

**JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY
AND THE MINNESOTA ZOOLOGICAL BOARD FOR COST SHARING OF
HARVESTING AND TRANSPORTING NATIVE PRAIRIE GRASS**

WHEREAS, Minn. Stat. § 471.59 authorizes local governmental units and State agencies and instrumentalities 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 Minnesota Zoological Board (Zoo) is a Minnesota State board (collectively herein the County and the Zoo are referred to as the “Parties”); and

WHEREAS, by resolution _____, the Dakota County Board authorized the adoption of the cost sharing agreement between the County and the Zoo;

WHEREAS, the Parties are desirous of entering into this Agreement so that the County and the Zoo may share the actual costs for harvesting and transporting native prairie grass from County Property and used by the Zoo; and

NOW, THEREFORE, in consideration of the mutual promises and benefits that the Parties 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 Zoo to the County for actual cost of harvesting and transporting native prairie grasses from County Property. All funds provided by the Zoo are to be used by the County solely for this purpose. The County shall use funds pursuant to this Agreement exclusively for the payment of actual harvesting and transporting native prairie grasses costs as provided in this Agreement. "County Property" as used in this agreement is defined as land owned by the County or land for which the County has specific explicit written agreement which allows the harvesting of grasses for the purpose outlined in this JPA.

ARTICLE 2

Parties

The Parties to this Agreement are the Zoo and County. County is acting by and through its Parks Department.

ARTICLE 3

Term

This Agreement shall be effective on the date of the signature (Effective Date) of the last party to sign this Agreement and expires on ___December 31st, 2029___ 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

Zoo's Payment Obligation

- 5.1. Reimbursement Amount. The Zoo shall reimburse the County ___210___ and 00/100 (\$___210___) per ton of native grass received.
- 5.2. Reimbursement by Zoo. After this Agreement has been executed by both parties, the County may claim reimbursement in accordance with the Agreement.
 - A. On ___May 1st___ of every year, the Zoo will provide to the County a letter indicating the amount of native grass, per ton or bale number, the Zoo would like to receive from the County. The letter must be submitted in the form acceptable to the County.

- B. After receiving the ___May 1st___ notice from the Zoo, the County will respond by ___June 30th___ notifying the Zoo of the County's capacity to meet the Zoo's tonnage request of native grass/hay. The County will notice the estimated surplus amount of native grass, per ton or bale count, anticipated in that year's harvest that will be available to meet the Zoo's request in the ___June 30th___ notification to the Zoo. The County makes no guarantees that the entirety of the estimated tonnage/bales will be provided but will in good faith work to meet the estimated amount of native grass to the Zoo.
- C. Upon receipt of a request for reimbursement from County, and satisfactory delivery of the tonnage of native grass requested by the Zoo, the Zoo will reimburse the County for the per ton amount described in Section 5.1 within forty-five (45) calendar days. All requests for reimbursement must be submitted by ___two weeks of delivery___. If the request for reimbursement is incorrect, defective, or otherwise improper, the Zoo will notify County within ten (10) calendar days of receiving the incorrect request for reimbursement. Upon receiving the corrected request for reimbursement from County, the Zoo will make payment within forty-five (45) calendar days.
- D. Right to Refuse Payment. The Zoo may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim does not preclude the Zoo from questioning the propriety of the claim. The Zoo reserves the right to offset any overpayment or disallowance of claim by reducing future payments.

ARTICLE 6
County's Obligations

- 6.1. Providing Native Prairie Grass. The County, its agents, or contractors will harvest and transport native prairie grass from County Property to the Minnesota Zoological Garden. The County will provide the native prairie grass by ___October 15th___ each year.
 - 6.2. Request for Reimbursement. Upon delivering the native prairie grass to the Zoo, the County will provide a request for reimbursement. The request for reimbursement will indicate the total cost, the cost per ton of grass received, and the number of tons received by the Zoo.
 - 6.3. Compliance with Laws/Standard. The County shall abide by all federal, state, or local laws, statutes, ordinances, rules and regulations related to the removal and maintenance of native prairie grass. The County 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. Neither the Zoo nor the County may assign nor 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 County and the Zoo.

- B. Use of Contractors. The County may engage contractors to perform activities funded pursuant to this Agreement.

ARTICLE 7
Indemnification and Insurance

- 7.1. 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 the Minnesota Tort Claims Act, Minn. Stat. § 3.736 et seq., and other applicable laws govern liability of the County and the Zoo. 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 or Minn. Stat. § 3.736, as applicable. 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, Zoo 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 or Minn. Stat. § 3.736 during the term of such activity. All such insurance policies shall name Zoo and County as additional insureds. Zoo 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 Zoo and the County agree 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 Zoo and County for a minimum period of six (6) years following the expiration of this Agreement. Zoo agrees to promptly provide the County copies of any accounting records related to this Agreement upon the County's request, and County agrees to do the same upon the Zoo's request.
- 8.2 Auditing. The Zoo and County 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 Zoo 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, and the County agrees to do the same upon request. The Zoo and County 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 Zoo and County agree with respect to any data that they possess regarding the Agreement to comply with all of 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 designated as 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: Georg Fischer, or successor
 Physical Development Division Director
 14955 Galaxie Avenue
 Apple Valley, MN 55124-8579

Georg Fischer, or his successor, has the responsibility to monitor the Zoo's performance pursuant to this Agreement and the authority to approve invoices submitted for reimbursement.

TO THE ZOO: Kelly Kappen
 Animal Nutritionist
 13000 Zoo Boulevard
 Apple Valley, MN 55124

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 Zoo. 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: Carleigh Dueck,
 Natural Resources Bison Technician
 Telephone: 952-891-7142
 Email: carleigh.dueck@co.dakota.mn.us

Zoo Liaison: Kelly Kappen, Animal Nutritionist

Telephone: 952-431-9518

Email: Kelly.kappen@state.mn.us

- 8.6 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**

Any 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 Zoo.

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. In addition, either Party may terminate this Agreement without cause by giving thirty (30) calendar days written notice of its intent to terminate to the other Party. 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 Zoo 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 or damages if the Agreement is terminated due to lack of funding.
- 10.3 Termination by Zoo for Lack Of Funding. Notwithstanding any provision of this Agreement to the contrary, the Zoo 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 the Zoo to Dakota County by facsimile is sufficient notice under this section. The Zoo is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The Zoo 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.

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.

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 either of the Parties 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 Zoo, nor shall either of the Parties be considered or deemed to be an agent, representative or employee of

the other party in the performance of this Agreement. Personnel of either of the Parties or other persons while engaging in the performance of this Agreement shall not be considered employees of the other party 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 5.2 (Reimbursement by Zoo); Article 6 (County’s Obligations); 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).

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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-24-

By _____
[Name]
[Title]

Date of Signature: _____

County Board Res. No.

MINNESOTA ZOOLOGICAL BOARD

By _____
[Authorized Signatory]

Date of Signature: _____