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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.

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Enclosures

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