

**JOINT POWERS AGREEMENT BETWEEN
THE COUNTY OF DAKOTA AND THE CITY OF LAKEVILLE
FOR MAINTENANCE OF GREENWAYS, TRAILS AND ASSOCIATED IMPROVEMENTS**

This Joint Powers Agreement (“Agreement”) is between the County of Dakota, by and through Dakota County Parks (“County”) and the City of Lakeville (“City”). This Agreement uses the word “Parties” for both the County and the City.

WHEREAS, the County and City are governmental units as that term is defined in Minn. Stat. § 471.59.

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

WHEREAS, the Parties have cooperated and intend to continue to cooperate in the construction of various Greenway and other regional and local trail segments and associated improvements within the City.

WHEREAS, the City and County recognize that it may be efficient and cost-effective to share resources and cooperate in maintaining certain Greenway and trail segments and their associated improvements.

WHEREAS, the City and the County further recognize that it will be efficient to have a single master maintenance agreement for all Greenway and trail segments within the City, and to provide for that agreement to be modified over time as improvements are added or removed and as cooperative opportunities and maintenance efficiencies may change.

WHEREAS, the City and the County therefore desire to enter into this Agreement for the purpose of identifying cooperative maintenance opportunities and the responsibilities of the Parties for maintaining various regional and local improvements within the City.

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1
PURPOSE**

The purpose of this Agreement is to set out the respective duties and responsibilities of the County and the City for the maintenance of Greenways and other regional and local trail segments located within the City and their associated improvements, as more fully described herein.

**ARTICLE 2
TERM**

This Agreement shall be effective as of the date of the signatures of the Parties (the “Effective Date”) and shall remain in effect until terminated as provided herein, or until termination is required by operation of law or by decision of a court of competent jurisdiction.

ARTICLE 3

MAINTENANCE

4.1 County Maintenance Obligations. Unless otherwise specified in this Agreement, including within any Exhibit to this Agreement, the County will be responsible for the routine maintenance, repair and replacement of the County's trail improvements located within the Greenway segment(s) shown on the attached Exhibit 1 (the "Greenway Improvements"), at no cost to the City. The County's maintenance obligations shall be limited to those Greenway Improvements constructed within areas for which the County has an easement or other right to use and maintain property for the Greenway Improvements, including through this Agreement, as determined by the County. The County will maintain, repair and replace the Greenway Improvements according to the County's then-existing maintenance service standards, subject to available funding, and according to a schedule to be determined by the County in its sole discretion.

4.2 City Maintenance Obligations. Unless otherwise specified in this Agreement, including within any Exhibit to this Agreement, the City will be responsible for all routine maintenance, repair and replacement of any City-owned trail improvements connected to the Greenway Improvements (the "City Improvements"), at no cost to the County. The City will maintain the City Improvements according to the City's then-existing maintenance service standards, subject to available funding, and according to a schedule to be determined by the City in its sole discretion.

4.3 Cooperative Maintenance Responsibilities, Payment.

4.3.1 City Greenway Maintenance. The City will be responsible for routine maintenance for those Greenway Improvement segments shown on Exhibit 2 and any addendum to Exhibit 2 (collectively referred to herein as "Exhibit 2"). The specific tasks required for routine maintenance relating to individual Greenway segments shall be identified on the applicable portion of Exhibit 2. Unless otherwise specified on Exhibit 2, the City shall not be responsible for any maintenance, repair or replacement of the Greenway Improvements but may notify the County if repairs may be necessary.

4.3.2 County Local Improvement Maintenance. The County will be responsible for all routine maintenance for those segments of any City Improvements shown on Exhibit 3 and any addendum to Exhibit 3, if any (collectively referred to herein as "Exhibit 3"). The specific tasks required for routine maintenance relating to individual City Improvements shall be identified on the applicable portion of Exhibit 3. Unless otherwise specified on Exhibit 3, the County shall not be responsible for any maintenance, repair and replacement of the City Improvements but may notify the City if repairs may be necessary.

4.3.3 Payment for Cooperative Maintenance. A Party assuming a maintenance obligation under this Agreement shall be compensated according to the amounts, if any, identified on the applicable Exhibit. By way of example, the Exhibits may identify a per mile charge for certain tasks (such as snow removal, cleaning, mowing) and/or a per unit or flat charge for certain tasks (such as emptying trash receptacles), or any other appropriate compensation method agreeable to the Parties. In addition, the Parties may provide on the Exhibits that no compensation is appropriate if the Parties agree that their shared maintenance obligations for each other's improvements are roughly equal.

4.3.4 Adjustments for Cooperative Maintenance Payments. The City and the County will meet prior to June 1 each year as provided in Article 6 of this Agreement, to evaluate and establish the compensation rates that will be applicable to their respective maintenance obligations for the following calendar year, and the compensation rates may be modified by agreement of the Parties. Following the annual meeting, a Party proposing an increase in compensation rates shall provide written notice of such increase to the other Party's Authorized Representative. The Authorized Representative will respond in writing within 60 days and may request additional information or may, in its discretion, accept or reject the proposed rate increase. If the rate increase is accepted, the Parties shall memorialize a modification to the applicable Exhibit by amendment or by separate addendum referencing this Agreement. If the proposed compensation rate increase is rejected or if the proposed increase has not been accepted or rejected in writing within 60 days from the date the written proposal was submitted, the proposing Party may terminate this Agreement as set forth in Section 8.1.

4.4 New Improvements. The Parties will coordinate on the installation of new Greenway improvements and new City improvements that may be connected to current or future Greenway improvements (the "Additional Improvements"). The Parties may include Additional Improvements within the cooperative maintenance responsibilities identified in this Agreement through a written amendment to the Agreement and the applicable Exhibit(s). Any such amendment shall be considered a material amendment under Section 7.3 of this Agreement.

ARTICLE 5

ACCESS AND USE RIGHTS

5.1 City Access to Greenway Easements. The City may reasonably access the Greenway Improvements for purposes of fulfilling its obligations under this Agreement and for other purposes related to routine work relating to the City Improvements. The City will contact the County prior to beginning any work that requires Greenway closure, or the use of equipment that interrupts or interferes with the County or the public's use of the Greenway Improvements. The City may be required to obtain a special use permit from the County for such extended access.

5.2 County Access to City Right-of-Way and Property. The County may reasonably access City right-of-way and other City-owned property for purposes of fulfilling its obligations under this Agreement and for other purposes in connection with routine work relating to improvements owned by the County and connected to City Improvements. The County will contact the City prior to beginning any work that requires any closure of City right-of-way, or the use of equipment that interrupts or interferes with the City's or the public's use of City right-of-way or other property. The County may be required to obtain a special use permit from the City for such extended access.

5.3 Perpetual License for Greenway Improvements. The City grants a perpetual license for the County and its employees, agents and contractors to install, maintain, repair and replace the Greenway Improvements for those Greenway segments shown on Exhibit 1 that are located on City property or within City right-of-way. The perpetual license shall survive expiration or termination of this Agreement. The perpetual license shall be subject to the City's right to require relocation of the Greenway Improvements pursuant to applicable law. The City's right to require relocation shall also survive expiration or termination of this Agreement.

5.4 Permanent Easements for Greenway Improvements. At the County's request, and limited to City-owned property, the City will replace the license provided for in section 5.3 with permanent easements for the Greenway Improvements shown on Exhibit 1. The City will execute documents reasonably necessary to convey permanent easements for the Greenway Improvements. The County will provide all surveying and other documentation and information necessary for the City to grant the requested permanent easements.

ARTICLE 6 ANNUAL REVIEW

The parties shall confer annually to review the parties' respective maintenance obligations and to discuss any issues the parties may have relating to this Agreement. The annual meeting shall occur on or before June 1 of each year, unless a later date is agreeable to both parties for their convenience.

ARTICLE 7 AMENDMENTS

7.1 Amendments. No amendments or variations of the terms and conditions of this Agreement shall be valid unless in writing and signed by the parties' Authorized Representatives.

7.2 Administrative Amendments. The Authorized Representatives may make non-material alterations, amendments, variations, modifications, or waivers to this Agreement without first obtaining authorization from their respective governing bodies. Any such modification or amendment shall not be effective until incorporated as a written amendment to this Agreement pursuant to section 7.1. Notwithstanding the foregoing, the Parties may adjust the compensation rates provided for in Section 4.3.4 through a written addendum explicitly referencing this Agreement and the applicable Exhibit(s). Modification of the maintenance obligations identified in the Exhibits to this Agreement made for the convenience of the Parties shall be considered a non-material amendment, provided that the Parties' Authorized Representatives determine that such modifications do not significantly impact the Party's approved budget for its obligations under this Agreement. Nothing in this Section 7.2 requires a Party to process an amendment administratively if, in the Party's sole discretion, the Party determines that a proposed amendment should be reviewed by its governing body.

7.3. Material Amendments. Any material changes to this Agreement, including but not limited to the addition or removal of any Greenway Improvement segments to or from Exhibit 1 or the modification of maintenance obligations that, in the view of an individual Party, significantly impact that Party's maintenance budget, including but not limited to costs of materials, equipment, and wages, shall require authorization and approval by the Parties' respective governing bodies. A Party may unilaterally choose to have its governing body approve an increase in compensation rates established in Section 4.3.4 of this Agreement. A decision by a Party to have its governing body approve one or more annual compensation rate increases shall not require the other Party to also request approval from its governing body.

ARTICLE 8
TERMINATION

8.1 With or Without Cause. This Agreement may be terminated with or without cause, by either Party upon sixty (60) calendar days' written notice of intent to terminate.

8.2 Non-Appropriation of Funds. Notwithstanding any provision of this Agreement to the contrary, either Party may terminate this Agreement immediately in the event the Party determines that sufficient funds from City, County, State, or Federal sources are not appropriated at a level sufficient to allow for the performance 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 purposes of this Agreement. The Authorized Representative, or their successor, has authority to bind the Party they represent to the extent such authority has been granted by the Party's governing body. The parties shall promptly provide Notice to each other when an Authorized Representative's successor is appointed. All notice shall be provided to the following named persons and addresses unless otherwise stated in this Agreement:

To the City:

To the County:

Georg T. Fischer
Physical Development Division Director
14955 Galaxie Avenue
Apple Valley, MN 55124

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 and the City. The parties shall promptly provide Notice to each other when a Liaison's successor is appointed. At the time of execution of this Agreement, the following persons are the designated liaisons:

City Liaison

County Liaison

Tony Wotzka
Parks Greenway Manager
952-891-7966
tony.wotzka@co.dakota.mn.us

ARTICLE 10
LIABILITY

Each Party to this Agreement shall be liable for the acts of their own officers, agents, volunteers, or employees and results thereof to the extent authorized by law and shall not be responsible for the acts of the other Party, its officers, agents, volunteers, or employees. The parties mutually agree to indemnify and hold harmless each other from any claims, losses, costs,

expenses, or damages resulting from the acts or omissions of the respective offices, agents, or employees related to activities conducted by either Party under this Agreement. It is understood and agreed that the provisions of the Minn. Stat. § 471.59, the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability arising from the parties' acts or omissions. Each Party warrants that they are able to comply with this section through an insurance or self-insurance program and that each has minimum coverage consistent with the liability limits contained in Minn. Stat. Ch. 466. Nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. The provisions of this Article 10 shall survive the expiration or termination of this Agreement.

ARTICLE 11

GENERAL PROVISIONS

11.1 Conflict Resolution. The County and City will cooperate in the coordination of operations and maintenance of the Greenway Improvements, City Improvements, and any Additional Improvements. The City and County Authorized Representatives, or successors, will be responsible for resolving issues and conflicts. If the Authorized Representatives are unable to reconcile issues and conflicts the responsibility for resolution shall be forwarded to the County Manager and City Administrator.

11.2 No Joint Venture. It is agreed that nothing in this Agreement is intended or should be construed as creating the relationship of agents, partners, joint ventures, or associates between the parties or as constituting the County or the City as the employee of the other entity for any purpose or in any manner whatsoever.

11.3 Data Practices. The Parties agree that any information and data received from the other Party during the term of this Agreement shall be treated and maintained in accordance with all applicable federal, state, and local laws, rules and regulations governing same, including but not limited to the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

11.4 Notices. Any notices required or permitted to be given under this Agreement shall be delivered personally or sent by U.S. mail to the other Party's Authorized Representative. Mailed notice shall be deemed complete two business days after the date of mailing.

11.5 Audit. To the extent applicable as to any disbursement of public funds between the Parties for services provided under this Agreement, the Parties shall maintain complete and accurate records with respect to costs incurred and services performed under this Agreement for a period of at least six (6) years after the termination of this Agreement. Pursuant to Minn. Stat. § 16C.05, Subd. 5, each Party shall allow the other Party, the State Auditor, or their authorized representatives access to the books, records, documents, and accounting procedures and practices relevant to the subject matter of the Agreement, for purposes of audit.

11.6 Minnesota Law Governs. The laws of Minnesota govern all matters related to this Agreement, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Agreement must be in those courts located within the County of Dakota, State of Minnesota or U.S. District Court, District of Minnesota.

11.7 Survival. The provisions of this Agreement which, by their terms, impose obligations that are continuing in nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement.

11.8 Authority. The person or persons executing this Joint Powers Agreement on behalf of the City and the County represent that they are duly authorized to execute this Joint Powers Agreement on behalf of the respective Parties and represent and warrant that this Joint Powers Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

11.9 Severability. In the event that any portion of this Agreement shall be held to be invalid, such invalidity shall not affect the validity of the remainder of this Agreement.

11.10 Electronic Signatures. Each Party agrees the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

11.11 Incorporation of Recitals and Exhibits. The Recitals at the beginning of this Agreement and the Exhibits attached to this Agreement, including any addendum to an Exhibit, are each true and correct, and are incorporated into and made part of this Agreement.

IN WITNESS THEREOF, the Parties have caused this agreement to be executed by their duly authorized officials.

DAKOTA COUNTY

CITY OF LAKEVILLE

By: _____
Georg T. Fischer, Director
Physical Development Division

By: _____
Luke Hellier, Mayor

Date of signature: _____

Date of signature: _____

County Board Res. No. _____

By: _____
Ann Orlofsky, City Clerk

EXHIBIT 1

COUNTY GREENWAY IMPROVEMENTS

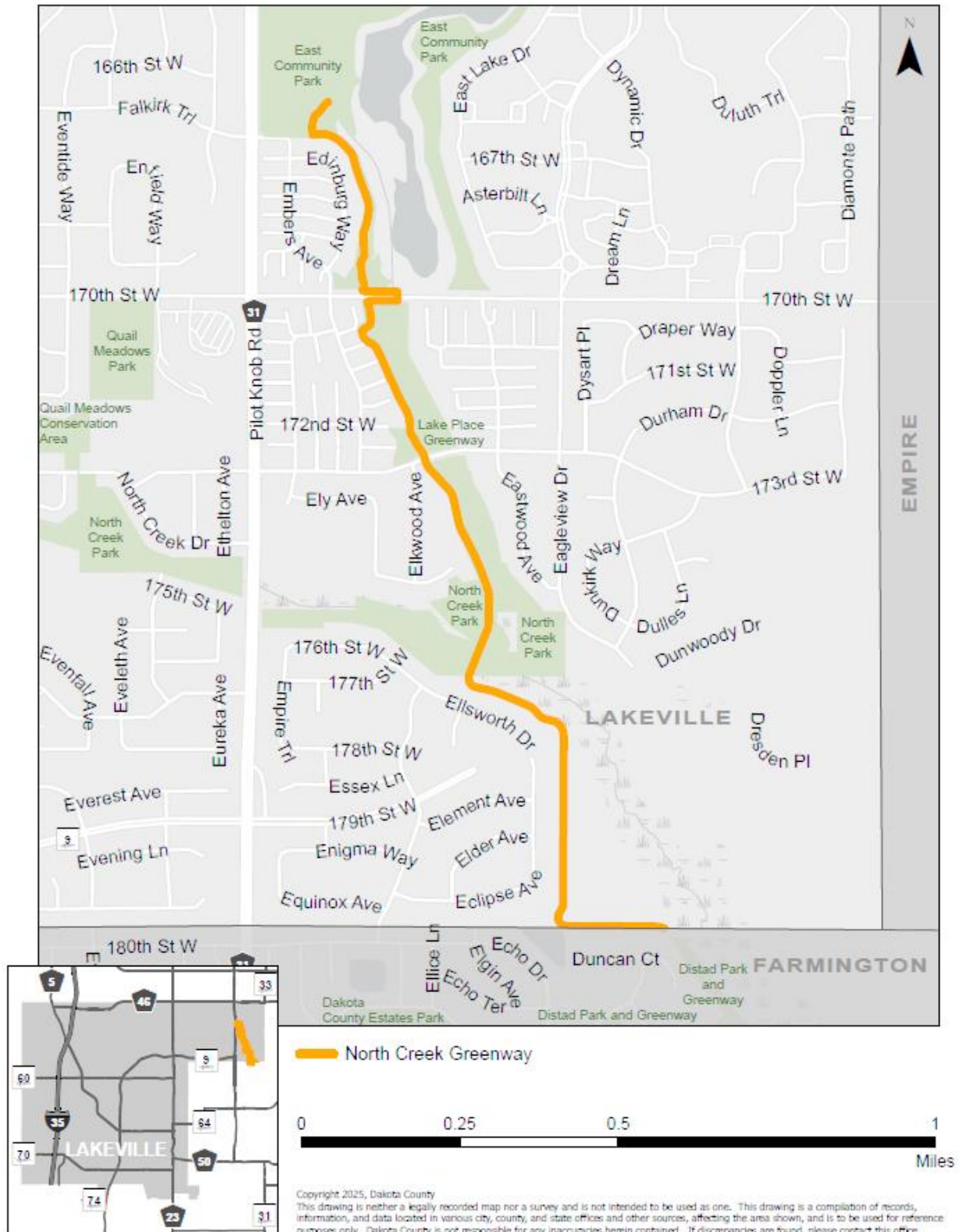


EXHIBIT 2

CITY GREENWAY MAINTENANCE OBLIGATIONS

I. Maintenance

A. North Creek Greenway: Duncan Ct (Lakeville City boundary) to East Community Park (1.75 mi)

- (1) Snow removal from trail and bench nodes
- (2) Mowing 2' per side and around nodes, including string trimming around infrastructure
- (3) Trimming branches and vegetation from the 2' clear zone
- (4) No Trash and Recycling Container removal (County responsible)

Assumes mowing 30 times a season and 30 snow events on average.

II. Reimbursement

A. North Creek Greenway: Duncan Ct (Lakeville City boundary) to East Community Park

- a. \$1,750 snow removal
- b. \$1,750 mowing
- c. \$250 brush and tree trimming

Total: 1.75 miles @ \$3,750 per mile = \$6,562.50

EXHIBIT 3

COUNTY MAINTENANCE OBLICATIONS FOR CITY TRAILS AND FACILITIES

NONE

DRAFT