

SHARED SERVICES HOW-TO

WISCONSIN TOWN LAWYERS CONFERENCE

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I. What are shared services?

Shared services are a governmental function that you provide jointly with another municipality, so that your residents are served and the other municipalities are served, by the same persons or entities or service agreement. Almost every service that you provide as a municipality, you could provide jointly with another municipality if you were so inclined, and if this were properly structured, subject to some limitations that we will discuss as follows.

II. Why share services?

There are many reasons to share services. The following examples are not necessarily an exclusive list:

1. The Same Service for Less Cost.

In the example of a joint fire department, you may find that by joining with another municipality the total number of fire trucks for the municipalities working together might be fewer, or the total number of fire stations, or personnel might be fewer. Instead of having three stations in one municipality and three stations in another municipality, for a total of six, you might find that if the jurisdiction crossed the border you would only need five fire stations to cover the combined territory, for example. Instead of eight total pumper trucks you might only need seven if the vehicles were shared among the communities.

2. Additional Services.

In some cases, by combining within another municipality, you can provide a service together that neither would have the resources to provide separately. For example, maybe neither community could provide a public library separately, but together they could do so. Or you may be able to create a municipal court together, that you could not provide separately.

3. ***Better Price for Contracted Services.***

You might also find that you can increase your bargaining position if you join with another municipality, for purposes of contracted services. For example, you might get a better price for garbage and recycling contracts, snow plowing contracts, or forestry services, for example, if you do this jointly with another municipality.

4. ***Lower Unit Bids on Joint Contract.***

Similarly, some communities have found that by joining together for public bidding purposes, they can get lower unit prices for their annual sewer, water and road programs. The bidders may have a larger incentive to outbid one another when the scope of the work throughout the various municipalities is large, as opposed to the relatively small scope of work if each municipality bids separately.

5. ***Create a Full Time Position, Rather than Part Time.***

You may be able to create a full time position together, while separately you do not have enough work to hire someone full time. This might be desirable, because it might help you to recruit the quality professional personnel you desire. For example, if you want to hire an in-house professional planner, but you only have twenty hours per week of work for the planner, you may find that you could combine with a neighboring municipality and jointly create a forty-hour position. That might be sufficiently attractive, so that you could hire a planner to serve both of the municipalities. This might also represent a cost savings from what you would pay for an independent contractor.

6. ***Serve Hard to Reach Areas.***

Many municipalities have sections that are more difficult than others to service. The topography or waterways might separate segments of the municipality. Or, in a simpler example, you may have roads along municipal boundaries that have joint jurisdiction. In circumstances like this, the

abutting municipality may be willing to serve your area for a fee, and this might be more cost effective than serving them yourself.

III. What Authority Do We Have to Share Services?

Shared services are done by intermunicipal agreement, which is a contract between municipalities. The general authority for this is described in Wisconsin Statutes Section 66.0301, which reads as follows:

(2) In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

(3) Any contract under sub. (2) may provide a plan for administration of the function or project, which may include but is not limited to provisions as to proration of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts.

(4) A commission created by contract under sub. (2) may finance the acquisition, development, remodeling, construction and equipment of land, buildings and facilities for regional projects under s. 66.0621. Participating municipalities acting jointly or separately may finance the projects, or an agreed share of the cost of the projects, under ch. 67.

IV. How Do We Share Services?

Short answer: By agreement. The agreement should be in writing. You should not make informal shared services arrangements with another

municipality. At the very least, most shared service agreements will need to address all of the following issues:

1. **Governance.**

You need to decide how the decisions will be made in this shared arrangement, and in many cases this will need to be described within the agreement. Depending upon the issue you are facing, this may require that a joint board is created to oversee the service that is being provided. Unless the service is very simple or routine this is the recommended method. If the service would be provided by the municipal entities directly, this could quickly become very cumbersome and political unwieldy, involving joint meetings of the municipal governing bodies to resolve all issues.

To create a joint board, you need to decide how the board will be constituted. Who appoints the members? How long do the members serve on the joint board? Can the members of the joint board be removed from office, and how? How many representatives of each community serve on the joint board?

As a practical matter, you may have a difficult time convincing municipalities to join your shared endeavor if you do not establish a voting requirement on the joint board that requires the effective participation of each municipality before action will be taken. That is, many agreements would require that a majority of the representatives of each municipality is required for action to be taken.

Here is some sample language, for purposes of illustration only:

B. Composition. The Fire Board shall be comprised of three (3) board members. The Village President, with confirmation by the Village Board, shall appoint one (1) member. The Town Chairperson of each Town Board, with confirmation by their respective Town Board, shall each appoint one (1) member. The members so appointed need not be resident elector citizens of the municipality from which they are appointed. The members shall not be members of the Fire Commission, or Fire

Department in any capacity, nor elected officials of the Town or Village.

In addition to describing the composition of the overseeing board, the agreement should describe:

- the *term of office* of the members of the board,
- the *election of officers* of the board,
- the *duties* of the officers,
- the *compensation* of the members of the board (which should say that there is none, if that is the case), and
- the *procedures for meetings*, including how meetings are called, and how many votes are necessary for motions to be adopted.

2. Cost Sharing.

There is a very important political discussion that will need to be held regarding the division of the costs of this shared service. There are three main methods that we generally see in shared service agreements regarding the division of cost:

- Percentage based upon population of the participating municipalities.
- Percentage based upon equalized value in the participating municipalities.
- Percentage based upon usage of the shared service.

In some cases, a combination of these methods is used. This certainly is not an exclusive list of the possible ways of dividing the cost of the service between the participating municipalities.

However it is decided to share these costs, the essential point is that the agreement is very clear about how this division works, so that there can be no dispute later as to the share of each participating municipality. This is likely to be a continuing political issue, long after the agreement is entered, for that

matter, so you should try to establish a fair division of the cost at the outset, and you may want to include a mechanism to reconsider the division of costs if it proves to be inequitable.

Here is some sample language, for purposes of illustration:

(c) Financing formula (distribution of costs). Each participating municipality's annual financial contribution to the Fire Department's operating and capital budget shall be based on the following:

[1] Population: 33.33% of the total budget contribution shall be shared among the municipalities in proportion to each municipality's percentage share of the total population of all the municipalities, as determined by the State of Wisconsin Department of Administration Demographics Service Center (or any successor) for the prior year.

[2] Equalized valuation: 33.33% of the total budget contribution shall be shared among the municipalities in proportion to each municipality's percentage share of the total equalized valuation, excluding land, of all the municipalities, as determined by the State of Wisconsin for the prior year and as adjusted as hereafter provided. Total equalized valuation, excluding land, shall be divided into:

[a] Residential and other; and

[b] Mercantile and commercial; and

[c] Manufacturing and industrial.

A multiplier of one for total residential and other valuation, two for total mercantile and commercial and commercial valuation, and three for total manufacturing and industrial valuation shall be applied. The total of the multiplied valuations for each municipality shall be divided by the total of the multiplied valuations for all the municipalities and multiplied by 100 to determine each municipality's proportionate percentage share.

[4] Usage: 33.33% of the total budget contribution shall be shared among the municipalities in proportion to each municipality's percentage share of usage. The usage shall be based upon each municipality's share of total calls for service over a rolling average of the previous three years of operation. This rolling average will continue by dropping off the oldest year and adding the new year to determine the municipality's three-year average. Usage shall be calculated based on the actual number of personnel hours for each fire or EMS run rounded to the next 1/10 of one hour. Personnel hours are calculated from the time vehicles leave their stations to the time vehicles return to their stations. Usage is assigned to the municipality in which the call for service originated, without regard to where the personnel responding are stationed (see example Appendix D).

3. Ownership of Property.

If the shared service will require acquisition and use of property, this will need to be described in some detail. How will the property be acquired; can the joint board acquire the property or do the municipalities acquire directly? Who owns the property once it is acquired, is it one or the other of the municipalities directly, or is it the municipalities together equally, or is it the municipalities together in some percentage that is not equal? Who is responsible to maintain the property, and to insure it? Who has the power to sell the property? Once the shared service agreement terminates, what happens with the property? All of these issues should be carefully addressed in the agreement.

Here is an illustration:

The Joint Fire District shall own and control all equipment and apparatus used for operation.

B. Assets. In the event of the termination of this agreement, the Fire Board shall cause all of the assets it owns and the property owned as tenants in common by the participating municipalities used by the Fire Department, to be appraised by competent appraisers, and the Fire Board is authorized to sell such assets to either the Village Board or the Town Boards at the appraised value provided; however, if more than one participating

municipality desires to purchase a particular asset, it shall be sold to highest bidder. Failing to dispose of such assets to either the Village or the Towns, the Fire Board is authorized to sell or dispose of the remaining assets at the best price obtainable therefore. Sale of the assets may not commence prior to four (4) months before the Dissolution Date. No delivery of any asset to the purchasing party may occur until the Dissolution Date.

4. Length of Term.

How long will the agreement last, and how it can be extended? This is obviously an essential term. Here is an illustration:

Term. This contract shall be for the term beginning November 1, 2008 and ending on October 31, 2009. This contract may be extended by the parties for an additional one-year term by an extension agreement by both parties.

5. Budget Approvals.

Regardless of how the agreement is structured, the joint board that is created will not have taxing authority. All of the costs will need to be paid by the participating municipalities. These costs will need to be budgeted, so the shared service joint board will need to submit budget requests to all of the municipalities, and the cost will need to be budgeted by each of the municipalities. The agreement should address this, including addressing what would happen if any of the municipalities refuses to budget for their portion of the shared expense, or if any of the municipalities fails to pay. What will be the consequence in those circumstances?

Here is some sample language, for illustration:

2. The Fire Board shall submit a budget to the Village Board and the Town Boards no later than the third Wednesday in October, and if the Fire Board fails to do so, the budget, as submitted by the Fire Chief and the Fire Commission, shall be submitted to the Village Board and the Town Boards. The budget shall then be reviewed by a joint meeting of the Fire Board, the Village Board, the Town Boards, Fire Commission, and the Fire Chief or his/her designee for the purpose of

discussing and considering said budget, including any reductions thereof or additions thereto prior to the adoption thereof by the Village Board and Town Boards. Said joint meeting shall be held between October 1 and October 31 each year. The Fire Board shall not have elective or taxing powers. All funding and expenditures in the budget must be authorized and approved by the Village Board and the Town Boards. A final budget shall be adopted by the Village Board and the Town Boards no later than December 1 as part of the regular municipal budgeting process of each year. If the Village Board and the Town Boards do not adopt identical budgets for the Fire Board for the upcoming year by December 1 of each year, the last budget, less amounts budgeted specifically for capital expenditures, approved by the Village Board and the Town Boards shall be deemed to be adopted by the Village Board and Town Boards for the next calendar year.

6. Employment issues.

Depending upon the situation, you may need to consider numerous employment related issues. Who is the employer? Who hires and fires? Who pays workers compensation and other benefits? In some cases, if a joint board is created, you may be able to appropriately empower the board to assume these employment responsibilities. If there is no joint board, you may decide that one or the other of the municipalities participating in this shared endeavor will serve as the employer, e.g.:

City employee. City agrees to hire the Planner, upon terms and conditions agreed upon between and subject to Town's approval. The Planner shall serve as an employee of City. City may engage the Planner in more than one capacity, whether as planner, administrator, or other capacity, however this agreement shall be interpreted as though all such capacities were subsumed within the role of municipal planner.

a. *If City terminates the Planner without cause during the term of this agreement, any lump sum cash severance due and owing to the Planner shall be paid by City.*

b. *If City terminates the Planner for cause during the term of this agreement, any accrued vacation benefit due and owing to the Planner shall be paid equally by City and Town.*

c. If City terminates the Planner without cause or for cause during the term of this agreement, payments for hours of service shall be settled up as set forth in paragraph 9, below.

7. Termination.

The agreement needs to describe how the shared service arrangement will terminate, and what happens upon termination. Keep in mind that in exercising the shared service the joint board might have purchased equipment or facilities, and once the agreement is terminated there needs to be an explanation of what will happen with that property. One way of addressing this might be as follows:

(a) District Dissolution. The District may be dissolved at any time upon the written agreement of the City and the Town, duly authorized by their respective governing bodies, provided that the District shall not be dissolved if the dissolution would violate any state or federal rule or regulation or grant award and unless all of its outstanding legal monetary obligations or bonds shall have been paid in full or funds shall have been irrevocably set aside in an amount sufficient to pay such indebtedness in full along with all the interest accruing thereon and any other charges related thereto. Upon such dissolution, title to all the assets owned by the Commission other than cash or marketable securities shall vest in the City and the Town, as follows. Any physical structure or structures forming a part of the District Facilities shall automatically become the property of the City or Town within which said structure is located. After all the Commission's liabilities have been satisfied and provision has been made for the satisfaction of any and all of the Commission's contingent liabilities, all remaining cash and marketable securities of the Commission shall be paid and distributed to the City and Town, or their successors and assigns, in shares equal to their proportionate share of assets in other than cash and marketable securities.

(b) Commission Assignment. Immediately following the dissolution of the District, the City and Town, respectively, shall be assigned automatically all rights and responsibilities of the Commission regarding the Stormwater Facilities located within their respective jurisdictions. The assigned rights and responsibilities shall include, but not be limited to, the rights and responsibilities of the Commission regarding maintenance agreements, easements, contracts, or other agreements that the Commission may have entered pursuant to the authority

described in Article VII Section 2 of this Agreement, all of which shall have continuing effect. Any District Regulations established by the Commission pursuant to Article VII of this Agreement shall have continuing effect in those portions of the Town and the City where the District was located immediately prior to dissolution, until amended or repealed by the Town or the City with regard to their respective jurisdictions.

(c) Agreement Termination. Upon dissolution of the District as described in subsection (a), above, and assignment of the rights and responsibilities of the Commission as described in subsection (b), above, this Agreement shall be terminated automatically.

V. Conclusion.

In these difficult economic times, many municipalities are trying to find ways to maintain present services while not increasing their expenditures. Economic efficiencies might be achieved by joining together with neighboring municipalities to provide the same services at less cost. It is very important that your shared services agreement is appropriately drafted to suit your purposes, however, to ensure a stable relationship that provides mutual benefits long into the future.