Agenda

Vermillion River Watershed Joint Powers Board Meeting
October 24, 2019, 1 p.m.
Dakota County Extension and Conservation Center, Room A, Farmington, MN

1. Call to Order
2. Roll Call
3. Audience Comments on Items Not on the Agenda
   *(please limit audience comments to five minutes)*
4. Consent Agenda
   a. Approval of Agenda
   b. Approval of Minutes from the September 26, 2019, Meeting
   c. Acceptance of Treasurer’s Report
   d. Authorization to Execute a Joint Powers Agreement with Dakota County for the Wetland Health Evaluation Program
   e. Authorization to Amend a Joint Powers Agreement with the Minnesota Zoo for Rainwater Harvesting System Project
   f. Authorization to Execute a Joint Powers Agreement with Dakota County for Vegetation Management at the South Branch Vermillion River Nitrate Treatment Wetland and Dakota County 78-06 Mitigation Wetland and Bioretention Basin
5. Approval of Expenses
6. Business Items
7. Staff Reports
8. Adjourn

Other Information

Next Meeting Date: **December 5, 2019**, at 1 p.m.
Dakota County Extension and Conservation Center, Room A, Farmington, MN
You will be notified if the meeting is cancelled due to an anticipated lack of quorum.
Meeting Minutes

Vermillion River Watershed Joint Powers Board Meeting
September 26, 2019, 1 p.m.
Dakota County Extension and Conservation Center, Conference Room A, Farmington, MN

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

Others in Attendance
Mark Zabel, Watershed Administrator
Travis Thiel, VRWJPO Watershed Specialist
Paula Liepold, VRWJPO Water Resources Educator
Mark Ryan, VRWJPO Watershed Engineer

1. Call to Order
Meeting was called to order by Commissioner Slavik at 1:01 p.m.

2. Roll Call
All Board members were in attendance.

3. Audience Comments on Items Not on the Agenda
There were no comments from the audience.

4. Approval of Consent Agenda
a. Approval of Agenda
b. Approval of Minutes from the August 22, 2019, Meeting
c. Acceptance of Treasurer’s Report
d. Approval of Joint Powers Agreement with City of Hastings for Vermillion Falls Area and Ravine Projects

Res. No. VRW 19-36: Motion by Commissioner Wolf, Second by Commissioner Holberg, and passed on a unanimous vote to approve the consent agenda.

5. Approval of Expenses
Mark Zabel presented the current invoices as shown on item 5.
Commissioner Slavik requested that arborist work be tracked and the training budget reflective of where staff time is spent. Mark Zabel is currently working with Georg Fischer on staff training plans and aligning training dollars with watershed and County roles.

Res. No. VRW 19-37: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a 3-0 roll call vote to approve the expenses totaling $35,539.66 incurred between August 12, 2019 and September 9, 2019, as submitted on September 26, 2019.

6. Business Items

6a. Adopt Proposed Changes to Draft Vermillion River Watershed Joint Powers Organization Standards

Mark Zabel noted changes to the draft Standards and mentioned that the VRWJPO received several comments during the public comment period. The draft Standards have been modified based on some of the comments received.

Commissioner Slavik asked if the comments from Scott County had been addressed. Mark Zabel explained that Scott County would like the VRWJPO to match their criteria for land disturbance. Also, the City of Rosemount would prefer area and volume criteria for land disturbance as opposed to a list of criteria, which is what the current VRWJPO Standard was before the proposed amendments. The VRWJPO’s response to both Scott County and the City of Rosemount is that entities can be more restrictive than the VRWJPO Standards, with the inclusion of the additional site characteristics, to comply.

Mark Ryan mentioned that the Minnesota Board of Water and Soil Resources sent the VRWJPO a letter indicating their approval with the process so far and indicated that the VRWJPO should carry on with the adoption process.

Res. No. VRW 19-38: Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous vote to adopt the proposed changes to draft Vermillion River Watershed Joint Powers Organization Standards.

7. Staff Reports

Paula Liepold asked for feedback on the watershed tour. Commissioner Holberg thought it was good and that a tour every other year is the right frequency. Commissioner Slavik liked the projects and wants to see more like them in the watershed. Mark Zabel asked if there was anything that could be improved. Suggestions included having more elected officials on the tour (Commissioners suggested phone calling to spark their attendance), possibly a later start time to attract more participants (3:30), and to invite the Dakota County Planning Commission members, if not already on the invite list.

Paula mentioned the Children’s Water Festival for which she facilitates presenters. There were 49 presenters. Six schools applied from Dakota County, four schools from Dakota County were selected to attend the event this year, and one was from the Watershed. Commissioner Slavik would like to see VRWJPO dollars spent for schools in the Watershed to attend for this great event.

Travis Thiel gave several project updates:
  • The Minnesota Department of Natural Resources contract with the United States Department of Agriculture-APHIS has been renewed for beaver management.
• The VRWJPO has contracted an engineer through RFP for the Vermillion Park Conservation Area in Empire Township for stream restoration.
• Travis will meet next week with Commissioner Slavik, the landowner, and a township board member to discuss the County Road 78-10 nitrate treatment project to address both township and landowner concerns.

Jen Dullum was not present but provided written updates.
• The Friends of the Mississippi River held a Vermillion River Stewards planting event along South Creek at Flagstaff with help from the Natural Resource staff at Dakota County on September 5.
• A make-n-take rain barrel workshop (Vermillion Steward event) is planned for October 15 at 6 p.m. at the Apple Valley Senior Center.
• Friends of the Mississippi River will also will be working with National Honor Society students from Farmington High School to do more buckthorn removal at Rambling River Park followed with seeding the forest floor after removal.
• Social media posts for the month of August include 9 Facebook posts, 5 Tweets, and 4 Instagram posts.

Mark Ryan gave an update on services provided to landowners in Vermillion Township. Mark has been working on culvert sizing for a landowner’s primary driveway along a tributary to the Vermillion River that has floodplain designation. The landowner lives near another landowner whom Mark assisted with floodplain issues related to a bridge replacement earlier in 2019. Mark suggested development of a policy to define staff services providing fair application of landowner assistance and to ensure that staff are not inundated with requests for assistance.

Mark Zabel let the VRWJPB know that Minnesota Board of Water and Soil Resources approved Watershed Based Funding policy and allocations. The VRWJPO will receive up to $650,000 for the biennium in July 2020. The allocation is based on 90% private land and 10% shoreline.

Mark also updated the Commissioners on the short presentation and notifications on adoption of the Standards he gave at the Township Officers Meeting. There were no comments at the meeting.

Mark gave an update on river flow. 2019 river flow has been much higher than normal flow and has consistently been above the 90th percentile. Cumulative annual flows in the river are already higher this year by late September than previous years of data have shown for the entire year.

Melissa Bokman Ermer was not present but had provided an update on the drainage issue brought to the VRWJPB by Albert Zweber. Mr. Zweber has been experiencing a drainage issue on privately owned property. This will be something that will need to be worked out between neighboring property owners to alleviate the issue because it is a private ditch. Commissioner Wolf inquired if Mr. Zweber could have the ditch made public water or public ditch. Staff indicated that he could petition for a public ditch designation in Scott County under the drainage laws (Minnesota Statutes 103.E) but that it would likely not be made a public water. Commissioner Wolf would like information on how the drainage law process works.

The Webster wetland restoration project in Elko-New Market will go out for bid for later winter construction. It is currently in the design phase and permitting process.
Adjourn

Motion by Commissioner Holberg, Second by Commissioner Wolf, and passed on a unanimous voice vote to adjourn the meeting at 1:31 p.m.

Next Meeting Date: October 24, 2019 – Dakota County Extension and Conservation Center, Room A at 1 p.m.

Respectfully submitted:

Jen Dullum
Vermillion River Watershed Joint Powers Organization

Mark Zabel
Administrator for the Vermillion River Watershed Joint Powers Organization

Attest

____________________________________________________
Commissioner Tom Wolf       Secretary/ Treasurer       Date
## Agenda Item 4c
### Budget Amounts

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<th>Description</th>
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<td><strong>$2,572,225.00</strong></td>
<td><strong>$469,098.69</strong></td>
<td><strong>$60,089.77</strong></td>
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## Budget Funding Sources

- **Scott County Levy** $35,100.00
- **Dakota County Levy** $912,900.00
- **Expected 2017 Carryover (Fund Balance)** $734,200.00
- **Special Use Permit** $2,500.00
- **2019 CWF Grants (BWSR)** $249,200.00
- **2019 CWF Grant 1W1P (BWSR)** $123,000.00
- **CPL Grant South Creek at Hamburg** $282,000.00
- **Met Council Grant** $230,100.00
- **Expected CIP** $431,225.00
- **Investment Earnings** $20,000.00

**Total** $3,020,225.00
4d. Authorization to Execute a Joint Powers Agreement with Dakota County for the Wetland Health Evaluation Program

Meeting Date: 10/24/2019
Item Type: Consent-Action
Contact: Paula Liepold
Telephone: 952-891-7117
Prepared by: Paula Liepold
Reviewed by: N/A  N/A

PURPOSE/ACTION REQUESTED

- Authorization to execute a Joint Powers Agreement with Dakota County for the Wetland Health Evaluation Program

SUMMARY

Dakota County Environmental Resources Department coordinates the Wetland Health Evaluation Program (WHEP), a program consistent with the public outreach and communication goals of the Vermillion River Watershed Joint Powers Organization (VRWJPO). WHEP, a collaborative program of Dakota County, partner cities in the Vermillion River Watershed and the County, the North Cannon River Watershed Management Organization, the Minnesota Pollution Control Agency, and a consulting firm, directly benefits the watershed. Volunteer citizen scientists monitor macroinvertebrates and vegetation at wetlands selected by the participating communities and organizations to determine the overall health of each wetland.

The VRWJPO staff requests the Vermillion River Watershed Joint Powers Board (VRWJPB) continue this efficient and effective collaboration and authorize the chair to execute a Joint Powers Agreement with Dakota County for financial support of the WHEP in 2020 in an amount not to exceed $3,000.

EXPLANATION OF FISCAL/FTE IMPACT

The draft VRWJPO 2020 Budget includes $3,000 to support the WHEP program in the Public Outreach and Communication category.
RESOLUTION

4d. Authorization to Execute a Joint Powers Agreement with Dakota County for the Wetland Health Evaluation Program

WHEREAS, Dakota County Environmental Resources Department is coordinating the Wetland Health Evaluation Program (WHEP), a public outreach and communication program that has direct benefits to the Vermillion River Watershed; and

WHEREAS, a Joint Powers Agreement between Dakota County and the VRWJPO to partially fund the WHEP program would result in increased government efficiency and effectiveness; and

WHEREAS, the draft VRWJPO 2020 Budget includes $3,000 to support the WHEP program.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board (VRWJPB) authorizes the chair to execute a Joint Powers Agreement with Dakota County for financial support of the Wetland Health Evaluation Program in an amount not to exceed $3,000; contingent upon final approval of the VRWJPO 2020 Budget and subject to approval by the Dakota County Attorney’s Office as to form.
JOINT POWERS AGREEMENT
BETWEEN THE VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION AND
THE COUNTY OF DAKOTA FOR FUNDING RELATED TO
WETLAND HEALTH EVALUATION PROGRAM AND PUBLIC OUTREACH

WHEREAS, Minn. Stat. § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, the Vermillion River Watershed Joint Powers Organization is a watershed management body consisting of Dakota and Scott Counties (VRWJPO) 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 of Dakota (County) is a governmental and political subdivision of the State of Minnesota; and

WHEREAS, in its proposed 2020 budget, the VRWJPO included funding for education programs within the Vermillion River Watershed; and

WHEREAS, the County, through its Environmental Resources Department, is undertaking programs consistent with the proposed 2020 VRWJPO budget including the Wetland Health Evaluation Program; and

WHEREAS, the public outreach will be of benefit to the Vermillion River Watershed and can be accomplished in a more cost-effective manner by partnering with the County.

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

ARTICLE 1
PURPOSE
The purpose of this Agreement is to provide partial funding from the VRWJPO to the County for costs related to the Wetland Health Evaluation Program.

ARTICLE 2
PARTIES
The parties to this Agreement are the Vermillion River Watershed Joint Powers Organization (VRWJPO) and the County of Dakota, Minnesota (County.)
ARTICLE 3
TERM
This Agreement shall be effective January 1, 2020, and shall remain in effect until December 31, 2020, or until completion by the parties of their respective obligations under this Agreement, whichever occurs first, unless earlier terminated by law or according to the provisions of this Agreement.

ARTICLE 4
COOPERATION
The VRWJPO and the County 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.

ARTICLE 5
PAYMENT
5.1 The VRWJPO shall provide funding to the County as follows:
   • In an amount not to exceed three thousand and no/100 Dollars ($3,000.00) for costs related to the Wetland Health Evaluation Program.

5.2 The funding referred to in Section 5.1 above is contingent upon final approval by the VRWJPB of the 2020 VRWJPO budget.

5.3 For the funding referred to in Section 5.1 above, the County shall submit itemized invoices for payment. The VRWJPO shall make payment on invoices within thirty-five (35) days of the date on which an itemized invoice is received. If an invoice is incorrect, defective, or otherwise improper, the VRWJPO shall notify the County within ten (10) days of receiving the incorrect invoice. Upon receiving the corrected invoice from the County, the VRWJPO will make payment within thirty-five (35) days.

5.4 The VRWJPO may refuse to pay any claim that is 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 offset any overpayment or disallowance of claim by reducing future payments.

ARTICLE 6
COUNTY’S OBLIGATIONS
The County agrees to provide to the VRWJPO complete and unedited copies of any analysis and/or any other reports prepared in relation to the projects funded in Section 5.1 above. In addition, in all publications, press releases, or presentations to the public related to the projects funded in Section 5.1 above, the County shall acknowledge funding by the VRWJPO for all or part of the costs of making such information available to the public.
ARTICLE 7
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 VRWJPO and the County. This section shall survive expiration or termination of this Agreement.

ARTICLE 8
AUTHORIZED REPRESENTATIVES AND LIAISONS
8.1 AUTHORIZED REPRESENTATIVES. The following named persons are designated the Authorized Representatives of the parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications, except that the authorized representative shall have only the authority specifically or generally granted by their respective governing boards. Notice required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement:

TO THE VRWJPO: Mike Slavik, Chair or Successor
Vermillion River Watershed Joint Powers Organization
14955 Galaxie Avenue
Apple Valley, MN 55124

TO THE COUNTY: Georg Fischer, Director, or successor
Dakota County Environmental Resources Department
14955 Galaxie Ave.
Apple Valley, MN 55124

In addition, notification to the VRWJPO or the County regarding termination of this Agreement by the other party shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, Minnesota 55033.

8.2 LIAISONS. To assist the parties in the day-to-day performance of this Agreement and to ensure compliance and provide ongoing consultation, a liaison shall be designated by the VRWJPO and the County. The VRWJPB and the County shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

VRWJPO Liaison: Mark Zabel
Telephone: (952) 891-7011

COUNTY Liaison: Paula Liepold
Telephone: (952) 891-7117
ARTICLE 9
TERMINATION

Either party may terminate this Agreement for cause by giving seven days' written notice or without cause by giving thirty (30) days' written notice, of its intent to terminate, to the other party. 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 VRWJPO in the event of a default by the County. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party. 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.

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 source, or if 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 County by facsimile is sufficient notice under this section. 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.

ARTICLE 10
MODIFICATIONS

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, and signed by the Authorized Representatives of the VRWJPO and the County.

ARTICLE 11
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.

ARTICLE 12
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.

ARTICLE 13
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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

COUNTY OF DAKOTA

By _______________________________
Georg Fischer, Director or successor
Dakota County Environmental Resources Department
Date of Signature: ___________________

VERMILLION RIVER WATERSHED
JOINT POWERS ORGANIZATION

By _______________________________
Mike Slavik, Chair or successor
Date of Signature: ___________________
4e. Authorization to Amend the Joint Powers Agreement with the Minnesota Zoo for Rainwater Harvesting System Project

Meeting Date: 10/24/2019  
Item Type: Consent-Action  
Contact: Mark Ryan  
Telephone: 952-891-7596  
Prepared by: Mark Ryan  
Reviewed by: N/A

PURPOSE/ACTION REQUESTED

• Authorization to Amend the Joint Powers Agreement with the Minnesota Zoo for Rainwater Harvesting System Project

SUMMARY

The Vermillion River Watershed Joint Powers Board (VRWJPB) authorized a joint powers agreement (JPA) with the Minnesota Zoo to complete the tropics building rainwater harvesting system project on June 28, 2018 (Res. No. VRW 18-28). This JPA was created to utilize the remainder of Metropolitan Council grant funding on the rainwater harvesting project, with a portion of the grant funding previously used by the Vermillion River Watershed Joint Powers Organization (VRWJPO) to complete bioretention practices at the Minnesota Zoo in 2016-17.

Based on project design and updated cost estimates in June 2019, VRWJPO staff presented the potential funding shortfall to the VRWJPB. The budget and JPA included a total of $260,000 to complete the rainwater harvesting system project while the engineering estimates indicated a need for $400,000 to complete the project. On July 25, 2019, the VRWJPB approved an amendment to the 2019 budget to allocate $140,000 from the Capital Improvement Program to the tropics building rainwater harvesting project for 2019 and 2020 (Res. No. VRW 19-30).

The existing JPA with the Minnesota Zoo does not reflect the budget amendment made in July 2019. This amendment to the JPA will correct the amount of funding being provided by the VRWJPO to complete the project, with the total contract maximum being changed from $260,000 to $400,000. In addition, the current JPA expires on December 1, 2019, and the termination date has therefore been changed to December 31, 2020 to match the termination date of the JPA the VRWJPO has with the Metropolitan Council for grant funding. A few small changes to the numbering of items in Section 4 of the JPA were also made through the amendment.

EXPLANATION OF FISCAL/FTE IMPACT

The 2019 budget amendment to allocate $140,000 of Capital Improvement Program dollars to the project for 2019 and 2020 was made with resolution number 19-30, and there are no other fiscal impacts.
RESOLUTION

4e. Authorization to Amend the Joint Powers Agreement with the Minnesota Zoo for Rainwater Harvesting System Project

WHEREAS, the Vermillion River Watershed Joint Powers Board (VRWJPB) authorized staff to execute a joint powers agreement (JPA) with the Minnesota Zoo to complete the tropics building rainwater harvesting system project on June 28, 2018; and

WHEREAS, the project design and updated cost estimates from June 2019 indicated a need for $400,000 to complete the project while the project budget and JPA included a total of $260,000 to complete the rainwater harvesting system project; and

WHEREAS, on July 25, 2019, the VRWJPB approved an amendment to the 2019 budget to allocate $140,000 from the Capital Improvement Program to the tropics building rainwater harvesting project for 2019 and 2020; and

WHEREAS, this amendment to the JPA will change the total contract maximum from $260,000 to $400,000, change the termination date to December 31, 2020, and make a few small changes to the numbering of items in Section 4 of the JPA.

NOW, THEREFORE, BE IT RESOLVED, the Vermillion River Watershed Joint Powers Board hereby authorizes staff to amend the Joint Powers Agreement with the Minnesota Zoo for Rainwater Harvesting System Project; subject to approval as to form by the Dakota County Attorney’s Office.
First Amendment to Joint Powers Agreement
Between the Vermillion River Watershed Joint Powers Organization and the Minnesota Zoo
For Rainwater Harvesting System Project

Whereas, effective July 30, 2018, the Vermillion River Joint Powers Organization and the Minnesota Zoo entered into a joint powers agreements (Agreement) for cost share of the rainwater harvesting system at the tropics building; and

Whereas, the parties desire to amend certain terms of the Agreement as more fully set forth below; and

Whereas, the Agreement provides that any amendments shall be valid only when expressed in writing and duly signed by the parties.

Now, therefore, in consideration of the mutual covenants contained herein, the parties agree as follows:

A. To amend Sections 1 and 4 as follows:

1. Term of Agreement
   1.1 Effective Date: June 25, 2018, or the date the VRWJPO obtains all required signatures, whichever is later.
   1.2 Expiration Date: December 31, 2020, or until all obligations have been satisfactorily fulfilled whichever occurs first.
   1.3 Survival of Terms. The following clauses survive the expiration or cancellation of this grant contract: 8 Liability; 9 Audits; 10 Government Data Practices; 11 Publicity; 12 Governing Law Jurisdiction and Venue.

4. Funding

   4.1 In no event shall the contributions of the VRWJPO and MCES exceed the current maximum budget of $400,000 from the VRWJPO and MCES.

   4.2 The VRWJPO will provide the Zoo a sum not to exceed $170,000.00 (One Hundred Seventy Thousand Dollars and no/100).

   4.3 The MCES will provide an amount not to exceed $230,000.00 (Two-Hundred Thirty Thousand and no/100) dollars through the MCES “proposed Targeted Stormwater Grants to Support Planning, Technical Assistance, and Effectiveness Monitoring” program grant. The grant amount would be passed through by the VRWJPO, which holds the grant agreement with MCES. This amount exceeds the $170,000 initially prescribed for the rainwater harvesting system from the original $350,000 grant.

   4.4 The project maximum for this Agreement shall not exceed $400,000.00 from the VRWJPO and MCES. In the event the Project design phase determines the cost of the project exceeds the project maximum and additional funding sources are secured, this Agreement shall be amended in compliance with section 8.2 of this Agreement to account for any additional funding amounts and sources.

   4.5 Any changes, variations, modifications, or change orders related to the completion of any project of this Agreement, shall only be valid when they have been reduced to writing and approved by the VRWJPO’s Authorized
Representative. In no event shall any changes, variations, modifications, or change orders, exceed the project maximum of $400,000.00 unless modified or amended in compliance with Section 8.2 of this Agreement.

B. All other terms of the Agreement between the VRWJPO and the Minnesota Zoo for the rainwater harvesting project shall remain in full force and effect unless otherwise amended or terminated in accordance with law or the terms of the Agreement.

C. In any case where this Amendment conflicts with the Agreement, this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date(s) indicated below

MINNESOTA ZOO

By __________________________
Date of Signature: ______________

VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION

By __________________________
Date of Signature: ______________

APPROVED AS TO FORM:

/s/ ______________
Assistant Dakota County Attorney Date
VRW Res. No. 19- ___
KS-18-276-001

/s/ Mike Slavik, Chair
Assistant Dakota County Attorney Date
VRW Res. No. 19- ___
KS-18-276-001
4f. Authorization to Execute a Joint Powers Agreement with Dakota County for Vegetation Management at the South Branch Vermillion River Nitrate Treatment Wetland and Dakota County 78-06 Mitigation Wetland and Bioretention Basin

Meeting Date: 10/24/2019
Item Type: Consent-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 Dakota County for vegetation management at the South Branch Vermillion River nitrate treatment wetland and the Dakota County 78-06 mitigation wetland and bioretention basin

SUMMARY

In 2017, Dakota County Road 78 was reconstructed in Eureka and Castle Rock Townships, which required some impacts to wetlands along the corridor. To offset the wetland impact, a wetland was constructed on site to mitigate those impacts. Dakota County also constructed a bioretention basin to meet State of Minnesota requirements for stormwater management. Concurrently, the Vermillion River Watershed Joint Powers Organization (VRWJPO) collaborated with Dakota County to construct a nitrate treatment wetland adjacent to the County’s mitigation wetland and bioretention basin. Both wetlands and the bioretention basin need vegetation management to function at peak efficiency. In the case of the mitigation wetland, vegetation management is required for at least the next five years to meet performance standards set by the Federal, State, and local government, as part of the wetland mitigation process.

Dakota County and VRWJPO staff discussed how to best address vegetation management at the site. Staff concluded that management of both wetlands and the bioretention basin as one wetland and stormwater area and assigning tasks and costs of the vegetation management based on each organization’s portion of responsibility is most practical and sensible. Approximately 75 percent of the area is the responsibility of Dakota County, and the remaining 25 percent is the responsibility of the VRWJPO, and it is expected that the costs for vegetation management would be broken up in approximately the same ratio.

Vegetation management at this location will be an adaptive process, which makes establishing an annual budget for this site’s management difficult. The vegetation will be monitored and documented each year through 2025 to assess the management needs for the site. Upon both parties agreeing to the management activities needed each year, a vegetation management contractor will perform the management activities.

The VRWJPO staff requests the Vermillion River Watershed Joint Powers Board (VRWJPB) authorize the chair to execute a Joint Powers Agreement with Dakota County for shared vegetation management at the wetland and stormwater area, in an amount not to exceed $5,000 annually through 2025.

EXPLANATION OF FISCAL/FTE IMPACT

The draft VRWJPO 2020 Budget includes $10,000 for maintenance within the Land and Water Treatment category. It is very unlikely that the VRWJPO’s portion of the cost for vegetation management would exceed $5,000 in any given year.
RESOLUTION

4f. Authorization to Execute a Joint Powers Agreement with Dakota County for Vegetation Management at the South Branch Vermillion River Nitrate Treatment Wetland and Dakota County 78-06 Mitigation Wetland and Bioretention Basin

WHEREAS, in 2017, Dakota County Road 78 was reconstructed, which required some impacts to wetlands; and

WHEREAS, a wetland was constructed on site to mitigate those impacts; and

WHEREAS, Dakota County also constructed a bioretention basin to meet State requirements for stormwater management and collaborated with the Vermillion River Watershed Joint Powers Organization (VRWJPO) to construct a nitrate treatment wetland adjacent to the mitigation wetland and bioretention basin; and

WHEREAS, the wetlands and bioretention basin require vegetation management to function efficiently; and

WHEREAS, the mitigation wetland requires vegetation management is for at least the next five years to meet performance standards set by the Federal, State, and local government, as part of the wetland mitigation process; and

WHEREAS, Dakota County and VRWJPO staff discussed how to best address vegetation management at the site and have concluded that management of both wetlands and the bioretention basin as one wetland and stormwater area is most practical; and

WHEREAS, approximately 75 percent of the area is the responsibility of Dakota County, and the remaining 25 percent is the responsibility of the VRWJPO, and it is expected that the costs for vegetation management would be broken up in approximately the same ratio; and

WHEREAS, the vegetation will be monitored and documented each year through 2025 to assess the management needs for the site, and a collaborative decision would be made between Dakota County and VRWJPO staff each on management that would occur; and

WHEREAS, the draft VRWJPO 2020 Budget includes $10,000 to support maintenance in the Land and Water Category to support maintenance of capital improvement projects; and

WHEREAS, while management will be adaptive based on monitoring of the site, it is not anticipated that vegetation management would cost the VRWJPO more than $5,000 in any given year.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board (VRWJPB) authorizes the chair to execute a Joint Powers Agreement with Dakota County vegetation management at the South Branch Vermillion River nitrate treatment wetland and the Dakota County 78-06 mitigation wetland and bioretention basin, in an amount not to exceed $5,000 annually through 2025; contingent upon final approval of the VRWJPO 2019 Budget and subject to approval by the Dakota County Attorney’s Office as to form.
JOINT POWERS AGREEMENT FOR

VEGETATION MANAGEMENT

BETWEEN

THE COUNTY OF DAKOTA

AND

VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION

DAKOTA COUNTY PROJECT NO. 78-06

SYNOPSIS: Dakota County Transportation Department and Vermillion River Watershed Joint Powers Organization agree to perform vegetation management for a mitigation wetland, a nitrate treatment wetland, a bioretention basin, and other associated vegetated areas constructed as part of County Project 78-06 adjacent to County State Aid Highway 78 (Denmark Avenue) 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 Project 78-06 was the reconstruction and paving 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 mitigating or eliminating impacts caused by excess nitrate; and

WHEREAS, Dakota County and VRWJPO constructed a nitrate treatment wetland and mitigation wetland as part of the Project consisting of approximately 10.7 acres of constructed wetland and buffer areas, a 0.3 acre bioretention basin, and a vegetated channel leading to the constructed wetlands (collectively, "the Wetland and Stormwater Area"); and
WHEREAS, the mitigation wetland and its buffer areas require vegetative management and monitoring to achieve and maintain mitigation plan performance standards and become certified for wetland mitigation; and

WHEREAS, the bioretention basin, nitrate treatment wetlands, other associated buffer areas, and the vegetated channel do not require vegetative management and monitoring to achieve and maintain any performance standards, but do require vegetative management in order to help with overall vegetative management of the Wetland and Stormwater Area as a whole; and.

WHEREAS, approximately seventy-five percent (75%) of the Wetland and Stormwater Area is the responsibility of the County and approximately twenty-five percent (25%) of the Wetland and Stormwater Area is the responsibility of the VRWJPO as identified in the attached Exhibit 1; and

WHEREAS, Dakota County and VRWJPO desire to share the cost of the vegetative management and monitoring for the Wetland Mitigation Area based on the work performed allocated to each entities areas of responsibility.

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 vegetative management and monitoring of the Wetland and Stormwater Area.

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 for until December 31, 2025. This Agreement can be renewed for a subsequent term agreed to by the Parties upon adopted resolutions by the governing boards of the Parties prior to December 31, 2025.
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.

5. **Vegetative Management and Monitoring.** The VRWJPO shall be the lead agency for the completion of vegetative management and monitoring of the Wetland and Stormwater Area.
   a. The VRWJPO may utilize professional service providers and contractors to complete the work.
   b. All vegetative management and maintenance shall be completed to comply with mitigation plan performance standards and wetland mitigation certification standards of the Army Corps of Engineers, the MN Board of Water and Soil Resources, and the Wetland Conservation Act.

6. **Contract Administration.** The VRWJPO shall administer any contracts for the completion of vegetative management and monitoring of the Wetland and Stormwater Area and act as the paying agent for all payments to the contractor.
   a. Prior to soliciting a contract, the Parties shall agree to the scope of work or services.
   b. The vegetative management and maintenance costs shall be included the County’s and VRWJPO’s capital improvement plans.
   c. If a contract solicitation requires amendment of either Parties’ approved capital improvement plan budget for the work, VRWJPO shall not award the contract until any necessary budget amendments are approved.
   d. Any change orders or supplemental agreements that affect the 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 or management operations.
   e. Payments to the contractor will be made as the work progresses and when certified by the Watershed Specialist.

7. **Payment.** The Parties shall share costs for vegetative management, and monitoring of the Wetland Mitigation Area based upon the costs associated with the over which each Party has responsibility. The VRWJPO shall be responsible for costs on twenty-five percent (25%) the
Wetland and Stormwater Area consisting of the North Wetland and associated upland buffer as depicted on Exhibit 1. The County shall be responsible for costs on the remaining seventy-five percent (75%) of the Wetland and Stormwater Area as depicted on Exhibit 1. If the costs are evenly spread over the whole Wetland and Stormwater Area, then the cost share shall be twenty-five percent (25%) by the VRWJPO and seventy-five percent (75%) by the County. Work shall be scheduled so that costs payable by VRWJPO shall not exceed a total of $25,000 during the term of this Agreement (an average of $5,000 per year). Upon presentation of an itemized invoice by one of the Parties to the other, the invoice shall be paid for costs incurred under this Agreement within 60 days from the presentation of the invoice. If any portion of an itemized invoice is questioned by the payer, the remainder of the invoice 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. Payment of an invoice shall not preclude the payer from questioning the propriety of the invoice. Such payer reserves the right to be repaid for any overpayment or disallowed claim.

8. **Operation and Maintenance.** The terms of this Agreement are limited to vegetative management and monitoring of the Wetland Mitigation Area. Paragraph 11 of the Joint Powers Agreement between the County and VRWJPO for the construction and maintenance of CP 78-06 dated March 14, 2017 (Dakota County Contract # GR01018) remains effective for all other operation and maintenance of the Wetland Mitigation Area.

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

10. **Rules and Regulations.** 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 16 (Indemnification), 17 (Government Data Practices) and 18 (Audit) 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)  
   Dakota County Engineer  
   14955 Galaxie Avenue  
   Apple Valley, MN.  55124  
   (952) 891-7100

   Mike Slavik (or successor)  
   Vermillion River Watershed Joint Powers Board Chair  
   1590 Highway 55  
   Hastings, MN.  55033  
   (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

Date_______________________

Vermillion River Watershed Joint Powers Resolution

No. 19-__Date: __________, 2019

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DAKOTA COUNTY

RECOMMENDED FOR APPROVAL:

__________________________
By_________________________
Physical Development Director

Date_______________________

COUNTY BOARD RESOLUTION

No. 19-______ Date: March 21, 2017

APPROVED AS TO FORM:

__________________________
Assistant County Attorney
KS 2019 00431

Date
EXHIBIT 1

Vegetation Management Areas

Legend
- Wetland
- Upland Buffer
- Bioretention Basin
- Vegetated Channel
- Wet Pond-No Management Needed

N

0 100 200 400 Feet
Date: October 24, 2019  
To: Vermillion River Watershed Joint Powers Board  
From: Staff  
Subject: Joint Powers Organization Expenses

Expenses from the invoices submitted between August 13, 2019 and October 14, 2019 totalled $35,539.66.
The invoices submitted between September 10, 2019 and October 14, 2019 are listed below:

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<td>Applied Ecological Services, Inc.</td>
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Total approved expenses as presented on October 24, 2019 $60,089.77

Action Requested: Approve all above expenses as presented on October 24, 2019