

**JOINT POWERS AGREEMENT
TO PROTECT AND MANAGE
THE MIDDLE ST CROIX WATERSHED**

THIS AGREEMENT, made and entered into as of the date of execution, by and between the local governmental units within the Middle St. Croix Watershed Management Organization each party realizes that the success or failure of the Middle St. Croix Water Management Organization created by this agreement is dependent upon the desire of each member community to cooperate in the exercise of Joint Power to solve a common problem. Each party to this agreement pledges its cooperation to meet the requirements of the Metropolitan Surface Water Management Act (Minn. Stat. 103B.201 to 103B.255).

WITNESSTH:

WHEREAS, the cities and townships located within the Middle St. Croix Watershed have authority pursuant to Minn. Stat. 471.59 to jointly and/or cooperatively by agreement, exercise any powers common to the contracting parties; and,

WHEREAS, the parties are desirous of jointly and cooperatively developing a Watershed Management Plan for the Watershed and instituting programs to conserve soil and water resources through implementation of practices that preserve and use natural storage areas, control excessive volumes and rates of run-off, effectively reduce or prevent erosion and sedimentation, promote groundwater recharge, improve water quality and prevent flooding in order to protect and manage the natural and artificial water conveying systems of the Middle St. Croix Watershed.

NOW, THEREFORE, the parties to this agreement do mutually agree as follows:

ARTICLE I

General Purpose

1.1 It is the general purpose of the parties to this Agreement to establish an organization to jointly and cooperatively develop a Watershed Management Plan and program to preserve and use natural or created water storage and retention systems in order to:

- a. Protect, preserve and use natural service and groundwater storage and retention systems;
- b. Minimize public capital expenditures to correct flooding and water quality problems;
- c. Identify and plan for means to effectively protect and improve surface and groundwater quality;
- d. Establish more uniform local policies and official controls for surface and

- groundwater management;
- e. Prevent erosion of soil into surface water systems;
- f. Promote groundwater recharge;
- g. Protect and enhance fish and wildlife habitat and water recreational facilities; and,
- h. Secure the other benefits associated with the proper management of surface and groundwater.

1.2 The boundaries of the Middle St. Croix Water Management Organization (hereinafter referred to as MSCWMO) are set forth in Exhibit I attached hereto and incorporated by reference herein and shall be hereinafter referred to as the “Watershed”. In general, the plan may include projects that accomplish the following:

- a. Preserve and use natural *or created* water storage and retention systems in order to reduce to the greatest practical extent the public capital expenditures necessary to control excessive volumes and rates of run-off;
- b. Protect and improve existing water quality in lakes and streams through proper land use and appropriate conservation practices;
- c. Prevent flooding and erosion by implementing flood plain management and erosion control systems;
- d. Protect and enhance fish and wildlife habitat and water recreational facilities by reducing pollutant loads to lakes, streams, and wetlands;
- e. Undertake needed programs to promote groundwater recharge and protection;
- f. Provide a mechanism for the review of local land and water management plans;
- g. Provide a forum for resolution of future intergovernmental disputes relating to the management and protection of the Watershed;
- h. Provide cooperation on a united basis on behalf of all units of government within the Watershed and with all other levels of government to facilitate natural resource protection and water management in the Watershed.
- i. Provide means for review of development projects to ensure compliance with MSCWMO Watershed Management Plan requirements.

ARTICLE II

Definitions

2.1 For the purposes of this agreement, the terms shall have the meanings as defined in this Article.

- a. “MSCWMO” The organization created by this agreement, the full name of which is the Middle St. Croix Water Management Organization (MSCWMO). It shall be a public agency of its members.
- b. “Board” The Joint Powers Board consisting of one Manager from each of the local governmental units that is a party to this agreement, which shall be the governing body of the MSCWMO.

- c. “Council” Means the governmental body of a local governmental unit that is a member of this MSCWMO.
- d. “Local Governmental Unit” Means that City, Township, or other political subdivision cited in Minn. Stat. 473.852. Subd. 7.
- e. “Manager” Is the person appointed to the Joint Powers Board by each Council or in the Manager’s absence, the Alternate Manager.
- f. “Middle St. Croix Watershed” or “Watershed” Unless otherwise stated, means that area described and set forth within the map depicted in Exhibit I attached hereto and incorporated by reference herein.
- g. “Groundwater” Is the water found in the interconnected pores found beneath the water table.

ARTICLE III

Board of Managers

3.1 The governing body of the Joint Powers Board shall be its board. Each council shall be entitled to appoint one Manager on the Board and one Alternate who may sit when the Manager is not in attendance and said Manager or Alternate shall be called a Manager.

3.2 Each Manager and Alternate shall be appointed for a three (3) year term and shall serve at the pleasure of the Council appointing such Manager, and such Manager or Alternate may be removed by the Council at any time for just cause in accordance with Minnesota Statutes 103B.227. Subd. 3: and Minnesota Rules Chapter 8410.0040.

3.3 Vacancies. A vacancy on the Joint Powers Board shall be filled by the Council whose membership position on the Joint Powers Board is vacant. The vacant position shall be filled in accordance with the requirements as set forth within Minn. Stat. §103B.227 (1995).

3.4 Compensation and Expenses. The Joint Powers Board Manager shall not be entitled to compensation or reimbursement for expenses incurred in attending meetings except to the extent the Council might determine to compensate or reimburse the expenses of the member it appoints in which case the obligation to make such payment shall be that of the individual Council and not of the MSCWMO.

3.5 Officers. The Joint Powers Board shall elect from its membership a Chairperson, Vice Chairperson, Secretary, and Treasurer and further officers as may be necessary to reasonably carry out the purposes of this agreement. All such officers shall hold office for a term of 2 years or until their successors have been duly elected by the members of the Joint Powers Board. Any such officer may only serve while a Manager of the Joint Powers Board. Vacancies in office shall be filled by the membership of the Joint Powers Board by election for the remainder of the unexpired term of such office.

Duties of Officers

1. *Chair - Presides over meetings, assists with preparation of agenda, maintains and presents annual calendar of specific responsibilities.*

2. *Vice Chair - In the absence of the Chair, fulfills all duties of the Chair.*
3. *Secretary - Meeting minutes, prepare agendas, maintain membership list.*
4. *Treasurer - Maintains checkbook, financial reports at meetings, prepares budgets and billing statements, assists with yearly financial audit.*

3.6 Quorum. One half of the members of the Board shall constitute a quorum.

3.7 Meetings. The regular meeting date of the Joint Powers Board shall be established by resolution of the Joint Powers Board and may be changed from time to time. Special meetings shall be held at the call of the Chair or by any member giving not less than seventy-two (72) hours written notice of the time, place and purpose of such meeting delivered or mailed to the residence of each Joint Powers Board manager and to the City Clerk for each member local government unit. All meetings of the Joint Powers Board are subject to Minn. Stat. Chapter 13D (The Minnesota Open Meeting Law), *and shall be governed by Robert's Rules of Order, Newly Revised 10th Edition* or later. Member local government units will be notified of meeting dates, times, and locations.

3.8 MSCWMO Joint Powers Board Office. The office of the MSCWMO shall be at: Washington Conservation District. 1380 West Frontage Road, Highway 36. Stillwater, Minnesota 55082. The Joint Powers Board will designate the official bulletin board by official resolution.

All notices to the MSCWMO or its Joint Powers Board shall be delivered or served at said office. The designated office of the MSCWMO may be changed from time to time upon an affirmative vote from a majority of its Managers at a regularly held meeting or special meeting called for that purpose.

3.9 Alternate Managers. One Alternate Manager to the Joint Powers Board shall be appointed by each party to this agreement. Alternate Managers may attend any meeting of the Joint Powers Board and in the absence of the appointed Manager have the right to vote on the behalf of the member local governmental unit that the Alternate represents. If a Joint Powers Board Manager is also an officer of the Joint Powers Board, the Alternate shall not be entitled to serve in the place of such officer when the officer is absent.

3.10 Voting. Any action taken by the Board shall be by majority vote unless otherwise stated herein or required by law. Amendments to the annual operating budgets require a two-thirds (2/3) majority of all of the 10 managers of the Joint Powers Board.

Actions taken by the Joint Powers Board to order projects or to assess member local governmental units for improvements shall require a two-thirds (2/3) majority vote of all 10 members of the Joint Powers Board; all other matters will carry by a simple majority of those present as provided in 3.6.

ARTICLE IV

Joint Powers Board Powers and Duties

4.1 Joint Powers Board. The Joint Powers Board shall have the powers and duties set

forth within this article.

4.2 Rules and Regulations. The Joint Powers Board may prescribe and promulgate such rules from time to time, as it deems necessary to carry out its duties and the purpose of this agreement and to collect such fees as are reasonably necessary to cover the expenses of administration, permitting, and enforcement of such rules.

4.3 Watershed Management Plan. As required by law, the Joint Powers Board shall prepare and adopt a Watershed Management Plan as required by law.

4.4 Local Water Management Plan. After consideration, but before adoption by its governing body, each member local governmental unit shall submit its Local Water Management Plan to the Joint Powers Board for review of its consistency with the Watershed Management Plan of the Middle St. Croix Water Management Organization. Each member local governmental unit may also adopt, by resolution, the Middle St. Croix Watershed Management Plan, as its own local plan. The Joint Powers Board shall approve or disapprove each Local Water Management Plan or parts thereof. The Joint Powers Board shall have sixty (60) days to complete its review. If the Joint Powers Board fails to complete its review within the prescribed time period, unless an extension is agreed to by the member local governmental unit submitting the plan, the proposed plan shall be deemed approved.

4.5 Information and Data. The Joint Powers Board may acquire and record such information and data within the Watershed as it deems necessary to accomplish its purpose as set forth herein. Such information or data as collected, shall be fully available for all member local governmental units of the MSCWMO and the public. Nothing herein is intended to authorize or require a disclosure of data in violation of the Minnesota Data Privacy Act, Minnesota Statutes, Chapter 13.

4.6 Claims. As provided within Minn. Stat. §103B.211 Subd. 1, the MSCWMO through its agents and employees may enter upon land within or without the Watershed to make surveys and/or investigations to accomplish the purposes of the watershed management plan. The MSCWMO shall be liable for actual damages resulting from entry but every person who claims damages shall serve the Chairman or Secretary of the Joint Powers Board with a Notice of Claim as required by Minn. Stat. 466.05.

4.7 Contracts. The MSCWMO may make such contracts and enter into such agreements as necessary to fulfill its obligations under this agreement. Such contract or agreements shall be in accordance with the Municipal Contracting Law as set forth within Minn. Stat. §471.345 et seq.

4.8 Employment and Professional Services. The MSCWMO may obtain such professional services and/or contract for services and may also utilize existing staff of the local governmental units to the extent that the local governmental units consent thereto. The MSCWMO may also employ such other persons as it deems necessary. If staff services of a member local governmental unit are utilized, such services shall not reduce the financial commitment of the member local governmental unit to the operating fund of the Joint Powers Board unless the Joint Powers Board so authorizes the same by a majority vote of the Joint

Powers Board of Managers in such cases as where the utilization of staff services are to be substantial.

4.9 The Joint Powers Board will appoint citizen and technical advisory committees as it deems necessary and/or as required by law.

4.10 The Joint Powers Board will also establish and provide for a newsletter or other communication in the manner prescribed within Minn. Stat. §103B.227 Subd. 4.

4.11 The Joint Powers Board shall be authorized to fund projects by use of an ad valorem tax authorized under Minn. Stat. §103B.241 in addition to the cost of preparing plans to implement same. MSCWMO and its member local governmental units may accumulate the proceeds of levies as an alternative to issuing bonds to finance improvements.

4.12 Pursuant to the authority of Minn. Stat. §103B.211, this Water Management Organization shall have the authority of a watershed district under Section 103D.911 to adopt a budget, and to decide the total amount necessary to be raised from ad valorem tax levies to meet the budget and further the authority of watershed districts under Section 103D.915 to certify its budget with the auditor of Washington County; and the authority of a watershed district under Section 103D.901 to file approved assessment statements with each affected county and finally have the other powers necessary to exercise the authority under clauses 1 - 3 of Minn. Stat. §103B.211 Subd.1 including the power to enter into contracts for the performance of functions with government units or persons.

4.13 The Joint Powers Board shall be authorized to fund projects in accordance with Minn. Stat. §103B.251.

4.14 The Joint Powers Board shall fulfill all responsibilities imposed by law on watershed management organizations under Minn. Stat. §103B.201 - 103B.255, including future amendments thereto (the "Act") and shall have all powers and authority that the Act allows for watershed management organizations except as explicitly modified, restricted, or withheld in this Agreement.

ARTICLE V

Annual Budget/Administrative Funding

5.1 Method of Operation. The Joint Powers Board may collect and receive money and services subject to the provisions of this agreement from the member local governmental units and from any other sources approved by the Joint Powers Board and it may incur expenses and make expenditures and disbursements necessary and incidental to the effectuation of the purposes of this agreement. Funds may be expended by the Joint Powers Board in accordance with procedures established herein. Orders, checks, and drafts shall be signed by both the Chairperson or Vice-Chairperson and the Treasurer. Other legal instruments shall be executed on behalf of the Joint Powers Board by the Chairperson or Vice-Chairperson and the Secretary.

5.2 On or before August 1 of each year, the Joint Powers Board shall prepare an annual

work program relating to implementation of the Watershed Management Plan and other watershed issues.

5.3 Operating Funds. On or before August 1 of each year, the Joint Powers Board shall prepare an operating budget for the following year for the purpose of providing funds to operate the Joint Powers Board's business.

5.4 Notwithstanding the provisions of Article of IV of this agreement, the annual administrative expenses shall be budgeted and borne by each voting member local governmental unit in the following manner:

- a) 40 percent shall be borne based upon the total acreage of each member local governmental unit based as a percentage of the acreage of the entire Middle St. Croix Watershed;
- b) Twenty percent shall be borne by each member local governmental unit based upon the tax capacity of the particular community's area of the watershed as a percentage of the tax capacity of the entire Middle St. Croix Watershed. *To determine the tax capacity portion of each community in the watershed to use in the formula described here, the total tax capacity of the particular community is multiplied by the percentage of the acreage that community has within the Middle St. Croix Watershed;*
- c) Forty percent shall be borne by each member local governmental unit based upon population of particular community's area of the watershed as a percentage of the total population of the entire Middle St. Croix Watershed. *To determine the population portion of each community in the watershed to use in the formula described here, the total population of the particular community is multiplied by the percentage of the acreage that community has within the Middle St. Croix Watershed.*

The budget shall be adopted by the Joint Powers Board upon a two-thirds (2/3) majority vote of all 10 members of the Joint Powers Board. After approval, the Secretary shall certify the adopted budget to each member local governmental unit on or before September 1 of each year, together with a statement showing the amounts due from each period. Each member local governmental unit shall pay over to the Joint Powers Board the amount owing, in two (2) equal installments, the first on or before January 1, and the second on or before July 1, in accordance with the tax year for which the amount due is being paid.

5.5 Annual Accounts. By May 1 of each year, the Joint Powers Board shall make and file a full and complete financial report, an activity report, and an audit report to each member local governmental unit and to the State Board of Water and Soil Resources, in accordance with Minnesota Rules. Chapter 8410.0150.

ARTICLE VI

Works of Improvement

6.1 Initiation of Improvement Projects. Works of improvement for the protection and management of the Middle St. Croix Watershed including but not limited to improvements to property, land acquisition, easements, or rights-of-way may be initiated by recommendation of the MSCWMO or petition to the Joint Powers Board by the Council of one or more member

local government units. In either case, the MSCWMO shall conduct a study to determine first, whether or not such proposed improvements are consistent with the adopted MSCWMO Watershed Management Plan and will result in a benefit to the Watershed in part or in whole, and second, whether or not the proposed improvement is feasible and as to whether it should be best made as proposed or in connection with some other improvement. Finally, the MSCWMO shall determine the estimated cost of the improvement as recommended.

For projects that will be funded by ad valorem tax levies, the Joint Powers Board shall follow procedures specified by law.

For projects that will be funded in whole or in part by assessments against member local government units, the MSCWMO shall follow the following procedures: Upon concluding such determination, the MSCWMO may make a recommendation of the improvement to the Council of the member local governmental unit that the MSCWMO determines will be directly benefited thereby. The recommendation of the MSCWMO shall include a description of the proposed improvement together with its estimated costs and all engineering or staff reports related thereto and an allocation of costs among benefited member local government units. The recommendation shall also specify whether the improvement will be constructed by the MSCWMO or a member local government unit. In the event the original proposal for the improvement was submitted by all the local governmental units that are specifically and directly benefited by the proposed improvement, such a recommendation from the MSCWMO to the Council(s) shall not be required. Upon the submission of such a recommendation, if required above, to the Council, each such Council to whom the MSCWMO submitted the recommendation shall respond in writing within ninety (90) days of the date of receipt of the recommendation. In the event a Council does not respond within ninety (90) days of the date of receipt the recommendation of the MSCWMO, the Council shall be deemed to have consented to the improvement.

In the event the Council of any local government unit directly benefited by any proposed improvement timely objects to same, such proposed improvement may only be ordered by the Joint Powers Board after conducting a public hearing on the improvement and then only on an affirmative vote of two-thirds (2/3) of the Managers. Such public hearings shall be noticed and conducted in the manner established and set forth in Minnesota Statute 103D.741.

6.2 Local Improvements. When works of improvement are initiated by the Council of a party or parties, said party or parties shall submit a petition to the MSCWMO setting forth the description of the proposed work and the improvement, the benefits to be realized by said improvements, its total estimated cost and a statement of its feasibility. The MSCWMO shall review and make recommendations on the proposed improvement and the compliance with the adopted MSCWMO Watershed Management Plan in accordance with the provisions of this agreement all to be submitted back to the particular Council within sixty (60) days of the date of receipt of the original proposal. In the event the MSCWMO does not respond to the particular Council within sixty (60) days of the date of receipt of the proposal for improvement, the MSCWMO shall be deemed to have consented to such proposal for improvement unless an

extension of time has been granted by the Council.

In reviewing the proposal of the member local governmental unit for improvement projects, the MSCWMO shall determine whether or not the same is consistent with the adopted MSCWMO Watershed Management Plan. In the event the MSCWMO determines the proposed improvements by the member local governmental unit to be inconsistent with the approved MSCWMO Watershed Management Plan, the MSCWMO shall so notify the member local governmental unit in the time prescribed above and in such case the member local governmental unit shall not proceed with the proposed improvement. Review and approval by the MSCWMO shall not be required for local projects that are identified in local surface water management plans previously approved by the MSCWMO.

6.3. Tax District. Each member local governmental unit may establish a watershed management tax district for the portion of its corporate boundaries that lie within the Watershed for the purposes of paying the cost of the planning required to develop a Watershed Management Plan, or implement capital improvement projects. The tax district shall be established pursuant to the provisions of Minnesota Statutes Section 103B.245. Neither the provisions of this agreement or the establishment of a tax district shall prevent the member local governmental units from electing to finance capital improvements by other means, such as establishing a storm water utility.

6.4 Binding Arbitration. Any member local government unit that is aggrieved by the determination of the Joint Powers Board as to the allocation of the costs of an improvement shall have 60 days after receipt of the recommendation of the Joint Powers Board referred to in Section 6.1 to appeal such recommendation. The appeal shall be in writing and shall be addressed to the Joint Powers Board asking for arbitration. The determination of the appeal shall be referred to a Board of Arbitration. The Board of Arbitration shall consist of three persons; one to be appointed by the Joint Powers Board; one to be appointed by the appealing local government unit; and the third to be appointed by the two so selected. In the event the two persons so selected do not appoint the third person within 15 days after their appointment, the Chief Judge of the Washington County district court shall have jurisdiction to appoint, upon application of either or both of the two earlier selected, the third person to the Board of Arbitration. The third person selected shall not be a resident of any member governmental unit. The arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be divided equally between the MSCWMO and the appealing member. Arbitration shall be conducted in accordance with Minnesota Statutes, Chapter 572.

ARTICLE VII

Miscellaneous Provisions

7.1 Insurance. The Joint Powers Board may contract for or purchase such insurance as the it deems reasonable.

7.2 The Joint Powers Board shall not have the power to levy a special assessment on any privately or publicly owned land. The Joint Powers Board shall have the power to require any member local government unit to contribute to costs allocated or assessed according to the other provisions of this agreement.

7.3 The Joint Powers Board shall not have the power to issue certificates, bonds or warrants.

7.4 The MSCWMO shall not have the power of eminent domain and shall not own any interest in real property. (All interests in land shall be held in the name of the member local government unit wherein said lands are located).

7.5 The MSCWMO has the ability to charge fees to member local government units to cover the cost of reviews of projects within the member local government unit boundaries and applied for and/or initiated by the member communities to ensure projects are meeting the performance standards in the Watershed Management Plan.

7.6 The MSCWMO has the authority to establish and maintain a wetland enhancement and replacement fund from funds collected from developers constructing projects having impacts on wetlands subject to the limitations of the law.

ARTICLE VIII

Duration

8.1 Each member local governmental unit agrees to be bound by the terms of this agreement until such time as it is dissolved.

8.2 This agreement may be terminated by dissolution pursuant to the procedures set forth below or by the unanimous consent of the parties of this agreement.

8.3 **Dissolution.** Any member local governmental unit may petition the board to dissolve the agreement. Upon thirty (30) days notice in writing of each member local governmental unit, the board shall hold a hearing and upon a favorable vote by three-fourths (3/4) of all the eligible votes of the then existing Board of Managers, the Board may by resolution, recommend that the Joint Powers Board be dissolved. Notice of such recommendation shall be sent to Washington County and the Board of Water and Soil Resources as a notice of intent to dissolve, and no dissolution shall be effective until at least 90 days following such notice. Said resolution shall be submitted to each member local governmental unit and if ratified by three-fourths (3/4) of the member local governmental units within ninety (90) days, said board shall dissolve the MSCWMO allowing a reasonable time to complete work in progress and to dispose of personal property owned by the Joint Powers Board and/or the MSCWMO, if any. Upon dissolution of the Joint Powers Board and/or the MSCWMO, all property of the Joint Powers Board and/or the MSCWMO shall be sold and the proceeds thereof together with monies on hand shall be distributed to the member local governmental units of the Joint Powers Board. Such distribution of the Joint Powers Board and/or the MSCWMO assets shall be made in proportion to total contribution of the Joint Powers Board required by the last annual budget.

ARTICLE IX

Effective Date

This agreement shall be in full force and effect upon the filing of the certified copy of the Resolution approving said agreement by each member local governmental unit.

ARTICLE X

Amendment

The Joint Powers Board and/or the Councils of the member local governmental units may recommend changes and amendments to this agreement. Such recommendation shall be forwarded in writing, to all of the Councils of the member local governmental units. Amendments shall be adopted by three-fourths (3/4) vote of the Councils of the member local governmental units within ninety (90) days of the referral. However, any amendment which changes the method of approval for improvements or the financing of the Joint Powers Board must be unanimously approved.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date of complete execution of the parties.

SEAL

Dated:



1-26-06

CITY OF AFTON

By:

Mayor

ATTEST:

City Clerk

SEAL

Dated:



2/7/06

CITY OF BAYPORT

By:

Mayor

ATTEST:

City Clerk

SEAL

Dated:

2-6-06

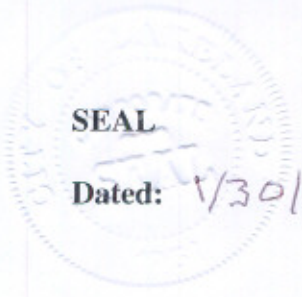
TOWN OF BAYTOWN

By:

Chairperson

ATTEST:

Town Clerk



SEAL

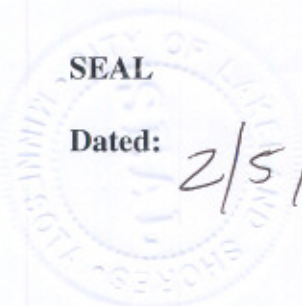
Dated: 1/30/06

CITY OF LAKELAND

By: Robert W. Craggs
Mayor

ATTEST:

Chris Woodring
City Clerk



SEAL

Dated: 2/5/06

CITY OF LAKELAND SHORES

By: Randy Key
Mayor

ATTEST:

Opie Edward
City Clerk



SEAL

Dated: 2/7/06

CITY OF LAKE ST. CROIX BEACH

By: Laurel March
Mayor

ATTEST:

Cinder Keiter
City Clerk



SEAL

Dated: 1-24-06

CITY OF LAKE ST. CROIX BEACH

By: *Lance March*
Mayor

ATTEST:

Janet H. Kinnear
City Clerk

SEAL

Dated: 2/7/06

CITY OF ST. MARY'S POINT

By: *Ronald Jones*
Mayor

ATTEST:

Holly Whalen
City Clerk

SEAL

Dated: 2-7-06

CITY OF STILLWATER

By: *Greg J. Smith*
Mayor

ATTEST:

Marianne J. Ward
City Clerk

SEAL

Dated: 2-3-06

CITY OF OAK PARK HEIGHTS

By:



Mayor

ATTEST:



City Clerk

TOWN OF WEST LAKELAND

By:



Chairperson

ATTEST:



Town Clerk

SEAL

Dated: 2-7-06