

Monday, June 15, 2026, 5:30 PM
106 Center Street

Members of the public may attend the work session either in person or by joining via Zoom either online or by telephone at:

<https://us02web.zoom.us/j/86346794494>

Meeting chat link

<https://us02web.zoom.us/jc/86346794494>

Meeting ID: 863 4679 4494

One tap mobile

+13092053325,,86346794494# US

+13126266799,,86346794494# US (Chicago)

AGENDA

1. Call to Order/Roll Call
2. Agenda Approval
3. New Business
 - a) Greenwood Involvement in South Lake Minnetonka Police Department Operating Committee
 - b) Proposed Changes to the Excelsior Fire District Joint Powers Agreement (JPA)
4. Adjournment



Item: 3.a.

ITEM REPORT

To: City Council

From: Kristi Luger, City Manager

Meeting Date: June 15, 2026

Department/Office: Administration

Item Name: Greenwood Involvement in South Lake Minnetonka Police Department Operating Committee

Summary:

The South Lake Minnetonka Police Department (SLMPD) Coordinating Committee requested a legal opinion regarding whether it's appropriate for the mayor of Greenwood, who is also appointed as their city administrator, to serve as a member of the Operating Committee. Per the SLMPD Joint Powers Agreement (JPA), the Coordinating Committee consists of the mayor of each member city, and the Operating Committee has the chief administrative officer of each member city.

The Coordinating Committee reviewed the legal opinion at their May 19th meeting. All the cities, except Greenwood, agreed with the legal opinion that Mayor Fletcher cannot serve on the Operating Committee. Mayor Fletcher indicated that the Greenwood City Council will discuss the matter at their next City Council meeting.

The Council should review the legal opinion and provide feedback on the Mayor of Greenwood serving on the Operating Committee that Mayor Ringate can share with the Board.

The packet includes the following document:

- Legal opinion regarding the Mayor of Greenwood serving on the Coordinating Committee and the Operating Committee.
- The current SLMPD JPA.

Recommended Action:

Budget:

Attachments:

1. Legal Opinion on Greenwood's Involvement
2. SLMPD JPA 2023

DYAN J. EBERT

dyan@resolutelawmn.com



CALLY
KJELLBERG-
NELSON

cally@resolutelawmn.com

RACHEL RAMTHUN
OFFICE MANAGER/PARALEGAL
rachel@resolutelawmn.com

VIA E-MAIL ONLY
lholtan@southlakepd.com

April 13, 2026

Laura Holtan
Administrator
South Lake Minnetonka Police Department
24150 Smithtown Rd
Shorewood, MN 55331

RE: Advice

Dear Ms. Holtan:

Thank you for contacting us regarding your need for legal assistance in addressing questions that have been raised about governance and organizational structure of the South Lake Minnetonka Police Department ("SLMPD"). It is our understanding that the primary concern that needs to be addressed is whether the City of Greenwood is permitted to have its Mayor serve as a member of both the SLMPD's Coordinating Committee and Operating Committee, or whether doing so violates the Joint Powers Agreement ("JPA") or is otherwise impermissible or inappropriate.

Background Information:

The most recent version of SLMPD Joint Powers Agreement became effective August 1, 2023. Section 3, subdivision 1 of the JPA, provides for governance of the SLMPD by the Coordinating Committee. Coordinating Committee membership is dictated by Section 3, subdivision 2 of the JPA which provides:

The person holding the office of mayor of a Party to this Agreement shall be a Committee Member and serve on the Committee as a representative of said Party. An alternate Committee Member may be appointed by the

council of each Party from the members of said Council to serve for a term of one calendar year and represent said Party on the Committee in the absence of the mayor. The Committee Member and alternate shall serve without compensation from the Committee.

The JPA specifically provides that “[e]ach Committee Member shall have an equal voice in the affairs of the Committee.” JPA, Section 3, subdivision 1. The powers and duties of the Committee are detailed in Section 5 of the JPA.

The current Coordinating Committee members are:

Jennifer Labadie – Mayor of Shorewood
Gary Ringate – Mayor of Excelsior
Adam Jennings – Mayor of Tonka Bay
Tom Fletcher – Mayor of Greenwood

The JPA further defines the “Operating Committee” of SLMPD as consisting of “the chief administrative officer of each of the Parties.” JPA, Section 2, H.

The Operating Committee has the following powers and duties:

- A. Advising the Coordinating Committee.
- B. Meeting with the Chief of Police once per month.
- C. Participating in labor negotiations on a rotating basis.
- D. Functioning as the personnel committee for complaints or issues regarding the Chief of Police.
- E. Other duties and projects as assigned by the Coordinating Committee.

JPA, Section 6.

Currently, three members of the JPA have chief administrative officers that serve on the Operating Committee:

Marc Nevinski – City of Shorewood City Administrator;
Kristi Luger – City of Excelsior City Manager; and
Max Peters – City of Tonka Bay City Administrator.

It is our understanding the City of Greenwood does not employ a City Administrator or City Manager. According to the City’s Resolution 01-26, Mayor Tom Fletcher and Councilmember Kristi Conrad serve on the City’s “Administrative Committee.” (Resolution 01-26 is posted on the City’s Administration page on its website.) Additionally, Shanda Wilhelmy is the City Clerk. It does not appear, however, that Ms. Wilhelmy, has been designated as the City’s chief administrative officer or has otherwise been asked to serve on the SLMPD Operating Committee in this capacity. Instead, Mayor Fletcher has also been designated by the City as its “Police Operating Committee Representative” and has been attending Operating Committee Meetings on behalf of the

City. As noted above, Mayor Fletcher also serves on the Coordinating Committee pursuant to Section 3, subd. 2 of the JPA.

A question has been raised regarding whether Mayor Fletcher's participation on the Operating Committee is allowed under the JPA and is otherwise impermissible or inappropriate.

Can an elected official serve on the SLMPD Operating Committee?

Under the existing terms of the JPA, an elected official cannot be appointed to the Operating Committee. The JPA clearly limits membership on the Operating Committee to only the chief administrative officers of each of the Parties. Further, the JPA does not provide for any avenue to appoint an alternate to the Operating Committee like the Coordinating Committee provides. Accordingly, given the language explicitly limiting members of the Operating Committee to chief administrative officers of the Parties, there would not be any other options available for membership.

Further, while the City of Greenwood has designated Mayor Tom Fletcher and Councilmember Kristi Conrad to serve on the City's "Administrative Committee" there has been no information provided that demonstrates Mayor Fletcher, by serving in this capacity, qualifies as the City's "chief administrative officer" as required by the JPA.

Mayor Fletcher's service on the Operations Committee also results in some other potential practical concerns or conflicts regarding oversight of the SMLPD Chief of Police. For example, under the JPA, the Coordinating Committee has the power to hire, as well as discipline and terminate, the SLMPD Police Chief. The Operating Committee, however, has the obligation to meet with the Chief of Police on a monthly basis and to function "as the personnel committee for complaints or issues regarding the Chief of Police." Accordingly, if Mayor Fletcher serves on both the Coordinating Committee and the Operations Committee, he would potentially be involved in the day-to-day management of the Chief of Police, as well as have a role in any discipline that may be administered to the Chief, which appears to be inconsistent with the intent of the JPA to separate these responsibilities.

Conclusion:

Based on the information currently available, it is our opinion that Mayor Fletcher cannot serve on the SLMPD Operating Committee because he is not the City of Greenwood's chief administrative officer as required by the JPA.

If there is additional information you want us to consider regarding this issue, please feel free to forward it to us. Additionally, please let us know if you have any other questions regarding the SLMPD JPA and its application to the Operating and Governing Committees.

Laura Holtan
April 13, 2026
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Sincerely,

Dyan J. Ebert

Dyan J. Ebert
Attorney at Law
Email: dyan@resolutelawmn.com
Direct: 320-290-3910
Office: 320-777-1551

Cally Kjellberg-Nelson

Cally Kjellberg-Nelson
Attorney at Law
Email: cally@resolutelawmn.com
Direct: 701-866-2417
Office: 320-777-1551

South Lake Minnetonka Police Department

Joint Powers Agreement

TO PROVIDE FULL-TIME POLICE PROTECTION AND SERVICE FOR THE CITIES OF EXCELSIOR, GREENWOOD, SHOREWOOD, AND TONKA BAY

08.01.23 EFFECTIVE DATE



The Parties to this Joint Powers Agreement ("JPA" or "Agreement") are the municipalities of Excelsior, Greenwood, Shorewood, and Tonka Bay of the State of Minnesota which have the responsibility for providing for law enforcement within their respective cities so as to enforce the ordinances of these cities and the laws of the State of Minnesota. The original police department JPA for the Parties was executed in 1973. This updated Agreement is made pursuant to Minnesota Statutes, Section 471.59.

Section 1: General Purpose

The general purposes of this Agreement are to continue employment of a full-time Chief of Police to act on behalf of the Parties to this Agreement and to provide assistance to the Chief of Police in the form of police officers, community service officers, administrative staff, police facility, equipment, and supplies as may be necessary so as to provide the Parties with law enforcement services in the discharge of the duties imposed upon said municipalities to protect and serve the health and welfare of their citizens and property located within their cities. It is the opinion of the Parties to this Agreement that continued joint action to operate a joint police department to serve the four communities will continue to result in a higher standard of police service, closer control of the police force by the municipalities it serves, and more efficiency and financial savings to the communities.

Section 2: Definition of Terms

For the purpose of this Agreement, the terms in this section shall have the following meanings:

- A. "Committee" means the organization created under this Agreement, the full name of which is the "Coordinating Committee for the South Lake Minnetonka Police Department."
- B. "Committee Funds" means all funds for the South Lake Minnetonka Police Department.
- C. "Committee Member" means a member of the Committee.
- D. "Council" means the governing body of the Governmental Unit which is a Party to this Agreement.
- E. "Governmental Unit" means a city or municipality.
- F. "ICR" means Incident Call Reports as compiled for each of the Parties by the SLMPD. The ICR numbers used for the funding formula do not include citations.
- G. "Later Party" means a Governmental Unit which enters into this Agreement at some time after the Committee is originally constituted.
- H. "Operating Committee" means the chief administrative officer of each of the Parties.
- I. "Party" means a Governmental Unit which enters into this Agreement.
- J. "Pro Rata" means the remaining Parties split the departing Party's allocation percentage of the current operating budget as shown by the example below.

	Original Allocation %	Original Share of Budget				
Departing City	25%	\$250,000				
Remaining City 1	50%	\$500,000				
Remaining City 2	15%	\$150,000				
Remaining City 3	10%	\$100,000				
TOTAL BUDGET	100%	\$1,000,000				
	Original Allocation %	New Allocation %	Departing City's Portion of Budget	Pro Rata Share of Departing City's Allocation	Original Share of Budget	New Share of Budget
Remaining City 1	50%	divided by 75% = 66.667%	x \$250,000 =	\$166,667	+	\$500,000 = \$666,667
Remaining City 2	15%	divided by 75% = 20.000%	x \$250,000 =	\$50,000	+	\$150,000 = \$200,000
Remaining City 3	10%	divided by 75% = 13.333%	x \$250,000 =	\$33,333	+	\$100,000 = \$133,333
	75%	100.000%		\$250,000		\$1,000,000

- K. "SLMPD" means the "South Lake Minnetonka Police Department," which shall be the name of the police force created hereunder.
- L. "Supplemental Services" means any additional police services requested and paid by any of the Parties separate from the operating budget.
- M. "Unanimous agreement of the Parties" means that the measure is approved by a majority vote of Council members present at the Council meetings of each of the Parties. If one or more of the Councils does not approve the measure on a majority vote, there is no unanimous agreement.

Section 3: Governing Body

Subdivision 1. The Committee, consisting of one Committee Member from each Party, shall be the governing body. Each Committee Member shall have an equal voice in the affairs of the Committee.

Subdivision 2. The person holding the office of mayor of a Party to this Agreement shall be a Committee Member and serve on the Committee as representative of said Party. An alternate Committee Member may be appointed by the Council of each Party from the members of said Council to serve for a term of one calendar year and represent said Party on the Committee in the absence of the mayor. The Committee Member and alternate shall serve without compensation from the Committee.

Subdivision 3. A majority of the Committee Members shall constitute a quorum at meetings of the Committee.

Subdivision 4. A vacancy on the Committee shall be filled by the Council of the Parties whose position on the Committee is vacant.

Subdivision 5. No Committee Member shall be eligible to vote on behalf of his / her Party during the time that such Party is in default on any financial payment required to be paid under the terms of the Agreement nor shall the vote of such Party be counted for the purposes of determining a quorum.

Section 4: Officers & Meetings

Subdivision 1. The chair and vice chair shall be determined on a rotating basis at the first meeting of each year. The chair shall facilitate meetings and execute all financial and legal instruments of the Committee. The vice chair shall assume all duties of the chair in the event the chair is unable to fulfill the duties of the position.

Subdivision 2. Regular meetings of the Committee shall be held once each quarter as follows: The second Wednesday of January, the second Wednesday of April, the second Wednesday of July, and the second Wednesday of October. Any regular meeting date may be rescheduled by unanimous agreement of Committee Members. The purpose of the regular meetings shall be to set budgets, review expenditures, and discuss / take action on other operating matters. Special meetings shall be at the call of any Committee Member. Notice of such a meeting shall be posted and provided by the SLMPD in accordance with state statutes.

Subdivision 3. Business of the Committee shall be conducted according to Roberts Rules of Order.

Section 5: Powers & Duties of the Committee

Subdivision 1. The powers and duties of the Committee shall include the powers set forth in this section.

Subdivision 2. It shall establish qualifications and duties for the position of Chief of Police of the SLMPD.

Subdivision 3. It shall hire said person to act as Chief of Police for the SLMPD at such salary and in accordance with such terms and conditions of employment as it shall determine. It also has the authority to discipline and terminate the Chief of Police.

Subdivision 4. It shall approve new positions (e.g. Deputy Chief, Drug Task Force Officer, etc.) by unanimous vote of the Committee.

Subdivision 5. It shall approve union contracts by unanimous vote of the Committee.

Subdivision 6. It shall provide office space, equipment, and supplies as necessary to accomplish the duties and responsibilities of law enforcement within the boundaries of the Parties.

Subdivision 7. It shall select a qualified accounting / auditing firm to prepare financial statements and conduct an annual financial audit. All of its books, reports, and records shall be available for and open to examination by the Parties at reasonable times.

Subdivision 8. It may accumulate reasonable reserve funds for the purposes as here in provided and it may invest funds of the Committee not currently needed for its operations in a manner and subject to the laws of Minnesota applicable to cities.

Subdivision 9. It may collect monies from Parties subject to this Agreement.

Subdivision 10. It may recommend changes in this Agreement to the Parties which shall be effective, however, only upon unanimous agreement of the governing bodies of all Parties.

Subdivision 11. It shall exercise general supervision over the law enforcement and standards of law enforcement for the Parties.

Subdivision 12. It shall annually approve a fee schedule for the SLMPD by unanimous vote of the Committee.

Section 6: Operating Committee

The powers and duties of the Operating Committee shall include the following:

- A. Advising the Coordinating Committee.
- B. Meeting with the Chief of Police once per month.
- C. Participating in labor negotiations on a rotating basis.
- D. Functioning as the personnel committee for complaints or issues regarding the Chief of Police.
- E. Other duties and projects as assigned by the Coordinating Committee.

Section 7: Financial Matters

Subdivision 1. Except as otherwise provided herein, the Committee funds may be expended by the Committee in accordance with procedures established by law for the expenditure of funds by Minnesota cities. Orders, checks, and drafts shall be signed by two persons. Authorized signers shall be the Committee chair, Committee vice chair, Chief of Police, 2nd in command officer, and the SLMPD administrator.

Subdivision 2.

- A. The allocation for funding the SLMPD operations, other than for any Party's Supplemental Services, shall be set taking into consideration the Party's tax capacity, ICR statistics, and population using the below allocation formula as shown on the attached Exhibit A.

AA = Arbitration Allocation for each Party:

Excelsior	27%
Greenwood	8%
Shorewood	50%
Tonka Bay	15%

C = Current 3-year average of Population, Tax Capacity, and ICRs for each Party with each factor weighted at 33 $\frac{1}{3}$ %.

Population source: Metropolitan Council.

Tax Capacity source: Hennepin County Adjusted Net Tax Capacity.

ICR source: SLMPD (does not include citations initiated by officers).

PR = Previous 3-year average of Population, Tax Capacity, and ICRs for each Party with each factor weighted at 33 $\frac{1}{3}$ %.

DI (Difference) = C – PR (Current minus Previous 3-year average for each Party)

NA = New Allocation.

Allocation Formula: NA = AA + DI

Note: The adjustments do not result in a shift to a formula based purely on population, tax capacity, and ICR statistics but are only used to adjust incrementally the Arbitration Allocation to the extent the three factors differ from the previously established data.

- B. The operations funding percentages were last revised in July 2021 for 2022-26 budgets and shall continue to be reviewed and adjusted in three-year increments (next adjustment will occur in 2026 for 2027-29 budgets, etc.).
- C. Each Party shall fund the SLMPD the full amount of the allocation pursuant to the terms of the JPA.
- D. The approved annual operating budget for each year shall be determined in advance by Unanimous agreement of the Parties. If the Parties do not unanimously agree on the approved annual operating budget by September 1st of each year, the operating budget will remain the same as it was in the preceding year except for wage or benefit increases

required by any union contracts. Each Party shall be entitled to full and complete SLMPD services funded by the SLMPD annual operating budget and preclude delivery of multiple tiers or levels of services to Parties.

- E. Parties may contract with the SLMPD for Supplemental Services delivered by separately dedicated personnel outside of the approved budget by Unanimous agreement of the Parties. The amount charged for Supplemental Services shall be the actual hourly wage and overhead costs. Agreement to provide such Supplemental Services shall not be unreasonably withheld.

Section 8: Duration

This Agreement shall take effect August 1, 2023 and automatically renew every 20 years unless any Party submits written notification to the Coordinating Committee two years in advance.

Section 9: Adding Parties

Subdivision 1. Any other Governmental Unit may become a Later Party to this Agreement upon Unanimous agreement of the Parties to this Agreement.

Subdivision 2. Details regarding process, funding, additional personnel, building ownership, etc. will be recommended by the Committee and must be approved by Unanimous agreement of the Parties to this agreement.

Section 10: Withdrawal

Subdivision 1. Any Party may withdraw from this Agreement subject to the provisions below:

- A. Written notice of withdrawal must be made by filing notice with the Committee by October 1 for withdrawal. Such withdrawal would be effective December 31 of the year following notice.
- B. All capital equipment remains the property of the SLMPD.
- C. A withdrawing Party shall not participate in budget approval for the calendar year in which its withdrawal commences.
- D. A withdrawing Party shall continue to have an ownership interest in the building. The ownership interest shall not include a right of use or occupation but shall entitle the Party to its Pro Rata share of any revenue generated through the lease, sale, or other conveyance of the building. The Pro Rata share shall be commensurate with the percentage based on the most current Adjusted Net Tax Capacity for each of the Parties posted on the Hennepin County website.

Subdivision 2. In the event the corporate existence of a Party is terminated, or a Party is consolidated with another municipality not a Party to this Agreement, then the obligations of such Party hereunder shall cease as of the effective date of such termination or consolidation. If said effective date shall occur at a time other than the end of a budget year, the withdrawing Party's financial obligation for the budget year in progress at the time of said effective date shall be pro-rated for such budget year as of said effective date.

Subdivision 3. The withdrawal of a Party under this subdivision shall not automatically terminate this Agreement or the obligations of the remaining Parties. Following such a withdrawal, a revised version of this Agreement (with new funding allocations) shall be reviewed and have Unanimous Agreement of the remaining Parties before January 1 (15 months after written notice is received). In the event that the Parties fail to approve a revised version of this Agreement by January 1, the departing Party's allocation shall be split between the remaining Parties on a Pro Rata basis.

Section 11: Dissolution

Subdivision 1. This Agreement shall remain in full force and effect until all the remaining Parties have voted in favor of dissolution or the term of the Agreement has expired.

Subdivision 2. Cash assets and proceeds from non-cash assets held by the Committee at the time of dissolution to this Agreement shall be divided and distributed to the Parties in proportion to the contributions made by the Parties to the total cost of law enforcement during the period of this Agreement. If the Parties cannot agree with respect to the value of non-cash assets, two appraisers will be selected by the Committee to appraise the non-cash assets. The two appraisers so selected will select a third appraiser. The values as determined by a majority of the appraisers shall be attributed to the non-cash assets in question. Cost of appraisers shall be paid by the Parties using the funding formula at the time of the dissolution.

Section 12: Officers & Employees

Subdivision 1. The Chief of Police employed by the Committee shall serve as Chief of the SLMPD and shall have the following duties and be invested with the following authority:

- A. Shall be in full and complete charge of all personnel matters and employees of the department including sworn and non-sworn.
- B. Shall set standards of performance of police officers and non-sworn employees.
- C. Shall be in complete charge of all matters relating to law enforcement and to its administration, including assignment of duty and responsibilities to all employees.
- D. Shall interview and consider applications for employment of all employees and shall make all hiring and termination decisions.
- E. Shall discipline all employees, sworn, and non-sworn.
- F. Shall be responsible for all labor grievance matters. Such actions shall be in accordance with the laws of the State of Minnesota and outstanding contractual agreements governing the same.
- G. Shall be allowed to make unbudgeted purchases up to \$20,000 without Coordinating Committee approval.

Subdivision 2. The Chief of Police shall be responsible for developing new job descriptions for various positions within the department deemed necessary for the efficient operation of the department.

Subdivision 3. It shall be the duty and responsibility of the Chief of Police to communicate directly with the respective Councils of the Parties in the event the Chief of Police deems it necessary to receive direction on any matter arising out of or involving the jurisdiction of any particular Council.

Subdivision 4. All police officers, including the Chief of Police, shall enforce and be provided authority to enforce the laws of the Parties to this Agreement through proper action of the Council of said Parties. The Committee shall assume all obligations with regard to Worker's Compensation, PERA, withholding tax, insurance, union negotiations, fringe benefits, Social Security, and the like for all employees including the Chief of Police, all police officers, community service officers, and administrative staff.

Section 13: Prosecution – Violation of Ordinances & Laws

The respective Parties to this Agreement shall be responsible for and pay the cost of all prosecutions for violations occurring within their respective boundaries which are subject to prosecution by a Party's municipal attorney, including expenses incurred by reason of police officers making their services available for court appearances in such prosecutions. All returns of fines from district court shall be the sole property of the Party in whose jurisdiction the offense occurred.

Section 14: Dispute Resolution

When any Party has a dispute regarding the Agreement, that Party may initiate a dispute resolution process by submitting a written statement outlining the dispute to the Committee at one of its regularly scheduled meetings. The members of the Committee will then bring that dispute to their respective Councils. The Committee will meet to discuss the dispute within 120 days after the submission of the written statement, and the Committee has a 90-day period to resolve the dispute commencing with this meeting.

If the dispute is not resolved within the 90-day period, the aggrieved Party has the right to demand that the Committee forward the dispute to mediation. The costs of the mediator will be paid for by the aggrieved Party unless decided otherwise by majority consent of the Committee.

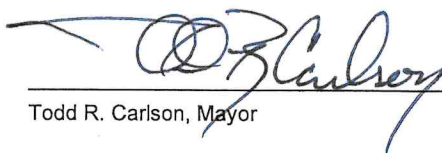
If the mediation process does not bring consensus regarding resolution of the disputed issue, the aggrieved Party may submit the issue to binding arbitration 90 days following the commencement of mediation. This date may be extended with unanimous consent of the Committee. The aggrieved Party's right to submit the dispute to arbitration expires 150 days after the commencement of mediation. This expiration deadline can be extended with unanimous consent of the Committee. The Parties shall share the cost of the arbitration process in the same proportion as they are sharing the operating budget at the time the dispute resolution process is initiated. Each Party shall bear the costs of its own representation in the mediation and arbitration processes. The arbitrator or arbitration panel shall be selected by mutual agreement of the Parties and shall have the authority to order that any Party bringing a frivolous or unfounded dispute be required to pay the costs of the arbitration process. The provisions of Minn. Stat. § 549.211 shall be used to determine whether a dispute is frivolous or unfounded. In the event that the Parties cannot agree on an arbitrator or arbitration panel within 30 days of the date on which the aggrieved Party initiates arbitration, the aggrieved Party shall select one arbitrator, the other Parties shall select another, and the two selected arbitrators shall select a third.

Repeal of Memorandum of Understanding

The Memorandum of Understanding dated February 13, 2002 is hereby repealed.

The Cities of Excelsior, Greenwood, Shorewood, and Tonka Bay have caused this Agreement to be executed in their behalf by their proper officers duly authorized by resolution of their respective City Councils.

BY THE CITY OF EXCELSIOR

 10/11/23

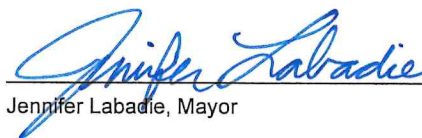
Todd R. Carlson, Mayor Date

BY THE CITY OF GREENWOOD

 09.26.23

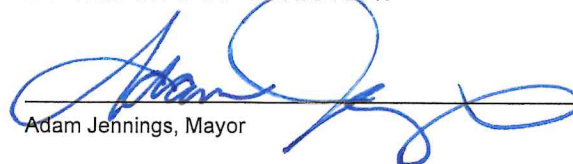
Debra J. Kind, Mayor Date

BY THE CITY OF SHOREWOOD

 10/11/23

Jennifer Labadie, Mayor Date

BY THE CITY OF TONKA BAY

 10/11/23

Adam Jennings, Mayor Date

Exhibit A

Referenced in Section 7

ALLOCATION FORMULA FOR SLMPD OPERATING FUND

No changes will be made to the 2022-2026 allocation. In 2026, the below formula will be adjusted for 2027-2029 budgets using the most current 3-year data for population, tax capacity, and incident call reports on the right side of the spreadsheet and the immediately preceding 3-year data on the left side of the spreadsheet.

This formula is used to reset the allocation every 3 years.

POPULATION - PREVIOUS

	2014	2015	2016	Average	% of Avg. Total
Excelsior	2,273	2,262	2,225	2,253	18.8890%
Greenwood	689	702	703	698	5.8511%
Shorewood	7,425	7,458	7,496	7,460	62.5321%
Tonka Bay	1,488	1,509	1,558	1,518	12.7277%
	11,875	11,931	11,982	11,929	99.9999%

TAX CAPACITY - PREVIOUS

	2015	2016	2017	Average	% of Avg. Total
Excelsior	4,226,789	4,638,729	4,973,275	4,612,931	14.9618%
Greenwood	3,241,439	3,387,471	3,749,653	3,459,521	11.2207%
Shorewood	16,027,049	16,798,414	17,582,141	16,802,535	54.4980%
Tonka Bay	5,796,033	5,882,972	6,190,423	5,956,476	19.3195%
	29,293,325	30,709,602	32,497,509	30,831,463	100.0000%

INCIDENT CALL REPORTS - PREVIOUS

	2015	2016	2017	Average	% of Avg. Total
Excelsior	2,354	2,398	2,129	2,294	36.8106%
Greenwood	401	376	352	376	6.0397%
Shorewood	3,175	2,796	2,697	2,889	46.3703%
Tonka Bay	861	577	577	672	10.7794%
	6,791	6,147	5,755	6,231	100.0000%

	1/3 Pop	1/3 Tax Cap	1/3 ICRs	Previous 3yr Average Totals
Excelsior	6.2963%	4.9873%	12.2702%	23.5538%
Greenwood	1.9504%	3.7402%	2.0132%	7.7038%
Shorewood	20.8440%	18.1660%	15.4568%	54.4667%
Tonka Bay	4.2426%	6.4398%	3.5931%	14.2755%
TOTAL	33.3333%	33.3333%	33.3333%	99.9999%

Tax Capacity Source: Hennepin County 'Adjusted Net Tax Capacity'

ICR Source: SLMPD (does not include citations)

Population Source: APT Council

Updated 08.01.23

POPULATION - CURRENT

	2017	2018	2019	Average	% of Avg. Total
Excelsior	2,352	2,321	2,566	2,413	19.3924%
Greenwood	724	706	708	713	5.7275%
Shorewood	7,708	7,693	7,934	7,778	62.5117%
Tonka Bay	1,526	1,550	1,541	1,539	12.3684%
	12,310	12,270	12,749	12,443	100.0000%

TAX CAPACITY - CURRENT

	2018	2019	2020	Average	% of Avg. Total
Excelsior	5,436,784	5,774,617	6,235,205	5,815,535	16.1158%
Greenwood	3,960,542	4,090,777	4,444,257	4,165,192	11.5424%
Shorewood	18,738,484	19,376,580	20,198,532	19,437,865	53.8655%
Tonka Bay	6,590,064	6,681,790	6,730,124	6,667,326	18.4763%
	34,727,892	35,925,783	37,610,138	36,085,919	100.0000%

INCIDENT CALL REPORTS - CURRENT

	2018	2019	2020	Average	% of Avg. Total
Excelsior	1,819	1,872	1,700	1,797	33.9612%
Greenwood	319	383	387	363	6.8603%
Shorewood	2,714	2,621	2,516	2,617	49.4582%
Tonka Bay	525	551	467	514	9.7203%
	5,377	5,427	5,070	5,291	100.0000%

1/3 Pop	1/3 Tax Cap	1/3 ICRs	Current 3yr Average Totals	Difference (Current - Previous)	Arbitration Allocation	New Allocation (Arbitration Allocation + Difference)
6.4641%	5.3719%	11.3204%	23.1564%	-0.3973%	27.0000%	26.6027%
1.9092%	3.8475%	2.2868%	8.0434%	0.3396%	8.0000%	8.3396%
20.8372%	17.9551%	16.4861%	55.2784%	0.8117%	50.0000%	50.8117%
4.1228%	6.1588%	3.2401%	13.5217%	-0.7539%	15.0000%	14.2461%
33.3333%	33.3333%	33.3333%	99.9999%		100.0000%	100.0000%



Item: 3.b.

ITEM REPORT

To: City Council

From: Kristi Luger, City Manager

Meeting Date: June 15, 2026

Department/Office: Administration

Item Name: Proposed Changes to the Excelsior Fire District Joint Powers Agreement (JPA)

Summary:

At the May 27th Excelsior Fire District (EFD) Board meeting, the representative from Deephaven presented the City of Deephaven's proposed amendments to the Joint Powers Agreement (JPA). Per the City of Deephaven's request, the Board agreed to bring the draft amendments to their respective City Councils for discussion. The Council should review the proposed changes and provide feedback for Councilmember Caron to share with the Board.

The packet includes the following documents:

- A memo from the City of Deephaven with a proposed Amendment to the Excelsior Fire District Joint Powers Agreement.
- A table that includes an abbreviated version of Deephaven's proposed changes and staff's recommendations on how to respond to the proposed revisions.

The current EFD JPA.

Recommended Action:

Budget:

Attachments:

1. Deephaven Proposed Changes to JPA
2. Table of JPA Changes
3. JPA 11-16-11 with Signatures

EXCELSIOR FIRE DISTRICT BOARD MEETING
6:00 P.M. WEDNESDAY, MAY 27, 2026
JOINT POWERS AGREEMENT AMENDMENT MEMORANDUM

Friday, May 22, 2026

Members of the Excelsior Fire District Board:

The events over the past year have highlighted the need to review and revise the Excelsior Fire District Joint Powers Agreement (hereinafter “JPA”), last updated as amended in 2011. I believe our cities are aligned that the current JPA needs modernization, and the attached is the City of Deephaven’s earnest effort to provide leadership and direction in that process. These amendments are presented for discussion and review by the Fire Board. It is not our intent to call for action on this item at our meeting on Wednesday; more so, it is our intention to provide these changes for presentation, consideration and review, to be discussed and available for formal action at a future meeting. Ideally, board members will bring the draft Amendment to their City Councils for discussion and provide feedback at the next board meeting.

We have learned a lot about the operation and leadership at the Fire Department over the past several months and have gained valuable insight into support that is needed from the Board for the successful operation of the Fire District. We have heard from our leadership team, as well as our rank-and-file firefighters, that additional support and resources are necessary to continue the levels of service they provide to our communities. Additionally, we have seen through our own operations and actions as a Board that we are deficient in some areas of guidance and support that contributed to the challenges we have navigated this past year. As a result, the City of Deephaven is presenting amendments to the JPA that address these stated and observed areas for improvement by providing a review process for the Fire Chief, providing an onboarding process for the education of new Fire Board Members, establishing an Ethics and Conflict of Interest Policy applicable to Board Members, formally establishing the provision of Human Resources support, equitably amending the allocation of Fire Board votes, placing limitations on the voting ability of Alternate Board Members, formally establishing the provision of a Fiscal Agent for financial and audit support, and amending the process for withdraw, including the notice period, continuing obligations during the notice period and equitably amending the winddown process.

Thank you for your time in review of our recommended amendments to the JPA. I look forward to presenting this matter next Wednesday evening and appreciate the timely process of discussion and review. It is important that we work diligently on this matter to actively support our Firefighters, Fire Department Leadership and the residents of our respective communities.

Sincerely,

Tony Jewett

Tony Jewett
Deephaven City Council
Vice Chair, Excelsior Fire District Board

AMENDMENT TO THE EXCELSIOR FIRE DISTRICT JOINT POWERS AGREEMENT

THIS AMENDMENT TO THE EXCELSIOR FIRE DISTRICT JOINT POWERS AGREEMENT is entered into on _____, by and between the Cities of Deephaven, Excelsior, Greenwood, Shorewood, and Tonka Bay, all of which are municipal corporations of the State of Minnesota (collectively, the “Member Cities”).

WHEREAS, the Member Cities executed the Excelsior Fire District Joint Powers Agreement (the “Agreement”) on November 16, 2011;

WHEREAS, the Member Cities desire to change and amend the terms of the Agreement;

WHEREAS, the original joint powers agreement stated all amendments shall be in writing;

NOW, THEREFORE, IT IS HEREBY AND HEREIN MUTUALLY AGREED, in consideration of each party’s promises and considerations herein set forth, as follows:

1. Section 2.2(a) of the Agreement is hereby deleted in its entirety and replaced with the following:

“a) Voting Members: Voting Members shall include one (1) elected official of the city council of each Member City, with votes cast by the Voting Members from Deephaven and Shorewood counting as two (2) votes. All votes cast by the Voting Members from Excelsior, Greenwood and Tonka Bay shall count as one (1) vote. No employee of the District or any police department serving any of the Member Cities may serve on the Board as a Voting Member.

If any Member City/Cities are hereafter consolidated into a new municipal corporation, the corporation will have one (1) Voting Member representative.”

2. Section 2.2(c) of the Agreement is hereby deleted in its entirety and replaced with the following:

“c) Alternate Members: The city council of each Member City shall name one (1) elected official of its city council to serve as an Alternate Member in case of absence of the Voting or Ex-Officio Member. The Alternate Member shall have the authority to vote in place of (but not in addition to) the Voting Member at one (1) meeting in any calendar year. The Alternate Member shall not participate as a Board Member except in the absence of the council member or the Ex-Officio Member.”

3. Section 2.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

“2.7 Operating Committee. The Ex-Officio Members shall comprise the Operating Committee. The Operating Committee shall meet with the Fire Chief/District Administrator on a monthly basis and report to the Board at each regular meeting.

The Operating Committee shall perform an annual review of the Fire Chief and shall have the authority to approve expenses consistent with the yearly operating budget for District services and a capital improvement program/finance plan adopted by the Board pursuant to Section 3.1(i) budgeted expenditures during monthly meetings. Non-budgeted expenditures must be approved by the Board. A list of bills shall be provided to each member of the Operating Committee on a monthly basis.”

4. Section 2.9 of the Agreement is hereby deleted in its entirety and replaced with the following:

“2.9 Fiscal Agent. “Fiscal Agent” shall mean the entity designated by the Board to receive, hold, disburse, account for, and otherwise manage the District’s funds and financial transactions. The City of Excelsior shall act as the initial Fiscal Agent for the District. The Fiscal Agent shall be compensated by the District at a rate mutually agreed upon by the Fiscal Agent and the Board. The Board may change the Fiscal Agent as it deems necessary from time to time, but must at all times have a fiscal designated agent. The District shall indemnify and hold the Fiscal Agent harmless from any claims, causes of action, or liability arising out of actions it takes in performing duties under this section except for claims, causes of action or liability arising out of the negligent or intentional acts of the fiscal agent in performing its duties under this paragraph.”

5. Section 3.1(i) of the Agreement is hereby deleted in its entirety and replaced with the following:

- “i) To establish a yearly operating budget for District services and a capital improvement program/finance plan (including an equipment replacement schedule) of not less than ten years' duration, which shall require approval consistent with the terms of this Agreement.

To act as agent for receipt, custody, and disbursement of funds, gifts, or other funds paid or given by the Member Cities on behalf of or for the use of the District, and shall take into account the respective usage levels of district services by the respective Member Cities.”

6. The following shall be added as Section 3.1(p) to the Agreement:

- “p) To ensure all employees and Board Members are bound by and act in accordance with the ethics and conflicts of interest policy established by the Board pursuant to Section 5.8.”

7. The following shall be added as Section 3.1(q) to the Agreement:

- “q) To ensure that the mandatory process is in place for effective training and onboarding of new Board members.”
8. The first paragraph of Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:
- “5.1 **Fire Chief/District Administrator.** The Fire Chief/District Administrator shall be responsible to the Board for the efficient and economical operation of the District; the hiring, termination, supervision, discipline and the direction of the District personnel; the establishment of rules of conduct for those personnel consistent with the ethics and conflicts of interest policy established by the Board pursuant to Section 5.8; and carrying out the policies and procedures adopted by the Board. The Fire Chief/District Administrator is appointed by the Board and serves at the pleasure of the Board. The Fire Chief/District Administrator is a full time employee of the District and may enter into an employment contract with the Board.”
9. Section 5.2 of the Agreement is hereby deleted in its entirety and replaced with the following:
- “5.2 **Fire Marshal.** The District ~~shall~~ may have a position of Fire Marshal, who shall be appointed by the Fire Chief/District Administrator solely on the basis of training, experience, and administrative, and other qualifications. The Fire Marshal's responsibilities will be to enforce the Minnesota State Fire Code and perform other duties that may be assigned by the Fire Chief/District Administrator. The Fire Marshal need not be a "member" of the Excelsior Fire District. Fire Marshal responsibilities may be performed by a contractor who is not an employee of the District; however, the Fire Marshal under the employ of the City of Excelsior on December 31, 2000 shall automatically be appointed as the District's first Fire Marshal with continuation of his/her status as a regular employee including continuation of salary, benefits, accrued leave, and other customary issues of employment. The first Fire Marshal and all subsequent persons filling that position shall serve at the pleasure of the Fire Chief/District Administrator.”
10. Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following:
- “5.3 **District Positions and Independent Contractors.** The Board may, from time to time, establish, eliminate or reconstitute other employee positions as it deems to be appropriate. The Board must at all times provide for a Human Resources function through employment or through contracting with an independent contractor.”
11. Section 5.8 of the Agreement is hereby deleted in its entirety and replaced with the following:
- “5.8 **Continuation of Prior Policies, Plans, and Procedures.** All Excelsior Fire Department policies, ~~plans~~planes, procedure, and by-laws not superseded by this Agreement, in place on January 1, 2002, shall remain in effect until changed by the Board.

The terms and provisions of this Agreement shall supersede any conflicting Excelsior Fire Department policies, plans, procedures, and by-laws in place at the time of the effective date of this Agreement. The Board must establish and implement an ethics and conflicts of interest policy.”

12. Section 8.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

“8.1 **Approval of Capital Improvement Program/Finance Plan.** After approval of the District's annual Operating Budget covering the calendar year 2001, the Member City councils shall approve a Capital Improvement Program/Finance Plan by an affirmative vote of ~~the a two-thirds~~ majority of the Member City councils. Any proposed amendment to the Capital Improvement Program/Finance Plan shall be approved by an affirmative vote of ~~the two-thirds~~ majority of the Member City councils no later than September 15. The vote on the Capital Improvement Program/Financial Plan or any amendment thereto shall be binding upon all Member Cities.”

13. Section 10.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

“10.1 **Notice.** Notice of intent to withdraw from participation in the District may be given ~~in any year only in March of odd-numbered years,~~ with a minimum of 24 ~~33~~ months’ notice of intent to withdraw, and the final month of the term must end in December.”

14. Section 10.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“10.2 **Continuing Obligations After Notice Withdrawal.** The withdrawing Member City shall continue to pay its share of the operating budget and capital expense budget until it withdraws from the District. There shall be no further obligations after withdrawal, an amount equal to 500% of the amount allocated to it during the year of its notice of intent to withdraw. The withdrawing Member City may make this payment during the five years succeeding its leaving the District, but in no year shall the amount paid be less than one-fifth of the 500% amount.”

15. Section 10.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

“10.3 **Vesting.** Any party withdrawing from the Agreement shall have no vested rights or ownership in any of the property or assets of the District; provided, however, that upon withdrawal by a Member City under this Section, the District will reimburse the withdrawing Member City for the value of that Member City’s share of the District’s capital assets. This amount will be determined by an appraisal of the capital assets at the time of the withdrawal multiplied by the percentage of the withdrawing Member City’s allocated share of the total operating budget (as determined in Section 7.1). The resulting amount due to the withdrawing Member City may be paid by the District over the three

years succeeding the Member City's withdrawal, but in no year shall the amount paid be less than one-third of the total amount due."

16. All other provisions of the Agreement remain unchanged and in full effect and are incorporated herein as necessary.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the undersigned governmental units have caused this Amendment to be duly executed on the day and year first above written.

CITY OF DEEPHAVEN

By: _____
Name: _____
Its: _____

ATTEST:

Its: _____

CITY OF EXCELSIOR

By: _____
Name: _____
Its: _____

ATTEST:

Its: _____

CITY OF GREENWOOD

By: _____
Name: _____
Its: _____

ATTEST:

Its: _____

CITY OF SHOREWOOD

By: _____
Name: _____
Its: _____

ATTEST:

Its: _____

CITY OF TONKA BAY

By: _____
Name: _____
Its: _____

ATTEST:

Its: _____

Abbreviated Version of Deephaven's Proposed Changes to the Excelsior Fire District Joint Powers Agreement

Section	Recommendation
Section 2.2(a) – new language under governance is underlined below: Voting Members shall include one (1) elected official of the city council of each Member City, <u>with votes cast by the Voting Members from Deephaven and Shorewood counting as two (2) votes. All votes cast by the Voting Members from Excelsior, Greenwood and Tonka Bay shall count as one (1) vote.</u>	Reject, it is common for cities participating in a JPA to have an equal vote.
Section 2.2(c) – new language under governance is underlined below: The city council of each Member City shall name one (1) elected official of its city council to serve as an Alternate Member in case of absence of the Voting or Ex-Officio Member. The Alternate Member shall have the authority to vote in place of (but not in addition to) the Voting Member <u>at one (1) meeting in any calendar year.</u> The Alternate Member shall not participate as a Board Member except in the absence of the council member or the Ex-Officio Member.	Reject, the City of Excelsior has experienced Councilmembers missing multiple meetings due to family emergencies. The Alternate Member's ability to vote should not be limited.
Section 2.7 Operating Committee – new language is underlined below: The Operating Committee <u>shall perform an annual review of the Fire Chief and shall have the authority to approve expenses consistent with the yearly operating budget for District services and a capital improvement program/finance plan adopted by the Board pursuant to Section 3.1(i) budgeted expenditures during monthly meetings.</u>	Reject, the Board should perform the annual review of the Fire Chief since the Fire Chief is appointed by the Board and serves at the pleasure of the Board.
Section 2.9 Fiscal Agent – new language is underlined below: <u>"Fiscal Agent" shall mean the entity designated by the Board to receive, hold, disburse, account for, and otherwise manage the District's funds and financial transactions.</u> The City of Excelsior shall act as the initial Fiscal Agent for the District. The Fiscal Agent shall be compensated by the District at a rate mutually agreed upon by the Fiscal Agent and the Board. The Board may change the Fiscal Agent as it deems necessary from time to time, <u>but must at all times have a fiscal designated agent.</u>	The language is outdated and should be modified, if the Council is interested in updating the JPA (recommended language is below). Staff recommends not mandating the use of a fiscal designated agent to maintain maximum flexibility with District operations. <u>"Fiscal Agent" shall mean the entity designated by the Board to receive, hold, disburse, account for, and otherwise manage the District's funds and financial transactions.</u> The City of Excelsior shall act as the initial Fiscal Agent for the District. The Fiscal Agent shall be compensated by the District at a rate mutually agreed upon by the Fiscal Agent and the Board. The Board may change the Fiscal Agent as it deems necessary

	from time to time, but must at all times have a fiscal designated agent.
Section 3.1(i) (technically Section 3.1(j)) – the proposed changes are in Section 3.1(j), not 3.1(i) as stated in the Deephaven memo. The new language under the general powers of the Board is underlined below: To act as agent for receipt, custody, and disbursement of funds, gifts, or other funds paid or given by the Member Cities on behalf of or for the use of the District, <u>and shall take into account the respective usage levels of district services by the respective Member Cities.</u>	Reject, the intentions of the proposed language are unclear. The Board should be looking at the District as a whole, not the service levels of individual cities.
Section 3.1(p) – this is new language under the general powers of the Board: To ensure all employees and Board Members are bound by and act in accordance with the ethics and conflicts of interest policy established by the Board pursuant to Section 5.8.	If the Council wants to accept this language, staff recommends not including a reference to Section 5.8.
Section 3.1(q) – this is new language under the general powers of the Board: To ensure that the mandatory process is in place for effective training and onboarding of new Board members.	Reject, this language should be included in the Board bylaws and not the JPA.
Section 5.1 Fire Chief/District Administrator – new language is underlined below: The Fire Chief/District Administrator shall be responsible to the Board for the efficient and economical operation of the District; the hiring, termination, supervision, discipline and the direction of the District personnel; the establishment of rules of conduct for those personnel <u>consistent with the ethics and conflicts of interest policy established by the Board pursuant to Section 5.8;</u> and carrying out the policies and procedures adopted by the Board. The Fire Chief/District Administrator is appointed by the Board and serves at the pleasure of the Board. The Fire Chief/District Administrator is a full time employee of the District and may enter into an employment contract with the Board.	If the Council wants to accept this language, staff recommends not including a reference to Section 5.8.
Section 5.2 Fire Marshal – new language is underlined below: The District shall <u>may</u> have a position of Fire Marshal, who shall be appointed by the Fire Chief/District Administrator solely on the basis of training, experience, and administrative, and other qualifications.	Reject, the JPA should only reference the Fire Chief position to maintain flexibility with future staffing options.
Section 5.3 District Positions – new language is underlined below:	Reject, the JPA should only reference the Fire Chief position to maintain flexibility with future staffing options.

The Board may, from time to time, establish, eliminate or reconstitute other employee positions as it deems to be appropriate. <u>The Board must at all times provide for a Human Resources function through employment or through contracting with an independent contractor.</u>	
Section 5.8 Continuation of Prior Policies, Plans, and Procedures – new language is underlined below: All Excelsior Fire Department policies, <u>plans</u> planes, procedure, and by-laws not superseded by this Agreement, in place on January 1, 2002, shall remain in effect until changed by the Board. The terms and provisions of this Agreement shall supersede any conflicting Excelsior Fire Department policies, plans, procedures, and by-laws in place at the time of the effective date of this Agreement. <u>The Board must establish and implement an ethics and conflicts of interest policy.</u>	The language is outdated and should be modified, if the Council is interested in updating the JPA (recommended language is below). The requirement to establish and implement an ethics and conflicts of interest policy is unnecessary. All Excelsior Fire Department policies, plans planes, procedure, and by-laws not superseded by this Agreement, in place on January 1, 2002, shall remain in effect until changed by the Board. The terms and provisions of this Agreement shall supersede any conflicting Excelsior Fire Department policies, plans, procedures, and by-laws in place at the time of the effective date of this Agreement. <u>The Board must establish and implement an ethics and conflicts of interest policy.</u>
Section 8.1 Approval of Capital Improvement Program/Finance Plan – new language is underlined below: After approval of the District's annual Operating Budget covering the calendar year 2001, the Member City councils shall approve a Capital Improvement Program/Finance Plan by an affirmative vote of <u>the a two-thirds</u> majority of the Member City councils. Any proposed amendment to the Capital Improvement Program/Finance Plan shall be approved by an affirmative vote of <u>the two-thirds</u> majority of the Member City councils no later than September 15. The vote on the Capital Improvement Program/Financial Plan or any amendment thereto shall be binding upon all Member Cities.	Reject, the items identified in the Capital Improvement Program/Finance Plan are typically significant in value and should have a higher voting threshold.
Section 10.1 Notice – new language is underlined below: Notice of intent to withdraw from participation in the District may be given <u>in any year only in March of odd-numbered years</u>, with a minimum of <u>24</u> 33 months' notice of intent to withdraw, <u>and the final month of the term must end in December.</u>	If the Council wants to modify Sections 10.1, 10.2, and 10.3, staff recommends using the language that is in the withdrawal clause of the SLMPD JPA, which is listed below.

Section 10.2 Continuing Obligations After Notice Withdrawal – new language is underlined below:

The withdrawing Member City shall continue to pay its share of the operating budget and capital expense budget until it withdraws from the District. There shall be no further obligations after withdrawal, an amount equal to 500% of the amount allocated to it during the year of its notice of intent to withdraw. The withdrawing Member City may make this payment during the five years succeeding its leaving the District, but in no year shall the amount paid be less than one-fifth of the 500% amount.

Section 10.3 Vesting – new language is underlined below:

Any party withdrawing from the Agreement shall have no vested rights or ownership in any of the property or assets of the District; provided, however, that upon withdrawal by a Member City under this Section, the District will reimburse the withdrawing Member City for the value of that Member City's share of the District's capital assets. This amount will be determined by an appraisal of the capital assets at the time of the withdrawal multiplied by the percentage of the withdrawing Member City's allocated share of the total operating budget (as determined in Section 7.1). The resulting amount due to the withdrawing Member City may be paid by the District over the three years succeeding the Member City's withdrawal, but in no year shall the amount paid be less than one-third of the total amount due.

Subdivision 1. Any Party may withdraw from this Agreement subject to the provisions below:

- A. Written notice of withdrawal must be made by filing notice with the Committee by October 1 for withdrawal. Such withdrawal would be effective December 31 of the year following notice.
- B. All capital equipment remains the property of the SLMPD.
- C. A withdrawing Party shall not participate in budget approval for the calendar year in which its withdrawal commences.
- D. A withdrawing Party shall continue to have an ownership interest in the building. The ownership interest shall not include a right of use or occupation but shall entitle the Party to its Pro Rata share of any revenue generated through the lease, sale, or other conveyance of the building. The Pro Rata share shall be commensurate with the percentage based on the most current Adjusted Net Tax Capacity for each of the Parties posted on the Hennepin County website.

**EXCELSIOR FIRE DISTRICT
JOINT POWERS AGREEMENT
3rd Amendments
Up to date as of November 16, 2011**

THIS AGREEMENT, made and entered into this 16th day of November, 2011, by and between the Cities of Deephaven, Excelsior, Greenwood, Shorewood, and Tonka Bay, all of which are municipal corporations of the State of Minnesota (collectively, the “Member Cities”).

WHEREAS, the parties hereto are authorized by law to provide fire protection and medical response services to their residents; and

WHEREAS, the parties hereto have determined that such power may be best exercised jointly by creation of the Excelsior Fire District to carry out such purposes; and

WHEREAS, the parties hereto desire to enter into a joint powers agreement for the purpose of creating and implementing said District including its operation, ownership of equipment and facilities, and funding; and

WHEREAS, Minnesota Statutes Section 471.59 authorizes governmental units by agreement of their governing bodies jointly and/or cooperatively to exercise any power common to the contracting parties and to provide for a joint board representing the parties to the agreement; and

WHEREAS, all previous agreements, amendments or parts thereof in force at the time of execution of the Excelsior Fire District Joint Powers Agreement will be repealed and replaced; and

WHEREAS, each signatory to this Agreement hereby agrees to repeal any ordinance in effect in its city that is in conflict with this Agreement, and to amend any existing ordinance or adopt a new ordinance in order to create the Excelsior Fire District;

NOW THEREFORE, the parties to this Agreement mutually agree as follows:

Section 1 General Purpose and Intent

1.1 **General Purpose.** It is the general purpose of this Agreement:

- a) To provide fire protection services including, but not limited to, fire prevention, fire fighting, and rescue and medical response to one community comprised of the Member Cities; and
- b) To establish a joint powers governance structure to deliver the services described above consistent with the provisions of this Agreement and Minn. Stat. 471.59.

1.2 **General Intent.** It is the general intent of the parties to this Agreement to declare the cities commitment to establish, through special legislation or other means, a special unit of government to provide fire protection and medical response services to the Excelsior Fire District and to provide the basis for a smooth transition to that special unit of government.

Section 2 Organization

2.1 **Establishment.** There is hereby established by the execution of this Agreement the “Excelsior Fire District” (hereinafter referred to as the “District”) to be managed and operated pursuant to the terms of this Agreement.

2.2 **Governance.** The governing body of the District shall be the “Excelsior Fire District Board” (hereinafter referred to as the “Board”). The Board shall consist of the following members:

- a) **Voting Members:** Voting Members shall include one (1) elected official of the city council of each Member City. No employee of the District or any police department serving any of the Member Cities may serve on the Board as a Voting Member.

If any Member City/Cities are hereafter consolidated into a new municipal corporation, the corporation will have one (1) Voting Member representative.

- b) **Ex-Officio (non-voting) Members:** The chief administrative officer (city manager, administrator, or clerk) of each Member City shall serve on the Board as a non-voting Ex-Officio Member.
- c) **Alternate Members:** The city council of each Member City shall name one (1) elected official of its city council to serve as an Alternate Member in case of absence of the Voting or Ex-Officio Member. The Alternate Member shall have the authority to vote in place of (but not in addition to) the Voting Member. The Alternate Member shall not participate as a Board Member except in the absence of the council member or the Ex-Officio Member.
- d) **Board Procedures:** The Board shall elect from among its Voting Members, a Chair and a Vice-Chair. The Chair shall act as the presiding officer at Board meetings and the Vice-Chair shall act as the presiding officer at any meetings not attended by the Chair. The Board shall have authority to adopt by-laws establishing its own procedures.

2.3 **Compensation.** Board members shall serve without compensation from the District, but nothing herein shall be construed to prevent a Member City from compensating its members for service on the Board to the extent such compensation is otherwise authorized by law.

2.4 **Board Quorum.** Four of the Voting Members present shall constitute a quorum for the purposes of all Board meetings, with the exception of Special Quorum Meetings, at which three Voting Members shall constitute a quorum.

2.5 **Meetings.** The Board shall hold regular meetings at least once each calendar quarter. The Board may also, from time to time, hold special meetings and emergency meetings.

At any Board meeting attended by only three Voting Members, the three Voting Members in attendance may, by unanimous vote of all three Voting Members in attendance, call for a Special Quorum Meeting. A Special Quorum Meeting shall be achieved by the attendance of three Voting Members.

All meetings of the Board are governed by the Minnesota Open Meeting Law, Minnesota Statutes Section 471.705. Notice of a Special Quorum Meeting shall be provided in compliance with the special meeting requirements of the Open Meeting Law and provided to each of the Member Cities.

2.6 **Voting.** Each Voting Member shall have an equal vote. Unless otherwise specified herein, the Board may take action on any issue by majority vote of all Voting Members.

Voting by proxy is not allowed.

2.7 **Operating Committee.** The Ex-Officio Members shall comprise the Operating Committee. The Operating Committee shall meet with the Fire Chief/District Administrator on a monthly basis and report to the Board at each regular meeting.

The Operating Committee shall have the authority to approve budgeted expenditures during monthly meetings. Non-budgeted expenditures must be approved by the Board. A list of bills shall be provided to each member of the Operating Committee on a monthly basis.

2.8 **District Office.** The address of the District shall be 24100 Smithtown Road, Shorewood, Minnesota 55331. (This address may be changed by the Board.)

2.9 **Fiscal Agent.** The City of Excelsior shall act as the initial fiscal agent for the District. The fiscal agent shall be compensated by the District at a rate mutually agreed upon by the fiscal agent and the Board. The Board may change the fiscal agent as it deems necessary from time to time. The District shall indemnify and hold the fiscal agent harmless from any claims, causes of action, or liability arising out of actions it takes in performing duties under this section except for claims, causes of action or liability arising out of the negligent or intentional acts of the fiscal agent in performing its duties under this paragraph.

2.10 **Default.** No Board member shall be eligible to vote on behalf of the Member City he or she represents during such time as that Member City is in Default of the terms or provisions of this Agreement. During the time that a Member City is in Default, that Member City's seat on the Board shall not be counted for purposes of calculating a quorum or a prevailing vote. For the purposes of this Agreement, "Default" shall mean any breach of the terms of this Agreement or failure to comply with any of the provisions herein. A Member City shall not be considered in Default until it has been notified in writing by the District and has had twenty (20) business days from the date it received the notice to cure its Default. A Member City shall thereafter remain in Default until it has cured the Default.

Section 3 General Powers of the Board

3.1 **Powers.** The Board shall have and is hereby given all powers, duties and functions enumerated in this Agreement and provided by law, and all such further powers necessary to carry out the intent and purpose of the District with respect to acquisition of property and operation of the District heretofore set forth, including but not limited to the following:

- a) To employ and determine the terms of employment of fire protection, administrative, and other personnel, accountants, engineers, legal counsel, and other qualified personnel, except as provided in this Agreement.
- b) To cause reports, plans, studies, and recommendations to be prepared.
- c) To purchase capital equipment and land, and to cause the construction of buildings to implement the purposes of the District.
- d) To lease or purchase equipment (including capital equipment) and supplies necessary for the proper operation, care, maintenance, and preservation of District facilities and equipment.
- e) To adopt District bylaws, rules and regulations for the operation, maintenance and use of District fire protection services, equipment, and facilities.

- f) To enter into mutual aid agreements with other organizations with similar purposes.
- g) To dispose of capital equipment and land consistent with the terms of this Agreement.
- h) To sell or lease any of its equipment (including capital equipment) as may be deemed expedient.
- i) To establish a yearly operating budget for District services and a capital improvement program/finance plan (including an equipment replacement schedule) of not less than ten years' duration, which shall require approval consistent with the terms of this Agreement.
- j) To act as agent for receipt, custody, and disbursement of funds, gifts, or other funds paid or given by the Member Cities on behalf of or for the use of the District.
- k) As may be authorized by State law, to act as paying agent for any bonds, contract of indebtedness, and loans made in the names of the Member Cities for the benefit of the District, and act as a custodian of sinking funds created for or required by such indebtedness.
- l) To cause an annual independent audit to be made of all its accounts, books, vouchers; and funds.
- m) To promulgate, establish, and adopt suitable bylaws governing operations of the Board.
- n) To continue a Firefighters' Relief Association for the benefit of members of the District and to make such contribution to the fund of the Firefighters' Relief Association as the Board deems appropriate.
- o) To contract to provide fire protection and medical response services.

3.2 **Disbursements.** Except as otherwise provided, all unanticipated disbursements of the District shall be approved by the Board and co-signed by two officials designated by the Board.

Section 4 Fire Equipment, Land, Buildings, and Funds

4.1 Disposition of Equipment to the Excelsior Fire District. Effective January 1, 2001, all equipment and personal property of the City of Excelsior Fire Department used to provide fire protection services included on the attached Schedule A (the "Leased Equipment") shall be leased to the District pursuant to the terms of an Equipment Lease agreement (the "Equipment Lease Agreement"), for One Dollar (\$1.00), for a term ending upon the dissolution of the District (which would include the creation of a Fire Services Taxing District) or the expiration of a term of five (5) years. In the event that the District is dissolved before the expiration of the five-year lease term, the Equipment Lease Agreement shall be voided, and the Leased Equipment returned to the City of Excelsior. In the event that the District is not dissolved during the five-year lease term, title to the Leased Equipment shall be transferred to the District. All expenses relating to the maintenance and repair of the Leased Equipment and incurred during the lease term and thereafter shall be an operating expense of the District.

The District shall have the right to sell the Leased Equipment pursuant to the terms of the Equipment Lease Agreement. The District shall fully document each such sale and retain all records relating to such sale.

4.2 Reimbursement to City of Excelsior Upon Dissolution. In the event of the dissolution of the District at any time during the first five years of District operation (which five-year period shall begin on January 1, 2001), the City of Excelsior shall receive from the District:

- One hundred percent (100%) of the value listed on Schedule A for any Leased Equipment sold during calendar year 2001;
- Eighty percent (80%) of the value listed on Schedule A for any Leased Equipment sold during calendar year 2002;
- Sixty percent (60%) of the value listed on Schedule A for any Leased Equipment sold during calendar year 2003;
- Forty percent (40%) of the value listed on Schedule A for any Leased Equipment sold during calendar year 2004; and
- Twenty percent (20%) of the value listed on Schedule A for any Leased Equipment sold during calendar year 2005.

Any sum distributed to the City of Excelsior pursuant to this Section shall be in addition to any distribution owed to the City of Excelsior pursuant to Section 12 of this Agreement.

Section 4.2 shall not apply in the event that the District is dissolved for the sole purpose of the establishment by the Member Cities of a Fire Services Taxing District.

4.3 **Existing Land and Building.** The Fire Station used by the Excelsior Fire Department prior to this Agreement shall, beginning on January 1, 2001, become the initial Fire Station for the District. Ownership of the existing building and land for the Fire Station will remain with the City of Excelsior. The District shall pay the City of Excelsior a fair market rent for the space used for the Fire Station pursuant to a lease through at least June 30, 2003 unless the District is dissolved prior to that time in which case any obligations to pay rent or provide space shall cease. This rent shall be included in the budget of the District, and all Member Cities will contribute to it in their funding allocations. Any and all leasehold improvements to the existing building and land for the Fire Station shall remain the property of the City of Excelsior, and no compensation shall be paid to the District for such leasehold improvements when and if the District vacates the existing Fire Station.

In the event that District and the City of Excelsior cannot agree on the fair market rent for the space used for the Fire Station, either the City or the District may initiate an appraisal process by submitting written notice to the other party. Within thirty (30) days after the notice of the appraisal process has been issued, the City and the District shall appoint appraisers who shall, in turn, select a third appraiser to determine the fair market rent for the space used for the Fire Station. The appraisers selected by the City and the District shall produce reports with whatever supporting documentation they each see fit to provide and submit said appraisal reports to the third appraiser within sixty (60) days after the notice of the appraisal process has been issued. The third appraiser shall review the reports provided by the appraisers for the City and the District and, if he or she determines it to be necessary, additional information relevant to determining the fair market rent for the space to be used for the Fire Station. The third appraiser shall issue his or her decision within thirty (30) days after receiving the reports of the City's and District's appraisers. The third appraiser's decision shall be final and binding on both the District and the City. The District and the City shall be responsible for the cost of the appraisers they appoint and shall equally divide the cost of the third appraiser.

4.4 **Transfer of Excelsior Fire Department Funds.** The funds remaining in the City of Excelsior Fire Department Funds (specifically, fund numbers 230-31, 233-35, and 240) on December 31, 2000 shall be transferred to the District on January 1 2001.

4.5 **New Land and Building(s).** For any expansion that may occur at the existing fire station site, the land shall be under the ownership of the City of Excelsior. All new buildings and lands may be owned and, to the extent permitted by law, financed by the District. The District may lease buildings and lands, including those that may be owned by any of the Member Cities.

4.6 **Purchase of Equipment.** Purchase of equipment by the District must be done in accordance with a capital equipment plan, which must include all physical items whose costs are anticipated to exceed \$10,000, approved by the Board. To the extent allowed by law, the District may use debt instruments to make such purchases.

4.7 **Use of Equipment Outside District Boundaries.** All equipment controlled by the District shall be used when needed within the boundaries of the District for the benefit of Member Cities. It should not be used outside the District, except as follows:

- a) In areas outside the District, where fire emergencies may endanger life or property within the District.
- b) When use is covered by contracts duly entered into by the District for fire protection or other services outside the District.
- c) When necessary to fulfill mutual aid agreements duly entered into by the Board.
- d) In case of major emergency or disaster, when authorized by the Fire Chief/District Administrator, or in his/her absence, the officer in charge. Such use shall be reported as soon as possible to the Fire Chief/District Administrator.
- e) When specifically authorized by the Board.

Section 5 Personnel and Administration

5.1 **Fire Chief/District Administrator.** The Fire Chief/District Administrator shall be responsible to the Board for the efficient and economical operation of the District; the hiring, termination, supervision, discipline and the direction of the District personnel; the establishment of rules of conduct for those personnel; and carrying out the policies and procedures adopted by the Board. The Fire Chief/District Administrator is appointed by the Board and serves at the pleasure of the Board. The Fire Chief/District Administrator is a full time employee of the District and may enter into an employment contract with the Board.

The Fire Chief/District Administrator shall be chosen by the Board solely on the basis of training, experience, administrative, and other qualification. The Fire Chief/District Administrator shall be appointed for an indefinite period of time and may be removed by the Board at any time. The Fire Chief/District Administrator need not be a "member" of the Excelsior Fire District. Should the Board determine that there should exist separate Fire Chief and District Administrator positions, only the District Administrator shall be the full-time paid position.

If the District has not selected a Fire Chief/District Administrator, the individual serving as Fire Chief of the Excelsior Fire Department on December 31, 2000 shall serve as the District's Interim Fire Chief until such time as the Board selects a Fire Chief/District Administrator.

5.2 **Fire Marshal.** The District may have a position of Fire Marshal, who shall be appointed by the Fire Chief/District Administrator solely on the basis of training, experience, and administrative, and other qualifications. The Fire Marshal's responsibilities will be to enforce the Minnesota State Fire Code and perform other duties that may be assigned by the Fire Chief/District Administrator. The Fire Marshal need not be a "member" of the Excelsior Fire District. Fire Marshal responsibilities may be performed by a contractor who is not an employee of the District; however, the Fire Marshal under the employ of the City of Excelsior on December 31, 2000 shall automatically be appointed as the District's first Fire Marshal with continuation of his/her status as a regular employee including continuation of salary, benefits, accrued leave, and other customary issues of employment. The first Fire Marshal and all subsequent persons filling that position shall serve at the pleasure of the Fire Chief/District Administrator.

5.3 **District Positions.** The Board may, from time to time, establish, eliminate or reconstitute other employee positions as it deems to be appropriate.

5.4 **Training.** The District shall at all times be in compliance with such equipment, personnel and training standards as may be required by the laws of the State of Minnesota and the Federal Government.

5.5 **Employees.** On January 1, 2001, the personnel of the Excelsior Fire Department become employees of the District. If it has not done so prior to January 1, 2001, the District must promptly thereafter adopt rules and regulations governing the operation, management, departmental structure, personnel administration and other similar matters related to the District and its personnel and operation. Until such rules and regulations have been adopted, the rules, regulations and ordinances of Member City where the personnel were previously employed apply to the personnel of the District.

The District shall hold Member Cities harmless and shall defend and indemnify the Member Cities for any claims, suits, demands or causes of action for any damages or injuries asserted against Member Cities based on allegations of wrongful, tortious or illegal conduct on the part of the personnel of the Excelsior Fire Department or the District.

5.6 **Compensation of Employees.** The compensation of the employees of the District shall be set by the Board.

5.7 **Membership in Firefighters' Relief Association.** Paid on-call employees of the District shall be eligible for membership in the Excelsior Firefighters' Relief Association. Other employees are members of the appropriate public employees' retirement fund, if eligible.

5.8 **Continuation of Prior Policies, Plans, and Procedures.** All Excelsior Fire Department policies, plans, procedure, and by-laws not superseded by this Agreement, in place on January 1, 2002, shall remain in effect until changed by the Board. The terms and provisions of this Agreement shall supersede any conflicting Excelsior Fire Department policies, plans, procedures, and by-laws in place at the time of the effective date of this Agreement.

Section 6 Uniform Fire Codes

6.1 **Adoption of Minnesota State Fire Code.** All Member Cities agree to adopt the most current *Minnesota State Fire Code* including Minnesota State Building Code, Chapter 1306 and authorize the District to enforce said Minnesota State Fire Code in their cities within ninety (90) days of execution of this Agreement. Any city not so adopting shall be considered in default of this Agreement as defined in Section 2.10 unless said City agrees to indemnify and hold all other cities and the District harmless with regard to any possible circumstance or consequence. All Member Cities further agree that they will approve amendments to their City Codes of Ordinances adopting any updates or revisions to the Minnesota State Fire Code within sixty (60) days of receiving notice from the District that the Minnesota State Fire Code has been amended.

Section 7 Funding

7.1 **Member Contributions.** Each city shall contribute an allocated share ("Member Contribution") of the total operating budget (capital and operating expenses) to the District as established by the Board. The share allocated to each Member City shall be based upon that Member City's percentage of the:

1. total tax capacity for the District as of June 30 of the prior year;
2. assessor's estimated market value for property within the District as of June 30 the prior year;
3. population of the District based upon the most recent Metropolitan Council estimates of population within each Member City as of June 30 of the prior year;
4. total number of tax parcels within the District as of June 30 of the prior year; and
5. total number of calls made by the District over the previous three (3) calendar years prior to the immediately preceding year except that the calls made to 225 Mill Street in Excelsior don not count for purposed of this formula.

Initially, the allocations shall be made by adding each of the percentage identified above and dividing by five. Over time, the allocations will transition to a purely tax capacity based formula on the following schedule:

	<u>Tax Capacity</u> <u>Weight in Formula</u>	<u>Other 4 Factors*</u> <u>Weight in Formula</u>
2001	20%	80%
2002	20%	80%
2003	30%	70%
2004	40%	60%
2005	50%	50%

2006	60%	40%
2007	70%	30%
2008	80%	20%
2009	90%	10%
2010	100%	0%

*Each of the four factors would be equally weighted within their collective percentage of the formula.

An illustration of the manner in which the formula will be applied is attached as Schedule B.

7.2 **Quarterly Payment.** The District shall bill each of the Member Cities on a quarterly basis at least thirty (30) days before payments are due. Beginning January 1, 2008, Member Cities shall forward their contributions to the District on a quarterly basis, with such contributions being due and payable no later than:

First Quarter:	<i>January 15</i>
Second Quarter:	<i>April 15</i>
Third Quarter:	<i>July 15</i>
Fourth Quarter:	<i>October 15</i>

In the event that a Member City fails to pay any contribution required hereunder on the date due, such Member City agrees to pay a late charge of one-half percent (0.5%) of the delinquent amount to defray the costs of the District incident to collecting such late payment. Member Cities further agree to pay additional penalties of one-half percent (0.5%) per day after Default until payment is made. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights the District may have.

Section 8 **Budget**

8.1 **Approval of Capital Improvement Program/Finance Plan.** After approval of the District's annual Operating Budget covering the calendar year 2001, the Member City councils shall approve a Capital Improvement Program/Finance Plan by an affirmative vote of a two-thirds majority of the Member City councils. Any proposed amendment to the Capital Improvement Program/Finance Plan shall be approved by an affirmative vote of two-thirds majority of the Member City councils no later than September 15. The vote on the Capital Improvement Program/Financial Plan or any amendment thereto shall be binding upon all Member Cities.

8.2 **Approval of District Operating Budget.** The annual District Operating Budget, which shall include any outlay necessitated by the Capital Improvement Program/Financial Plan, must be approved by an affirmative vote of the majority of Member City councils. The vote on the annual District Operating Budget shall be binding upon all Member Cities.

8.3 **Budget Process and Schedule.** The annual District Operating Budget shall consist of the entire cost of operation of the District including the costs incurred by the District in financing the special fund of the Firefighters' Relief Association, which shall be determined pursuant to the provisions of Minnesota Statute Section 69.774. Except for the annual District Operating Budget for the calendar year 2001, the District shall submit a proposed budget to the Member Cities through their Operating Committee members by August 10. The Member City councils shall vote on the proposed budget by September 15. For the annual District Operating Budget for the calendar year 2001, the District shall submit a proposed budget to the Member Cities through their Operating Committee members by August 1, 2000. The Member City councils shall vote on the calendar year 2001 proposed budget by September 1, 2000.

8.4 **Base Budget.** If the Member Cities are unable to agree on the proposed budget, the amount of the previous year's budget will be increased by the lesser of the following:

- a.) The increase in the July Minneapolis/St. Paul Consumer Price Index for All Urban Consumers (CPI-U) over the previous twelve month period; or
- b.) The percentage increase in the most restrictive statutory levy limit applicable to the budget year placed on any of the Member Cities over the levy limit for that Member City for the prior year.
- c.) In the event that (a) or (b) decreases, the operating budget shall remain the same.

If the Member Cities are unable to agree on the proposed budget for the calendar year 2001, the Excelsior Fire Department budget for calendar year 2000 shall be increased by the lesser of the items a.) – c.), above.

8.5 **Budget Reports.** Beginning January 1, 2001, the District agrees to submit to each of the Member Cities through its Operating Committee member a quarterly budget report. Furthermore, the District agrees to submit to each of the Member Cities through their Operating Committee members a copy of the District's annual financial report no later than June 15 of each year.

Section 9 Dispute Resolution

9.1 **Dispute Resolution Process.** Except as provided in section 4.3, when any Member City believes that there is a misrepresentation or a violation of the specific terms and conditions of this Agreement, that Member City may initiate the dispute resolution process by submitting to the District and each Member City a written statement outlining the dispute or disagreement. This written statement of dispute shall be forwarded by the complaining Member City to the Board at the Board's next scheduled meeting. The Board will then have a three (3) month period to resolve the dispute as to interpretation of application of the terms of this Agreement. If the dispute is not resolved within the three (3) month period, the dispute shall be forwarded by the Board to an appropriate meditation service.

The Board may independently call for dispute resolution of any issue, by majority vote of its Voting Members.

9.2 **Judicial Relief.** If the aggrieved Member City and the Board cannot mutually agree to a resolution through the mediation process as described in Section 9.1 within ninety (90) days after the initiation of the mediation process, either the aggrieved Member City or the Board may submit the issue to arbitration pursuant to the Uniform Arbitration Act.

Section 10 Withdrawal

10.1 **Notice.** Notice of intent to withdraw from participation in the District may be given only in March of odd-numbered years, with a minimum of 33 months' notice of intent to withdraw.

10.2 **Continuing Obligations After Withdrawal.** The withdrawing Member City shall pay an amount equal to 500% of the amount allocated to it during the year of its notice of intent to withdraw. The withdrawing Member City may make this payment during the five years succeeding its leaving the District, but in no year shall the amount paid be less than one-fifth of the 500% amount.

10.3 **Vesting.** Any party withdrawing from the Agreement shall have no vested rights or ownership in any of the property or assets of the District.

10.4 **Not Applicable if Dissolved.** This Section shall not apply if the District has been dissolved pursuant to Section 11 of this Agreement.

Section 11 Duration and Dissolution of District

11.1 **Duration.** Unless dissolved pursuant to this Agreement, the duration of the District shall be perpetual.

11.2 **Dissolution.** The District shall be dissolved upon the affirmative vote of a two-thirds majority of the Member City councils. Dissolution shall occur at the end of the second full calendar year after the date of the agreement to dissolve, unless this joint powers entity is reestablished as a special unit of government.

Dissolution shall also occur if:

- (1) the District does not adopt and the Member City councils do not approve a Capital Improvement Program/Finance Plan by July 1, 2003, that includes funding for construction of a new station(s) and/or the renovation of the existing fire station; the location(s) of a new fire station(s) for which shall be determined based upon among other things, improving the existing fire response times to Member Cities; and the plan and budget for the station(s) has been determined by the Board and

recommended to the Member City councils as what is necessary to provide the best service for the District based upon a disinterested, professional feasibility study; or

- (2) said renovation or construction does not begin by June 30, 2004.

Dissolution under the terms in (1) above shall occur on December 31, 2003. Dissolution under the terms in (2) above shall occur on December 31, 2004.

Section 12 Distribution of Assets Upon Dissolution

12.1 Upon dissolution, the assets of the District shall be liquidated according to State Law. All cash from the liquidation of assets shall be distributed to the vested Member Cities based upon their share in the funding allocation in effect on the date of the agreement to dissolve except as provided in Section 4 of this Agreement.

Section 13 Counterparts

13.1 This Agreement may be executed in several counterparts and all so executed shall constitute one and the same agreement and instrument, binding on all of the parties hereto.

Section 14 Additional Members

14.1 **Process.** A municipality shall be added to the District only upon receiving the approval of each existing Member City.

14.2 **Equipment.** Municipalities added to this agreement shall not be compensated for equipment donated to the District.

14.3 **Budget.** The budget as established in Section 8 of this Agreement may be adjusted to reflect the addition of member(s) to the District should such member(s) be added.

14.4 **Vesting.** A new member must be party to this Agreement ten (10) years in order to have a vested interest in the assets of the District for the purposes of Section 12.1.

14.5 **Adjustment of Membership.** If any Member City/Cities consolidate with another Member City/Cities (i.e. merge to form a single new municipal corporation) the consolidated municipal corporation shall automatically become a single Member City party to this Agreement.

Section 15 Amendment of Agreement

15.1 **Required Approval.** This Agreement may be amended by identical resolutions adopted by the city council of every Member City. Such resolutions must be filed together with the Board.

15.2 **Submittal/Consideration/Action Process.** The Board or any Member City may propose amendments to this Agreement. Such amendments shall be in the form of a Board or city council resolution, and shall clearly identify the proposed amendment and the reason(s) for the amendment.

Any such proposed amendment shall be presented to the Board. The Board shall review the proposed amendment and issue a report on it to the Member Cities within ninety (90) days of proposal of the amendment. Member Cities shall have ninety (90) days after the Board issues its report in which to adopt city council resolutions as identified in Section 15.1.

Section 16 Allocation of Resources

The parties to this Agreement recognize the possibility that occasions will arise on which demand for the services outlined in the Agreement will exceed the resources available for provision of such services. In such circumstances, District officials use their best judgement to prioritize the delivery of services. The parties hereby agree that District shall have complete and definitive discretion in prioritizing the delivery of services pursuant to this Agreement.

Section 17 Effective Date

Except as otherwise provided herein, this Agreement is effective on September 1, 2000 provided that executed copies of this Agreement, accompanied by a resolution of the city council of each Member City authorizing approval of this Agreement, are filed with the city clerk of the City of Excelsior.

Section 18 Notices

Any notice to the District required or permitted to be given under this Agreement shall be given in writing, and shall be sent by certified mail to the registered address of the District. Notice to each Member City shall be given in writing via U.S. Mail or fax to the address of the Voting Member and the City Clerk for that City.

Section 19 Choice of Law

The provisions of this Agreement shall be construed in accordance with the laws of the State of Minnesota.

Section 20 Headings and Captions

The headings and captions of this paragraphs and Sections of this Agreement are included for convenience or reference only and shall not constitute a part thereof.

Section 21 Entire Agreement

This Agreement contains the entire understanding between the Member Cities and the District concerning the subject matter hereof, and the provisions applicable thereto cannot be amended, altered, enlarged, supplemented, abridged, modified, extended, or waived except if done in accordance with the provisions of Section 15 of this Agreement.

Section 22 Limitation of Liability – District

22.1 Each Member City shall hold the District harmless and will defend and indemnify the District for any claims, suits, demands or causes of action for any damages or injuries based on allegations or negligence or omissions by employees, officers, or agents of that Member City. This provision does not apply to actions taken by employees, agents, or officers of Member Cities to the extent that they are acting as Board Members (Voting, Alternate, or ex officio) of the District.

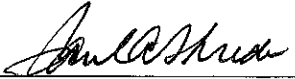
22.2 The District shall hold its Board Members (Voting, Alternate, or officio), the Member Cities, their City Council Members, employees, and other agents harmless and will defend and indemnify the Board Members (Voting, Alternate, or officio), Member Cities, their City Council Members, employees, and agents for any claims, suits, demands or causes of action for any damages or injuries based on allegations of negligence or omissions by employees, officers, or agents of the District. The District's duty to indemnify will be limited to its applicable insurance coverage.

Section 23 Limitation of Liability – Member Cities

The District shall hold the Member Cities harmless, individually and collectively, and will defend and indemnify the Member Cities for any claims, suits, demands or causes of action for any damages or injuries, arising prior to the establishment of the District, based on allegations or negligence or omissions by employees, officers, or agents of any of the Member Cities arising out of the provision of fire protection services (or the failure to provide such services) including, but not limited to, fire prevention, fire fighting, and rescue and medical response services.

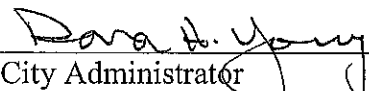
IN WITNESS WHEREOF, the undersigned governmental units have caused this Agreement to be executed by their duly authorized officers.

CITY OF DEEPHAVEN

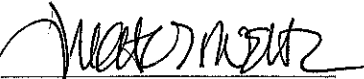
By 
Its Mayor

Date: Jan 11, 2012

ATTEST:


City Administrator

CITY OF EXCELSIOR

By 
Its Mayor

Date: Dec. 12, 2011

ATTEST:

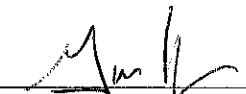

City Manager

CITY OF GREENWOOD

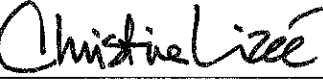
By 
Its Mayor

Date: 1/10, 2012

ATTEST:

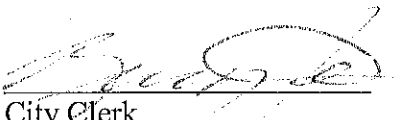

City Administrator

CITY OF SHOREWOOD

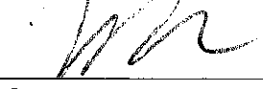
By 
Its Mayor

Date: 12/19, 2011

ATTEST:

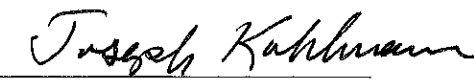

City Clerk

CITY OF TONKA BAY

By 
Its Mayor

Date: 12/13/11, 2011

ATTEST:


City Clerk