

AN AGREEMENT FOR MUTUAL
FIREFIGHTING ASSISTANCE

By and Between

THE CITY OF DULUTH, MINNESOTA

and

THE CITY OF SUPERIOR, WISCONSIN

THIS AGREEMENT, entered into by and between the CITY OF SUPERIOR, WISCONSIN (hereinafter also referred to as "Superior"), a municipal corporation organized and existing under the laws of the State of Wisconsin, and the CITY OF DULUTH, MINNESOTA (hereinafter also referred to as "Duluth"), a governmental and political subdivision of the State of Minnesota;

WITNESSETH:

WHEREAS, both Superior and Duluth employ full-time firefighting personnel and maintain fire departments for the purpose of suppressing fires within their respective boundaries; and whereas, both Superior and Duluth are desirous of rendering each other assistance in situations of fire emergency;

NOW, THEREFORE, Superior and Duluth, pursuant to the authority contained in Minnesota Statutes ' 471.59 (the Joint Powers Act) and ' 438.08 and Wisconsin Statutes ' 66.30(5) in order to accomplish the foregoing purpose, agree as follows:

1. Definitions

The following terms shall have the meanings hereinafter ascribed to them:

Chief: shall mean the Chief of the fire departments of the City of Superior and the City of Duluth as appropriate and any person designated by such Chief to act on his or her behalf pursuant to this Agreement.

Emergency Services: shall mean the provision by the Providing City of services of the kind normally made available by the fire department of the Providing City within the geographical area of its City and any other jurisdiction to which it has agreed to provide such services, other than the Receiving City, under circumstances where the Chief of the Receiving City has determined that the need for such services by the Receiving City exceeds the capacity of the Receiving City to provide such services for itself and where said Chief has requested that the Providing City provide such services to the Receiving City. Emergency Services shall include but not be limited to firefighting services, search and rescue services,

hazardous material containment and/or recovery services

Providing City: shall mean the City requested to provide Emergency Services to the Receiving City.

Receiving City: shall mean the City for which Emergency Services are provided and any other jurisdiction to which the Receiving City has agreed to provide Emergency Services pursuant to an agreement between them.

2. Superior Fire Department to Render Assistance

Subject to the remaining provisions of this Agreement, Superior will direct its fire department and firefighting personnel to provide Emergency Services to Duluth when requested by the Duluth Chief. It is understood that the Duluth Fire Department has primary responsibility for the provision of Emergency Services as needed in Duluth. The assistance provided by Superior under this paragraph will, to the extent consistent with good practices for providing Emergency Services under mutual aid agreements, be of a secondary or backup capacity to Duluth firefighters.

3. Duluth Fire Department to Render Assistance

Subject to the other provisions of this Agreement, Duluth will direct its fire department and firefighting personnel to provide Emergency Services to Superior when requested by the Superior Chief. It is understood that the Superior Fire Department has primary responsibility for the provision of Emergency Services as needed in Superior. The assistance provided by Duluth under this paragraph will, to the extent consistent with good practices for providing Emergency Services under mutual aid agreements, be of a secondary or backup capacity to Superior firefighters.

4. Priority to Emergency Services in Own City

It is the expressed understanding of the parties that the first and foremost priority of Superior is to provide Emergency Services to the City of Superior. It is the expressed understanding of the parties that the first and foremost priority of Duluth is to provide Emergency Services to the City of Duluth. It is therefore expressly understood that the assistance contacted for by this Agreement shall be provide only if the Providing City can, in its judgment of its Chief, provide such assistance

without unduly jeopardizing fire protection within the Providing City. If, at any time while the Providing City is providing Emergency Services to the Receiving City, the Chief of the Providing City determines in the exercise of his or her judgement and discretion that the provision of such Emergency Services to the Receiving City is jeopardizing the Providing City's first and foremost priority for services as set forth above, the Chief of the Providing City may reduce or terminate the provision of Emergency Services to the Receiving City as he or she determines appropriate, provided that in so reducing or terminating the provision of such services the Chief shall use his or her best efforts to do so in a manner which mitigates the jeopardy to the lives of the firefighting personnel of the Receiving City.

5. Equipment

The equipment to be used by the Providing City in providing Emergency Services shall be any of the equipment owned by the fire department of the Providing City which, in the discretion of the Chief of the Providing City, is reasonably needed to provide assistance under the circumstances existing at the time assistance is required.

6. Damages and Injuries

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting either Party as an agent, representative or employee of the other Party for any purpose or in any manner whatsoever. The Parties do not intend to create any third party beneficiary of this Agreement. Neither Party nor its employees shall not be considered employees of the other Party, and any and all claims that may or might arise under the Worker's Compensation Acts of the State of Wisconsin or of Minnesota on behalf of either Party's employees while so engaged, and any and all claims whatsoever on behalf of such Party's employees arising out of employment shall in no way be the responsibility of the other Party. Neither Party's employees shall not be entitled to any compensation or rights

or benefits of any kind whatsoever from the other Party, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and retirement benefits. Further, neither Party shall in any way be responsible to defend, indemnify or save harmless the other Party from liability or judgments arising out of such Party's intentional or negligent acts or omissions of such Party or its employees while performing the work specified by this Agreement.

b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

7. Compensation

It is understood that the Receiving City shall pay to the Providing City reasonable and documented expenses incurred as a result of extended assistance to the recipient as hereinafter provided for. The Providing City provider shall be reimbursed for the reasonable and documented costs of all materials and supplies furnished by it and used or damaged during the period of assistance. In addition the Providing City shall be reimbursed for Personnel and Equipment as hereinafter provided for. There shall be no reimbursement to either party for the first 24 hours of the provision of Personnel or Equipment or both. Reimbursement therefore will begin 24 hours from when the Providing City first commences the provision of Emergency Services in the Receiving City. Subject to the foregoing, the terms and conditions governing reimbursement for any assistance provided under this agreement shall be in accordance with the following provisions:

- a. Personnel – During the period of assistance, the Providing City shall continue to pay its employees according to its labor agreement. The Receiving City shall reimburse the Providing City for all direct and indirect payroll costs of employees of the Providing City providing Emergency Services to the Receiving City.
- b. Equipment – The Providing City shall be reimbursed by the Receiving City

for the use of its equipment during the period of assistance at a rate of \$300 per hour for fire apparatus or \$100 per hour for support vehicles.

8. Authority

Subject to the provisions of this Paragraph and of paragraphs 1 and 2, the Chief of the Receiving City shall direct and control the scene of the emergency. Employees of both the Providing and City and the Receiving City shall be under the control and command of their respective Chiefs.

9. No Liability for Failing to Assist

It is expressly understood that neither Superior nor Duluth shall be in any way liable for any claim based upon a failure to provide assistance under this Agreement or for any claim based upon a failure to render adequate assistance under this Agreement.

10. Construction

This agreement is expressly intended to authorize requests for assistance only for Emergency Services as herein defined and nothing herein shall be construed as authorizing requests or assistance by one party of the other party for routine activities.

11. Termination

This Agreement may be terminated by either party upon thirty (30) days' written notice to the other party. Such notice shall be delivered to the Mayor or Clerk of the City.

12. Duluth Funds

Funds paid by Duluth to Superior shall be paid from Fund 110-150-1502-5319 (general fund, fire, operations, other professional services) or its successor fund.

Funds paid by Superior to Duluth shall be paid to Fund 110-150-1501-4340 (general fund, fire, admin, fire protection services) or its successor fund.

IN WITNESS WHEREOF, Superior and Duluth have hereunto set their hands and seals
this _____ day of _____, 2016.

CITY OF DULUTH

CITY OF SUPERIOR

BY _____

BY _____

Mayor
Emily Larson

Mayor
Bruce Hagen

City Clerk
Jeff Cox

City Clerk
Terri Kalan

Fire Chief
Dennis Edwards

Fire Chief
Steve Panger