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RISK MANAGEMENT INFORMATION

## COMBINING GOVERNMENTAL SERVICES

### Issues to Consider

With the budget crisis affecting virtually every aspect of governmental service in Minnesota, many cities are looking at intergovernmental cooperative arrangements as a possible way to provide services less expensively, more effectively, or both. Planning and negotiating an agreement to share or combine services is a big task and there are many aspects to consider.

Under the joint powers law 471.59, cities can enter intergovernmental agreements with virtually any other governmental entity – other cities, counties, towns, special districts, service cooperatives, even the state itself. For simplicity's sake, we'll just refer to cities in this memo, but the same issues arise and the same principles apply regardless of what types of governmental units are involved.

This memo identifies many of the issues (we won't promise that we've identified *all* of the issues) that need to be addressed. In some cases, the solutions for some of these issues may be non-controversial and obvious to everyone; in another situation though, the same issue might turn out to be the deal-breaker.

In all cases, the decisions about how best to arrange cooperative services need to be made and supported among elected officials and city administration, as well as the general public.

#### **Structure and governance**

The joint powers law allows political subdivisions to cooperate in a wide variety of ways. There are three basic structural models: a *consolidated service* approach; a *service contract* approach; or a *mutual aid* approach.

- *Consolidated service.* Under the *consolidated service* approach, two or more cities agree under the joint powers law to create a joint board consisting of one or more representatives from each of the participating cities. Each city provides financial support to the joint board. In turn the board employs the necessary staff, owns or leases the equipment, and manages the operations.
- *Service contract.* Under the *service contract* approach, one city maintains and manages the operation and the other city simply purchases services from the first city. Typically, the agreement will specify the level and type of service to be provided, performance standards, and so on.

- *Mutual aid.* Under the *mutual aid* approach, two or more cities agree to assist each other in specified circumstances; e.g., when an emergency in one city requires additional personnel, or when one city is short-staffed because of vacancies, vacations, injuries, sickness, etc. Generally, no money changes hands; the assumption is that in the long run, things will even out and each city will receive roughly as much assistance as it provides. Note that a mutual aid arrangement could involve complementary, rather than identical, services; e.g., you buy and maintain a snorkel truck and we'll buy and maintain a hazmat vehicle, and we'll both make them available to the other when needed.

Of course, in practice joint powers arrangements don't always neatly fall into one of these three categories. There may be arrangements under which a joint managing board is created and given the responsibility to be a consolidated service provider for several jurisdictions, and the joint board in turn purchases the service from one of the member cities – more or less a hybrid of the “consolidated service” and the “service contract” approaches.

Similarly, mutual aid agreements sometimes provide that if the mutual assistance continues longer than a specified time, the city receiving the assistance must begin paying the city that's providing the assistance. But while these kinds of variations are possible, it's probably helpful at least to begin the discussions by thinking in terms of one of the three basic models: consolidation, service contract, or mutual aid.

Once structure is determined, cities must also decide how the operation will be governed and managed. For a consolidated service, how will the board be structured? Will it consist of elected officials, appointed city officials, citizen appointees, or some combination? Do all the cities have equal representation? How are the members appointed, for what terms, etc.? Are there certain specific types of decisions that will need to be approved by the participating city councils, in addition to (or instead of) by the joint board?

For *service contracts*, will there be a formal structure for the purchasing city to have input, such as an advisory board, a designated liaison, regular meetings, etc.?

### **Contract provisions**

It's important that the contract not only establish the legal organization of a new consolidated service, service contract, or mutual aid agreement, but that it also consider the financial obligations of each participating city.

How will each city's share of the cost be determined? What might be grounds for changing the cities' respective shares in the future? How will any unexpected or unbudgeted costs or uninsured/unfunded liabilities be handled? How will decisions about future capital expenditures be made and funded?

Since many arrangements may also include equipment contributions, one question is whether cities' respective contributions may not be equitable because of the age, condition or amount of the equipment contributed.

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Even if the cities forming a new consolidated service intend to maintain it well into the future, it's important to include plans for possible termination of the agreement. Will the agreement expire on a specified date, or continue indefinitely until terminated by the parties? When may a city withdraw, under what conditions, and how much notice is required? In a multi-party joint service, will/can the service continue with the now-reduced number of participating cities? If the joint arrangement is dissolved, how are the equipment, assets and liabilities allocated?

In addition to the contract that controls the new cooperative service, other existing city contracts should be reviewed to make sure the cooperative activity doesn't somehow affect them. For example, if the city is moving from having its own service to a consolidated or service contract approach, does the city have any existing mutual aid arrangements affecting that service? If so, those arrangements will need to be revised.

## **Employees**

How to staff the services being provided, including how to manage that staff, is an important consideration that may in fact impact the decision about how best to structure an agreement. Will the new operation have the same number, more, or fewer employees than the combined total of the cities' existing operations?

If there are labor agreements in force in one or more of the participating cities, they will need to be reviewed in light of the new operation and any provisions regarding changes to the labor contract considered. Also, there will need to be a determination about what union, if any, will represent the employees in a combined service.

Regardless of whether there are unions in place, the salary and benefits schedule for the new department will need to be established. This could be a significant issue if the wage and/or benefit packages are significantly different in two cities that are combining services.

It's possible that all current employees of each city's activities will be combined to form the new staff, and that those employees will be guaranteed a job. However, the participating cities might also choose to have employees apply individually for a job with the new department or operation.

Other employment questions to ask include:

- Do any of the cities have a civil service system covering employees that would be affected?
- Do any of the cities have a local relief association covering employees that would be affected?
- How will personnel records and files be handled for both current and future employees?

## **Accounting practices**

It may be more efficient to have one of the cities handle accounting functions on behalf of the consolidated operation, rather than having the consolidated operation set up its own accounting system. This may include payroll activities for the joint operations staff.

If the activities of the new arrangement are significantly different than other city operations – for instance, if there is a new joint powers agreement for ambulance services that requires Medicare billing – then a separate accounting function may make sense.

## **Location and logistics**

As staffing decisions are made and depending on the purchase of any new equipment, there may need to be some provisions made for locating resources. One consideration is whether it is important for the joint activities to operate out of a single location, or if it is fine for equipment or staff to be spread out among the cities involved.

In a joint powers arrangement, and perhaps even under a “service contract” approach, it may be desirable to identify the operation in a way that conveys to the public that it’s a cooperative effort. E.g., even though legally it’s the City of Mosquito Heights that’s providing police services to the City of Frostbite Falls, it might be desirable to call it the Mosquito Heights – Frostbite Falls Police Department.

## **Liability**

In any cooperative arrangement, you ideally want to avoid creating situations where each party must respond independently to claims arising from cooperative activities. If that happens it can put the parties into conflict with each other, and even into litigation against each other, when a liability claim occurs.

In a *consolidated service*, it works best for the joint board to carry its own liability coverage. The coverage should be structured to protect the constituent cities as well as the joint entity. (LMCIT does this automatically when covering a joint powers entity.)

Under a *service contract* approach, it works best for the city providing the service to carry the liability risk and coverage, since that city controls how the service is provided and therefore is in a position to control that liability risk. The “provider” city would also agree contractually to defend and indemnify the “purchaser” city for claims arising from activities under the service agreement.

Under a *mutual aid* approach, LMCIT generally recommends that the city receiving the assistance assume the liability; i.e., the receiving city agrees to defend and indemnify the city providing the assistance for liability claims that might arise. The mutual aid agreement would also provide that the city providing the assistance is under the direction and control of the city

receiving the service. Again, the idea is to make it clear who's in charge, and to have the party that's in charge bear the liability risk.

## **Police operations**

When combining police operations, there are a few special issues to consider.

- Do any of the cities have part-time officers?
- Will the new department have part-time officers?
- What will be the policy on personal equipment, such as weapons, uniforms, body armor, etc.? (Will the officer purchase it or is it supplied, etc.)?
- What policies and procedure manuals will be used?
- How will law enforcement records be handled? (Will the existing departments' records be combined, and if so where and how)?
- Do any of the departments have other non-law-enforcement responsibilities, such as emergency management?

## **Other resources**

These LMCIT risk management memos are available on the League web site, [www.lmnc.org](http://www.lmnc.org), or from the League office.

- "Liability Coverage for Joint Powers Agreements" discusses liability and coverage issues in more detail.
- LMCIT's "Model Mutual Aid Agreement" contains a discussion of mutual aid issues and a model agreement form.

Sample joint powers agreements for police services are available on the League web site at <http://www.lmnc.org/lmcit/lawenforcementjp.cfm>. These include samples of both the "consolidated service" and the "service contract" approach. The League research department can also provide samples of other types of joint powers agreements. There is also a policy analysis memo available entitled "Cities Across Minnesota Cooperate to Provide Service and Perform Functions: A Review of Joint Powers Agreements."

Finally, LMCIT staff will be happy to review any draft joint powers agreements, comment on the liability, risk, and coverage aspects, and let you know whether the city's existing liability coverage will apply to the agreement or whether separate coverage would be needed.

Feel free to contact your LMCIT underwriter or any of the following:

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## Checklist of Considerations

### Structure and governance

- ❑ Which structure – consolidated service, service contract, or mutual aid?
- ❑ Once structure is determined, how will the operation be governed and managed?
- ❑ For a *consolidated service*:
  - ❑ Will the board consist of elected officials, appointed city officials, citizen appointees, or some combination?
  - ❑ Do all the cities have equal representation?
  - ❑ How are the members appointed, for what terms, etc.?
  - ❑ Are there certain specific types of decisions that will need to be approved by the participating city councils, in addition to (or instead of) by the joint board?
- ❑ For *service contracts*, will there be a formal structure for the purchasing city to have input, such as an advisory board, a designated liaison, regular meetings, etc.?

### Contract provisions

- ❑ How will each city's share of the cost be determined?
- ❑ What might be grounds for changing the cities' respective shares in the future?
- ❑ How will any unexpected or unbudgeted costs or uninsured/unfunded liabilities be handled?
- ❑ How will decisions about future capital expenditures be made and funded?
- ❑ Will there be equipment contributions?
- ❑ Are cities' equipment contributions equitable?
- ❑ Will the agreement expire on a specified date, or continue indefinitely until terminated by the parties?
- ❑ When may a city withdraw, under what conditions, and how much notice is required?
- ❑ In a multi-party joint service, will/can the service continue with the now-reduced number of participating cities?
- ❑ If the joint arrangement is dissolved, how are the equipment, assets and liabilities allocated?
- ❑ If a city is moving from having its own service to a consolidated or service contract approach, does the city have any existing mutual aid arrangements affecting that service?
- ❑ Are there other contracts that may be affected by the new joint effort?

### Employees

- ❑ Will the new operation have the same number, more, or fewer employees than the combined total of the cities' existing operations?
- ❑ Are there existing labor contracts in place?
- ❑ What will the new salary and benefits schedule for employees be?
- ❑ What union, if any, will represent the employees in a combined service?
- ❑ Do any of the cities have a civil service system covering employees that would be affected?

- ❑ Do any of the cities have a local relief association covering employees that would be affected?
- ❑ How will personnel records and files be handled for both current and future employees?

### **Accounting practices**

- ❑ Will one of the cities handle accounting functions on behalf of the consolidated operation?
- ❑ Should the consolidated operation set up its own accounting system?
- ❑ How will payroll be handled?

### **Liability**

- ❑ Does the joint board have its own liability coverage?
- ❑ Does the coverage protect constituent cities?
- ❑ Are indemnification provisions appropriate for the relationship?
- ❑ Who controls or directs the service?

### **Location and logistics**

- ❑ Is it important for the joint activities to operate out of a single location?
- ❑ How will the service relationship be conveyed to the public?

### **Police operations**

- ❑ Do any of the cities have part-time officers?
- ❑ Will the new department have part-time officers?
- ❑ What will be the policy on personal equipment, such as weapons, uniforms, body armor, etc.?
- ❑ What policies and procedure manuals will be used?
- ❑ How will law enforcement records be handled?
- ❑ Do any of the departments have other non-law-enforcement responsibilities, such as emergency management?