

# **BY-LAWS**

## **OF**

### **MINNEHAHA COMMUNITY WATER, CORP**

#### **ARTICLE I - GENERAL PURPOSES**

This association shall be known as the Minnehaha Community Water, Corp., incorporated under the laws of the State of South Dakota.

The purposes for which the Corporation is formed, and the powers which it may exercise are set forth in the Articles of Incorporation of the association.

#### **ARTICLE II - NAME AND LOCATION**

Section 1. The name of the Corporation is the Minnehaha Community Water, Corp.

Section 2. The principal office and place of business of this Corporation shall be located in Minnehaha County, State of South Dakota, but the Corporation may maintain offices and places of business at other places within or without the State and as the Board of Directors may determine.

#### **ARTICLE III - SEAL OF CORPORATION**

Section 1. The seal of the Corporation shall have inscribed thereon the name of the Corporation, the State of its organization and the words, "Corporate Seal".

Section 2. The secretary shall have custody of the seal.

Section 3. The impression of the seal shall be made on all papers and documents requiring the signature of an executive officer of the Corporation.

#### **ARTICLE IV - FISCAL YEAR**

The fiscal year of the Corporation shall begin with the 1st day of January in each year.

## ARTICLE V - BOARD OF DIRECTORS

Section 1. This Corporation shall be governed by a Board of Directors consisting of seven (7) members. The terms of the Directors shall be for a period of three (3) years. The terms of Directors for the seven (7) member Board shall be staggered. At each Annual Meeting, the members shall elect for a term of three (3) years the number of directors whose terms of office have expired. The Board shall meet as soon as practical after the adjournment of the Annual Meeting and organize by electing a President, Vice President, Secretary, and Treasurer from their own number.

Section 2. Qualifications. In order to qualify and remain as a Director of this Corporation, a Director shall:

Be a member in good standing of this Corporation.

Shall not be employed by or directly involved with any other organization, the purposes and goals of which shall conflict with the purposes and goals of this Corporation.

C. Shall not be a corporation or a political subdivision.

Section 3. Nomination and Election. Whenever a vacancy in a Director position shall exist, any member in good standing of this Corporation, except a member who is a corporation or a political subdivision, may become a candidate for the office of Director by filing at the Corporation Headquarters, at least seven (7) days prior to the date of the Annual Meeting, a Nominating Petition setting forth the name of the person so nominated for the office of Director and signed by at least five (5) members in good standing of the Corporation. No nominations shall be received from the floor at the Annual Meeting. At the Annual Meeting, the members present and voting shall select, by secret written ballot, the appropriate number of Director candidates to fill the expired Director terms, each member present and voting being entitled to vote for one (1) Director nominee for each vacancy. The Director candidates receiving the most votes shall be declared to be the elected Directors of the Corporation. In the event there are no more Director nominees than there are vacancies, the Director candidates may be elected by voice vote.

Section 4. If a director shall be absent from three (3) consecutive regular meetings of the board of Directors, the remaining directors may review those absences and may declare a vacancy as a result of those absences.

Section 5. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting. If, however, such quorum shall not be present at any meeting, the members present shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum is present.

## ARTICLE VI – MEMBERSHIP

Section 1. The members of this Corporation are the qualified water users at each service connection.

Section 2. The privileges of membership are extended and accepted only in accordance with and subject to the conditions and restrictions stipulated in the Articles of Incorporation and By-Laws and amendments to the same. There shall be two (2) classes of membership as follows:

- A. One class of membership shall be comprised of persons and corporations.
- B. Another class of membership shall be comprised of political subdivisions, including the state and all subdivisions of government thereunder.

Section 3. Every prospective water user shall agree to sign such Agreement for the purchase of water from the Corporation that may from time to time be provided and required by the Board of Directors.

Section 4. Transfers of membership shall be made only upon the books of the Corporation, only to a transferee approved by the Board of Directors and only when the member transferring is free from indebtedness to the Corporation.

Section 5. A person's membership in the Corporation terminates upon death. If a member ceases to be a bona fide water user or willfully fails to comply with these By-Laws and other requirements, or willfully obstructs the purposes and proper activities of the Corporation, the Corporation through the Board of Directors, may elect to terminate that membership. Any member whose membership is terminated for a cause may appeal from the action of the Board of Directors to a vote of the members at the next regular meeting of the members or a special meeting of the members called for such purpose.

Section 6. No member of the Corporation shall be entitled to more than one (1) vote at meetings of the members regardless of the number of service connections held by the member. A member who is a corporation or a political subdivision may designate a person to cast its vote at meeting of the members, and shall notify this Corporation of that designee in writing prior to any meeting at which such vote shall be cast.

## ARTICLE VII - MEETING OF MEMBERS

Section 1. The annual meeting of the members of this Corporation shall be held in Minnehaha County, South Dakota at such time and place as may be designated by the Board of Directors during the months of February, March, April, or May of each year.

Section 2. Special meetings of the members may be called at any time by the action of the Board of Directors and such meetings must be called whenever a petition requesting such is signed by at least five percent (5%) of the members in good standing of the Corporation and presented to the Secretary, or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat except such as specified in the notice.

Section 3. Notice of the meeting of members of the Corporation may be given by a notice mailed to each member of record, directed to the address shown upon the books of the Corporation, at least ten (10) days prior to the meeting. Such a notice shall state the nature, time, place, and purpose of the meeting, but no failure or irregularity of notice of any annual meeting, regularly held, shall affect any proceedings taken thereat.

Section 4. Five percent (5%) of the membership, either in person or by proxy, not to exceed twenty-five (25) members shall constitute a quorum for the transaction of business at any meeting. Unless, such quorum is present, no business shall be transacted. If however, such quorum shall not be present at any regular or special meeting, the members present shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum is present. Any business may be transacted which might have been transacted at the meeting as originally called.

## ARTICLE VIII - OFFICERS AND DIRECTORS

Section 1. The officers of the association shall be a President, Vice-President, Secretary, Treasurer, and such other officers as may be determined by the Board of Directors from time to time. The offices of Secretary and of Treasurer may be held by the same person.

Section 2. The Board of Directors shall be elected at the regular annual meeting and serve to the next annual meeting, or until their successors are elected and qualified.

Section 3. If the office of Director or officer should become vacant for any cause, the remaining Directors may appoint a successor, who shall serve to the next regular or special meeting of the members when the vacancy shall be filled by election. The newly elected officer so named shall serve the unexpired term.

Section 4. Subject to Paragraph XIV of the Articles of Incorporation, compensation of officers may be fixed at any regular or special meeting of the Directors of the Corporation.

## ARTICLE IX - DUTIES OF OFFICERS OR DIRECTORS

Section 1. The Board of Directors, subject to the restrictions of law, the Articles of Incorporation, and By-Laws shall exercise all of the powers of the association; and, without prejudice to or limitation upon their general powers, it is hereby expressly provided that the Board of Directors shall have and are hereby given full power and authority in the following matters:

- a. To pass upon the qualifications and eligibility of water users for membership in the Corporation.
- b. To enter into Contracts on behalf of the Corporation. To select and appoint a general manager and other officers of the Corporation; to prescribe such duties and designate such powers as may not be inconsistent with these By-Laws and to fix their compensation and pay for faithful services. The Board shall also be empowered to remove such general manager or officers with or without cause.
- c. To borrow from any source, money, goods or services and to make and issue notes and other negotiable and transferable instruments, mortgages, deeds or trust and trust agreements and to do every act and thing necessary to effectuate the same, and to accept grants, gifts, bequests or donations of any type.
- d. To prescribe, adopt and amend, from time to time such equitable uniform rules and regulations as, in their discretion, may be deemed essential or convenient for the conduct of the business and affairs of the Corporation and the guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof.
- e. To order, at least once each year, an audit of the books and accounts of the Corporation by a competent public auditor or accountant. The report prepared by such auditor or accountant shall be submitted to the members of the Corporation at their annual meeting.
- g. To require all officers, agents and employees charged with responsibility for the custody of any of the funds of the Corporation to give adequate bonds, the cost thereof to be paid by the Corporation. The exercise of this power shall be mandatory.
- h. To select one or more banks to act as depositories of the funds of the Corporation and to determine the manner of receiving, depositing, and disbursing the funds of the Corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.
- i. To levy assessments upon the members of the Corporation. Notice of assessments so levied by the Board of Directors shall be mailed to each members at the address shown on the books of the Corporation, at least thirty (30) days prior to the final due date for payment thereof. In the event any assessment is not paid when due, the Board of Directors shall have the option to either declare the delinquent membership forfeited, or to bring suit in a court of competent jurisdiction for recovery of the amount of the delinquent assessment as a contract obligation, upon giving the delinquent member

thirty (30) days written notice by mail at the address as shown on the books of the Corporation, of the intended action, if payment is not made prior to that time.

## ARTICLE X - DUTIES OF OFFICERS

Section 1. Duties of President. The President shall preside over all meetings of the Board of Directors, and unless determined otherwise by the Board of Directors at all meetings of the members; call special meetings of the Board of Directors; perform all acts and duties usually performed by an executive and presiding officer; sign all membership certificates and such other papers of the Corporation as he may be authorized or directed to sign by the Board of Directors, provided that the Board of Directors may authorize any person to sign any or all checks, contracts and other instruments in writing on behalf of the Corporation. The President shall perform such other duties as may be prescribed by the Board of Directors from time to time.

Section 2. Duties of the Vice-President. In the absence of or disability of the President, the Vice-President shall perform the duties of the President provided, however that in case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect his successor.

Section 3. Duties of the Secretary. The Secretary shall keep a complete record of all meetings of the Corporation and of the Board of Directors and shall have general charge and supervision of the Books of the Corporation. He shall sign papers pertaining to the Corporation as he may be authorized or directed to do by the Board of Directors. He shall serve all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to his office to the members at the annual meeting. He shall keep the corporate seal, and shall keep complete records of the Corporation, and shall affix the corporate seal to all papers requiring seal. He shall keep a proper membership record, showing the name of each member of the Corporation and dates of inception of membership and surrender, cancellation, or forfeiture. He shall make all reports required by law and shall perform such other duties as may be required of him by the Corporation or the Board of Directors. Upon the election of his successor, the Secretary shall turn over to him all books and other property belonging to the Corporation that he may have in his possession.

Section 4. Duties of the Treasurer. The Treasurer shall keep a complete record of all accounts, finances and financial records of the Corporation. He shall also perform such duties with respect to the financial conditions of the Corporation as may be prescribed by the Board of Directors, including but not limited to, participation in annual audits and preparation of such financial statements as may be called for by the Board.

## ARTICLE XI - DUTIES OF CORPORATION AND MEMBERS

Section 1. The Corporation shall install, maintain and operate a main distribution pipeline or lines from the source of the water supply and shall install or supervise the installation of service lines from the main distribution pipeline or lines to the fixed meter location, which is hereby designated the "delivery point", said meter to be purchased, installed, owned and maintained by the Corporation.

The cost of the service line or lines and meter installation extending from said main distribution pipeline to the "delivery point" shall be paid by the member either in the member either in the form of "good intention fees" or "hook-up fees" or direct billing, all of which shall be in accord with the policy established by the Board of Directors and in effect at the time the application for service is granted, except in the case of Bulk Users or Developers.

With regard to services to Bulk Users or Developers, the Board of Directors shall establish the policy, regulations, and rates.

Section 2. The water delivered through each service line will be metered. No new service line or change in an existing service line may be made which will interfere with an existing service line or the delivery of water therein.

Section 3. The Board of Directors shall be authorized and empowered to establish such rates as they shall deem necessary from time to time for services rendered to the members and consumers and shall furthermore be authorized to establish such sanctions, rules and penalties as they shall deem necessary for failure of members and consumers to pay for services rendered or who otherwise violate the terms and conditions of these By-Laws or rules and regulations of the Corporation.

## ARTICLE XII - DISTRIBUTION OF SURPLUS FUNDS

Section 1. It is not anticipated that there will be any net income. If there should be any, then at the end of the fiscal year, after paying the expenses of the Corporation for operation and otherwise, and after setting aside reserves for depreciation on all buildings, equipment and office fixtures and such other reserves as the Board of Directors may deem proper, and after providing for payments on interest and principal of obligations and amortized debts of the Corporation, and after providing for the purchase of proper supplies and equipment, the net earnings then remaining shall be accumulated in a surplus fund for the purpose of the replacing, enlarging, extending and repairing the system and property of the Corporation and for such other purposes as the Board of Directors may determine to be for the best interest of the Corporation.

## ARTICLE XIII – AMENDMENTS

Section 1. These By-Laws may be repealed or amended by a vote of majority of the members present at any regular meeting of the Corporation, or at any special meeting of the Corporation called for the purpose, except that the members shall not have the power to change the purposes of the Corporation so as to decrease its rights and powers under the laws of the state; or to waive any requirement of bond or other provision for the safety and security of the property and funds of the Corporation or its members, or to deprive any member of rights and privilege then existing, or so to amend the By-Laws as to effect a fundamental change in the policies of the Corporation. Notice of any amendment to be made at a special meeting of the members must be given at least ten (10) days before such meeting and must set forth the amendments to be considered.

Section 2. Nothing herein shall prohibit the establishment of rules and regulations for the operation of the Corporation not inconsistent herewith, or rules and regulations pertaining to bulk users, governmental bodies or tract developers.