

SABIN-ELMWOOD FIRE DISTRICT
JOINT POWERS AGREEMENT

This Agreement, made and entered into this 21 day of March, 2006, by and between the City of Sabin and Elmwood Township, both of which are municipal corporations of the State of Minnesota (collectively the “Members”).

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

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

WHEREAS, the parties hereto desire to enter into a Joint Powers Agreement for the purposes of creating and implemented 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 the 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, 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 Sabin-Elmwood Fire District; and

WHEREAS, the Sabin-Elmwood Fire District has operated cooperatively for a number of years and entered into various contracts, with the original agreement dated December 5, 1969, and updated November 17, 1981, August 8, 1995 and June 10, 1997. The Joint Power Agreement shall supercede all of the previous contracts.

NOW, THEREFORE, IT IS HEREBY AGREED 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 residents of the Members; and
- (b) To establish a joint powers governance structure to deliver the services described above consistent with the provisions of this Agreement and Minnesota Statute 471.59

1.2 **General Intent.** It is the general intent of the parties of this agreement to declare the Member's commitment to establish a special unit of government to provide fire protection and medical response services.

Section 2. Organization.

2.1 **Establishment.** There is hereby established by the execution of this Agreement the "Sabin-Elmwood Fire District" (hereafter referred to as the "District") to be managed by and operated pursuant to the terms of the Agreement.

2.2 **Governance.** The governing bodies of the District shall be the Sabin-Elmwood Fire District Board (hereinafter referred to as the "Board"). The board shall consist of the following members:

- (a) **Voting Members:** Voting Members shall include two (2) elected officials of the City Council of Sabin and two (2) elected officials of Elmwood Township. No employee of the District or any police department servicing any of the Members may serve on the Board as a Voting Member.
- (b) **Ex-Officio (non-voting Members.** The fire chief and two fire department members shall serve on the Board as non-voting Ex-Officio Members.
- (c) **Alternate Members:** The Sabin City Council and the Elmwood Township Board of Supervisors shall name one (1) elected official of the City Council/Board of Supervisors 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 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 meeting not attended by the Chair. The Board shall have the authority to adopt by-laws and establish 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 from compensating its members for services on the Board to the extent such compensation is otherwise authorized by law.

2.4 **Board Quorum:** Three of the voting members present shall constitute a quorum for the purposes of all Board Meetings.

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.

All meetings of the Board are governed by the Minnesota Open Meeting Law

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 **District Office.** The address of the District shall be the City Hall, Main Street, Sabin, Minnesota 56580 (this address may be changed by the Board)

2.8 **Fiscal Agent.** The City of Sabin shall act as the fiscal agent for the District. The fiscal agent shall be compensated by the District at a rate of mutually agreed upon by the fiscal agent and the Board. 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 negligent or intentional acts of the fiscal agent in performing its duties under this paragraph.

2.9 **Default.** No Board member shall be eligible to vote on behalf of the Member City or Township her or she represents during such time as the Member is in Default of the term or provisions of this Agreement. A Member 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.

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 will have 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, consultant, engineer, legal council, and other qualified personal, 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 building to implement the purpose of the District.

- (d) To lease or purchase equipment (including capital equipment) and supplies necessary for the proper operation, care, maintenance, and preservation of the District facilities and equipment.
- (e) To adopt District bylaws, rules and regulations for the operation, maintenance and use of the 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 10 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 Members 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 names of the Members for the Benefit of the District. And act as custodian of sinking funds created for or required by such indebtedness.
- (l) To cause an annual independent audit to be made of all accounts, books, and 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 the 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 and 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 **Existing Land and Building.** The fire station used by the Sabin-Elmwood Fire Department prior to this Agreement shall, beginning on January 1, 2006, 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 Sabin and the Elmwood Township.

4.2 **Re-designated Sabin-Elmwood District Funds.** The funds remaining in the City of Sabin Fire Department funds on December 31, 2005, shall be re-designated as District funds as of January 1, 2006.

4.3 **New Land and Building (s).** The members contemplate construction of a new fire hall. The land shall be under the ownership of the District. All new buildings and lands shall be financed by the District. The district may lease buildings and lands, including those that may be owned by any of the members.

4.4 **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 \$10,000.00, approved by the Board. To the extent allowed by the law, the District may use debt instruments to make such purchases.

4.5 **Use of Equipment Outside District Boundries.** All equipment controlled by the District shall be used when needed within the boundaries of the District for the benefit of its Members. 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) Where use is covered by contracted 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 or 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. Funding

5.1 **Member Contributions.** The City of Sabin and Elmwood Township shall contribute each a 50% share of the total operating budget as established annually by the Board.

Section 6. Budget

6.1 **Approval of Capital Improvement Program/Finance Plan.** The City of Sabin and Elmwood Township shall improve a Capital Improvement Program/Finance Plan by an affirmative vote of a two-thirds majority of the City and Town. Any proposed amendment to the Capital Improvement Program/Finance Plan shall be approved by an affirmative vote of two-thirds majority of the City Council and the Board of Supervisors no Later than April 15. The vote on the Capital Improvement Program/Finance Plan or any amendment thereto shall be binding upon all Members.

6.2 **Approval of District Operating Budget.** The annual District Operating Budget shall Include any outlay necessitated by the Capital Improvement Program/Finance Plan, must be adopted by an affirmative vote of the City of Sabin and the Township of Elmwood. The vote on the annual District Operating Budget shall be binding upon all Members.

6.3 **Budget Process Schedule.** The annual District Operating Budget shall consist of the entire cost of operation of the District including cost incurred by the District in financing the special fund for the Firefighter's Relief Association, which shall be determined pursuant to the provisions of Minnesota Statutes Section 69.774. The District shall submit a proposed budget to the City of Sabin and the Township of Elmwood by June 15 of each year. The City of Sabin and the Township of Elmwood shall vote on the proposed budget by September 1 of each year.

Section 7. Dispute Resolution.

7.1 **Dispute Resolution Process.** Except as provided in Section 4.3, when any Member believes that there is a misrepresentation or a violation of the specific terms and conditions of this Agreement, that Member may initiate a dispute resolution process by submitting to the District and each Member a written statement outlining the dispute or disagreement. The written statement of dispute shall be forwarded by the complaining Member to the Board at the Boards next scheduled meeting. The Board will then have a three (3) month period to resolve the dispute as to interpretation or 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 mediation service.

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

7.2 **Judicial Relief.** If the aggravated Member and the Board cannot mutually agree to a resolution through the mediation process as described in Section 7.1 within ninety (90) days after the initiation of the mediation process, either the aggregated Member or the Board may submit to arbitration under the Uniform Arbitration Act.

Section 8. Withdrawal.

8.1 **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 12 months' notice of intent to withdraw.

Section 9. Duration and Dissolution of District.

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

9.2 **Dissolution.** The District shall be dissolved upon the affirmative vote of a two-thirds majority of the City of Sabin City council and the Township of Elmwood Board of Supervisors.

Section 10. Distribution of Assets Upon Dissolution.

10.1 City Will Purchase Townships' Interest

10.2 That if the parties have not entered into another agreement regarding the cost, operation, and maintenance of said Fire Department trucks, equipment, and other property within four months following the end of the term of this agreement, than City shall pay the Township the following determined amount (the "purchase price") to purchase the Township's interest in the Sabin-Elmwood Fire Department trucks, equipment, and other property, including the fire hall.

10.3 **Purchase Price.** The purchase price to be paid by the City to the Township shall be one half of the fair market value of the fire departments trucks, equipment and other property, including the fire hall, as of the end of the term of this agreement as determined by the mutual agreement of the City and Township.

10.4 **Determining Purchase Price.** If the parties cannot agree upon the purchase price within five months following the end of the term of this agreement, then the fair market value of the Sabin-Elmwood Fire Department trucks, equipment and other property, including the fire hall, shall be determined by appraisal as follows: City and Town each appoint, at their own cost, within 15 days following the expiration of the time for mutual agreement has expired, a qualified appraiser ("Qualified Appraiser"), who shall be a professional appraiser, to appraise the Sabin-Elmwood Fire Department trucks, equipment, and other property, including the fire hall. If both Qualified appraisers agree on a fair market value of the Fire Department trucks, equipment, and other property, including the fire hall, their opinion shall be submitted in writing, shall be conclusive and binding on both City and Town.

If only one of the parties appoints a Qualified Appraiser, the appraiser's written opinion on the fair market value of the Sabin-Elmwood Fire Department trucks, equipment, and other property, including the fire hall, shall be conclusive and binding on both the City and the Town. If the two Qualified Appraisers disagree on fair market value of the Sabin-Elmwood Fire Department trucks, equipment, and other property, including the fire hall, they shall appoint a third Qualified Appraiser, who's fees and expenses shall be divided equally between the City and Town, shall be conclusive and binding as to the fair market value of the Sabin-Elmwood Fire Department trucks, equipment, and other property, including the fire hall. Provide, however, that if the value found by a third Qualified Appraiser is greater than the highest of the first two appraisals, the highest of the first two appraisals shall constitute the "appraised value" of the Sabin-Elmwood Fire Department trucks, equipment, and other property including the fire hall.

10.5 **Terms of Payment.** The purchase price will be paid by a down payment of at least ten percent (10%) of the total amount required to be paid and the balance shall be paid in up to ten equal annual installments of the principal and interest, with interest payable at a rate of interest equal to the "Base Rate" then available at Norwest Bank Moorhead, MN (and if Norwest bank Moorhead, or its successors no longer exist, then at the "Prime Rate" as specified in the Wall Street Journal for the date of closing), such debt to be reflected by a promissory note to be delivered by the City to Town. Upon delivery of the down payment, City shall deliver to the Town a bill of sale and a quick claim deed to the Fire Department trucks, equipment, and other property, including the fire hall.

Section 11. Counterparts

11.1 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 12. Additional Members

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

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

12.3 **Budget.** The budget as established in section 6 of this Agreement may be adjusted to reflect the addition of member(s) to the District should such member(s) be added.

12.4 **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 10.1

Section 13. Amendment of Agreement.

13.1 **Required Approval.** This agreement may be amended by identical resolutions adopted by the City Council/Board of Supervisors of every Member. Such resolutions must be filed together with the Board.

13.2 **Submittal/Consideration/Action Process.** The Board or any Member may propose amendments to this Agreement. Such amendments shall be in the form of a Board or City Council/Board of Supervisors 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 Members within ninety (90) days of proposal of the amendment. Members shall have ninety (90) days after the Board issues its report in which to adopt resolutions identified in 13.1.

Section 14. Allocation of Resources.

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

Section 15. Effective Date.

Except as otherwise provided herein, this Agreement is effective on January 1, 2006, provided that executed copies of this Agreement, accompanied by a resolution of the City Council/Board of Supervisors of each Member authorizing approval of this Agreement, are filed with the City Clerk of the City of Sabin.

Section 16. Notices.

Any notice to the District required or permitted 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 shall be given in writing via U.S. Mail or fax to the address of the Voting Member and the City Clerk/Town Clerk for that Member.

Section 17. Choice of Law.

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

Section 18. Headings and Captions.

The heading and captions of this paragraph and Sections of this Agreement are included for convenience or reference only and shall not constitute a part hereof.

Section 19. Entire Agreement.

This agreement contains the entire understanding between the Members 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 13. of this Agreement.

Section 20. Limitation of Liability – District.

20.1 Each member 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 of negligence or omissions by employees, officers, or agents of that Member. This provision does not apply to actions taken by employees, agents, or officers of Members to the extent that they are acting as Board Members (Voting, Alternate, or ex-officio) of the District.

20.2 The District shall hold its Board Members (Voting, Alternate, and ex-officio), the Members, their City Council/Board of Supervisors Members, employees and other agents harmless and will defend and indemnify the Board Members (Voting, Alternate, and ex-officio), Members, their City Council/Board of Supervisor 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 Districts Duty to indemnify will be limited to its applicable insurance coverage.

Section 21. Limitation of Liability – Members

The District shall hold the District harmless, individually and collectively, and will defend and indemnify the Members 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 of negligence or omissions by employees, officers or agents of any of the members 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.

Dated: March 21, 2006

CITY OF SABIN

By Gary Storms, Mayor
Electronic Signature

By Laurie Olson, City Clerk
Electronic Signature

Dated: March 21, 2006
TOWNSHIP

ELMWOOD

By Rodney Schmidt, Chairman
Electronic Signature

By Lori Pender, Clerk
Electronic