

STATE OF MINNESOTA JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota, acting through its commissioner of natural resources ("State") and the City of St. Paul ("City").

Recitals

Under Minnesota Statute § 471.59, subdivision 10, the City is empowered to engage such assistance as deemed necessary. The City is in need of an amendment to a conservation easement held by the State to allow the City to conduct site investigations on the protected property as to the feasibility of constructing a pedestrian/bicycle bridge and, if feasible, the construction of such bridge.

Agreement

1 Term of Agreement

- 1.1 **Effective date:** October 1, 2015, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** September 30, 2017, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 Agreement between the Parties

The City conveyed to the State a conservation easement dated November 22, 2002, recorded in the Ramsey County Recorder's Office on November 27, 2002 as Document Number 3558591, and recorded in the Ramsey County Registrar of Titles' Office on January 3, 2003 as Document Number 1723715, covering 17 acres in Ramsey County, Minnesota (hereinafter referred to as "protected property").

The general objective of the parties ("the project") is to utilize the services and expertise of the State's staff to enable the City to conduct soil borings and other geotechnical work on the protected property to determine the feasibility of constructing a pedestrian and bicycle bridge on the protected property. If site investigations prove favorable, the City desires the ability to build the pedestrian and bicycle bridge on the protected property.

In order to conduct the project, the conservation easement between the parties, dated November 22, 2002, as referenced above, will need to be amended to allow the project activities on the protected property. The City agrees to reimburse the State for the following:

- a. legal costs in drafting this joint powers agreement and any amendment(s) to the Conservation Easement between the parties dated November 22, 2002, which includes staff attorney time and recording fees;
- b. staff time to conduct a resource assessment, including a cultural resource assessment;
- c. staff time to review plans and specifications of anticipated geotechnical work;
- d. other costs incurred by the State in association with the project.

Should the project proceed to the bridge construction phase, this joint powers agreement may be amended by the parties to provide for reimbursement of additional costs incurred by the State.

3 Payment

3.1 **Hourly Rate Services.** The parties agree that the services of the State shall be delivered at the professional services rate for real estate services in effect for the given fiscal year, billable in one-quarter hour increments for time less than an hour that is spent on the project work. The professional services rate for fiscal year 2016 is \$109 per hour.

3.2 **Reimbursable Expenses.** The State shall be reimbursed by the City for expenses actually and necessarily incurred by State staff in the course of performing the work described in paragraph 2, above, in regard to the project. In particular, staff traveling to and from their principal work site to the project area for site visits. Reimbursements for

travel and subsistence expenses shall be made at the rates and in the amounts provided in the current “Commissioner’s Plan” promulgated by the Minnesota Commissioner of Management and Budget.

3.3 Invoicing of Costs and Services. The Hourly Rate Services and Reimbursable Expenses shall be invoiced by the State to the City in such form and detail as the City’s Authorized Representative shall reasonably require to enable compliance with the City’s accounting and auditing standards. The State shall invoice the City at the end of each phase of the project.

3.4 Payment for Invoiced Costs and Services. The City shall promptly, and in any event within twenty (20) State business days following receipt and acceptance of any invoice for costs and services, cause payment of the approved invoice amount.

3.5 The total obligation of the City under this agreement will not exceed \$xxxxxx.

4 Authorized Representatives

The State's Authorized Representative is Jan Shaw Wolff, Central Regional Manager, Minnesota Department of Natural Resources, Division of Parks and Trails, 1200 Warner Road, St. Paul, Minnesota 55106, ph. 651-259-5747, e-mail jan.wolff@state.mn.us, or her successor.

The City's Authorized Representative is Don Varney, Landscape Architect, City of St. Paul Parks and Recreation Design, 500 St. Paul City Hall, St. Paul, Minnesota 55102, ph. 651-266-6427, e-mail don.varney@ci.stpaul.mn.us, or his successor.

5 Assignment, Amendments, Waiver, and Contract Complete

5.1 Assignment. The City may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.

5.2 Amendments. Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

5.3 Waiver. If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.

5.4 Contract Complete. This agreement contains all negotiations and agreements between the State and the City. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

6 Indemnification

In the performance of this contract by the City, or its agents or employees, the City must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney’s fees incurred by the state, to the extent caused by the City’s:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State’s sole negligence. This clause will not be construed to bar any legal remedies the City may have for the State’s failure to fulfill its obligation under this contract.

7 State Audits

Under Minnesota Statute § 16C.05, subdivision 5, the City’s books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

8 Government Data Practices

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, as it

applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either the City or the State.

If the City receives a request to release the data referred to in this Clause, the City must immediately notify the State. The State will give the City instructions concerning the release of the data to the requesting party before the data is released.

9 Venue

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

10 Termination

The State or the City may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

11 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.

Signed: _____

Date: _____

SWIFT Contract No. _____

2. GOVERNMENTAL UNIT

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

3. STATE AGENCY

By: _____
(with delegated authority)

Title: _____

Date: _____

4. COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

By: _____

Date: _____

Distribution:
Agency
Governmental Unit
State's Authorized Representative - Photo Copy