



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Chris Jenkins, Parks & Recreation Director
Date: January 29, 2020
Item: Joint Powers Agreement

Council Action Requested: Approve Joint Powers Agreement with Dakota County for Mississippi River Regional Trail Reconstruction Project.

Background Information: A roughly 3-mile segment of the Hastings trail system is also identified as the Mississippi River Regional Trail, generally located along County Hwy 42 and the Mississippi River in the northwest corner of Hastings. This segment of trail connects the Hastings Trail System to Dakota County's Regional Trail System and to South Washington County's Regional Trail System. It is a vital link for recreation and tourism.

City and County staff identified a need for trail improvements within this trail segment and have worked through the necessary steps to identify and secure funding to complete a trail reconstruction project of approximately 3,300 feet, as well as complete crack repairs as needed.

The attached Joint Powers Agreement allows the County to provide \$216,700.00 to be used specifically for this trail reconstruction and crack repair project. The JPA requires the City to hire the contractor(s) and lead the project(s), and the JPA stipulates a transfer of jurisdiction, maintenance, use, and operations from the City to the County after completion of the reconstruction project and crack repairs.

The transfer of jurisdiction is beneficial to the City of Hastings, the Residents of Hastings, Dakota County, and all those who use or will use the trail. Ultimately the jurisdiction transfer allows Dakota County to assume repair and maintenance responsibilities, allows signage and amenity installation, and allows for future improvement projects to be led by Dakota County on this section of Regional Trail.

This JPA also sets the stage for an upcoming Supplemental Maintenance Agreement. This SMA is currently being developed, and will be finalized shortly before, or directly after the reconstruction project is completed.

Dakota County has a few options to consider when developing the SMA for the routine maintenance of the trail and corridor. They can choose to maintain it with Dakota County staff and resources, they can choose to hire a private contractor or they can choose to hire the City of Hastings to complete the routine maintenance. With any of the above scenarios, the standards of routine maintenance will be the same. Further, Dakota County staff have suggested they are open to discussing the preferred option with the City of Hastings prior to finalizing the Supplemental Maintenance Agreement. Staff will return to the City Council for input once the proposed SMA has been fully developed, costs have been evaluated, and options have been vetted at a staff level.

Financial Impact: The reconstruction project and crack repairs will be completed via reimbursement from the County. P&R Staff will work closely with Finance Staff to ensure all costs are allocated accurately and reimbursement requests are submitted on a timely schedule. There is no overall budget impact to the City for these projects, however some staff time will be required to solicit and manage contractors and the project overall.

Advisory Commission Discussion: None

Council Committee Discussion: None

Attachments:

- Joint Powers Agreement

**JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY
AND THE CITY OF HASTINGS FOR COST SHARING OF REGIONAL TRAIL
IMPROVEMENTS AND RECONSTRUCTION**

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

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

WHEREAS, the City of Hastings (City) is a Minnesota municipal corporation (collectively herein the County and the City are referred to as the “Parties”); and

WHEREAS, the Parties are desirous of entering into this Agreement so that the County and the City may share the actual construction costs for trail improvements and trail reconstruction, improvement, widening, and construction of 3,300 feet of the Mississippi River Regional Trail to Hastings (“Project”); and

WHEREAS, the Parties anticipate that the 3,300 feet of the Mississippi River Regional Trail (“Trail”) will be incorporated into a regional trail system leading to points of interest outside the City; and

WHEREAS, as part of incorporation of the Trail into a regional trail system, it is mutually desirable to transfer jurisdiction, maintenance, use, and operations to the County.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the Parties shall derive from this Joint Powers Agreement (“Agreement”), the Parties hereby enter into this Agreement for the purposes stated herein.

ARTICLE 1

Purpose

The purpose of this Agreement is to provide cooperation and funding by the County to the City for actual construction costs of the Project and to define the responsibilities and obligations of the Parties for cost contribution and Project management. All funds provided by the County are to be used by the City solely for this purpose. The City shall use funds pursuant to this Agreement exclusively for the payment of actual construction costs as provided in this Agreement. The other purpose of this Agreement is to provide a procedure for transferring jurisdiction and power over maintenance, use, operation, repair, replacement, reconstruction, and installation of signage, markings, landscaping, drainage, utilities, sewer, water, improvements, alterations, and any other work directly related to the Trail to Dakota County.

ARTICLE 2

Parties

The Parties to this Agreement are the City and County. County is acting by and through its Parks Department. City is acting by and through its Parks Department.

ARTICLE 3
Term

This Agreement shall be effective on the date of the signature (Effective Date) of the last party to sign this Agreement and expires on December 31, 2021 or upon completion by the Parties of their respective obligations under this Agreement, whichever occurs first, unless amended in writing or earlier terminated by law or according to the provisions of this Agreement.

ARTICLE 4
Cooperation

The Parties 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 disputes in an equitable and timely manner.

ARTICLE 5
County's Payment Obligation

- 5.1. **Contribution Amount.** The County shall reimburse the City One Hundred Ninety-Seven Thousand Dollars and 00/100 (\$197,000.00), including a 10 percent contingency for a total amount not to exceed Two Hundred Sixteen Thousand Seven Hundred Dollars and 00/100 (\$216,700.00) for actual construction costs incurred for the paving, crack repair work, reconstruction, and widening of 3,300 feet of the Mississippi River Regional Trail to Hastings. The areas of construction, crack repair work, widening, and reconstruction are depicted and highlighted in magenta in Exhibit 1. In addition, crack repair work may occur within any area where the County will assume jurisdiction and operation as identified in Exhibit 1.
- 5.2. **Reimbursement by County.** After this Agreement has been executed by both parties, the City may claim reimbursement for costs in accordance with the Agreement.
 - A. The County will reimburse the City within forty-five (45) calendar days of the City's submission of invoices for actual construction costs to the County. Invoices must be submitted in the form acceptable to the County. All requests for reimbursement must be submitted by November 16, 2021. The City must certify that the requested reimbursements are accurate, appropriate and that such expenditures have not been otherwise reimbursed. If the invoice is incorrect, defective, or otherwise improper, the County will notify City within ten (10) calendar days of receiving the incorrect invoice. Upon receiving the corrected invoice from City, the County will make payment within forty-five (45) calendar days.
 - B. **Actual Construction Costs.** Any net increase in actual construction costs exceeding \$216,700.00 shall not affect or increase the County's contribution amounts. The County's contribution amounts shall not exceed the limits set forth herein, regardless of net increases in the estimated or actual costs of the trail reconstruction.

- C. Right to Refuse Payment. The County may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude the County from questioning the propriety of the claim. The County reserves the right to offset any overpayment or disallowance of claim by reducing future payments.
- D. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect the Project cost, scope or cost participation must be approved by the Authorized Representatives of both Parties prior to execution of work. Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.

ARTICLE 6
City's Obligations

- 6.1. Construction. The City, or its agents or contractors, shall reconstruct, improve, and widen 3,300 feet of existing eight-foot-wide trail segments to ten feet. Exhibit 1 further identifies and describes this area, which is highlighted in magenta. Notwithstanding anything herein to the contrary, the City may use funds provided through this Agreement for crack repair work within any area where the County will assume jurisdiction and operation. The City will lead the work, utilizing a contractor and shall be responsible for awarding contracts for the construction of said trail. The City will provide project design and management. Project bid, specifications, and completion shall be reviewed and approved by the County.
- 6.2. Acknowledgement. The City shall appropriately acknowledge the funding assistance provided by the County pursuant to this Agreement in any promotional materials, signage, reports, publications, notices and presentations concerning the Project. The County shall appropriately acknowledge the assistance provided by the City pursuant to this Agreement in any promotional materials, signage, reports, publications, notices and presentations concerning the Project.
- 6.3. Compliance with Laws/Standard. The City shall abide by all federal, state, or local laws, statutes, ordinances, rules and regulations related to the work anticipated by this Project. The City or contractor, if any, is responsible for obtaining and complying with all federal, state, or local permits, licenses, and authorizations necessary for performing the work.
 - A. Assignment. Neither the City nor the County may assign nor transfer any rights, duties, interests, or obligations under this Agreement without the prior consent of the County and a fully executed assignment agreement, executed by the County and the City.
 - B. Use of Contractors. The City may engage contractors to perform activities funded pursuant to this Agreement. However, the City retains primary responsibility to the County for performance of the activities and the use of such contractors does not relieve the City from any of its obligations under this Agreement.

If the City engages any contractors to perform any part of the Project, the City agrees that the contract for such services, labor, or materials shall include the following provisions:

- (a) The contractor must maintain all records and provide all reporting as required by this Agreement;
- (b) The contractor must defend, indemnify, and hold harmless the County from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted work, caused by any intentional or negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable;
- (c) The contractor must provide and maintain insurance through the term of this Agreement in amounts and types of coverage as set forth in the Insurance Terms, which is attached and incorporated as Exhibit 2, and provide to the County prior to commencement of the contracted work a certificate of insurance evidencing such insurance coverage;
- (d) The contractor must be an independent contractor for the purposes of completing the contracted work.
- (e) The contractor must acknowledge that the contract between the City and the contractor does not create any contractual relationship between County and the contractor, but that the County is a third-party beneficiary of the contract.
- (f) The contractor shall perform and complete the activities in full compliance with this Agreement and all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the activities.

6.4. Future Platting. If part of the Trail is located on property included in a plat map submitted for approval, including without limitation a submission for replatting or subdivision platting, the Trail shall be reflected and shown on the plat map. The City is responsible for fulfilling any condition precedent necessary to reflect or show the Trail on a plat map, including without limitation obtaining an easement.

6.5. City Responsibility for Project Delivery. The City will be responsible for management and inspection of the work of the Project assuring it is in accordance with State laws and meets approved construction standards. The County will have no actual or implied legal responsibility to the City relating to the above obligations and responsibilities of the Project.

6.6. Trail Maintenance. The City is responsible for all Trail maintenance, use, operations, repairs, replacement, reconstruction, removal, or installation of signage, markings,

landscaping, drainage, utilities, sewer, water, improvements, alterations, or any other work. The County shall have no responsibility or liability related to Trail maintenance, use, operations, repairs, replacement, reconstruction, removal, or installation of signage, markings, landscaping, drainage, utilities, sewer, water, improvements, alterations, or any other work.

ARTICLE 7
Transfer of Jurisdiction

- 7.1. Upon completion of the Project, the City and the County shall execute a separate Agreement addressing maintenance and operation of the Trail (“Supplemental Maintenance Agreement”). Exhibit 1 further identifies and describes the segments of the trail that are subject to this Article 7. Execution of the Supplemental Maintenance Agreement is a condition precedent to the County accepting the Project and designating the Trail as a Regional Trail.
- A. Pursuant to the Supplemental Maintenance Agreement, the County shall assume jurisdiction, and shall thereafter have the power to maintain, use, operate, repair, replace, reconstruct, remove, and install signage, markings, landscaping, drainage, utilities, sewer, water, improvements, alterations, or any other work directly arising from operation of the Trail. The County may hire contractors or County staff, or use volunteers, or pay another government unit to perform, provide, or supply the labor, materials, work, services (professional or otherwise), or products necessary or advisable to exercise its powers over the Trail.
 - B. Pursuant to the Supplemental Maintenance Agreement, the County shall have no responsibility for repairs, maintenance, use, operations, replacement, reconstruction, removal, or installation of signage, markings, landscaping, drainage, utilities, sewer, water, improvements, alterations, or any other work that does not arise from the ownership and operation of the Trail. This exception applies regardless of whether work occurs within the Trail or whether there is an incidental benefit to the Trail or the area surrounding the Trail.
- 7.2. At County’s request, the City shall execute and obtain all documents or instruments that are necessary or advisable, as determined by the County, to convey the rights and permissions that will allow or facilitate the County to fulfill its obligations and responsibilities under the Supplemental Maintenance Agreement and exercise jurisdiction and control over the trail segments incorporated into the County’s Regional Trail System. These may include, without limitation, deeds, licenses, waivers, consents, joint power agreements, easements, assignments, agreements, transfers, or permits. At its own expense, City shall procure all deeds, licenses, waivers, consents, joint power agreements, easements, assignments, agreements, transfers, or permits, or other rights as required by the County. The City shall furnish copies of the above to the County upon request.

ARTICLE 8
Indemnification and Insurance

- 8.1. Each party to this Agreement shall be solely 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 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. In order to insure a unified defense against any third party liability claim arising from the work of the Project, City agrees to require all contractors or subcontractors hired to do any of the work contemplated by this Agreement to maintain commercial general liability insurance in amounts consistent with minimum limits of coverage established under Minn. Stat. § 466.04 during the term of such activity. All such insurance policies shall name City and County as additional insureds. City agrees to promptly provide County copies of any insurance policy related to this Agreement upon the County's request.
- 8.2. Notwithstanding anything herein to the contrary, to the greatest extent allowed by law, the City shall indemnify and hold harmless the County, its officers, agents, and employees, from and against any actual or alleged loss, litigation cost (e.g., reasonable attorney fees and costs and expenses), costs, settlement, judgment, demands, damage, lien, debt, liability, injury, harm, fees, fines, penalties, interest, expenditure, diminution in value, or disbursement arising from, attributable to, sustained, or incurred by Dakota County, or its officers, agents, and employees, which is attributable to City's, or City's agents', independent contractors', employees', or delegates' performance of or failure to perform the City's obligations in Section 7.2.
- A. **Construction and Survivorship.** The language in Section 8.2 shall be constructed and construed so as to give its natural and ordinary meaning and effect, regardless of any rule or law to the contrary. This indemnity provision survives expiration or termination of this Contract.

ARTICLE 9
Reporting, Accounting and Auditing Requirements

- 9.1. **Accounting Records.** The City agrees to establish and maintain accurate and complete accounts, financial records and supporting documents relating to the receipt and expenditure of the funding provided in accordance with this Agreement. Such accounts and records shall be kept and maintained by the City for a minimum period of six (6) years following the expiration of this Agreement. City agrees to promptly provide the County copies of any accounting records related to this Agreement upon the County's request.

- 9.2. Auditing. The City shall maintain books, records, documents and other evidence pertaining to the costs or expenses associated with the work performed pursuant to this Agreement. Upon request, the City shall allow the County, Legislative Auditor or the State Auditor to inspect, audit, copy or abstract all of the books, records, papers or other documents relevant to this Agreement. The City shall use generally accepted accounting principles in the maintenance of such books and records, and shall retain all such books, records, documents and other evidence for a period of six (6) years from the date of the completion of the activities funded by this Agreement.
- 9.3. Data Practices. The City agrees with respect to any data that it possesses regarding the Agreement to comply with all of the provisions of the Minnesota Government Data Practices Act contained in Minnesota Statutes Chapter 13, as the same may be amended from time to time.
- 9.4. Authorized Representatives. The following named persons are designated as 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 Representatives shall have only authority specifically granted by their respective governing boards. Notice required to be provided pursuant this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification to this Agreement:

TO THE COUNTY: Matt Smith
 County Manager
 1590 Highway 55
 Hastings, MN 55033-2372

Matt Smith, or his successor, has the responsibility to monitor the City’s performance pursuant to this Agreement and the authority to approve invoices submitted for reimbursement.

TO THE CITY: Dan Wietecha
 City Administrator
 101 East 4th Street
 Hastings, MN 55033

In addition, notification to 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.

- 9.5. 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 County and the City. The parties 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:

County Liaison: Steve Sullivan, Parks Director
Telephone: (952) 891-7088
Email: Steve.Sullivan@co.dakota.mn.us

City Liaison: Chris Jenkins, Parks & Recreation Director
Telephone: (651) 480-6176
Email: CJenkins@hastingsmn.gov

- 9.6. Changes to Designated Liaisons or Authorized Representatives. The Parties shall provide written notification to each other of any change to the designated liaison or authorized representative. Such written notification shall be effective to change the designated liaison or authorized representative under this Agreement, without necessitating an amendment of this Agreement.

ARTICLE 10
Modifications

Any alterations, amendments, 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 County and the City.

ARTICLE 11
Termination

- 11.1. In General. Either Party may terminate this Agreement for cause by giving seven (7) calendar days written notice of its intent to terminate to the other Party. Such Notice of Termination 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.
- 11.2. Termination by Dakota County for Lack Of Funding. Notwithstanding any provision of this Agreement to the contrary, Dakota County 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 payments due under this Agreement or any contract or work orders of Invoices submitted. Written notice of termination sent by Dakota County to the City by facsimile is sufficient notice under this section. Dakota County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. Dakota County will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding.

ARTICLE 12
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 or its breach shall be venued in Dakota County, Minnesota.

ARTICLE 13
Merger

- 13.1. 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. No other understanding regarding this Agreement, whether written or oral may be used to bind either party.
- 13.2. Exhibits 1 (including all Attachments or addenda) through and including Exhibit 2 are attached hereto, and all terms, obligations and conditions in said Exhibits are incorporated herein and made a part of this Contract. By signing this Contract, the Parties affirm and acknowledge receipt of all the above Exhibits (including all Attachments or Addenda).

ARTICLE 14
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 15
Waiver

If either of the Parties fails to enforce any provision of this Agreement, that failure shall not result in a waiver of the right to enforce the same or another provision of this Agreement.

ARTICLE 16
Relationship of the Parties

Nothing contained in this Agreement is intended or should be construed as creating or establishing the relationship of co-partners or joint ventures between the County and the City, nor shall either of the Parties be considered or deemed to be an agent, representative or employee of the other party in the performance of this Agreement. Personnel of either of the Parties or other persons while engaging in the performance of this Agreement shall not be considered

employees of the other party and shall not be entitled to any compensation, rights or benefits of any kind whatsoever.

ARTICLE 17
Interpretation and Construction

This Agreement was fully reviewed and negotiated by the Parties. Accordingly, the Parties agree the “against the offeror” principle of contract interpretation and construction shall not be applied to this Agreement. Any ambiguity, inconsistency, or question of interpretation or construction in this Agreement shall not be resolved strictly against the party that drafted the Agreement. It is the intent of the Parties that every section (including any subsection thereto), clause, term, provision, condition, and all other language used in this Agreement shall be construed and construed so as to give its natural and ordinary meaning and effect.

ARTICLE 18
Survivorship

The following provisions under this Agreement shall survive after the termination or expiration of this Agreement: Article 6.2 (Acknowledgement); Article 7 (Transfer of Jurisdiction); Article 8 (Indemnification and Insurance); Article 9 (Reporting, Accounting and Auditing); Article 12 (Minnesota Law to Govern); Article 14 (Severability); Article 17 (Interpretation and Construction); and Article 18 (Survivorship).

[the remainder of this page has been intentionally left blank]

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

APPROVED AS TO FORM:

DAKOTA COUNTY

Assistant County Attorney/Date
KS-18-403

By _____
Matt Smith
County Manager

Date of Signature: _____

County Board Res. No. _____

CITY OF HASTINGS

By _____
Mary Fasbender, Mayor
Date of Signature: _____

By _____
Julie Flaten, City Clerk
Date of Signature: _____

Mississippi River Regional Trail

Nininger Township

New Restrooms & Parking

Washington County

New Restrooms & Parking

New Trail with Hudson Spayer Development



TH 55

Hastings

Hastings to Red Wing (Future)

Vermillion River Greenway (future)

Mississippi River Reginal Trail - Hastings Reconstruction & Jurisdictional Transfer

-  Cost Share (Rehabilitation & Reconstruction)
-  Jurisdictional/Operations Transfer


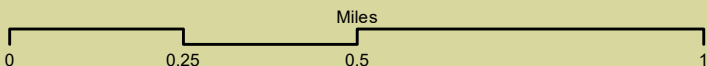
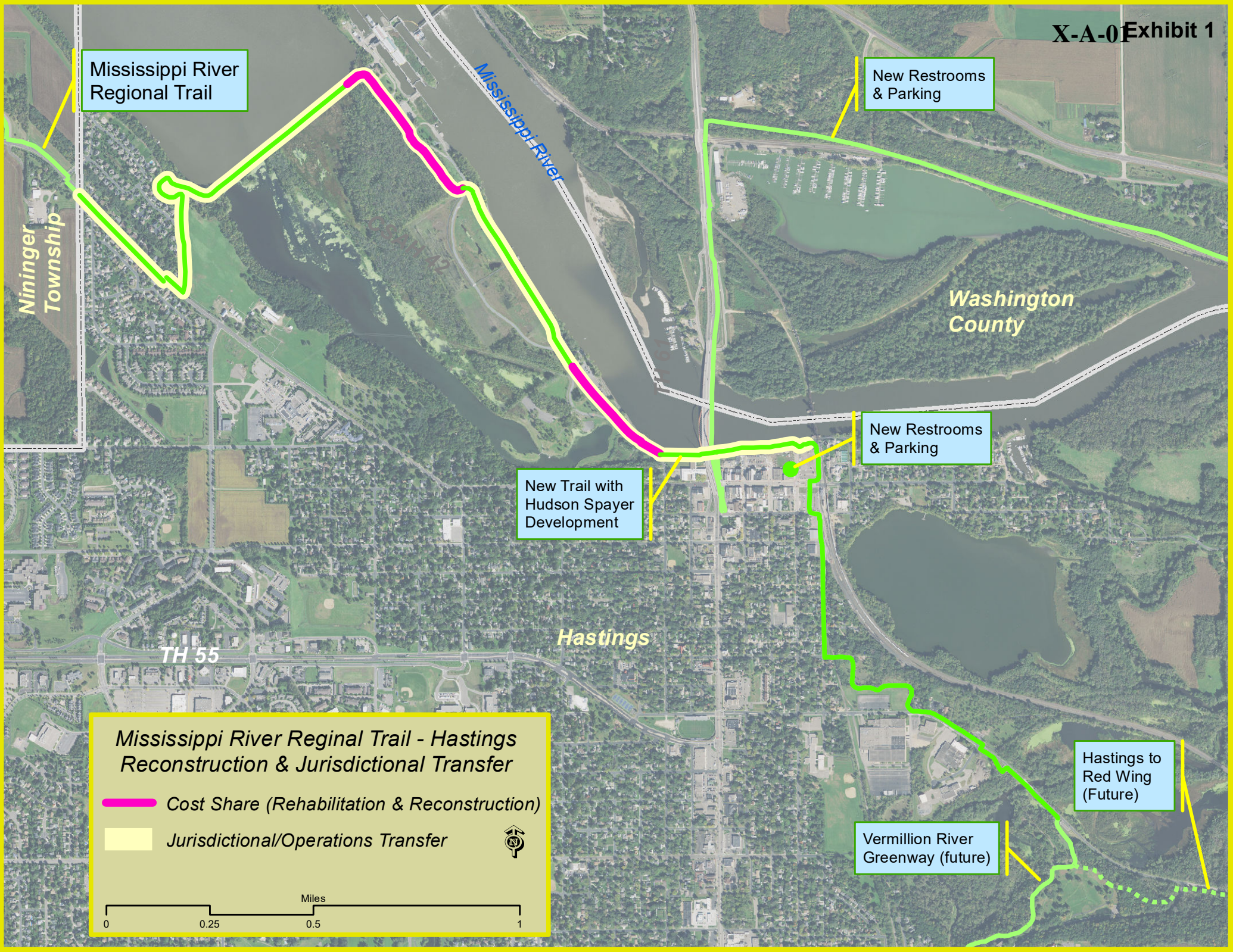




EXHIBIT 2
INSURANCE TERMS

X-A-01

Contractor agrees to provide and maintain at all times during the term of this Contract such insurance coverages as are indicated herein and to otherwise comply with the provisions that follow. Such policy(ies) of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the Contract indemnity provisions. The provisions of this section shall also apply to all Subcontractors, Sub-subcontractors, and Independent Contractors engaged by Contractor with respect to this Contract, and Contractor shall be entirely responsible for securing the compliance of all such persons or parties with these provisions.

APPLICABLE SECTIONS ARE CHECKED

1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than \$500,000. If Contractor is not required by Statute to carry Workers' Compensation Insurance, Contractor agrees: (1) to provide County with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Contractor from the requirement of obtaining Workers' Compensation Insurance; (2) to provide prior notice to County of any change in Contractor's exemption status under Minn. Stat. § 176.041; and (3) to hold harmless and indemnify County from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for Workers' Compensation or Employers' Liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain Workers' Compensation Insurance, Contractor agrees to promptly provide County with evidence of such insurance coverage.

2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Contract), Independent Contractors, "XC&U" and Products-Completed Operations liability (if applicable). Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. An Insurance Services Office "Comprehensive General Liability" policy which includes a Broad Form Endorsement GL 0404 (Insurance Services Office designation) shall be considered to be an acceptable equivalent policy form.

Contractor agrees to maintain at all times during the period of this Contract a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

Such Commercial General Liability policy and Umbrella or Excess Liability policy (or policies) may provide aggregate limits for some or all of the coverages afforded thereunder, so long as such aggregate limits have not, as of the beginning of the term or at any time during the term, been reduced to less than the total required limits stated above, and further, that the Umbrella or Excess Liability policy provides coverage from the point that such aggregate limits in the underlying Commercial General Liability policy become reduced or exhausted. An Umbrella or Excess Liability policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention for each occurrence does not exceed the amount shown in the provision below.

Contractor's liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Contractor to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed \$25,000 each occurrence.

Such policy(ies) shall name Dakota County, its officers, employees and agents as Additional Insureds thereunder.

3. Professional Liability. Professional Liability (errors and omissions) insurance with respect to its professional activities to be performed under this Contract. This amount of insurance shall be at least \$1,500,000 per occurrence and aggregate (if applicable). Coverage under such policy may be subject to a deductible, not to exceed \$25,000 per occurrence. Contractor agrees to maintain such insurance for at least one (1) year from Contract termination.

It is understood that such Professional Liability insurance may be provided on a claims-made basis, and, in such case, that changes in insurers or insurance policy forms could result in the impairment of the liability insurance protection intended for Dakota County hereunder. Contractor therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability insurance coverage if such impairment of Dakota County's protection could result; and further, that it will exercise its rights under any "Extended Reporting Period" ("tail coverage") or similar policy option if necessary or appropriate to avoid impairment of Dakota County's protection. Contractor further agrees that it will, throughout the one (1) year period of required coverage, immediately: (a) advise Dakota County of any intended or pending change of any Professional Liability insurers or policy forms, and provide Dakota County with all pertinent information that Dakota County may reasonably request to determine compliance with this section; and (b) immediately advise Dakota County of any claims or threats of claims that might reasonably be expected to reduce the amount of such insurance remaining available for the protection of Dakota County.

4. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Contract. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least \$1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy. **Unless included within the scope of Contractor's Commercial General Liability policy, such Business Automobile Liability policy shall also include coverage for motor vehicle liability assumed under this contract.**

Such policy, and, if applicable, such Umbrella or Excess Liability policy(ies), shall include Dakota County, its officers, employees and agents as Additional Insureds thereunder.

5. Additional Insurance. Dakota County shall, at any time during the period of the Contract, have the right to require that Contractor secure any additional insurance, or additional feature to existing insurance, as Dakota County may reasonably require for the protection of their interests or those of the public. In such event Contractor shall proceed with due diligence to make every good faith effort to promptly comply with such additional requirement(s).

6. Evidence of Insurance. Contractor shall promptly provide Dakota County with evidence that the insurance coverage required hereunder is in full force and effect prior to commencement of any work. At least 10 days prior to termination of any such coverage, Contractor shall provide Dakota County with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of the Dakota County Certificate of Insurance, or in such other form as Dakota County may reasonably request, and shall contain sufficient information to allow Dakota County to determine whether there is compliance with these provisions. At the request of Dakota County, Contractor shall, in addition to providing such evidence of insurance, promptly furnish Contract Manager with a complete (and if so required, insurer-certified) copy of each insurance policy intended to provide coverage required hereunder. All such policies shall be endorsed to require that the insurer provide at least 30 days' notice to Dakota County prior to the effective date of policy cancellation, nonrenewal, or material adverse change in coverage terms. On the Certificate of Insurance, Contractor's insurance agency shall certify that he/she has Error and Omissions coverage.

7. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financially responsible insurers licensed to do business in the State of Minnesota, and all such insurers must be acceptable to Dakota County. Such acceptance by Dakota County shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable. In all other instances, Dakota County shall have 15 business days from the date of receipt of Contractor's evidence of insurance to advise Contractor in writing of any insurer that is not acceptable to Dakota County. If Dakota County does not respond in writing within such 15 day period, Contractor's insurer(s) shall be deemed to be acceptable to Dakota County.

8. Noncompliance. In the event of the failure of Contractor to maintain such insurance and/or to furnish satisfactory evidence thereof as required herein, Dakota County shall have the right to purchase such insurance on behalf of Contractor, which agrees to provide all necessary and appropriate information therefor and to pay the cost thereof to Dakota County immediately upon presentation of invoice.

9. Loss Information. At the request of Dakota County, Contractor shall promptly furnish loss information concerning all liability claims brought against Contractor (or any other insured under Contractor's required policies), that may affect the amount of liability insurance available for the benefit and protection of Dakota County under this section. Such loss information shall include such specifics and be in such form as Dakota County may reasonably require.

10. Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Contractor. Contractor hereby releases Dakota County, its officers, employees, agents, and others acting on their behalf, from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of Dakota County or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

Contractor agrees to effect such revision of any property insurance policy as may be necessary in order to permit the release and waiver of subrogation agreed to herein. Contractor shall, upon the request of Dakota County, promptly provide a Certificate of Insurance, or other form of evidence as may be reasonably requested by Dakota County, evidencing that the full waiver of subrogation privilege contemplated by this provision is present; and/or, if so requested by Dakota County, Contractor shall provide a full and complete copy of the pertinent property insurance policy(ies).