



Board of County Commissioners Agenda Request



Requested Meeting Date: February 9, 2021

Title of Item: Approve Rum River Joint Powers Agreement Content & Structure

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
Submitted by: Jessica Seibert	Department: Administration	
Presenter (Name and Title): Jessica Seibert, County Administrator		Estimated Time Needed: 10 min.
Summary of Issue: The Rum River Policy Committee has been working with their respective County Attorneys to draft a Joint Powers Agreement for the 1 Watershed 1 Plan work. Aitkin County Attorney Jim Ratz has been involved in these discussions. The committee is asking each County Board involved to approve the content and structure of the agreement. The final agreement will be brought before the Board for approval to join at a later date.		
Alternatives, Options, Effects on Others/Comments:		
Recommended Action/Motion: Approve content and structure of Rum River Joint Powers Agreement.		
Financial Impact: <i>Is there a cost associated with this request?</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>What is the total cost, with tax and shipping? \$</i> <i>Is this budgeted?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

**JOINT POWERS AGREEMENT FOR THE IMPLEMENTATION OF THE RUM RIVER
COMPREHENSIVE WATER MANAGEMENT PLAN
Draft of December 22, 2020**

Pursuant to Minnesota Statutes Section 471.59, this Joint Powers Agreement is entered into between the political subdivisions and local governmental units of the State of Minnesota 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 (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.

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 and local units of government and those added in accordance with the terms of this Agreement are herein collectively referred to as "Parties" and individually, as "Party."

Recitals

WHEREAS, pursuant to Minnesota Statutes Section 103B.305, subd. 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 Statute Section 471.59, to prepare, develop, adopt, implement, and administer a comprehensive local water management plan, as a substitute thereof, and carry out implementation actions, programs, and projects toward achievement of goals and objectives of such plans.

WHEREAS, pursuant to Minnesota Statute Sections 103B.101 and 103B.801, the Minnesota Board of Water and Soil Resources (BWSR) is authorized, amongst other things, 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 that drain into the Rum River watershed as depicted on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, 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 Soil and Water Conservation (“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 _____. 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 Statute Chapters 103B, 103C, and 103D, and with public drainage systems pursuant to Minnesota Statute 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: This Agreement has the following purpose:
 - a. 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 those entities who operate within the Rum River Watershed, to allow for the implementation of projects with the watershed that provide the highest return on investment for improving 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 Statute Section 103B.801 and fulfill responsibilities under Minnesota Statute Chapter 103B;.

- b. This Agreement establishes a joint powers entity (hereinafter, the "Entity"). The name of the Entity is "Rum River 1W1P".
- c. All recitals set forth above are hereby incorporated into this Agreement.

2. Eligibility and Procedure to Become A Party

- a. **Qualifying Party:** A county, SWCD, watershed district, 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 member, 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 shall be formed to oversee the implementation of the Plan ("Board"). 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 not deemed employees of the Board nor be entitled to any compensation from the Entity.

- 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 to carry 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 meeting shall comply with the Minnesota Open Meeting law as set forth in Minnesota Statute 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. The Board may act if there is a quorum. A quorum is a simple majority of the Board.
- f. **Yearly Budget and Yearly plan:** The Board shall approve of 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 Statute 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.

- 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 for funding, the timeline for the completion of the project and who is proposed to oversee the project. The yearly project 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.

- i. Powers: The Board shall have the following powers:
 - 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;

- 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.
- 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 monies are purchased with grant monies or are a gift; the ability to levy, 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.

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 MN Statutes Section 471.59, subd. 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 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 made on or before June 30th shall be effective for the following January 1st. The withdrawal shall not relieve any Party of an obligation in effect for the then existing terms of a grant agreement. Notice shall be done by certified US Mail delivered to the fiscal agent and the then current Board Chair.
- e. **Duties on Withdrawal:** Notwithstanding the Notice to Withdraw, the Party shall continue to discharge its responsibilities under the then current BWSR grant. The withdrawing Party shall not be entitled under this Agreement to any disbursement or property or funds.

5. General Provisions

- a. **Compliance with Laws/Standards:** The Parties agree to abide by all federal, state, and local laws, statutes, ordinances, rules, and regulations now in effect or hereafter adopted pertaining to this Agreement.
- 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 Statute 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 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, subd. 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 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 percent, 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.

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 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.

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