

**JOINT POWERS AGREEMENT
BETWEEN THE VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION,
THE COUNTY OF DAKOTA AND THE CITY OF LAKEVILLE
FOR THE LAUNCH PARK WETLAND RESTORATION PROJECT PRELIMINARY ENGINEERING
DESIGN AND PERMITTING COORDINATION**

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

WHEREAS, the Vermillion River Watershed Joint Powers Organization is a watershed management body consisting of Dakota and Scott Counties (VRWJPO) governed by the Vermillion River Watershed Joint Powers Board (VRWJPB) and is charged with carrying out the duties set forth in Minn. Stat. § 103B.211 to 103B.255 and as otherwise provided by law; and

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

WHEREAS, the City of Lakeville (City) is a governmental and political subdivision of the State of Minnesota; and

WHEREAS, South Creek (AUID 07040001-517) is located within the Vermillion River Watershed and Dakota County and is included in the EPA's 303d Impaired Waters List for Total Suspended Solids (TSS); and

WHEREAS, the Vermillion River Watershed Restoration and Protection Strategy (WRAPS) Report includes the implementation of sediment reduction and/or volume reduction Best Management Practices within publicly owned lands in the South Creek subwatershed to reduce TSS loading in the Vermillion River; and

WHEREAS, the Vermillion River Watershed Management Plan includes working with partners to restore wetlands through revegetation for flood protection and pollutant filtration; and

WHEREAS, the City acquired Outlot D, Airlake 70 First Addition (Parcel), previously in agricultural production, that drains to South Creek; and

WHEREAS, prior to City's implementation of sediment reduction and/or volume reduction practices within the Parcel, a wetland restoration design and applicable permitting through State agencies must be completed (Project); and

WHEREAS, the City has entered into a contract with an engineering consultant to provide the wetland restoration design, including construction plans and specifications, and obtain applicable permitting necessary for the Project (City Project 24-60); and

WHEREAS, the total contract amount for the services to be provided by the City's consultant for wetland restoration design and applicable permitting for City Project 24-60 is \$36,750 (Project Cost); and

WHEREAS, the VRWJPO, County, and City have agreed to cooperatively participate in the Project and have funding available in their respective budgets to jointly participate in the Project Cost.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the VRWJPO, County, and City shall derive from this Agreement, the VRWJPO, County, and City hereby enter into this Agreement for the purposes stated herein.

**ARTICLE 1
PURPOSE**

This Agreement defines the Project responsibilities and Project cost-sharing obligations of the VRWJPO, County, and City.

**ARTICLE 2
PARTIES**

The parties to this Agreement are the VRWJPO, County, and City.

**ARTICLE 3
TERM**

This Agreement is effective upon the date of the signatures of the parties to this Agreement and shall remain in effect until December 31, 2025, or until completion by the parties of their respective obligations under this Agreement, whichever occurs first, unless earlier terminated by law or according to the provisions of this Agreement.

**ARTICLE 4
COOPERATION**

The VRWJPO, County, and City 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 dispute in an equitable and timely manner.

**ARTICLE 5
PROJECT PLANS**

The City is the lead agency for administration of the Project, effective upon execution of this Agreement by all parties. The VRWJPO, County, and City shall approve all wetland restoration design plans and specifications (Project Plans) provided pursuant to the Project prior to any restoration activities occurring on the Parcel.

**ARTICLE 6
PAYMENT**

6.1 The parties shall make the following contributions toward the Project Cost in accordance with the following payment schedule in consideration of the benefit provided by restoration activities on the Parcel in accordance with the Project Plans. The City will administer the consultant contract for the Project and act as the paying agent for all payments to the consultant.

6.1.1 The County, by and through its Environmental Resources Department, shall contribute \$13,000 toward the Project Cost.

6.1.2 The City shall contribute \$11,875 toward the Project Cost.

6.1.3 The VRWJPO shall contribute \$11,875 toward the Project Cost.

6.2 The City's maximum eligible reimbursement is up to \$24,875 when accounting for the VRWJPO and County contributions.

6.3 No payment shall be made prior to approval of the Project Plans by the VRWJPO, County, and City, and execution of this Agreement.

6.4 The VRWJPO and County shall pay the City their share of the Project Cost on a reimbursement basis up to the maximum amounts identified in Sections 6.1.1 and 6.1.3. The City shall invoice the County and VRWJPO for their share of Project Costs once the Project Plans are approved by the parties. The VRWJPO and County shall make payment to the City within thirty-five (35) days of receipt of an invoice from the City provided the invoice shall be supported by itemized Project receipts and invoices from the City's contracted consultant.

6.5 The VRWJPO and County may refuse to pay an invoice for services or fees not specifically authorized by this Agreement. Payment of an invoice shall not preclude the VRWJPO and County from questioning the propriety of the claimed services or fees. The VRWJPO and County reserve the right to be repaid for any overpayment or disallowed claimed services or fees.

ARTICLE 7 OBLIGATIONS

7.1 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.

7.2 CONTENT REQUIREMENTS. The Project shall be carried out according to the objectives outlined in the City's contract with its consultant. The VRWJPO, County, and City shall approve any modifications to the scope of the Project.

7.3 COMPLIANCE WITH LAWS/STANDARDS. The City shall abide by all federal, state, or local laws, statutes, ordinances, rules, and regulations in executing the Project.

ARTICLE 8 INDEMNIFICATION

Each party to this Agreement shall be 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 parties, or officers, employees or agents or the other parties. The City agrees to defend, indemnify, and hold harmless the County and VRWJPO against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement for which the City is responsible, including negligent acts or omissions of the City and/or those of City employees or agents. All Parties to this Agreement recognize that liability for any claims arising under this Agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466. The City warrants that it can comply with the aforementioned indemnity requirements through an insurance or self-insurance program and that it has minimum coverage consistent with liability limits contained in Minn. Stat. Ch. 466. In the event of any claims or actions filed against any party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. This section shall survive the expiration or termination of this Agreement.

ARTICLE 9 AUTHORIZED REPRESENTATIVES AND LIAISONS

9.1 AUTHORIZED REPRESENTATIVES. The following named persons are designated the authorized representatives of the parties for this Agreement. These persons have authority to bind the party they represent and to consent to modifications, except that the authorized representative shall have only the authority specifically or generally granted by their respective governing boards. Notice required to be provided pursuant to this Agreement shall be made to the following named persons and addresses unless otherwise stated in this Agreement, or an amendment of this Agreement:

TO THE VRWJPO: Mike Slavik or successor, Chair
 Vermillion River Watershed Joint Powers Organization
 4100 220th St. W #103
 Farmington, MN 55024

Telephone: (651) 438-4427
mike.slavik@co.dakota.mn.us

TO THE COUNTY: Joe Atkins, Chair, or successor
Dakota County Board of Commissioners
1590 Highway 55
Hastings, MN 55033
Telephone: (651) 438-4430
joe.atkins@co.dakota.mn.us

TO THE CITY: Justin Miller, City Administrator, or successor
City of Lakeville
20195 Holyoke Avenue
Lakeville, MN 55044
Telephone: (952) 985-4400
jmiller@lakevillemn.gov

In addition, notification to the VRWJPO and County regarding termination of this Agreement by the City shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, MN 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 VRWJPO, County and City. The VRWJPO, County, and City 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:

VRWJPO Liaison: Kelly Perrine
Senior Watershed Specialist
Telephone: (952) 891-7002
Email: kelly.perrine@co.dakota.mn.us

County Liaison: Cole Johnson
Water Resources Project Supervisor
Telephone: (952) 891-7539
Email: cole.johnson@co.dakota.mn.us

City Liaison: McKenzie Cafferty
Environmental Resources Manager
Telephone: (952) 985-4520
Email: mcafferty@lakevillemn.gov

ARTICLE 10 MODIFICATIONS

Any alterations, 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, or as delegated by the parties' respective Boards, and signed by the Authorized Representatives, or delegated authority, of the VRWJPO, County, and City.

ARTICLE 11 TERMINATION

11.1 IN GENERAL. Any party may terminate this Agreement for cause by giving seven days' written notice or without cause by giving 30 days' written notice of its intent to terminate, to the other parties. 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. This Agreement may also be terminated by any of the parties in the event of a default by one party. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other parties. 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 FOR LACK OF FUNDING. Notwithstanding any provision of this Agreement to the contrary, the VRWJPO, County, or City may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding sources, or if it's funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement. The terminating body shall remain obligated to pay for any invoices received prior to any parties' receipt of written notice of termination for lack of funding. The remaining parties shall determine by majority vote whether to continue this Agreement upon receipt of termination pursuant to this Section 11.2.

ARTICLE 12 MINNESOTA LAW TO GOVERN

This Agreement shall be governed by and construed under 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 shall be venued in the County of Dakota, State of Minnesota. This section shall survive the expiration or termination of this Agreement.

ARTICLE 13 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.

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 any party.

ARTICLE 15 GOVERNMENT DATA PRACTICES

The VRWJPO, County, and 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 VRWJPO, County or City.

ARTICLE 16 SURVIVABILITY

The provisions of Article 8 (Indemnification) and Article 15 (Government Data Practices) survive the expiration or termination of this Agreement.

ARTICLE 17 DEFAULT: FORCE MAJEURE

No party shall be liable to the other parties for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the

defaulting party gives notice to the other parties 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.

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

**VERMILLION RIVER WATERSHED
JOINT POWERS ORGANIZATION**

By: _____
Mike Slavik or successor, Chair

Date of Signature: _____

DAKOTA COUNTY

By: _____
Joe Atkins or successor, Chair

Date of Signature: _____

Approved as to form:

Assistant Dakota County Attorney/Date
KS-24-503
VRW Res. No.
County Res. No.

CITY OF LAKEVILLE

By: _____
Luke M. Hellier or successor, Mayor

Date of Signature: _____

By: _____
Ann Orlofsky, City Clerk

Date of Signature: _____