

**JOINT POWERS AGREEMENT FOR**  
**ENGINEERING AND TRAIL CONSTRUCTION**

**BETWEEN**

**THE COUNTY OF DAKOTA**

**AND**

**THE CITY OF SAINT PAUL**

**FOR**

**FEDERAL STATE AID NUMBER SP 164-090-014**

**COUNTY PROJECT NUMBER 97-160**

**CITY PROJECT NUMBER 2017-105**

*SYNOPSIS: Dakota County and the City of Saint Paul agree to construct the Robert Piram Regional Trail (RPRT) a 3.7 mile long multi-use off-road trail gap within the trail networks. The project will connect the Big Rivers Regional Trail and River to River Greenway trail in Lilydale with the Lilydale Regional Park Trail in Saint Paul, Harriet Island Regional Park Cherokee Regional Trail and downtown Saint Paul with Kaposia Landing Park in South Saint Paul, which has connections to the Mississippi River Regional Trail and the east leg of the River to River Greenway in Dakota County trail system.*

THIS AGREEMENT, made and entered into by and between the County of Dakota, referred to in this Agreement as the "County", and the City of Saint Paul, referred to in this Agreement as the "City", and witnesses the following:

WHEREAS, under Minnesota Statutes 471.59, subdivision 1, two governmental units may enter into an Agreement to cooperatively exercise any power common to the contracting parties, and one of the participating governmental units may exercise one of its powers on behalf of the other governmental units; and

WHEREAS, the City and the County have cooperatively undertaken the construction and construction-engineering of 3.7 miles of off-road multi-use trail; and

WHEREAS, the joint powers agreement between City and the County defines the roles, responsibilities, and obligations for project, cost contribution, funding shares and obligations, federal cost splits, cost updates, construction management, amendments, change orders and supplemental agreements, project acceptance, and indemnifications regarding the construction for the Robert Piram Regional Trail from Harriet Island Regional Park in Saint Paul to the MRT at Kaposia Landing Park in South St. Paul; and

WHEREAS, the Project is eligible for the expenditure of federal aid funds and is programmed in the approved State Transportation Improvement Program (STIP) for the fiscal years 2018 and 2022, and is identified in MnDOT records as State Project 164-090-014, and in Federal Highway Administration ("FHWA") records as Minnesota Project NMTP-TA 6218(221); and

WHEREAS, Dakota County and the City of Saint Paul desire to temporarily provide local funds in lieu of the federal funds so that the project may proceed prior to the fiscal year(s) designated in the STIP; and

WHEREAS, the Delegated Contracting Process (DCP) Advance Construction (AC) Agreement No. 1031220 between the City of Saint Paul Parks and Recreation Department and MnDOT defines the terms and conditions of the Federal Participation in Construction and AC; and

WHEREAS, it is permissible under Federal Highway Administration procedures to perform advance construction of eligible projects with non-federal funds, such that the City will be reimbursed with federal funding for the eligible costs at a later date; and

WHEREAS, for the project to be constructed in advance of the year it is programmed for the federal funds, the County and City will fund their share with nonfederal funds, with the intent to request federal funding for the federally eligible costs in a subsequent federal fiscal year through the Metropolitan Council Transportation Advisory Board (TAB) Federal Funds Management Process; and

WHEREAS, the County and the City have included these projects in their Capital Improvement Programs to share project responsibilities.

NOW, THEREFORE, it is agreed the County and City will share project responsibilities and jointly participate in the project costs associated with constructing the proposed off-road, multi-use trail as described in the following sections:

1. Project Description. The proposed off-road, multi-use trail contains five newly constructed segments. See EXHIBIT 00.

Segment 1 (Trail A): This segment begins in Lilydale at the Big Rivers Regional Trail trailhead, which is located approximately 500-ft. north of where Lilydale Road crosses beneath Sibley Memorial Highway (TH 13). The trail crosses Lilydale Road (County Road 45) and then follows along the east side of Lilydale Road to the entrance of Lilydale Regional Park. The trail then connects to the existing trail segment at the west entrance of Lilydale Regional Park until reaching the second proposed trail segment, Trail B.

Segment 2 (Trail B): This segment begins at the entrance of Harriet Island Regional Park in Saint Paul, and proceeds south to the intersection of Water Street and Plato Boulevard. Continuing east, the trail is located on the north side of Plato Boulevard until it reaches the east frontage road of Lafayette Road (TH 52). Between Water Street and Wabasha Street, the north travel lane of westbound Plato Boulevard will be removed and the center median narrowed to accommodate the trail. After crossing Plato Boulevard, the third segment, Trail C, begins.

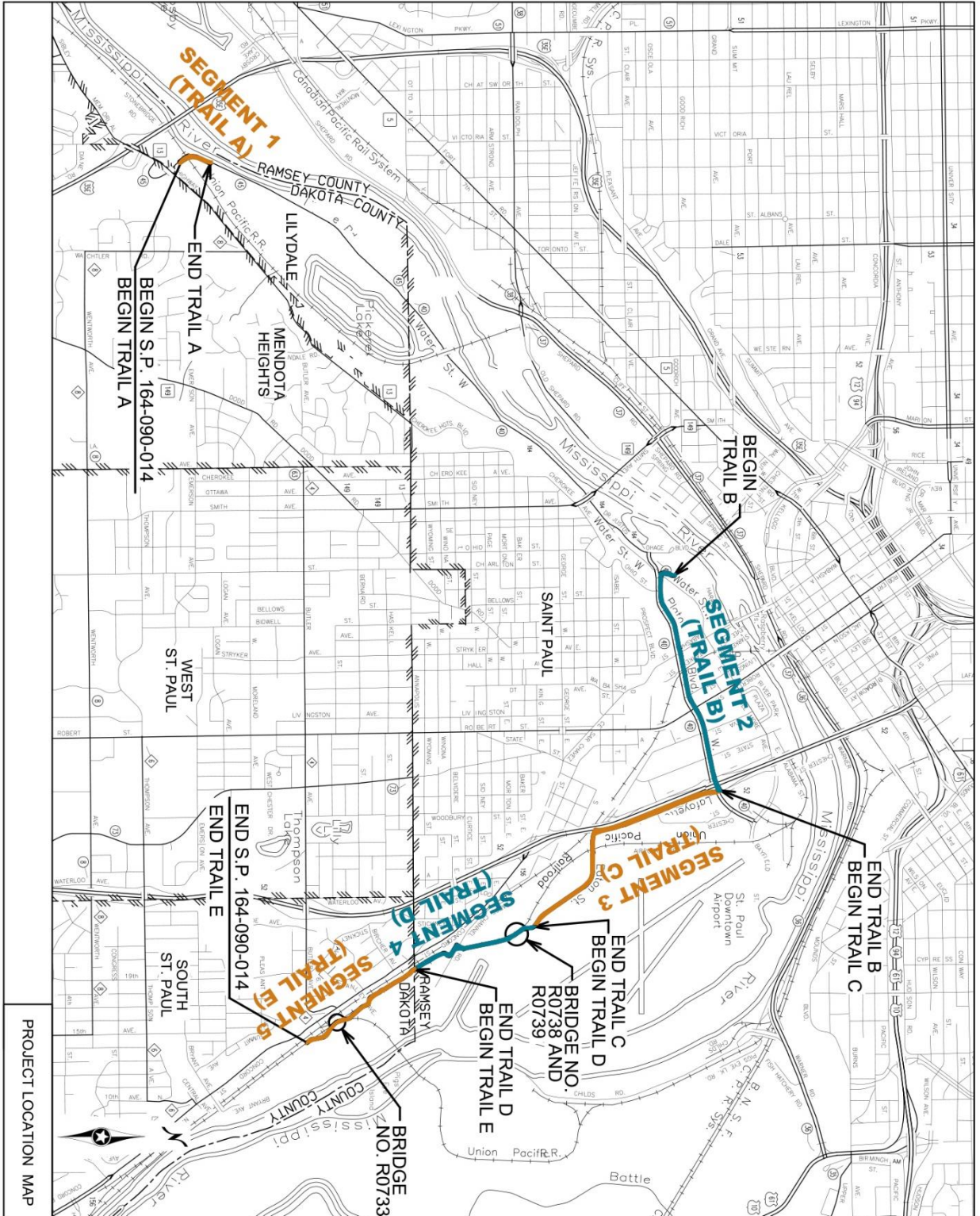
Segment 3 (Trail C): This segment proceeds south following the east side of the east frontage road of Lafayette Road (TH 52) from Plato Boulevard to Eaton Street. Portions of the easterly lane of the frontage road will be narrowed to accommodate the trail. The trail crosses Eaton Street and continues east and south along the south side of Eaton Street. Where the trail departs Eaton Street, the fourth segment, trail D begins.

Segment 4 (Trail D): This segment begins at the south end of the Saint Paul Downtown Airport and passes through the Airport Marsh wetland and upland forest; two boardwalk structures, Bridges R0738 and R0739 will be constructed in the wetland. The Trail continues south parallel to the east side of the Union Pacific Railroad corridor, to the Ramsey-Dakota county line where the fifth and final segment, Trail E begin.

Segment 5 (Trail E): This segment continues to the south in South Saint Paul until reaching Kaposia Landing Park. A pedestrian bridge, Bridge R0733 will be constructed over the Union Pacific tracks

adjacent to Kaposia Landing Park A portion of the local trail near the ball fields will be slightly re- aligned to accommodate the regional trail.

**EXHIBIT 00**



2. Plans, Specifications and Award of Contract. The City and County have prepared plans and specifications consistent with County and City's design practices, State-Aid design standards, and the City's standards and specifications. County concurrence with the plans and specifications is required prior to advertising for bids. The City will advertise for bids for the construction of the Project in accordance with applicable state laws and Delegated Contract Process (DCP) for Local Agency Federal Aid Projects. The City shall, within 7 days of opening bids for the construction contract, submit to the County a copy of the low bid and an abstract of all bids together with the City's request for concurrence by the State in the award of the construction contract to the lowest responsible bidder. The City may award the contract for construction to the lowest responsive and responsible bidder in accordance with state law or may reject all bids. If a bid is not awarded, this Agreement shall terminate and all costs incurred as of the date of termination shall be apportioned in accordance with the terms of this agreement. The contract construction shall be performed in accordance with State approved plans, specifications and special provisions which are on file in the office of the County's Engineer, and are made a part hereof by reference with the same force and effect as though fully set forth herein.

3. Engineering Costs. The City in partnership with the County will submit Request for Proposals (RFP) to perform construction engineering, construction management, construction inspection and all related materials testing. The RFP shall include the splitting of cost based on project jurisdiction. The cost of County and City staff time for these purposes beyond the cost based on project jurisdiction if any will be split based on the County's and City's share of the final construction costs.

4. Direction, Supervision and Inspection of Construction The contract construction will be under the direction of the City and under the supervision of a registered professional engineer; however, the contract construction will be open to inspection by the County Engineer or his authorized representatives.

5. Federal Funding. Federal funding cap is \$6,154,624 requiring a minimum 20-percent local match. \$3,435,500 is available the remaining \$2,719,124 is to be funded in advance of the apportionment of authorized Federal-aid funds. An advance construction project may be converted to a regular Federal-aid project at any time provided that sufficient eligible Federal-aid funds and obligation authority are available.

Federal Funding shall be split based on the City's and County's share of the final construction costs. The current engineer's estimate (\$8,105,052) for the City's and County's project cost split is 57-percent City (\$4,629,335) and 43-percent County (\$3,475,717). The City was awarded \$278,355 Federal Non-Motorized funding in Federal Fiscal Year (FY) 2018 for the project. Based on the cost splits using estimated quantities and unit prices after applying the cities Federal Non- Motorized funding and required



local match (\$69,589) the local project cost share is \$954,050 City and \$718,023 County requiring an estimated advance construction of \$1,434,687 City and \$1,284,437 County.

Prior to award of the construction contract, the City and County will prepare a revised cost split based on construction contract unit prices, which will replace and supersede the preliminary cost split as part of this agreement.

The County shall temporarily advance to the City the County's full and complete share of the advance construction costs, estimated to be \$1,284,437 for the County local funds in lieu of the federal funds so that the project may proceed. If the advance construction project is converted to a regular Federal-aid project before completion and final acceptance the County will request reimbursement of the County's advance construction costs. At such time that the project is converted to federal funding and such funding is received by MnDOT, MnDOT will reimburse to the City the federal aid share of the federally eligible costs, previously provided by the City and County. Reimbursement for the County funds used in lieu of federal funds will be forwarded to the County.

6. Project Cost Updates. The City will provide updated cost estimates to the County showing the City and County shares of Project costs. Updated cost estimates will also be provided by the City to the County at the following times:

- prior to advertising a construction contract,
- after bid opening (prior to contract award),
- during construction if total contract changes exceed \$100,000,
- once per year following the construction season until the Project is complete.

Project cost estimate updates include actual and estimated costs for engineering, utility relocation, and construction. The Parties acknowledge that Project cost estimates are subject to numerous variables causing the estimates to be subject to change and the updates are provided for informational purposes in good faith. Each agency is responsible for informing their respective councils or boards regarding Project costs.

7. Payment. The City will act as the paying agent for costs of engineering and for all payments to the Contractor. Payments to the Contractor will be made as the Project work progresses and when certified by the Project Manager. The City, in turn, will bill the County for the County's share of the engineering, estimated at 8% of the construction costs (\$278,000) and county's local construction cost share after federal aid funds estimated to be (\$718,023) as the Project work progresses as specified in this agreement.

Request for reimbursement of the federal aid share of the federally eligible costs will be made after work has commenced. Upon presentation of an itemized claim by one agency to the other, the receiving agency shall reimburse the invoicing agency for its share of the costs incurred under this agreement within 35 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving agency, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work. The County will invoice the City the County's federal advance construction cost after advance construction project is converted to a regular Federal-aid.

8. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect the Project cost participation must be approved by the Authorize Representative of each party prior to execution of work. Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.

9. Amendments. Any amendments to this Agreement will be effective only after approval by both governing bodies and execution of a written amendment document by duly authorized officials of each body.

10. Effective Dates. This Agreement will be effective upon execution by duly authorized officials of each governing body and shall continue in effect until all work to be carried out in accordance with this Agreement has been completed. Absent an amendment, however, in no event will this Agreement continue in effect after December 31, 2023.

11. Final completion. Final completion of the construction Project must be approved by both parties.

12. Maintenance and Operation. Upon satisfactory completion of the Project, the City and County shall provide for the proper maintenance based on the jurisdiction without cost or expense to the other jurisdiction.

13. Rules and Regulations. The County and the City shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures, and State statutes as applicable to carrying out the work contemplated in this Agreement unless amended by the contract specifications.

14. Indemnification. Pursuant to Minn. Stat. §471.59, subd 1a, each party is responsible for its own acts and omissions and not for the acts and omissions of the other party. All parties to this agreement recognize that liability for any tort claims arising under this Agreement are subject to the provisions of the



Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466. 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. The City shall include the County and city of South St. Paul as additional insured in the contract documents.

15. Employees of Parties. Any and all persons engaged in the work to be performed by the County shall not be considered employees of the City and any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of said employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the City. Any and all persons engaged in the work to be performed by the City shall not be considered employees of the County for any purpose, including Worker's Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employee while so engaged. Any and all claims made by any third party as a consequence of any act or omissions of the part of the City's employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the County.

16. Audit. Pursuant to Minn. Stat. Sec. 16C.05, Subd. 5, any books, records, documents, and accounting procedures and practices of the County and the City relevant to the Agreement are subject to examination by the County, the City, and either the Legislative Auditor or the State Auditor as appropriate. The County and the City agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement.

17. Integration and Continuing Effect. The entire and integrated agreement of the parties contained in this Agreement shall supersede all prior negotiations, representations or agreements between the County and the City regarding the project; whether written or oral. All agreements for future maintenance or cost responsibilities shall survive and continue in full force and effect after completion of the projects provided for in this Agreement.

18. Authorized Representatives. The authorized representatives for the purpose of the administration of this Agreement are:

Mark Krebsbach (or successor)  
Dakota County Transportation Director/County Engineer  
14955 Galaxie Avenue  
Saint Paul, MN. 55124  
(952) 891-7100

Michael Hahm (or successor)  
Director of Parks and Recreation  
City of Saint Paul  
25 W. 4<sup>th</sup> Street, Suite 400  
Saint Paul, MN 55102

(651) 266-6409

The Authorized Representative shall obtain authorization to implement or administer any provision of this Agreement from his or her respective governing body as required by the governing body's policies and procedures. The parties shall promptly provide notice to each other when an Authorized Representative's successor is appointed. The Authorized Representative's successor shall thereafter be the Authorized Representative for purposes of this Agreement.

All notices or communications required or permitted by this Agreement shall be either hand delivered or mailed by certified mail, return receipt requested, to the above addresses. Either party may change its address by written notice to the other party. Mailed notice shall be deemed complete two business days after days after the date of mailing.

**[SIGNATURE PAGE TO FOLLOW]**

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*Paul*

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**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their duly authorized representatives on or as of the Effective Date.

**CITY OF ST. PAUL**

By: \_\_\_\_\_

Its: Director, Parks and Recreation

By: \_\_\_\_\_

Its: Director, Financial Services

By: \_\_\_\_\_

Its: Mayor's Office

Approved as to form:

By: \_\_\_\_\_

Its: Assistant City Attorney

**COUNTY OF DAKOTA**

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
W. Taud Hoopingarner, Director  
Operations Management Department

Date \_\_\_\_\_

By \_\_\_\_\_  
Steve Mielke,  
Physical Development Director

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Attorney      Date

K \_\_\_\_\_

COUNTY BOARD RESOLUTION  
No. 18-141      Date: March 13, 2018