



1W1P Operational Arrangements

Lower Minnesota River West CWMP

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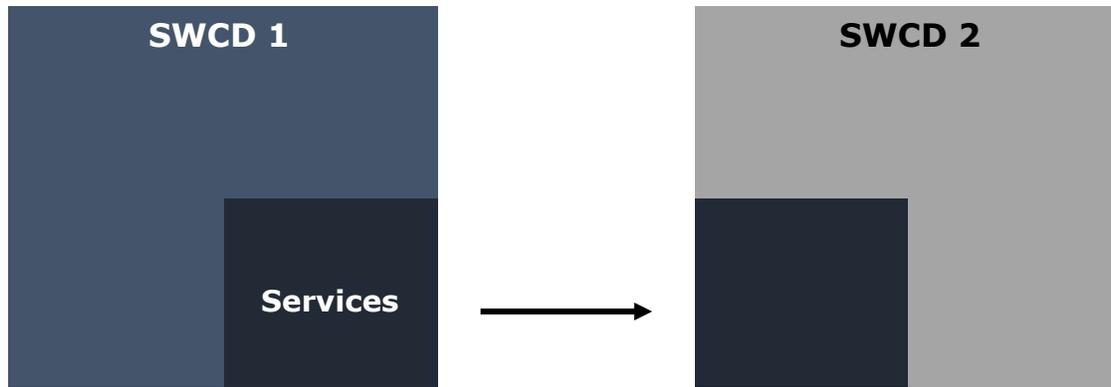
Operational Structures

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



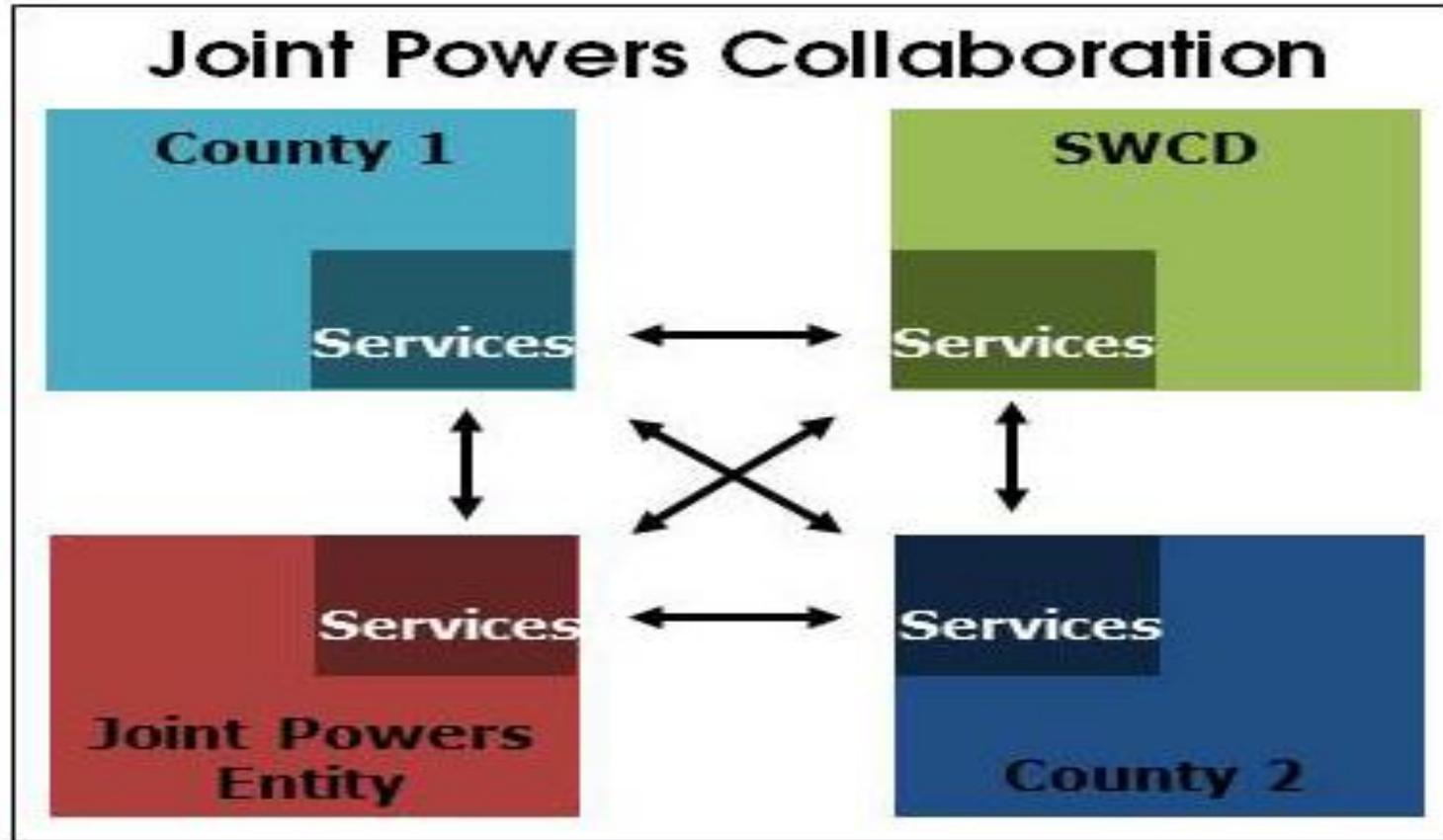
What about an MOA?

- 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

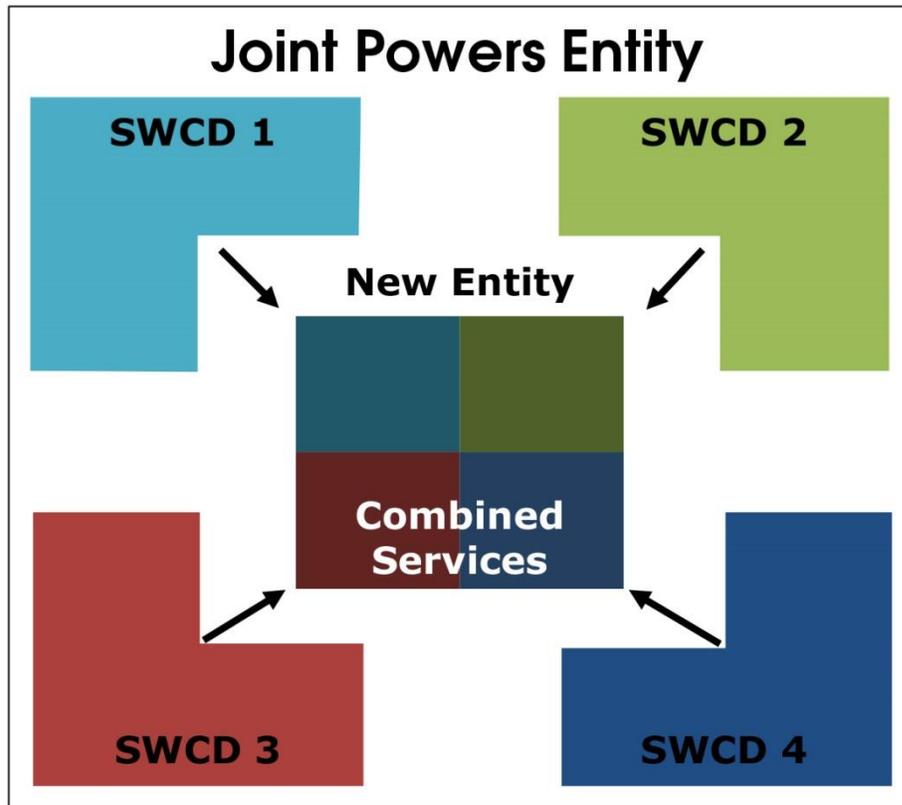
Joint Powers Collaboration (JPC)



JP Collaboration: 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 (JPE)



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

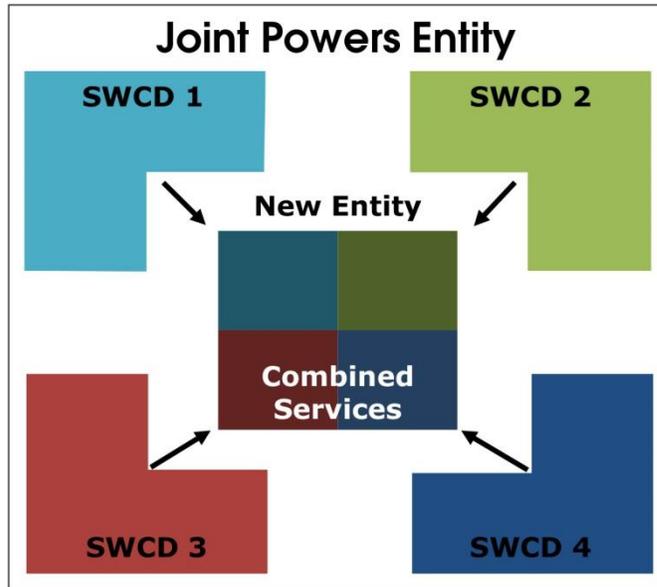
- JPE is a separate, free-standing public entity that can sue and be sued
 - Liability should be transferred from the participating members to the JPE
- A JPE typically operates under its own name
- JPC does not establish a new entity
 - Liability remains with the participating members
- Joint powers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

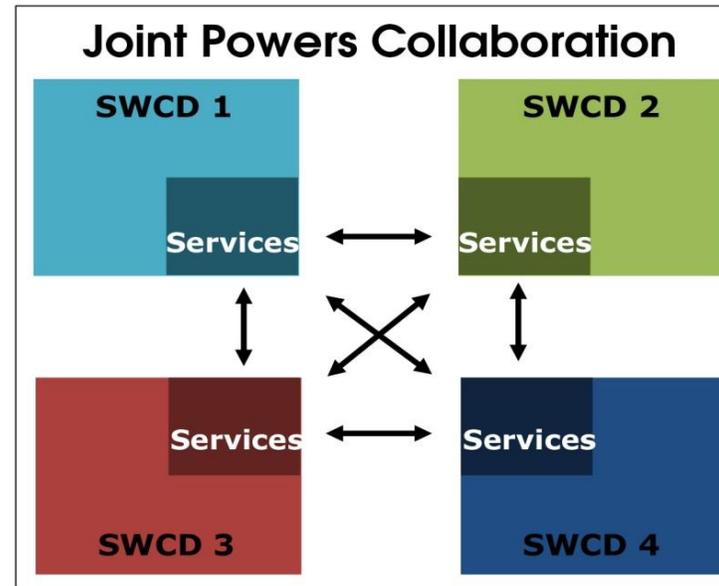
Joint Powers Agreement

Consolidate and transfer operations to a new entity



- Autonomous
- Give up control
- Transfer liability

Outline how governmental units will work together



- Advisory
- Retain control
- Retain some liability

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?
 - 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

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

- 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?

Personnel and Staff Decisions

- Will personnel be needed?
- Will the JPE have its own employees or contract?
- Who will be responsible for HR functions?
 - Conduct job interviews?
 - Hire and fire?
 - Develop job descriptions?
 - Whose personnel policies?
- Payroll should be issued in the name of the JPE?

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?

Governing Documents

- Mandatory Provisions in MS §471.59
 - Enabling authority
 - Purpose of the agreement
 - Governance terms
 - Distribution of property
 - Disbursement of funds
 - Method of disbursement
 - Strict accounting of all funds
 - Report of all receipts
 - Provisions for disbursements
 - Length of agreement and termination provisions

Governing Documents

- Transfer liability to the JPE through the hold harmless and indemnification agreement
- The joint powers entity should protect, defend and hold the individual members harmless from liability claims arising out of the joint activities and decisions of the joint powers entity

Governing Documents

- Hold harmless and indemnification agreement
 - A clause in a contractual agreement that specifies one contracting party will assume specified legal liabilities of another party.
 - Example
 - *The [JPE] shall fully defend, indemnify and hold harmless the parties against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the Board and/or employees and/or the agents of the [JPE]. This Agreement to indemnify and hold harmless does not constitute a waiver by any participant of limitations on liability provided under Minnesota Statutes, Section 466.04.*

Coverage

- The joint powers entity is a separate and distinct political entity
 - May sue and be sued
 - The entity could be found liable to a third party for damages caused by their activities

MCIT Coverage

- The fact that the participating members of a JPE are members of MCIT will not automatically extend the members' coverage to the JPE
- "Member"
 - Entity named in the "Declarations" including any
 - Department
 - Subdivision
 - Committee
 - Commission or
 - Board
 - Under the member's *jurisdiction, control and direction*

