

**JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY
AND THE CITY OF WEST ST. PAUL FOR FINAL DESIGN OF THE RIVER TO
RIVER GREENWAY – GARLOUGH AND MARTHALER PARKS SEGMENT**

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 (collectively herein the County and the City are referred to as the “Parties”); and

WHEREAS, the River to River Greenway: Garlough and Marthaler Parks segment does not currently meet regional design standards; and

WHEREAS, final design is required to complete the realignment and reconstruction of the River to River Greenway through Garlough and Marthaler Parks; and

WHEREAS, the County and the City are desirous of entering into this Agreement to share the actual costs for final design and engineering for the River to River Greenway, specifically the Garlough and Marthaler Parks Segment as depicted in Exhibit A; (“Project”); and

WHEREAS, the cost estimated cost for final design is \$75,000; and

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 to the City for actual design and engineering, of the Project and to define the responsibilities and obligations of the County and the City for cost contribution and Project management. All funds provided by the County are to be used by the City solely for this purpose. The City shall use funds pursuant to this Agreement exclusively for the payment of actual design and engineering costs as provided in this Agreement.

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 December 31, 2022 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 Design and Engineering Costs. The County shall reimburse the City an amount not to exceed Sixty Thousand Dollars and 00/100 (\$60,000.00) for actual design and engineering costs incurred for the Project.
- 5.2. 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. The County will reimburse the City within forty-five (45) calendar days of the City's submission of invoices for actual design and engineering costs to the County. Invoices must be submitted in the form acceptable to the County. All requests for reimbursement must be submitted by November 16, 2022. 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 City within ten (10) calendar days of receiving the incorrect invoice. Upon receiving the corrected invoice from City, the County will make payment within forty-five (45) calendar days.
 - B. Increased Actual Design and Engineering Costs. Any net increase in actual design and engineering costs exceeding the estimated total of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00) in costs for design and engineering shall not affect or increase the County's contribution amounts. The County's contribution amounts shall not exceed the limits set forth in Section 5.1, regardless of net increases in the estimated or actual design and engineering costs.
 - C. Reductions in Actual Design and Engineering. Any net reduction in actual design and engineering costs shall reduce the County's contribution equally so that for every dollar reduction in actual design and engineering costs, the County's contribution for actual design and engineering costs shall be reduced by Seventy-five (75¢). City shall

provide County with all documentation evidencing reductions or increases in Project design and engineering costs at the County's request.

- D. 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.
- E. 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.

5.3 Project Management Team. Dakota County staff will participate on the Project Management Team (PMT) coordinated by the City.

5.4 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 concerning the Project.

ARTICLE 6 **City's Obligations**

- 6.1. Design, Engineering, and Bid Preparation. The City, or its agents or contractors, shall provide design and engineering for the Project, and prepare bid documents for the Project. The City will lead the final design and engineering, and shall be responsible for awarding contracts for the Project. The City will provide project design and management.
- 6.2. 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.
- 6.3. 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 contractor, if any, is responsible for obtaining and complying with all federal, state, or local permits, licenses, and authorizations necessary for performing the work.
 - A. Assignment. The City may not assign or transfer any rights, duties, interests, or obligations under this Agreement without the prior consent of the County and a fully executed assignment agreement, executed by the parties.
 - B. Use of Contractors. The City may engage contractors to perform 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 provide and maintain insurance through the term of this Agreement in amounts and types of coverage as set forth in the Insurance Terms, which is attached and incorporated as Exhibit B, and provide to the County prior to commencement of the contracted work a certificate of insurance evidencing such insurance coverage;
- (d) The contractor must be an independent contractor for the purposes of completing the contracted work.
- (e) The contractor must acknowledge that the contract between the City and the contractor does not create any contractual relationship between County and the contractor, but that the County is a third-party beneficiary of the contract.
- (f) The contractor shall perform and complete the activities in full compliance with this Agreement and all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the activities.

6.4. City Responsibility for Project Delivery. The City will be responsible for management 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.

ARTICLE 7
Indemnification and Insurance

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. 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 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 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 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 agrees with respect to any data that it possesses regarding the Agreement to comply with the provisions of the Minnesota Government Data Practices Act contained in Minnesota Statutes Chapter 13, as the same may be amended from time to time.
- 8.4. 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: Steven C. Mielke
Physical Development Division Director
14955 Galaxie Avenue
Apple Valley, MN 55124

Matt Smith, or his successor, has the responsibility to monitor the City's performance pursuant to this Agreement and the authority to approve invoices submitted for reimbursement.

TO THE CITY: Ryan Schroeder
City Manager
1616 Humboldt Ave.
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.

- 8.5. 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. 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: Steve Sullivan, Parks Director
Telephone: 952-891-7088
Email: Steve.Sullivan@co.dakota.mn.us

City Liaison: Ross Beckwith
City Engineer
West St. Paul, MN 55118
Telephone: 651-552-4130
Email: rbeckwith@wspmn.gov

- 9.6. 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 9
Modifications

- 9.1. 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 (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.
- 10.2. 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 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 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. Exhibits A and B (including all Attachments or addenda) 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 13
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 14
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 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. 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
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 17
Survivorship

The following provisions under this Agreement shall survive after the termination or expiration of this Agreement: Article 5.4 and 6.2 (Acknowledgement); Article 7 (Indemnification and

Insurance); Article 8 (Reporting, Accounting and Auditing); Article 11 (Minnesota Law to Govern); Article 13 (Severability); Article 16 (Interpretation and Construction); and Article 17 (Survivorship).

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-20-326

By _____
Steven C. Mielke
Physical Development Division Director

Date of Signature: _____

County Board Res. No. _____

CITY OF WEST ST. PAUL

By _____

David J. Napier, Mayor

Date of Signature: _____

By _____

Ryan Schroeder, City Manager

Date of Signature: _____

EXHIBIT A

River to River Greenway Garlough and Marthaler Parks Segment



Overall River to River Greenway:

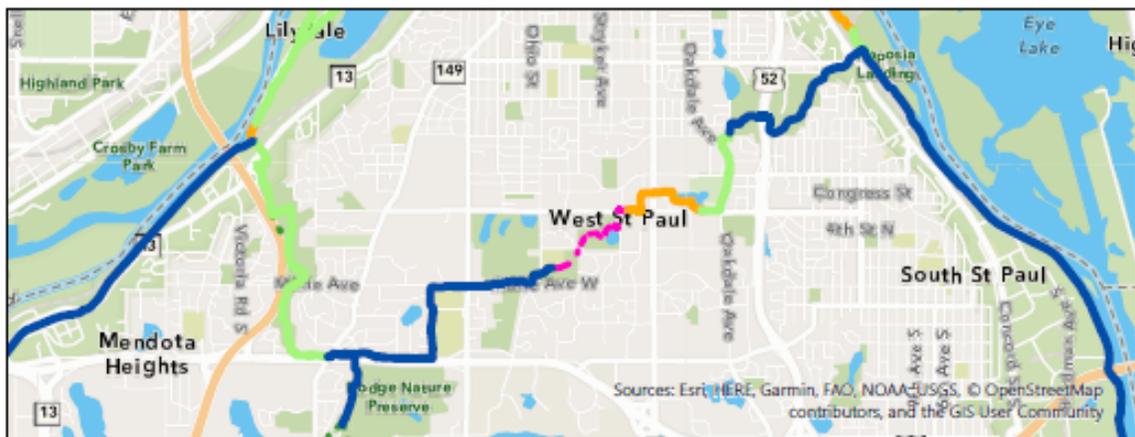


EXHIBIT B
[County Insurance Terms]