



AGENDA
CLEARWATER CITY COUNCIL SPECIAL MEETING
WEDNESDAY, MAY 20, 2020

- 1. Call to Order: 1:30 p.m. via Zoom Web Conference**
- 2. Consider Fire Contract Proposal**
- 3. Adjournment**

Fire Contract Proposed Split Formula - 2020 Budget - Method 1

2020 Budget	300,960
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Calculation - Part I

Budget 300,960 33% 99,316.80 33% is taken off the top and split between the 3 entities - this is based on the old formula

1/3 33,105.60 This is the 1/3 amount for each entity.

Calculation - Part II

Budget Remainder 201,643.20

Calls for Last 5 Years

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>	<u>5 Yr Avg</u>	<u>% Share</u>	<u>Amount</u>
Clearwater	124	133	134	137	161	689	138	52.04%	104,933.66
Clearwater Twp	62	63	55	50	87	317	63	23.94%	48,278.62
Lynden Twp	59	45	71	65	78	318	64	24.02%	48,430.92
Total	245	241	260	252	326	1,324	265	100.00%	201,643.20

Total Cost Split

	<u>Part I</u>	<u>Part II</u>	<u>Total</u>	<u>Share</u>
Clearwater	33,105.60	104,933.66	138,039.26	45.87%
Clearwater Twp	33,105.60	48,278.62	81,384.22	27.04%
Lynden Twp	33,105.60	48,430.92	81,536.52	27.09%
	99,316.80	201,643.20	300,960.00	

Fire Contract Proposed Split Formula - 2021 Budget - Method 1

2021 Budget **350,000** ***estimate only - this has not yet been reviewed*

Calculation - Part I

Budget 350,000 33% 115,500.00 33% is taken off the top and split between the 3 entities - this is based on the old formula

1/3 38,500.00 This is the 1/3 amount for each entity.

Calculation - Part II

Budget Remainder 234,500.00

Calls for Last 5 Years

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>	<u>5 Yr Avg</u>	<u>% Share</u>	<u>Amount</u>
Clearwater	124	133	134	137	161	689	138	52.04%	122,032.10
Clearwater Twp	62	63	55	50	87	317	63	23.94%	56,145.39
Lynden Twp	59	45	71	65	78	318	64	24.02%	56,322.51
Total	245	241	260	252	326	1,324	265	100.00%	234,500.00

Total Cost Split

	<u>Part I</u>	<u>Part II</u>	<u>Total</u>	<u>Share</u>
Clearwater	38,500.00	122,032.10	160,532.10	45.87%
Clearwater Twp	38,500.00	56,145.39	94,645.39	27.04%
Lynden Twp	38,500.00	56,322.51	94,822.51	27.09%
	115,500.00	234,500.00	350,000.00	

Fire Contract Proposed Split Formula - 2020 Budget - Method 2

2020 Budget	300,960
Operations	224,960
Capital	76,000
Debt	-

Calculation - Part I

Operations Budget	224,960	33%	99,316.80	33% is taken off the top and split between the 3 entities - this is based on the old formula
		1/3	33,105.60	This is the 1/3 amount for each entity.

Calculation - Part II

Budget Remainder 125,643.20

Calls for Last 5 Years

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>	<u>5 Yr Avg</u>	<u>% Share</u>	<u>Amount</u>
Clearwater	124	133	134	137	161	689	138	52.04%	65,383.81
Clearwater Twp	62	63	55	50	87	317	63	23.94%	30,082.25
Lynden Twp	59	45	71	65	78	318	64	24.02%	30,177.14
Total	245	241	260	252	326	1,324	265	100.00%	125,643.20

Calculation Part III

		<u>Clearwater</u>		
		<u>Clearwater</u>	<u>Twp</u>	<u>Lynden Twp</u>
Capital Budget - 1/3	76,000.00	25,333.33	25,333.33	25,333.33
Debt Budget - 1/3	-	-	-	-

Total Cost Split

	<u>Part I</u>	<u>Part II</u>	<u>Part III</u>	<u>Total</u>	<u>Share</u>
Clearwater	33,105.60	65,383.81	25,333.33	123,822.74	41.14%
Clearwater Twp	33,105.60	30,082.25	25,333.33	88,521.18	29.41%
Lynden Twp	33,105.60	30,177.14	25,333.33	88,616.08	29.44%
	99,316.80	125,643.20	76,000.00	300,960.00	

**CITY OF CLEARWATER
FIRE SERVICES CONTRACT**

This contract is made and entered into this ____ day of _____, 20____ between the City of Clearwater, Minnesota, ("City"), Clearwater Township, Minnesota, and Lynden Township, Minnesota ("Towns").

In consideration of the mutual promises and agreements hereinafter set forth the parties do hereby agree as follows:

1. **Fire Service.** Towns agree to purchase from City, and City agrees to provide Towns, the following fire services:

- | | |
|--|--|
| <input type="checkbox"/> Structural Firefighting | <input type="checkbox"/> General Medicals |
| <input type="checkbox"/> External Structural Firefighting | Level of Emergency Medical Response |
| <input type="checkbox"/> Interior Structural Firefighting | <input type="checkbox"/> First Responder |
| <input type="checkbox"/> Grass/Forest Firefighting | <input type="checkbox"/> Fire Code Enforcement (city only) |
| <input type="checkbox"/> General Firefighting | <input type="checkbox"/> Hazardous Materials Response |
| <input type="checkbox"/> Vehicles & Equipment | Level of Hazardous Materials Response |
| <input type="checkbox"/> Carbon Monoxide Calls | <input type="checkbox"/> First Responder, Operations |
| <input type="checkbox"/> Other Non-Structural Firefighting | <input type="checkbox"/> Disaster Response |
| <input type="checkbox"/> Rescue | |
| <input type="checkbox"/> Vehicle & Equipment Extrication | |
| <input type="checkbox"/> General Search & Rescue | |
| <input type="checkbox"/> Water Rescue | |
| <input type="checkbox"/> Emergency Medical Services | |
| <input type="checkbox"/> Fire Scenes | |
| <input type="checkbox"/> Rescue Scenes | |

The services indicated above are further explained, or limited, as follows:

- a. **Allocation of Resources.** The parties understand the fire department officer in charge of the particular scene shall exercise judgment to determine, in consideration of all the established policies, guidelines, procedures, and practices, how best to allocate the available resources of the fire department under the circumstances of a given situation. Failure to provide fire services because of poor weather conditions or other conditions beyond the control of City shall not be deemed a breach of this contract.
- b. **No Guarantee.** The parties understand and agree City will endeavor to provide the services indicated above to the best of its ability given the circumstances, but City makes no guarantees that the services it actually provides in a given situation will meet any particular criteria or standard.

2. **Payment.** Towns agree to pay City during the term of this contract the Payment Amount determined annually according to the formula as set forth in Exhibit A which is attached hereto and made a part of this contract. Half of the Payment Amount owed shall be remitted to the City on July 15 and December 15 of each year of this contract. City shall invoice Towns for each payment owed,

but failure to submit invoices does not void requirement for Towns to remit the Payment Amount.

3. **Fire Advisory Committee.** Towns and City shall hold at least one joint meeting annually during the term of this contract to calculate the Payment Amount for the upcoming year, discuss Towns' satisfaction with the services provided during the year, and to discuss such other issues as each party deems relevant to this contract. The meeting shall be held separately from any regular Town or City meeting and shall be attended by at least one appointed representative from each party's governing body. The meeting shall also be attended by the City's Fire Chief or designee. The representative appointed by the City shall act as Chair at the meeting, and minutes shall be taken by a City Staff representative. The Fire Advisory Committee meeting shall comply with open meeting law requirements.
4. **Emergency Service Charge.** Towns, in their sole discretion, may exercise their authority to impose and collect an emergency service charge on those receiving emergency services, including fire services, within Town's Service Territory. City shall have no right to, or interest in, any service fees collected by Towns. If Towns impose an emergency service charge they shall provide City a list of the specific types of information needed in order to successfully impose and collect the charge. City shall make a good faith effort to collect the requested information for each service call to the Service Territory and promptly provide Towns with the information it collected.
5. **Service Territory.** City shall provide fire services as indicated in this contract to the area in each Town as indicated on the map shown on Exhibit B which is attached hereto and made part of this contract. The identified area shall constitute the Town's Service Territory for the purposes of this contract.
6. **Term.** This contract shall commence on January 1, 2021 and terminate on December 31, 2025 unless otherwise extended by agreement of the parties or otherwise terminated in accordance with Section 7 of this contract.
7. **Termination.** This contract may be terminated at any time during its term by mutual agreement of the parties. Any party may terminate this contract by providing written notice of termination to the other parties via first class mail to the following mailing address:

City of Clearwater
Attn: City Administrator
PO Box 9
Clearwater, MN 55320

Clearwater Township
Attn: Town Clerk
PO Box xx
Clearwater, MN 55320

Lynden Township
Attn: Town Clerk
PO Box xx
Clearwater, MN 55320

Upon receipt of such notice, this contract will terminate at 11:59 p.m. on December 31 of the year following the year in which notice was received.

8. **Ownership.** City owns the buildings and equipment associated with the Fire Department and the amounts paid by Towns do not give rise to any ownership interest in, or responsibility toward, those items.
9. **City's Responsibilities.** In addition to any other obligations described herein, City shall:

- a. Authorize and direct the City fire department to provide the fire services described herein to Town's Service Territory;
- b. Develop a detailed annual operational budget for the fire department for each year during the term of this contract and present it to the Fire Advisory Committee for consideration;
- c. Upon Town's request, provide Towns access to financial and cost data related to the fire department for any years prior to the current service year for which the City has data pursuant to its Data Practices Retention Schedule;
- d. Disclose to Towns any proposed action City or the fire department intends to take that can reasonably be expected to effect the Insurance Services Office Fire Protection Grade in the Service Territory or City's ability to provide the fire services indicated above; and
- e. Promptly disclose to Town any information City can reasonably anticipate will directly affect its ability to perform its obligations under this contract.

10. Town's Responsibilities. In addition to any other obligations described herein, Towns shall:

- a. Promptly pay City the Payment Amount as outlined above for the year of service;
- b. Present a budget and levy proposal to the town electors at each annual town meeting during the term of this contract seeking authority to levy funds as needed to pay the Payment Amount; and
- c. Promptly disclose to City any information Towns can reasonably anticipate will directly affect its ability to perform its obligations under this contract.

It is understood and agreed Towns shall have no responsibility whatsoever toward the fighters or other emergency personnel including any employment related issues such as training, supervision, performance reviews, discipline, compensation, benefits, insurance coverages, compliance with any employment related federal, state, and local laws and rules such as OSHA, ERISA, RLSA, FMLA, or any other employment related issues. It is further agreed Towns have no responsibility, beyond paying the agreed upon Payment Amount, for acquiring, operating, maintaining, housing, or replacing equipment as needed to provide the fire services described herein.

11. Insurance Requirements. City shall maintain general liability insurance for its services and shall include Towns as additional insureds for the term of this contract and any extensions thereof. City shall also maintain inland marine, automobile, and property insurance coverages. City shall provide Towns proof of such insurance coverages and the additional insured endorsement naming the Towns annually at the time of insurance renewal.

12. Indemnification. City agrees to defend and indemnify Towns against any claims brought or actions filed against Towns or any officer, employee, or volunteer of Towns for injury to, death of, or damage to the property of any third person or persons, arising from City's performance under this contract for services. Under no circumstances, however, shall City be required to pay on behalf of itself and Towns, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for Towns and City may not be added together to determine the maximum amount of liability for City. The intent of this subdivision is to impose on City a limited duty to defend and indemnify Town for claims arising out of the performance of this contract 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 between the parties and to permit

liability claims against both parties from a single occurrence to be defended by a single attorney.

- 13. **No Waiver.** Nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes Chapter 466 or otherwise.
- 14. **Modification.** This writing contains the entire agreement between the parties and no alterations, variations, modifications, or waivers of the provisions of this agreement are valid unless reduced to writing, signed by both City and Towns, and attached hereto.
- 15. **Subcontracting & Assignment.** City shall not subcontract or assign any portion of this contract to another without prior written permission from Towns. Services provided to Towns pursuant to a mutual aid agreement City has, or may enter into, with another entity does not constitute a subcontract or assignment requiring prior approval of Towns so long as City remains primarily responsible for providing fire services to Town's Service Territory.
- 16. **Service Contract.** This is a service contract. The parties do not intend to undertake or create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise between the parties.
- 17. **Minnesota Law Governs.** This contract shall be governed by and construed in accordance with the internal laws of the State of Minnesota. All proceedings related to this contract shall be venued in the State of Minnesota.
- 18. **Severability.** The provisions of this contract shall be deemed severable. If any part of this contract is rendered void, invalid, or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this contract.

IN WITNESS WHEREOF, the parties have executed this contract effective on the date indicated above.

CITY OF CLEARWATER

CLEARWATER TOWNSHIP

LYNDEN TOWNSHIP

Mayor

Board Chair

Board Chair

City Administrator

Town Clerk

Town Clerk

Date

Date

Date

Exhibit A – Payment Amount Calculation

The City shall account for Fire Department revenues and expenditures in a Special Revenue Fund designated for Fire and Rescue operations. Any donations to the Fire Department or grants received by the Fire Department shall be booked as revenues to the Fire Department Fund for operations of the department and not used by the City for other purposes. Any proceeds from the sale of Fire Department equipment shall be booked as revenues to the Fire Department Fund and shall not be considered a contribution or payment from any party. The City shall not transfer any money out of the Fire Department Fund unless specifically used for Fire Department purposes, such as bond payments made for the purchase of Fire Department assets.

Any surplus or deficit in the Fund at the end of each calendar year, following completion of the City audit and following the set aside of \$50,000 designated as capital reserve, shall be split among the parties based on their share of the Payment Amount for the year during which the surplus or deficit occurred. The credit or deficit shall be reflected on the invoice for the first half payment due the year following the fiscal year. For example, a surplus from 2019 would be credited to the first half payment due July 15, 2020.

Each year, the City shall calculate a budget for the Fire Department's operations, debt service, and capital needs for the upcoming fiscal year. The budget shall be reviewed by the Fire Advisory Committee and presented to each party's governing Board. In addition, the City's Fire Department will provide an annual report outlining the call activity for the previous year. The departmental budget and calls will be used to calculate the Payment Amount for each year.

Payment Amount Calculation:

(Insert Chosen Method)

Townships Prefer Method 1 as outlined in calculation proposals, with some adjustments.

Exhibit B – Service Territory Map

Insert Service Territory Maps that outlines parcels and area of highways included in each.

COURI & RUPPE, P.L.L.P

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Michael C. Couri*
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**Also Licensed in Illinois*

***Also Licensed in California*

May 7, 2020

Annita Smythe
City Administrator
City of Clearwater
P.O. Box 9
Clearwater, MN 55320

Re: Clearwater and Lynden Townships; Fire Contract.

Dear Ms. Smythe:

The Lynden and Clearwater Township Boards have met to discuss the terms of a fire contract with the City of Clearwater and have agreed that the Townships are willing to enter into a fire contract for 2021 that encompass the following terms:

- 1/3rd of the annual fire budget to be split evenly between the three parties.
- 2/3^{rds} of the annual fire budget to be allocated based on the percentage of calls for each jurisdiction over a five-year moving average. This is the same formula shown as “M1 2021” on the “2021 Fire Contract Options” spreadsheet that Anita and Jean discussed in March.
- The first year debt service for the new fire truck to be allocated based on the percentage of calls for each jurisdiction over a five-year moving average.
- \$50,000 be included in each year’s budget as a capital reserve for future equipment purchases.
- After the close of each year a budget to actual “true up” be performed, with a corresponding credit back to the Townships if less than the budgeted amount was spent or an additional check cut to the City from the Townships if more than the budgeted amount was spent.
- The City provides the Township with quarterly or monthly budget reports.
- The City provides the Township with quarterly or monthly run reports summarizing all fire department runs, the nature of the call (medical, fire, car accident, etc.), the address or location responded to, and the time and date of the response.

Annita Smythe

May 7, 2020

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- A fire advisory commission be established that meets at least annually to facilitate the free flow of information between the Townships and the City regarding fire service issues.

A contract on this basis can be approved in time for the City's 2021 budgeting process and before the Townships set their levies (the Townships continued their annual meetings to set the levy until late summer) and will ensure that all parties are able to adequately plan and budget for fire service in 2021. Please confirm that these points are acceptable for a 2021 fire service contract, at which point a draft document can be prepared for the parties to consider.

Sincerely,



Michael C. Couri
Couri & Ruppe, P.L.L.P.

Cc: Jenny Schmidt
Jean Just