

**JOINT POWERS AGREEMENT FOR
THE FIRELIGHT WAY TSS REDUCTION PROJECT
BETWEEN THE VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION,
THE CITY OF LAKEVILLE, AND DAKOTA COUNTY
CITY PROJECT 24-44**

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, Firelight Way in Lakeville is located directly adjacent to North Creek, a tributary to the Vermillion River; and

WHEREAS, North Creek and the Vermillion River are identified on the EPA's 303d Impaired Waters List for total suspended solids (TSS); and

WHEREAS, stormwater outfalls contribute sediment loading to downstream reaches of North Creek and the Vermillion River; and

WHEREAS, a stormwater outfall near Firelight Way was identified as a high sediment loading source to this section of North Creek; and

WHEREAS, restoration strategies were identified in the WRAPS report to identify and implement sediment reduction BMPs on public lands in the North Creek subwatershed; and

WHEREAS, reducing the sediment load in North Creek through stormwater treatment before being discharged to North Creek (Project) will address the TSS impairment affecting North Creek and the Vermillion River; and

WHEREAS, the estimated Project cost is \$296,010(Project Cost); and

WHEREAS, the VRWJPO was awarded a \$184,300 Watershed Based Implementation Funding Grant (Grant) from the Minnesota Board of Water and Soil Resources (BWSR) in accordance with the BWSR Grant Agreement, attached and incorporated herein as **Exhibit A**; and

WHEREAS, the Grant has a minimum match requirement equal to 10% of the amount of Grant monies awarded, either in the form of cash or in-kind services; and

WHEREAS, the VRWJPO, City, and County have included cash matches collectively totaling at least 10% of the Grant Amount(defined in Section 7.2 herein) used for Project costs in their Capital Improvement Plans for the Project to be applied towards the Project Cost after the City's application of the Grant Amount and will jointly participate in the design, construction, and related activities for the Project to the extent specified herein; and

WHEREAS, the VRWJPO, the City, and County will follow all applicable BWSR Grant policies and requirements relevant to each party's participation in the Project.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the City, County, and VRWJPO shall derive from this Agreement, the VRWJPO, City, and County 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, 2027, 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

The VRWJPO, City, and County will provide technical and quality assurance for the Project. 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. Appropriate practice standards from the United States Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide, Minnesota Stormwater Manual, or other scientifically appropriate and applicable standards can be used. Vegetative practices must follow the BWSR Board adopted Native Vegetation Establishment and Enhancement Guidelines. The engineer(s) providing technical and quality assurance will certify that the Project was installed or constructed consistent with the applicable plans and specifications, including approved modifications, prior to authorization for payment by the VRWJPO or County. An as-built plan set will be provided to the VRWJPO 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 Grant will reimburse project-related activities up to \$184,300 (Grant Amount) related to the engineering, permitting, bidding and construction of the Project. Disbursement of the Grant Funds shall be subject to Section 7.6 and terms of the BWSR Grant Agreement (Exhibit A).

7.3 The parties shall make the following contributions toward the Project Cost in accordance with the following payment schedule and Section 7.9 in consideration of the benefit provided by restoration activities on the Project in accordance with the Project Plans. The City will administer the contract(s) for the Project and act as the paying agent for all payments to the contractor(s).

7.3.1 The County, by and through its Environmental Resources Department, shall contribute \$10,000 toward the Project Cost.

7.3.2 The City shall contribute \$91,710 toward the Project Cost.

7.3.3 The VRWJPO shall contribute \$10,000 toward the Project Cost and will pass through Grant Amount for eligible project-related activity expenses.

7.4 The City's maximum eligible reimbursement is up to \$204,300 when accounting for the Grant Amount, VRWJPO cash contribution, and County cash contribution.

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

7.6 Under the terms of the Grant, the VRWJPO will receive the Grant Amount in the following disbursements: (a) 50% after execution of the Grant; (b) 40% after the first 50% has been expended and Grant reporting requirements are met; and (c) 10% after final Grant requirements are met. The VRWJPO will make progress payments to the City, if requested, on a reimbursement basis, contingent upon the VRWJPO's receipt of adequate Grant disbursements to make City requested payments. Ten percent (10%) of the Agreement maximum shall be withheld until the VRWJPO has verified that the Project has been installed according to this Agreement and the Project Plans. All requests for payment shall be supported by itemized Project receipts and invoices determined by the VRWJPO to be practical and reasonable for completion of the Project.

7.7 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.

7.8 Subject to Sections 7.9, 7.10 and 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 7.3.1 and 7.3.3. 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 contractor(s).

7.9 The VRWJPO and County may refuse to pay/reimburse 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.

7.10 All services provided by the VRWJPO under the BWSR Grant Agreement (Exhibit A) or through this Agreement, and services provided by the City and the County to the VRWJPO through this Agreement must be performed to the State's satisfaction pursuant to Exhibit A and the BWSR approved work plan.

ARTICLE 8 CITY OBLIGATIONS

8.1 AUTHORIZED PURPOSE. The funds, including the Grant Amount, 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 or 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 VRWJPO for on-going maintenance of the Project upon completion for a minimum of 25 years 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, City, the State of Minnesota, and the Clean Water, Land, and Legacy Amendment 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
14955 Galaxie Avenue
Apple Valley, MN 55124
Telephone: (952) 891-7030
mike.slavik@co.dakota.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

TO THE COUNTY: Georg Fischer, Director
Physical Development Division
14955 Galaxie Avenue
Apple Valley, MN 55124
Telephone: (952) 891-7000
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

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

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

12.3 REPAYMENT OF GRANT AMOUNT. If this Agreement is terminated pursuant to this Article 12, the City shall repay the Grant Amount received as of the date of termination to the VRWJPO, who shall return the Grant Amount to the BWSR, and the County and VRWJPO shall reimburse the City for their pro-rata share (based on the parties contributions set forth in Sections 7.3.1 through 7.3.3) of the Project Cost incurred as of the date of termination. The City shall be responsible for the remaining amount of the Project Cost as of the date of the termination.

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 _____
Justin Miller or successor, City Administrator
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: _____

DAKOTA COUNTY

By _____
Georg Fischer, Director
Physical Development Division
Date of Signature: _____

Approved as to form:¹

/s/ Brian J. Wisdorf 11/26/2024
Assistant Dakota County Attorney/Date
KS-24-743
VRW Res. No.
KS-24-756
Dakota County Board Res. No.

¹ Dakota County Attorney's Office approved as to form for both Dakota County and the Vermillion River Watershed Joint Powers Organization