

JOINT POWERS AGREEMENT FOR THE LAKE OF THE WOODS WATERSHED JOINT POWERS BOARD

Article 1 Enabling Authority

This Joint Powers Agreement is made by and between the political subdivisions organized and existing under the Constitution of laws of the State of Minnesota, hereafter collectively referred to as “Parties”, and individually as “Party” which are signatories to this “Agreement.” The Parties include:

- The Counties of Lake of the Woods and Roseau (Counties) by and through their respective County Board of Commissioners, and
- The Lake of the Woods and Roseau County Soil and Water Conservation Districts (SWCDs), by and through their respective Soil and Water Conservation District Board of Supervisors, and
- The Warroad River Watershed District (WRWD), by and through its Board of Managers,

WHEREAS, Minnesota Statutes § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the contracting Parties; and

WHEREAS, the Counties of this Agreement are political subdivisions of the State of Minnesota, with authority to carry out environmental programs and land use controls, pursuant to Minnesota Statutes Chapter 375 and as otherwise provided by law; and

WHEREAS, the Soil and Water Conservation Districts of this Agreement are political subdivisions of the State of Minnesota, with statutory authority to carry out erosion control and other soil and water conservation programs, pursuant to Minnesota Statutes Chapter 103C and as otherwise provided by law; and

WHEREAS, the Watershed District of this Agreement is a political subdivision of the State of Minnesota, with statutory authority to conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources, pursuant to Minnesota Statutes Chapter 103B, 103D, 103E and as otherwise provided by law; and

WHEREAS, the Parties to this Agreement have a common interest and statutory authority to prepare, adopt, and assure implementation of a comprehensive watershed management plan in the Lake of the Woods Watershed to conserve soil and water resources through the implementation of practices, programs, and regulatory controls that effectively control or prevent erosion, sedimentation, siltation and related pollution in order to preserve natural resources, ensure continued soil productivity, protect water quality, reduce damages caused by floods, preserve wildlife, protect the tax base, and protect public lands and waters; and

WHEREAS, with matters that relate to coordination of water management authorities pursuant to Minnesota Statutes Chapters 103B, 103C, and 103D and with public drainage systems pursuant to Minnesota Statutes Chapter 103E, this Agreement does not change the rights or obligations of the public drainage system authorities; and

WHEREAS, pursuant to Minnesota Statutes Section 103B.101 Subd. 14, the Board of Water and Soil Resources (BWSR) “may adopt resolutions, policies, or orders that allow a comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to chapter 103B, 103C,

or 103D to serve as substitutes for one another or be replaced with a comprehensive watershed management plan,” also known as the “One Watershed, One Plan”; and

WHEREAS, the Parties previously entered into a Memorandum of Agreement for the purpose of planning the One Watershed, One Plan for the Lake of the Woods Watershed, and the Parties have now formed this Agreement for the specific goal of implementing the One Watershed, One Plan for the Lake of the Woods Watershed.

WHEREAS, it is understood by all the Parties to this Agreement that the One Watershed, One Plan for the Lake of the Woods Watershed Planning Area does not replace or supplant local land use, planning, or zoning authority.

WHEREAS, it is understood by all Parties to this Agreement that the One Watershed, One Plan for the Lake of the Woods Watershed Planning Area is intended to provide a framework for consistency and cooperation on a watershed basis and to allow local governments to cooperatively work together to implement projects with the highest return on investment for improving water quality/quantity issues on a watershed basis.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the Parties shall derive here from, all Parties hereby enter into this Joint Powers Agreement for the purposes herein.

NOW, THEREFORE, the Parties hereto agree as follows:

Article 2

Purpose

The Parties to this Agreement recognize that a guiding principle of One Watershed, One Plan is that One Watershed, One Plan implementation will be accomplished through formal agreements among participating local governments on how to manage and operate the watershed. The Parties to this Agreement acknowledge that the purpose of this principle is to provide assurances that decision-making spanning political boundaries is supported by an in-writing commitment from participants. The Parties’ desire to establish a mechanism whereby they may jointly exercise powers common to each participating Party on the following:

- 2.1 Exercise leadership in the development of policies, programs and projects that will promote the accomplishment of the purposes found at Minnesota Statutes § 103B, including the preparation, adoption and implementation of the plan required by Minnesota Statutes § 103B.801 for the Lake of the Woods Watershed Planning Area and
- 2.2 Guide and assist the Parties in acting jointly and individually to take actions that will promote the goals listed in Minnesota Statutes §103B.801 and fulfill their responsibilities under Chapter 103B.
- 2.3 Provide other similar or related services and programs as determined by the Board.
- 2.4 Establish procedures to add qualifying Parties to this Agreement.
- 2.5 Establish a mechanism whereby additional and/or alternative programs and services may be developed for the benefit of the Parties and in furtherance of the objective of the Parties.

Article 3

Name

The Parties working together for the purpose of planning the One Watershed, One Plan for the Lake of the Woods Watershed (Attachment A), known collectively as the “Lake of the Woods Watershed Planning Group” under the Memorandum of Agreement, now establish, through this Agreement, the process for governance of the implementation of the plan as they continue to recognize the importance of partnerships to plan and implement protection and restoration efforts for the Lake of the Woods Watershed. Parties signing this Agreement will continue to be collectively referred to as the “Lake of the Woods Watershed Joint Powers Board” (hereafter, referred to as “the Board”) and are partnering together in the form of this Agreement pursuant of the cooperative authority contained in Minnesota Statutes Section 471.59.

Article 4

Agreement to Participate

- 4.1 Charter Members: A qualifying Party within the Lake of the Woods Watershed that is responsible for water planning and resource management according to Minnesota State Statutes desiring to become a participating Party of this Agreement shall indicate its intent by adoption of a governing board resolution to join the Lake of the Woods Watershed Joint Powers Board.
- 4.2 Adding Additional Parties: A qualifying Party within the Lake of the Woods Watershed that is responsible for water planning and resource management according to Minnesota State Statutes desiring to become a participating Party of this Agreement shall indicate its intent by adoption of a governing board resolution to join the Lake of the Woods Watershed Joint Powers Board. An amendment of this Agreement is needed to add an additional Party.
- 4.3 Compliance: A Party agrees to abide by the terms and conditions of the Agreement; including but not limited to the Joint Powers Agreement, bylaws, policies and procedures adopted by the Board.

Article 5

Governance

- 5.1 Governing Board: A governing board shall be formed to oversee the operations of the Lake of the Woods Watershed Joint Powers Board and shall be known as the Board.
- 5.1.1 Membership: The Board shall be comprised of up to five (5) qualifying Parties with charter membership composed of the following eligible members: one (1) County Commissioner from each qualifying County, one (1) Soil and Water Conservation District Supervisor from each qualifying SWCD, and one (1) Manager from the qualifying Watershed District. The respective individual representatives are designated by the governing board of each participating Party. If a new Party joins the Joint Powers Agreement, the Party shall appoint one of its board members to serve as a representative on the Board. Each participating Party may designate alternates to serve on the Board.

5.1.2 **Terms:** Each representative shall be appointed for a two-year term, with the ability of a Party to appoint a representative for successive terms. In the event that a representative was not appointed by the governing board of each respective Party or prior to expiration of the representative's term, the incumbent representative shall serve until a successor has been appointed.

5.1.3 **Vacancies:** If a representative resigns or is otherwise unable to complete a term on the Board because of the circumstance outlined in Minnesota Statutes §351.02 exist or if a representative fails to qualify or act as a representative, the Board will advise the appointing authority of the vacancy as soon as practicable and the vacancy will be filled according to the requirements of the respective local unit of government.

5.1.4 **Officers of the Board:** The Board shall elect officers from its membership. Duties and terms shall be defined in the Board bylaws.

5.1.5 **Meetings:** The Board shall comply with Minnesota Statutes Chapter 13D (Open Meeting Law).

5.1.6 **Quorum:** A quorum of the Board shall consist of a simple majority of the members.

5.1.7 **Voting:** Each representative who is present shall be entitled to one vote.

A motion or resolution shall be approved by a favorable vote of a simple majority of the members present, provide enough members are present to make a quorum.

A simple majority vote of the full Board can approve One Watershed, One Plan Implementation Work Plans.

A supermajority vote of 75 percent of all members shall be required for amendments to the One Watershed, One Plan or changes to the Board bylaws.

5.1.8 **Staff:** The Board shall not have authority to hire staff. Any staff providing services in conjunction with this agreement shall remain an employee of their respective Party.

5.2 **Bylaws:** The Board shall have the power to adopt and amend such bylaws that it may deem necessary or desirable for the conduct of its business. Such bylaws shall be consistent with this Agreement and any applicable laws or regulations. (See 5.1.7 for amending Board bylaws)

5.3 **Joint Powers Entity Agreement Amendments:** The Joint Powers Entity Agreement may be amended from time to time as deemed necessary. Amendments to this Agreement shall be effective only if they are by resolution and approved by all Parties.

Article 6

Duties of the Board

The Board shall have the responsibility to prepare, adopt and implement a plan for the Lake of the Woods Watershed Planning Area that meets the requirements of Minnesota Statutes § 103B.801.

Version 11/19/2019 Final

Article 7

Powers of the Board

7.1 General Powers: The Board is hereby authorized to exercise such authority as is necessary and proper to fulfill its purposes and perform all duties described herein. Such authority shall include, but not be limited to, authority and responsibility to oversee revenues and expenditures.

7.2 Specific Powers:

7.2.1 Contracts: The Board may enter into any contract necessary or proper for the exercise of its powers or the fulfillment of its duties and enforce such contracts to the extent available in equity or at law. Additionally, the Board may enter into agreements pursuant to Minnesota Statutes § 471.59. The Board may approve any contract consistent with goals of the Board and may authorize its chair to execute these contracts.

The Board shall pay for services performed consistent with the purpose of this Agreement. No payment on any invoice for services performed by a Party, consultant, contractor, or any other person or organization providing services in connection with this Agreement shall be authorized unless approved by the Board. The Board may develop a process to expedite payment of invoices, but any such payments shall be ratified by the Board at their next meeting.

7.2.2 Funds: The Board may disburse funds in a manner which is consistent with the Agreement and with the method provided by law for the disbursement of funds by the Parties to this Agreement. The Board may apply for and accept gifts, grants or assistance from the United States government, the State of Minnesota, any person, association or agency for any of its purposes; enter into any agreement in connection therewith; and hold use and dispose of such gift or grant or assistance in accordance with the terms relating thereto.

7.2.2.1 Debts: The Board may not incur debts.

7.2.2.2 Accountability: All funds shall be accounted for according to generally accepted accounting principles.

7.2.3 Insurance: The Board shall obtain liability insurance and may obtain such other insurance it deems necessary to indemnify the Board and its members for action of the Board and its members arising out of this Agreement.

7.2.4 Personal and Real Property: The Board has no authority to purchase personal or real property. Any personal property provided to a Party through grant funds to accomplish the goals of the One Watershed, One Plan, shall be owned by that Party.

7.2.5 Reservation of Authority: All responsibility not specifically set out to be jointly exercised by the Board under this agreement are hereby reserved to the respective governing bodies of the Parties.

- 7.2.6 Coordinator(s) and Fiscal Agent: The Board shall appoint Lake of the Woods One Watershed, One Plan coordinator(s) and a fiscal agent. These roles are to be defined in the Board bylaws.
- 7.2.7 Committees and Work Groups: The Board can form committees and work groups. Such committees and groups include the Advisory Committee and the Implementation Committee. The roles of Advisory Committee and the Implementation Committee are defined in the Board bylaws.

Article 8 Indemnification and Hold Harmless

- 8.1 Applicability: The Board shall be considered a separate and distinct public entity to which the Parties have transferred all responsibility and control for actions taken pursuant to this Agreement. The Board shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of M.S. 466.
- 8.2 Indemnification and Hold Harmless: The Board 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 Board. 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.

To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the Parties that they shall be deemed a “single governmental unit” for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(a); provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

The Parties of this Agreement are not liable for the acts or omissions of the other participants to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Parties.

Article 9 Term

This Agreement shall commence upon approval of the governing body of each Party and signature of the official with authority to bind the entity listed in Article 1.

The Agreement shall be in effect only with respect to the Parties who have approved and signed it.

Article 10 Withdrawal and Termination

- 10.1 Procedure for Parties to Leave Membership of the Agreement: A Party may withdraw from the Board by indicating its intent in writing to the Board in the form of an official board resolution. Notice must be made

180 days in advance of leaving the Board. A withdrawing Party shall not be entitled to the distribution of any assets or funds. A Party that leaves the membership of the Agreement remains obligated to complying with the terms of any grants the Board has at the time of the Party's notice to leave membership and is obligated until the grant has ended. In the event of a withdrawal by any Party, this Agreement shall remain in full force and effect as to all remaining Parties.

10.2 Termination: The Parties anticipate that this Agreement will remain in full force and effect until canceled by all Parties, unless otherwise terminated in accordance with law or other provisions of this Agreement. The Parties acknowledge their respective and applicable obligations, if any, under Minnesota Statutes Section 471.59, Subd. 5 after the purpose of the Agreement has been completed.

10.2.1 Distribution of Assets: At the time of termination, any property owned by the Joint Powers Entity and any surplus monies remaining shall be divided pro-rata in proportion to the contributions of the several contracting Parties. If no contributions have been made, the assets and surplus monies shall be divided equally among the Parties. See article 7.2.4

Article 11 Counterparts

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the persons authorized to act for their respective Parties on the date shown below.

[Remainder of page intentionally left blank]

IN TESTIMONY WHEREOF the Parties have duly executed this Agreement by their duly authorized officers.

Partner: Lake of the Woods County

APPROVED:

BY:  12/27/19
Board Chair Date

BY: Lorene Hanson 12/27/19
Auditor Date

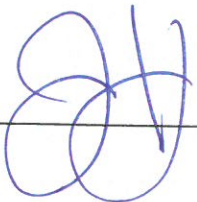
APPROVED AS TO EXECUTION

BY:  1 2 20
County Attorney Date

IN TESTIMONY WHEREOF the Parties have duly executed this Agreement by their duly authorized officers.

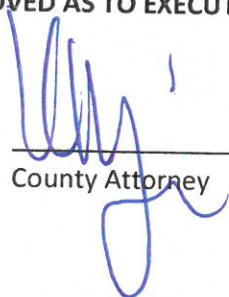
Partner: Roseau County

APPROVED:

BY:  12/26/19
Board Chair Date

BY: Martha Monrud 12-26-19
Auditor Date

APPROVED AS TO EXECUTION

BY:  1/2/20
County Attorney Date

IN TESTIMONY WHEREOF the Parties have duly executed this Agreement by their duly authorized officers.

Partner: Lake of the Woods Soil and Water Conservation District

APPROVED:

BY:  12-12-19
Board Chair Date

BY:  12-12-19
District Manager Date

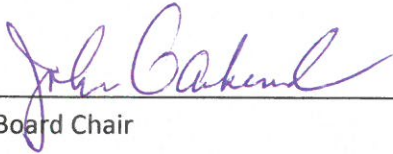
APPROVED AS TO EXECUTION

BY:  12 16 19
County Attorney Date

IN TESTIMONY WHEREOF the Parties have duly executed this Agreement by their duly authorized officers.

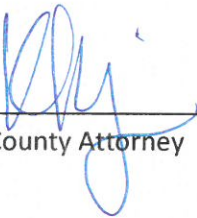
Partner: Roseau County Soil and Water Conservation District

APPROVED:

BY:  12-10-19
Board Chair Date

BY:  12-10-19
District Manager Date

APPROVED AS TO EXECUTION

BY:  12-16-19
County Attorney Date

IN TESTIMONY WHEREOF the Parties have duly executed this Agreement by their duly authorized officers.

Partner: Warroad River Watershed District

APPROVED:

BY: William R. Thompson 11/26/19
Board Chair Date

BY: Keith Lander 11-26-19
District Administrator / Treasurer Date

APPROVED AS TO EXECUTION

BY: [Signature] 12-16-19
County Attorney Date

Attachment A: Map of the Lake of the Woods Watershed

