

**JOINT POWERS AGREEMENT BETWEEN
THE COUNTY OF DAKOTA AND
THE DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY
FOR LEGAL SERVICES**

This Agreement is made and entered into by and between the County of Dakota, Minnesota ("County") by and through the Dakota County Attorney's Office ("Dakota County Attorney's Office") and Dakota County Community Development Agency, ("CDA"), pursuant to the authority conferred upon them by Minn. Stat. § 471.59. The County and the CDA are also referred to herein as the "parties."

WHEREAS, the County is a political subdivision of the State of Minnesota, and the Dakota County Attorney's Office is required by law to provide certain legal services to the County and its Board of Commissioners; and

WHEREAS, the CDA is a public body corporate and politic in the State of Minnesota and has all of the powers and duties of a housing and redevelopment authority under Minn. Stat. §§ 469.001 to 469.047 and of a county housing and redevelopment authority under any other related provision of Minnesota law.

WHEREAS, the County Attorney's Office is not required by law to provide legal services to CDA or its Board of Commissioners, pursuant to Minn. Stat. § 388.05, the Dakota County Attorney's Office may provide legal services to CDA per an agreement between the two to provide legal service.

WHEREAS, the CDA desires, and the County is willing, to have the County Attorney's Office provide legal advice and services to the CDA, its committees and the CDA Board, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and benefits realized by each party, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to enable the County Attorney's Office to provide legal services to the CDA, as detailed herein, and for the CDA to secure such services from the County Attorney's Office, and to establish the terms on which such services shall be provided.
2. **Term.** Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on January 1, 2023 and shall continue in full force until December 31, 2024 unless terminated by either party pursuant to Section 5.e. of this Agreement.
3. **Services Provided by Dakota County.**
 - a. Scope. The County agrees the Dakota County Attorney's Office may provide legal advice and representation to the CDA, its Board and committees subject to the discretion of the County Attorney, on an ad hoc basis.
 - b. Discretion to Decline Services. The Dakota County Attorney's Office shall have discretion to decline to provide legal services under this Agreement if it determines it is unable to provide the services requested. Nothing in this Agreement shall obligate the Dakota County Attorney's Office to provide legal services.
 - c. Discretion to Obtain Services from Other Sources. The CDA shall have sole and complete discretion to obtain legal services (including, without limitation, legal advice and representation) from sources other than the Dakota County Attorney's Office. Nothing in this Agreement shall obligate the CDA to obtain legal services from the Dakota County Attorney's Office.
 - d. Conflicts of Interest. If the Dakota County Attorney's Office determines that its representation of both the CDA and the County and/or County Departments may result in a conflict of interest or perceived conflict of interest (as determined under the Minnesota Rules of Professional Conduct or otherwise), the Dakota County Attorney's Office shall notify the Dakota County Manager and the CDA Executive Director of the conflict and its effect on the Dakota County Attorney's Office's

representation of the CDA and the County and/or County departments. The Dakota County Manager and the CDA Executive Director, with assistance of the Dakota County Attorney's Office, shall consult with their respective boards regarding the conflict of interest issues and may request a waiver of the conflict of interest from their respective boards.

- e. Withdrawal. The Dakota County Attorney's Office may withdraw from representation of the CDA subject to and in accordance with the Minnesota Rules of Professional Conduct, at any time by providing written notice of withdrawal to the CDA Executive Director.

4. **Payment for Services.**

- a. Hourly Rate. Work will be billed at the applicable rate for each year of the contract term. 2023, at an hourly rate of \$216.00 for attorney time and \$48.00 for paralegal time; and in 2024, at an hourly rate of \$222.00 for attorney time and \$49.00 for paralegal time.
- b. Costs. The CDA shall reimburse the Dakota County Attorney's Office for any costs incurred by the Dakota County Attorney's Office in connection with providing legal services under this Agreement. Reimbursable costs include, without limitation, long-distance telephone charges, photocopying charges, printing charges, mileage charges (reimbursable at the Internal Revenue Service's then-applicable standard mileage rate), parking charges, delivery fees, messenger service fees, filing fees, deposition costs, witness fees, and other reasonable expenses incurred by the Dakota County Attorney's Office in providing legal services to the CDA under this Agreement.
- c. Billing. The Dakota County Attorney's Office shall invoice the CDA on a monthly basis for legal services provided to the CDA pursuant to this Agreement and any costs incurred by the Dakota County Attorney's Office in connection with providing such services. Said invoices shall identify the persons providing legal services to the CDA and itemize the services provided by each such person, the amount of time that each such person spent providing services, and any costs incurred by the Dakota County Attorney's Office in connection with providing such services. Upon receipt of the itemized invoice, the CDA shall make payment to the Dakota County Attorney's Office within 35 calendar days.

5. **General Provisions.**

- a. Independent Contractor. For purposes of this Agreement, the County Attorney and staff of the Dakota County Attorney's Office shall be deemed to be independent contractors, and not employees of the CDA. Any and all agents, servants, or employees of the Dakota County Attorney's Office, while engaged in the performance of any work or services required to be performed by the County Attorney under this Agreement, shall not be considered employees of the CDA, and any and all claims that may or might arise against the CDA, its agents or employees as a consequence of any act or omission on the part of the CDA, its agents and employees or other persons, shall in no way be the obligation or responsibility of the County, Kathryn M. Keena (or her successor), or the Dakota County Attorney's Office.
- b. Indemnification. Each party to this Agreement shall be liable for the acts of their own officers, employees, and/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, agents, and employees. The parties agree that the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability arising from the parties' acts or omissions. Nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. Nothing in this Agreement is intended as a waiver of any liability limits to which the parties are otherwise entitled under law.
- c. Notices. Except as provided elsewhere in this Agreement, any notice or demand ("Notice") must be in writing and provided as follows to the other party's Authorized Representative: (a) personal delivery; (b) first class mail; or (c) nationally recognized overnight courier, with tracking service and all fees and costs prepaid. Except as provided elsewhere in this Agreement, a Notice is

effective only if the Authorized Representative has received the Notice ("Receipt"). Receipt is effective when Notice is delivered pursuant to the above-approved methods. However, if the Authorized Representative rejects or otherwise refuses to accept the Notice or if the Notice cannot be delivered because of a change of address for which no Notice was provided, then Receipt is effective upon rejection, refusal, or inability to deliver.

- d. Authorized Representative. The following named persons, or their successors, are designated as the Authorized Representatives of the parties for purposes of this Agreement and notices described in 5.c. of this Agreement. The parties shall provide Notice to each other of any change to the Authorized Representative, which will be effective without necessitating written amendment of the Agreement.

TO THE COUNTY ATTORNEY:

Kathryn M. Keena
Dakota County Attorney
1560 Highway 55
Hastings, MN 55033
(651) 438-4438

TO THE CDA:

Tony Schertler
Executive Director
1228 Town Centre Drive
Eagan, MN 55123
(651) 675-4400

- e. Termination. Either party may terminate this Agreement without cause upon giving at least 30 days written Notice. In the event of termination under this Section, and if requested by the CDA, the County Attorney will provide the CDA with copies of documents in the possession of the Dakota County Attorney's Office related to the provision of legal services under this Agreement. Upon termination, the Dakota County Attorney's Office shall be entitled to receive compensation for the legal services provided in a satisfactory manner up to and including the effective date of termination, including any costs incurred in providing such services.
- f. Data Practices. The CDA and the County agree that all data created, collected, received, stored, used, maintained or disseminated in connection with the performance of activities pursuant to this Agreement shall be treated in accordance with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, and the Minnesota Rules implementing the Act, as well as any other applicable state or federal law that applies to such data.
- g. Knowing and Voluntary Agreement. The CDA acknowledges that it has entered into this Agreement knowingly and voluntarily. The CDA also acknowledges that it had a reasonable opportunity to consult with an attorney of its choosing in connection with the negotiation and preparation of this Agreement, and that it has not relied on any advice of the Dakota County Attorney's Office in negotiating, preparing, or entering into this Agreement. Any ambiguity, inconsistency, or question of interpretation or construction will not be resolved strictly against the party that drafted this Agreement. It is the intent of the parties that all language used in this Agreement be constructed and construed to give its natural and ordinary meaning and effect, regardless of any rule to the contrary.
- h. Amendments. Any alterations, variations, or modifications of the provisions of this Agreement shall be valid only when reduced to writing, approved by the parties' respective boards, and signed by the Authorized Representatives.
- i. Waiver. The waiver of any of the rights and/or remedies arising under the terms of this Agreement on any occasion by either party hereto shall not constitute a waiver of any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.
- j. 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 substantially impair the value of the entire Agreement with respect to either party.

- k. Entire Agreement. This Agreement shall constitute the entire Agreement between the parties and may not be modified orally or in any other manner except in writing signed by both parties.

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.

IN WITNESS WHEREOF, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statute §471.59.

COUNTY OF DAKOTA

By _____
Kathryn M. Keena
Dakota County Attorney
Date of Signature _____

DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY

By _____
Tony Schertler
Executive Director
Date of Signature _____

Approved as to form:

Assistant County Attorney/Date
County Attorney File No. KS-22-620

Resolution No. _____.