

**RURAL MINNESOTA ENERGY BOARD
JOINT POWERS AGREEMENT**

June 2021

THIS AGREEMENT IS MADE by and between the Counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lincoln, Lyon, Martin, Mower, Murray, Nicollet, Nobles, Pipestone, Redwood, Renville, Rock, and Watonwan, collectively, the "Members," and each individually, a "Member", pursuant to Minnesota Statutes, Section 471.59, the Joint Powers Act, which are signatories to this "Agreement" each having been duly authorized to enter into this Agreement by its respective Board of County Commissioners.

ARTICLE I. ENABLING AUTHORITY AND PURPOSE

- 1.1 Minnesota Statutes section 471.59 provides that two or more governmental units may by agreement jointly exercise any power common to the contracting parties.
- 1.2 The general purpose of this Agreement is to provide for a Joint Powers Organization (JPO) to cooperate in the areas encompassed by the Members in planning, management, and implementation of methods to address all manner of energy, energy transmission, energy conservation, energy funding and energy related issues rural Minnesota.
- 1.3 The Rural Minnesota Energy Board (RMEB) is established as a governmental unit under the above-referenced authority and requirements of Minnesota law to jointly exercise the powers common to the signatories for the general purposes described herein.
- 1.4 The Members expressly authorize the RMEB to issue and sell revenue bonds and other obligations as provided by law, including without limitation Minnesota Statutes, Sections 471.59, Subdivision 11, in order to carry out the purposes of this Agreement.

ARTICLE II. DEFINITION OF TERMS

For the purposes of this Agreement, the terms defined in this article shall have the meanings given them.

- 2.1. “Rural Minnesota Energy Board” or “RMEB” means the Joint Powers Organization created pursuant to this Agreement, hereafter referred to as RMEB.
- 2.2. “Organization” or “JPO” refers to RMEB, unless specifically qualified to refer to another organization.
- 2.3. “Member” means a governmental unit that is a signatory to this Agreement and has not given notice to withdraw pursuant to Article VIII.
- 2.4. “Director” means the primary representative designated by the governing body of the Member of RMEB. Alternate means the secondary representative designated by the governing body of the Member of RMEB to represent and act in the absence of the Director.
- 2.5. “Board” means the governing body of RMEB, consisting of one Director from each Member.
- 2.6. “Governmental Unit” is defined by Subdivision 1, Section 471.59 of Minnesota Statutes, as amended.
- 2.7. Day or days shall refer to calendar days. Fiscal Year shall be the calendar year.
- 2.8. Operating Capital Contribution. Upon approval of the Joint Powers Board, new members of the Rural Minnesota Energy Board shall pay a capital contribution in an amount determined by the Board.
- 2.9. Dues: The Board may annually set dues for Membership in the RMEB.

ARTICLE III. JOINT POWERS BOARD

The administrative and executive functions of the activities contemplated by this Agreement shall be administered and carried out by a Joint Powers Board

- 3.1 The Joint Powers Board (“Board”) shall take such action as it deems necessary and proper to accomplish the purposes of RMEB and any other action necessary and incidental to the implementation of said purpose or action. The Board is hereby authorized to exercise such authority and powers common to the Members as are necessary and proper to fulfill its purposes and perform its duties. Such authority shall include the specific powers enumerated in this Agreement and/or in the Bylaws.
- 3.2 Members, by executing this Agreement, recognize the Board as the governing authority of RMEB.
- 3.3 The Board shall be made up of one Director (or alternate) appointed by the governing board of each Member Governmental Unit. The Director shall be a board member of the governing body of the Member. Any Director or Alternate shall be subject to removal by the appointing governing board at any time, with or without cause. A vacancy of a Director or Alternate shall be filled by the governing body of the Member who appointed the Director or Alternate.
- 3.4 Directors and Alternates shall serve without compensation from RMEB, but this shall not prevent a Member from providing compensation for its Director or Alternates, if such compensation is authorized by such Governmental Unit and by law.
- 3.5. Subject to the limitations of Article IV, the Board shall have the power to make contracts as it deems necessary to make effective any power to be exercised by RMEB pursuant to this Agreement; to provide for the prosecution and defense or other participation in actions or proceedings at law in which it may have an interest; to employ such persons as it deems necessary to accomplish its duties and powers on a full-time, part-time or consulting basis; to hire legal counsel and other professional advisors; to conduct such research and investigation as it deems necessary on any matter related to or affecting the general purposes of RMEB; to acquire, hold and dispose of personal both real and personal as the Board deems necessary; and to contract for space, materials, supplies and personnel either with a Member or with a number of Members or elsewhere. The Board is authorized to contract with third parties or consulting services as may be, in the judgment of the Board, necessary or desirable from time to time in order to carry out the purposes of this Agreement.

- 3.6 Subject to the limitations of Article IV, the Board shall be authorized to own, purchase, sell, construct, operate and maintain energy facilities and other equipment necessary or collateral to their operation; and the Board is further authorized to enter into contracts for the purchase, acquisition, construction, sale, provision, operation or maintenance of energy facilities and equipment necessary for their operations.
- 3.7 Subject to the limitations of Article IV, the Board shall develop and submit for approval of the governing boards of its Members an energy management plan;
- 3.8 The Board may establish and collect dues from its Members.
- 3.9 The Board may accept gifts, apply for and use grants or loans of money or other property from the state, or any other governmental units or organizations and may enter into agreements required in connection therewith and may hold, use and dispose of such monies or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.
- 3.10 The Board shall cause a regular, periodic independent audit of the books to be made and shall make a regular, periodic financial accounting and report in writing to the Members. Its books and records shall be available for and open to examination by its Members at all reasonable times.
- 3.11 The Board shall establish the annual budget for RMEB as provided in this Agreement.
- 3.12 The Board shall adopt and follow such bylaws as may be appropriate and consistent with this agreement and law. Bylaws shall be adopted by and amended by a two-thirds (2/3) majority of the Board.
- 3.13 The Board may establish such committees as it deems appropriate and may delegate authority to such committees to take action between Board meetings as the Board shall see fit, consistent with the authority of this Agreement.
- 3.14 The Board may accumulate and maintain reasonable working capital reserves and may invest and reinvest funds not currently needed for the purposes of RMEB. Such investment and reinvestment shall be in accordance with and subject to the laws applicable to the investment of county funds.
- 3.15 The Board may pay reasonable and necessary expenses of officers, Directors and Alternates incurred in connection with their duties as such.
- 3.16 The Board shall provide for its employees to be members of the Public Employees Retirement Association and may make any required employer

contributions to that organization and any other employer contributions which counties are authorized or required by law to make.

- 3.17 The Board may purchase public liability insurance and such other bonds or insurance as it may deem necessary.
- 3.18 The Board may develop additional rules concerning the financing of RMEB and the disbursement of funds may be adopted by the Board provided they are not inconsistent with the provisions contained in this Agreement or state statutes.
- 3.19 The Board is authorized to enter into negotiations with the owner or operator of any new or existing energy facility(ies) on behalf of the Members and to recommend to each Member County the acceptance of any proposal for the facilities as may be appropriate under the circumstances in the best judgment of the Board.
- 3.20 The Board may exercise any power necessary and incidental to the implementation of its powers and duties.
- 3.21 The Board shall select from among its Directors a Chairperson, Vice-Chairperson, Secretary, and Treasurer, who shall serve in their respective capacities for one year terms or until their successors are duly qualified to act. No Director shall be deprived of the right to vote by virtue of appointment as an officer of the Board.

ARTICLE IV. FINANCING AND DISBURSEMENT OF FUNDS

- 4.1 Control of Funds: Board shall have exclusive control over all monies credited to any RMEB fund in accordance with state and federal laws and rules. Expenditures shall be made in accordance with the approved budget, contractual obligations of the JPO and the approval of the Board or duly appointed Committee.
- 4.2 Fiscal Agent: The Board may, by majority vote, designate a unit of government to act as the fiscal agent for the Board. The Fiscal Agent shall establish an account to ensure proper record keeping for all receipts and expenditures. The Fiscal Agent is empowered to prepare a list of proposed obligations of the Board, including expenses incurred by the Fiscal Agent and present them, at regular intervals, to the Board for approval. There shall be strict accountability of all funds and complete reporting of all receipts and disbursements by the Fiscal Agent.

4.3 Annual Budget: The Board shall prepare an annual budget in June/July each year to cover the administrative and planning costs of these joint powers and the Board, and agree that they shall continue to do so for each year of its existence. These costs will be paid equally ("Equal Share") by each Member up to a ceiling of \$3,500 per County per year, and further costs shall be based on per capita ("Proportional Share") as described in 4.4. For purposes of this Article, a feasibility study is considered a capital expenditure and not a planning cost.

4.4 Capital Expenditures. The Board shall prepare and approve a capital expenditures budget in June/July each year. The Counties agree that the counties utilizing the facility(ies) or service(s) included in the capital expenditures budget shall appropriate funds based on a Proportional Share, derived from population data from the most recent United States Census.

The ratios shall be adjusted as each decennial Census results become available, and shall be adjusted upon the admission of additional counties or withdrawal of present counties to the Board.

The Board shall have the authority to authorize the expenditure of the appropriated and contributed funds for the purposes designated in this Agreement with the following limitations:

- Any decision for a Capital Project shall be brought back to each Member County Board for a vote.
- If a Member County chooses not to participate in a capital project, it will not be held fiscally liable for said capital project.
- The Voting Directors of a Member Counties choosing not to participate in a particular capital project shall not be eligible to vote on operational matters pertaining to said capital project.

No expenditure may be made by or on behalf of the Board in a manner or for a purpose not authorized by law nor may any contract or purchase be made that does not comply with applicable provisions of the Uniform Municipal Contracting Law as adopted in the State of Minnesota and amended from time to time.

4.5 The adopted budget, which shall describe projected income and expenditures, shall be filed with the County Auditors of the Members.

4.6 RMEB will ensure strict accountability for all funds of the organization and will report on all receipts and disbursements made to, or on behalf of RMEB. The Fiscal Agent shall allow the Counties and the State of Minnesota, including the Legislative Auditor or the State Auditor, access to its records, at reasonable

hours; including all books, records, documents, and accounting procedures and practices relevant to the subject matter of this agreement, for the purpose of Audit.

ARTICLE V. PROCEDURE TO JOIN

- 5.1 If a County wishes to join RMEB as a Member, it may make written application to the Board. The application shall consist of the governing body of the County seeking membership adopting a resolution containing language to indicate full acceptance (without deviation) of the contents of this Joint Powers Agreement.

The County seeking membership Governmental Unit shall formally submit the adopted resolution under cover to the Chair of the RMEB Board. Upon a two-thirds (2/3) approval of the Governing Boards of Member Counties that have not given a notice to withdraw, the request will be approved, subject to the provisions of Section 6.3. The Board shall notify all Members in writing of the decision. .

- 5.2 All Members agree to abide by the terms and conditions of this Joint Powers Agreement, the Bylaws and the Policies or Procedures adopted by the Board.
- 5.3 At the time of application, RMEB shall notify the applying County Board of the amount of operation capital contribution the applying County Board will be required to contribute upon becoming a Member. Approval of membership shall be contingent upon agreement of the applying County making a capital contribution as determined by the Board.

ARTICLE VI. SUSPENSION OF VOTING RIGHTS

- 6.1. The Board shall provide written notice by personal service, certified mail or via electronic mail using an application such as DocuSign, to the County Administrator /Coordinator, Auditor and voting Director of the Member County in default in its payment of dues within sixty (60) days. If the Member County fails to make payment of its dues within sixty (60) days of notice being served, the Director's voting privileges shall be suspended until such dues are paid in full.
- 6.2 By Resolutions adopted by 2/3 of the remaining Member County Boards, a non-compliant Member may be expelled from the RMEB for failure to pay its dues within 120 days of becoming due, or upon failure to fulfill other obligations undertaken by the Member pursuant to the terms of this Agreement.

Such expulsion shall not in any way limit or constitute a waiver of remedies available to the remaining Members for default or breach of this Agreement.

- 6.3 No Member county may be expelled from membership in the Board unless it shall have been notified in writing of the item or items of non-performance and have failed within 90 days following submission of such notice to cure the default.
- 6.4 Upon expulsion an expelled County shall pay its equal and proportional share of the Board's financial liability and other damages as if it had withdrawn pursuant to Article VII.

ARTICLE VII. RIGHT TO WITHDRAW

- 7.1 A Member County Board may withdraw from this Agreement by adopting a resolution which specifically contains language of its "Notice to Withdraw." The Member County Board's resolution shall be submitted under cover letter and sent via certified mail, electronic mail via DocuSign or a similar application, or hand delivered with an affidavit of personal service to the County Administrator/Coordinator, Auditor, and voting Director of each Member County and to the Board Chair of RMEB. The Notice must be received six (6) months prior to the effective date.
- 7.2 Following service of Notice of Withdrawal, the voting Director of the withdrawing Member County's voting rights shall be suspended.
- 7.3 If any party exercises its right to withdraw, this Agreement shall remain in full force and effect between the remaining Members.
- 7.4 A Member withdrawing from RMEB shall make payment to the Board its prorated share of any liquidated damages or penalties for which the remaining Counties may be liable and pay its equal and proportional share of the Board's financial liability. RMEB and the remaining Members shall make reasonable efforts to mitigate the damages which may be incurred as a result of the withdrawal of any County.
- 7.5 The withdrawing Member shall be paid a proportionate share of the liquid, unencumbered, surplus monies in proportion to its capital contribution, less any un-recouped funds owing to RMEB. Nothing in this section shall be construed as requiring RMEB or any of its Members to repay a withdrawing Member dollar for dollar its capital contribution, nor shall it be construed as alleviating the withdrawing Members obligations under § 7.4 or other agreements.

ARTICLE VIII. DISSOLUTION

- 8.1. RMEB shall be dissolved:
- a. Whenever a sufficient number of Members withdraws from RMEB to reduce the total number of Members to less than two (2); or
 - b. Two-thirds (2/3) of the governing boards of the Members who have not given a notice to withdraw vote to dissolve.

A Member which has given notice of withdrawal shall not be counted under this subsection.

- 8.2. Upon dissolution, the remaining assets of RMEB, after payment of all obligations, shall be distributed among the then existing Members and those former Members who had been members within the previous two-year period in proportion to their contributions as determined by the Board, less any funds previously paid to them pursuant to § 7.5.
- 8.3. Winding-up and Distribution. Upon termination of this Agreement, RMEB shall be dissolved. The Board shall continue to exist after dissolution as long as is necessary to wind-up and conclude the affairs subject to this Agreement.

ARTICLE IX. DATA PRACTICES AND PROCEDURES

All Members agree to comply with state and federal statutes and rules regulating data, particularly the collection, creation, receipt, maintenance, storage, or dissemination of private data, nonpublic and confidential data, as defined and regulated by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and or any other applicable state or federal laws.

ARTICLE X. AMENDMENTS

- 10.1 Amendments to this Agreement may be proposed either by the Board or by governing boards of Members. Some changes may be mandated by law. Notice of proposed changes shall be served on the Members by certified mail not later than 60 days prior to the proposed change unless an earlier date is mandated by a change in law. Service shall be accomplished by notice to the County Administrator or Coordinator and County Auditor and the voting Director.

- 10.2 Amendments to this Agreement must be approved by a two-thirds (2/3) vote of governing boards of Members who have not given a notice to withdraw, and shall be approved by the governing boards of Members at least 30 days prior to the effective date.
- 10.3 Adopted amendments shall remain in full force and effect, subject to the terms stated herein, until such time as this Agreement is terminated.

ARTICLE XI. INDEMNIFICATION AND HOLD HARMLESS

- 11.1 RMEB shall be considered a separate and distinct public entity to which the Members have transferred all responsibility and control for actions taken pursuant to this Agreement. RMEB 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.
- 11.2 RMEB shall fully defend, indemnify and hold harmless the signatory Members and Board Members against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the employees or agents of RMEB. This agreement to indemnify and hold harmless does not constitute a waiver by any Party/Member of limitations on liability under Minnesota Statutes section 466.04.
- 11.3 To the full extent permitted by law, actions by the Parties/Members pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the Members that they shall be deemed a “single governmental unit” for the purposes of liability, all as set forth in Minnesota Statutes section 471.59, subdivision 1(a); provided further that for purposes of that statute, each Member party to this Agreement expressly declines responsibility for the acts or omissions of the other party.
- 11.4 The Parties/Members to this Agreement are not liable for the acts or omissions of the other Parties/Members 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/Members.

ARTICLE XII. ARBITRATION

Any dispute or controversy between a County and the Board arising out of or related to the execution, performance, interpretation or breach of this agreement, or any of its terms or conditions shall, at the election of either party, be submitted for resolution to an arbitrator selected and acting in accordance with arbitration rules promulgated by the American Arbitration Association. Any decision by such arbitrator shall be final,

subject to the rights of appeal, modification, verification, or confirmation before a court of competent jurisdiction.

ARTICLE XIII. GOVERNING LAW, FINALITY, SEVERABILITY

- 13.1 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Minnesota. Any legal proceedings taken arising out of the terms and conditions of the Agreement shall be venued in the district courts of the State of Minnesota.
- 13.2 Severability. The provisions of this Agreement are severable. If any section, paragraph, subdivision, sentence, clause or phrase of the Agreement is held to be contrary to law, rule, or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.
- 13.3 Final Agreement. It is understood and agreed that the entire agreement of the parties is contained here and that this contract supersedes all oral or written agreements and negotiations between the parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be part of the Agreement. This Agreement may be executed in multiple parts.

ARTICLE XIV. DURATION

This Agreement shall continue in effect indefinitely, unless terminated in accordance with its terms, or superseded by a subsequent joint powers agreement specifically related to the purposes of this Agreement.

ARTICLE XV. NOTICE

Notice as required under this Agreement shall be given in writing by certified mail, electronically via an application such as DocuSign, or personal service with affidavit of service to the County Administrator/County Coordinator, County Auditor and voting Director and the Board Chair of RMEB as well as RMEB staff.

ARTICLE XVI. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

By virtue of the duly authorized signatures set forth below, the Counties hereby make this Agreement.

COTTONWOOD COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

FARIBAULT COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

JACKSON COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

LINCOLN COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

LYON COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

MARTIN COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

MOWER COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

MURRAY COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

NOBLES COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

PIPESTONE COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

REDWOOD COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

RENVILLE COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

ROCK COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

WATONWAN COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

BLUE EARTH COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

FREEBORN COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

BROWN COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board

NICOLLET COUNTY

BY:

Chair

ATTEST:

Clerk to the County Board