

**JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY AND
THE CITY OF WEST ST PAUL FOR COST CONTRIBUTION FOR
CONSTRUCTION OF RIVER TO RIVER GREENWAY: MARTHALER PARK TRAILHEAD**

WHEREAS, Minn. Stat. § 471.59 authorizes local governmental 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 (“City”) is a Minnesota municipal corporation; and

WHEREAS, by resolution 15-431, the County authorized the adoption of the River to River Greenway Master Plan (Master Plan) and the Master Plan identifies Marthaler Park as a location for a trailhead; and

WHEREAS, the City has designed certain facilities to serve the trailhead, including a community facility with restrooms and parking (the “Project”); and

WHEREAS, the facility will be co-branded with City and County signage, kiosks, and wayfinding; and

WHEREAS, the estimated cost of the Project is \$2,300,000 including proved delivery; and

WHEREAS, by resolution 23-128, the County authorized up to \$400,000 towards construction costs of the Project; and

WHEREAS, the City agrees to fund the balance of construction costs; and

WHEREAS, a future supplemental maintenance agreement will be executed by the parties to address ongoing maintenance responsibilities of the parties; and

NOW, THEREFORE, in consideration of the mutual promises and benefits herein, the County and the City hereby enter into this Agreement to share the actual costs for the construction of the Marthaler trailhead of the River to River Greenway, part of the Marthaler Park Improvement Project No. 23-7, as described in Exhibit 1.

**ARTICLE 1
PURPOSE**

The purpose of this Agreement is to define the responsibilities and obligations of the County and the City for cost contribution related to the construction of the Project. The City shall use all funds provided by the County for the sole purposes set forth in this Agreement.

**ARTICLE 2
TERM**

This Agreement shall be effective on June 1, 2023, regardless of the signature of the last party to sign this Agreement, and expires on December 31, 2024, 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 3
COOPERATION**

- 3.1 Duty of Good Faith. 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.
- 3.2 Assignment. Neither the City nor the County may assign nor transfer any rights, duties, interests, or obligations under this Agreement without the prior consent of the other party and a fully executed assignment agreement, executed by the County and the City.

**ARTICLE 4
COUNTY OBLIGATIONS**

- 4.1 Contribution Amount. The County shall reimburse the City an amount not to exceed Four Hundred Thousand and 00/100 Dollars (\$400,000) ("Agreement Maximum") for actual construction costs incurred for the Project.
- 4.2 Reimbursement by County. After this Agreement has been executed by both parties, the City may claim reimbursement for costs in accordance with the Agreement.
- A. Procedure. The County will reimburse the City within forty-five (45) calendar days of the City's submission of invoices to the County for actual construction costs of the Project. Invoices must be submitted in the form acceptable to the County. All requests for reimbursement must be submitted by the City by November 15, 2024. 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 in writing 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.
- B. Net Increases in Actual Construction Costs. Any net increase in actual design and engineering costs exceeding the estimated total of Two Million Three Hundred Thousand and no/100 Dollars (\$2,300,000.00) in costs for construction shall not affect or increase the County's contribution amount. The County's contribution amount shall not exceed the Agreement Maximum set forth in Section 5.1, regardless of net increases in the estimated or actual construction costs.
- C. Right to Refuse Payment. The County may refuse to pay any claim from the City 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.

D. Final Payment. The County shall withhold the final reimbursement payment until the County documents its acceptance of final construction of the Project and provides notice to the City.

4.3 Project Management Team. County staff will participate on the Project Management Team coordinated by the City.

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

ARTICLE 5 CITY OBLIGATIONS

5.1 Project Management. The City, or its agents or contractors, shall provide construction services for the Project, and shall prepare bid documents for the Project. The City will lead the construction of the Project and shall be responsible for awarding contracts for the Project. The City will provide and be responsible for project delivery, management, and inspection of the work of the Project, assuring it meets professional standards of care. The County will have no actual or implied legal responsibility to the City relating to the above obligations and responsibilities of the Project.

5.2 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.

5.3 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 its contractor, if any, is responsible for obtaining and complying with all federal, state, or local permits, codes, licenses, and rights and authorizations necessary for performing the work.

5.4 Use of Contractors. The City may engage contractors to perform the activities funded pursuant to this Agreement. However, the City retains primary responsibility to the County for performance of the activities and the use of such contractors does not relieve the City from any of its obligations under this Agreement.

If the City engages any contractors to perform any part of the Project, the City agrees that the contract for such services, labor, or materials shall include the following provisions:

A. The contractor must maintain all records and provide all reporting as required by this Agreement;

B. The contractor must defend, indemnify, and hold harmless the County from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted work, caused by any intentional

or negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable;

- C. The contractor must be an independent contractor for the purposes of completing the contracted work; and
- D. The contractor shall perform and complete the activities in full compliance with this Agreement and all applicable laws, statutes, rules, codes, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the activities.

ARTICLE 6 INDEMNIFICATION AND INSURANCE

Except as otherwise stated in this Agreement, 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 can 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. In the event of any claims or actions 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.

In order 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, commercial auto liability insurance and professional 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 or certificates of insurance related to this Agreement upon the County's request.

Acts of Employees

Any and all persons engaged in the work to be performed by the County shall not be considered employees of the City for any purpose, including Worker's Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged. Any and all claims made by any third party as a consequence of any act or omission on the part of said County employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the City. The opposite situation shall also apply: the County shall not be responsible under the Worker's Compensation Act for any employees of the City and any and all claims made by any third party as a consequence of any act or omission on the part of said City employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the County.

ARTICLE 7
REPORTING, ACCOUNTING, AND AUDITING REQUIREMENTS

- 7.1. 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 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.
- 7.2. 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 of the 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 of such books, records, documents, and other evidence for a period of 6 years from the date of the completion of the activities funded by this Agreement.
- 7.3. Data Practices. The City and County must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, 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 or County.

ARTICLE 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. All notice shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement:

TO THE COUNTY: Georg Fischer, or successor
Physical Development Division Director
14955 Galaxie Avenue
Apple Valley, MN 55124-8579

TO THE CITY: Nate Burkett, or successor
City Manager
1616 Humboldt Ave
West St Paul, MN 55118

- 8.2. Notification to County Attorney. In addition, notification to the County regarding termination or breach 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.
- 8.3. 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 and

the City. At the time of execution of this Agreement, the following persons are the designated liaisons:

County Liaison: Niki Geisler, Parks Director, or successor
Telephone: (952) 891-7088
Email: niki.geisler@co.dakota.mn.us

City Liaison: Dave Schletty, Parks Director, or successor
Telephone: (651) 552-4152
Email: dschletty@wspmn.gov

- 8.4. Written Notice. The parties shall provide written notification to each other of any change to the designated Liaison or Authorized Representatives or the appointment of any additional designated liaisons or authorized representatives. 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 9 MODIFICATION

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 10 TERMINATION

- 10.1. In General. Either party may terminate this Agreement for cause by giving seven days' written notice of its intent to terminate to the other party. Such notice to terminate 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.
- 10.2. Termination by County for Lack of Funding. Notwithstanding any provision of this Agreement to the contrary, the County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement. Written notice of termination sent by the County to the City by facsimile is sufficient notice under this section. The County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The County will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding.

**ARTICLE 11
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 exclusively in Dakota County, Minnesota.

**ARTICLE 12
MERGER**

12.1. 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.

12.2. Exhibit. The following Exhibit are incorporated and made a part of this Agreement:

Exhibit 1- a true and correct copy of the concepts for the Project.

By signing this Agreement, the parties acknowledge receipt of the above Exhibit.

**ARTICLE 13
SEVERABILITY**

The provisions of this Agreement are severable. If any provision of this Agreement is void, invalid, or unenforceable, it will not affect the validity and enforceability of the remainder of this Agreement unless the void, invalid, or unenforceable provision substantially impairs the value of the entire Agreement with respect to either party.

**ARTICLE 14
WAIVER**

Any waiver is only valid when reduced to writing, specifically identified as a waiver, and signed by the waiving party's Authorized Representative. A waiver is not an amendment to the Agreement. Failure to enforce any provision of this Agreement shall not result in a waiver of the right to enforce the same or another provision of this Agreement.

**ARTICLE 15
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 or the Project. 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 16
AGREEMENT INTERPRETATION**

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 article, section (including any subsection), 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, regardless of any rule or law to the contrary.

**ARTICLE 17
SURVIVORSHIP**

The following provisions under this Agreement survive after the termination or expiration of this Agreement: Section 5.2 (Acknowledgement); Article 6 (Indemnification and Insurance); Article 7 (Reporting, Accounting and Auditing); Article 11 (Minnesota Law to Govern); Article 12 (Merger); Article 13 (Severability); Article 14 (Waiver); Article 15 (Relationship of the Parties); Article 16 (Agreement Interpretation); Article 17 (Survivorship). In addition, termination or expiration shall not discharge any obligation which, by its nature, would survive after the date of termination or expiration.

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

Approved by the City Council

CITY OF WEST ST. PAUL

Date _____

By _____

Dave Napier, Mayor or Successor

Resolution No. _____

Date of Signature _____

By _____

Nate Burkett, City Manager or Successor

Date of Signature _____

Dakota County Board Resolution
No. 23-128.

COUNTY OF DAKOTA

By _____

Georg T. Fischer, Director

Physical Development Division

Dakota County Contract DCA20332.

Date of Signature _____

Approved as to form:

/s/ Dain L. Olson 5/2/23

Assistant County Attorney/Date

KS-23-160

