



Minnesota Counties Intergovernmental Trust

1W1P

Operational Arrangements

Cannon River 1W1P

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The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.

Operational Structures

TYPES OF ARRANGEMENTS

Contracts

- Used for professional services, purchase of goods and services
- Good for single purpose agreements
- May include provisions from Minn. Stat. § 471.59
- Manage all contracts by ensuring parties meet definitions and have credentials if applicable
- See Resource “Sharing Employees: Drafting Agreements”

Contract for Services



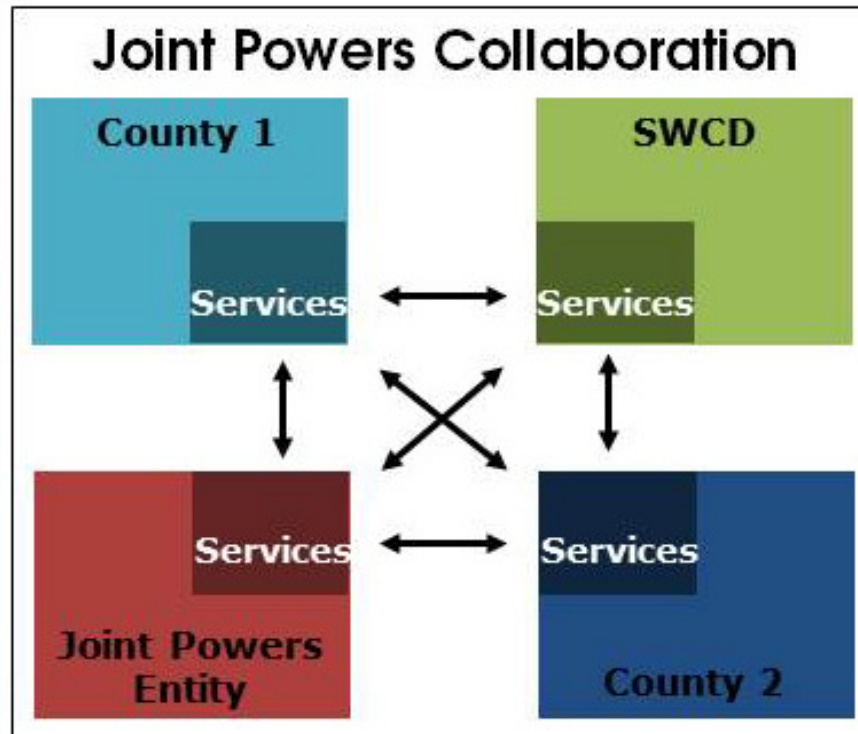
What about an MOA?

- Memorandum of Agreement
 - Written agreement where participants agree to do certain items
 - If no consideration, not legally enforceable. If consideration, legally a contract.

Joint Powers Agreements

- Minnesota Statutes, Section 471.59
- Joint Powers Statute
 - Permits government units to join as one to accomplish common goals
 - May form a new entity
 - May remain separate entities and share resources
 - Agreement must include mandatory statutory provisions

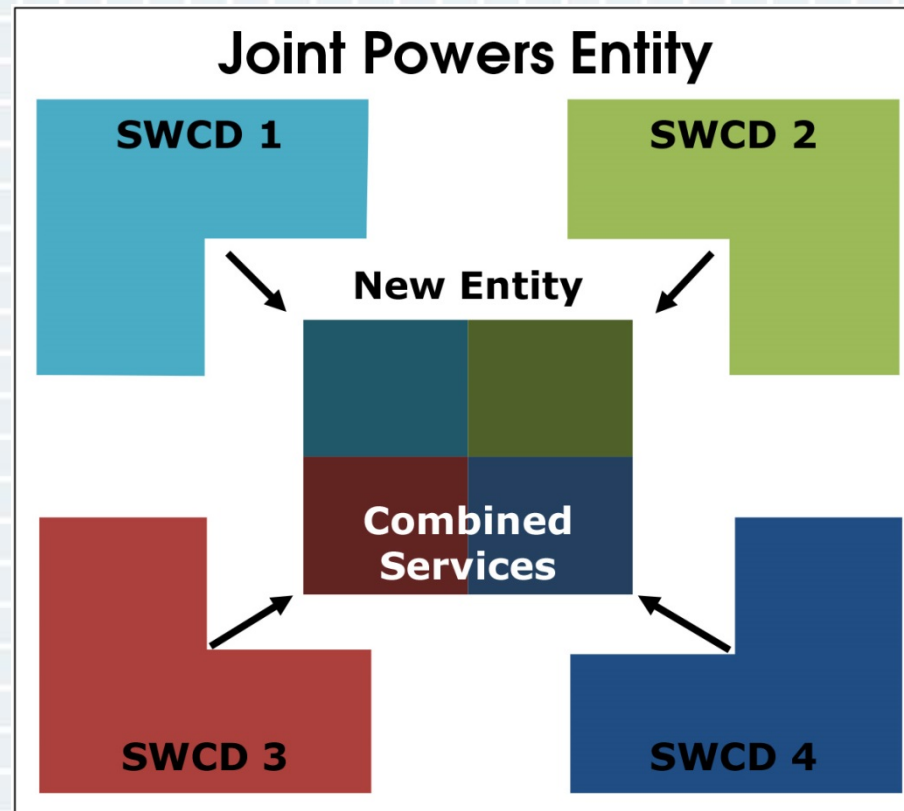
Joint Powers Collaboration



JPC: Governance

- Board
 - Not needed
 - If a board is established, it is strictly advisory in nature
 - Individual governmental units retain all decision-making authority
- No employees
 - Members may assign their employees to JPC projects
 - Employee remains an employee of his or her original governmental unit
- Members provide the funding

Joint Powers Entity



Joint Powers Entity: Board

- Needed to operate
- Must be *representative* of its members
- Operates autonomously from the boards of the individual members

Joint Powers Entity: Board

- Individual members delegate control to the JPE board
- JPE board members represent the interests of the JPE
- Necessary to issue bonds or obligations (Minn. Stat. § 471.59)
 - Forming members must have authority

Joint Powers Entity: Liability

- May sue and be sued
- Can be found liable to a third party for damages caused by the JPE's activities
- Will be obligated to provide workers' compensation benefits if it has employees

Notable Differences Between JPE and JPC

- JPE is a separate, free-standing public entity that can sue and be sued
 - Liability should be transferred from the participating members to the JPE
- A JPE typically operates under its own name
- JPC does not establish a new entity
 - Liability remains with the participating members
- Joint powers agreement should establish how liability will be allocated

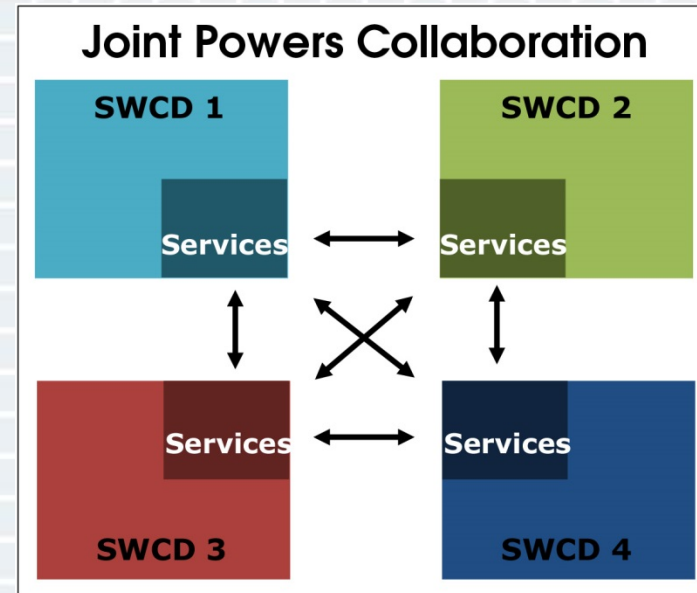
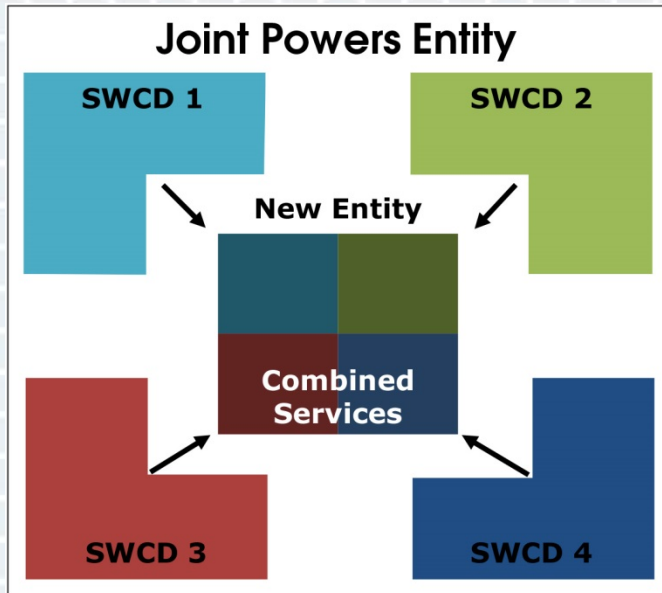
Notable Differences Between JPE and JPC

- Joint powers entity may apply for funding in its own name
- JPC participants fund the projects/activities
- JPC participants may apply for grant funding
 - In their own names
 - Individual participant retains all responsibility/liability

Joint Powers Agreement

Consolidate and transfer operations to a new entity

Outline how governmental units will work together



- Autonomous
- Give up control
- Transfer liability

- Advisory
- Retain control
- Retain some liability

Watershed District

- Separate legal entity
- Appropriate when:
 - Addressing water resource issues that transcend county boundaries
 - Managing water and related land resource problems in a comprehensive-basin wide manner

Watershed: Nominating Petition

- Must be signed by:
 - At least $\frac{1}{2}$ of the counties within the proposed district
 - By a counties or counties having at least 50 percent of the area within the proposed district

Watershed: Nominating Petition

- Must be signed by:
 - A majority of the cities within the proposed district
 - At least 50 resident owners residing in the proposed district (excluding resident owners within corporate limits of a city if the city has signed the petition)

Watershed: Nominating Petition

- Petition must include:
 - Name of district
 - Statement setting for the territory to be included and a map of district
 - The necessity of the district, vision
 - How actions beneficial to public health and welfare
 - Nos of Managers
 - Request of establishment

Watershed District

- BWSR
 - Holds a hearing regarding a petition
 - Issues a decision regarding establishment

Determining the Best Structure

ASK THE RIGHT QUESTIONS

Questions to Ask to Determine Appropriate Structure

- What is/are the goal(s) you are trying to achieve?
- What are the road blocks in achieving those goals as a single entity: financial, political, etc.?

Questions to ask to Determine Appropriate Structure

- What are the various options to complete the goals, work and/or delivering the services
- How will working cooperatively in reaching those goals?
- What are the pros/cons of the various options

Questions to Ask to Determine Appropriate Structure

- Which, if any, responsibilities does your entity want to keep, and which are you willing to outsource?

Questions to Ask to Determine Appropriate Structure

- What authority is the board willing to delegate?
 - Watershed: autonomous entity
 - Joint Powers entities: original entities still exist, delegate certain functions and decision making to new organization, e.g., TSAs, MCIT
 - Joint Powers arrangements: no new entity created, all authority remains vested with forming entities
 - Contract for services: authority becomes one of contract management

Joint Powers Entities

CONSIDERATIONS AND AGREEMENTS

Establishing a Joint Powers

- Make decisions prior to drafting governing documents
- Major decisions include
 - Governance
 - Budget and finance
 - Operations
 - Personnel and staff

Governance

- Who are the participating members
 - MS § 471.59 defines “governmental unit”
- What are your common goals?
 - Which services or powers will be shared?
 - How do you plan to carry out or accomplish your goals?
 - A JPA under MS §471.59, Subd. 2 must define the “purpose” as well as ... “provide for the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised.”

Governance Decisions

- Establishing the board
 - Explain the duties, board composition, etc.
 - MS §471.59, Subd. 2 Agreement to State Purpose
 - When the agreement provides for use of a joint board, the board shall be representative of the parties to the agreement...
 - Irrespective of the number, composition, terms or qualifications of its members, such boards are deemed to comply with statutory or charter provisions for a board for the exercise by any one of the parties of the power which is subject to the agreement.

Governance

- Legal Counsel?
- Will parties be allowed to join and/or withdraw after-the-fact?
 - Define the conditions

Budget and Finance Decisions

- Where will the JPE obtain funding?
- Will the JPE need a fiscal agent?
 - Which party will serve as fiscal agent?
 - For how long?
 - Will fiscal agent change?
 - If so, define circumstances in which a change may be made
 - Handle “in house”?
 - Contract with accounting firm?
- JPE should have its own bank accounts

Budget and Finance Decisions

- How will costs or funding be shared?
 - Allocated by population? Percentage? Equal shares?
 - In-kind support?
 - Unexpected costs?
 - Uncovered claims
 - Deductibles
 - Costs that cannot be allocated to grants
 - Assets and liabilities at termination

Operations

- Office location?
- If co-located with a participating member
 - Retain distinct identity
- Will there be new property, equipment or vehicles? Who will own/insure?

Operations

- Will the JPE own or operate property, equipment or vehicles?

Operations

- Contracts
 - Board has the authority to sign
 - Board can delegate authority
 - If separate entity contracts executed in that entity's name
 - If no separate entity, whose name will contract be in? All? Fiscal Agent?

Operations

- How will the work get done?
- Who has/wants control of staff and personnel?

Minnesota Government Data Practices Act Considerations

- Whose data is it?
- What is the classification of the data?
- What barriers and obstacles need to be addressed?
- Who will be responsible for complying with requirements/requests?

Coverage

- A joint powers entity or watershed district are separate and distinct political entities
 - May sue and be sued
 - The entity could be found liable to a third party for damages caused by their activities
 - Needs independent coverage

Share Experiences and Ask Questions

DISCUSSION