

**A RESOLUTION REGARDING THE COOPERATIVE AGREEMENT
DELEGATION OF THE MINNESOTA BUFFER LAW**

County of Itasca and Itasca Soil and Water Conservation District
{Resolution # _____}

THIS DELEGATION AGREEMENT, is made the 19th day of June, 2018 by and between the Itasca County Soil and Water Conservation District, a public corporation (herein referred to as "SWCD"), a political sub-division of the State of Minnesota, with its principal mailing address at 1889 East Highway 2, Grand Rapids, MN 55744;

-and-

COUNTY OF ITASCA, a body politic (herein referred as "COUNTY") and a recipient of Buffer Aid [MN Stat. 103F.48] with an address of 123 NE 4th Street, Itasca County Courthouse, Grand Rapids, MN 55744.

-recitals-

WHEREAS, provisions in Minnesota Statute 103B.101, Subdivision 12A and 103F.48 (Buffer Law) allow a county or watershed district to affirm jurisdiction to carry out the compliance provisions regarding riparian vegetated buffers and alternative water quality practices for those waterbodies identified on the Department of Natural Resources' Buffer Protection Map; and

WHEREAS, the "COUNTY," as required under the statute adopted a resolution on June 20, 2017 to affirm its jurisdiction to carry out the compliance and received state-aid provided under the provisions of Minnesota Statutes 103B.101, subdivision 12a and 103F.48 by resolution; and

WHEREAS, the "COUNTY" discussed its intentions to delegate the compliance provisions of the Buffer Law at their June 20, 2017 meeting to the "SWCD"; and

WHEREAS, the "COUNTY" may appropriate these proceeds directly to soil and water conservation district in the county; and

WHEREAS, "SWCD" is a soil and water conservation district which provides access to conservation and resource management services. In cooperation with federal, state and local agencies, the District provides technical assistance, cost-sharing and natural resource management information and education; and

WHEREAS, "SWCD" is political subdivisions of the State of Minnesota established for the conservation, use and development of soil, water and related resources in a collaborative manner on on-the-ground actions that encourage diverse, sustainable use, protection, recovery and enjoyment of Itasca County's world-class water and shore-land resources that is critical to a strong economy; and

WHEREAS, the "COUNTY" and "SWCD" are committed to carry out the compliance and received state-aid provided under the provisions of Minnesota Statutes 103B.101, subdivision 12a and 103F.48 to improve water quality in a cooperative and efficient implementation of the initiative of the water quality buffer initiative; and

NOW THEREFORE, it is mutually agreed by and between the Parties as follows:

1. **PURPOSE.** The purpose of this delegation agreement is to appropriate \$35,000 of the "COUNTY'S" \$40,000 2017 Buffer Aid funding previously received, and once received (anticipated August 2018) the entire \$50,000 2018 allocation, to the "SWCD". This funding will be appropriated to carry out the compliance provisions of Minnesota Statute 103B.101, Subdivision 12A and 103F.48 regarding riparian vegetated buffers and alternative water quality practices for those waterbodies identified on the Department of Natural Resources' Buffer Protection Map
2. **TASK AND RESPONSIBILITIES.** The Itasca County Board of Commissioners authority and administrative responsibility to implement Minnesota Buffer Law enforcement as the LGU within the legal boundaries of the "COUNTY" is delegated to the "SWCD" as of June 19, 2018 in accordance with Minnesota Statute 103F.48.

"SWCD" agrees to carry out corrective actions on a parcel basis to ensure compliance with the buffer requirements, which may include criminal penalties, under the authority provided in Minnesota Statutes 103B.101, subd. 12a and 103F.48

County attorney's office will administer any criminal penalty court action related to buffer law enforcement matters, and will retain \$5,000 of 2017 funding for potential legal matters; additional funding is anticipated August 2019. See section five "FEES" on this page for language regarding procedure.

3. **FISCAL AGENT.** The County Auditor will act as the Fiscal Agent for the "COUNTY" establishing a dedicated riparian aid fund for the deposit of the appropriated Aid from the Commissioner of Revenue. The County Auditor will allocate funding provided by this fund to "SWCD" to develop and implement the buffer requirements under the terms of the agreement. The "SWCD" will provide annual reports to the County Board and the Environmental Services Department.
4. **COUNTY LIASON.** As County Liaison, the Environmental Administrator arranges communication for the County Board meetings from "SWCD" and external partner organizations and is responsible for accountability of funds spent and that field work is completed satisfactory (by monthly reports).
5. **FEES.** The Itasca County Auditor will pro-rate any time expended for Buffer Law Enforcement litigation services against the fund for reimbursement. See section two "TASK AND RESPONSIBILITIES" on this page for SFY2017 retained value.
6. **INSURANCE.**
 - a. Worker's Compensation insurance. "SWCD" shall provide and maintain, at all times while this agreement is in effect, Worker's Compensation Insurance as required by law. See Exhibit A.

b. **General Liability and Professional Liability Insurance.** The "SWCD" agrees that in order to protect itself as well as the "COUNTY" under this agreement that it will at all times during the term of the agreement have and keep in full force at its expense, a commercial general liability insurance policy covering any injury damages, claim or demand caused by an act or omission on part of the 'SWCD', its officers, agents, and employees in the performance of or with relation to any of the work or services performed or furnished by the "SWCD" under the terms of this agreement. The minimum insurance limits for this policy shall be as set forth in Exhibit A.

7. **INDEMNIFICATION.** Each Party to this agreement shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for acts of the other party, its agents, volunteers or employees. It is understood and agreed that liability and damages arising from the parties' acts and omissions are governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, the Minnesota Tort Claims Act, Minnesota Statutes section 3.736, and other applicable laws. Nothing in this agreement waives the "COUNTY'S" immunities and limitations on liability as provided for under the statutory law.

8. **TERM AND TERMINATION.** The agreement becomes effective on the date of final signature. The agreement expires upon the State of Minnesota eliminating Itasca County buffer law enforcement eligibility. This agreement may be terminated with or without cause by 30-day written notice to the other party.

9. **ENTIRE AGREEMENT.** This agreement supersedes any prior or contemporaneous representation or agreements, whether written or oral, between "SWCD" and the "COUNTY" and contains the entire agreement with regard to the subject matter herein.

10. **AMENDMENTS.** This agreement may be amended only by writing, signed by each of the Parties.

11. **NOTICE.** Any written communication required under this agreement will be addressed to the other Party as follows, except that any party may change its address for notice by so notifying the other Party in writing:

TO SWCD:

Andy Arens
Itasca Soil and Water Conservation District
1889 US Highway 2 E
Grand Rapids, MN 55744

TO ITASCA COUNTY:

Dan Swenson
Itasca County Environmental Services
123 NE 4th Street
Grand Rapids, MN 55744

12. **GOVERNING LAW AND VENUE.** This agreement will be governed by and interpreted in accordance with the laws of the State of Minnesota. Venue for all legal proceedings out of this

agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Itasca County, Minnesota.

- 13. **WAIVERS.** The waiver by "SWCD" or the "COUNTY" of any breach or failure to comply with any provision of this agreement by the other Party will not be construed as nor will it constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this agreement.

- 14. **STATE AUDITS.** Under Minnesota Statutes section 16C.05, subd. 5, "SWCD'S" books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and for the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

- 15. **GOVERNING LAW AND VENUE.** This agreement will be governed by and interpreted in accordance with the laws of the State of Minnesota. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Itasca County, Minnesota.

- 16. **GOVERNMENT DATA PRACTICES.** "SWCD" must comply with the Minnesota Government Data Practices Act, Minnesota Statute Chapter 13, as it applies to all data created, collected, received, stored, used, maintained, or disseminated by "SWCD" in its' performance under this agreement.

- 17. **COMPETITIVE BID LAW REQUIREMENTS.** "SWCD" must comply with the extent it may be applicable, with the statutory law governing competitive bidding (particularly MN Stat. 471.345 and 375.21).

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto execute and deliver this agreement.

SWCD:

Signature: _____

Title: Board Chair, Ted Lovdahl

Date: _____

County:

Adopted this _____ day of _____, 20____.

By: _____
Leo Trunt, Chair of the Board

Attest: _____
Brett Skyles, County Administrator

EXHIBIT A TO THE COOPERATIVE AGREEMENT BETWEEN THE ITASCA SOIL AND WATER CONSERVATION DISTRICT AND THE COUNTY OF ITASCA

A. "SWCD" agrees to defend, indemnify and hold harmless "COUNTY", its elected officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney fees resulting directly or indirectly from any act or omission of "SWCD", anyone directly or indirectly employed by them and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this contract and against all loss by reason of failure of said "SWCD" to perform fully, in any respect, all obligations under this contract.

B. "SWCD" agrees at all times during the term of this Agreement to have and keep in force insurance, either under a self-insurance program or separate insurance policy, as follows:

a. Commercial General Liability shall list the "COUNTY" as an additional insured with the following insurance limits:

	<u>Limits</u>
General Aggregate	\$1,500,000
Products – Completed	
Operations Aggregate	\$1,500,000
Personal and Advertising Injury	\$1,500,000
Each Occurrence:	
Combined Bodily Injury and Property Damage	\$1,500,000

b. Automobile Liability - Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned and hired automobiles \$1,500,000

c. Workers' Compensation and Employer's Liability Statutory Limits
 If the contractor is based outside the State of Minnesota, coverage must apply to Minnesota Laws

d. Employer's Liability

Bodily Injury by:	
Accident – Each Accident	\$500,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$500,000

An umbrella or excess policy over primary liability coverages is an acceptable method to provide the required aggregate insurance amounts.

The above establishes minimum insurance requirements. It is the sole responsibility of "SWCD" to determine the need for and to procure additional coverage that may be needed in connection with this Agreement.

"SWCD" shall not commence buffer law enforcement work until it has obtained required insurance and filed an acceptable Certificate of Insurance with "COUNTY" to the attention of Dan Swenson, Environmental Services. The Certificate shall:

1. List Itasca County as Certificate holder and as an additional insured with respect to operations covered under the contract for all liability coverages except Workers' Compensation and Employer's Liability and Professional Liability, if applicable; and,
 2. Be amended to show that Itasca County will receive thirty (30) days written notice in the event of cancellation, non-renewal or material change in any described policies.
- C. "SWCD" also agrees that any contract let by "SWCD" for the performance of the work on buffer law enforcement as provided herein shall include clauses that will: (1) require "SWCD" to defend, indemnify and hold harmless "COUNTY", its elected officials, officers, agents and employees for any liability, claims, causes of action, losses, demands, damages, judgments, costs, interest, expenses (including, without limitation, reasonable attorney fees, witness fees and disbursements incurred in the defendant thereof) arising out of or by reason of the acts and/or omissions of "SWCD" its subcontractors, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable for ; (2) require "SWCD" to provide and maintain insurance in accordance with the following:

a. Workers' Compensation: (Statutory Limits)

Employer's Liability Insurance:	<u>Limits</u>
1. Bodily Injury by Accident, each accident	\$500,000
2. Bodily Injury by Disease, policy limit	\$500,000
3. Bodily Injury by Disease, each employee	\$500,000

Note: all states endorsement is required if "SWCD" is domiciled outside the State of Minnesota.

b. Commercial General and Automobile Liability Insurance

1. Commercial General Liability:	<u>Limits</u>
Combined Bodily Injury and Property Damage	
Each Occurrence Limit	\$1,500,000
General Aggregate Limit	\$3,000,000
Products – Completed Operations	
Aggregate Limit	\$3,000,000
Personal and Advertising Injury Limits	\$1,500,000

Coverages above shall also include:

- Premises – Operations
- Contractual Liability (including oral and written contracts)
- Explosion, Collapse, Underground Property Damage (XCU)

- 2. Automobile Liability including Hired Car and
Employers Non-Ownership Liability:
Combined Bodily Injury and Property Damage
Each Occurrence \$1,500,000

The above subparagraphs establish minimum insurance requirements and it is the sole responsibility of "SWCD'S" Subcontractor(s) to purchase additional insurance that may be necessary for the project.

- D. "SWCD" further agrees the minimum requirements set forth above shall at all times be in an amount at least equal to the maximum liability of the "COUNTY" under Minn. Stat. 466.04 now or as said statute is hereafter amended or as otherwise required by law, statute or rule.

In addition to any other rights contained herein the "COUNTY" reserves the right to terminate, suspend or rescind this contract if "SWCD" is not in compliance with the requirements contained herein and retains all rights its thereafter to pursue any legal remedies against "SWCD". All insurance policies shall be open to inspection by the "COUNTY" upon written request.