

**HORIZON PUBLIC HEALTH
JOINT POWERS AGREEMENT
— ANNOTATED**

This Joint Powers Agreement serves as a model agreement for its strong support from its parties, as well as its robustness, careful use of language, structure, and formatting.

Thus, it can be used as a guide when drafting and amending JPA's. However, this recommendation is intended for information purposes only and does not constitute legal advice. Annotations in the margins give short explanations of key parts of the agreement.

HORIZON PUBLIC HEALTH JOINT POWERS AGREEMENT

**Article 1
Enabling Authority**

THIS AGREEMENT is made by and between the political subdivisions organized and existing under the Constitution and laws of the State of Minnesota, hereafter collectively referred to as "Parties", and individually as "Party" which are signatories to this "Agreement."

Minnesota Statutes, Section 471.59 provides that two or more governmental units may by Agreement jointly exercise any power common to the contracting Parties; and

Minnesota Statutes, Section 145A.03, subdivision 2 provides that a county may establish a joint community health board by agreement with one or more contiguous counties; and

Minnesota Statutes, Section 145A.04 provides that a community health board has the general responsibility for development and maintenance of a system of community health services under local administration and within a system of state guidelines and standards,

In consideration of the mutual promises and Agreements contained herein and subject to the provisions of Minnesota Statutes, Sections 471.59 and Minnesota Statute Section 145A and all other applicable statutes, rules and regulations, the following Parties:

← Title of Agreement, with a clear indication of what it is (JPA) and between what parties, or name of joint entity if more than ~3 parties.

← Enable the authority of the agreement, **required by MN Statute § 471.59, subd. 1.**

(Recommended). It is common practice to lay out recitals, which give the background and reasons for establishing the agreement, as well as other legal precedents.

← By convention, each recital starts with the word *whereas*, but it is not required. This agreement does not follow that. This section can also be labeled as *Witnesseth*.

Note: recitals aren't intended to be a part of the agreement's provisions.

Douglas County
Grant County
Pope County
Stevens County
Traverse County

hereto agree as follows:

**Article 2
Purpose**

The Parties desire to establish a mechanism whereby they may jointly exercise powers common to each participating Party on issues requiring:

- A. The general responsibility for development and maintenance of a system of community health services under local administration and within a system of state guidelines and standards.
- B. Under the general supervision of the commissioner, recommend the enforcement of laws, regulations, and ordinances pertaining to the powers and duties within the 5-county community health board jurisdictional area.
- C. Provide other similar or related services and programs as determined by the Board.
- D. Establish procedures to add qualifying Parties to this Agreement.
- E. 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 objectives of the Parties.

**Article 3
Name**

The name of this entity shall be Horizon Public Health.

**Article 4
Agreement to Participate**

- 4. Charter Members. A Party desiring to become a charter member of Horizon Public Health shall indicate its intent by adoption of a board resolution prior to July 1, 2014.

Establish the purpose of the agreement, **required by MN Statute § 471.59, subd. 2.**

It is recommended to be thorough as possible here as the purpose should be periodically reviewed.

In this example, the duties/powers of the board are also established here.

(Optional). Although not specified in statute, giving a name to the new organization better signifies that it is a separate legal entity, and its reference is more easily communicated.

(Optional). It is recommended to include a detailed process for joining the joint powers collaborative. Here, extra information on financial obligations and employee work space is included.

- 4.1. New Members. Any Minnesota county governmental unit including, but not limited a joint powers entity of the State of Minnesota that is contiguous to any of the existing Parties to the Agreement, shall be eligible to become a member of Horizon Public Health. The Governing Board of Horizon Public Health shall define membership requirements for a new Party and may impose such conditions of membership as it deems appropriate to protect the interest of Horizon Public Health and to provide for the benefit of its members. The addition of a new Party to Horizon Public Health shall require a two-thirds (2/3) majority vote of the Governing Board.
- 4.2. 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.
- 4.3. Financial Obligation. Each Party shall annually contribute to the budget of Horizon Public Health as outlined in Article 8.2.2.
- 4.4. Provision of Office Space. Each Party agrees to provide office facilities, including internet connectivity, to house the Horizon Public Health employees whose home base office is assigned to that respective Party. In addition, each of the five (5) Parties agrees to provide office cleaning services at no cost to Horizon Public Health. All other costs associated with supporting office functions and operations including but not limited to basic telephone service, long distance telephone charges, computers, printers, copiers, faxes and information technology support shall be the financial responsibility of Horizon Public Health unless otherwise directed by the Governing Board and agreed to by the parties to the agreement.

**Article 5
Governance**

- 5. Governing Board. A governing board shall be formed to oversee the operation of Horizon Public Health and shall be known as the Horizon Community Health Board (Board).
 - 1.1. Membership. The Board shall consist of 13 members as follows:
 - 1.1.1. Two (2) elected officials shall be appointed by the county board of commissioners of each of the Parties.
 - 1.1.2. One (1) additional member, who may or may not be an elected official, shall be appointed by the Party with the largest population.
 - 1.1.3. There shall be no provision for alternates to the appointed Board members.

Establish the governance structure of the board, **required by MN Statute § 471.59, subd. 2.**

This section is a good place to provide details on how the board is peopled, terms and filling vacancies, board leadership, meeting schedule, any subgroups or committees, and any specific roles among the board.

1.1.4. A withdrawing Party shall retain membership on the Board until the effective date of withdrawal as outlined in Article 11.

1.2. Terms and Vacancies.

1.2.1. Terms for members appointed to the Board by the county board of commissioners of the respective Parties to the Agreement shall be one year with term limits established as eight (8) consecutive one-year terms.

1.2.2. Terms for the at-large representatives shall be two (2) years with term limits established as four (4) two-year terms.

1.2.3. A vacancy of a member appointed by the county board of commissioners of a Party to the Agreement shall be filled by the appointing Party as soon as the vacancy occurs. A vacancy of an at-large representative shall be filled in accordance with the same process established for the initial appointment as described in the by-laws.

1.3. Documentation. Resolutions or other documentation of designation shall be filed with the Secretary of the Board.

1.4. Members not Employees. Members of the Board shall not be deemed to be employees of Horizon Public Health. As defined in the by-laws, Board Members shall be compensated with a per diem and mileage for serving on the Board.

5.2. Officers of the Board. The Board shall elect a Chair and Vice Chair from its membership who shall serve one-year terms.

5.2.1. Election of Officers. The election of the Chair and Vice-Chair shall be conducted at the first meeting of the calendar year.

5.2.2. Secretary/Treasurer. The Board shall elect or appoint a secretary/treasurer.

5.2.3. Additions to the Board. The Board may elect or appoint such other officers as it deems necessary to conduct the affairs of the organization.

5.2.4. Committees. The Board shall have the authority to appoint such committees as it deems necessary to fulfill the purpose of the organization.

(Optional). If the entity is of sufficient size and complexity, committees (that meet regularly) can divide tasks and responsibilities to make implementation more manageable.

This section can have a thorough breakdown on how they are formed and managed.

5.3. Meetings.

- 5.3.1. The Board shall meet no less than 6 times per calendar year at a time and place determined by the Board.
- 5.3.2. The Chair may convene or, upon written request of a majority of the Board, members shall convene a special meeting.
- 5.3.3. All regular and special meetings of the Board shall comply with Minnesota Statutes Chapter 13D (Open Meeting Law). Written notice of meetings shall be sent to Board members pursuant to Minnesota Statute Chapter 13D by the Secretary or designee.
- 5.3.4. Pursuant to M.S. 13D.02 Subd. 1, in the event that the Chair or designated Chair of the Horizon Community Health Board determines that an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12, one or more Board members may participate in a meeting of the Community Health Board, or a committee meeting, by means of conference telephone or similar communications equipment that allows all persons participating in the meeting to hear one another and hear all discussion. Additionally, such a meeting must meet all of the requirements of M.S. 13D.02 Subd. 1-4. Participation in this manner shall constitute presence in person at such meeting.

It is **recommended** to meet as regularly and consistently as possible (in this entity's case, monthly).

This agreement comprehensively details protocols on meeting as a board.

5.4. Voting. A quorum shall consist of no less than fifty-one percent (51%) of Board members eligible to vote. Board actions shall be determined by a majority of the votes cast at the meeting. Abstentions shall not be counted as votes cast for the purpose of this section. Proxy votes are not permitted.

5.5. By-Laws. The Board may adopt bylaws to govern its operations. Such bylaws shall be consistent with the Agreement and applicable law.

5.6. Amendments. This Agreement may be amended from time to time as deemed necessary.

5.7. Records, Accounts and Reports.

- 5.7.1. Records and Reports. The books and records, including minutes and the original fully executed Agreement, of the Board shall be subject to the provisions of Minn. Stat. Ch.

(Recommended). Include details on the procedure for amending the agreement.

Some agreements amendment sections include a procedure on initiating and agreeing on amendments.

13. They shall be maintained at the office of the Public Health Administrator. Records, accounts and reports shall be maintained by the Secretary/Treasurer.

5.7.2. Receipts and Disbursements. The Horizon Community Health Board will ensure strict accountability for all funds of the organization and will require reports on all receipts and disbursements made to, or on behalf of Horizon Public Health.

Article 6 Duties of the Board

The Board shall formulate a plan to carry out its purposes pursuant to Article 2.

Article 7 Reservation of Authority

All responsibilities not specifically set out to be jointly exercised by the Board under this Agreement are hereby reserved to the Parties.

Effective January 1, 2015, this Agreement shall supersede all prior agreements of the Parties to jointly provide for the development and maintenance of a system of community health services under local administration and within a system of state guidelines and standards

Article 8 Powers of the Board

8. General Powers. The Board is hereby authorized to exercise such authority and powers common to the Parties as is necessary and proper to fulfill its purposes and perform its duties. Such authority shall include the specific powers enumerated in this Agreement or in the bylaws.

8.1. Specific Powers.

8.1.1. Contracts. The Board may enter into contracts necessary for the exercise of its duties and responsibilities to govern Horizon Public Health. The Board may take such action as is necessary to enforce such contracts to the extent available in equity or at law. Contracts let and purchases made pursuant to this Agreement shall conform to the requirements applicable to contracts required by law (i.e. fiscal management, personnel management).

In this section and others, lay out the duties, powers, and responsibilities of the board, required by [MN Statute § 471.59, subd. 2.](#)

In this case, the board's duties are included in the section establishing the entity's purpose. The board's powers are in their own section.

In this section and others, lay out the powers and responsibilities of the board, required by [MN Statute § 471.59, subd. 2.](#)

In this case, the board's powers are established in their own section.

8.1.2. Annual Budget.

The annual budget shall be prepared by the Public Health Administrator, and presented to the Horizon Community Health Board no later than August 15 of each year for the following calendar year. Following the adoption of the annual budget by the Horizon Community Health Board, the financial responsibility of each Party shall be presented in an annual budget request to each Party.

(Recommended). It is important to establish detailed and comprehensive provisions, as done here, that help ensure stable finances in the joint entity.

In 2015, 2016, and 2017 each Party's annual contribution shall be equivalent to the amount that the Party budgeted for public health services in 2014 with an exception for a potential increase to cover health insurance increases. In 2018 and thereafter, the individual Party budget requests will be determined utilizing a population-based formula developed and adopted by the Horizon Community Health Board, whose membership includes representatives from each Party. Each Party retains individual authority for accepting the financial responsibility for their entity. Should a Party not be in agreement with the budget request, that Party shall provide written notification to the Horizon Community Health Board of its request for reconsideration of the annual Horizon budget.

In the event that a Party and the Horizon Community Health Board are unable to come to an agreement regarding the yearly contribution by October 15 of that year, the parties agree to attempt to resolve this dispute by mediation. The Horizon Community Health Board and the Party will be responsible for their own costs that are incurred by mediation. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures.

Until the dispute of the yearly contribution is resolved, all Parties shall be obligated to contribute a yearly contribution in an amount equivalent to the most recent calendar year contribution. Any resolution reached with the individual Party shall be mutually applied to all of the Parties via the established formula.

8.1.3. Insurance. Horizon Public Health shall obtain liability and property insurance and may obtain such other insurance it deems necessary to indemnify the Board and its members for actions of

the Board and its members arising out of this Agreement.

8.1.4. The Board may hire or authorize the hiring of staff. The Board shall also be the employer of the employees of Horizon Public Health.

Article 9 Indemnification and Hold Harmless

9. Applicability. Horizon Public Health 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. Horizon Public Health 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.
- 9.1. Indemnification and Hold Harmless. Horizon Public Health 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 Horizon Public Health. 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.

(Strongly recommended by MCIT). For reasons of liability, a detailed Indemnification and Hold Harmless section is strongly recommended. This section ensures that the joint entity protects, defends, and holds the individual members harmless from potential liability claims.

MCIT also **recommends** to include mentioning of a transfer of liability to the newly-formed joint entity.

Article 10 Term

For the purposes of adopting operating procedures and completing other organizational and administrative duties necessary to ensure full implementation of Horizon Public Health by January 1, 2015, this Agreement shall commence upon approval of the governing body of each Party and signature of the official with authority to bind the Party listed in Article 1. The actual duties of Horizon Public Health, as stated herein, shall commence upon January 1, 2015.

MN Statute § 471.59, subd. 4 and 5 **requires** a definite term of the beginning and end of an agreement. Sometimes it's included in the section on withdrawal and termination.

Article 11 Withdrawal and Termination

11. Withdrawal. A Party may not withdraw from Horizon Public Health during the first two calendar years following the effective date of this Agreement.

11.1. Effective Date and Obligations. The withdrawing Party must notify the Commissioner of Health and the other Parties to this Agreement at least one year before the beginning of the calendar year in which the withdrawal takes effect. A withdrawing Party is obligated to pay its annual contribution until the effective date of withdrawal. The withdrawing Party shall have no liability or obligation to Horizon Public Health after the effective date of withdrawal for debts or claims incurred after the effective date of withdrawal.

11.2. Termination. This Agreement shall remain in force until a unanimous vote to dissolve Horizon Public Health is made by the Board or until the Board consists of only one Party.

11.2.1. Winding-up and Distribution. Upon termination of this Agreement, Horizon Public Health shall be dissolved. The Board shall continue to exist after dissolution as long as is necessary to wind-up and conclude the affairs subject to this Agreement. After payment of all claims and expenses, any surplus shall be prorated and distributed to the member Parties remaining at the time of dissolution, based upon the formula used to determine the respective financial contribution of the member Parties. Additionally, any joint property acquired shall also be liquidated and the resulting funds distributed based upon the overall percentage of services provided to each member Party remaining at the time of dissolution.

In this section, establish the procedure for withdrawal and termination, as **required by MN Statute § 471.59, subd. 4 and 5**. This is also a good place for describing disbursement of assets, monies, and equipment, which is also required.

**Article 12
Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Counterparts shall be filed with, and maintained by the office of the Public Health Administrator.

(Recommended). Include a section on document counterparts, detailing how copies and signatures are sent and stored.

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.

Each Party must complete the following. An original of each Party's execution of the Agreement should be attached to the Agreement and remain in a permanent file.

Approved as to form and execution: COUNTY OF _____

County Attorney/Date

By _____
Chair of Board

Date of Signature _____

Attest _____
Clerk to Board

LAKE SUPER SANITARY DISTRICT JOINT POWERS AGREEMENT – ANNOTATED

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Thus, it can be used as a *guide* when drafting and amending JPA's. However, this recommendation is intended for information purposes only and does not constitute legal advice. Annotations in the margins give short explanations of key parts of the agreement.

JOINT POWERS AGREEMENT

This Joint Powers Agreement is made and entered into pursuant to Minn. Stat. § 471.59, by and between the **Sanitary Board of the Western Lake Superior Sanitary District**, a political subdivision of the State of Minnesota ("District"), and the **County of Carlton**, Minnesota, a political subdivision of the State of Minnesota ("County").

RECITALS

- A. The District is a political subdivision of the State of Minnesota with authority and responsibility to manage and dispose of wastewater and solid waste within its boundaries and, pursuant to such authority, operates a solid waste transfer station at its facility located at 2626 Courtland Street, Duluth, Minnesota.
- B. The County is a political subdivision of the State of Minnesota that is responsible for solid waste management within its boundaries. The County operates a solid waste transfer station located at 1950 Highway 210, Carlton, Minnesota.
- C. The District and the County are authorized pursuant to Minn. Stat. § 471.59 to enter into a Joint Powers Agreement concerning solid waste activities.

Title of Agreement, with a clear indication of what it is (JPA) and between what parties, or name of joint entity if more than ~3 parties.

Enable the authority of the agreement, **required by MN Statute § 471.59, subd. 1.**

(Recommended). It is common practice to lay out recitals, which give the background and reasons for establishing the agreement, as well as other legal precedents. It is helpful to be as comprehensive as possible.

By convention, each recital starts with the word *whereas*. This section can also be labeled as *Witnesseth*.

Note: recitals aren't intended to be a part of the agreement's provisions.

- D. The District has an agreement with the City of Superior, Wisconsin (“City”) for the disposal of waste at the City land disposal facility (Solid Waste Facility Operation License #2627) which expires on June 30, 2024, with extensions to be negotiated by the City and the District through the end of operational life of the Disposal Facility. It is anticipated that the Disposal Facility will have some remaining available capacity after July 1, 2024.
- E. The District and the County have previously entered into Joint Powers Agreements providing for the disposal of Carlton County solid waste under the District Solid Waste Disposal Agreement with the City. The current Amended Joint Powers Agreement expires June 30, 2019.
- F. Both the District and the County operate household hazardous waste and recycling programs for residents within their respective jurisdictions. The jurisdiction of the District overlaps the jurisdiction of the County over an area comprised of the cities of Cloquet, Carlton, Scanlon, and Wrenshall, and the townships of Silver Brook, Thomson, and Twin Lakes.
- G. The County currently has a separate waste transportation agreement with a contractor, which transports the County waste directly to City.

NOW, THEREFORE in consideration of the mutual covenants and agreements contained herein, the District and the County agree as follows:

1. Purpose. The purpose of this Joint Powers Agreement is to enable the County to dispose of solid waste through the District’s solid waste disposal contract with the City, and to clarify the solid waste responsibilities of the District and the County in their overlapping jurisdictional area.
2. Definitions. As used in this Agreement, terms shall have the meanings as defined in the District Solid Waste Ordinance unless a different meaning clearly appears from the context. The following terms are defined as:

“Acceptable Waste” means those Solid Wastes that are not prohibited from processing or disposal as defined by the solid waste disposal Agreement between the City and the District, District Ordinance or pursuant to local, State and federal laws.

“Collector” means the person or entity specifically licensed by the District or other government unit to collect and dispose of garbage, Rubbish, other Mixed Municipal Solid Waste or Recyclable Materials.

(Recommended). Now therefore concludes the recitals and begins the provisions of the agreement.

Establish the purpose of the agreement, **required by MN Statute § 471.59, subd. 2.**
As exemplified here, it is **recommended** to be thorough as possible in this section, as the purpose should be periodically reviewed.

(Optional). While not always included, defining key vocabulary helps in future clarifications.

"Disposal Facility" means the City of Superior, Wisconsin landfill located on Moccasin Mike Road (Solid Waste Facility Operation License #2627).

3. Solid Waste Disposal. The Acceptable Waste collected at the County transfer station will be included with the District waste for purposes of securing the best rate for disposal of the waste. The County shall use its best efforts to collect Acceptable Waste at the County transfer station. The County shall transfer the waste to the City Disposal Facility at the County's expense. The County shall use its authority to assist the District in obtaining written agreements with Collectors in Carlton County securing delivery of waste to the Carlton Transfer Station for the term of this agreement. The County shall require that any Collector using the County transfer station must comply with the provisions of this agreement. The County shall charge to a Collector the applicable rate established by the District for any Collector that has failed to sign a solid waste delivery agreement or any Collector deemed to be Noncompliant by the District in accordance with the District Solid Waste Ordinance.

4. Fee for Services. The County shall be charged the disposal fee charged to the District by City, and any increases in the disposal fee shall be calculated in accordance with the provisions of the solid waste disposal agreement with the City. The disposal fee shall be adjusted on July 1 of each year, based upon the CPI adjustment as described in the agreement between the City and the District. The disposal fee includes Wisconsin environmental and recycling fees which may be modified by the state at any time.

Effective July 1, 2019 and during the first year of the term of this Agreement, the County

- i. Thirty-Nine Dollars and Eighty-four Cents (\$39.84) for each ton of Mixed Municipal Solid Waste (\$38.84 disposal fee and \$1.00 admin fee); and

- ii. Forty-One Dollars and Eighty-four Cents (\$41.84) for each ton of Mixed Waste (\$38.84 disposal fee and \$3.00 admin fee).

Unacceptable Waste deposited at the Disposal Facility by the County, its agents, employees, contractors or subcontractors, shall be separated by the City and lawfully disposed. Any costs incurred by the City for such disposal

shall be the responsibility of the County. County shall reimburse the District for any such costs assessed by City on County waste.

District shall bill the County every month between the first (1st) and tenth (10th) day of the month for all waste delivered to City prior to the date of such bill which has not been included in any previous bill and shall be reimbursed within thirty (30) days of receipt by the County of each such billing. Compensation for the disposal services performed pursuant to this Agreement shall be based upon the number of tons of Acceptable Waste from County accepted at the Disposal Facility as determined from the records of the City.

The County shall pay an out-of-district fee of \$5.00 per ton for waste generated from outside of the District boundaries, after receiving a credit for the administrative fees and capital fees already paid (on a per ton basis) for such waste during the year. The County shall pay the annual out-of-district fee (covering the annual period of July 1 to June 30) on September 1st of each year calculated at \$5.00 (after receiving the credits noted above) per ton on 18% of the tons of Acceptable Waste from County accepted at the Disposal Facility as determined from records of City. The parties agree that 18% of all County Acceptable Waste is from these outlying areas. The out-of-district fee per ton may be modified in the discretion of the District. The District will give written notice of an increase in the out-of-district fee sixty (60) days prior to the effective date and advise the County of the reasons for the increase. The County recognizes that the District, in its discretion, may assess a solid waste management fee for any area within the boundaries of the District.

County shall report to the District each month the additional fees charged to noncontract Collectors and Collectors found by the District to be in Noncompliance, and forward all such fees collected to District.

5. Collector Requirements. Any Collector, excluding self-haulers, which uses the County transfer station to dispose of waste at the City Disposal Facility pursuant to this Joint Powers Agreement shall:
 - a. maintain a Collector license from the District in accordance with the District Solid Waste Ordinance.
 - b. execute a solid waste delivery agreement with the District or pay to the District an additional fee per ton, in an amount set by the District, for noncontract disposal.

County will notify District if a Collector is in violation of these requirements, or other requirements of the District Solid Waste Ordinance. County shall not accept waste at the transfer station from a Collector that is not licensed by the District.

1. Recycling. The County shall be responsible for providing recycling services for all County residents in accordance with Chapter 115A of Minnesota Statutes. The County shall be responsible for preparation of all State reporting forms relating to recycling, and shall specifically be responsible for timely preparation of all S.C.O.R.E. Reports. The District shall provide educational and public relations support for the County's recycling effort. The County shall be eligible to receive an annual stipend from the District as long as the District has collected a solid waste management fee from Carlton residents during the period. The stipend shall be calculated as a fraction of the 25% annual match that the County must provide for S.C.O.R.E. funding. The fraction shall be determined by comparing the population in the County residing within the District to the total population of the County.
2. Household Hazardous Waste. Both the District and the County operate household hazardous waste collection facilities. Each facility will continue to operate and provide services to residents of the County. If the District accepts waste from Carlton County residents residing outside of the boundaries of the District, the County will not pay an administrative charge for the household delivering waste. The District shall keep a written record of each Carlton County household from outside of the District depositing waste at the District household hazardous waste facility.
3. District Ordinances. Generators of solid waste in the County and Collectors shall comply with all District ordinances and regulations governing disposal of waste, except for the mandatory collection requirements.
4. Term. This agreement shall be in effect July 1, 2019 and terminate on June 30, 2024, but may be extended by the parties' option through the end of operational life of the Disposal Facility, unless sooner terminated as provided in Section 10.
5. Termination. This agreement may be terminated by either party, with or without cause, on 60 days prior written notice.
6. Entire Agreement. This agreement constitutes the entire agreement and understanding between the parties hereto, and it shall not be modified, altered, changed or amended, accept in a writing signed by both parties.
7. Assignment. This agreement may not be assigned by either party without the prior written consent of the other party.

In these sections, establish the procedure for withdrawal and termination, as **required by MN Statute § 471.59, subd. 4 and 5**. This is also a good place for describing disbursement of assets, monies, and equipment, which is also **required**.

The term (also **required**) of the agreement can be put here as well.

(Recommended). Include details on the procedure for amending the agreement.

- 8. Waiver. Failure of the District or the County at any time to require performance by the other of any provisions hereof shall in no way affect the right of the other to subsequently enforce the same.
- 9. Notices. Any notices and other communications hereunder shall be in writing and shall be deemed duly given if delivered personally or by U.S. Mail, postage prepaid, addressed as follows:

To the District: Attention: Executive Director
 Western Lake Superior Sanitary District
 2626 Courtland Street
 Duluth, MN 55806-1984

To the County: Solid Waste Administrator
 Carlton County
 301 Walnut Avenue, Room 101
 P.O. Box 220
 Carlton, MN 55718-0220

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

CARLTON COUNTY, MINNESOTA

WESTERN LAKE SUPERIOR SANITARY DISTRICT

By _____
 Chair of the Board
 of County Commissioners

By _____

Its _____

Attest:

By _____
 County Auditor

Approved as to form:

By _____
 County Attorney

RUM RIVER JOINT POWERS AGREEMENT – ANNOTATED

This Joint Powers Agreement serves as a model agreement for its strong support from its parties, as well as its robustness, careful use of language, structure, and formatting.

Thus, it can be used as a *guide* when drafting and amending JPA's. However, this recommendation is intended for information purposes only and does not constitute legal advice. Annotations in the margins give short explanations of key parts of the agreement.

JOINT POWERS AGREEMENT FOR THE IMPLEMENTATION OF THE RUM RIVER COMPREHENSIVE WATER MANAGEMENT PLAN

Pursuant to Minnesota Statutes, section 471.59, this Joint Powers Agreement ("Agreement") is entered into by and among the political subdivisions and local governmental units of the State of Minnesota and the Non-Removable Mille Lacs Band of Ojibwe ("MLBO"), a federally recognized American Indian Tribal government identified as follows:

The Counties of Aitkin, Benton, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison, and Sherburne each by and through its respective Board of Commissioners, and MLBO, by and through its Commissioner of the Department of Natural Resources ("DNR") (collectively referred to as the "Counties");

The Aitkin, Anoka, Benton, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison, and Sherburne Soil and Water Conservation Districts, each by and through its respective Board of Supervisors (collectively referred to as the "SWCDs"); and

Lower Rum River and Upper Rum River Watershed Management Organizations (collectively referred to as the "Watershed Management Organizations").

Together, the above identified Counties, SWCD's, and Watershed Management Organizations collectively formed the Rum River Watershed Implementation Partnership and, for purposes of this Agreement, said political subdivisions, local units of government and MLBO Tribal Government, and those added in accordance with the terms of this Agreement, are herein collectively referred to as "Parties" and individually as a "Party."

Title of Agreement, with a clear indication of what it is (JPA) and between what parties, or name of joint entity if more than ~3 parties.

Enable the authority of the agreement, **required by MN Statute § 471.59, subd. 1.**

(Recommended). There are various parties included in this agreement, making for a pathway to include the plan's implementers in on the decision-making.

Recitals

WHEREAS, a portion of the Upper Rum River Watershed area is situated within the MLBO Reservation and the MLBO DNR has the authority to manage its natural resources and it strives to work cooperatively and collaboratively with other governmental agencies with which it shares an interest in maintaining, managing and protecting natural resources; and

WHEREAS, MLBO desires to join in this Agreement with the other Parties. For this purpose and within this Agreement MLBO may be identified or referred to as a “Party” or “Parties,” “County” or “SWCD”; and

WHEREAS, pursuant to Minnesota Statutes, sections 103B.305, subdivision 5 and 103B.3363, each of the Parties to this Agreement is a local unit of government having the responsibility and authority to separately or cooperatively, by joint agreement pursuant to Minnesota Statutes, section 471.59, to prepare, develop, adopt, implement, and administer a comprehensive local water management plan, or a substitute thereof, and carry out implementation actions, programs, and projects toward achievement of goals and objectives of such plans; and

WHEREAS, pursuant to Minnesota Statutes, sections 103B.101 and 103B.801, the Minnesota Board of Water and Soil Resources (BWSR) is authorized, to coordinate the water and resource planning and implementation activities of counties, SWCDs and watershed management organizations and to administer and oversee the Minnesota Comprehensive Watershed Management Planning Program, known as the One Watershed, One Plan program; and

WHEREAS, each of the Parties exercises water management authority and responsibility within the Rum River Watershed Management Area, a geographical area consisting of those portions of Aitkin, Anoka, Benton, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison, and Sherburne counties and within the MLBO reservation that drain into the Rum River watershed as depicted on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, some of the Parties had previously entered into the Rum River Watershed Memorandum of Agreement (“MOA”) with the last date of signature being March 28, 2019, to develop the One Watershed, One Plan (“Plan”) for the Rum River Watershed. Under the terms of the MOA, the Plan will be completed, be submitted to the Minnesota Board of Water and Soil Resources (“BWSR”) for approval and will then be considered for adoption by the Parties to this Agreement. Those governmental entities that approve the Plan shall be eligible to be a part of this Agreement. The terms of the MOA also require that the structure for administration of the Plan be determined. The MOA will expire coterminous with the One Watershed, One Plan grant from BWSR dated

(Recommended). It is common practice to lay out recitals, which give the background and reasons for establishing the agreement, as well as other legal precedents. It is helpful to be as comprehensive as possible.

By convention, each recital starts with the word *whereas*. This section can also be labeled as *Witnesseth*.

Note: recitals aren't intended to be a part of the agreement's provisions.

_____. This Agreement shall not be construed as to modify or supplant the terms or provisions of the MOA; 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, this Agreement and the Rum River Comprehensive Watershed Management Plan does not replace or supplant local land use, planning/zoning authority of the respective Parties and the Parties intend that this Agreement shall not be construed in that manner.

TERMS AND CONDITIONS

NOW THEREFORE, pursuant to Minnesota Statutes, section 471.59 and other relevant state law and in consideration of the mutual promise and benefits that the Parties shall derive herefrom, all Parties hereby agree:

1. Purpose and Establishment

- a) Purpose: This Agreement establishes the terms and conditions, governing structure, and processes by which the Parties will institute the implementation of the Plan. The Plan provides a framework for consistency and cooperation for entities that operate within the Rum River Watershed to allow for the implementation of projects within the watershed that provide the highest return on investment for addressing water quality/quantity issues within the watershed, and to allow the funding from the Minnesota Board of Water and Soil Resources (“BWSR”) to be passed through to the Parties for administration consistent with State statutes and guidelines and the Plan. Consistent with its terms and conditions, this Agreement authorizes the Parties to cooperatively exercise their common and similar power of local water planning and management notwithstanding the territorial limits within which they may otherwise exercise separately and to take action that will promote the goals listed in Minnesota Statutes, section 103B.801 and fulfill responsibilities under Minnesota Statutes, chapter 103B.
- b) Established: This Agreement establishes a joint powers entity (hereinafter, the “Entity”). The name of the Entity is “Rum River Watershed Partnership”.
- c) Recitals: All recitals set forth above are hereby incorporated into this Agreement.

(Recommended). Now therefore concludes the recitals and begins the provisions of the agreement.

Establish the purpose of the agreement, **required by MN Statute § 471.59, subd. 2.**

As exemplified here, it is **recommended** to be thorough as possible in this section, as the purpose should be periodically reviewed.

(Optional). Although not specified in statute, giving a name to the new organization better signifies that it is a separate legal entity, and its reference is more easily communicated.

2. Eligibility and Procedure to Become A Party

- a) **Qualifying Party:** A county, SWCD, watershed district, and MLBO or watershed management organization located and authorized to carry out water planning and resource management responsibilities within the Rum River Management Area is eligible to become a Party to this Agreement. To become a Party, the county, SWCD, watershed district or watershed management organization shall have first adopted the Plan.
- b) **Initial Parties:** A county, SWCD, watershed district, or watershed management organization may be an Initial Party by qualifying under section 2(a), by adopting the Plan and by its governing board agreeing to become a Party and be bound by the terms of this Agreement within 60 days of State approval of the Plan. Such local unit of government shall also give notice of plan adoption in accordance with provisions of Minnesota Statutes, chapters 103B and 103D. Any qualifying county, SWCD, watershed district, or water management organization that desires to become a Party after expiration of the 60-day period for joining as an Initial Party, will be eligible to become a Party as an additional party pursuant to Section 2.c., below.
- c) **Adding Additional Parties:** A qualifying local unit of government that desires to become a Party to this Agreement at any time later than 60-days following State approval of the Plan, may become a Party upon the adoption of the Plan by the Party's governing board and by submitting to the Entity evidence its governing board agrees to the terms and conditions of this Agreement and to be bound by the same.

Upon receipt of such evidence, the governing board shall issue a signature page to the local government unit and instructions to execute and return the same to the Entity along with the name and contact data of the representatives appointed by the local government unit to serve on the governing board.

3. Powers and Formation of the Governing Board

- a) **Board:** A governing board ("Board") shall be formed to oversee the implementation of the Plan. The Board shall consist of one individual selected by each Party to the Agreement. Each member of the board shall have one vote. The Party shall determine its representative and an alternate to serve in the absence of the representative. Members of the Board are neither deemed employees of the Board nor entitled to any compensation from the Entity.

(Optional) It is recommended to include a detailed process for joining the joint powers collaborative.

Establish the governance structure of the board, **required by MN Statute § 471.59, subd. 2.**

This section is a good place to provide details on how the board is peopled, terms and filling vacancies, board leadership, meeting schedule, any subgroups or committees, and any specific roles among the board.

- b) Board Term and Vacancy: The term of a Board representative shall be for a period of two years with the ability of the Party to appoint a representative to successive terms. If the Party fails to appoint a representative, the incumbent shall serve until such appointment occurs. If a representative resigns or is no longer able to serve, the alternate shall serve until a representative is appointed.
- c) Officers: The Board shall elect from its members a Chair and a Vice Chair at the first meeting of each new calendar year. The duties of the Chair include presiding at all meetings, acting as the administrative leader of the Entity, and carrying out such functions as the Board assigns to the Chair. The Vice Chair shall act as the Chair in the Chair's absence. The Board may elect or appoint such other officers as it deems necessary to conduct the affairs of the Entity.
- d) Open Meeting Law: The Board shall comply with the Minnesota Open Meeting law as set forth in Minnesota Statutes, chapter 13D.
- e) Operations: The Board shall meet twice a year or more often as deemed necessary by the Board. The Board may adopt bylaws consistent with this Agreement and applicable law and may amend the same on a vote of simple majority of all the Board representatives. The Board may act only if there is a quorum. A quorum is a simple majority of the Board.
- f) Yearly Budget and Yearly Plan: The Board shall approve the yearly budget for the organization and the yearly implementation plan by super majority of 75% of the quorum.
- g) Fiscal Agent: The Board, with a Party's consent, shall identify a Party to act as fiscal agent. The fiscal agent shall be responsible for: 1) retention of all data collected, created, received, maintained or disseminated for any purpose of the activities undertaken pursuant to this Agreement and retain the same for a minimum of six years after the termination of the Agreement or as required by any funding source, whichever is longer in duration; 2) to ensure a full accounting using generally accepted auditing practices of all financial obligations of the Entity; 3) to allow, as required by Minnesota Statutes, section 16C.05, access and the right to examine, audit, excerpt or transcribe any documents pertinent to the accounting practices and procedures and fiscal transactions relating to this Agreement for the purposes of auditing by any Party, the State Auditor or others as the Board directs; 4) to provide to the Board reports on the fiscal transactions that have occurred for their approval; and 5) to ensure that any reporting requirement from funding sources is abided by.

It is **recommended** to meet as regularly and consistently as possible.

h) Committees: The Board may establish committees for the purposes of implementation of the Plan. At minimum, the Board shall appoint an Implementation Planning Committee. It is the duty of the Implementation Planning Committee to draft a yearly implementation plan consistent with the Plan and a yearly budget for consideration by the Board. The Implementation Planning Committee will solicit from each Party projects that are consistent with the Plan and further the goals of the Plan for consideration of the Implementation Planning Committee as a whole. The Implementation Planning Committee shall have one representative from each Party who is appointed by the Party's governing board and is a staff member from the Party. Each person appointed shall have one vote. The yearly implementation plan shall identify the projects/ and or programs for funding, the timeline for the completion of the project/programs and who is proposed to oversee the project/programs. The yearly plan shall be evaluated in accord with the goals of Plan, the guidelines set forth in statute and by BWSR. The Implementation Planning Committee may have ex officio members to assist the Committee in its efforts. The ex officio members shall not have a vote on the Committee.

If the entity is of sufficient size and complexity, committees (that meet regularly) can divide tasks and responsibilities to make implementation more manageable.

As done here, it helps to have a thorough breakdown on how they are formed and managed.

i) Powers: The Board shall have the following powers:

In this section, lay out the duties, powers, and responsibilities of the board, **required by MN Statute § 471.59, subd. 2.**

Sometimes, the duties of the board are placed in their own section.

- i) The Board may apply for and accept gifts, grants or money, other personal property or assistance that is available through the United States government, the State of Minnesota or any person, association, or agency in the furtherance of the goals and objectives of the Plan;
- ii) The Board may make such agreements or contracts as necessary to implement the terms of the Plan including the contracting for a project coordinator, administrative, legal or expert services. If a coordinator is contracted for, the payment for the coordinator shall be funded by grant funds or gifts;
- iii) The Board may contract with a Party to implement a Project set forth in the yearly Implementation plan;
- iv) The Board shall procure insurance coverage and any necessary surety bonds for the Entity with such costs being paid for by the Entity;
- v) The Board shall direct development of a yearly budget and yearly project plan to be implemented and shall provide notice to all the Parties' governing boards of the proposed budget and yearly plan and seek feedback on the same;

(Recommended). These clauses (*i* and *v*) help specify and ensure the general duty of the board to govern staff.

vi) The Board may adopt bylaws for the operation of the Entity so long as the bylaws are consistent with state law and this Agreement;

vii) The Board shall pay for services performed consistent with the purpose of the Agreement and the Plan. The Board may develop a process to expedite the payment of invoices provided that all payments shall be subject to ratification by the Board at the next meeting. The Board shall account for disbursement of funds in a manner consistent with generally accepted accounting practices; and

viii) The Board shall hold such incidental powers as are necessary to effectuate this Agreement.

j) **Reservation of Powers:** Any powers not specifically enumerated shall be reserved to the Parties. Specifically, and without limitation, the following powers are reserved: the ability to hire staff; the ability to own real property; the ability to own personal property, unless such properties are purchased with grant monies or are a gift; the ability to levy; and the ability to incur debt or bond.

k) **Funding of Operations:** The funding of the Entity and the implementation of the plan shall be limited to grant revenues, gifts, or monies from any person, entity, or association. The Parties shall only be responsible for agreed upon contributions of in-kind services and staff time, unless the Party's governing board, in its sole discretion, affirmatively elects to do otherwise.

(Recommended). It is important to establish provisions that help ensure stable finances in the joint entity.

4. Term and Termination

a) **Effective Date:** This Agreement is effective upon signature of all Initial Parties and will remain in effect unless terminated consistent with terms of this Agreement or as otherwise provided under the law.

b) **Termination:** This Agreement terminates: 1) by motion or resolution adopted by the governing bodies of all then-existing Parties; 2) by resolution or motion by the Board upon ongoing failure to obtain adequate funding for Plan implementation; 3) by order of a Court of competent jurisdiction; or 4) if only three Parties remain party to this Agreement. The Parties acknowledge their respective and applicable obligations, if any, under Minnesota Statutes, section 471.59, subdivision 5 after the Agreement has been terminated or the purpose of the Agreement has been completed.

c) **Asset Disbursement:** Upon termination, any assets remaining shall be disbursed as follows: 1) assets that have been purchased with pass

In this section, establish the procedure for withdrawal and termination, as **required by MN Statute § 471.59, subd. 4 and 5**. This is also a good place for describing disbursement of assets, monies, and equipment, which is also **required**.

The term (also **required**) of the agreement can be put here as well.

through funding wherein the agreement requires tracing of the asset and specific disposal requirement shall be disposed of in accord with the funding agreement; 2) remaining assets shall be liquidated and any monies shall first be applied to any debt or obligation remaining; 3) after satisfaction of any debt or obligation there remains any assets, it shall be divided evenly to the then remaining Parties to the Agreement at the time of termination.

- d) **Withdrawal:** A Party may withdraw from this Agreement by motion or resolution of its governing body of intent to withdraw. Any motion to withdraw made on or before June 30th shall be effective for the following January 1st. Any motion to withdraw made after June 30th shall not be effective until the second January 1st. The withdrawal shall not relieve any Party of an obligation in effect for the existing terms of a grant agreement nor shall it relieve Rum River Watershed Partnership of paying for any obligation assumed by the Party until such time as the withdrawal is effective. Notice shall be done by certified US Mail delivered to the fiscal agent and the current Board Chair.
- e) **Duties on Withdrawal:** Notwithstanding the Notice to Withdraw, the Party shall continue to discharge its responsibilities under the current BWSR grant. The withdrawing Party shall not be entitled, under this Agreement, to any disbursement of property or funds.

(Recommended). A detailed section(s) on member withdrawal, as given here. It is common for there to be a holding period of two years after joining a joint entity.

5. General Provisions

- a) **Compliance with Laws/Standards:** The Parties agree to abide by all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations.
- b) **Timeliness:** The Parties agree to perform obligations under this Agreement in a timely manner and inform each other about delays that may occur.
- c) **Applicability:** The Entity 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 Entity 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 Minnesota Statutes, chapter 466.
- d) **Indemnification and Hold Harmless:** The Entity 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 Governing Board and/or employees and/or the agents of the Entity. This Agreement to indemnify and hold harmless does not

(Recommended). This provision, combined with meeting as regularly as necessary, helps to improve efficiency and communication.

(Strongly recommended by MCIT). For reasons of liability, a detailed Indemnification and Hold Harmless section is strongly recommended. Sometimes, this is made its own section. This section ensures that the joint entity protects, defends, and holds the individual members harmless from potential liability claims.

constitute a waiver by any participant on limitations on liability provided under Minnesota Statutes, section 466.04 or any other statutes regarding the limitation of liability for political subdivisions of the State of Minnesota.

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, subdivision 1a(a); provided further that for purposes of the statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

The Parties acknowledge that MLBO is not subject to the protections or provisions of Minnesota Statutes referenced within this subsection(d) above but rather MLBO employees may be protected from personal liability under the Federal Torts Claims Act (28 U.S.C. Part VI, Chapter 171 and 28 U.S.C. Section 1346) and indemnification provisions under MLBO statutes.

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.

- e) Amendments: Any proposed amendments to this Agreement may be initiated by the Board and, if approved by the Board by a supermajority of 75%, the Board may send the same to the Parties’ governing bodies for consideration. No amendment to this Agreement is effective until all Parties’ governing boards have approved the amendment.

(Recommended). Include details on the procedure for amending the agreement.

- f) Dispute Resolution: If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the Parties to the dispute are unable to resolve the issue through good faith discussions, the Parties may agree to attempt to resolve the dispute by mediation within 30 days of notice of the dispute. If the Parties to the dispute agree to mediation, they shall work cooperatively to select a mediator, the cost of which shall be shared equally among the Parties to the dispute.

(Recommended). It is important to include a detailed section on resolving disputes to maintain healthy operations.

6. Miscellaneous

- a) Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same

(Recommended). Include a section on document counterparts, detailing how copies and signatures are sent and stored.

Agreement. Any counterpart signature transmitted by facsimile or by sending a scanned copy by electronic mail or similar electronic transmission shall be deemed an original signature. This executed Agreement, including all counterparts, shall be filed with each Party to this Agreement with a notification of the Agreement's effective date.

- b) Savings Clause: In the event any provision of this Agreement is determined by a court of law to be null and void, the remaining provisions of this Agreement shall continue in full force and effect.

The remainder of this page left intentionally blank

(Optional). This phrase avoids confusion of when an agreement's provisions end.

UPDATE WITH YOUR SIGNATURE BLOCK, BELOW IS AN EXAMPLE

County of Sherburne

Chair

Dated: _____

Approved as to form and execution:

_____ Kathleen A. Heaney

Sherburne County Attorney

Dated: _____