



RISK MANAGEMENT INFORMATION LMCIT MODEL MUTUAL AID AGREEMENT

The League of Minnesota Cities Insurance Trust has developed a Model Mutual Aid Agreement (located at the end of this memo) for cities to consider when they are working with other local governments. It provides a system to address liability, workers' compensation and equipment damage in mutual aid situations. Generally, the basic elements of the model agreement are:

- **Workers' Compensation** – Each city retains the financial responsibility for workers' compensation benefits for its own employees, for any injuries that occur in mutual aid situations. Cities can also agree not to bring claims against the other cities to recover the cost of workers' compensation benefits to its employees.
- **Equipment** – Each city retains the financial responsibility for damage to or loss of its own equipment that may occur in a mutual aid situation.
- **Responding Party as Employees of Requesting Party** – The Responding Party's employees will be considered to be employees of the Requesting Party for the purposes of the Minnesota Municipal Tort Liability Act.
- **Indemnification** – The city receiving the assistance agrees to defend and indemnify the city providing the assistance, for any liability claims by third parties that may arise from the mutual aid situation, to the extent of the city's statutory liability limits.
- **Command** – The personnel providing assistance act under the command of the requesting city's officer in charge at the scene. Thus the receiving city, which bears the liability risk, is also in a position to control that risk.

Why does LMCIT suggest handling liability this way?

These provisions eliminate the potential for conflicts and litigation between cities about who is liable for what. The basic idea is that there are better ways for cities and LMCIT to use the taxpayers' money than to spend it suing each other. Incidentally, the 1998 law authorizing inter-local disaster assistance, Minnesota Statute Section 12.331, sets out a very similar scheme for handling liability, workers compensation, and equipment damage.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

Workers' Compensation

This provision helps to eliminate conflicts between the local governments for injuries to each other's employees. Each government pays the workers' compensation coverage on its own employees so it makes sense that that government would be responsible for injuries to its own employees. By waiving the right to recover any damages from the other parties to the mutual aid agreement, you avoid having the parties suing each other.

Equipment

Similarly, each party pays for property coverage for its own equipment so it is simpler for each party to be responsible for any damages or loss of its own equipment. So even if another party causes damage to another party's equipment, with this waiver of subrogation, the parties agree that they will not sue for that loss. Again, it eliminates conflicts between the local governments.

Responding Party as Employees of Requesting Party

The provision that stating that an employee of the Responding Party will be considered to be an employee of the Requesting Party for liability purposes helps to reduce the costs for defending the actions by allowing one attorney to defend the action. This method also ensures that only one liability limit is at stake. Minnesota Statutes, Sections 12.331 and 626.77 both use this method so it is clear the legislature can do this through legislation. It is not clear if local governments can also establish this type of system through an agreement.

Indemnification

The defense and indemnification provisions for liability claims make it possible to appoint a single defense attorney to defend all of the parties that might be the target of tort liability claims arising from a mutual aid situation. That attorney can then provide a unified defense for all parties, since liability is covered under the receiving city's coverage. It does not matter which city or individual employee is ultimately determined to be negligent.

If the agreement instead makes each city responsible for its own employees' negligence, defending potential liability claims is more complicated and expensive. If several cities were all sued for something that occurred in a mutual aid situation, each of those cities would need to have its own defense attorney. And because "who pays" depends on "whose fault was it," the multiple defense attorneys are automatically in conflict with each other, each trying to make sure that if anyone is held liable, it is one of the other defendants.

In short, with the defense and indemnification provisions in the model agreement, defending liability claims is simpler and less expensive. LMCIT only pays one attorney to defend the claim, rather than paying several attorneys to both defend the claim and fight with each other.

Though taking on the liability risk of other cities, LMCIT members all benefit from the reduced attorneys' fees. For example, in recent years, LMCIT's expenses for attorney's fees in police liability claims were significantly more than the liability damages. LMCIT member cities are assessed both the damages and attorneys' fees in determining their liability claims experience.

Some cities do not like the idea of taking on another city's negligence. They are uncomfortable with how some employees from other cities may act or whether the employees have had adequate training. Therefore, it is important for cities to discuss these concerns. In order for mutual aid to be beneficial, cities should not have to worry if the response from the other city will be appropriate.

Command

The model agreement addresses these concerns by making it clear that the Requesting Party that is taking on the liability for the Responding Party is in command of the mutual aid scene. It places the Requesting Party in a position to help control the potential risks by being the party that decides how to handle the emergency site and what equipment to use.

Coverage issues

LMCIT's liability coverage covers liability the city assumes by contract, assuming that the underlying claim would be a covered claim. Therefore, the city's LMCIT liability coverage picks up the duty to defend and indemnify the claim assumed under the mutual aid agreement. Note also that the city's duty to defend and indemnify the other parties is limited to the amount of the statutory liability limits for one city.

Charges

Traditionally, local governments do not charge for services to each other in a mutual aid situation. However, the provision in the Model Mutual Aid Agreement for charges after 48 hours is established to comply with a Federal Emergency Management Association (FEMA) rule. The rule states that if local governments do not have a written agreement providing for charges to be paid to the Responding Party, FEMA will not reimburse the Responding Party for those costs. The rule allows short-term assistance to be given for no charge. The 48-hour figure is suggested as an example but it can be negotiated by the parties.

Other questions

Before adopting the language from the Model Mutual Aid Agreement, it is important that city officials understand the effect of these provisions, the reasons for them, and how their LMCIT coverage would apply. If anyone has further questions, please call Ann Gergen, LMCIT Associate Administrator or Chris Smith, Risk Management Attorney, at the League offices.

Chris Smith 10/07

Model Mutual Aid Agreement

Purpose

This agreement is made pursuant to Minnesota Statutes, Section 471.59 which authorizes the joint and cooperative exercise of powers common to political subdivisions. The intent of this agreement is to make equipment, personnel and other resources available to political subdivisions from other political subdivisions.

Definitions

1. "Party" means a political subdivision.
2. "Requesting Official" means the person designated by a Party who is responsible for requesting Assistance from other Parties.
3. "Requesting Party" means a Party that requests Assistance from other parties.
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.
5. "Responding Party" means a Party that provides Assistance to a Requesting Party.
6. "Assistance" means (Check the type of Assistance that will be provided):
 - a. Public works personnel and equipment _____
 - b. Fire and/or emergency medical services personnel and equipment _____
 - c. Law enforcement personnel and equipment _____
 - d. Utility personnel and equipment _____
 - e. Other personnel and equipment as listed below:

Procedure

1. **Request for Assistance.** Whenever, in the opinion of a Requesting Official, there is a need for Assistance from other parties, the Requesting Official may call upon the Responding Official of any other Party to furnish Assistance.
2. **Response to request.** Upon the request for Assistance from a Requesting Party, the

Responding Official may authorize and direct his/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.

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 governing body of the Responding Party, it is considered to be in the best interests of the Responding Party to do so.
4. **Command of Scene.** The Requesting Party shall be in command of the mutual aid scene. The personnel and equipment of the Responding Party shall be under the direction and control of the Requesting Party until the Responding Official withdraws Assistance or until the Requesting Party determines that Assistance is no longer needed.

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 any other Party for any workers' compensation benefits paid to its own employee or volunteer or their dependants, even if the injuries were caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers.

Damage to equipment

Each Party shall be responsible for damages to or loss of its own equipment. Each Party waives the right to sue any 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 any other Party or its officers, employees, or volunteers.

Liability

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

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 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.

3. No 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 any other Party, or for recalling Assistance, both as described in this agreement.

Charges to the Requesting Party

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

Duration, Withdrawal and Amendments

This agreement will be in force for a period of _____ years from the date of execution. Any Party may withdraw from this agreement upon thirty (30) days written notice to the other Party or parties to the agreement. Any amendment to this agreement requires the adoption of identical resolutions by the governing body of each Party.

Execution

Each Party, by action of its governing body has agreed to and executed this Mutual Aid Agreement on the date indicated.

Date _____

Entity _____
By _____
Title _____

Date _____

Entity _____
By _____
Title _____