JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY AND THE CITY OF WEST ST. PAUL FOR NATURAL RESOURCE RESTORATION AND ENHANCEMENT ON THE RIVER TO RIVER REGIONAL GREENWAY – GARLOUGH AND MARTHALER PARKS

The parties to this Agreement are the County of Dakota, a political subdivision of the State of Minnesota (County) and the City of West St. Paul (City), a governmental and political subdivision of the State of Minnesota. This Agreement is made pursuant to the authority conferred upon the parties by Minn. Stat. § 471.59.

WHEREAS, by Resolution No. 20-519 (October 20, 2020), the County Board adopted the River to River Greenway Natural Resources Management Plan (NRMP), which identified priorities for ecological restoration and enhancement areas on public lands within and outside the 100ft-wide Greenway Corridor along the River to River Greenway Regional Trail (Trail); and

WHEREAS, by Resolution No. 20-568 (November 17, 2020), the County Board adopted the County Land Conservation Plan; and

WHEREAS, both the River to River Greenway NRMP and Land Conservation Plan identified cost-shares and roles associated with ecological restoration and enhancement on non-County lands; and

WHEREAS, Great River Greening (GRG) is a Minnesota 501(3)c non-profit organization; and

WHEREAS, GRG obtained State grant funds totaling $206,800 (Grant) for natural resource restoration and enhancement projects within and outside the Greenway Corridor on the campuses of Two Rivers High School and Garlough Environmental Magnet Elementary School and within Garlough and Marthaler Parks; and

WHEREAS, the County and the City desire to enter into this Agreement for the County and the City to equally share the grant match costs for ecological restoration and enhancement activities for the River to River Regional Greenway – Garlough and Marthaler Parks; (“Project”) more fully described in Exhibit 1 attached and incorporated herein by reference; and

WHEREAS, the Grant requires a local match and both the City and County will contribute towards grant match; and

WHEREAS, the County will contribute $10,000 towards the grant match, and

WHEREAS, the City of West St. Paul will contribute $10,000 and staff time for project management towards the grant match, and;

WHEREAS, as part of incorporation of the Trail into a regional trail system, it is mutually desirable to transfer maintenance of the natural areas within the Greenway Corridor to the County as stipulated in a separate Supplemental Maintenance Agreement (SMA) upon completion of the Project.
NOW, THEREFORE, in consideration of the mutual promises and benefits that the County and the City shall derive from this Joint Powers Agreement (“Agreement”), the parties hereby enter into this Agreement for the purposes stated herein.

ARTICLE 1
Purpose

The purpose of this Agreement is to provide cooperation and funding by the County for grant match required by the Grant for the Project, and to define the responsibilities and obligations of the County and City for cost contribution and Project management.

ARTICLE 2
Parties

The parties to this Agreement are the City and County. County is acting by and through its Parks Department. City is acting by and through its Parks Department.

ARTICLE 3
Term

This Agreement shall be effective on the date of the signature of the last party to sign this Agreement (Effective Date) and expires on June 30, 2026 or upon completion by the parties of their respective obligations under this Agreement, whichever occurs first, unless amended in writing or earlier terminated by law or according to the provisions of this Agreement.

ARTICLE 4
Cooperation

The parties agree to cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement and to, in good faith, undertake resolution of any disputes in an equitable and timely manner.

ARTICLE 5
County’s Payment Obligation

5.1. County Contribution Amount for Grant Match. The County shall reimburse the City an amount not to exceed Ten Thousand Dollars and 00/100 ($10,000.00) for actual restoration and enhancement costs incurred for the Project.

5.2. The County will reimburse City within forty-five (45) calendar days of the City’s submission of invoices for actual design, restoration and enhancement costs for the Project to the County. Invoices must be submitted in the form acceptable to the County. All requests for reimbursement must be submitted by June 30, 2026. The City must certify that the requested reimbursements are accurate, appropriate and that such expenditures have not been otherwise reimbursed. If the invoice is incorrect, defective, or
otherwise improper, the County will notify the City within ten (10) calendar days of receiving the incorrect invoice. Upon receiving the corrected invoice from the City, the County will make payment within forty-five (45) calendar days.

5.3. Right to Refuse Payment. The County may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude the County from questioning the propriety of the claim. The County reserves the right to offset any overpayment or disallowance of claim by reducing future payments.

5.4. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect the Project cost, scope or cost participation must be approved by the Authorized Representatives of both parties prior to execution of work. Both parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.

5.5 Acknowledgment. The County shall appropriately acknowledge the assistance provided by the City pursuant to this Agreement in any promotional materials, signage, reports, publications, notices and presentations about the Project.

ARTICLE 6
City’s Obligations

6.1. Lead Agency. The City is the lead agency for construction administration of the Project, effective upon execution of this Agreement by both parties.

6.2 Design and Bid Preparation. The City, or its agents or contractors, shall provide design for the Project, and prepare bid documents for the Project. The City will lead the final design, and shall be responsible for awarding contracts for the Project. The City will provide project design and management.

6.3 Authorized Purpose. The funds provided under the terms of this Agreement may only be used by the City for the payment of costs directly related to the Project.

6.4. Acknowledgement. The City shall appropriately acknowledge the funding assistance provided by the County pursuant to this Agreement in any promotional materials, signage, reports, publications, notices and presentations concerning the Project.

6.5. Compliance With Laws/Standard. The City shall abide by all federal, state, or local laws, statutes, ordinances, rules and regulations related to the work anticipated by this Project. The City or contractor, if any, is responsible for obtaining and complying with all federal, state, or local permits, licenses, and authorizations necessary for performing the work.

6.6. Construction and Design Failures. Any failure related to restoration and enhancement work or design of the Project shall be addressed in the contracts with the restoration firm or professional services firm.
6.7. **City Responsibility for Project Delivery.** The City will be responsible for management and inspection of the work of the Project assuring it is in accordance with State laws and meets approved professional standards. The County will have no actual or implied legal responsibility to the City relating to the above obligations and responsibilities of the Project.

6.8 **City Responsibility for Maintenance of Native Vegetation.** The City will be responsible for the annual maintenance to retain the integrity of the native plantings within the Project outside the County Greenway Corridor consistent with the Supplemental Maintenance Agreement.

**ARTICLE 7**

**Indemnification**

Each party to this Agreement shall be solely liable for the acts of its officers, employees or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. The provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability of the County and the City. Each Party warrants that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program and that each has minimum coverage consistent with liability limits contained in Minn. Stat. Ch. 466. If any claims or actions are filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. To insure a unified defense against any third-party liability claim arising from the work of the Project, City agrees to require all contractors or subcontractors hired to do any of the work contemplated by this Agreement to maintain commercial general liability insurance in amounts consistent with minimum limits of coverage established under Minn. Stat. § 466.04 during the term of such activity. All such insurance policies shall name City and County as additional insureds. City agrees to promptly provide County copies of any insurance policy related to this Agreement upon the County’s request.

**ARTICLE 8**

**Reporting, Accounting and Auditing Requirements**

8.1. **Accounting Records.** The City agrees to establish and maintain accurate and complete accounts, financial records and supporting documents relating to the receipt and expenditure of the funding provided in accordance with this Agreement. Such accounts and records shall be kept and maintained by the City for a minimum period of six (6) years following the expiration of this Agreement. City agrees to promptly provide the County copies of any accounting records related to this Agreement upon the County’s request.

8.2. **Auditing.** The City shall maintain books, records, documents and other evidence pertaining to the costs or expenses associated with the work performed pursuant to this
Agreement. Upon request, the City shall allow the County, Legislative Auditor or the State Auditor to inspect, audit, copy or abstract all books, records, papers or other documents relevant to this Agreement. The City shall use generally accepted accounting principles in the maintenance of such books and records, and shall retain all such books, records, documents and other evidence for a period of six (6) years from the date of the completion of the activities funded by this Agreement.

8.3. Data Practices. The City and County must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 1, as it applies to all data provided, created, collected, received, stored, used, maintained or disseminated under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the City of County.

ARTICLE 9
Authorized Representatives and Liaisons

9.1. Authorized Representatives. The following named persons are the Authorized Representatives of the parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications, except that the Authorized Representatives shall have only authority specifically granted by their respective governing boards. Notice required to be provided pursuant this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification to this Agreement:

TO THE COUNTY:                 TO THE CITY:
Steven C. Mielke               Nate Burkett
Physical Development Division Director City Manager
14955 Galaxie Avenue           1616 Humboldt Ave.
Apple Valley, MN 55124         West St. Paul, MN 55118

In addition, notification to the County regarding termination of this Agreement by the other Party shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, Minnesota 55033.

9.2. Liaisons. To assist the parties in the day-to-day performance of this Agreement and to ensure compliance and provide ongoing consultation, a liaison shall be designated by the County, the City. The parties shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

County Liaison:                 City Liaison:
Christian Klatt                Ross Beckwith
Natural Resource Specialist    Parks and Public Works Director/City Engineer
Telephone: (952) 891-7947       Telephone: (651) 552-4130
Email: christian.klatt@co.dakota.mn.us Email: rbeckwith@wspmn.gov
9.3. Changes to Designated Liaisons or Authorized Representatives. The parties shall provide written notification to each other of any change to the designated liaison or authorized representative. Such written notification shall be effective to change the designated liaison or authorized representative under this Agreement, without necessitating an amendment of this Agreement.

ARTICLE 10
Modifications

Any material alterations, amendments, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, approved by the parties’ respective Boards, and signed by the Authorized Representatives of the County and the City.

ARTICLE 11
Termination

11.1. In General. Either party may terminate this Agreement for cause by giving seven (7) calendar days written notice of its intent to terminate to the other party. Such Notice of Termination for cause shall specify the circumstances warranting termination of the Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the Authorized Representative of the other party. Termination of this Agreement shall not discharge any liability, responsibility or right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the Effective Date of termination.

11.2. Termination by Dakota County for Lack of Funding. Notwithstanding any provision of this Agreement to the contrary, Dakota County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if funding cannot be continued at a level sufficient to allow payments due under this Agreement or any contract or work orders of Invoices submitted. Written notice of termination sent by Dakota County to the City by facsimile is sufficient notice under this section. Dakota County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. Dakota County will not be assessed any penalty of damages if the Agreement is terminated due to lack of funding.

ARTICLE 12
Minnesota Law to Govern

This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement or its breach shall be venued in Dakota County, Minnesota.
ARTICLE 13

Merger

13.1. Final Agreement. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements. No other understanding regarding this Agreement, whether written or oral may be used to bind either party.

13.2. Exhibits 1 (including all Attachments or addenda) through and including Exhibit 2 are attached hereto, and all terms, obligations and conditions in said Exhibits are incorporated herein and made a part of this Contract. By signing this Contract, Contractor affirms and acknowledges receipt of all the above Exhibits (including all Attachments or Addenda).

ARTICLE 14

Severability

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either Party.

ARTICLE 15

Waiver

If the County fails to enforce any provision of this Agreement, that failure shall not result in a waiver of the right to enforce the same or another provision of this Agreement.

ARTICLE 16

Relationship of the Parties

Nothing contained in this Agreement is intended or should be construed as creating or establishing the relationship of co-partners or joint ventures between the County and the City, nor shall the County be considered or deemed to be an agent, representative or employee of the City in the performance of this Agreement. Personnel of the City or other persons while engaging in the performance of this Agreement shall not be considered employees of the County and shall not be entitled to any compensation, rights or benefits of any kind whatsoever.

ARTICLE 17

Default: Force Majeuer

Neither party shall be liable to the other party for loss or damage resulting from delay or failure to perform due to unforeseeable acts or events outside the defaulting party’s reasonable control, provided the defaulting party gives notice to the other party as soon as possible. Acts and events
may include acts of God, acts of terrorism, war, fire, flood, epidemic, pandemic, acts of civil or military authority, and natural disasters.

**ARTICLE 18**

**Interpretation and Construction**

This Agreement was fully reviewed and negotiated by the Parties. Accordingly, the Parties agree the “against the offeror” principle of contract interpretation and construction shall not be applied to this Agreement. Any ambiguity, inconsistency, or question of interpretation or construction in this Agreement shall not be resolved strictly against the party that drafted the Agreement. It is the intent of the Parties that every section (including any subsection thereto), clause, term, provision, condition, and all other language used in this Agreement shall be constructed and construed so as to give its natural and ordinary meaning and effect.

**ARTICLE 19**

**Survivorship**

The following provisions under this Agreement shall survive after the termination or expiration of this Agreement: Article 5.5 and 6.4 (Acknowledgement); Article 7 (Indemnification); Article 8 (Reporting, Accounting and Auditing); Article 12 (Minnesota Law to Govern); Article 14 (Severability); Article 18 (Interpretation and Construction); and Article 19 (Survivorship).

**DAKOTA COUNTY**

APPROVED AS TO FORM:

By

Assistant County Attorney/Date
KS-21-438-009
County Board Res. No. 21-606

Georg Fischer or successor, Director
Environmental Resources Department
Date of Signature:

**CITY OF WEST ST. PAUL**

By

Dave Napier or successor, Mayor
Date of Signature:

By

Nicole Tillander or successor, City Clerk
Date of Signature: