit to the Contracting Cities a summary of the actual costs. The actual costs set forth for the prior contract year may result in either a surplus or deficit with respect to that year's Annual Operating Budget. Any surplus shall be refunded to the contract cities in the same ratio as the cost allocation formula. Any deficit shall be funded by the contract cities in the same ratio as the cost allocation formula. It is expected that expenditures will remain within the Annual Operating Budget amounts and will only exceed such budget amounts in the case of an emergency expenditure as provided in Section 12 or when mutually agreed to by the Contracting Cities as provided in Section 14 of this Agreement.

14. Unforecasted Expenditures

Notwithstanding any of the above, the Contracting Cities shall have the right to be heard regarding any proposed expenditures which are not identified in the Annual Operating Budget and which exceed \$5,000. Notice of such proposed, non-budgeted expenditures shall be given in writing to the Contracting Cities prior to actual expenditures for such items and the Contracting cities shall thereafter have 21 days in which to approve or disapprove the same in writing and if there is no response which disapproves the expenditure, it is agreed that such proposed expenditures may be made and the cost thereof shall be included in the Annual Operating Budget as if ratified originally.

15. Contract Payments

The City Budget Share (See Section 16.2) of each Contracting City shall be paid in equal quarterly installments on January 1, April 1, July 1 and October 1 of the next contract year by the Contracting City to the City of Long Lake.

Long Lake agrees to provide each Contracting City with reasonably detailed information relating to the actual expenditures against the Annual Operating Budget at its request and on a quarterly basis and agrees to make its records available to the Contracting City for inspection for the purpose of determining the basis for the allocation of costs to fire protection.

16. Arbitration

If a Contracting City is aggrieved by the determination of the City of Long Lake as to the allocation of the actual costs of the prior year's service, the Contracting City may appeal said determination within 30 days after receipt of the City of Long Lake's audit. Said appeal shall be in writing and shall be addressed to the City of Long Lake asking for arbitration by a board of arbitration. The Board of Arbitration shall consist of three persons; one to be appointed by the City of Long Lake, one to be appointed by the appealing Contracting City, and the third to be appointed by the two so selected. The name of each arbitrator shall be submitted in writing to the other party. In the event that the two arbitrators so selected do not appoint the third arbitrator within 15 days after receipt of written notice of appointment of either of the first two arbitrator's, the Chief Judge of the District Court of Hennepin County shall have jurisdiction to appoint, upon application of either the Contracting Cities or the appealing Contracting City, the third arbitrator to the Board. The third arbitrator selected shall not be a resident of either Contracting City, and shall be a city manager or administrator. The arbitrator's expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be divided equally between the parties to the arbitration. Arbitration shall be conducted in accordance with the Uniform Arbitration act, Chapter 572 of the Minnesota Statutes, and any decision shall be rendered within 60 days of appointment of the third arbitrator. Said arbitration shall be binding on both parties.

17. Special Fire Funds

In order to facilitate the accounting and reporting of all fire funds associated with the Annual Operating Budget, a Fire Operating Fund will be maintained by the City of Long Lake. No Major Equipment Fund will be maintained by the City of Long Lake on behalf of the Contracting Cities as a part of this agreement since under the provisions of Section 11 each Contracting City agrees to maintain an Equipment Fund on its own.

18. Fire Services Joint Advisory Committee

Each Contracting City may appoint two volunteer members to a Fire Services Joint Advisory Committee and the name of such appointees shall be furnished to Long Lake. The Fire Services Joint Advisory Committee shall meet no less than four times per year to discuss and make recommendations regarding concerns or problems identified regarding the provision of fire service, and to periodically review budget updates. The Fire Services Joint Advisory Committee shall have the specific task of reviewing the Fire Department's operating and capital budget proposals for the next calendar year and arriving at a consensus Annual Fire Services Operating Budget and Annual Fire Services Capital Budget by August 15 of each calendar year.

19. Cost Sharing Formula

Each of the Contracting Cities receiving fire service from the Long Lake Fire Department shall pay a share of the costs of the Annual Fire Services Operating and Capital Budgets. The City's Budget Share will be based upon a formula, which takes into account the Market Value of the protected property and the fire department staff resources utilized to protect the property. The objective is to fairly allocate "insurance" type costs and "effort and variable" type costs. The Contracting Cities have agreed that 70% of the share allocation will be based upon Market Value and 30% upon fire department hours expended on calls to the City Fire Service Area.

19.1 Definitions:

- A. City Fire Service Area is the area within a Contracting City provided fire protection under this contract. The City Fire Service Area for each Contracting City is shown in Appendix A (attached).
- B. City Fire Service Area Market Value is the assessed market value of the property in the City Fire Service Area and is based upon the assessed market value for the year immediately preceding the budget year. The source of the assessed market value data shall be the Hennepin County Assessor's Office.
- C. Total Service Area Market Value is the sum of the City Fire Service Area Market Values of all contracting cities.
- D. City Market Percent is the percentage computed by dividing the City Fire Service Area Market Value by the Total Service Area Market Value and multiplying by 100.
- E. City Call Hours is the total number of fire fighter hours expended in responding to calls in the City Fire Service Area as recorded by The Long

Lake Fire Department during the preceding three year period measured from January 1 through December 31.

- F. Total Call Hours is the total number of fire fighter hours expended in responding to calls in all contracting cities during the previous three-year period measured from January 1 through December 31.
- G. Call Percent is the percentage computed by dividing the City Call Hours by the Total Call Hours and multiplying by 100.
- H. City Budget Percentage is the percentage derived from the sum of the City Market Percent multiplied by 0.7 and the City Call Percent multiplied by 0.3.

19.2 Budget Share Computation:

City Budget Share is the City Budget Percentage multiplied by the Annual Fire Services Operating Budget and the resulting product divided by 100.

19.3 Formulae for Calculations

- A. City Market Percent = $(B \times 100) / (C)$ percent

Where B = City Fire Service Area Market Value
C = Total Fire Service Area Market Value

- B. Call Percent = $(E \times 100) / (F)$ percent

Where E = City Call Hours
F = Total Call Hours

- C. City Budget Percentage = $[(\text{City Market Percent} \times 0.70) + (\text{Call Percent} \times 0.30)]$

- D. City Budget Share = $(\text{City Budget Percentage} / 100) \times (\text{Annual Operating Budget less Major Equipment expenditures})$

- E. The City Budget Share of capital expenditures is determined under the provision of Section 11.

20. Termination of this Agreement

This Agreement shall be terminable only as follows:

1. For "Good Cause" by any city that desires to terminate its participation in the Agreement provided that such termination is preceded by a minimum of 36-

months notice. "Good Cause" shall mean, but is not limited to, a pattern of inadequate service quality; including inadequate response to call, inadequate training, and inadequate handling of calls; and/or a pattern of budget overruns.

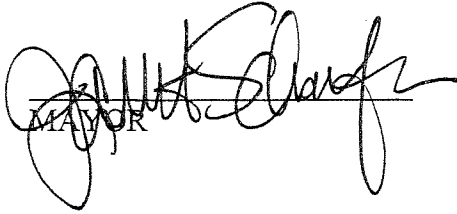
2. For breach of contract;
3. By mutual agreement of all cities covered by the agreement.
4. City of Medina may terminate its participation in this Agreement without cause, subject to providing a twenty-four month notice of termination.
5. This agreement may be renegotiated or terminated by the cities to enable participation in a fire district or similar organizational arrangement.

21. Provision to adjust City Fire Service Area

During the period of this agreement a Contracting City may request that its City Fire Service Area be reduced or increased in size. Such a request must be made prior to July 1 of the Contract Year to allow time for preparing the Annual Fire Services Budget for the succeeding Contract Year. In the event that a Contracting City proposes an increase to its City Fire Service Area, the City of Long Lake in consultation with the Long Lake Fire Department shall have the right to limit the increase to assure that coverage at the service level provided under this agreement can be achieved by the Fire Department. The service area shall not be increased to the extent that it requires the purchase of additional equipment unless all parties to the contract agree. In the event that a Contracting City wishes to decrease and/or alter the location of its City Fire Service Area it may do so by specifying those changes in writing by July 1 of the year prior to the contract year with respect to which such change is to be effective.

Approved by the Cities of Long Lake, Orono, and Medina on the date first written above.

CITY OF LONG LAKE


MAYOR

ATTEST


CITY ADMINISTRATOR

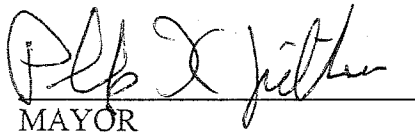
CITY OF ORONO


MAYOR

ATTEST


CITY ADMINISTRATOR

CITY OF MEDINA


MAYOR

ATTEST


CITY ADMINISTRATOR, acting