

## **AGREEMENT**

### **Between Saint Paul, West St. Paul, Mendota Heights, and the Lower Mississippi River Watershed Management Organization**

#### **Cherokee Heights Stormwater Management and Ravine Stabilization Project**

**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”) the City of Mendota Heights (“Mendota Heights”) (collectively the “Partners”), and the Lower Mississippi River Watershed Management Organization (“LMRWMO”) 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 previously entered into an agreement for the Erosion Stabilization Project Cherokee Heights Upper Ravine, approved by the Partners in or around August and September of 2017 (“First Agreement”); and

WHEREAS, the LMRWMO has applied for and received a grant from the Minnesota Board of Water and Soil Resources of \$700,000 for the Cherokee Heights Stormwater Management and Ravine Stabilization Project; and

WHEREAS, the Partners and the LMRWMO now wish to jointly participate in the costs of the feasibility study, preparation of plans and specifications, construction, and construction inspection services for the Project as outlined in the First Agreement; and

WHEREAS, the Partners and LMRWMO now intend to terminate the First Agreement and replace it with this agreement (“Agreement”); and

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

## **BACKGROUND**

Multi-jurisdictional storm water runoff from about 70-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.

Project costs not eligible for and not paid for by the Grant shall be paid as follows:

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

## **PROJECT PURPOSE AND GOALS**

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

- Prepare construction plans and specifications to rehabilitate and stabilize the Cherokee Heights upper ravine, immediately downstream and upstream of the 60-inch culvert and install two hydrodynamic separator stormwater treatment devices to treat stormwater runoff from the contributing watershed
- Erosion stabilization measures to be designed and constructed to handle a 100-year storm event.
- Complete Project plans, specifications, and bidding documents in 2018.
- Complete Project construction by the December 31, 2019.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

## **AGREEMENT**

- **Definitions**
  - “**Consultant**” means Barr Engineering.

- “**LMRWMO**” means the Lower Mississippi River Watershed Management Organization.
- “**LMRWMO**” **JPA**” means the JPA that governs the LMRWMO.
- “**BWSR**” means the MN Board of Water and Soil Resources

**1.5 “Project”** is the engineering design, inspection, and construction to stabilize the Cherokee Heights Upper Ravine.

**1.6 “Grant”** means the grant from the Minnesota Board of Soil Resources in the total amount of \$700,000 to the LMRWMO for the Cherokee Heights Stormwater Management and Ravine Stabilization Project including the LMRWMO Grant work plan. See Grant work plan for grant amounts eligible for Project engineering and construction costs.

- **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 GRANT:** The Grant application, Grant agreement, and Grant work plan are incorporated into this Agreement. The Partners agree to be bound by and to comply with the terms and requirements of the Grant work plan as determined by the LMRWMO and BWSR grant guidelines. Partners also agree to be responsible for any penalties due for failure to comply with the Grant Agreement. The Grant Agreement and work plan is incorporated herein by reference. If there are any inconsistencies or conflicts between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall control.

**2.3 Effective Date:** The date all required signatures are obtained by the Partners and the LMRWMO. This Agreement shall supersede and replace in its entirety the First Agreement.

**2.4 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.

- **Duties and Responsibilities between the Partners**

- **Scope**

- Saint Paul will:
  - 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 A.
  - Provide available information to the Consultant, as requested, in support of the Project.
  - Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.
  - Provide reimbursement requests to the LMRWMO for project costs

- Be responsible for long term maintenance of the final installation of the project, following BWSR Grant requirements and for a period of no less than 25 years. The Partners and the LMRWMO will enter into a maintenance agreement outlining necessary maintenance to be performed prior to project completion.
- The Partners will:
  - Participate in meetings and discussions with the Consultant toward the successful completion of the Project.
  - Participate in the shared costs of the Project as outlined herein.
  - Participate in the shared maintenance of the hydrodynamic separator stormwater treatment devices.
- West St. Paul will:
  - Provide available information to the Consultant, as requested, in support of the Project.
  - Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.
- Mendota Heights will:
  - Provide available information to the Consultant, as requested, in support of the Project.
  - Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.
- (5) The LMRWMO will:
  - a.. The LMRWMO will promptly pay Saint Paul after the quarterly receipt of written notification of invoiced and eligible costs. Payment to Saint Paul will be made within sixty (60) days of receiving funds from BWSR.
  - b. Participate in meetings and discussions with the Consultant and Partners toward the successful completion of the Project.
  - c. Approve all project documents and construction plans for the proposed work which is to be funded with the Grant.
  - d. Perform all grant reporting and administration duties, utilizing a portion of the total grant amount as determined in the Grant work plan.
- **Payment**
  - **Consideration.** This is a cost participation Project between the Partners. Below are estimated costs for the Project phases:
    - Feasibility Study (completed) = \$80,186.74
    - Engineering and Inspection = \$220,000 to \$250,000
    - Construction = \$900,000 to \$1,300,000
  - Compensation.  
Saint Paul will initially pay for the Project.

Below are the cost sharing percentages for each of the Project Partners for costs not paid for from the Grant:

- 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 2019 and 2020 West St. Paul and Mendota Heights will reimburse Saint Paul for their cost shares of the remaining Project costs as they occur.

Any work completed prior to the Grant agreement being fully executed is not eligible for reimbursement from the LMRWMO using Grant funds.

The LMRWMO is only obligated to pay for costs of the Project eligible under current BWSR Clean Water Fund Grant guidelines.

The LMRWMO is only obligated to pay for Project costs using funds provided to the LMRWMO by BWSR for implementation of the Grant work plan.

- Invoices.  
Saint Paul will provide the LMRWMO with quarterly invoices of incurred project costs. The LMRWMO will promptly pay Saint Paul after the quarterly receipt of written notification of invoiced and eligible costs. Payment to Saint Paul will be made within sixty (60) days of receiving funds from BWSR.

After Grant funds have been expended, 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.

- **Work Products, Reports and Documents**

The Partners and the LMRWMO 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, Mendota Heights, and the LMRWMO copies of all material generated during the course of the Project and a copy of its consultant’s final report. West St. Paul, Mendota Heights, and the LMRWMO 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.

The LMRWMO will be given the opportunity to review and comment on all project feasibility documents and construction documents at 30%, 60%, 90% and 100% completion milestones. All construction documents, change orders, or other work that impacts the Project cost must be approved by the LMRWMO authorized representative named in Section 6 prior to the authorization, bidding, or execution of such work in order to ensure conformance with BWSR grant requirements and the Grant work plan.

- **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.

The LMRWMO's authorized representative is Joe Barten, Administrator, 4100 220<sup>th</sup> Street West, Suite 102, Farmington MN 55024, (651) 480-7784, or his designated successor.

- **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.

- **Audits and Record Keeping**

Saint Paul shall maintain for at least six (6) years all books, records, documents and other detailed records 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. Saint Paul will provide the LMRWMO with detailed accounting of incurred project costs quarterly and a final detailed report of all project financials upon project completion.

- **Termination**

Saint Paul, West St. Paul, Mendota Heights, and the LMRWMO 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 and the LMRWMO 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 the project 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.

- **Merger Agreement**

It is understood and agreed that the entire Agreement between the Partners is contained herein and that this Agreement supersedes any previous agreements between the Partners for the Cherokee Heights Stormwater Management and Ravine Stabilization Project and 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.

- **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.

- **Amendments, Waiver and Contract Complete**

- **Amendments.**

The Partners and LMRWMO 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' and LMRMWO authorized representatives in Section 6 prior to the execution or authorization of such work.

- **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.

- **Indemnification**

The Partners and LMRWMO 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 and LMRWMO 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 and LMRWMO have caused this agreement to be executed by their duly authorized representatives (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: \_\_\_\_\_

**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: \_\_\_\_\_

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

## Signatures

### **LOWER MISSISSIPPI RIVER WATERSHED MANAGEMENT ORGANIZATION**

*This agreement is duly executed:*

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

Title: Chair

Date: \_\_\_\_\_

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

Title: Secretary/Treasurer

Date: \_\_\_\_\_