

Joint Powers Agreement Establishing a Board of Directors To Organize and Direct a Challenge To the Construction of a Dam

The parties to this Agreement are governmental units of the State of Minnesota and North Dakota. This Agreement is made pursuant to the authority conferred upon the parties by Minnesota Statute 471.59 and North Dakota Century Code 54-40.1.

1. General Purpose. . The purpose of this Joint Powers Agreement is to establish a Board of Directors to protect the citizens and properties of Richland and Wilkin “Counties and to take any and all steps necessary as determined by the respective County Commission to oppose the planned construction of a Dam on the Wild Rice and Red River approximately four miles north of the boundaries separating Richland and Wilkin Counties with Cass and Clay Counties as proposed in the Fargo Metropolitan Area Flood and Risk Management Project. The County Commissioners of Richland and Wilkin County have deemed it necessary to have this joint powers agreement to prevent the inducement of increased flooding south of the proposed dam, which increased flooding would result in loss of tax revenues, loss of populations, uncompensated damage to public structures, right of ways and ditch systems, reduction in land values decreasing real estate taxes, elimination of government entities, reduction in school funding and enrollment within the boundaries of impacted governmental units.

2. Definitions.

- 2.1 "Additional Member" - A signatory of this Joint Powers Agreement who is not an Initial Member, having joined after the initial execution of this Joint Powers Agreement.
- 2.2 "Board" - The Board of Directors established by this Agreement.
- 2.3 "Director" - A member of the Board of Directors.
- 2.4 "Initial Member" - An original signatory of this Joint Powers Agreement as identified in Section 3.1.
- 2.5 "Member" - Any city, township, school district or county which is a signatory to this Agreement.
- 2.6 "Project" - Fargo Metropolitan Area Flood Risk Management Project.

3. Membership.

- 3.1 The Initial Members shall be: Richland County and Wilkin County

4. Board of Directors.

- 4.1 The Board of Directors shall consist of four members of which two shall be Wilkin County Commissioners and two shall be Richland County Commissioners.

- 4.2 Wilkin County and Richland County Commissions shall each appoint two Members to the Board. Each Member may designate an alternate for its appointed Director. In the event of a vacancy of a director, the appointing Commission for that director shall appoint a replacement director.
- 4.3 Directors shall serve without compensation from the Board, This shall not prevent a Member from providing compensation to a Director for serving on the Board.

5. Quorum/Voting.

- 5.1 A majority of all of the Directors shall constitute a quorum. A simple majority vote of the Directors present at a meeting with a valid quorum shall be required for the Board to take action, unless otherwise provided in this Agreement or by law.
- 5.2 There shall be no voting by proxy except as otherwise authorized in this Agreement. All votes must be cast by the Director or designated alternate at a Board Meeting. Each Director shall have on (1) vote.

6. Officers.

- 6.1 The officers of the Board shall be a Chair, Vice-Chair and Secretary.
- 6.2 The Richland County Auditor shall act as the Treasurer and the depository of all board funds.
- 6.3 At its first meeting, the Board shall elect a Chair, a Vice-Chair, and a Secretary who shall serve out the following initial terms of office:
 - Chair to serve through December 31 of the year when first elected and until his/her successor is elected.
 - Vice-Chair to serve through December 31 of the year following election and until his/her successor is elected.
 - Secretary to serve through December 31 of the year until his/her successor is elected. At the meeting prior to completion of the initial term(s) and at the completion of every term thereafter, a Director shall be elected to each respective office for a one-year term.
- 6.4 A Director shall be elected in the same manner as above to fill out an unexpired term of any office which becomes vacant.

7. Meetings.

- 7.1 The Board shall meet at least monthly on a schedule determined by the Board.
- 7.2 Meetings of the Board may be called by the Chair or upon written request of a majority

of the Directors.

- 7.3 The Board may elect or appoint such other officers as it deems necessary to conduct its meetings and affairs.

8. Powers and Duties of the Board.

The powers and duties of the Board include, but are not limited to, the following:

- 8.1 The Board shall prepare, adopt, and implement a plan to provide responses to the Fargo Metropolitan Area Flood Risk Management Project to the extent it impacts the members of the agreement.
- 8.2 The Board shall have the power to seek a legal opinion on any legal basis to challenge the project including action necessary to enjoin the planning, funding or construction of the "project."
- 8.3 The Board shall as a part of the legal opinion obtain an estimate of costs and expenses to proceed with the necessary litigation.
- 8.4 The Board shall on the approval of the Members pursue contracting professional services from a Law Firm.
- 8.5 The Board may make contracts, employ consultants, legal services, incur expenses and make expenditures necessary and incidental to the effectuation of its purposes and powers, in conformance with the requirements applicable to contracts and purchases of all of the Members, subject to the authorization of its Members.
- 8.6 The Board may further cooperate or contract with the State of Minnesota, State of North Dakota or any political subdivision, federal agencies or private or public organizations to accomplish the purposes for which it is organized.
- 8.7 The Board may accept from other political subdivisions, private or public organization or individuals' contribution to accomplish the purposes for which it is organized.
- 8.8 The Board may contract for or purchase such insurance as the Board deems necessary for the protection of the Board or the Members.
- 8.9 The Board may accumulate reserve funds for the purposes herein mentioned not currently needed.
- 8.10 The Board may, with the consent of the members, engage lobbyists to oppose any plans submitted to congress by the Fargo-Moorhead Metropolitan Area Flood Risk Management project which the members deem detrimental to the members.

- 8.11 The Board may collect money, subject to the provisions of this agreement, from its Members and from any other source(s) authorized by law.
- 8.12 The Board Treasurer shall cause to be made an annual audit of the books and accounts of the Board and shall make and file a report to its Members at least once each year. Strict accountability of all funds and report of all receipts and disbursements shall be made.
- 8.13 The Board's books, reports and records shall be available for and open to inspection by its Members at all reasonable times. The Board's records shall be available for inspection by the public pursuant to Minnesota Statutes, Chapter 13 and the North Dakota Open Records Law.
- 8.14 The Board may appoint such committees as it deems necessary to exercise the powers of the Board.
- 8.15 The Board may exercise all other lawful powers necessary and incidental to the implementation of the purposes and powers set forth herein, including, without limitation, the adoption of by-laws to govern the functioning of the Board, provided that no by-law or action of the Board shall be contrary to the terms of this Agreement.

9. Additional Members.

- 9.1 Other political subdivisions (Additional Members) may become a party to this Agreement upon approval of a majority of the Board entitled to vote. The new Member shall sign a copy of this Agreement. Existing Members shall not be required to resign.
- 9.2 Members joining after the Initial Members have executed the Agreement shall be Additional Members and shall not be entitled to appoint a Director to the Board but shall have all the other rights and privileges of Membership.
- 9.3 The Board may require Additional Members to pay a fee deemed appropriate by the Board. Said fee shall take into consideration the expenditures made on behalf of and to the benefit to the member,

10. Financing - Contributions to General Administration.

- 10.1 Each Member agrees to contribute each year to a general fund subject to the approval of the members governing body.
- 10.2 The initial contribution by each Initial Member shall be as follows:

The initial contribution shall be paid within sixty (60) days after the member executes this agreement.

10.3 Contributions of a member other than the Initial Members to this agreement shall be as determined by the Board.

11. Budget.

11.1 On or before March 1st of each year, the Board shall, by approval of 3/4 of those eligible to vote, adopt a proposed general budget for the ensuing year and decide upon the total amount necessary for the general fund. The board shall present the proposed budget to the Members governing bodies for approval. The proposed budget shall include the fee allocated to each member.

11.2 Any Member which has objected to its financial contribution as stated in the proposed budget may withdraw from this Agreement by filing with the Chair a written notice of intent to withdraw by April 1, of the year proceeding the year for which the budget is proposed. The effective date of withdrawal shall be December 31 of the proposed budget year. Any Member formally withdrawing is still obligated to pay its contribution according to the terms of this Agreement for the proposed budget year but shall have no further liability or obligation to the Members except as to actions, events or responsibilities arising or occurring before the effective date of withdrawal. Any Member withdrawing under this provision shall not be entitled to any refund from the Board.

12. Duration.

12.1 Notwithstanding Section 13.2, each Member agrees to be bound by the terms of this Agreement until Dec. 31,2013.

13. Termination.

13.1 This Agreement may be terminated prior to Dec. 31,2013 by the written agreement of 3/4 of the Initial Members. Any Initial Member may petition the Board to terminate this Agreement. Upon 30 day's notice in writing to the clerk of the governing body of each Initial Member, the Board shall hold a hearing and upon a 3/4 vote of all Directors eligible to vote, the Board may by resolution recommend that the Agreement be terminated. The resolution shall be submitted to the governing body of each Member and if ratified by 2/3 of the governing bodies of all Members within sixty (60) days, the Board shall terminate the Agreement, allowing a reasonable time to complete work in progress.

13.2 Upon dissolution this agreement, all monies on hand, shall be distributed to the current Members. Such distribution of assets shall be made in proportion to the total contributions by the respective Members over the entire duration of this Agreement. The Board shall continue to exist after dissolution for such period, no longer than six months, as is necessary to wind up its affairs, but for no other purpose.

14. Default.

14.1 Upon the failure of any Member to contribute its financial obligation in a timely manner, or to fulfill any of its other material obligations under this Agreement the Board may expel a Member upon 3/4 vote.

15. Effective Date.

15.1 This Agreement shall be in till force and effect when all Initial Members, (identified in Section 3.1 of this Agreement), sign this Agreement. All Members need not sign the same copy. The signed Agreement along with a certified copy of the resolution authorizing the Agreement, shall be filed with the Richland County Auditor, who shall notify all Members in writing of its effective date and set a date and place for the Board's first meeting. Prior to the effective date of this Agreement, any signatory may rescind its approval.

16. Amendments.

16.1 Any Member may petition the Board or the Board on its own initiative may recommend changes in this Agreement to its Members. An Amendment to this Agreement shall become effective upon written agreement of 3/4 of the Initial Members.

IN WITNESS WHEREOF, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statute 471.59.

APPROVED AS TO FORM:

COUNTY OF WILKIN, MN

_____ BY: _____
County Attorney Chairperson of Board

Date of Signature _____ Date of Signature _____

Attest _____
Auditor

Date of Signature _____

APPROVED AS TO FORM:

CITY OF _____

City Attorney

BY: _____
Mayor

Date of Signature _____

Date of Signature _____

Attest _____
Clerk

Date of Signature _____

APPROVED AS TO FORM:

TOWNSHIP OF _____, ND

Supervisor

BY: _____

Date of Signature

Attest _____
Clerk

Date of Signature _____

APPROVED AS TO FORM:

TOWNSHIP OF _____, MN

Supervisor

BY: _____

Date of Signature

Attest _____
Clerk

Date of Signature _____

APPROVED AS TO FORM: SCHOOL DISTRICT _____

_____ BY: _____
Chair

Date of Signature

Attest _____
Secretary

Date of Signature _____