



AGENDA ITEM # 6.3

REPORT TO CITY COUNCIL

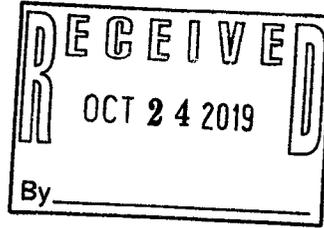
Report Prepared by: Dawn Bittner

Date: November 5, 2019

Subject: Sourcewell Planning & Zoning Services Agreement

Report: Attached is a memo from Sourcewell outlining concerns the MPCA has raised regarding Sourcewell's legal authority to provide services related to Subsurface Sewage Treatment Systems (SSTS). This issue can be resolved by designating joint employees to satisfy the program administration requirements of the MPCA. Sourcewell has provided the attached Addendum #1: Joint Powers Agreement. The terms of the Agreement executed in July, 2018 will remain the same. The language from these addenda will be included in future contracts as they are renewed.

Council Action Requested: Council motion authorizing the City Administrator to execute Addendum #1: Joint Powers Agreement.



TO: Shared Service Communities
FROM: Sourcewell, Community Solutions
DATE: 10/22/2019
RE: SSTS Services

ISSUE

The MPCA has raised concerns about Sourcewell's legal authority to provide services related to subsurface sewage treatment systems (SSTS). The basic position of the MPCA is that only employees of a City, County or Township qualify for certification under Minnesota Statutes, § 115.56, subd. 2(b)(1). The MPCA has threatened enforcement action against Sourcewell if we do not discontinue services related to SSTS's. They have requested that we apply for a business entity license, but that is not something we can do as a local unit of government.

BRIEF ANSWER

While we disagree with the MPCA's legal interpretation, we believe there is a middle-ground approach available. Through Minnesota's joint powers law, the City and a Service Cooperative such as Sourcewell can designate joint employees, thereby making them qualified employees for certification purposes because they would legally be employees of the City. This should satisfy the program administration requirements of the MPCA. The attached addenda seek to accomplish this goal. Note that nothing in the addendum changes anything operationally for the City. Sourcewell will continue to hire, supervise, support, pay, etc. staff designated as joint employees. Additionally, we have included defense and indemnification language in favor of the City.

CONCLUSION

It is important that we get these addenda in place and then roll the language into future contracts as they are renewed. If we cannot resolve this technical legal issue, it may mean we have to discontinue the SSTS related portion of the service we provide.

Addendum #1: Joint Powers Agreement

On July 10, 2018, a Shared Services Agreement for Planning and Zoning Services (“Agreement”) was made effective by and between Sourcewell, located at 202 – 12th Street NE, PO Box 219, Staples, MN 56479, and the City of Pequot Lakes (“City”), located at 4638 Main Street, Pequot Lakes, MN 56472.

For purpose of further clarity, Sourcewell and City now wish to be legally bond to the following, which constitutes additional terms and conditions to the Agreement:

Sourcewell is a local governmental unit, public corporation and public agency, and service cooperative created under Minn. Stat. § 123A.21. City is a local governmental unit pursuant to state statute. As such, the Agreement executed between the Parties constitutes a Joint Powers Agreement pursuant to Minn. Stat. § 471.59, subd. 1.

Sourcewell and City further agree that solely for purposes of the Joint Powers Agreement the staff providing planning and zoning services are designated as joint employees of Sourcewell and the City and eligible as qualified employees of the City who are certified professionals pursuant to Minn. Stat. § 115.56, subd. 2(b)(1).

The City is a member of Sourcewell pursuant to Minn. Stat. §123A.21, subd. 3. This Joint Powers Agreement is entered pursuant Minn. Stat. § 471.59, Minn. Stat. § 123A.21, subd. 7(1)(10)(17)(18) & (21) and Minn. Stat. §115.55, et. seq.

For purposes of determining total liability, if any, the Parties will be treated as a single governmental unit within the meaning of Minn. Stat. § 471.59, subd. 1a(b) and nothing in the Agreement will be construed as a waiver of statutory limits on liability set forth in Minn. Stat. § 466.04 or constitute a waiver of any available governmental immunities or defenses.

Sourcewell is responsible for hiring, supervision, support, payment and administration related to joint employees designed under this Joint Powers Agreement.

Sourcewell will defend, indemnify and hold the City harmless from all loss, liability, damage, claims or causes arising from the intentional or negligent acts, if any, of any designated joint employee.

The Parties agree that this Addendum shall be effective as of the Effective Date of the original Agreement.

Sourcewell and City further affirm that no other terms or conditions of the Agreement shall be amended as a result of this Addendum.

IN WITNESS WHEREOF, City and Sourcewell have executed this Addendum as of the date hereof.

Sourcewell

City of Pequot Lakes

By _____
Authorized Signature-**Signed**

By _____
Authorized Signature-**Signed**

By Anna Gruber _____
Name-**Printed**

By _____
Name-**Printed**

Title Manager of City/County Solutions

Title _____

Date _____

Date _____