



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Chris Jenkins, Parks & Recreation Director
Date: September 16, 2024
Item: Joint Powers Agreement

Council Action Requested: Approve JPA with Dakota County

Background Information: A segment of the Mississippi River bank along the Mississippi River Greenway Trail has eroded to such a degree that riverbank repairs are necessary. This project has already been approved and a contract awarded to complete the repairs.

Dakota County has agreed to participate in a cost share to help fund this repair along the Mississippi River Greenway Trail at 40% of the total cost.

Staff recommend approval of the attached JPA.

Financial Impact: Total project cost \$76,815.00, Dakota County's 40% = \$30,726.00 and the City's 60% = \$46,089.00.

Advisory Commission Discussion: N/A

Council Committee Discussion: N/A

Attachments:

- JPA
- County Resolution 24-413

**JOINT POWERS AGREEMENT BETWEEN THE CITY OF HASTINGS AND DAKOTA
COUNTY FOR COST SHARING OF MISSISSIPPI RIVERBANK EROSION REPAIR
PROJECT**

This Joint Powers Agreement (“Agreement”) is entered into by and between the City of Hastings, a Minnesota municipal corporation, hereinafter referred to as “City”, and Dakota County, a political subdivision of the State of Minnesota, hereinafter referred to as “County” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, Minnesota Statutes, Section 471.59 authorizes local governmental units to jointly and cooperatively exercise any power common to the contracting parties; and

WHEREAS, the City and County have identified Mississippi riverbank erosion repair that is needed adjacent to the Mississippi River Greenway; and

WHEREAS, the City and County have agreed to partner on the Mississippi riverbank erosion repair operations; and

WHEREAS, the City has completed a riverbank erosion repair engineering plan with Barr Engineering; and

WHEREAS, the City will lead the construction project, including management of the consulting engineering firm managing the construction contractor; and

WHEREAS, on July 23, 2024, the City received bids for the erosion repair project with Fitzgerald Excavating & Trucking, Inc. submitting a bid of \$49,515.00 and being awarded the project by the Hastings City Council on August 5, 2024; and

WHEREAS, the total project cost consists of the erosion repair costs of \$49,515.00 and design and engineering costs of \$27,300.00, for a total of \$76,815.00; and

WHEREAS, because the Mississippi River Greenway is part of the County’s Regional Trail System, the County shall contribute forty percent (40%) of the total cost of the project, with the City contributing the remaining sixty percent (60%).

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

1. **Purpose.** The purpose of this Agreement is to provide cooperation and funding by the County to the City for design, engineering, permitting, construction and construction administration costs of the Mississippi River Greenway erosion repair project (“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 design, engineering, permitting, construction costs and management of the Project as provided in this Agreement. The areas of construction are depicted in Exhibits 1 and 2.

2. **Parties.** The Parties to this Agreement are the City and County. County is acting by and through its Parks Department.
3. **Term.** This Agreement shall be effective on the date of the signature (“Effective Date”) of the last party to sign this Agreement and terminates on December 31, 2025, 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.
4. **Cooperation.** The Parties agree to cooperate and use 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.
5. **County’s Payment Obligation.**
 - A. Contribution Amount. The County shall provide forty percent (40%) of the total cost of the Project for a contribution of Thirty Thousand Seven Hundred Twenty-Six Dollars and 00/100 (\$30,726.00) for the Project, unless agreed in writing by the County’s Authorized Representative and the City Council.
 - B. Reimbursement by County. After this Agreement has been executed by both Parties, the City may claim reimbursement for costs in accordance with the Agreement.
 - i. The County will reimburse the City within forty-five (45) calendar days of the City’s submission of invoices for actual design, engineering, permitting, construction and management costs to the County. Invoices must be submitted in the form acceptable to the City. All requests for reimbursement must be submitted by December 31, 2025. 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 the City within ten (10) calendar days of receiving the incorrect invoice. Upon receiving the corrected invoice from the City, the County will make payment within forty-five (45) calendar days.
 - ii. 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 City from questioning the propriety of the claim. The County reserves the right to offset any overpayment or disallowance of claim by reducing future payments.
 - iii. 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 Representative of both Parties prior to execution of any work.

Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay the repair operations of the Project.

6. City's Obligations.

- A. Contribution Amount. The City shall provide sixty percent (60%) of the total cost of the Project for a contribution of Forty-Eight Thousand Eighty-Nine Dollars and 00/100 (\$48,089.00) for the Project, unless agreed in writing by the County's Authorized Representative and the City Council.
- B. Construction and Repair. The City, or its agents or contractors, shall reconstruct, improve, and repair the portion of the Mississippi riverbank further identified and described in Exhibits 1 and 2. The City will lead the construction and repair work, utilizing a contractor and shall be responsible for awarding contracts for the needed repairs for the Project. The City will also provide project design and management. The completed project shall be reviewed and approved by the County and City.
- C. 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.
- D. Compliance with Laws/Standard. The City shall abide by all federal, state, or local laws, statutes, ordinances, rules and regulations related to the construction and repair activities of 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.
- i. Use of Contractors. The City may engage contractors to perform activities funded pursuant to this Agreement. However, the City retains primary responsibility for performance of the construction and repair activities of the Project 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:
 - ii. The contractor must maintain all records and provide all reporting as required by this Agreement.
 - iii. 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.

- iv. The contractor must provide and maintain insurance through the term of this Agreement in amounts and types of coverage as set forth in this Agreement and provide to the City prior to commencement of the contracted work a certificate of insurance evidencing such insurance coverage.
- v. The contractor must be an independent contractor for the purposes of completing the contracted work.
- vi. 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.
- vii. 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.
- viii. City Responsible for Project Delivery. The City will be responsible for management and inspection of the work done on the Project assuring it is in accordance with State laws and meets approved construction and repair standards. The County will have no actual or implied legal responsibility to the City relating to the above obligations and responsibilities of the Project.

7. Indemnification and Insurance.

- A. 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, Minnesota Statute, Chapter 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 Minnesota Statutes, Chapter 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 Minnesota Statutes, Section 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.

- B. Notwithstanding anything herein to the contrary, to the greatest extent allowed by law, the County shall indemnify and hold harmless the City, 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 the County, or its officers, agents, and employees, which is attributable to City or its agents, independent contractors, employees, or delegates performance of or failure to perform the City's obligations in under this Agreement. This indemnity provision survives expiration or termination of this Agreement.

8. Reporting, Accounting and Auditing Requirements.

- A. Accounting Records. The Parties agree 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 Parties for a minimum period of six (6) years following the expiration of this Agreement. The Parties agree to promptly provide copies of any accounting records related to this Agreement upon the request of the other party.
- B. Auditing. The Parties 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 Parties shall allow the other party, 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 Parties 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.
- C. Data Practices. The Parties agree 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.
- D. 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:	Georg Fischer, or successor Physical Development Director 14955 Galaxie Avenue Apple Valley, MN 55124-8579
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TO THE CITY: Dan Wietecha, or successor
 City Administrator
 101 East 4th Street
 Hastings, MN 55033

- E. 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 Parties. 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: Niki Geisler, Parks Director
 Telephone: (952) 891-7088
 Email: Niki.Geisler@co.dakota.mn.us

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

- F. Changes to Designated Liaisons and 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.

9. Termination.

- A. Termination by Either Party. This Agreement may be terminated by either party upon thirty (30) days' written notice delivered to the other party to the addresses listed in Section 8 of this Agreement.
- B. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.
- C. Discharge of Obligations. 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.
- D. Termination by County for Lack of Funding. Notwithstanding any provision of this Agreement to the contrary, 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 invoices submitted. County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. County will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding.

10. Miscellaneous Provisions.

- A. Modification. 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 Parties.
- B. Assignment. Neither the County nor City may assign or transfer any rights, duties, interests, or obligations under this Agreement without the prior written consent of the other party.
- C. Choice of Laws. 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.
- D. 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. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- E. 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.
- F. 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.
- G. 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 Parties, 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.
- H. Interpretation and Construction. 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 constructed and construed so as to give its natural and ordinary meaning and effect.

- I. Survivorship. The following provisions under this Agreement shall survive after the termination or expiration of this Agreement: Article 6.2 (Acknowledgement); Article 7 (Indemnification and Insurance); Article 8 (Reporting, Accounting and Auditing); Article 10.3 (Minnesota Law to Govern); Article 10.5 (Severability); Article 10.8 (Interpretation and Construction); and Article 10.9 (Survivorship).

[The remainder of this page is intentionally left blank]

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

DAKOTA COUNTY

APPROVED AS TO FORM:

/s/Tim Sime 9/4/2024
Assistant Dakota County Attorney/Date
KS-24-551

By: _____
George Fischer, Director
Physical Development Division

Date: _____









Dakota County Board Resolution: 24-413

CITY OF HASTINGS

By: _____
Mary Fasbender
Mayor

By: _____
Kelly Murtaugh
City Clerk

Date: _____

-  Project Area
 -  Silt Curtain
 -  Tree/Shrubs
 -  Riprap
 -  Seeding
 -  Existing OHW (682')
- Existing Surface**
-  Index Contour
 -  Intermediate Contour



Imagery: Nearmap, 4/25/2024



Project Impacts
Mississippi Riverbank
Permitting
 City of Hastings
 Dakota County, Minnesota

VIII-08

FIGURE 4



**BOARD OF COUNTY COMMISSIONERS
DAKOTA COUNTY, MINNESOTA**

VIII-08

August 13, 2024

Resolution No. 24-413

Motion by Commissioner Workman

Second by Commissioner Halverson

**Authorization To Execute Joint Powers Agreement With City Of Hastings For Mississippi River Greenway
Cost Sharing Of Mississippi Riverbank Repairs**

WHEREAS, the City of Hastings (City) and County staff have identified a riverbank erosion repair needed adjacent to the Mississippi River Greenway; and

WHEREAS, the City and County have agreed to partner on this project with the Greenway and adjacent park and riverbank operations and maintenance overlap between agencies; and

WHEREAS, the City has completed a riverbank erosion repair engineering plan with Barr Engineering; and

WHEREAS, the City will lead the construction project delivery, including management of the consulting engineering firm managing the construction contractor; and

WHEREAS, the total estimated cost of construction and design is estimated to be between \$75,000 and \$100,000; and

WHEREAS, the County would contribute up to 40 percent and the City up to 60 percent of total construction costs; and

WHEREAS, sufficient revenues are available in the Urgent Improvements Projects and Parks Asset Preservation set-asides in the Adopted 2024 Parks Capital Improvement Program.

NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the County Manager, or their designee, to execute a joint powers agreement with the City of Hastings to fund the Mississippi River Greenway riverbank erosion repairs for the period of August 19, 2024, through December 31, 2025, subject to approval by the County Attorney's Office as to form.

**STATE OF MINNESOTA
County of Dakota**

	YES		NO
Slavik	<u> X </u>	Slavik	_____
Atkins	<u> X </u>	Atkins	_____
Halverson	<u> X </u>	Halverson	_____
Droste	<u> X </u>	Droste	_____
Workman	<u> X </u>	Workman	_____
Holberg	<u> X </u>	Holberg	_____
Hamann-Roland	<u> X </u>	Hamann-Roland	_____

I, Jeni Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 13th day of August 2024, now on file in the Office of the County Manager Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 13th day of August 2024.



Clerk to the Board