



Soil & Water Conservation District

215 1st Avenue South, STE 104, Long Prairie, MN 56347 Phone: 320-732-2644

TODD COUNTY SWCD BOARD MEETING AGENDA

There will be a meeting of the Todd Soil and Water Conservation District Board of Supervisors on Thursday, November 9, 2017 beginning at 8:30 a.m. The meeting will take place at the Todd County Historic Courthouse (Prairie Conference Room) 215 1st Ave South, Long Prairie, MN 56347.

Call to Order Kenny Pesta

Pledge of Allegiance

Act on Approving Agenda

Secretary's Report (Minutes) Norman Krause

Treasurer's Report (Financial) Tom Williamson

1. Decisions Needed

1. Approve cost share payment of FY16 Local Capacity funds for Steve Katterhagen, contract #1-16 **Tim**
2. Approve encumbering additional CWP Cost Share funds for City of Swanville, contract #2-15CWP **Tim**
3. Approve cost share payment of CWP Cost Share funds for City of Swanville, contract #2-15CWP **Tim**
4. Approve one board member to serve on the Policy Committee for the SRWD 1W1P **Tim**
5. Approve resolution approving the WCTSA Agreement effective January 1, 2018 **Tim**
6. Approve date for Board of Commissioners and Soil and Water Liaison Meeting **Tim**

2. Discussion

3. Reports

4. Informational

1. MASWCD Annual Business Meeting Items **Tim**

5. Other

Adjourn

The next regular SWCD board meeting will be December 14, 2017 beginning at 8:30 a.m. at the Historic Courthouse, (Prairie Conference Room), 215 1st Ave South, Long Prairie, MN 56347.

RESOLUTION 20171109-01

RESOLUTION APPROVING UPDATED WEST CENTRAL TECHNICAL SERVICE AREA JOINT POWERS AGREEMENT

WHEREAS, the Todd Soil and Water Conservation District (“SWCD”) is a party to the May 29, 2009 Joint Powers Agreement (“Agreement”) that established the West Central Technical Service Area in order to provide shared technical services across the twelve Member Districts; and

WHEREAS, the Todd SWCD and other Member Districts desire to amend and update said agreement pursuant to Section 12.

THEREFORE BE IT RESOLVED that the Joint Powers Agreement dated January 1, 2018 by and between Todd SWCD and the other eleven member districts be approved. A copy of the Agreement is attached to this Resolution and made a part of it.

BE IT FURTHER RESOLVED that _____, Chair of the Todd SWCD, is authorized to sign the Agreement.

Passed by the Todd SWCD Board of Supervisors this _____ day of _____, 2017.

_____, Chair
Todd Soil & Water Conservation District

ATTEST: _____
_____, Secretary
Todd Soil & Water Conservation District

West Central Technical Service Area Joint Powers Agreement

THIS AGREEMENT is entered into between the following political subdivisions of the State of Minnesota, as defined by Minnesota Statutes §103C, by and through their respective governing bodies:

Benton Soil and Water Conservation District
Big Stone Soil and Water Conservation District
Chippewa County Soil and Water Conservation District
Douglas County Soil and Water Conservation District
Kandiyohi Soil and Water Conservation District
Meeker Soil and Water Conservation District
Morrison Soil and Water Conservation District
Pope Soil and Water Conservation District
Stearns County Soil and Water Conservation District
Stevens Soil and Water Conservation District
Swift County Soil and Water Conservation District
Todd Soil and Water Conservation District

Individually and collectively, the parties of this Agreement are referred to as the “Member Districts” of the West Central Technical Service Area (“WCTSA”).

Recitals

WHEREAS, pursuant to Minnesota Statutes §471.59, the Member Districts may, by Agreement, jointly exercise any power common to the parties; and

WHEREAS, the Member Districts are defined by the State of Minnesota Board of Water and Soil Resources (“BWSR”) as Technical Service Area 2, also known as the West Central Technical Service Area; and

WHEREAS, the Member Districts desire to protect and improve natural resources within their respective boundaries; and

WHEREAS, the Member Districts desire to enhance the delivery of technical assistance to further these goals; and

WHEREAS, the State of Minnesota makes grant funds available to Technical Service Area Joint Powers Organizations to deliver essential engineering and associated technical services for critical soil and water conservation and water quality practices and projects; and

WHEREAS, each party to this Agreement desires to enter into the Joint Powers Agreement, in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and Agreements contained herein and subject to the provisions of applicable Minnesota Statutes, rules and regulations, the following Parties agree to amend and restate the May 29, 2009 Joint Powers Agreement as follows:

Terms and Conditions

SECTION 1: TERM

This Agreement will commence on January 1, 2018 or upon approval of each Member District and the signature of the official with authority to bind the Member District, whichever is later. This Agreement shall be in effect until such time as the Agreement is terminated pursuant to Section 11 herein. This Agreement will only apply to those Member Districts whose Board of Supervisors have lawfully executed the document.

SECTION 2: PURPOSE

The purpose of this Agreement is to create the WCTSA Joint Powers Organization to administer shared services between the 12 Member Districts. The recitals set forth above are incorporated by reference and fully set forth herein. Shared services to be provided under this Agreement may include, but are not limited to, the following:

- 2.1 TECHNICAL AND ENGINEERING. Shared engineering and other critical technical services for erosion and sediment control and water quality: 1) Engineering (site evaluation, design, and construction); 2) Technical Services (forest land management, GIS, groundwater protection, monitoring, and other conservation practices); 3) Associated targeted priority services such as outreach to landowners and assistance to landowners in meeting regulatory requirements.
- 2.2 ADMINISTRATION AND COORDINATION. Administrative, clerical, financial, and related activities associated with the operation of the WCTSA: management, reporting, bookkeeping, communication, record-keeping, and other requirements.
- 2.3 EDUCATION AND INFORMATION. Development and provision of technical training and related information to Member Districts.
- 2.4 EQUIPMENT AND SUPPLIES. Acquisition of necessary equipment, hardware, software, and supplies.

SECTION 3: GOVERNANCE

- 3.1 BOARD OF DIRECTORS. A WCTSA Board of Directors (“Board”) is established for the purposes and with the powers and duties provided in this Agreement.
- 3.2 MEMBERSHIP. The Board shall consist of twelve Directors, one from among the Board of Supervisors of each Member District. Each Director shall serve at the pleasure of the Member District that appointed him or her and may be removed with or without cause by that District at any time.
- A. Term of Office. The term of appointment shall be set by the Member District.
- B. Vacancies. If the office of any Director or alternate becomes vacant, the vacancy shall be filled by appointment by the Board of Supervisors in whose District the vacancy has occurred. The office shall be deemed vacant under the conditions specified in the Minnesota Statute §351.02.
- 3.3 OFFICERS. The Board shall elect from among the Directors a Chair, a Vice-Chair, and a Secretary/Treasurer (“Officers”), who shall serve until their successors are elected. The Board shall hold a special election to fill officer vacancies. The Officers shall perform such duties and exercise such powers as shall be assigned to them in the Bylaws or by Board resolution. Any Officer may be removed from office for good cause by Board resolution.
- 3.4 COMMITTEES. The Board may form committees it deems necessary to fulfill the purpose of the organization.
- 3.5 MEETINGS. The Board shall comply with Minnesota Statutes §13D (Open Meeting Law). The Board shall meet regularly at such interval as designated in the Bylaws.
- 3.6 RECORDS AND REPORTS. The books and records of the Board, including meeting minutes and the original fully executed Agreement, shall be subject to the provisions of Minnesota Statutes §13D and retained by the Host Agent.
- 3.7 QUORUM AND VOTING.
- A. Quorum. A majority of the Directors shall constitute a quorum for all regular and special meetings of the Board. In the absence of a quorum a meeting shall be rescheduled or adjourned.
- B. Votes. Each Director shall be entitled to cast one vote on any matter. Any action within the authority of the Board shall be approved only by a majority vote, except as provided in this agreement or the Bylaws. Except as otherwise may be provided in this Agreement or Bylaws no Director may cast a vote on behalf of another member of the Board by proxy.

SECTION 4: BYLAWS

- 4.1 PURPOSE AND SCOPE. WCTSA Bylaws shall be created to specify operating procedures, officer roles, fiscal requirements, and other rules and regulations of the WCTSA and Board. This Agreement shall supersede the Bylaws if any conflict between the two arises.
- 4.2 AMENDMENT. Member Districts shall be notified in writing at least 30 days in advance of any proposed amendment to the Bylaws. The Bylaws may be amended by majority vote of the Board.

SECTION 5: POWERS AND DUTIES

Following appropriate Board action, the WCTSA may exercise the following powers and duties:

- 5.1 Powers common to the Member Districts as necessary and proper to fulfill its purpose and perform its duties.
- 5.2 Adopt Bylaws and policies and procedures relating to the exercise of its powers or the accomplishment of its purposes.
- 5.3 Sue and be sued.
- 5.4 Make and enter into any contract, joint powers agreement, lease, or any other legal instrument, necessary or proper for the exercise of its powers or the accomplishment of its purposes.
- 5.5 Receive and expend funds.
- 5.6 Employ, train, pay, discipline, discharge, and otherwise manage personnel needed to assist the Board in carrying out its duties and responsibilities.
- 5.7 Apply for and accept gifts, grants, or loans of money, or other real or personal property from the United States, the State of Minnesota, or any other body, organization, political subdivision, or person, whether public or private. The WCTSA may enter into any agreement required in connection therewith, and may hold, use, and dispose of any such money or other property in accordance with the terms of the gift, grant, loan, or agreement.
- 5.8 Make any gift, grant, or loan required or permitted by Minnesota Statutes Chapter 103C, as amended.
- 5.9 Administer grant funds in accordance with Minnesota Statutes, BWSR policies, and other applicable laws.
- 5.10 Contract with one or more Member Districts for the provision of technical or engineering

services for non-point source pollution and other relevant natural resource concerns.

- 5.11 Exercise all powers arising by necessary implication from the powers enumerated and otherwise expressed herein.

SECTION 6: HOST AND/OR FISCAL AGENT

- 6.1 HOST AGENT. The WCTSA may enter into a joint powers agreement with a Member District to provide administrative services as the Host Agent. Such services shall include, but not be limited to: record keeping; grants administration; meeting preparation. The contracting and purchasing requirements of the Host District shall apply to transactions of the Board.
- 6.2 FISCAL AGENT. The WCTSA may enter into a joint powers agreement with a Member District to provide financial services as the Fiscal Agent. Such services shall include, but not be limited to: management of all funds, including District contributions and grant monies; payment for contracted services; bookkeeping.
- 6.3 HOST/FISCAL AGENT. The WCTSA may enter into a joint powers agreement with a Member District to provide both Host Agent and Fiscal Agent services.

SECTION 7: FINANCIAL PROCEDURES AND OBLIGATIONS

- 7.1 BUDGET. The Board shall adopt a WCTSA budget and/or work plan by the first day of each fiscal year as defined in the Bylaws. The budget revenues shall include any grant or other funds to be received by the WCTSA and contributions, if any, from Member Districts. The budget shall include all expenditures related to personnel, contractual agreements, administration, and project costs. The work plan and budget may be adopted based on anticipated continued special project funding and may be modified as needed to meet actual grant or other funding amounts and requirements.
- 7.2 ASSESSMENTS. If an approved budget includes assessments to all Member Districts, the assessment shall be applied according to such procedure as defined in the Bylaws. Special Projects may have a separate assessment for participating Districts. Non-participating Districts shall not be assessed any portion of the costs for a Special Project.
- 7.3 SPECIAL PROJECTS. The WCTSA may develop and implement Special Projects that benefit all, or a subset, of Member Districts. All Special Projects must be approved by the WCTSA Board and the Board of Supervisors of each participating Member District. The Districts participating in the Special Project will determine the assessment formula for the Special Project.
- 7.4 WCTSA PROPERTY. Title to any real or physical property purchased with WCTSA funds shall remain under the sole ownership of the WCTSA, subject to requirements of funding partners.

- 7.5 JOINT LIABILITY. Should existing WCTSA funds be insufficient to meet financial liabilities owed to Member Districts, Host and/or Fiscal Agents, outside vendors, other government agencies, or other qualified creditors, Member Districts shall be jointly liable for the amount.
- 7.6 ACCOUNTABILITY OF FUNDS, RECORDS, AND AUDIT. The WCTSA shall provide for the strict accountability of all funds, and for the accurate reporting of all receipts and disbursements in accordance with good accounting practices. The books and records of the Board are subject to the provisions of Minnesota Statutes Chapter 13 (Minnesota *Government Data Practices Act*). The Board, within 120 days after the close of each fiscal year, as defined in the Bylaws, or as directed by the granting agency, and shall *give* a complete written report of all financial activities for the fiscal year to the Districts.

To the extent required by Minnesota Statute Section 16C.05, subd. 5 (as may be amended), the Districts agree that any District, the State Auditor, the Legislative Auditor or any of their duly authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other Districts and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the Agreement and for six (6) years after its termination and cancellation.

SECTION 8: INDEMNIFICATION AND INSURANCE

8.1 INDEMNIFICATION.

- A. Applicability. The WCTSA shall be considered a separate and distinct public entity to which the Districts have transferred all responsibility and control for actions taken pursuant to this Agreement. The WCTSA 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.
- B. Indemnification. The WCTSA shall fully defend, indemnify, and hold harmless the Member Districts, their officers, employees and agents, against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the WCTSA. This Agreement to indemnify does not constitute a waiver by any District of limitations on liability provided under Minnesota Statutes Section 466.04.

To the full extent permitted by law, actions by the Districts, their officers, employees and agents, pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Districts that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes §471.59, subd. 1a(a), provided

further that for purposes of that statute each District expressly declines responsibility for the acts or omissions of any other District.

The Member Districts are not liable for the acts or omissions of the other Districts except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Districts.

- 8.2 INSURANCE. The WCTSA shall obtain appropriate coverage for liability, property and/or auto insurance and may obtain such other insurance it deems necessary to indemnify the Board, its officer, employees, and agents for actions of the Board, its officers, employees if any, and agents arising out of this Agreement. To the extent that property is not covered by insurance, the WCTSA shall bear the cost of repair or replacement.

SECTION 9: DEFAULT

The breach of any material term of this Agreement by a Member District shall constitute a default by such. Upon such a default, the non-defaulting Member Districts may, by three-fourths joint resolution, expel the defaulting Member District from the Board, in which case this Agreement is terminated as to such Member District. The financial and legal consequences of expulsion shall be the same as those resulting from a Member District's voluntary withdrawal from membership in the Board.

SECTION 10: WITHDRAWAL FROM WCTSA

- 10.1 VOLUNTARY WITHDRAWAL. Any Member District shall have the right to withdraw from the WCTSA in the following manner:
- A. The Board of Supervisors of the withdrawing District shall pass a resolution declaring its intention to withdraw effective on a specified date by sending a certified copy of such resolution to the Chair of the Board not less than ninety days before the effective date of withdrawal.
 - B. On receipt of the resolution of withdrawal the Chair of the Board shall send a copy of said resolution to each District Board of Supervisors.
 - C. Withdrawal by a District shall not result in the discharge of any legal or financial liability incurred by such District before the effective date of withdrawal. All such liabilities shall continue until properly discharged or settled by the withdrawing District to the approval of the remaining Districts, which approval shall not be unreasonably withheld.
 - D. A Withdrawing District shall not be entitled to a refund of funds paid, or forgiveness of

funds owed, to the Board prior to the effective date of withdrawal. A withdrawing District shall be entitled to a return of any property owned by the District, real or personal, that is leased or loaned by such District to the Board. All such property not returned at the time of said District's withdrawal shall be dealt with as provided by Section 11 (Termination).

SECTION 11: TERMINATION

- 11.1 TERMINATION. This Agreement, and the Board created hereby, shall continue indefinitely in full force and effect until the occurrence of the following event:
- A. All Districts, or all remaining Districts, mutually agree to terminate the Agreement by joint resolution passed by the Districts' respective Boards of Supervisors.
- 11.2 LIABILITY AND DISPOSITION OF PROPERTY UPON TERMINATION. Termination of this Agreement shall not act to discharge any liability incurred by the Board. After the effective date of termination, the Board shall continue to exist for the limited purpose of discharging the Board's debts and liabilities, settling its affairs, and disposing of its property. All property, real and personal, held by the Board at the time of its termination, shall be auctioned off or sold at fair market value and all the monetary proceeds will be distributed first towards any remaining debts and then shall be distributed among the past and current members of the WCTSA, as proportionate to their respective contributions, with due regard to the requirements of the Minnesota Statutes Section 471.59, subdivision 5. The Board shall finally terminate and cease to exist upon the approval of a final report of the Board, passed by the unanimous vote of its Directors, declaring that all the affairs and obligations of the Board have been discharged or otherwise properly concluded.

SECTION 12: AMENDMENTS

This Agreement may be amended only by the unanimous action of Districts, which action shall take the form of a joint resolution passed by each District Board of Supervisors.

SECTION 13: MISCELLANEOUS

- 13.1 SEVERABILITY. The provisions of this Agreement are severable. This means if any paragraph, section, subdivision, sentence, clause or phrase is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.
- 13.2 ENTIRE AGREEMENT. This Agreement contains the entire agreement of the Districts and supersedes all oral and written agreements and negotiations by the Districts relating to the subject matter of this Agreement.

13.3 ALTERNATIVE DISPUTE RESOLUTION. The Districts and the Board agree to participate in the alternative dispute resolution procedures in Attachment A if mutual agreement cannot be reached about issues arising out of Sections 10 (Withdrawal) and 11 (Termination) or any other issue as requested by resolution of a District.

SECTION 14: COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which is considered an original, but all of which constitute on and the same Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands on the dates written below:

Todd Soil and Water Conservation District

BY: _____
(signature)

NAME: _____, Chair, Board of Supervisors

DATE: _____

Pursuant to a Resolution Passed by the District's Board of Supervisors on:

ATTACHMENT A

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Definitions:

Negotiation: Two or more people meet voluntarily to discuss an issue.

Mediation: A negotiation process involving a third party neutral who facilitates the discussion. The mediator has no decision-making authority.

Arbitration: A more formal process involving an arbitrator who has decision-making authority.

Procedures:

In the event of initiation of Alternative Dispute Resolution under the Joint Powers Agreement, the parties to the dispute agree to attempt to resolve their dispute by following the process described below.

- 1 A party shall provide written notice to the Board of Supervisors of the other Districts describing the perceived conflict, positions and underlying reasons for the conflict.
- 2 The Board of Supervisors of the other Districts shall provide written response to the notice within 45 days of receipt of notice.
- 3 The parties shall meet with a neutral facilitator within 14 days of receipt of the response. The neutral facilitator shall be a representative from the Minnesota Office of Dispute Resolution.
- 4 At the first meeting, the neutral facilitator shall assist the parties in identifying the appropriate parties and participants in the dispute resolution process, their concerns, a meeting agenda and design for any subsequent meetings. The parties shall agree on a process for resolving the problem that would involve additional negotiations, mediation or arbitration.
- 5 In developing the process, the parties shall be guided by the following principles:
 - 5.1 The parties shall attempt in good faith to reach a negotiated settlement.
 - 5.2 The parties agree that there must be fair representation of the parties directly involved in the dispute.
 - 5.3 The parties shall use legal proceedings as a last resort
 - 5.4 In the event the parties are unable to resolve the dispute, each party retains all rights, remedies or defenses it had prior to entering the process.
- 6 The parties will report to the Board within 60 days of their first meeting on the resolution of the dispute and recommendations for resolving the dispute.