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### Statement of Position Joint Powers Fire Departments and Fire Districts

The sharing of fire services among local units of government provides opportunities that may improve the level and/or quality of services provided to residents and may reduce costs.<sup>1</sup> This Statement of Position focuses on one model for sharing fire services, the use of joint powers agreements.<sup>2</sup>

#### The Joint Powers Agreement –The Document

Because joint powers agreements are legal documents, local governments entering into them for fire services should work with their attorneys for assistance in drafting the agreements.<sup>3</sup> Getting the legal document right the first time will help to avoid problems later on. Issues that should be addressed in the agreement document include:

1. The agreement must state its purpose and how the purpose will be accomplished. For example, the agreement may specify that one of the parties to the agreement will provide services on behalf of the other participating local governments.<sup>4</sup>
2. The agreement for fire services should explain how the amount of the required municipal contribution to the fire relief association that each participant will pay will be determined, and should describe the process by which the relief association bylaws and benefit changes will be approved.<sup>5</sup>

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<sup>1</sup> See [A Blueprint for Shared Services, Governor's Fire and Rescue Shared Services Task Force](#) ("Task Force Report") (2010).

<sup>2</sup> See Minn. Stat. § 471.59 (joint exercise of powers).

<sup>3</sup> Links to sample agreements are included on page 65 of the Task Force Report.

<sup>4</sup> Minn. Stat. § 471.59, subd. 2.

<sup>5</sup> See Minn. § 424A.092, subd. 4. The statute explicitly acknowledges that the body responsible for the minimum municipal obligation may be a joint powers entity: "If the responsible entity is a joint powers entity, the certification must be made in the manner specified in the joint powers agreement, or if the joint powers agreement is silent on this point, the certification must be made to the chair of the joint powers board." *Id.*

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This Statement of Position is not legal advice and is subject to revision.

3. State law requires that joint powers agreements contain certain provisions in the event of dissolution. For example, the agreement must provide for the disposition of any property acquired as a result of the joint exercise of power. It must also require that any surplus moneys remaining after the dissolution be returned to the parties to the agreement in proportion to their contributions.<sup>6</sup>

### **Joint Powers Board**

A joint powers agreement can be used to create a new, separate entity, operated by a joint powers board. If so, the board must be representative of the parties to the agreement.<sup>7</sup>

A joint powers board may be structured in a number of different ways. For example, some boards serve only as “advisory” boards, requiring most decisions made by the board to be ratified by the governing bodies of the parties to the agreement. Some boards are granted significant independent authority to run the day-to-day operations of the joint powers entity, but they must obtain specific authority from the parties to the agreement for such things as setting budgets, setting rates and fees, or purchasing land, facilities or equipment. Some boards are granted broad authority to make independent decisions. The joint powers agreement should clearly specify the extent of the authority granted to the joint powers board.

### **Handling Public Funds**

If the joint powers agreement gives the joint powers board the authority to disburse public funds, the joint powers entity must handle the funds in the same way that local governments handle their funds. Under Minnesota law, the disbursement of funds by a joint powers entity must “agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement.”<sup>8</sup> The joint powers entity must also follow the local government’s contracting and purchasing requirements.<sup>9</sup>

For example, the joint powers board should require that claims be itemized, just as local governments require itemized claims. All claims should be approved by the joint powers board prior to payment, just as claims are approved by a city council or town board prior to payment. More than one signature should be required on checks issued by the joint powers entity, just as more than one signature is required on checks issued by a local government.<sup>10</sup>

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<sup>6</sup> Minn. Stat. § 471.59, subd. 5.

<sup>7</sup> Minn. Stat. § 471.59, subd. 2.

<sup>8</sup> Minn. Stat. § 471.59, subd. 3.

<sup>9</sup> See OSA’s Statements of Position: [City Bidding and Contract Requirements](#) and [County Bidding and Contract Requirements](#).

<sup>10</sup> For more information on the claims approval process and the multiple signature requirement, see the OSA’s “Avoiding Pitfalls” on these topics at <http://www.auditor.state.mn.us/default.aspx?page=pitfalls>.

As a matter of best practices, local governments that have a joint powers agreement in place for fire services should review the agreement on a regular basis. The agreement should be modified if circumstances affecting the agreement have changed since the agreement was first adopted.

### **Audit Requirement**

The joint powers entity may be subject to audit requirements. Minnesota law requires “special districts” to have annual audits if the special district’s annual revenue is greater than a threshold dollar amount.<sup>11</sup> A fire district or fire department created through a joint powers agreement has a special or limited purpose, and is generally funded, at least in part, by property tax revenues or other public funds. A joint powers entity or fire district is a “special district” if:

- It is not included in a city, county, or town financial report as a component of that local government; and
- It is governed by 1) people directly elected to the governing board; 2) people appointed to the governing board by local elected officials; 3) local elected officials who serve on the board by virtue of their elected office; or 4) a combination of these selection methods.<sup>12</sup>

If the joint powers entity meets the definition of a “special district,” the entity’s joint powers agreement and any other documents relating to the governance of the entity, must be filed with the OSA within 60 days of adoption.

A “special district” also needs an annual audit if total revenues exceed the annual audit threshold and if it is not subject to financial auditing and reporting requirements under any other law.<sup>13</sup> Special districts must have an Agreed-Upon Procedures engagement once in every five-year period if total revenues are equal to or less than the annual audit threshold and if they are not subject to financial auditing and reporting requirements under any other law.<sup>14</sup>

A “special district” must also complete the OSA’s Annual Financial Reporting form within 180 days after the end of the district’s fiscal year. The form is accessed through the State Auditor’s Form Entry System (SAFES). The audit, the agreed-upon procedure engagement, or the financial statements must also be submitted to the OSA.

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<sup>11</sup> Minn. Stat. §§ 6.465 and 6.756.

<sup>12</sup> Minn. Stat. §§ 6.465, subd. 3.

<sup>13</sup> Minn. Stat. §§ 6.465, subd. 2. The audit thresholds are posted on the OSA’s website under the “Audit FAQs” heading at <http://www.auditor.state.mn.us/default.aspx?page=faq>.

<sup>14</sup> Minn. Stat. § 6.465, subd. 2.