1. Call to Order
2. Audience Comments on Items Not on the Agenda
3. Approval of Agenda
4. Approval of Minutes from the February 23, 2017, Meeting
5. Approval of Expenses
6. Acceptance of Treasurer’s Report
7. Business Items
   a. Presentation by Dakota SWCD on proposed “other watercourses” as required by 2016 Minnesota Buffer Law
   b. Authorization to execute a Joint Powers Agreement with the City of Lakeville and Dakota County for the Phosphorus Treatment Enhancements at County Road 50 Project*
   c. Authorization to execute a Joint Powers Agreement with Dakota County for the Dakota County Transportation Department’s 78-06 Project/South Branch Nitrate Reduction Project*
8. Staff Reports
9. Adjourn

*Additional materials included in the packet

Next Meeting Date: April 27, 2017 – Western Service Center, Room 334 at 1 p.m.
Meeting Minutes
Vermillion River Watershed Joint Powers Board Meeting
Thursday, February 23, 2017, 1:00 p.m.
Dakota County Western Service Center, Apple Valley, Conference Room 334

Board Members in Attendance
Dakota County Commissioner Mike Slavik, Chair
Scott County Commissioner Tom Wolf, Vice-Chair
Dakota County Commissioner Mary Liz Holberg, Secretary/Treasurer

Others in Attendance
Mark Zabel, VRWJPO Dakota County Administrator
Travis Thiel, VRWJPO Watershed Specialist
Helen Brosnahan, Dakota County Attorney’s Office
Mark Ryan, VRWJPO Watershed Engineer
Paula Liepold, VRWJPO Water Resources Educator
Mac Cafferty, City of Lakeville
Adam Flett, Friends of the Mississippi River Stewardship Program Manager
Amy Kilgore, Friends of the Mississippi River Volunteer Coordinator

1. Call to Order
Meeting was called to order by the Board Chair at 1:02 p.m. All Board members were in attendance.

2. Audience Comments on Items Not on the Agenda
There were none.

3. Approval of Agenda
Motion by Commissioner Wolf, Second by Commissioner Holberg, and passed on a unanimous vote to approve the agenda for the February 23, 2017 meeting.

4. Approval of Minutes from the January 26, 2017, Meeting
Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to approve the minutes of the January 26, 2017, meeting, as presented on February 23, 2017.

5. Approval of Expenses
Mark Zabel provided a description of expenses (which are not routine monthly items). The $2,674 invoice from Wenck is for 2016 fish biomonitoring services and reporting. All other listed expenses are routine monthly expenses.
Res. No. VRW 17-13: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a 3-0 roll call vote to approve the expenses totaling $31,620.20 occurring between January 20th and February 16, 2017, as submitted on February 23, 2016.

6. Acceptance of Treasurer’s Report
Mark Zabel provided an overview of the Treasurer’s Report. Commissioner Slavik asked whether any carry over funds from 2016 were reflected in the 2017 budget in the Treasurer’s Report, and Mark Zabel summarized the basis for the 2017 budget and the inclusion of 2016 carry over funds.

Res. No. VRW 17-14: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a 3-0 roll call vote to accept the Treasurer’s Report as presented on February 23, 2017.

7. Business Items

7a. Overview of 2016 Vermillion River Watershed Stewards Program
Adam Flett, Stewardship Program Manager for Friends of the Mississippi (FMR) provided an informational summary and presentation on the activities and events that took place in 2016 as part of the Vermillion River Watershed Steward Program. The presentation included an explanation of the work completed at the various program events as well as summaries of the total number of volunteers and number of volunteers living in the watershed that attended the events. Events included VRJPO supported events and those covered by match funds from other partners. A summary of the program history since 2005 was also included in the presentation. Commissioner Holberg asked specifically about the live staking of cottonwood events held at the Gores Aquatic Management Area (AMA) and why the need for cottonwoods for bald eagle habitat. Adam explained that the eagles seem to prefer the cottonwoods as nesting and perching sites for the height and crown size of these trees and went on to explain the need for replenishing cottonwoods in the floodplain and the impact that increased flooding has on regeneration of these trees.

This item was an informational item only.

7b. Authorization to Execute a Grant Agreement with Friends of the Mississippi River (FMR) for Vermillion River Stewards Program in 2017
Adam Flett provided a presentation on the proposed projects in the watershed for 2017 and highlighted new project areas and types, including the Hampton Woods Wildlife Management Area (WMA) invasive species cleanup and the live-staking event planned with VRJPO staff at the 2015 Middle Creek remeander project near Meadowview Elementary School in Farmington. Commissioner Holberg and Chair Slavik both inquired about why the 2016 projection of 430 volunteers was dropped to 400 volunteers for 2017. Adam indicated that this was a result of being slightly more conservative in the estimate for some events and that some of the invasive species cleanup sites do not need as high of a number of volunteers compared to past years.

Res. No. VRW 17-15: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to authorize the chair to execute to Execute a Grant Agreement with Friends of the Mississippi River (FMR) for Vermillion River Stewards Program in 2017.

WHEREAS, the Vermillion River Watershed Joint Powers Organization (VRJPO) is in need of services to coordinate and implement the Vermillion River Stewards Program (Stewards Program); and

WHEREAS, the Stewards Program is an important way to build stewardship, educate, and engage local citizens in protecting and enhancing the Vermillion River and its tributaries, as well as lakes, wetlands, and natural areas in the Vermillion River Watershed; and

WHEREAS, Friends of the Mississippi River (FMR) is willing to provide these services for an amount not to exceed $25,000 and has the experience, knowledge, and past success in implementing the Stewards Program; and
WHEREAS, the continuation of the Stewards Program is an important step towards engaging the public through involvement and education on the goals within the VRWJPO Watershed Plan and the VRWJPO 2017 work plan; and

WHEREAS, funding for the Stewards Program is included in the VRWJPO 2017 Budget for $25,000.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board (VRWJPB) hereby authorizes its chair to execute a grant agreement with the Friends of the Mississippi River in an amount not to exceed $25,000 to implement the Vermillion River Stewards Program for 2017; subject to approval by the Dakota County Attorney’s Office as to form.

7c. Authorization to Amend the Metropolitan Council Stormwater Grant Agreement for Stormwater Improvements at the Minnesota Zoo

Travis Thiel provided an update on the stormwater project and the Minnesota Zoo and indicated that the grant was due to expire on March 1, 2017 even though the stormwater reuse project is still pending design and construction. He noted that the new agreement is set to expire on March 1, 2019 and that Chair Slavik needed to sign the updated grant agreement today to avoid lapse of the existing agreement.

Res. No. 17-16: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to authorize the chair to Amend the Metropolitan Council Stormwater Grant Agreement for Stormwater Improvements at the Minnesota Zoo.

WHEREAS, VRWJPO, Dakota Soil and Water Conservation District, and Zoo staff has successfully implemented a portion of the grant agreement’s stormwater improvements on the Zoo campus as identified in the grant work plan; and

WHEREAS, VRWJPO and Zoo staff has yet to fulfill the stormwater reuse project identified in the Grant work plan; and

WHEREAS, the Zoo was tasked with developing the request for proposals (RFP) for the design and construction of the stormwater reuse; and

WHEREAS, VRWJPO staff believes it is in the best interest of both the VRWJPO and Zoo if the Zoo provides the lead role in developing the RFP, as the stormwater reuse system construction will involve modifications to Zoo infrastructure and will involve Zoo staff oversight; and

WHEREAS, Zoo staff is in the final stages of developing the RFP for the stormwater reuse system, but the grant is near its grant term deadline, and staff need additional time to complete the RFP and work through the design and construction phases of the project; and

WHEREAS, in order to fulfill the timing of the stormwater reuse project execution and the grant work plan, VRWJPO staff is recommending the VRWJPO authorize an amending the Metropolitan Council Stormwater Grant agreement to extend the term of the agreement from March 1, 2017 to March 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, that the VRWJPB authorizes its Chair to amend the Metropolitan Council Stormwater Grant agreement to extend the term of the agreement from March 1, 2017 to March 1, 2019; subject to approval as to form by the Dakota County Attorney’s Office.

7d. Authorization to Execute a Joint Powers Agreement with the City of Lakeville for the South Creek Temperature Reduction Project

Travis Thiel provided a short overview of the project location and purpose as a reminder as the project has been discussed with the Board in previous meetings. Travis explained the funds provided within the agreement. The
VRWJPO will provide $179,800 of grant funding plus the VRWJPO’s match which is $50,000 for a total of up to $229,800 to the City of Lakeville for completion of the project.

Res. No. 17-17: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to execute a Joint Powers Agreement with the City of Lakeville for the South Creek Temperature Reduction Project.

WHEREAS, the VRWJPO and the City of Lakeville (City) have been working to identify projects to reduce the stressors to the fish and macroinvertebrate (biota) in South Creek that include sediment, warm water temperatures, low dissolved oxygen, and poor habitat; and

WHEREAS, the VRWJPO and City have identified a stormwater basin that is a source of warm stormwater entering South Creek that results in warmer water in South Creek and lower dissolved oxygen concentrations; and

WHEREAS, the VRWJPO and City have proposed a project to separate South Creek from the stormwater basin to reduce the water temperatures and improve dissolved oxygen concentrations in South Creek; and

WHEREAS, a feasibility study was conducted to identify the most cost-effective means to engineer and construct the project and identified an estimated $220,000 project to engineer and construct a reinforced berm and new outlet to separate South Creek from the stormwater basin; and

WHEREAS, 2016 monitoring indicates that the project has the potential to reduce maximum water temperatures in this reach of South Creek by 16.6° C, and average of 11.1° C, and increase dissolved oxygen concentrations by 1-2 mg/L; and

WHEREAS, the VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a Clean Water Fund grant for $194,800, which requires a local match of 25% of the total grant request; and

WHEREAS, the grant consists of $15,000 for VRWJPO staff to perform grant administration and coordination, $44,800 for project engineering and associated activities, and $135,000 for a portion of project construction; and

WHEREAS, the VRWJPO allocated $50,000 as grant match within its 2017 Budget for the project; and

WHEREAS, the VRWJPO and City will equally split the costs of the local match needed to fulfill the engineering and construction of the project up to the maximum $50,000 VRWJPO Budget allocation and City contribution; and

WHEREAS, the City of Lakeville is requesting the grant funding for the engineering ($44,800) and construction ($135,000) and up to an additional $50,000 in funding from the VRWJPO.

NOW, THEREFORE, BE IT RESOLVED, that the VRWJPB authorizes its chair to execute a Joint Powers Agreement with the City of Lakeville in an amount not to exceed $229,800 for the South Creek Temperature Reduction Project; subject to approval as to form by the Dakota County Attorney’s Office.

7e. Authorization to Execute a Joint Powers Agreement with the City of Lakeville for the South Creek Hydrodynamic Separator Project

Travis Thiel provided a brief overview of another of the Clean Water Fund projects describing its location and purpose, and explained the funding within the agreement.

Res. No. 17-18: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to authorize the chair to execute a Joint Powers Agreement with the City of Lakeville for the South Creek Hydrodynamic Separator Project.
WHEREAS, the VRWJPO and the City of Lakeville (City) have been working to identify projects to reduce the stressors to the fish and macroinvertebrate (biota) in South Creek that include sediment, warm water temperatures, low dissolved oxygen, and poor habitat; and

WHEREAS, a subwatershed assessment identified a stormwater outfall that drains a portion of the downtown as a significant source of sediment to South Creek; and

WHEREAS, the subwatershed assessment identified a hydrodynamic separator as a cost-effective means to reduce sediment from entering South Creek; and

WHEREAS, the hydrodynamic separator is estimated to cost $200,000 and will annually reduce sediment in South Creek by an average of 3.6 tons/year and phosphorus by 28 lbs./year; and

WHEREAS, the VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a Clean Water Fund grant for $116,000, which requires a local match of 25% of the total grant request; and

WHEREAS, the grant consists of $5,000 for VRWJPO staff to perform grant administration and coordination, $11,000 for project engineering and associated activities, and $100,000 for a portion of project construction; and

WHEREAS, the VRWJPO allocated $50,000 as grant match within its 2017 Budget for the project; and

WHEREAS, the VRWJPO and City will equally split the costs of the local match needed to fulfill the engineering and construction of the project up to the maximum $50,000 VRWJPO Budget allocation and City contribution; and

WHEREAS, the City of Lakeville is requesting the grant funding for the engineering ($11,000) and construction ($100,000) and up to an additional $50,000 in funding from the VRWJPO.

NOW, THEREFORE, BE IT RESOLVED, that the VRWJPB authorizes its chair to execute a Joint Powers Agreement with the City of Lakeville in an amount not to exceed $161,000 for the South Creek Hydrodynamic Separator Project; subject to approval as to form by the Dakota County Attorney’s Office.

7f. Authorization to Execute a Joint Powers Agreement with the City of Burnsville for the Alimagnet Lake Stormwater Improvement Projects

Travis Thiel provided a brief overview of another of the Clean Water Fund projects describing its purpose, and explained the funding within the agreement.

Res. No. 17-19: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to authorize the chair to execute a Joint Powers Agreement with the City of Burnsville for the Alimagnet Lake Stormwater Improvement Projects.

WHEREAS, the VRWJPO and the City of Burnsville have been working to identify projects to reduce the external phosphorus load reaching Alimagnet Lake; and

WHEREAS, a subwatershed assessment identified two regional stormwater basins that are a significant source of phosphorus reaching Alimagnet Lake; and

WHEREAS, the subwatershed assessment identified an iron-enhanced sand filter (IESF) and alum treatments as a cost-effective means to reduce phosphorus from reaching Alimagnet Lake; and

WHEREAS, the engineering and construction of the IESF and the alum treatments for the basins are estimated to cost $406,450 and will annually reduce phosphorus in Alimagnet Lake by 62 lbs./year.
WHEREAS, the VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a Clean Water Fund grant for $216,450 and was awarded the grant, which requires a local match of 25% of the total grant request; and

WHEREAS, the grant consists of $10,000 for VRWJPO staff to perform grant administration and coordination, $30,300 for the IESF project engineering and associated activities, and $176,150 for a portion of the IESF project construction; and

WHEREAS, the VRWJPO allocated $75,000 as grant match within its 2017 Budget for the project; and

WHEREAS, The VRWJPO and City will equally split the costs of the local match needed to fulfill the engineering and construction of the IESF projects and alum treatments up to the maximum $75,000 VRWJPO Budget allocation and City allocation, and any further costs will be paid for by the City up to the proposed maximum City allocation of $125,000; and

WHEREAS, the City of Burnsville is requesting the grant funding for the IESF engineering ($30,300) and construction ($176,150) and up to an additional $75,000 in funding from the VRWJPO.

NOW, THEREFORE, BE IT RESOLVED, that the VRWJPB authorizes its chair to execute a Joint Powers Agreement with the City of Burnsville in an amount not to exceed $281,450 for the Alimagnet Lake Stormwater Improvement Projects; subject to approval as to form by the Dakota County Attorney’s Office.

8. Staff Reports
   a. Travis Thiel indicated that much of his time has been spent on the grant project agreements and illuminated a concern on permitting slowdowns with the US Army Corps of Engineers due to the rusty patched bumble bee being added to the coverage of the Endangered Species Act which triggers a review coordinated with the U.S. Fish and Wildlife Service on new projects. Part of the problem created in that requirement is that there currently is no clearly defined process for those reviews.
   b. Commissioner Holberg brought up the County Road 50 issues with the school board and siting stormwater practices and indicated that the idea was essentially put to rest because the school board members were simply against having the pond there. Mark Ryan and Travis Thiel provided an update on the project’s alternatives to the school property, and Travis pointed out the extra cost borne by Dakota County to have the consultant re-engineer the stormwater in that part of the project.
   c. Commissioner Slavik inquired whether there had been any Eureka Township permit applications, and Mark Zabel replied that there had not been any yet. Mark Ryan indicated that he would be attending the March 6, 2017 Planning Commission meeting just to check in with them and make sure that everyone is on the same page and up to date with the processes involved. Commissioner Slavik indicated he attended a recent Town Board meeting to discuss and that there was little feedback on the subject.
   d. Mark Ryan provided a table to summarize all of the Joint Powers Agreement costs for each of the Clean Water Fund grant projects. This table was created to provide summarized information on the money associated with each of the agreements after there was some confusion at the February Watershed Planning Commission (WPC) meeting on the actual amounts of the various agreements.
   e. Mark Zabel provided an update on the search for a new WPC member from the Scott County area of the watershed. Through City of Elko-New Market staff, Carolyn Miller of Elko submitted an application and was approved by the Scott County Board earlier in the week per Commissioner Wolf.

8a. Motion to amend the agenda to include appointment of Carolyn Miller to the Vermillion River Watershed Planning Commission

   Motion by Commissioner Wolf, Second by Commissioner Slavik, and passed on a 2-0 vote to amend the agenda to include appointment of Carolyn Miller to the Vermillion River Watershed Planning Commission with Commissioner Holberg abstaining.
8b. **Appointment of Carolyn Miller to the Watershed Planning Commission**

*Motion by Commissioner Wolf, Second by Commissioner Slavik, and passed on a unanimous vote to appointment of Carolyn Miller to the Watershed Planning Commission with Commissioner Holberg abstaining.*

f. Mark Zabel provided an update on the filling of Katherine Carlson’s communications and outreach position with Dakota County and the VRWJPO. A count provided around noon on Friday, February 17th (the date of closure for the posting) indicated a total of 64 applicants for the position at that time.

9. **Adjourn**

*Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a 3-0 voice vote to adjourn the meeting at 1:51 p.m.*

Next Meeting Date: March 23, 2017 – Western Service Center, Room 334 at 1:00 p.m.

Respectfully submitted:

Mark Ryan
Vermillion River Watershed Joint Powers Organization

Mark Zabel
Administrator for the Vermillion River Watershed Joint Powers Organization

Attest

______________________________    ____________
Commissioner Mary Liz Holberg  Secretary/ Treasurer  Date
Vermillion River Watershed Joint Powers Organization  
14955 Galaxie Avenue ~ Apple Valley, MN 55124

Agenda Item 5

Date: March 23, 2017  
To: Vermillion River Watershed Joint Powers Board  
From: Staff  
Subject: Joint Powers Organization Expenses

On February 23, 2017 the Joint Powers Board approved expenses from January 1st, 2017 through February 8th, 2017 totaling $31,620.20

The invoices submitted between February 17, 2017 and March 15, 2017 for approval are listed below:

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Total approved expenses as presented on March 23, 2017  $111,200.84

Action Requested: Approve expenses as presented on March 23, 2017
## Dakota County Staff Cost Related to the Vermillion Watershed
### February-17

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Vermillion River Watershed 21 70 70 7000 - Funds moved into Water 01 70 74 410 42149
## 2017 Vermillion River Watershed Joint Powers Organization
### Treasurer’s Report
March 23, 2017 - Vermillion River Watershed Joint Powers Board Meeting

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### Budget Funding Sources

- **Scott County Levy** $33,500.00
- **Dakota County Levy** $861,700.00
- **Expected 2016 Carryover (Fund Balance)** $290,000.00
- **Special Use Permit** $-
- **CPL Grant Rambling River (DNR)** $255,000.00
- **CPL Grant Flagstaff (DNR)** $268,000.00
- **Metropolitan Council Zoo Grant** $230,000.00
- **Fiscal Disp** $110,000.00
- **Expected CIP** $932,000.00
- **Investment Earnings** $15,000.00

**$2,995,200.00**
7a. Presentation by Dakota County Soil and Water Conservation District (SWCD) on proposed “other watercourses” as required by the Minnesota Buffer Law

Meeting Date: 3/23/17
Item Type: Regular-Information
Contact: Mark Zabel
Telephone: 952-891-7011
Prepared by: Mark Zabel
Reviewed by: N/A

PURPOSE/ACTION REQUESTED
- Presentation by Dakota County Soil and Water Conservation District (SWCD) on proposed “other watercourses” as required by the Minnesota Buffer Law

SUMMARY
Minnesota Statutes as amended in 2016, §103F.48, the Buffer Law, requires SWCDs to develop, adopt, and submit to each local water management authority within its boundary a summary of watercourses for inclusion in the local water management authority's plan. These requirements are defined in Minnesota Statutes §103F.48, Subd. 4. as follows:

“In consultation with local water management authorities, on or before July 1, 2017, the soil and water conservation district shall develop, adopt, and submit to each local water management authority within its boundary a summary of watercourses for inclusion in the local water management authority's plan. A local water management authority that receives a summary of watercourses identified under this subdivision must incorporate an addendum to its comprehensive local water management plan or comprehensive watershed management plan to include the soil and water conservation district recommendations by July 1, 2018. The incorporation to include the summary of watercourses provided by the soil and water conservation district does not require a plan amendment as long as a copy of the included information is distributed to all agencies, organizations, and individuals required to receive a copy of the plan changes. A local water management authority that receives a summary of watercourses identified under this subdivision must address implementation of the soil and water conservation district recommendations when revising its comprehensive local water management plan as part of a regularly scheduled update to its comprehensive local water management plan or development of a comprehensive watershed management plan under section 103B.801.”

Under the Minnesota Buffer Law, the Dakota County and Scott SWCDs are required to consult with the VRWJPO and other water management authorities within their boundaries to develop a summary of "other watercourses" above and beyond those identified by the Minnesota Department of Natural Resources. These "other watercourses" are not mandated to install buffers. Rather, the VRWJPO must include the SWCD’s identified other watercourses into its comprehensive water management plan.

The Dakota County SWCD presented to the VRWJPO TAG on November 30, 2016. SWCD staff will provide information at the Vermillion River Watershed Joint Powers Board meeting including the process and criteria that is being proposed and a summary of watercourses to be define as "other watercourses" as required under State Law.

EXPLANATION OF FISCAL/FTE IMPACT
No fiscal impact.
Supporting Documents: 

Previous Board Action(s):
- ;
- ;
- ;
- ;
- ;

RESOLUTION

7a. Presentation by Dakota County Soil and Water Conservation District on proposed “other watercourses” as required by the Minnesota Buffer Law

Information item only.
7b. Authorization to Execute a Joint Powers Agreement with the City of Lakeville and Dakota County for the Phosphorus Treatment Enhancements at County Road 50 Project

Meeting Date: 3/23/17
Item Type: Regular-Action
Contact: Mark Ryan
Telephone: 952-891-7596
Prepared by: Mark Ryan
Reviewed by: N/A

PURPOSE/ACTION REQUESTED
- Authorization to execute a Joint Powers Agreement with the City of Lakeville and Dakota County for the Phosphorus Treatment Enhancements at County Road 50 Project

SUMMARY
Vermillion River Watershed Joint Powers Organization (VRWJPO) staff is requesting the execution of a Joint Powers Agreement (JPA) with the City of Lakeville (City) and Dakota County (County) to provide up to $30,000 in VRWJPO funding, and pass through $125,000 of Minnesota Board of Water and Soil Resources (BWSR) Clean Water Fund grant money, for a project to remove phosphorus in stormwater runoff from County Road 50 and other City drainage as a protection project for Lake Marion.

The Vermillion River Watershed Restoration and Protection Strategy (WRAPS) project identified Lake Marion as a water resource requiring protection strategies for phosphorus because the lake’s current concentrations are approaching the applicable lake standard while not exceeding it (i.e., Lake Marion is not yet impaired). Lake Marion is a valuable recreational and ecological resource for the City of Lakeville and watershed residents. During planning and design for County Road 50 on the east side of Lake Marion, the VRWJPO, the County, and the City identified a location where stormwater from the roadway and an upstream drainage area could be treated to remove phosphorus. As a result, a basin consisting of a treatment train including a pretreatment sediment basin, standard bioretention, and an iron-enhanced sand filter was designed into the project to help reduce phosphorus beyond the road project needs. The County and its consulting engineer provided an estimate of the construction cost of the treatment basin completed during preliminary design of $162,500.

The VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a $127,500 Clean Water Fund grant. The grant funding will pay the VRWJPO $2,500 for grant administration and project coordination and $125,000 for a portion of project construction. The grant requires a local match of 25% of the requested grant amount. The VRWJPO allocated $30,000 in its 2017 Budget for the project, and the City of Lakeville will add in $5,000 of local match funding. The County and the City have also provided the engineering of the project through the larger County Road 50 project. Pollutant reduction modeling predicts that the practice will reduce annual loading to Lake Marion by 19.7 pounds of phosphorus and 4,258 pounds of total suspended solids (sediment).

The County, as the project owner, is requesting the grant funding for construction ($125,000) and up to an additional $30,000 in funding from the VRWJPO. VRWJPO staff recommends executing a Joint Powers Agreement with Dakota County and the City of Lakeville in an amount not to exceed $155,000 from the VRWJPO 2017 Budget for the Phosphorus Treatment Enhancements at County Road 50 Project.

EXPLANATION OF FISCAL/FTE IMPACT
The VRWJPO’s maximum contribution of $30,000 for the Phosphorus Treatment Enhancements at County Road 50 Project in the City of Lakeville would be taken from the CIP category of the VRWJPO 2017 Budget, where $30,000 is currently budgeted and identified as Cty Road 50 Lake Marion Protection Stormwater Improvements. The remaining $125,000 will be passed through to Dakota County for construction.
RESOLUTION

7b. Authorization to Execute a Joint Powers Agreement with the City of Lakeville and Dakota County for the Phosphorus Treatment Enhancements at County Road 50 Project

WHEREAS, the VRWJPO identified Lake Marion as a water resource requiring protection strategies for phosphorus in the Vermillion River Watershed Restoration and Protection Strategy (WRAPS); and

WHEREAS, the VRWJPO, the County, and the City identified County Road 50 and untreated stormwater runoff upstream of the road as areas draining to Lake Marion that could benefit from additional phosphorus treatment; and

WHEREAS, the VRWJPO, the County, and the City have designed a treatment basin incorporating bioretention and an iron-enhanced sand filter as part of the County Road 50 reconstruction project to treat stormwater to reduce phosphorus and sediment in the stormwater runoff to Lake Marion; and

WHEREAS, preliminary design included an estimate of $162,500 to construct the proposed treatment basin; and

WHEREAS, pollutant reduction modeling indicates that the project has the potential to reduce 19.7 pounds of phosphorus and 4,258 pounds of sediment from entering Lake Marion annually; and

WHEREAS, the VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a Clean Water Fund grant for $127,500, which requires a local match of 25% of the total grant request; and

WHEREAS, the grant consists of $2,500 for VRWJPO staff to perform grant administration and coordination and $125,000 for a portion of project construction; and

WHEREAS, the VRWJPO allocated $30,000 as grant match within its 2017 Budget for the project and the City will provide additional $5,000 of local grant match; and

WHEREAS, Dakota County is requesting the grant funding for construction ($125,000) and up to an additional $30,000 in funding from the VRWJPO.

NOW, THEREFORE, BE IT RESOLVED, that the VRWJPB authorizes its chair to execute a Joint Powers Agreement with the Dakota County and the City of Lakeville in an amount not to exceed $155,000 for Phosphorus Treatment Enhancements at County Road 50 Project; subject to approval as to form by the Dakota County Attorney’s Office.
JOINT POWERS AGREEMENT FOR
CONSTRUCTION & MAINTENANCE

BETWEEN
THE COUNTY OF DAKOTA,
THE CITY OF LAKEVILLE,
AND
VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION

DAKOTA COUNTY PROJECT NO. 50-19

SYNOPSIS: Dakota County Transportation Department, the City of Lakeville, and Vermillion River Watershed Joint Powers Organization agree to construct and maintain a stormwater treatment best management practice incorporating an iron-enhanced sand filter for phosphorus treatment adjacent to County State Aid Highway 50 (Kenwood Trail) in County Project 50-19 in Castle Rock Township, Dakota County.
WHEREAS, Minn. Stat. § 471.59 authorizes local government unit to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, County of Dakota (County) is a governmental unit and political subdivision of the State of Minnesota; and

WHEREAS, the City of Lakeville (City) is a governmental unit and political subdivision of the State of Minnesota; and

WHEREAS, the Vermillion River Watershed Joint Powers Organization (VRWJPO) is a watershed management body consisting of Dakota and Scott Counties 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 County Transportation Department operates and maintains a County Road system; and

WHEREAS, it is considered mutually desirable to the County and City to construct a four-lane divided highway on County State Aid Highway (CSAH) 50 (Kenwood Trail) as defined as a “Project” by existing Contract C00250179-1; and

WHEREAS, the stormwater infrastructure of CSAH 50 discharges to Lake Marion within the Vermillion River Watershed; and

WHEREAS, the CSAH 50 reconstruction project offers opportunities to treat stormwater runoff from CSAH 50 and adjacent land in the City that contains the pollutants phosphorus and sediment; and

WHEREAS, Lake Marion receives the pollutant laden stormwater from CSAH 50 and the adjacent land; and

WHEREAS, VRWJPO identified Lake Marion as a water resource requiring protection from further degradation of water quality due to excess phosphorus concentrations; and

WHEREAS, the Project will be required to meet VRWJPO and Minnesota Pollution Control Agency standards for stormwater management; and
WHEREAS, the County, City, and VRWJPO identified a proposed stormwater treatment best management practice (BMP) incorporating an iron-enhanced sand filter to additionally protect Lake Marion above the required standards; and

WHEREAS, the stormwater treatment best management practice is estimated to cost $162,500;

WHEREAS, the VRWJPO applied for and was awarded a $127,500 grant from the Minnesota Board of Water and Soil Resources to construct a stormwater treatment BMP incorporating an iron-enhanced sand filter for phosphorus treatment adjacent to CSAH 50 in the Project; and

WHEREAS, the grant requires a 25% local match ($35,000) and the VRWJPO has allocated $30,000 within its 2017 Budget for the Project; and

WHEREAS, the City of Lakeville has allocated $5,000 from its stormwater capital improvement funds for the stormwater treatment BMP.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the County, the City, and the VRWJPO shall derive from this Agreement, the County, City and the VRWJPO, through the VRWJPB, hereby enter into this Agreement for the purposes stated herein.

1. **Purpose.** The purpose of this Agreement is to define the responsibilities and cost sharing obligations of the County, the City, and the VRWJPO for the Project.

2. **Parties.** The parties (Parties) to this Agreement are the County), the City and the VRWJPO acting through its Joint Powers Board (VRWJPB).

3. **Term.** 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. Except for on-going maintenance activities, in no event will this Agreement continue in effect after December 31, 2019, unless the Parties mutually agree to an extension of the project term.

4. **Cooperation.** The County, the City and the VRWJPO 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.
5. **Technical and Quality Assurance.** County engineering staff, City engineering staff and the VRWJPO 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.

6. **Project Plans and Specifications.** The County is the lead agency for design and construction administration of the Project, under existing Contract C00250179-1. The VRWJPO and City shall approve the plans and specifications (Project Plans) prior to advertising for bids. Upon approval the relevant Project Plans shall be attached and incorporated as an Exhibit to an Amendment to this Agreement.

7. **Payment.** The Parties have the following payment obligations and responsibilities under this Agreement.

   7.1 The County will administer the contract and act as the paying agent for all payments to the Contractor. Payments to the Contractor will be made as the project work progresses and when certified by the County Engineer.

   7.2 The Clean Water Fund (CWF) grant will reimburse the following project-related activities up to the amount listed: $2,500 for administration and coordination of project (VRWJPO eligible only); and $125,000 for construction of the stormwater treatment best management practice (County eligible). The County’s eligible reimbursement is $160,000 (Agreement Maximum).

   7.3 The VRWJPO shall make payment to the County for construction costs in increments. Under the terms of the Grant, the VRWJPO is to receive Grant funds in three 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 County on a reimbursement basis, contingent upon the VRWJPO’s receipt of adequate Grant disbursements to make County requested payments. Ten percent (10%) of the Agreement Maximum shall be withheld until the VRWJPO has verified that the project has been installed in accordance with 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.
7.4 The CWF grant has a match requirement to the amount of CWF monies received totaling $35,000. The match shall be shared in the amount of up to $30,000 by the VRWJPO and $5,000 by the City.

7.5 No payment shall be made until the Project Plans are approved by the County, the City, and the VRWJPO.

7.6 Upon presentation of an itemized claim by one of the Parties to the other, the claim shall be paid for costs incurred under this Agreement within 60 days from the presentation of the claim. If any portion of an itemized claim is questioned by the payer, 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.

7.7 The VRWJPO may refuse to pay any claims not specifically authorized by this Agreement. Payment of a claim shall not preclude the VRWJPO from questioning the propriety of the claim. The VRWJPO reserves the right to be repaid for any overpayment or disallowed claim.

8. **Authorized Purpose.** The funds provided under the terms of this Agreement may only be used by the County for the payment of costs directly related implementation of the grant funded stormwater treatment best management practice.

9. **Construction and Design Failures.** Any failure related to construction or design of the Project shall be addressed in the contracts with the construction firm or professional services firm.

10. **Right of Entry.** The County hereby permits the VRWJPO, 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 for the purpose of inspecting the construction of the Project.

11. **Operation and Maintenance.** Upon acceptance of the project by all Parties, the City shall be responsible for on-going maintenance of the stormwater treatment best management practice upon completion for a minimum of twenty-five (25) years and include the maintenance in the City’s capital improvement plan or as managed as part of its Municipal Separate Storm Sewer System (MS4) unless necessitated by a failure due to Acts of God or Force Majeure. This is in accordance
with the current County and City Maintenance Agreement, which governs maintenance, repair, and replacement duties and costs shared by the County and City on all cost-share transportation projects.

12. **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 the Parties. 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 and the City.

13. **Change Orders and Supplemental Agreements.** Any change orders or supplemental agreements that affect the project cost participation must be approved by the Liaison of each of the Parties prior to execution of work. For the purposes of this section, the VRWJPO’s liaison is Mark Ryan, its Watershed Engineer; the County’s liaison is Todd Howard, Assistant County Engineer; and the City’s liaison is McKenzie Cafferty, its Environmental Resources Manager, or their successors. Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.

14. **Final completion.** Final completion of the work specified for the Project in this Agreement must be approved all Parties.

15. **Rules and Regulations.** The County shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures. The County shall also abide by all applicable federal, state, and local laws, rules and regulations and will obtain all necessary permits in completing the Project.

16. **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 party, its officers, employees or agents. The provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability of the all Parties. This section shall survive the expiration or termination of this Agreement.

17. **Government Data Practices.** All Parties 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 any Party.

18. **Audits.** Pursuant to Minnesota Statutes Sec 16 C. 05, Subd. 5, any books, records, documents, and accounting procedures and practices of any Party relevant to this Agreement are subject to examination by the other Parties and either the Legislative Auditor or the State Auditor as appropriate. The Parties agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement.

19. **Survivability.** The provisions of sections 9 (Construction and Design Failures), 11 (Operation and Maintenance), 16 (Indemnification) and 17 (Government Data Practices) survive the expiration or termination of this Agreement.

20. **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.

21. **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 either party.

22. **Termination.** The Parties have the following obligations and responsibilities under this Agreement for initiating termination of the Agreement.

22.1 **In General.** Any Party may terminate this Agreement for cause by giving seven days’ written notice or without cause by giving 30 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 County in the event of a default by any other Party. 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.

22.2 Termination by VRWJPO for Lack of Funding. Notwithstanding any provision of this Agreement to the contrary, the VRWJPO 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. Written notice of termination sent by the VRWJPO to the other Parties by facsimile is sufficient notice under this Agreement. The VRWJPO is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The VRWJPO will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding. The VRWJPO will pay for expenses incurred by the other Parties up to the effective date of termination.

23. Minnesota Law to Govern. This Agreement shall be governed by and construed in accordance with 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.

24. 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, acts of civil or military authority, and natural disasters.

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

Mark Krebsbach (or successor)
Dakota County Engineer
14955 Galaxie Avenue
Apple Valley, MN. 55124
(952) 891-7100

Mike Slavik (or successor)
Vermillion River Watershed Joint Powers Board Chair
Justin Miller (or successor)
City Administrator, City of Lakeville
20195 Holyoke Avenue
Lakeville, MN 55044
(952) 985-4400
IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized officials.

VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION

APPROVED AS TO FORM:

__________________________________________  By________________________
Assistant County Attorney                                           Mike Slavik, Board Chair
KS-17-96_                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           

Date____________________________________

Vermillion River Watershed Joint Powers Resolution

No. 17-__Date: __________, 2017

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DAKOTA COUNTY

RECOMMENDED FOR APPROVAL:

__________________________________________  By________________________
Physical Development Director                                                County Engineer

Date________________________

APPROVED AS TO FORM:

__________________________________________  By________________________
Assistant County Attorney                                           Date
KS-2017-____________________

COUNTY BOARD RESOLUTION

No. 17-______ Date: March 7, 2017
CITY OF LAKEVILLE

By ____________________________

Douglas P. Anderson or successor,
Mayor

Date _______________________

By ____________________________

Char Friedges, City Clerk

Date: _______________________

DRAFT
7c. Authorization to Execute a Joint Powers Agreement with the Dakota County for the Dakota County Transportation Department’s 78-06 Project/South Branch Nitrate Reduction Project

Meeting Date: 3/23/17
Item Type: Regular-Action
Contact: Travis Thiel
Telephone: 952-891-7546
Prepared by: Travis Thiel
Reviewed by: N/A

PURPOSE/ACTION REQUESTED
- Authorization to execute a Joint Powers Agreement with the Dakota County for the Dakota County Transportation Department’s 78-06 Project/South Branch Nitrate Reduction Project (Project)

SUMMARY
Vermillion River Watershed Joint Powers Organization (VRWJPO) staff is requesting the execution of a Joint Powers Agreement (JPA) with Dakota County to provide up to $50,000 in VRWJPO funding, and pass through $388,000 of Minnesota Board of Water and Soil Resources (BWSR) Clean Water Fund grant money, for a project to help reduce the nitrate load in the South Branch Vermillion River, a source of groundwater recharge to the eastern portion of the Vermillion River Watershed.

The VRWJPO and Dakota County have been working collaboratively to identify ways to reduce the nitrate load in the South Branch Vermillion River subwatershed as a result of the Vermillion River Watershed Restoration and Protection Strategy (WRAPS) and other Dakota County Environmental Resources Department efforts. The land use practices in the South Branch Vermillion River subwatershed are a source of high nitrate loads that contribute to nitrate drinking water contamination in the eastern portion of the watershed.

Dakota County’s Transportation Department is going to be reconstructing a portion of County Highway 78 in Castle Rock and Eureka Townships in 2017. The portion being reconstructed is within the South Branch Vermillion River subwatershed, and opportunity exists to integrate a nitrate reduction project within the Highway 78 project. VRWJPO staff worked with Dakota County Transportation Department staff to identify and design a pre-treatment basin and constructed wetland adjacent to County Highway 78. The total estimated engineering and construction cost during feasibility design was $500,250 for of the pre-treatment basin and constructed wetland. The total project is to annually reduce nitrate in the South Branch Vermillion River by 13,600 lbs./year and sediment by 7.6 tons/year.

The VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a $412,200 Clean Water Fund grant and was awarded the grant. The grant will pay the VRWJPO $15,000 for grant administration and project coordination, $17,200 for the project’s engineering and associated activities, and $380,000 for a portion of the project’s construction. The grant requires a local match of 25% of the requested grant amount. The VRWJPO allocated $50,000 in its 2017 Budget and the Dakota County Environmental Resources Department allocated $78,000 in its 2017 Capital Improvement Program.

Dakota County is requesting grant funding for the engineering ($8,000) and construction ($380,000) and up to an additional $50,000 in funding from the VRWJPO. VRWJPO staff recommends executing a Joint Powers Agreement with Dakota County in an amount not to exceed $438,000 from the VRWJPO 2017 Budget for the Project.

EXPLANATION OF FISCAL/FTE IMPACT
The VRWJPO’s maximum contribution of $50,000 for the Project would be taken from the CIP category of the VRWJPO 2017 Budget, where $50,000 is currently budgeted. The $388,000 will be passed through to Dakota County for engineering and construction.
RESOLUTION

7c. Authorization to Execute a Joint Powers Agreement with the Dakota County for the Dakota County Transportation Department’s 78-06 Project/South Branch Nitrate Reduction Project

WHEREAS, the Vermillion River Watershed Joint Powers Organization (VRWJPO) and Dakota County have been working to identify ways to reduce the nitrate load in the South Branch Vermillion River subwatershed as a result of the Vermillion River Watershed Restoration and Protection Strategy (WRAPS) and other Dakota County Environmental Resources Department efforts; and

WHEREAS, the land use practices in the South Branch Vermillion River subwatershed are a source of high nitrate loads that contribute to nitrate drinking water contamination in the eastern portion of the watershed; and

WHEREAS, Dakota County’s Transportation Department is going to be reconstructing a portion of County Highway 78 in Castle Rock and Eureka Townships in 2017; and

WHEREAS, the portion being reconstructed is within the South Branch Vermillion River subwatershed, and opportunity exists to integrate a nitrate reduction project within the reconstruction project; and

WHEREAS, VRWJPO staff worked with Dakota County Transportation Department staff to identify and design a pre-treatment basin and constructed wetland adjacent to County Highway 78; and

WHEREAS, the engineering and construction of the pre-treatment basin and constructed wetland are estimated to cost $500,250 and will annually reduce nitrate in the South Branch Vermillion River by 13,600 lbs./year and sediment by 7.6 tons/year; and

WHEREAS, the VRWJPO applied to the Minnesota Board of Water and Soil Resources (BWSR) for a $412,200 Clean Water Fund grant and was awarded grant funding, which requires a local match of 25% of the grant amount; and

WHEREAS, the grant will pay the VRWJPO $15,000 for grant administration and project coordination, $17,200 for the project’s engineering and associated activities, and $380,000 for a portion of the project’s construction; and

WHEREAS, the VRWJPO allocated $50,000 in its 2017 Budget and the Dakota County Environmental Resources Department allocated $78,000 in its 2017 Capital Improvement Program; and

WHEREAS, Dakota County is requesting grant funding for the engineering ($8,000) and construction ($380,000) and up to an additional $50,000 in funding from the VRWJPO.

NOW, THEREFORE, BE IT RESOLVED, that the VRWJPO authorizes its chair to execute a Joint Powers Agreement with Dakota County in an amount not to exceed $438,000 for the Dakota County Transportation Department’s 78-06 Project/South Branch Nitrate Reduction Project; subject to approval as to form by the Dakota County Attorney’s Office.
SYNOPSIS: Dakota County Transportation Department and Vermillion River Watershed Joint Powers Organization agree to construct and maintain a wetland with enhanced soil media for a nitrate treatment adjacent to County State Aid Highway 78 (Denmark Avenue) in County Project 78-06 in Castle Rock Township, Dakota County.
WHEREAS, Minn. Stat. § 471.59 authorizes local government unit to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, County of Dakota (“County”) is a governmental unit and political subdivision of the State of Minnesota; and

WHEREAS, the Vermillion River Watershed Joint Powers Organization (“VRWJPO”) is a watershed management body consisting of Dakota and Scott Counties 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 County Transportation Department operates and maintains a County Road system; and

WHEREAS, the County desires to reconstruct and pave County State Aid Highway (CSAH) 78 from the intersection of CSAH 78 (235th Street) and County Road 31 (Denmark Avenue) south to the intersection of CSAH 78 (240th Street) and east to the intersection of CSAH 78 and Minnesota State Highway 3 (“Project”); and

WHEREAS, the stormwater infrastructure of CSAH 78 intersects with a tributary of the South Branch Vermillion River; and

WHEREAS, the land use practices within the South Branch Vermillion River subwatershed are considered significant sources of nitrate based on VRWJPO and County studies; and

WHEREAS, the South Branch Vermillion River and upstream tributaries are the recipients of nitrate-laden stormwater from these land use practices; and

WHEREAS, Dakota County and VRWJPO have identified goals and strategies to improve the County’s natural resources by reducing or eliminating impacts caused by excess nitrate; and

WHEREAS, the Project will be required to meet VRWJPO and Minnesota Pollution Control Agency standards for stormwater management; and

WHEREAS, a feasibility study developed a construction solution to meet regulatory requirements for stormwater management and to incorporate nitrate treatment into the Project; and
WHEREAS, the nitrate treatment portion of the project is estimated to cost $515,250;

WHEREAS, the VRWJPO applied for and was awarded a $412,200 grant from the Minnesota Board of Water and Soil Resources to construct a wetland with enhanced soil media for nitrate treatment adjacent to CSAH 78 in the Project (the “Grant”); and

WHEREAS, the grant requires a 25% local match ($103,050) and VRWJPO has allocated $50,000 within its 2017 Budget for the Project; and

WHEREAS, Dakota County has allocated $53,050 from the Environmental Resources Department’s 2017 capital improvement plan for the Project.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the County and VRWJPO shall derive from this Agreement, the County and the VRWJPO, through the VRWJPB, hereby enter into this Agreement for the purposes stated herein.

1. **Purpose.** The purpose of this Agreement is to define the responsibilities and cost sharing obligations of the County and the VRWJPO for the Project.

2. **Parties.** The parties (“Parties”) to this Agreement are the County of Dakota (County) and the Vermillion River Watershed Joint Powers Organization (VRWJPO) acting through its Joint Powers Board (VRWJPB).

3. **Term.** 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. Except for on-going maintenance activities, in no event will this Agreement continue in effect after December 31, 2018, unless the Parties mutually agree to an extension of the project term.

4. **Cooperation.** The County and the VRWJPO 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. The County further agrees to provide any documentation necessary to obtain reimbursement from the Grant funds.
5. **Technical and Quality Assurance.** County engineering staff and the VRWJPO 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.

6. **Project Plans and Specifications.** The plans and specifications (“Project Plans”) for the Project shall be approved by both the VRWJPO Engineer and the County Design Engineer.

7. **Payment.** The Parties have the following payment obligations and responsibilities under this Agreement.

   7.1 The County will administer the contract and act as the paying agent for all payments to the Contractor. Payments to the Contractor will be made as the project work progresses and when certified by the County Engineer.

   7.2 The Parties agree that the Grant funds will be used to reimburse the following project-related activities up to the amount listed: $15,000 for administration and coordination of project (VRWJPO eligible only); $17,200 for technical and engineering assistance (County eligible for $8,000 and VRWJPO eligible for $9,200); and $380,000 for construction of the nitrate treatment practice (County eligible). The County’s eligible reimbursement is $388,000 (Agreement Maximum).

   7.3 The VRWJPO shall make payment to the County for construction costs in increments. Under the terms of the Grant, the VRWJPO is to receive Grant funds in three 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 County on a reimbursement basis, contingent upon the VRWJPO’s receipt of adequate Grant disbursements to make County requested payments. Ten percent (10%) of the Agreement Maximum shall be withheld until the VRWJPO has verified that the project has been installed in accordance with 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.

   7.4 The VRWJPO cost share for the local match requirement of the Grant shall not exceed Fifty Thousand Dollars ($50,000.00) for costs directly related to the completion of the Project.
7.5 No payment shall be made prior to the Project Plans approval by the VRWJPO and the County.

7.6 Upon presentation of an itemized claim by one of the Parties to the other, the claim shall be paid for costs incurred under this Agreement within 60 days from the presentation of the claim. If any portion of an itemized claim is questioned by the payer, 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.

7.7 The VRWJPO may refuse to pay any claims not specifically authorized by this Agreement. Payment of a claim shall not preclude the VRWJPO from questioning the propriety of the claim. The VRWJPO reserves the right to be repaid for any overpayment or disallowed claim.

8. **Authorized Purpose.** The funds provided under the terms of this Agreement may only be used by the County for the payment of costs directly related to the completion of the Project as approved by the VRWJPO Engineer.

9. **Construction and Design Failures.** Any failure related to construction or design of the Project shall be addressed in the contracts with the construction firm or professional services firm.

10. **Right-of-Way.** The County will undertake all actions necessary to acquire the permanent right of way to allow for the construction of the wetland to occur in the Project.

11. **Operation and Maintenance.** Upon acceptance of the project by the County and VRWJPO, the County and the VRWJPO shall be jointly responsible for all on-going maintenance, repair or replacement of the Project for a minimum of ten (10) years and include the maintenance in the County’s and VRWJPO’s capital improvement plan. Maintenance needs will be identified on an annual basis, at a minimum, and incorporated into VRWJPO’s and County’s annual budgets for implementation.

12. **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 the Parties.
13. **Change Orders and Supplemental Agreements.** Any change orders or supplemental agreements that affect the project cost participation must be approved by appointed representatives of both Parties prior to execution of work. For the purposes of this section, the VRWJPO’s appointed representative is Travis Thiel, its Watershed Specialist, and the County’s appointed representative is Todd Howard, Assistant County Engineer, or their successors. Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.

14. **Final completion.** Final completion of the work specified for the Project in this Agreement must be approved by both the County and the VRWJPO.

15. **Rules and Regulations.** The County and the VRWJPO shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures. The County and the VRWJPO shall also abide by all applicable federal, state, and local laws, rules and regulations and will obtain all necessary permits.

16. **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 party, its officers, employees or agents. The provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability of the County and the VRWJPO. This section shall survive the expiration or termination of this Agreement.

17. **Government Data Practices.** The 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 County or the VRWJPO.

18. **Audits.** Pursuant to Minnesota Statutes Sec 16 C. 05, Subd. 5, any books, records, documents, and accounting procedures and practices of the County and the VRWJPO relevant to this Agreement are subject to examination by the County or the VRWJPO and either the Legislative Auditor or the State Auditor as appropriate. The County and the VRWJPO agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement.
19. **Survivability.** The provisions of sections 9 (Construction and Design Failures), 11 (Operation and Maintenance), 16 (Indemnification) and 17 (Government Data Practices) survive the expiration or termination of this Agreement.

20. **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.

21. **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 either party.

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

Mark Krebsbach (or successor) Mike Slavik (or successor)
Dakota County Engineer Vermillion River Watershed Joint Powers Board Chair
14955 Galaxie Avenue 1590 Highway 55
Apple Valley, MN. 55124 Hastings, MN. 55033
(952) 891-7100 (651) 438-4418

[SIGNATURE PAGE TO FOLLOW]
IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized officials.

VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION

APPROVED AS TO FORM:

__________________________    By_________________________
Assistant County Attorney          Mike Slavik, Board Chair
KS-17-_____r

Date__________________________

Vermillion River Watershed Joint Powers Resolution

No. 17-__Date: __________, 2017

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DAKOTA COUNTY

RECOMMENDED FOR APPROVAL:

__________________________    By_________________________
Physical Development Director
County Engineer

Date__________________________

APPROVED AS TO FORM:

__________________________    Date
Assistant County Attorney
KS-2017-103

COUNTY BOARD RESOLUTION

No. 17-______ Date: March 21, 2017