

**JOINT POWERS AGREEMENT BETWEEN
DAKOTA COUNTY, THE CITY OF WEST ST. PAUL AND THE WEST ST. PAUL
ECONOMIC DEVELOPMENT AGENCY
FOR THOMPSON OAKS RIVER TO RIVER GREENWAY SEGMENT
AND WATER QUALITY PROJECT**

WHEREAS, Minn. Stat. § 471.59 authorizes local government units to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, Dakota County (“County”) is a political subdivision of the State of Minnesota; and

WHEREAS, the City of West St. Paul is a Minnesota municipal corporation and the West St. Paul Economic Development Agency is a public body corporate and politic in the State of Minnesota (collectively herein referred to as the “City”); and

WHEREAS, the City and County are collectively referred to as the “parties”; and

WHEREAS, the parties entered into Joint Powers Agreement, County Contract C0030771, executed between the parties on November 14, 2018, and Amended and Restated, County Contract C0030771-1, on January 27, 2020 for the River to River Greenway South Robert Street Crossing and preliminary study of the Thompson Oaks Water Quality Project (the “Greenway Crossing and Preliminary Study JPA”); and

WHEREAS, the parties are proceeding with the Thompson Oaks River to River Greenway Segment along with related City trail connections and Water Quality Project (Project) including remediation of contaminated sediment and solid waste, stormwater improvements, wetland restoration, and greenway construction; and

WHEREAS, the City and County have agreed to cooperatively undertake and pay for construction of the Project; and

NOW THEREFORE, in consideration of the mutual promises and benefits that the County and City shall derive from this Joint Powers Agreement (“Agreement”), the parties agree as follows:

AGREEMENT

1. Purpose

The purpose of this agreement is to define the responsibilities and obligations of the parties to the Agreement.

2. Term of Agreement

2.1 This Agreement shall be effective the date all required signatures are obtained and shall remain in effect until completion by the Parties of their respective obligations under this Agreement completion of construction of the Project and payment, unless amended in writing or earlier terminated by law or according to the provisions of this Agreement.

2.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 5. Maintenance; 10. Liability; 11. Audits; 12. Government Data Practices; 13. Governing Law Jurisdiction and Venue.

3. Real Estate

3.1 The City execute an easement in favor of the County permitting the County construction, use and maintain the Greenway by the County as specified in the easement attached here to as **Exhibit 1**.

3.2 The parties hereby grant to the each other and to the employees, agents and contractors of each of the parties, access to the property/facilities for the purpose of construction and maintenance for the Project, including, but not limited to, site visits, surveys and examination of possible best management practice (BMP) locations, meetings with consultants or contractors, construction staking, and monitoring of the construction of BMPs for the Project.

3.3 At the conclusion of the Project, the City will remain the fee owner of the ponds constructed as part of the project.

4. Construction

4.1 The County will be responsible for design, bidding, and construction administration, including but not limited to the engineering, contract administration, and inspection required to complete the Project specified in this Agreement.

4.2 The County will seek reimbursement from the Minnesota Board of Water and Soil Resources and the City in the amount outlined in Section 4.

4.3 Dakota County will be responsible for the administration of the Board of Soil and Water Clean Water Grant Funding administration tasks including reporting, reimbursement requests, and any other tasks associated with the grant funding.

4.4 The parties will conduct regular meetings (Project Management Team Meetings) with key staff and personnel necessary to complete the Project.

5. Maintenance

The maintenance of the completed Project will be handled in accordance with the ownership rights of the Parties upon completion or a separate joint powers agreement at the completion of the Project, if deemed necessary.

6. Funding

6.1 The total estimated Project cost for construction and engineering is \$5,217,148.

6.2 The City will reimburse the County up to \$675,075 based on actual project construction costs.

6.3 The County will be responsible for the remaining construction and engineering cost.

6.4 The County has obtained a Minnesota Board of Water and Soil Resources grant covering construction costs of \$576,447 to offset a portion of its cost.

7. Payment

7.1 The County administer the contract and act as the paying agent for all contracts for the project. Payments will be made as work progresses. Upon presentation of an itemized claim by one party to another, the receiving party shall reimburse the invoicing Party for its share of the costs incurred under this agreement within 45 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving party, the remainder of the claim shall be promptly paid and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of the actual costs incurred in carrying out the work.

7.2 Any changes, variations, modifications, or change orders related to the completion the Project shall only be valid when they have been reduced to writing and approved by the County's Authorized Representative.

8. Authorized Representatives and Liaisons.

8.1 **Authorized Representatives.** The following named persons are designated the authorized representatives of the parties for purposes of this Agreement. These persons have the authority to bind the party they represent and to consent to modifications and subcontracts, except that, the authorized representative s shall have only the authority specifically or generally granted by its respective Board or Council. Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

For the County:

Steve Mielke, or successor
Telephone: 952/891-7007
Email: steven.mielke@co.dakota.mn.us

For the City:

City Manager, or successor
Telephone: 651/552-4101
Email: rschroeder@wspmn.gov

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

For the County:

Mike Behan, or successor
Telephone: 952/891-7539
Email: Michael.behan@co.dakota.mn.us

For the City:

Ross Beckwith, or successor
Telephone: 651/552-4130
Email: rbeckwith@wspmn.gov

9. Assignment, Amendments, Waiver and Contract Complete

9.1 **Assignment.** No party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other two parties approved by the same individuals who executed and approved this Agreement, or their successors in office.

9.2 **Amendments.** Any amendments to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

9.3 **Waiver.** If the either party fails to enforce any provision of this Agreement, that failure does not waive the provision or that party's right to enforce it.

9.4 **Agreement Complete.** Except for the Greenway Crossing and Preliminary Study JPA, this Agreement contains all negotiations and agreements between the County and City and other understanding regarding this Agreement, whether in written or oral form, may be used to bind either party. Where there is a conflict between this Agreement and the Greenway Crossing and Preliminary Study JPA, this Agreement shall govern.

10. Liability

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other part's actions and consequences of those actions. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466, governs the parties' liability. Nothing in this Agreement is intended to waive or limit the provision of the Tort Claims Acts, Minn. Stat. §3.736, or Minn. Stat. Ch. 466, or any other law, legislative or judicial, which limits government liability. For purposes of determining total liability for damages, the participating governmental units are considered to be a single governmental unit, the total liability of which shall not exceed the limits for a single governmental unit as provided in Minn. Statutes, Section 466.04, Subd. 1.

11. Audits

The parties shall retain receipts for and maintain detailed records of all expenses related to this Agreement. When requested by the Board or Soil and Water Resources, State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

12. Government Data Practices

The parties must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided under this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the parties under this Agreement. The civil remedies of Minn. Stat. 13.08 apply to the release of the data referred to in this clause by any of the parties.

13. Governing Law, Jurisdiction, and Venue

Minnesota Law, without regard to its choice of law provisions governs this Agreement. Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court, with competent jurisdiction in Dakota County, Minnesota.

14. Termination for Insufficient Funding by County

The County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, other funding sources, or if funding cannot be continued at a level sufficient to allow for the payments provided herein. Termination must be by written notice to the City. The County is not obligated to pay for any costs of the Project that are incurred after the notice and effective date of termination. The County will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature or other funding sources, to not appropriate funds.

15. Merger

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.

16. 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.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date(s) indicated below

Approved as to form:

DAKOTA COUNTY

Assistant County Attorney/Date
KS-
Contract No. C

By _____
Kathleen Gaylord or successor, Chair
Date of Signature: _____

CITY OF WEST ST. PAUL

By _____
David J. Napier, or successor, Mayor
Date of Signature: _____

By _____
Nathan Burkett, City Manager
Date of Signature: _____

**WEST ST. PAUL ECONOMIC
DEVELOPMENT AGENCY**

By _____
David J. Napier, or successor, President
Date of Signature: _____

By _____
Nathan Burkett, Executive Director
Date of Signature: _____

EXHIBIT 1

GREENWAY EASEMENT

REGIONAL GREENWAY TRAIL EASEMENT

File No. n/a S.P. Project No. n/a
C.S.A.H. No. n/a County Project No. n/a
County Road No. n/a Parcel No. n/a

**Exempt from deed tax,
and filing or recording fees pursuant to Minnesota Statute § 386.77.**

Section One - Grant of Easement.

By this instrument, the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic, hereinafter called GRANTOR, for good and valuable consideration, receipt of which is hereby acknowledged, hereby conveys to DAKOTA COUNTY, a political subdivision of the State of Minnesota, its successors and assigns, a permanent easement for regional greenway trail purposes and all such purposes ancillary, incident or related thereto, including but not limited to a retaining wall for construction, maintenance, improvement, repair and replacement, and restoration purposes and all such purposes ancillary thereto, within the following described easement area located in Dakota County, State of Minnesota legally described in the attached **Exhibit A** and depicted in the attached **Exhibit B** (the "Permanent Easement Area").

GRANTOR conveys to DAKOTA COUNTY the exclusive right to construct, reconstruct, repair, operate and maintain a regional trail over the real property legally described herein, including, without limitation, the rights:

- (a) to enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of the Permanent Easement;
- (b) to occupy and move equipment over the Permanent Easement Area for the purpose of constructing, reconstructing, repairing and maintaining the regional trail;
- (c) to remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction, reconstructing, repairing and maintenance of the regional trail; and
- (d) to remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as the County may deem appropriate.

The foregoing rights of DAKOTA COUNTY may be executed by its contractors, agents and servants.

The trail will be used for non-motorized recreation and transportation purposes such as, but not limited to walking, biking, roller blading and cross-country skiing, subject to Americans with Disabilities Act of 1990 (42 U.S.C. § 12101), and related laws, accommodation requirements. DAKOTA COUNTY, or local law enforcement agencies, may operate motorized vehicles on the trail for the purposes of trail security, emergency

services and trail maintenance. No structures, obstructions or fences shall be allowed in the easement area unless written approval is granted by the DAKOTA COUNTY.

DAKOTA COUNTY shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the GRANTOR's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the GRANTOR of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by the County or their successors or assigns, shall be subject to any governmental immunity defenses of the GRANTOR and the maximum liability limits provided by Minnesota Statute, Chapter 466.

GRANTOR, for itself and its successors and assigns, does hereby warrant to and covenant with DAKOTA COUNTY, its successors and assigns, that it is well seized in fee of the GRANTOR's Property described above, the Permanent Easement Area described and depicted on Exhibits A and B, and has good right to grant and convey the Permanent Easement herein to DAKOTA COUNTY.

Section Two - Construction and Maintenance.

DAKOTA COUNTY, its agents or contractors, shall construct a bituminous trail surface using appropriate construction standards for trail construction along the length of this easement. The trail surface and other improvements on the trail shall be constructed by DAKOTA COUNTY at its own expense, or with grant funds obtained by DAKOTA COUNTY. DAKOTA COUNTY has no obligation to construct the trail or other improvements if the funds required for these improvements are not appropriated or received from other sources.

DAKOTA COUNTY, by its own forces or through contract agreement, shall provide routine repair and maintenance of the trail surface and other improvements at its own cost, including trees, shrubbery, grasses and other vegetation planted as an amenity along the trail.

The GRANTOR shall not be responsible for the maintenance of the trail or any costs associated with the use of the easement by DAKOTA COUNTY.

Dated this _____ day of _____, 2022.

GRANTOR:

WEST ST. PAUL ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
David J. Napier
Its President

By: _____
Nathan Burkett
Its Executive Director

EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

A 30.00 foot wide strip of land over part of Outlot A, WEST SAINT PAUL APARTMENTS, according to the recorded plat thereof, Dakota County, Minnesota, the centerline of said strip of land is described as follows:

Commencing at the northeast corner of said Outlot A; thence South 00 degrees 16 minutes 27 seconds East, assumed bearing along the east line of said Outlot A, a distance of 62.77 feet to the point of beginning of the centerline to be described; thence North 89 degrees 58 minutes 40 seconds West a distance of 13.15 feet; thence westerly a distance of 100.17 feet along a tangential curve concave to the southeast having a radius of 135.00 feet and a central angle of 42 degrees 30 minutes 53 seconds; thence South 47 degrees 30 minutes 28 seconds West, tangent to said curve, a distance of 2.28 feet; thence westerly a distance of 68.80 feet along a tangential curve concave to the north having a radius of 70.00 feet and a central angle of 56 degrees 18 minutes 48 seconds; thence North 76 degrees 10 minutes 44 seconds West, tangent to said curve, a distance of 198.59 feet; thence westerly and southwesterly a distance of 172.13 feet along a tangential curve concave to the southeast having a radius of 120.00 feet and a central angle of 82 degrees 11 minutes 07 seconds; thence southwesterly a distance of 282.89 feet along a reverse curve concave to the northwest having a radius of 800.00 feet and a central angle of 20 degrees 15 minutes 39 seconds; thence South 42 degrees 54 minutes 57 seconds West, not tangent to said curve, a distance of 32.89 feet; thence westerly a distance of 164.35 feet along a tangential curve concave to the northwest having a radius of 200.00 feet and a central angle of 47 degrees 05 minutes 03 seconds; thence West, tangent to said curve, a distance of 16.64 feet; thence southwesterly a distance of 60.93 feet along a tangential curve concave to the southeast having a radius of 100.00 feet and a central angle of 34 degrees 54 minutes 43 seconds; thence South 55 degrees 05 minutes 17 seconds West, tangent to said curve, a distance of 80.75 feet to the most westerly line of said Outlot A and said centerline there terminating.

Together with part of the east 80.00 feet of the west 400.00 feet of the south 70.00 feet of the north 129.00 feet of said Outlot A lying northerly of the above described 30.00 foot wide strip of land.

Said easement areas contain approximately 35,738 square feet.

PID# 42-83740-00-010

EXHIBIT B
LEGAL DESCRIPTION AND DEPICTION
OF PERMANENT EASEMENT AREA (BLUE AREA)

