

AGREEMENT

Between Saint Paul, City of West St. Paul, and Mendota Heights

Erosion Stabilization Project Cherokee Heights Upper Ravine

THIS AGREEMENT, is made and entered into by and between the City of Saint Paul (“Saint Paul”), the City of West St. Paul (“West St. Paul”) and the City of Mendota Heights (“Mendota Heights”) (collectively the “Partners”), and witnesses the following:

WHEREAS, under Minnesota Statutes Sections 471.59, subd. 1, two or more 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, it is considered mutually desirable to stabilize the Cherokee Heights Upper Ravine; and

WHEREAS, the Partners will jointly participate in the costs of the feasibility study, preparation of plans and specifications, construction and construction inspection services for the Project; and

WHEREAS, the Partners will share Project responsibilities and related activities as set forth in this agreement.

BACKGROUND

Multi-jurisdictional storm water runoff from about 47-acres discharges to a low area (basin) located in Saint Paul just north of Annapolis Street and east of Cherokee Heights. The storm water runoff is collected via storm sewer piping and is then conveyed beneath Cherokee Heights by a 60-inch diameter culvert owned and maintained by Saint Paul. High flow rates and velocities have caused erosion problems on the upstream and downstream end of the culvert.

Downstream of the 60-inch culvert storm water runoff flows down the bluff through a steep ravine area (upper ravine) and eventually flows to Pickerel Lake. The Cherokee Heights upper ravine channel has significant erosion along the channel bottom and side slopes, including undercutting of the toe of slope, which contributes to the instability of the ravine side slopes.

In 2015 a Cherokee Heights Culvert Analyses and Erosion Control Feasibility Study was completed for the LMRWMO. See Exhibit A for the final study report, as received and accepted by the Project Partners and LMRWMO. The \$80,186 cost to complete the feasibility study was paid for by Saint Paul. The Project Partners participated in the progress and review of the feasibility study.

To minimize erosion of the upper ravine channel and side slopes, and reduce the instability of the adjacent banks, the selected option (Downstream Channel Stabilization Option) from the 2015 feasibility study includes regrading and stabilizing the channel by armoring the channel with rip-rap and a properly graded filter material to prevent migration of underlying fine-grained soils through the rip-rap. High flow velocities in the upper ravine channel preclude use of many bio-engineering techniques for stabilization, as these techniques typically cannot withstand the magnitude of the flow velocities.

The 2015 feasibility study outlined the Project cost sharing percentages for each of the Partners in accordance with LMRWMO allowable flow calculations. Below are the Project cost sharing percentages:

- Saint Paul = 69%
- West St. Paul = 19%
- Mendota Heights = 12%

PROJECT PURPOSE AND GOALS

The Partners have determined the need to complete the Project (see Exhibit B). The purpose and goals of this Project are:

- A. Prepare construction plans and specifications to rehabilitate and stabilize the Cherokee Heights upper ravine, immediately downstream and upstream of the 60-inch culvert.
- B. Erosion stabilization measures to be designed and constructed to handle a 100-year storm event.
- C. Complete Project plans, specifications, and bidding documents by May 31, 2018.
- D. Complete Project construction by the November 1, 2019.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. Definitions

- 1.1 “Consultant”** means Barr Engineering.
- 1.2 “LMRWMO”** means the Lower Mississippi River Watershed Management Organization.
- 1.3 “LMRWMO” JPA”** means the JPA that governs the LMRWMO.
- 1.4 “Project”** is the engineering design, inspection, and construction to stabilize the Cherokee Heights Upper Ravine.

2. Terms of Agreement

- 2.1 LMRWMO JPA:** The provisions contained within the current version of the LMRWMO JPA shall be incorporated into this Agreement, including Section 9, “Construction of Improvements.” Where there appears to be a discrepancy between the LMRWMO JPA and this Agreement, the provisions of this Agreement shall govern.
- 2.2 Effective Date:** The date all required signatures are obtained by the Partners.
- 2.3 Agreement Term:** This Agreement shall expire on June 30, 2020 or until all obligations have been satisfactorily fulfilled, whichever occurs later, or until terminated or cancelled pursuant to Section 8.

3. Duties and Responsibilities between the Partners

3.1 Scope

- (1) Saint Paul will:
 - a. Act as the lead entity on the Project, executing and administering a professional services contract with a Consultant for final engineering design and construction inspection services for the Project tasks as set forth in Exhibit B.
 - b. Provide available information to the Consultant, as requested, in support of the Project.
 - c. Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.
- (2) The Partners will:
 - a. Participate in meetings and discussions with the Consultant toward the successful completion of the Project.
 - b. Participate in the shared costs of the Project as outlined herein.
- (3) West St. Paul will:
 - a. Provide available information to the Consultant, as requested, in support of the Project.
 - b. Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.
- (4) Mendota Heights will:
 - a. Provide available information to the Consultant, as requested, in support of the Project.
 - b. Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.

4. Payment

4.1 Consideration. This is a cost participation Project between the Partners. Below are estimated costs for the Project phases:

- Feasibility Study (completed) = \$80,186.74
- Final Plans & Specifications for Bidding (see Exhibit B) = \$101,000
- Construction = \$500,000 to \$800,000
- Construction Inspection Services (see Exhibit B) = \$51,000

(1) Compensation.

Saint Paul will initially pay for the Project. Below are the cost sharing percentages for each of the Project Partners:

- Saint Paul = 69%
- West St. Paul = 19%
- Mendota Heights = 12%

In 2018 West St. Paul and Mendota Heights will reimburse Saint Paul for their cost shares of the completed Project “Feasibility Study.”

In 2018 West St. Paul and Mendota Heights will reimburse the Saint Paul for their cost shares of the Project “Final Plans & Specifications for Bidding.”

In 2019 West St. Paul and Mendota Heights will reimburse Saint Paul for their cost shares of the Project “Construction” and “Construction Inspection Services.”

(2) Invoices.

Upon completion of the Project Plans and Specifications, Construction and Inspection Saint Paul will separately invoice West St. Paul and Mendota Heights their pro rata share of the Project cost consistent with section 3.1 above.

West St. Paul and Mendota Heights will promptly pay Saint Paul after receipt of written notification of project completion. Payment to Saint Paul will be made within forty-five (45) days of receipt of written notice.

5. Work Products, Reports and Documents

The Partners will be included when Saint Paul receives oral and written analyses and briefings under Saint Paul’s agreement for Consultant services for the Project. In addition, document sharing will be facilitated by the participation of Partners project management team assigned to the Project.

Saint Paul will provide West St. Paul and Mendota Heights copies of all material generated during the course of the Project and a copy of its consultant’s final report. West St. Paul and Mendota Heights shall make all requests for work products and documents through Saint Paul’s designated contact person named in Section 6 of this Agreement and shall not direct or attempt to direct the work of the consultant for the Project.

6. Authorized Representatives

Saint Paul’s Authorized Representative is Bruce Elder, Sewer Utility Manager, St. Paul Public Works, 700 City Hall Annex, 25 W. Fourth Street, St. Paul, MN 55102, telephone: (651) 266-6248, or his designated successor.

West St. Paul’s Authorized Representative is Ross Beckwith, City Engineer/ Public Works and Parks Director, 1616 Humboldt Avenue, West St. Paul, MN 55118, telephone: (651) 552-4130, or his designated successor.

Mendota Height’s Authorized Representative is Ryan Ruzek, Public Work Director, 1101 Victoria Curve, Mendota Heights, MN 55118, telephone: (651) 452-1850, or his designated successor.

7. Conflicts of Interest

Saint Paul shall inform its consultant for the project about this Agreement and Partners’ funding provided under this Agreement. Saint Paul and its consultant for the project shall immediately discuss with the Partners any current or new client obligation of the firm which may directly conflict with the firm’s ongoing work under its agreement for consulting services with Saint Paul.

8. Audits and Record Keeping

Saint Paul shall maintain for at least six (6) years all books, records, documents and other evidence directly related to the performance of this Agreement in accordance with the general accepted accounting principles and practices of governmental entities. Upon request and reasonable notice, Saint Paul shall permit West St. Paul and Mendota Heights to examine and copy the books, records, documents, and other evidence maintained by Saint Paul.

9. Termination

Saint Paul, West St. Paul, and Mendota Heights shall each have the right to terminate its participation in this agreement at any time without cause upon thirty (30) days written notice to the other parties. In the event of such a termination, the terminating entity will pay their share of the costs of the services satisfactorily performed prior to the date of termination, as determined by the remaining parties to this agreement.

Saint Paul shall have the right to receive, use, and (subject to the provisions of the Minnesota Data Practices Act) distribute copies of all materials, work products, reports and documents prepared by its consultant, pursuant to the consultant's agreement for consulting services with Saint Paul, if such materials, work products, reports and documents were prepared prior to the termination of this Agreement.

10. Merger Agreement

It is understood and agreed that the entire Agreement between the Partners is contained herein and that this Agreement supersedes all oral agreements and negotiations between each of the Partners relating to the subject matter thereof. All items in this Agreement, which are incorporated or attached, are deemed part of the Agreement. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the Partners.

11. Governing Law

This Agreement shall be governed by and construed according to the laws of the State of Minnesota. Venue shall be in the state or federal courts of Minnesota.

12. Amendments, Waiver and Contract Complete

12.1 Amendments.

The Partners may choose to amend this agreement to include final engineering, construction, and other work necessary to implement an alternative selected as a result of this Project or for any other term and condition. Any amendment to this agreement must be in writing and will not be effective until it has been approved and executed by the parties. Any change orders and supplemental agreements that impact the Project cost must be approved by the Partners' authorized representatives in Section 6 prior to the execution or authorization of such work.

12.2 Waiver.

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

13. Indemnification

The Partners each agree that they are solely responsible for and will hold harmless the others against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from their own negligent acts or omissions and/or those of their employees or agents. The Partners recognize that liability for any claims arising under this Agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466 and expressly reserve all immunities, rights and privileges accorded thereunder. In the event of any claims or actions filed against another party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties.

IN WITNESS WHEREOF, the Partners have caused this agreement to be executed by their duly authorized representative (see attached signature pages).

Signatures

CITY OF ST. PAUL

This agreement is duly executed:

By: _____

Title: Director of Public Works

Date: _____

Approved as to form:

By: _____

Title: Assistant City Attorney

Date: _____

By: _____

Title: Office of Financial Services

Date: _____

By: _____

Title: Sewer Utility Manager

Date: _____

Funding Activity#

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION

Signatures

CITY OF WEST ST. PAUL

This agreement is duly executed:

By: _____

Title: Mayor Jenny Halverson

Date: _____

By: _____

Title: City Manager Ryan Schroeder

Date: _____

Approved as to form:

By: _____

Title: City Attorney

Date: _____

**INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND
AUTHORIZING ITS EXECUTION**

Signatures

MENDOTA HEIGHTS

This agreement is duly executed:

By: _____

Title: Mayor

Date: _____

By: _____

Title: City Clerk

Date: _____

Approved as to form:

By: _____

Title: City Attorney

Date: _____

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