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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

SWCD 1

Services

SWCD 2
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

SWCD 1

New Entity

Combined Services

SWCD 2

SWCD 3

SWCD 4
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 ½ 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
DISCUSSION

Share Experiences and Ask Questions