

**AMENDED AND RESTATED JOINT POWERS AGREEMENT ESTABLISHING THE
AREA III SWCD TECHNICAL SERVICE AREA**

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is made by and between the following political subdivisions of the State of Minnesota:

Aitkin Soil & Water Conservation District,
Carlton Soil & Water Conservation District,
Cook Soil & Water Conservation District,
Kanabec Soil & Water Conservation District,
Lake Soil & Water Conservation District,
Mille Lacs Soil & Water Conservation District,
North St. Louis Soil & Water Conservation District,
Pine Soil & Water Conservation District,
South St. Louis Soil & Water Conservation District,

WHEREAS, each participating Soil and Water Conservation District ("SWCD") desires to protect and improve water quality within its respective boundaries; and

WHEREAS, the participating SWCDs desire to share in the delivery of technical assistance to further these goals; and

WHEREAS, The State of Minnesota has made available funding for technical assistance through the SWCDs for projects designed to correct non-point source pollution problems.

WHEREAS, the Carlton, Cook, Lake, North St. Louis, and South St. Louis Soil & Water Conservation Districts by and through their respective Boards of Supervisors entered into an agreement establishing the CCLNS Joint Powers Board #3 on December 19, 1994, pursuant to Minnesota Statutes Chapter 103C and Minnesota Statutes Section 471.59; and

WHEREAS, it is now necessary for Aitkin, Kanabec, Mille Lacs, and Pine Soil & Water Conservation Districts to merge with CCLNS Joint Powers Board #3 Soil & Water Conservation Districts; and.

WHEREAS, each party to this Agreement desires to amend and restate the Joint Powers Agreement establishing the Area III SWCD Technical Service Area as amended, in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and benefits that each party derives from this Agreement, the parties agree to amend and restate the December 19, 1994 Joint Powers Agreement as follows:

**SECTION 1
TERM**

The term of this Agreement begins on the date of the final signature of all parties and continues in force until it is terminated or modified as provided in this Agreement.

**SECTION 2
NAME OF ASSOCIATION**

The association established by this Agreement shall be known as the Area III SWCD Technical Service Area (Area III TSA).

SECTION 3 PURPOSE

The purpose of this Agreement is to establish a joint powers board to coordinate and assist with the operations of the Districts and with projects for the mutual benefit of the Districts as provided under this Agreement, including, but not limited to, the following:

- A. Provide technical assistance for the design of conservation practices.
- B. Provide similar or related services and programs as determined by the Board.
- C. Establish procedures to add qualifying Parties to this Agreement.
- D. 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.

SECTION 4 DEFINITIONS

- 4.1 "AREA III SWCD TECHNICAL SERVICE AREA Board" or "Board" means the joint powers board of the AREA III SWCD TECHNICAL SERVICE AREA established under this Agreement.
- 4.2 "Supervisor" means a member of the AREA III SWCD TECHNICAL SERVICE AREA Board.
- 4.3 "District" or "Board of Supervisors" means a District Board of Supervisors that is a party to this Agreement.

SECTION 5 AREA III SWCD TECHNICAL SERVICE AREA BOARD OF SUPERVISORS

- 5.1 CREATION. A joint powers board known as the AREA III SWCD TECHNICAL SERVICE AREA Board is established for the purposes and with the powers and duties provided in this Agreement.
- 5.2 AREA III SWCD TECHNICAL SERVICE AREA BOARD COMPOSITION. The AREA III SWCD TECHNICAL SERVICE AREA Board shall consist of nine Supervisors, one Supervisor from each District, appointed by resolution of each District. Districts may also appoint an alternate who may serve in the absence of the Supervisor. Resolutions appointing a Supervisor and alternate of each District shall be filed at a place, time and manner as determined by a majority of AREA III SWCD TECHNICAL SERVICE AREA Board members.

Qualifications. Each Supervisor and alternate must be a member of the appointing District Board of Supervisors. Each Supervisor and alternate shall serve at the pleasure of the District that appointed him or her and may be removed with or without cause by resolution of that District at any time.

Term of Office. The term of office for each Supervisor and alternate commences on the date specified in the appointing resolution and continues through December 31st of that calendar year, provided that each Supervisor and alternate may continue in office until a successor has been duly appointed. There shall be no limit to the number of successive terms a Supervisor or alternate may serve.

Vacancies. If the office of any Supervisor or alternate becomes vacant, the vacancy shall be filled by appointment by the Board of Supervisors in whose District the vacancy has occurred. The appointment shall occur within 45 days of the existence of the vacancy. The office shall be deemed vacant under the conditions specified in the Minnesota Statutes Section 351.02 or if a Supervisor or alternate fails to meet the qualification requirements under this Agreement.

- 5.3 OFFICERS. At its first meeting of each calendar year the AREA III SWCD TECHNICAL SERVICE AREA Board shall elect from its members a Chair, a Vice-Chair, and a Secretary/Treasurer, who shall serve until their successors are elected. The AREA III SWCD TECHNICAL SERVICE AREA Board may hold a special election to fill officer vacancies. There is no limit to the number of successive terms an officer may serve. The officers shall perform such duties and exercise such powers as shall be assigned to them by AREA III SWCD TECHNICAL SERVICE AREA Board resolution or bylaws. Any officer may be removed from office for good cause by AREA III SWCD TECHNICAL SERVICE AREA Board resolution.

Chair and Vice-Chair. The Chair shall preside at all meetings of the AREA III SWCD TECHNICAL SERVICE AREA Board and perform other duties and functions as determined by the AREA III SWCD TECHNICAL SERVICE AREA Board. The Vice-Chair shall preside over the AREA III SWCD TECHNICAL SERVICE AREA Board during the absence of the Chair.

Secretary and Treasurer. The Secretary/Treasurer shall take or arrange for the taking of minutes and submit all minutes of the AREA III SWCD TECHNICAL SERVICE AREA Board meetings for approval by the AREA III SWCD TECHNICAL SERVICE AREA Board at the next meeting. The Secretary/Treasurer shall assist the Chair in overseeing the AREA III SWCD TECHNICAL SERVICE AREA Board's budget and finances. In the absence of the Chair and Vice Chair, the Secretary/Treasurer shall preside over the AREA III SWCD TECHNICAL SERVICE AREA Board meeting.

- 5.4 MEETINGS AND AGENDA. The Board shall comply with Minnesota Statutes Chapter 13D (Open Meeting Law). The AREA III SWCD TECHNICAL SERVICE AREA Board shall meet regularly at such time and place designated by AREA III SWCD TECHNICAL SERVICE AREA Board resolution or bylaws. Special meetings may be held from time to time upon the call of the Chair or of any two other Supervisors of the AREA III SWCD TECHNICAL SERVICE AREA Board. It shall be the responsibility of the Chair or two Supervisors calling a special meeting to do so upon reasonable notice to all Supervisors and alternates of the AREA III SWCD TECHNICAL SERVICE AREA Board. No vote shall be taken on any matter within the scope of this Agreement, unless it is included on an agenda distributed to all Supervisors of each District not less than 10 days prior to the meeting of the AREA III SWCD TECHNICAL SERVICE AREA Board at which the matter is to be discussed.

- 5.5 QUORUM AND VOTING.

Quorum. A majority of the Supervisors shall constitute a quorum for all regular and special meetings of the AREA III SWCD TECHNICAL SERVICE AREA Board. In the absence of a quorum a meeting shall be rescheduled or adjourned. In the event a Supervisor cannot be present at a meeting, the Supervisor's alternate may appear and exercise all of the powers of such Supervisor, except an alternate appearing on behalf of an AREA III SWCD TECHNICAL SERVICE AREA Officer shall not exercise powers or responsibilities incident to such office.

Votes. Each Supervisor shall be entitled to cast one vote on any matter. Any action within the authority of the AREA III SWCD TECHNICAL SERVICE AREA Board shall be approved only by a majority vote. Except as otherwise may be provided in this Agreement or bylaws no Supervisor may cast a vote on behalf of another member of the AREA III SWCD TECHNICAL SERVICE AREA Board by proxy.

SECTION 6 POWERS AND DUTIES

POWERS. With respect to the activities, projects, or obligations the AREA III SWCD TECHNICAL SERVICE AREA Board undertakes in its effort to coordinate and assist with the operations of the Districts, the AREA III SWCD TECHNICAL SERVICE AREA Board shall only exercise the powers granted below as are appropriate to the responsibility undertaken:

- A. The AREA III SWCD TECHNICAL SERVICE AREA Board may sue and be sued.

- B. The AREA III SWCD TECHNICAL SERVICE AREA Board may 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.
- C. The AREA III SWCD TECHNICAL SERVICE AREA Board may adopt bylaws and policies and procedures relating to the exercise of its powers or the accomplishment of its purposes.
- D. The AREA III SWCD TECHNICAL SERVICE AREA Board may receive and expend funds.
- E. The AREA III SWCD TECHNICAL SERVICE AREA Board may employ, train, pay, discipline, discharge, and otherwise manage personnel needed to assist the AREA III SWCD TECHNICAL SERVICE AREA Board in carrying out its duties and responsibilities. The AREA III SWCD TECHNICAL SERVICE AREA Board may contract with one or more of its member Districts (Host District) for the Host District's employees to carry out AREA III SWCD TECHNICAL SERVICE AREA administrative, technical, or other duties.
- F. The AREA III SWCD TECHNICAL SERVICE AREA Board may 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 AREA III SWCD TECHNICAL SERVICE AREA Board 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.
- G. The AREA III SWCD TECHNICAL SERVICE AREA Board may make any gift, grant, or loan required or permitted by Minnesota Statutes Chapter 103C, as amended.
- H. The AREA III SWCD TECHNICAL SERVICE AREA Board may engage in any planning, advising, organizing, coordinating, or administering necessary or proper for the exercise of its powers or the accomplishment of its purposes.
- I. The AREA III SWCD TECHNICAL SERVICE AREA Board may prepare a work plan and budget for the support of its activities.
- J. The AREA III SWCD TECHNICAL SERVICE AREA Board may exercise all powers arising by necessary implication from the powers enumerated and otherwise expressed herein.

SECTION 7 BUDGETING AND FUNDING

- 7.1 AREA III SWCD TECHNICAL SERVICE AREA WORK PLAN AND BUDGET. By the end of the first meeting of the AREA III SWCD TECHNICAL SERVICE AREA Board of each new fiscal year, the AREA III SWCD TECHNICAL SERVICE AREA Board shall adopt a budget for the fiscal year. The budget revenues shall include any grant or other funds to be received by the AREA III SWCD TECHNICAL SERVICE AREA and contributions, if any, from each participating District.
- 7.2 DISTRICT ASSESSMENTS. If there is to be an assessment for any portion of the approved budget, each of the Districts shall be assessed according to a formula agreed upon by the AREA III SWCD TECHNICAL SERVICE AREA Board and Districts. Participating Districts will be assessed for special project costs according to the agreed upon formula for that special project. Non-participating Districts shall not be assessed any portion of the costs for a special project.
- 7.3 SPECIAL PROJECTS. The AREA III SWCD TECHNICAL SERVICE AREA may undertake to develop and implement Special Projects that benefit all, or a subset, of the Districts. All Special Projects must be approved by the AREA III SWCD TECHNICAL SERVICE AREA Board and ratified by the Board of Supervisors of each District that will be assessed for the

Special Project. In determining whether to ratify a Special Project approved by the AREA III SWCD TECHNICAL SERVICE AREA Board, the Boards of Supervisors may consider whether such ratification has the potential to financially obligate its District or present a risk of liability for its District. The Districts participating in the Special Project costs will determine the assessment formula for the Special Project.

7. 4 PROPERTY OF THE AREA III SWCD TECHNICAL SERVICE AREA BOARD. Title to any property acquired by the AREA III SWCD TECHNICAL SERVICE AREA Board or acquired with AREA III SWCD TECHNICAL SERVICE AREA Board funding shall be held in the name of the AREA III SWCD TECHNICAL SERVICE AREA Board. If a grant requires title to property purchased with grant funds be held in the name of the Grantor, such property must be maintained in the name of the Grantor.
7. 5 BUDGETING AND ACCOUNTING SERVICES. The AREA III SWCD TECHNICAL SERVICE AREA may contract with one or more of its member Districts (Host District) to provide any and all budgeting and accounting services necessary or convenient for the AREA III SWCD TECHNICAL SERVICE AREA. Such services shall include, but not be limited to; management of all funds, including District contributions and grant monies; payment for contracted services; and *relevant* bookkeeping and record keeping. The contracting and purchasing requirements of the Host District shall apply to transactions of the Board. The AREA III SWCD TECHNICAL SERVICE AREA, through a separate contract or joint powers agreement, shall enumerate the authorities and duties of the Host District. The Districts shall retain their authority to request reports pertaining to any and all budgeting and accounting services. All interest earned from established AREA III SWCD TECHNICAL SERVICE AREA funds shall be credited back to that same fund.
7. 6 ACCOUNTABILITY OF FUNDS, RECORDS AND AUDIT. The AREA III SWCD TECHNICAL SERVICE AREA shall provide for the strict accountability of all funds, which shall be maintained in separate accounts, and for the accurate reporting of all receipts and disbursements in accordance with good accounting practices. The books and records of the AREA III SWCD TECHNICAL SERVICE AREA 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, shall give a complete written report of all financial activities for the fiscal year to the Districts.

SECTION 8 INDEMNIFICATION AND INSURANCE

- 8.1 INDEMNIFICATION.
- A. Applicability. The AREA III SWCD TECHNICAL SERVICE AREA 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 AREA III SWCD TECHNICAL SERVICE AREA 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 AREA III SWCD TECHNICAL SERVICE AREA shall fully defend, indemnify and hold harmless the 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 AREA III SWCD TECHNICAL SERVICE AREA. 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 Section 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 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 Board shall obtain liability, property and auto insurance and may obtain such other insurance it deems necessary to indemnify the Board, its officer, employees if any, and agents for actions of the Board, its officers, employees if any, and agents arising out of this Agreement.

SECTION 9 DEFAULT

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

SECTION 10 WITHDRAWAL FROM ASSOCIATION

VOLUNTARY WITHDRAWAL. Any District shall have the right to withdraw from the AREA III SWCD TECHNICAL SERVICE AREA Board 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 AREA III SWCD TECHNICAL SERVICE AREA Board not less than ninety days before the effective date of withdrawal.

B. On receipt of the resolution of withdrawal the Chair of the AREA III SWCD TECHNICAL SERVICE AREA Board shall send a copy of said resolution to each District Board of Supervisors.

C. A District's withdrawal shall not operate to terminate this Agreement related to the remaining Districts, unless at the time of such withdrawal the AREA III SWCD TECHNICAL SERVICE AREA Board consists of no more than five members including the withdrawing District.

D. 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.

E. A Withdrawing District shall not be entitled to a refund of funds paid, or forgiveness of funds owed, to the AREA III SWCD TECHNICAL SERVICE AREA 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 AREA III SWCD TECHNICAL SERVICE AREA 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 AREA III SWCD TECHNICAL SERVICE AREA Board created hereby, shall continue indefinitely in full force and effect until the occurrence of either of the following events:

- A. Five or more Districts withdraw from the Agreement, either concurrently or at different times, pursuant to this Agreement; or
- B. 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 AREA III SWCD TECHNICAL SERVICE AREA Board. After the effective date of termination, the AREA III SWCD TECHNICAL SERVICE AREA Board shall continue to exist for the limited purpose of discharging the AREA III SWCD TECHNICAL SERVICE AREA Board's debts and liabilities, settling its affairs, and disposing of its property. All property, real and personal, held by the AREA III SWCD TECHNICAL SERVICE AREA Board at the time of its termination, shall be distributed among the past and current members of the AREA III SWCD TECHNICAL SERVICE AREA, as their proportionate interests may appear, with due regard to the requirements of the Minnesota Statutes Section 471.59, subdivision 5. The AREA III SWCD TECHNICAL SERVICE AREA Board shall finally terminate and cease to exist upon the approval of a final report of the AREA III SWCD TECHNICAL SERVICE AREA Board, passed by the unanimous vote of its Supervisors, declaring that all the affairs and obligations of the AREA III SWCD TECHNICAL SERVICE AREA 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 **SUCCESSOR ORGANIZATION.** It is the intent of the Districts that the AREA III SWCD TECHNICAL SERVICE AREA Board established pursuant to this Agreement is the successor to the CCLNS Joint Powers Board #3 established pursuant to the Joint Powers Agreement dated December 19, 1994. The Board established under this Agreement accepts the assignment and agrees to perform all the rights and obligations of its predecessor effective the date of all signatures of the parties on this Agreement.
- 13.3 **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.

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 one and the same Agreement.

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

[The remainder of this page was intentionally left blank.]

AITKIN SOIL & WATER CONSERVATION DISTRICT

BY: Donna Rao Asp
Chair, Board of Supervisors

Date: 5/19/09

CARLTON SOIL & WATER CONSERVATION DISTRICT

BY: Barbara Dahl Chair
Chair, Board of Supervisors

Date: 5/11/09

COOK SOIL & WATER CONSERVATION DISTRICT

BY: James Hall
Chair, Board of Supervisors

Date: 4/2/09

AND BY: Donald F. Goodell
Secretary, Board of Supervisors

Date: 4/2/2009

Pursuant to a Resolution Passed by the District's Board of Supervisors on
4-2-09

Approved as to Form:

J. C. S. 4-13-09
County Attorney Date

KANABEC SOIL & WATER CONSERVATION DISTRICT

BY:

Paul A. Hope
Chair, Board of Supervisors

Date:

6-9-09

Deleted: ¶

Deleted: AND BY:

Secretary, Board of Supervisors

Date:

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

Approved as to Form:

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¶

County Attorney

Date:

LAKE SOIL & WATER CONSERVATION DISTRICT

BY: *Philip Sautter*
Chair, Board of Supervisors

Date: 5-14-09

AND BY: _____

MILLE LACS SOIL & WATER CONSERVATION DISTRICT

BY: 
Chair, Board of Supervisors

Date: 5-12-09

NORTH ST. LOUIS SOIL & WATER CONSERVATION DISTRICT

BY: Margaret Pearson
Chair, Board of Supervisors

Date: 4-9-2009

AND BY: Richard Voelker
Secretary, Board of Supervisors

Date: 4/9/2009

Pursuant to a Resolution Passed by the District's Board of Supervisors on
April 9, 2009.

Approved as to Form:

Assistant County Attorney Date

PINE SOIL & WATER CONSERVATION DISTRICT

BY:  _____
Chair, Board of Supervisors

Date: 5/28/09 _____

SOUTH ST LOUIS SOIL & WATER CONSERVATION DISTRICT

BY: David J. Davis
Chair, Board of Supervisors

Date: 5-20-09