



Agenda

Vermillion River Watershed Joint Powers Board Meeting

January 26, 2022, 1 p.m., in-person and teleconference via Microsoft Teams

- | | | |
|--|-------------|---------|
| 1. Call to Order | | |
| 2. Election of Joint Powers Board Officers | Action | |
| 3. Roll Call | | |
| 4. Audience Comments on Items Not on the Agenda
(<i>please limit audience comments to five minutes</i>) | | |
| 5. Consent Agenda | Action | |
| a. Approval of Agenda | | Page 1 |
| b. Approval of Minutes from the December 1, 2022, Meeting | | Page 3 |
| c. Acceptance of Treasurer's Reports | | Page 6 |
| d. Authorization to Execute a Joint Powers Agreement with Dakota County Soil and Water Conservation District for Services in 2023 | | Page 7 |
| e. Authorization to Execute a Joint Powers Agreement with Scott Soil and Water Conservation District for Services in 2023 | | Page 16 |
| 6. Approval of Expenses | Action | Page 25 |
| 7. Business Items | | |
| a. Presentation of 2023 Vermillion River Watershed Joint Powers Organization Communications Plan | Information | Page 27 |
| b. Authorization to Execute Grant Agreement with the Minnesota Board of Water and Soil Resources for State Fiscal Year 2022-2023 Watershed Based Implementation Fund Grant | Action | Page 29 |
| c. Authorization to Execute a Joint Powers Agreement with the City of Lakeville for the Middle Creek at Dodd Road Restoration Project | Action | Page 31 |
| 8. Staff Reports | | |
| 9. Adjourn | Action | |

Please note, the January 26, 2023, Vermillion River Watershed Joint Powers Board meeting will take place **in-person** in Conference Room A or Meeting Room 1 at the Extension and Conservation Center, 4100 220th Street West, Farmington Minnesota **and via teleconference** on the web-based application, Microsoft Teams.



Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 285 399 304 139

Passcode: 3fQiNm

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 651-273-3070,,457558750#](#) United States, St. Paul

Phone Conference ID: 457 558 750#

Other Information

Next Meeting Date: **February 23, 2023**, at 1 p.m.

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

December 12, 2022, 1 p.m., In-person and Teleconference using Microsoft Teams

Board Members in Attendance

Dakota County Commissioner Mike Slavik, Chair

Scott County Commissioner Tom Wolf, Vice Chair

Others in Attendance

Bruce Johnson, Dakota County SWCD, Supervisor

Melissa Bokman-Ermer, Scott County, Watershed Co-administrator

Jennifer Wolf, Assistant Dakota County Attorney, VRWJPO Counsel (virtual)

Travis Thiel, Dakota County, VRWJPO Senior Watershed Specialist

Mark Ryan, Dakota County, VRWJPO Water Resources Engineer

Brita Moore-Kutz, Dakota County, VRWJPO Communications and Outreach Specialist

Mark Zabel, VRWJPO Watershed Administrator (virtual)

Nikki Stewart, Environmental Resources Department Director, Dakota County

Zach Nagel, Prairie Island Mdewakanton Dakota Community (virtual)

1. Call to Order

Meeting was called to order at 1:00 p.m.

2. Roll Call

Commissioners Slavik and Wolf 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 September 22, 2022, Meeting
- c. Acceptance of Treasurer's Report
- d. Approval of VRWJPB Meeting Dates for 2023

e. WPC Candidate Consideration and Appointment

Res. No. VRW 22-25: Motion by Commissioner Wolf, Second by Commissioner Slavik and passed on a 2-0 vote to approve the consent agenda.

5. Approval of Expenses

Travis Thiel presented the current expenses for approval as shown on item 5.

Res. No. VRW 22-26: Motion by Commissioner Wolf, Second by Commissioner Slavik and passed on a 2-0 vote to approve the expenses totaling \$161,435.75 incurred between September 14, 2022, and November 14, 2022.

Business Items

6a. Adoption of VRWJPO 2023 Budget and Watershed Management Tax District Levy

Travis Thiel noted that there were no significant changes to the budget in comparison to what had been presented at the August 25, 2022, Board meeting. There is a slight increase in the budget total reflecting a change in the wetland bank line item. There have been additional sales of wetland credits resulting in an additional \$34,100 of budget. There were also minor changes in the levy rate and impact estimates based on new calculations since August.

Res. No. VRW 22-27: Motion by Commissioner Wolf, Second by Commissioner Slavik and passed on a 2-0 vote to Adopt the VRWJPO 2023 Budget and Watershed Management Tax District Levy.

Staff Reports

Staff reports were deferred due to an urgent appointment by Commissioner Wolf.

Adjourn

Motion by Commissioner Wolf, Second by Commissioner Slavik and passed on a 2-0 vote to adjourn the meeting at 1:04 p.m.

Next Meeting Date: Thursday, January 26, 2023, at 1 p.m. in Conference Room A at the Dakota County Extension and Conservation Center, 4100 220th Street West, Farmington, MN.

Respectfully submitted by

Mark Zabel

Administrator for the Vermillion River Watershed Joint Powers Organization

Attest

Commissioner

Secretary/ Treasurer

Date



2022 Vermillion River Watershed Joint Powers Organization Treasurer's Report

January 2023- Vermillion River Watershed Joint Powers Board Meeting

	<u>Budget Amounts</u>	<u>Expenses to Date</u>	<u>Expenses Pending</u>	<u>Account Balance</u>
A. Administration & Operations (217002-0000)	\$ 240,500.00	\$ 150,849.31	\$ 11,973.54	\$ 77,677.15
B. Research & Planning (217002-0130)	\$ 18,600.00	\$ 20,639.51	\$ 655.37	\$ (2,694.88)
C. Monitoring & Assessment (217002-0230)	\$ 157,400.00	\$ 76,014.98	\$ 15,193.44	\$ 66,191.58
D. Public Communications & Outreach (217002-0330)	\$ 166,150.00	\$ 151,518.14	\$ 9,798.17	\$ 4,833.69
E. Irrigation and Audit (217002-0431)	\$ 20,000.00	\$ 32,074.86	\$ 8,227.50	\$ (20,302.36)
F. Regulation (217002-0530)	\$ 55,900.00	\$ 29,626.33	\$ 1,611.52	\$ 24,662.15
G. Coordination & Collaboration (217002-0531)	\$ 42,600.00	\$ 17,678.76	\$ 1,160.32	\$ 23,760.92
H. Feasibility/Preliminary Studies (217002-0631)	\$ 220,000.00	\$ 94,538.26	\$ 4,018.33	\$ 121,443.41
I. Capital Improvement Projects (217092-0130)	\$ 491,850.00	\$ 124,237.99	\$ 4,152.13	\$ 363,459.88
J. FY2019 - Watershed Funding Grant (217002-0848)	\$ 17,700.00	\$ 7,069.27	\$ 438.83	\$ 10,191.90
K. CWF Grant - Middle Creek Restoration (217002-0852)	\$ -	\$ 81.06	\$ -	\$ (81.06)
L. WBIF Grant (BWSR) 2020-2023 North Creek Stabilization (217002-0853)	\$ 387,500.00	\$ -	\$ -	\$ 387,500.00
M. WBIF Grant 2020-2023 Farmington Direct Drainage (217002-0854)	\$ 30,030.00	\$ -	\$ -	\$ 30,030.00
N. WBIF Grant (BWSR) 2020-2023 Hastings Direct Drainage (217002-0855)	\$ 30,030.00	\$ -	\$ -	\$ 30,030.00
O. WBIF Grant (BWSR) 2020-2023 Ravenna Basins Restoration (217002-0856)	\$ 85,000.00	\$ 64,005.30	\$ -	\$ 20,994.70
P. WBIF Grant (BWSR) 2020-2023 Rosemount Anti-Icing (217002-0857)	\$ -	\$ -	\$ -	\$ -
Q. CWF Grant - (BWSR) Foxborough TSS (217002-0859)	\$ 203,250.00	\$ 121.58	\$ 163.03	\$ 202,965.39
R. CWF Grant - (BWSR) Ravenna Trail (217002-0860)	\$ 297,500.00	\$ 81.06	\$ 40.76	\$ 297,378.18
S. Wetland Bank (217002-0930)	\$ 117,216.00	\$ 500.00	\$ -	\$ 116,716.00
VRW JPO Revised Budget Expense TOTAL	\$ 2,581,226.00	\$ 769,036.41	\$ 57,432.94	\$ 1,754,756.65

Budget Funding Sources

Scott County Levy	\$ 32,500.00
Dakota County Levy	\$ 967,500.00
Expected 2019 Carryover (Fund Balance)	\$ 686,000.00
Special Use Permit	\$ 1,000.00
CWF Grant (BWSR)	\$ 420,750.00
2019-2021 CWF Grant 1W1P (BWSR)	\$ -
2020-2023 CWF Grant WBIF (BWSR)	\$ 243,600.00
Met Council Grant	\$ -
CIP Reserve	\$ 246,000.00
CIP Reserve Grant Match	\$ 84,000.00
Investment Earnings	\$ 12,000.00
Total	\$ 2,693,350.00

5d. Authorization to Execute a Joint Powers Agreement with Dakota County Soil and Water Conservation District for Services in 2023

Meeting Date: 1/26/2023

Item Type: Regular-Action

Contact: Mark Zabel

Telephone: 952-891-7011

Prepared by: Mark Zabel

Reviewed by: N/A

N/A

**PURPOSE/ACTION REQUESTED**

- Authorization to Execute a Joint Powers Agreement with Dakota County Soil and Water Conservation District (SWCD) for Services in 2023

SUMMARY

Dakota County Soil and Water Conservation District (SWCD) provides a variety of essential services to the Vermillion River Watershed Joint Powers Organization (VRWJPO) each year, including water monitoring, outreach and education, policy development, regulatory review, inventory and assessment, and capital improvements. Each of the tasks in Dakota County SWCD's proposed work plan and budget (Attachment A) is included as a line item in the 2023 Vermillion River Watershed Joint Powers Organization (VRWJPO) budget. The largest proposed spending is in the Capital Improvement Project category. Rather than developing VRWJPO cost-sharing programs that duplicate existing efforts, the VRWJPO relies on the established cost-share programs implemented by Dakota County SWCD to efficiently implement water-quality improvement projects. The VRWJPO provides Dakota County SWCD with funds to cost-share best management practices (BMPs) in urban and rural areas throughout the watershed.

VRWJPO staff recommend authorization to execute a Joint Powers Agreement with Dakota County SWCD for Services in 2023.

EXPLANATION OF FISCAL/FTE IMPACT

Total not to exceed \$257,000.

Supporting Documents:

Attachment A: Dakota County SWCD 2023 Work Plan and Budget

Attachment B: Draft Dakota County SWCD JPA

Previous Board Action(s):**RESOLUTION****5d. Authorization to Execute a Joint Powers Agreement with Dakota County Soil and Water Conservation District for Services in 2023**

WHEREAS, the Dakota County Soil and Water Conservation District (SWCD) provides a variety of essential services to the Vermillion River Watershed Joint Powers Organization (VRWJPO) each year, including water monitoring, outreach and education, policy development, regulatory review, inventory and assessment, and capital improvements; and

WHEREAS, the Dakota County SWCD is proposing to assist the VRWJPO with similar tasks in 2023; and

WHEREAS, the tasks outlined in the Dakota County SWCD proposed work plan and budget are each included as line items in the VRWJPO 2023 Budget in various categories; and

WHEREAS, the VRWJPO relies on Dakota County SWCD's established cost-share programs to efficiently implement capital improvement projects in the Vermillion River Watershed.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board hereby authorizes its Chair to execute a Joint Powers Agreement with Dakota County SWCD for a total not to exceed \$257,000 as presented to the Vermillion River Watershed Joint Powers Board at its meeting on January 26, 2023; subject to approval by the Dakota County Attorney's Office as to form.

2023 Dakota County SWCD Work Plan and Budget to the Vermillion River Watershed Joint Powers Organization

Evaluation and Policy

- Incentive program policy assistance for programs to install voluntary conservation practices

\$1,600

Subtotal \$1,600

Feasibility/Preliminary Studies

- Preliminary design, technical assistance and marketing of voluntary conservation practices

\$40,000

Subtotal \$40,000

Capital Improvement Projects

- Install water quality projects under SWCD Cost Share Programs
- Implement Landscaping for Clean Water Grant Program (LCW)

\$61,250¹

\$18,750²

Subtotal \$80,000

Public Outreach and Communication

- Coordinate tasks under the Vermillion River Watch Program
- Coordinate and conduct Landscaping for Clean Water Workshops
- Presentations for Grades 3-12 (up to 3 total)

\$ 6,000

\$30,400

\$4,000

Subtotal \$40,400

Inventories and Assessments

- Provide GIS mapping support

\$5,000

Subtotal \$5,000

Monitoring and Data Analysis

- Staff time for sample collection, equipment installation, maintenance, downloading, longitudinal surveys (temperature, dissolved oxygen, turbidity), winter nitrate monitoring at South Branch Vermillion River
- Data analysis, database management, data reporting, FLUX modeling, reporting
- Water quality sample analysis and QA/QC samples
- Equipment and supplies
- Macroinvertebrate collections and habitat monitoring

\$39,000

\$17,000

\$19,000

\$ 8,000

\$ 7,000

Subtotal \$90,000

Total Not To Exceed Amount: \$257,000

1 25% technical and administrative costs will be invoiced for each contracted project installed

2 Each Landscaping for Clean Water project installed includes \$250 for landowner stipend and \$500 for technical and administrative assistance

**JOINT POWERS AGREEMENT
BETWEEN THE VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION
AND
THE DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT
FOR SERVICES**

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 Dakota County Soil and Water Conservation District (SWCD) is a governmental and political subdivision of the State of Minnesota, located wholly within the boundaries of Dakota County, with statutory authority to carry out erosion control and other soil and water conservation programs within Dakota County pursuant to Minn. Stat. ch. 103C and as otherwise provided by law; and

WHEREAS, in its 2022 budget, the VRWJPO included funding for the provision of certain services by the SWCD on behalf of the VRWJPO including water monitoring, outreach and education, policy development, regulatory review, feasibility studies, and capital improvements; and

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

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

**SECTION 1
PURPOSE**

The purpose of this Agreement is to define the responsibilities of the parties for services to be provided by the SWCD to the VRWJPO related to water monitoring, outreach and education, policy development, regulatory review, feasibility studies and capital improvements in the Vermillion River Watershed as more fully described in Exhibit 1, attached hereto and incorporated herein by reference.

**SECTION 2
PARTIES**

The parties to this Agreement are the Vermillion River Watershed Joint Powers Organization (VRWJPO) acting through its Joint Powers Board (VRWJPB) and the Dakota County Soil and Water Conservation District (SWCD) acting through its Board of Supervisors.

**SECTION 3
TERM**

Notwithstanding the dates of the signatures below, this Agreement shall be effective January 1, 2023, and shall remain in effect until December 31, 2023, 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.

SECTION 4 COOPERATION

The VRWJPO and the SWCD 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 any equitable and timely manner.

SECTION 5 SCOPE OF SERVICES AND PAYMENT

5.1 Scope of Services. The SWCD shall provide the services generally described in Exhibit 1. Services provided shall be in accordance with the criteria set out in Exhibit 1. Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the SWCD's profession currently practicing under similar conditions.

5.2 Total Cost. The total amount to be paid by the VRWJPO for all services provided pursuant to this Agreement shall not exceed Two Hundred Fifty-Seven Thousand Dollars and No/100 Cents (\$257,000.00). The VRWJPO shall pay for purchased services at the rates set out in Exhibit 1.

5.3 Time of Payment. The VRWJPO shall make payment to the SWCD within forty-five (45) 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 SWCD within ten (10) days of receiving the incorrect invoice. Upon receiving the corrected invoice from the SWCD, the VRWJPO will make payment within forty-five (45) days.

5.4 Payment for Unauthorized Claims. 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.

5.5 Payment Upon Early Termination. In the event this Agreement is terminated before the completion of services, the VRWJPO shall pay the SWCD for services provided in a satisfactory manner, in a pro-rated sum of the rates set forth in Exhibit 1 based upon actual time spent. In no case shall such payment exceed the total cost of this Agreement.

5.6 Cost Sharing Limitations for Capital Improvement Projects Funding provided for capital improvement projects under this Agreement may only be utilized for projects located within the Vermillion River Watershed and for projects not directly funded by the VRWJPO. For such projects, the SWCD may only consider providing VRWJPO cost share at an amount not to exceed \$50,000.00 per project where total project costs eligible for consideration under VRWJPO cost share do not exceed \$99,999.00. Proposers of any project exceeding the aforementioned dollar limit must apply directly to the VRWJPO for cost share funding pursuant to the VRWJPO Capital Improvement Project Cost Share Policy.

SECTION 6 GENERAL PROVISIONS

6.1 SWCD Obligations. In addition to the performance of services as described in Exhibit 1, the SWCD agrees to provide to the VRWJPO complete and unedited copies of any reports prepared in relation to the services provided pursuant to this Agreement. In addition, in all publications, press releases, or presentations to the public related to the services provided under this Agreement, the SWCD shall acknowledge funding by the VRWJPO for all or part of the costs of making such information available to the public.

6.2 Compliance with Laws/Standards. The SWCD agrees to abide by all federal, state or local laws, statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this Agreement or to the facilities, programs, and staff for which the SWCD is responsible. This includes, but is not limited to all Standard Assurances, which are attached and incorporated as Exhibit 2.

6.3 Employee Status. The SWCD, its employees or agents, in implementing the terms of this Agreement are not employees of the VRWJPO. The VRWJPO, its staff or agents, in implementing the terms of this Agreement are not employees of the SWCD.

6.4 Liable for Own Acts. Each party to this Agreement shall be liable for the acts of its officers, employees, volunteers 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, volunteers 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 SWCD. In the event of any claims or actions filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual Parties.

6.5 Insurance. At its own expense, the SWCD shall procure and maintain policies of insurance covering the term of this Agreement, as set forth in the Insurance Terms, which are attached and incorporated as Exhibit 3, except the requirement to provide automobile liability insurance is waived so long as the SWCD does not transport volunteers under this Agreement. Such policies of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the indemnity provisions herein. The SWCD shall pay all retentions and deductibles under such policies of insurance.

6.6 Records Retention and Audits. The SWCD's bonds, records, documents, papers, accounting procedures and practices, and other records relevant to this Agreement are subject to the examination, duplication, transcription and audit by the VRWJPO, the Legislative Auditor or State Auditor under Minn. Stat. § 16C.05, subd. 5. If services under this Agreement use federal funds these records are also subject to review by the Comptroller General of the United States and his or her approved representative. Following termination of this Agreement, the SWCD must keep these records for six years or longer if any audit-in-progress needs a longer retention time.

6.7 Subcontracting. The VRWJPO and the SWCD understand and agree that one or more of the scope of services set forth in Exhibit 1 to this Agreement may be performed through another agent or subcontractor and that the subcontracting party is responsible for the performance of its subcontractors, unless otherwise agreed. The parties agree that neither will enter into any subcontract for the performance of the services contemplated under this Agreement without prior written consent of the other party and subject to such conditions and provisions as are deemed necessary. Notwithstanding the foregoing, the VRWPO consents to the use of the Scott County Soil & Water Conservation District as a subcontractor for purposes of providing technical assistance with water monitoring tasks and for providing subwatershed BMP inventory assistance. It is the responsibility of each party to ensure its subcontractor(s) has adequate and appropriate insurance coverage.

6.8 Timeliness. The VRWJPO and the SWCD agree to perform their respective obligations under this Agreement in a timely manner and keep each other informed about any delays that may occur.

6.9 Default: Force Majeure. Neither party shall be liable to the other party 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 party 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.

6.10 Data Privacy and Confidentiality. Data on individuals collected, created, received, kept or shared by the SWCD under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13) and its implementing rules. Further, federal laws on data privacy may also apply. The SWCD must comply with data privacy laws and rules as if the SWCD was the VRWJPO. The Data Practices Act also applies to subcontractors providing services under this Agreement. If public data is available from the VRWJPO, the SWCD may direct the public to the VRWJPO for access to the data.

The VRWJPO may give the SWCD access to, or the SWCD may become aware of, private or confidential information in performing services under this Agreement. Private and confidential information is data that is not public under the Minnesota Data Practices Act (Minn. Stat. ch. 13). The SWCD may keep the private and confidential information only for use in performing services under this Agreement.

The SWCD must impose procedures as are necessary to assure nondisclosure of private and confidential information directly or indirectly to third parties.

6.11 Assignment. Neither party may assign any of its rights under this Agreement without the prior written consent of the other party. Said consent may be subject to conditions.

SECTION 7 AUTHORIZED REPRESENTATIVES AND LIAISONS

7.1 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 or successor, Chair Vermillion River Watershed Joint Powers Organization 4100 220 th Street West, Suite 103 Farmington, MN 55024
TO THE SWCD:	Laura Zanmiller or successor, Chair Dakota County SWCD 440 220 th Street West, Suite 102 Farmington, MN 55024

In addition, notification to the VRWJPO or the SWCD 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.

7.2 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 SWCD. The VRWJPO and the SWCD 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, Administrator Vermillion River Watershed Joint Powers Organization Telephone: (952) 891-7011
SWCD Liaison:	Brian Watson, Manager Dakota County SWCD Telephone: (651) 480-7778

SECTION 8 TERMINATION

8.1 IN GENERAL. Either 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 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. 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.

8.2 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 source, 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 SWCD 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.

SECTION 9 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 SWCD.

SECTION 10 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.

SECTION 11 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.

SECTION 12 MERGER

12.1 Final Agreement. 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. There are no representations, warranties, or stipulations, either oral or written, not contained in this Agreement.

12.2 Exhibits. Exhibits 1 through 3 are attached hereto and incorporated herein by reference. In the event of a conflict between the terms of this Agreement and the Exhibits, the terms of this Agreement shall govern.

Exhibit 1 – Work Plan and Budget
Exhibit 2 – Standard Assurances
Exhibit 3 – Insurance Terms

SECTION 13 REPRESENTATION BY THE DAKOTA COUNTY ATTORNEY'S OFFICE

The Dakota County Attorney (County Attorney) provides legal representation to the VRWJPO pursuant to the joint powers agreement that established the VRWJPO. In addition, the County Attorney is statutorily obligated to be the attorney for the SWCD. Specifically, Minn. Stat. § 103C.321, Subd. 4 provides that the SWCD Board may call upon the County Attorney for necessary legal counsel, advice and services. In the event there is a conflict of interest determined by the County Attorney in representing the interests of both the VRWJPO and the SWCD, the County Attorney will so inform the Authorized Representative of the parties. In the event the County Attorney determines a conflict exists, the conflict of interest procedures of the County Attorney will be followed. The parties hereby waive any conflict of interest for the Dakota

County Attorney's Office to represent both the VRWJPO and the SWCD in preparation and execution of this Agreement.

SECTION 14 SURVIVORSHIP

The following provisions of this Agreement survive after the termination date of this Agreement: Section 6.4 (Liable for Own Acts); Section 6.6 (Records Retention and Audits); Section 6.10 (Data Privacy and Confidentiality); Section 10 (Minnesota Law to Govern); Section 11 (Severability) and Section 13 (Representation by the Dakota County Attorney's Office).

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

DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT

By _____
Laura Zanmiller or Successor, Chair
Board of Supervisors
Date of Signature: _____

VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION

APPROVED AS TO FORM:

/s/ _____
Assistant Dakota County Attorney/Date
KS-23-38

By _____
Mike Slavik or Successor, Chair
Date of Signature: _____

VRW Res. No.

5e. Authorization to Execute a Joint Powers Agreement with Scott Soil and Water Conservation District for Services in 2023

Meeting Date: 1/26/2023

Item Type: Regular-Action

Contact: Mark Zabel

Telephone: 952-891-7011

Prepared by: Mark Zabel

Reviewed by: N/A

N/A

**PURPOSE/ACTION REQUESTED**

- Authorization to execute a Joint Powers Agreement with Scott Soil and Water Conservation District (SWCD) for Services in 2023

SUMMARY

Scott Soil and Water Conservation District (SWCD) provides a variety of essential services to the Vermillion River Watershed Joint Powers Organization (VRWJPO) each year, including water monitoring, outreach and education, regulatory review, inventory and assessment, and capital improvements. Each task in the Scott Soil and Water Conservation District's (SWCD) proposed work plan and budget (Attachment A) is included as a line item in the 2023 Vermillion River Watershed Joint Powers Organization (VRWJPO) budget. The largest proposed spending is in the Capital Improvement Project category for cost share and financial incentives for approved best management practices (BMPs). Rather than developing VRWJPO cost-sharing programs that duplicate existing efforts, the VRWJPO relies on Scott SWCD's established cost-share programs to efficiently implement water-quality improvement projects. The VRWJPO provides Scott SWCD with funds to cost-share BMPs in urban and rural areas throughout the Scott SWCD portion of the watershed.

VRWJPO staff recommend authorization to execute a Joint Powers Agreement with Scott SWCD for Services in 2023.

EXPLANATION OF FISCAL/FTE IMPACT

Total not to exceed \$42,950.

Supporting Documents:

Attachment A: Scott SWCD 2023 Work Plan and Budget

Attachment B: Draft Scott SWCD JPA

Previous Board Action(s):**RESOLUTION****5e. Authorization to Execute Joint Powers Agreement with Scott Soil and Water Conservation District for Services in 2023**

WHEREAS, Scott Soil and Water Conservation District (SWCD) provides a variety of essential services to the Vermillion River Watershed Joint Powers Organization (VRWJPO) each year, including water monitoring, outreach and education, regulatory review, inventory and assessment, and capital improvements; and

WHEREAS, Scott SWCD is proposing to assist the VRWJPO with similar tasks in 2023; and

WHEREAS, each task in the Scott SWCD proposed work plan and budget is included a a line item in the VRWJPO 2023 Budget in various categories; and

WHEREAS, the VRWJPO relies on Scott SWCD's established programs to efficiently implement cost-share funding for capital improvement projects.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board (VRWJPB) Authorize its Chair to execute a Joint Powers Agreement with Scott SWCD in an amount not to exceed \$42,950 as presented to the VRWJPB at its meeting on January 26, 2023; subject to approval by the Dakota County Attorney's Office as to form.

EXHIBIT 1
2023 SCOTT SWCD WORK PLAN AND BUDGET - DRAFT

Activity	Detail	Line Item		TOTAL	
		2022	2023	2022	2023
Water Quality Monitoring	Monitor water quality at one station (V24) to include: equipment set-up and take-down; flow measurements; base flow and grab samples collection; programming; thermal monitoring; data processing and management; planning and coordination.	\$5,800	\$5,100	\$9,800	\$9,300
	Equipment maintenance, repair and replacement expenses	\$1,500	\$1,200		
	Lab, data line, and courier expenses	\$2,500	\$3,000		
Public Outreach and Education	Conservation, stormwater and youth education, as detailed in the Scott Clean Water Education Program 2019 Work Plan. Includes but not limited to community events/expos, library displays, news releases, Outdoor Education Day; and workshops	\$1,500	\$2,000	\$1,500	\$2,000
Capital Improvement Program*	Project development: Prepare subwatershed assessments (SWA) to identify potential projects; identify, contact and meet with landowners with potential projects, including but not limited to the ones identified in the SWA.	\$7,000	\$3,500	\$31,000	\$30,000
	Project design and engineering: feasibility investigations; surveys; project design and conservation plan preparation; construction inspections and certification; cost share contract administration. Eligible projects to include but not limited to: wetland restoration, streambank stabilization, filter strips, bioretention, nutrient management, cover crops, closed tile intakes, grade stabilization structures, grassed and lined waterways, and water and sediment control basins.	\$8,000	\$9,000		
	Cost share and financial incentives for approved project applications	\$16,000	\$17,500		
Regulatory Program Assistance	Research, investigations, and corrective action follow-up related to wetland, feedlot, and buffer law compliance.	\$900	\$950	\$900	\$900
Management and Administration	Prepare and administer Service agreement	\$750	\$800	\$750	\$750
	Attend Board, TAG and other JPB–sponsored meetings				
	Identify and develop recommendations regarding JPO programs and policies				
	GRAND TOTAL:			\$43,950	\$42,950

* To the maximum extent practical, other local, state, federal cost-share funds will be utilized to implement conservation practices before, or in conjunction with, the use VRWJPO funds. By approval of this work plan, the VRWJPO authorizes the Scott SWCD to utilize funding under this line item to provide financial assistance to landowners and occupiers in the watershed for the implementation of approved practices, as set forth in applicable 2020 cost share and incentive program policies as adopted by Scott SWCD Board of Supervisors. If insufficient CIP funds are available to approve one or more priority project(s), the SWCD will coordinate with JPO staff to request a budget amendment.

**JOINT POWERS AGREEMENT
BETWEEN THE VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION
AND
THE SCOTT COUNTY SOIL & WATER CONSERVATION DISTRICT
FOR SERVICES**

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 Scott County Soil & Water Conservation District (SWCD) is a governmental and political subdivision of the State of Minnesota, located wholly within the boundaries of Scott County, with statutory authority to carry out erosion control and other soil and water conservation programs within Scott County pursuant to Minn. Stat. ch. 103C and as otherwise provided by law; and

WHEREAS, in its 2022 budget, the VRWJPO included funding for the provision of certain services by the SWCD on behalf of the VRWJPO including water monitoring, outreach and education, policy development, regulatory review, inventory and assessment, and capital improvements; and

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

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

**SECTION 1
PURPOSE**

The purpose of this Agreement is to provide a method by which the VRWJPO can utilize the services of the SWCD for activities related to soil and water conservation in the Vermillion River Watershed in a way that best utilizes public funds, resources and technical expertise that each party has to offer to one another.

**SECTION 2
PARTIES**

The parties to this Agreement are the Vermillion River Watershed Joint Powers Organization (VRWJPO) acting through its Joint Powers Board (VRWJPB) and the Scott County Soil & Water Conservation District (SWCD) acting through its Board of Supervisors.

**SECTION 3
TERM**

Notwithstanding the dates of execution by the Parties, this Agreement shall be effective from January 1, 2023 until December 31, 2023, 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.

SECTION 4 COOPERATION

The VRWJPO and the SWCD 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 any equitable and timely manner.

SECTION 5 SCOPE OF SERVICES AND PAYMENT

5.1 Scope of Services. The SWCD shall provide the services generally described in Exhibit 1, attached and incorporated herein by this reference. Services provided shall be in accordance with the criteria set out in Exhibit 1. Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the SWCD's profession currently practicing under similar conditions. In the event of a conflict between the terms of this Agreement and the Exhibits, the terms of this Agreement shall govern.

5.2 Total Cost. The total amount to be paid by the VRWJPO for all services provided pursuant to this Agreement shall not exceed Fifty-four thousand twenty-five and No/100 Dollars (\$42,950.00). The VRWJPO shall pay for purchased services at the rates set out in Exhibit 1.

5.3 Time of Payment. The VRWJPO shall make payment to the SWCD within forty-five (45) 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 SWCD within ten (10) days of receiving the incorrect invoice. Upon receiving the corrected invoice from the SWCD, the VRWJPO will make payment within forty-five (45) days.

5.4 Payment for Unauthorized Claims. 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.

5.5 Payment Upon Early Termination. In the event this Agreement is terminated before the completion of services, the VRWJPO shall pay the SWCD for services provided in a satisfactory manner, in a pro-rated sum of the rates set forth in Exhibit 1 based upon actual time spent. In no case shall such payment exceed the total cost of this Agreement.

5.6 Cost Sharing Limitations for Capital Improvement Projects. Funding provided for capital improvement projects under this Agreement may only be utilized for projects located within the Vermillion River Watershed and for projects not directly funded by the VRWJPO. For said projects, the SWCD may only consider providing VRWJPO cost share at an amount not to exceed \$50,000 per project where total project costs eligible for consideration under VRWJPO cost share do not exceed \$99,999. Proposers of any project exceeding the aforementioned dollar limit must apply directly to the VRWJPO for cost share funding pursuant to the VRWJPO Capital Improvement Project Cost Share Policy.

SECTION 6 GENERAL PROVISIONS

6.1 SWCD Obligations. In addition to the performance of services as described in Exhibit 1, the SWCD agrees to provide to the VRWJPO complete and unedited copies of any reports prepared in relation to the services provided pursuant to this Agreement. In addition, in all publications, press releases, or presentations to the public related to the services provided under this Agreement, the SWCD shall acknowledge funding by the VRWJPO for all or part of the costs of making such information available to the public.

6.2 Compliance with Laws/Standards. The SWCD agrees to abide by all federal, state or local laws, statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this

Agreement or to the facilities, programs, and staff for which the SWCD is responsible. This includes, but is not limited to all Standard Assurances, which are attached and incorporated as Exhibit 2.

6.3 Employee Status. The SWCD, its employees or agents, in implementing the terms of this Agreement are not employees of the VRWJPO. The VRWJPO, its staff or agents, in implementing the terms of this Agreement are not employees of the SWCD.

6.4 Liability. 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 SWCD.

6.5 Insurance. At its own expense, the SWCD shall procure and maintain policies of insurance covering the term of this Agreement, as set forth in the Insurance Terms, which are attached and incorporated as Exhibit 3, except the requirement to provide automobile liability insurance is waived so long as the SWCD does not transport volunteers under this Agreement. Such policies of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the indemnity provisions herein. The SWCD shall pay all retentions and deductibles under such policies of insurance.

6.6 Records Retention and Audits. The SWCD's bonds, records, documents, papers, accounting procedures and practices, and other records relevant to this Agreement are subject to the examination, duplication, transcription and audit by the VRWJPO, the Legislative Auditor or State Auditor under Minn. Stat. § 16C.05, subd. 5. If services under this Agreement use federal funds these records are also subject to review by the Comptroller General of the United States and his or her approved representative. Following termination of this Agreement, the SWCD must keep these records for six years or longer if any audit-in-progress needs a longer retention time.

6.7 Subcontracting. The VRWJPO and the SWCD understand and agree that one or more of the scope of services set forth in Exhibit 1 to this Agreement may be performed through another agent or subcontractor and that the subcontracting party is responsible for the performance of its subcontractors, unless otherwise agreed. The parties agree that neither will enter into any subcontract for the performance of the services contemplated under this Agreement without prior written consent of the other party and subject to such conditions and provisions as are deemed necessary. It is the responsibility of each party to ensure its subcontractor(s) has adequate and appropriate insurance coverage.

6.8 Timeliness. The VRWJPO and the SWCD agree to perform their respective obligations under this Agreement in a timely manner and keep each other informed about any delays that may occur.

6.9 Default: Force Majeure. Neither party shall be liable to the other party 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 party 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.

6.10 Data Privacy and Confidentiality. Data on individuals collected, created, received, kept or shared by the SWCD under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13) and its implementing rules. Further, federal laws on data privacy may also apply. The SWCD must comply with data privacy laws and rules as if the DISTRICT was the VRWJPO. The Data Practices Act also applies to subcontractors providing services under this Agreement. If public data is available from the VRWJPO, the SWCD may direct the public to the VRWJPO for access to the data.

The VRWJPO may give the SWCD access to, or the SWCD may become aware of, private or confidential information in performing services under this Agreement. Private and confidential information is data that is not public under the Minnesota Data Practices Act (Minn. Stat. ch. 13). The SWCD may keep the private and confidential information only for use in performing services under this Agreement. The SWCD

must impose procedures as are necessary to assure nondisclosure of private and confidential information directly or indirectly to third parties.

6.11 Assignment. Neither party may assign any of its rights under this Agreement without the prior written consent of the other party. Said consent may be subject to conditions.

SECTION 7 AUTHORIZED REPRESENTATIVES AND LIAISONS

7.1 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 or successor, Chair
Vermillion River Watershed Joint Powers Organization
4100 220th Street West, Suite 103
Farmington, MN 55024

TO THE SWCD: Robert Casey or successor, Chair
Scott County SWCD
7151 190th Street West, Suite 125
Jordan, MN 55352

In addition, notification to the VRWJPO 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.

7.2 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 SWCD. The VRWJPO and the SWCD 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, Administrator
Vermillion River Watershed Joint Powers Organization
Telephone: (952) 891-7011

SWCD Liaison: Troy Kuphal, Manager
Scott County SWCD
Telephone: (952) 492-5425

SECTION 8 TERMINATION

Either 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 party. Such notice to terminate for cause shall specify the circumstances warranting termination of this Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party.

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 its funding cannot be continued at a level sufficient to allow payment of amounts due under this Agreement. Written Notice of Termination sent by the VRWJPO to the SWCD 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.

SECTION 9 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 SWCD.

SECTION 10 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.

SECTION 11 FINAL AGREEMENT AND SEVERABILITY

This Agreement is the final agreement of the parties and the complete and exclusive statement of the terms agreed on and supersedes all prior negotiations, understandings or agreements. 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.

SECTION 12 SURVIVORSHIP

The following provisions of this Agreement survive after the termination date of this Agreement: Section 6.4 (Liability); Section 6.6 (Records Detention and Audits); Section 6.10 (Data Privacy and Confidentiality); and Section 10 (Minnesota Law to Govern).

[Remainder of page intentionally left blank]

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

**SCOTT COUNTY SOIL & WATER
CONSERVATION DISTRICT**

By _____
Robert Casey or successor, Chair
Board of Supervisors
Date of Signature: _____

**VERMILLION RIVER WATERSHED
JOINT POWERS ORGANIZATION**

By _____
Mike Slavik or successor, Chair
Date of Signature: _____

APPROVED AS TO FORM:

/s/ _____
Assistant County Attorney Date

VRW Res. No. 22-0
County Attorney File No. KS-23-39



Vermillion River Watershed Joint Powers Organization

4100 220th St. W., Suite 103, Farmington, MN 55024

Date: January 26, 2023
To: Vermillion River Watershed Joint Powers Board
From: Staff
Subject: Joint Powers Organization Expenses

Agenda Item 6a
January 2023

Expenses from the invoices submitted between October 14, 2022 and November 14, 2022 totalled \$49,973.45

The invoices submitted between November 14, 2022 and December 1, 2022 total:

<u>Invoice</u>	<u>Vendor</u>		<u>Amount</u>
	DC Staff	\$	31,583.23
IN28960	Scott County	\$	259.98
22-10800-13	144Design	\$	95.00
2011337	Stantec	\$	1,069.25
11/21/2022	MN Dirt Works	\$	64,005.30
11/29/2022	MN Dirt Works	\$	39,149.50
Total expense as approved on January 26, 2023			\$ 136,162.26

Action Requested: Approve all above expenses as presented on January 26, 2023



Vermillion River Watershed Joint Powers Organization

4100 220th St. W., Suite 103, Farmington, MN 55024

Date: January 26, 2023
To: Vermillion River Watershed Joint Powers Board
From: Staff
Subject: Joint Powers Organization Expenses

Agenda Item 6b
January 2023

Expenses from the invoices submitted between November 14, 2022 and December 1, 2022 totalled \$136,162.26

The invoices submitted between December 1, 2022 and December 31, 2022 total:

<u>Invoice</u>	<u>Vendor</u>		<u>Amount</u>
Dec 2022	DC Staff Time	\$	34,075.37
Nov-22	DC Legal	\$	236.76
IN29039	Scott County	\$	678.08
232288	DNR	\$	4,850.00
2024830	Stantec	\$	641.25
91025977	Dept of Interior	\$	8,724.00
12188	Water in Motion	\$	8,227.50
Total expense as approved on January 26, 2023			\$ 57,432.96

Action Requested: Approve all above expenses as presented on January 26, 2023

7a. Presentation of 2023 Vermillion River Watershed Joint Powers Organization Communications Plan

Meeting Date: 12/6/2023
Item Type: Information
Contact: Brita Moore-Kutz
Telephone: 952-891-7011
Prepared by: Brita Moore-Kutz

**PURPOSE/ACTION REQUESTED**

- Presentation of 2023 Vermillion River Watershed Joint Powers Organization Communications Plan

SUMMARY

Each year, the VRWJPO Communications and Outreach Specialist is responsible for updating the Communications, Outreach, and Engagement Plan. The word “Engagement” was added to the plan’s title this year. The plan contains the Specialist’s duties and descriptions, providing context with the watershed’s demographics, environmental resources, and structure. It lays out the Communications initiatives as described in the Watershed Plan and WRAPs and the resources available to help us reach our goals.

Some key points from the Communications Plan:

- The JPO’s work is completed almost entirely in partnership with others, including communications. Networks within Dakota County and externally are vital to our success.
- Measurable outcomes provided in the Watershed Plan are now incorporated.
- Like in the Watershed Plan Midpoint Evaluation we did in 2021, many of the Communications tasks are ongoing, quantified in the Measurable Outcomes report each year and evaluated internally by staff.

With frequent changes in technological trends and citizen attitudes about environmental issues, the Communications Plan is intended to be a living document, with updates at the end of every calendar year and throughout the year as needed. The Communications and Outreach Specialist will refer to this plan regularly to guide activities.

We welcome feedback and suggestions for Communications and Outreach work.

EXPLANATION OF FISCAL/FTE IMPACT

None.

Supporting Documents:

Attachment A: 2023 Vermillion River Watershed Joint Powers
Organization Communications Plan

Previous Board Action(s):

- ;

RESOLUTION**7a. Presentation of 2023 Vermillion River Watershed Joint Powers Organization Communications Plan**

Information only.

7b. Authorization to Execute an Agreement with the Minnesota Board of Water and Soil Resources for a Fiscal Year 2023 Clean Water Fund Grant

Meeting Date: 1/26/2023
Item Type: Regular-Action
Contact: Travis Thiel
Telephone: 952-891-7546
Prepared by: Travis Thiel
Reviewed by: N/A

N/A

**PURPOSE/ACTION REQUESTED**

- Authorization to execute an agreement with the Minnesota Board of Water and Soil Resources (BWSR) for a fiscal year 2023 Clean Water Fund (CWF) Grant

SUMMARY

The Vermillion River Watershed Joint Powers Organization (VRWJPO) staff requests execution of a CWF Grant with the BWSR for funding assistance for the East Lake fish barrier (barrier) and fish removal project in the Vermillion River Watershed.

In 2022, the BWSR requested applications for projects and practices that addressed water quality improvement for CWF Grant consideration. A Grant application was submitted to install a low-voltage electric fish barrier near the outlet of East Lake to prevent rough fish movement into and out of the lake and subsequently remove rough fish from East Lake. CWF Grants are a competitive process with other projects throughout Minnesota. The application was selected and approved for funding through that process. The BWSR has provided the VRWJPO with a Grant agreement for the barrier project.

The barrier and rough fish removals are estimated to cost \$375,000, which includes costs for engineering, fabrication, installation, construction, and rough fish removals. The Grant will provide \$300,000 toward the project cost of the barrier. The Grant has a 25-percent local match requirement that is being met using a combination of City and VRWJPO funding. The City and VRWJPO will each provide up to \$37,500 in local match for rough fish removals, installation, and construction.

VRWJPO staff and the Vermillion River Watershed Planning Commission recommend executing an agreement with the Minnesota Board of Water and Soil Resources for a fiscal year 2023 CWF Grant in an amount not to exceed \$300,000.

EXPLANATION OF FISCAL/FTE IMPACT

The VRWJPO will provide up to \$37,500 from the Capital Improvement Projects portion of the VRWJPO Budget and CWF Grant administration services.

RESOLUTION

7b. Authorization to Execute an Agreement with the Minnesota Board of Water and Soil Resources (BWSR) for a Fiscal Year 2023 Clean Water Fund (CWF) Grant

WHEREAS, in 2022 the BWSR requested applications for projects and practices that addressed water quality improvement for CWF Grant consideration; and

WHEREAS, a Grant application was submitted to install a fish barrier near the outlet of East Lake to prevent rough fish movement into and out of the lake and subsequently remove rough fish from East Lake; and

WHEREAS, the application was selected and approved for grant funding through that process; and

WHEREAS, the barrier and rough fish removals are estimated to cost \$375,000, which includes costs for engineering, fabrication, installation, construction, and rough fish removals; and

WHEREAS, the Grant will provide \$300,000 toward the project cost of the barrier; and

WHEREAS, the Grant has a 25-percent local match requirement that is being met using a combination of City and VRWJPO funding; and

WHEREAS, the City and VRWJPO would each provide up to \$37,500 in local match in the form of costs for rough fish removals, installation, and construction.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board authorizes its chair to execute an agreement with the BWSR in an amount not to exceed \$300,000 for a CWF Grant; subject to approval as to form by the Dakota County Attorney's Office.

7c. Authorization to Execute a Joint Powers Agreement with the City of Lakeville for the East Lake Rough Fish Barrier and Rough Fish Removals Project

Meeting Date: 1/26/2023
Item Type: Regular-Action
Contact: Travis Thiel
Telephone: 952-891-7546
Prepared by: Travis Thiel
Reviewed by: N/A

N/A

**PURPOSE/ACTION REQUESTED**

- Authorization to execute a Joint Powers Agreement with the City of Lakeville for the East Lake rough fish barrier and rough fish removals project

SUMMARY

The Vermillion River Watershed Joint Powers Organization (VRWJPO) staff requests execution of a Joint Powers Agreement (JPA) with the City of Lakeville (City) to convey funding from a Clean Water Fund (CWF) Grant and the VRWJPO to the City for an East Lake rough fish barrier and rough fish removals project.

The City has been monitoring the water quality in East Lake for over a decade. East Lake is on the EPA's 303d Impaired Waters List for excess nutrients, which is the result of having too much phosphorus. Detailed studies of the causes of the excess phosphorus loading has indicted that the phosphorus release from the lake bottom sediments (internal loading) are a significant cause of the poor water quality. Rough fish, including carp and goldfish, are present in significant quantities in the lake and these species are aggressive bottom feeders stirring up the lake bottom sediments and releasing excess phosphorus into the water column resulting in algae blooms. Carp tracking has shown that carp inhabit East Lake, but also travel to and from North Creek. A fish barrier in the channel between East Lake and North Creek would prevent rough fish movement between North Creek and East Lake, which provides the opportunity to remove rough fish from East Lake and improve water quality.

In 2022, the BWSR requested applications for projects and practices that addressed water quality improvement for CWF Grant consideration. A CWF Grant application was submitted to install a low-voltage electric fish barrier near the outlet of East Lake to prevent rough fish movement into and out of the lake and subsequently remove rough fish from East Lake. CWF Grants are a competitive process with other projects throughout Minnesota. The application was selected and approved for funding through that process.

The estimated cost for the rough fish barrier and rough fish removals project is \$375,000. The CWF Grant would provide \$300,000 in financial assistance toward the barrier. The Grant has a 25-percent local match requirement that will be met using a combination of City and VRWJPO funding. The City and VRWJPO will each provide up to \$37,500 in local match for rough fish removals, installation, and construction. The VRWJPO will convey CWF Grant funding and the VRWJPO's portion of local match to the City for project engineering, installation, construction, and fish removals.

VRWJPO staff and the Vermillion River Watershed Planning Commission recommend executing a JPA with the City for the East Lake rough fish barrier and rough fish removals project in an amount not to exceed \$337,500.

EXPLANATION OF FISCAL/FTE IMPACT

The VRWJPO will receive \$300,000 in revenues from the BWSR under the CWF Grant. The VRWJPO will pass through the CWF Grant funding to the City of Lakeville and will provide up to \$37,500 in local match from the Capital Improvement Projects portion of the VRWJPO Budget.

Supporting Documents:

Attachment A: Draft JPA with Lakeville for the East Lake Rough Fish Barrier and Rough Fish Removals Project

Previous Board Action(s):**RESOLUTION****7c. Authorization to Execute a Joint Powers Agreement with the City of Lakeville for the East Lake Rough Fish Barrier and Rough Fish Removals Project**

WHEREAS, the City has been monitoring the water quality in East Lake for over a decade, and East Lake is on the EPA's 303d Impaired Waters List for excess nutrients, which is the result of having too much phosphorus; and

WHEREAS, detailed studies of the causes of the excess phosphorus loading has indicted that the phosphorus release from the lake bottom sediments are a significant cause of the poor water quality; and

WHEREAS, rough fish, including carp and goldfish, are present in significant quantities in the lake and these species are aggressive bottom feeders stirring up the lake bottom sediments and releasing excess phosphorus into the water column resulting in algae blooms; and

WHEREAS, to prevent rough fish migration into and out of East Lake, a rough fish barrier is needed in the channel between East Lake and North Creek and subsequent rough fish removals are needed to improve water quality; and

WHEREAS, the estimated cost for the rough fish barrier and rough fish removals project cost is \$375,000; and

WHEREAS, the VRWJPO applied for and was awarded a \$300,000 Clean Water Fund (CWF) Grant for the rough fish barrier; and

WHEREAS, the Grant has a 25-percent local match requirement that is being met using a combination of City and VRWJPO funding; and

WHEREAS, the City and VRWJPO would each provide up to \$37,500 in local match in for rough fish removals, installation, and construction.

WHEREAS, the VRWJPO would convey the CWF Grant and the VRWJPO's portion of local match to the City for project implementation.

NOW, THEREFORE, BE IT RESOLVED, that the Vermillion River Watershed Joint Powers Board authorizes its chair to execute a Joint Powers Agreement with the City for the East Lake rough fish barrier and rough fish removals project in an amount not to exceed \$337,500; subject to approval as to form by the Dakota County Attorney's Office.

**JOINT POWERS AGREEMENT FOR
THE EAST LAKE ROUGH FISH BARRIER AND ROUGH FISH REMOVALS PROJECT
BETWEEN THE VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION
AND
THE CITY OF LAKEVILLE
CITY PROJECT 23-58**

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

WHEREAS, East Lake is a recreational lake within the Vermillion River Watershed; and

WHEREAS, East Lake is identified on the EPA's 303d Impaired Waters List for excess nutrients, namely phosphorus; and

WHEREAS, release of phosphorus from the lake bottom sediment is a contributor to the water quality problems; and

WHEREAS, rough fish like carp and goldfish are present in the lake and their aggressive bottom feeding results in additional phosphorus release from the lake bottom sediments; and

WHEREAS, restoration strategies in the WRAPS report identify the need for fish barriers and rough fish removals; and

WHEREAS, blocking movement of rough fish to their spawning areas and limiting fish recruitment while also removing rough fish from East Lake will result in improved water quality; and

WHEREAS, a fish barrier and fisheries management were identified in the Vermillion River Watershed Management Plan's Implementation Section; and

WHEREAS, a rough fish barrier and subsequent rough fish removals (Project) will be completed to address the water quality problem; and

WHEREAS, the estimated Project cost is \$375,000; and

WHEREAS, the VRWJPO was awarded a \$300,000 Clean Water Fund (Grant) from the Minnesota Board of Water and Soil Resources (BWSR) for the barrier portion of the project; and

WHEREAS, the Grant has a minimum match requirement equal to 25% of the amount of Grant monies received, either in the form of cash or in-kind services; and

WHEREAS, the City and VRWJPO have included cash match of at least 25% of the Grant amount used for Project costs in their Capital Improvement Plan and will participate in rough fish removals or the installation and construction of the fish barrier after applying Grant monies; and

WHEREAS, the VRWJPO, and as a result of this Joint Powers Agreement, the City will follow all applicable BWSR Grant policies and requirements that are relevant to each party.

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

ARTICLE 1 PURPOSE

The purpose of this Agreement is to define the Project responsibilities and Project cost-sharing obligations of the VRWJPO and the City.

ARTICLE 2 PARTIES

The parties to this Agreement are the VRWJPO and the City.

ARTICLE 3 TERM

This Agreement shall be effective the date of the signatures of the parties to this Agreement and shall remain in effect until December 31, 2025, 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 City 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 TECHNICAL AND QUALITY ASSURANCE

The VRWJPO and City or their representatives will provide technical and quality assurance for the rough fish barrier portion of the Project. Any engineer providing technical and quality assurance on earthwork for the barrier must be a licensed Professional Engineer in the State of Minnesota. Earthwork for the barrier will be designed using appropriate practice standards for design, construction, operation, and maintenance. Appropriate practice standards from the United States Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide, Minnesota Stormwater Manual, or other scientifically appropriate and applicable standards can be used. If vegetative practices are needed as part of earthwork, they must follow the BWSR Board adopted Native Vegetation Establishment and Enhancement Guidelines.

An engineer must be licensed in the State of Minnesota if they provide technical and quality assurance specific to the rough fish barrier. If an engineer is not used for technical and quality assurance, the installer providing technical and quality assurance must have previously documented experience with the installation, operation, and maintenance of the barrier; or must be an employee of the barrier manufacturer and have experience with the installation, operation, and maintenance of the barrier. The Engineer and/or barrier installer providing technical and quality assurance will certify that the barrier was installed or constructed in accordance with the applicable plans and specifications, including approved modifications, prior to authorization for payment by the VRWJPO. An as-built plan set will be provided to the VRWJPO by the Engineer and/or installer immediately following barrier completion as part of the required Project certification.

Rough fish removals will be performed by a commercial fisherman licensed and approved for fish removals for this portion of the State.

ARTICLE 6 PROJECT PLANS AND SPECIFICATIONS

The City is the lead agency for design and construction administration of the barrier portion of the Project, effective upon execution of this Agreement by both parties. The VRWJPO and City shall approve the plans and specifications (Barrier Plans) prior to advertising for bids. The City is the lead agency for implementation of the rough fish removals.

ARTICLE 7 PAYMENT

7.1 The City will administer the contracts and act as the paying agent for all payments to the contractor(s).

7.2 The Grant will reimburse activities up to \$300,000 related to the engineering, permitting, bidding, installation, construction of the barrier (City eligible).

7.3 The Grant has a match requirement to the amount of monies received. The match shall be provided by the City and the VRWJPO in the amount of up to \$75,000 in cash match. The match will be evenly split between organizations with each providing up to \$37,500 that will pay for rough fish removals and/or barrier construction. The VRWJPO's portion of its match will be conveyed to the City for Project implementation.

7.4 The VRWJPO will contribute in-kind Grant administration services for the project.

7.5 The City's maximum eligible reimbursement is up to \$337,500.

7.6 No payment shall be made prior to approval of the Barrier Plans by both the VRWJPO and City.

7.7 The VRWJPO shall pay the City for engineering and construction costs on a reimbursement basis. Under the terms of the Grant, the VRWJPO will receive funds in the following 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 City, if requested, on a reimbursement basis, contingent upon the VRWJPO's receipt of adequate Grant disbursements to make City requested payments. Ten percent (10%) of the Agreement maximum shall be withheld until the VRWJPO has verified that the barrier has been installed in accordance with this Agreement and the Barrier 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.

7.8 The VRWJPO may refuse to pay 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.

7.9 All services provided by the VRWJPO under the BWSR Grant Agreement, attached and incorporated herein as Exhibit 1, and services provided by the City to the VRWJPO through this Joint Powers Agreement must be performed to the State's satisfaction, as set forth in Exhibit 1 and in the BWSR approved work plan.

ARTICLE 8 CITY OBLIGATIONS

8.1 AUTHORIZED PURPOSE. The funds provided under the terms of this Agreement may only be used by the City for the payment of costs directly related to the Project.

8.2 CONSTRUCTION REQUIREMENTS. The barrier shall be constructed in accordance with the Barrier Plans. The VRWJPO and City shall approve any modifications to the Barrier Plans.

8.3 CONSTRUCTION AND DESIGN FAILURES. Any failure related to construction or design of the

barrier shall be addressed in the contracts with the construction firm or professional services firm.

8.4 RIGHT-OF-ENTRY. The City 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 or implementation of the Project.

8.5 OPERATION AND MAINTENANCE. Dakota County will be responsible for the for on-going maintenance of the barrier through a separate agreement with the City and VRWJPO upon completion for a minimum of 10 years unless necessitated by a failure due to Acts of God or Force majeure.

8.6 COMPLIANCE WITH LAWS/STANDARDS. The City shall abide by all federal, state, or local laws, statutes, ordinances, rules, and regulations in constructing or implementing the Project, including obtaining all necessary permits to construct or implement the Project.

8.7 PUBLICITY. The City hereby permits the VRWJPO to take and disclose photographs of the Project for use in publications or promotional material or on its website to highlight the VRWJPO's programs. The City shall appropriately acknowledge the funding provided by the VRWJPO, the State of Minnesota, and the Clean Water, Land, and Legacy Amendment in any promotional materials, signage, reports, publications, notices, and presentations related to the Project. This section shall survive the expiration or termination of this Agreement.

ARTICLE 9 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 City. Each party warrants that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program and that each has minimum coverage consistent with liability limits contained in Minn. Stat. Ch. 466. In the event of any claims or actions filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. This section shall survive the expiration or termination of this Agreement.

ARTICLE 10 AUTHORIZED REPRESENTATIVES AND LIAISONS

10.1 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 an amendment of this Agreement:

TO THE VRWJPO: Mike Slavik or successor, Chair
Vermillion River Watershed Joint Powers Organization
14955 Galaxie Avenue
Apple Valley, MN 55124
Telephone: (952) 891-7030

TO THE CITY: Justin Miller, City Administrator, or successor
City of Lakeville
20195 Holyoke Avenue
Lakeville, MN 55044
Telephone: (952) 985-4400

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

10.2 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 City. The VRWJPO and the City 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: Travis Thiel
Telephone: (952) 891-7546
Email: travis.thiel@co.dakota.mn.us

City Liaison: McKenzie Cafferty
Environmental Resources Manager
Telephone: (952) 985-4520
Email: mcafferty@lakevillemn.gov

ARTICLE 11 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, or as delegated by the parties' respective Boards, and signed by the Authorized Representatives, or delegated authority, of the VRWJPO and the City.

ARTICLE 12 TERMINATION

12.1 IN GENERAL. Either 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 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 City in the event of a default by the VRWJPO. 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.

12.2 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 its funding cannot be continued at a level sufficient to allow payment of the amounts due 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 City up to Notice of Termination of work on the Project.

ARTICLE 13 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.

ARTICLE 14 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 15 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.

ARTICLE 16 GOVERNMENT DATA PRACTICES

The City 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 City or the VRWJPO.

ARTICLE 17 SURVIVABILITY

The provisions of articles 8.3 (Construction and Design Failures), 8.5 (Operation and Maintenance), 9 (Indemnification) and 16 (Government Data Practices) survive the expiration or termination of this Agreement.

ARTICLE 18 DEFAULT: FORCE MAJEURE

Neither party shall be liable to the other party 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 party 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.

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

CITY OF LAKEVILLE

By _____
Luke Hellier or successor, Mayor Date of
Signature: _____

By _____
Ann Orlofsky, City Clerk
Date of Signature: _____

**VERMILLION RIVER WATERSHED
JOINT POWERS ORGANIZATION**

By _____
Mike Slavik or successor, Chair
Date of Signature: _____

APPROVED AS TO FORM:

Assistant Dakota County Attorney
VRW Res. No. _____
KS

DRAFT