

RESOLUTION NO. 2019-23

RESOLUTION TO APPROVE THE SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS AGREEMENT

WHEREAS, the Village of Caledonia originally authorized participating in the Suburban Mutual Assistance Response Teams under Resolution 2013-37; and

WHEREAS, the Suburban Mutual Assistance Response Teams (“S.M.A.R.T.”) have effectively provided law enforcement mutual aid to its participants since 1994; and

WHEREAS, the S.M.A.R.T. Mutual Aid Agreement has not been substantially updated since 1994; and

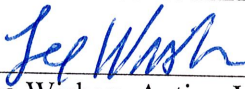
WHEREAS, the S.M.A.R.T. Mutual Aid Agreement is in need of updating to address certain inconsistencies within the terms and due to changes in the law; and

WHEREAS, we have received a recommendation from our Chief of Police, recommending that we enter the S.M.A.R.T. Mutual Aid Agreement which will update and replace the current Agreement and allow for our continued participation in this cooperative mutual aid, to better serve our municipality and the region.


NOW THEREFORE BE IT RESOLVED by the Caledonia Village Board that the S.M.A.R.T. Agreement as set forth in Exhibit A which is attached hereto and incorporated herein is approved and the officials named below are authorized to execute the same on behalf of the municipality.

IN WITNESS WHEREOF, this Agreement has been duly executed by the following parties on the 4th day of March, 2019

VILLAGE OF CALEDONIA



Lee Wishau, Acting Village President



Daniel Reilly, Chief of Police

ATTEST:



Karie Torkilsen, Village Clerk

ARENZ, MOLTER, MACY, RIFFLE, LARSON & BITAR

MUNICIPAL LAW & LITIGATION GROUP, S.C.

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COURT COMMISSIONER
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COURT COMMISSIONER
ERIC J. LARSON
REMZY D. BITAR

PAUL E. ALEXY
MATTEO REGINATO
R. VALJON ANDERSON
LUKE A. MARTELL
SAMANTHA R. SCHMID
STEPHEN J. CENTINARIO, JR.
TIMOTHY A. SUHA

October 24, 2018

Dan Baumann
Captain of Police
Waukesha Police Department
1901 Delafield St.
Waukesha, WI 53188

**Re: Suburban Mutual Assistance Response Teams
Intergovernmental Agreement**

Dear Captain Baumann:

It has been our pleasure to work with you and the S.M.A.R.T. Executive Board and membership over these last several months. This process began when one of your new members noted certain inconsistencies in the Agreement. My office was also initially contacted by a municipal insurer that expressed concerns. Although the S.M.A.R.T. Agreement has existed for some 25 years and has operated relatively smoothly, the legal foundation had developed into a patchwork and it was time to closely consider the legal documents. Through the course of several drafts and review and discussion with your group, we now have a final product that we are prepared to present to the member municipalities. Remzy and I have asked the major municipal insurers that operate in Wisconsin to consider the final product, and all have noted their approval, and they also have agreed to cover the costs of this drafting project. It is now time to forward the document to member municipalities and seek their approval. To that end, I am writing to outline the major issues that have been considered in this revision process. If any lawyers for the member municipalities would like a further explanation of these changes, I would be happy to discuss the matter with them individually and they should feel free to contact me. That said, given the large number of participants, it will quickly become unwieldy and unworkable to revisit these terms, which is why we have taken such care with the drafting process.

Aside from technical drafting issues, such as using defined terms consistently and correcting internal citations, most of the changes to the Agreement can be summarized as follows:

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1. Division of liability risks. The prior Agreement was ambiguous to some extent as to responsibilities in the event of injuries or accidents arising during a S.M.A.R.T. response. The enclosed Agreement clarifies that issue by incorporating State law as shown in Section 4. The statutes require the following. Law enforcement officers can assist other officers outside their jurisdiction, and they are deemed to be employees of the Requesting Agency for purposes of liabilities arising out of that Mutual Aid work. The responding Agencies remain the employer of their officers for purposes of compensation, and wages and disabilities, but the Requesting Agencies must pay reimbursement of such costs. While we could attempt to reach different conclusions on these issues than State law requires, we would raise litigation issues by doing so. In the case of *Liebenstein v. Crowe*, 826 F. Supp. 1174 (Ed. Wis. 1992), the court refused to enforce a Mutual Aid contract which stated that the employees of each Participating Agency "shall continue to be employees of their employing municipality for all purposes." The court held that this was contrary to State law which imposes certain obligations on the Requesting Agency. The League of Wisconsin Municipalities has concluded that home rule municipalities can exercise home rule authority and choose not to be bound by the statute, which may be true, but creates some significant hurdles for the adoption of this Agreement. Home rule authority is exercised through charter ordinances, which are subject to referendum requirements in some cases, and moreover, towns and counties do not have home rule authority. I recommend, therefore, that we allow the State statutes to have their effect and avoid the possibility of dispute on these issues.
2. Cooperation. Past practice of participating agencies has been to waive reimbursement for minor responses. The overriding theory among the participants has been this: Sometimes we are the responding municipality and incur these costs, but other times we will be the requesting municipality; so everyone wins when we help one another without unduly burdening the receiving municipality with response costs. There is no guarantee that any participant would waive costs. That said, the same spirit of cooperation that has guided this organization from its beginning would likely continue over time.
3. General terms. Certain general "boilerplate" terms have been added beginning in Section 6, largely to describe the current practices of S.M.A.R.T.
4. S.M.A.R.T. lack of corporate status. The Agreement has been modified to reduce the impression that S.M.A.R.T. has separate corporate status from the participating entities. It does not. S.M.A.R.T. is only a collection of participating law enforcement agencies and does not exist as an entity unto itself. This is a mutual aide agreement and it is administered by participating police chiefs and county sheriffs in their capacity as police chief or county sheriff for their municipality.
5. Action required. The transition between the former Agreement and this new Agreement will follow a process described in Section 10. All of the participating municipalities should be advised that **action is required prior to March 1, 2019.** After that time the Agreement that is currently in effect may be terminated and

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the new Agreement may take effect with those members who have chosen to enter the new Agreement prior to March 1st.

I am also enclosing a draft resolution that municipalities can use to adopt this Intergovernmental Agreement. If you should have any questions or concerns regarding these matters, please do not hesitate to contact us.

Yours very truly,

MUNICIPAL LAW & LITIGATION GROUP, S.C.

Eric J. Larson

Eric J. Larson

Yours very truly,

MUNICIPAL LAW & LITIGATION GROUP, S.C.

Remzy D. Bitar

Remzy D. Bitar

EJL/egm
Enclosures

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[Municipality]

SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS

The undersigned Agencies agree pursuant to Wisconsin Statutes as follows:

Section 1. PURPOSE OF AGREEMENT

This Agreement is made in recognition of the fact that situations may occur which are beyond the ability of the individual law enforcement Agency to deal with effectively in terms of personnel, equipment and available resources. Each Agency in S.M.A.R.T. expresses its intent to assist the other Agencies by assigning some of its personnel, equipment and available resources to permit the law enforcement Agency of each municipality to more fully safeguard the lives, persons and property of all citizens.

Section 2. DEFINITIONS

For the purpose of this Agreement, the following terms are defined as follows:

A. SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS

The Wisconsin law enforcement Agencies participating in this Mutual Aid Agreement, collectively.

B. INCIDENT

A situation that potentially threatens or causes loss of life and/or property or exceeds the physical and organizational capabilities of a Law Enforcement Agency. Generally, the word "Incident" within this document refers to situations (emergencies) connected to a law enforcement response to severe storms, floods, hazardous material incidents, transportation accidents, large fires, public disorders, major crimes, barricaded subjects, hostage situations, searches, traffic control, terrorist activities, dignitary protection and other similar occurrences.

C. AGENCY

A law enforcement organization recognized by its city, village, town, county or state.

D. MUTUAL AID

A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of Incidents by Requesting Agencies by the Aiding Agency in accordance with the Police Incident Assignments as developed by the Police Chiefs and Sheriffs of the Participating Agencies. (The head of law enforcement for a Participating Agency is referred to herein as "Chief/Sheriff," and collectively the heads

of law enforcement for all Participating Agencies is referred to herein as "Chiefs/Sheriffs". Collectively, and individually the "Chief/Sheriff").

E. PARTICIPATING AGENCY

An Agency that commits itself to this Mutual Aid Agreement by adopting an ordinance or resolution authorizing participation in the program with other Agencies for rendering and receiving Mutual Aid in the event of an Incident in accordance with the Police Incident Assignments, that is accepted into membership. Eligible Agencies must operate in Southeastern Wisconsin, within the counties of Jefferson, Kenosha, Milwaukee, Racine, Walworth and Waukesha.

F. REQUESTING AGENCY

The municipality or legal jurisdiction in which an Incident occurs that is of such magnitude that it cannot be adequately handled by the local law enforcement Agency, that makes a request for Mutual Aid pursuant to this Agreement.

G. AIDING AGENCY

A municipality furnishing police equipment and personnel to a Requesting Agency, pursuant to this Agreement.

H. POLICE INCIDENT ASSIGNMENTS

A predetermined listing of Aiding Agency personnel and equipment that will respond to aid a Requesting Agency.

Section 3. AGREEMENT TO EFFECTUATE THE MUTUAL AID PLAN

The senior on-duty officer of each Participating Agency is authorized to participate with the Participating Agencies in Mutual Aid according to following:

- A. Whenever an Incident is of such magnitude and consequence that it is deemed advisable by the senior on-duty officer of the Requesting Agency to request assistance of the Aiding Agencies he or she is hereby authorized to do so under the terms of this Mutual Aid Agreement.
- B. The senior on-duty officers of the Aiding Agencies are authorized to and shall forthwith take the following action upon receipt of a request for aid pursuant to this Agreement:
 - 1. Promptly determine what resources are required according to the Mutual Aid Police Incident Assignments.
 - 2. Promptly determine if the required equipment and personnel may be committed in response to the request from the Requesting Agency.

3. If so, promptly dispatch the personnel and equipment required to the Requesting Agency in accordance with the Police Incident Assignments.
- C. The rendering of assistance under the terms of this Mutual Aid Agreement is not mandatory. The senior on-duty officer of the Aiding Agency may determine not to respond, for example, if the available personnel and equipment are required for the protection of the Aiding Agency. In that event it is the responsibility of the Aiding Agency to promptly notify the Requesting Agency of the same. The judgment of the senior on-duty officer shall be final.
 - D. The senior on-duty officer of the Requesting Agency, shall assume full responsibility and command for operations at the scene. He or she will assign personnel and equipment, of the Aiding Agencies, to positions when and where deemed necessary.
 - E. It is expected that requests for Mutual Aid under this Agreement will be initiated only when the needs exceed the resources of the Requesting Agency. Aiding Agencies will be released and returning to duty in their own community as soon as the situation is restored to the point which permits the Requesting Agency to adequately handle it with its own resources. Aiding Agencies may also return to duty in their own community at any time, upon notifying the senior on-duty officer of the Requesting Agency, if the senior on-duty officer of the Aiding Agency determines the required equipment and personnel should no longer be committed to the Incident.

Section 4. STATUTORY AUTHORITIES

This Agreement is entered pursuant to Wisconsin Statutes §66.0301. The following statutory rights and responsibilities shall apply.

- A. Wisconsin Statutes §66.0313: Law enforcement; mutual assistance.
- B. Wisconsin Statutes §66.0513: Police, pay when acting outside county or municipality.
- C. Wisconsin Statutes §895.35: Expenses in actions against municipal and other officers.
- D. Wisconsin Statutes §895.46: State and political subdivisions thereof to pay judgments taken against officers.

To ensure compliance with State laws and to avoid ambiguity, all future amendments and recodification of the foregoing statutes, and judicial interpretations thereof, are incorporated herein and shall apply. Nothing contained within this paragraph or Agreement is intended to be a waiver or estoppel of the municipality or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained with Wisconsin Statutes 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

Section 5. COOPERATION

Nothing herein shall be interpreted to prevent member municipalities from voluntarily cooperating in law enforcement services, including voluntary sharing of equipment or facilities, and voluntarily providing services without seeking reimbursement of costs. Each Participating Agency hereby authorizes its Chief/Sheriff to exercise discretion in cooperating with Participating Agencies. Such discretion includes, but is not limited to, the discretion to waive rights of reimbursement of costs incurred in customary, routine and ordinary activities involving costs, salaries and benefits other than worker's compensation. Such waiver of rights of reimbursement of costs for worker's compensation or significant events involving death or catastrophic injury shall be exercised by the Chief/Sheriff upon consultation with and approval by the municipality's governing body.

Section 6. INSURANCE

Each Participating Agency shall maintain insurance coverage to protect against risks arising out of this Agreement, which shall include general liability coverage, automobile liability coverage, workers compensation coverage, and such additional coverage and amounts as further specified by the Chiefs/Sheriffs. Such coverage shall be endorsed, if necessary, to cover claims arising out of contractual liabilities.

Section 7. NO THIRD PARTY BENEFICIARIES

This Agreement is solely between the Participating Agencies, each of whom acts individually in the performance of this Agreement. There are no third party beneficiaries to this Agreement. No separate entities are hereby created.

Section 8. ADMINISTRATION

This Agreement shall be administered by the Chiefs/Sheriffs of the Participating Agencies. The Chiefs/Sheriffs are empowered to carry out the intentions of this Mutual Aid Agreement through all administrative means including the following:

- A. *Determination of membership.* The Chiefs/Sheriffs may determine eligibility for membership, accept new Agencies into membership, maintain records of who is currently a member at any time, determine criteria for termination from membership, and enforce termination of membership.
- B. *Membership fees/dues.* The Chiefs/Sheriffs may establish a fee to join into membership, and dues that may be required on a periodic basis to pay for the operations associated with administering this Agreement.
- C. *Officers and directors.* The Chiefs/Sheriffs may delegate their administrative responsibilities by creating administrative subunits, officers, directors and system managers, whose authority and duties may be described in by-laws and operating

procedures that the Chiefs/Sheriffs may adopt. All such officers, directors, by-laws and operating procedures in effect pursuant to the predecessor to this Agreement on the effective date of this Agreement remain in effect following the effective date of this Agreement.

- D. *Request and response protocols.* The Chiefs/Sheriffs may further define all protocols for making requests and responding to requests for service pursuant to this Mutual Aid Agreement.
- E. *Status.* All Chiefs/Sheriffs administering this Agreement, in any capacity, do so solely by virtue of their capacity as Police Chief or County Sheriff, and shall not be compensated by SMART.
- F. *Testing procedures.* The Chiefs/Sheriffs may establish and execute testing procedures, to ensure readiness for timely Mutual Aid response.
- G. *Method of decision making.* Actions taken by the Chiefs/Sheriffs shall be by majority vote of the quorum of Chiefs/Sheriffs or their designees present and voting, with 50% of the Chiefs/Sheriffs constituting a quorum, except that the Chiefs/Sheriffs may delegate these authorities and modify these terms within the duly adopted by-laws and operating procedures.

Section 9. TERMINATION

Any Agency may withdraw from the Suburban Mutual Assistance Response Teams Agreement by notifying the Chiefs/Sheriffs of the other Participating Agencies in writing, whereupon the withdrawing Agency will terminate participation ninety (90) days from the date of written notice. The Chiefs/Sheriffs may adopt procedures for terminating Agencies who fail to comply with the terms of this Agreement as administered by the Chiefs/Sheriffs, and may exercise that authority.

Section 10. EFFECTIVE DATE

This Agreement supersedes an agreement on the same subject between the same parties. The effective date for this Agreement and the termination of the prior agreement shall be as follows:

- A. This Agreement shall first take effect when it has been duly approved in writing by all municipalities shown in attached Appendix 1 (the "Current Members"), and executed by such authorized officials. On the date of the last such approval, the predecessor to this Agreement is thereby terminated and this Agreement is effective.
- B. In the event fewer than all of the Current Members choose to enter this Agreement prior to March 1, 2019, those municipalities who have approved this Agreement and executed it may give notice and terminate their participation in the prior agreement per

its terms, in which case this Agreement shall be effective for such members on the date of their termination of participation in the prior agreement.

- C. Following its initial effective date, this Agreement shall thereafter be effective for Agencies joining thereafter when the Agreement has been duly approved in writing by such Agency, duly executed by authorized officers of the Agency, and the Agency has been accepted into membership by the Chiefs/Sheriffs of the Participating Agencies. The adoption and signature on this Agreement constitutes an offer, which becomes a binding contract upon acceptance by the Chiefs/Sheriffs.

Section 11. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered in original form or facsimile shall be effective.

[signatures follow on page 7]

Signature Page for Suburban Mutual Assistance Response Teams Agreement

IN WITNESS WHEREOF, this Agreement has been duly executed by the following parties on the
4th Day of March, 2018⁹
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Village of Caladonia
[Municipality/Legal Jurisdiction]

Joe Wirth
[Municipal Official]

[Signature]
[Chief of Police or Sheriff]

ATTEST:

[Signature]
[Municipal Clerk/Witness]

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