

**JOINT POWERS AGREEMENT BETWEEN THE VERMILLION RIVER WATERSHED  
JOINT POWERS ORGANIZATION, THE CITY OF LAKEVILLE, AND DAKOTA COUNTY  
FOR LAKE MARION PHOSPHOROUS TREATMENT PROJECT/DAKOTA COUNTY 50-19/  
JAGUAR POND IMPROVEMENTS PROJECT, CITY PROJECT 24-49**

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

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

**WHEREAS**, the VRWJPO identified Lake Marion as a water resource requiring protection from further degradation of water quality resulting from phosphorus and sediment-laden stormwater runoff; and

**WHEREAS**, Jaguar Pond, formerly known as Jaguar Avenue Stormwater Basin, is located in Lakeville and accepts drainage from upstream areas and drains to Lake Marion within the Vermillion River Watershed; and

**WHEREAS**, the VRWJPO, County and City partnered in the initial construction of Jaguar Pond in 2018 as part of Dakota County 50-19 project; and

**WHEREAS**, continuous groundwater seepage and base flow created conditions and storage capacity reduction, combined with large storm events, resulting in the failure of Jaguar Pond; and

**WHEREAS**, all applicable warranties regarding the initial construction of Jaguar Pond have expired; and

**WHEREAS**, the City has entered into a contract with an engineering consultant to provide a final design of improvements determined by the engineering consultant to be necessary to improve the functionality of the Lake Marion Phosphorus Treatment Project/Dakota County 50-19 Project/Jaguar Pond (City Project 24-49 (Project)), contract documents including plans and specifications (Project Plans), and construction administration for the Project at a cost of \$17,400.00 (Engineering Cost); and

**WHEREAS**, the City has awarded a contract for the construction of the Project at a total cost of \$90,609.00 (Project Cost); and

**WHEREAS**, construction of the Project is will commence in 2025; and

**WHEREAS**, the VRWJPO, County and City are partnering to share in the Engineering Cost and Project Cost of the Project as set forth herein; and

**WHEREAS**, the City has agreed to provide up to \$5,800.00 towards the Engineering Cost and up to \$30,203.00 towards the Project Cost and has funding available in their budget to participate in the costs; and

**WHEREAS**, the County has agreed to provide up to \$5,800.00 towards the Engineering Cost and up to \$30,203.00 towards the Project Cost and has funding available in their budget to participate in the costs; and

**WHEREAS**, the VRWJPO has agreed to provide up to \$5,800.00 towards the Engineering Cost and up to \$30,203.00 towards the Project Cost and has funding available in their budget to participate in the costs.

**NOW, THEREFORE**, in consideration of the mutual promise 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, City, and County.

**ARTICLE 2  
PARTIES**

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

**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, 2026, 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, City, and County 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  
TECHNICAL AND QUALITY ASSURANCE**

Any engineer providing technical or quality assurance for the Project must be a licensed Professional Engineer in the State of Minnesota. The Project will be designed using appropriate practice standards for design, construction, operation, and maintenance. The engineer(s) providing technical and quality assurance will certify that the Project was installed or constructed consistent with the Project Plans, including approved modifications, prior to authorization for payment by the VRWJPO or County. The City shall have an as-built plan set provided to the VRWJPO and County by the engineer(s) immediately following Project completion as part of the required Project certification.

**ARTICLE 6  
PROJECT PLANS AND SPECIFICATIONS**

The City is the lead agency for design and construction administration of the Project, effective upon execution of this Agreement by all parties. The VRWJPO, City, and County shall approve the plans and specifications (Project Plans) prior to the City advertising for bids.

**ARTICLE 7  
PAYMENT**

**7.1** The City shall administer the contract(s) for the Project and act as the paying agent for all payments to the contractor(s).

**7.2** The parties shall make the following contributions toward the Engineering Cost and Project Cost in accordance with the following payment schedule in consideration of the benefit provided by the Project constructed in accordance with the Project Plans.

7.2.1 The County, by and through its Transportation Department, shall contribute up to \$5,800.00 towards the Engineering Cost and up to \$30,203.00 toward the Project Cost.

7.2.2 The City shall contribute up to \$5,800.00 towards the Engineering Cost and up to \$30,203.00 towards the Project Cost.

7.2.3 The VRWJPO shall contribute up to \$5,800.00 towards the Engineering Cost and up to \$30,203.00 towards the Project Cost.

**7.3** The City's maximum eligible reimbursement is up to \$72,006.00 when accounting for cash contributions of both the VRWJPO and County.

**7.4** No payment by the parties shall be made prior to approval of the Project Plans by the VRWJPO, City, and County.

**7.5** The VRWJPO and County may refuse to pay claims not specifically authorized by this Agreement. Payment of a claim shall not preclude the VRWJPO and/or County from questioning the propriety of the claim. The VRWJPO and County reserve the right to be repaid for any overpayment or disallowed claim.

**7.6** Subject to Article 12, the VRWJPO and County shall pay the City their share of the Project Cost upon receipt of the Project certification pursuant to Article 5 up to the maximum amounts identified in Sections 7.2.1 and 7.2.3. The City shall invoice the County and VRWJPO for their share of Engineering Cost along with such documentation required by either the County or VRWJPO to verify the City's payment to the engineer. The City shall invoice the County and VRWJPO for their share of Project Cost once the Project certification is provided to 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 engineer(s) and contractor(s).

## **ARTICLE 8 CITY OBLIGATIONS**

**8.1 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.

**8.2 CONSTRUCTION REQUIREMENTS.** The Project shall be constructed according to the Project Plans. The VRWJPO, City, and County shall approve any modifications to the Project Plans.

**8.3 CONSTRUCTION AND DESIGN FAILURES.** Any failure related to construction or design of the Project shall be addressed in the City's contracts with the construction firm and professional services firm.

**8.4 RIGHT-OF-ENTRY.** The City hereby permits the VRWJPO and County, its employees, duly authorized representatives and agents to enter upon and have rights of ingress and egress over and access at reasonable times to the real property where the Project will be located to inspect the construction of the Project. Notwithstanding the right to inspect, neither the VRWJPO nor County is obligated hereunder to inspect the work performed on the Project.

**8.5 OPERATION AND MAINTENANCE.** The City shall be responsible for on-going maintenance of the Project or will request shared responsibility with the County and VRWJPO for on-going maintenance of

the Project upon completion and shall follow the terms described in the Joint Powers Agreement for the Dakota County 50-19 project (VRW Resolution 17-11) unless a failure occurs from an Act of God or Force Majeure occurs such that it is cost prohibitive to repair or maintain.

**8.6 COMPLIANCE WITH LAWS/STANDARDS.** The City shall abide by all federal, state, or local laws, statutes, ordinances, rules, and regulations in constructing the Project, including obtaining all necessary permits to construct the Project.

**8.7 PUBLICITY.** The City hereby permits the VRWJPO and County to take and disclose photographs of the Project for use in publications or promotional material or on their websites to highlight the VRWJPO's programs. The City, County, and VRWJPO shall appropriately acknowledge the funding provided by the VRWJPO, County, and City in any promotional materials, signage, reports, publications, notices, and presentations related to the Project. This section shall survive the expiration or termination of this Agreement.

## **ARTICLE 9 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 provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability of the VRWJPO, City, and the County. Each party warrants that it 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 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 10 AUTHORIZED REPRESENTATIVES AND LIAISONS**

**10.1 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 220<sup>th</sup> Street W., Ste #103, Farmington MN,55024  
Telephone: (612) 229-5855  
twolf@co.scott.mn.us

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

TO THE COUNTY:      Georg T. Fischer, Director  
Physical Development Division  
14955 Galaxie Avenue

Apple Valley, MN 55124  
Telephone: (952) 891-7007  
[georg.fischer@co.dakota.mn.us](mailto:georg.fischer@co.dakota.mn.us)

In addition, regarding termination of this Agreement by the shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, MN 55033.

**10.2 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, City, and the County. The VRWJPO, City, and the County 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: Jeff Dunn  
Water Resources Engineer  
Telephone: (952) 891-7546  
Email: [jeff.dunn@co.dakota.mn.us](mailto:jeff.dunn@co.dakota.mn.us)

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

County Liaison: Todd Howard  
Assistant County Engineer  
Telephone: (952) 891-7906  
Email: [todd.howard@co.dakota.mn.us](mailto:todd.howard@co.dakota.mn.us)

#### **ARTICLE 11 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, City, and County.

#### **ARTICLE 12 TERMINATION**

**12.1 IN GENERAL.** Any party may terminate this Agreement for cause by giving seven 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 the City or County in the event of a default by the VRWJPO. 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.

**12.2 TERMINATION BY VRWJPO OR COUNTY FOR LACK OF FUNDING.** Notwithstanding any provision of this Agreement to the contrary, either the VRWJPO or the County 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. Neither the VRWJPO nor the County is obligated to pay for any services that are provided after written notice of termination for lack of funding. The party terminating under this provision for lack of funding will pay for expenses incurred by the other parties hereto up to Notice of Termination for work on the Project.

**ARTICLE 13  
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 14  
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 15  
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 16  
GOVERNMENT DATA PRACTICES**

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

**ARTICLE 17  
SURVIVABILITY**

The provisions of articles 8.3 (Construction and Design Failures), 8.5 (Operation and Maintenance), 9 (Indemnification) and 16 (Government Data Practices) survive the expiration or termination of this Agreement.

**ARTICLE 18  
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.

**CITY OF LAKEVILLE**

By \_\_\_\_\_  
Luke M. Hellier, Mayor  
Date of Signature: \_\_\_\_\_

By \_\_\_\_\_  
Ann Orlofsky, City Clerk  
Date of Signature: \_\_\_\_\_

**VERMILLION RIVER WATERSHED  
JOINT POWERS ORGANIZATION**

By \_\_\_\_\_  
Mike Slavik or successor, Chair  
Date of Signature: \_\_\_\_\_

VRW Res. No.25-45

**DAKOTA COUNTY**

By \_\_\_\_\_  
Georg T. Fischer, Assistant County Manager  
Physical Development Division  
Date of Signature: \_\_\_\_\_

Dakota County Board Res. No.

DRAFT