

CITY OF RICHMOND, MINNESOTA RESOLUTION NO. _____
CITY OF ROCKVILLE, MINNESOTA RESOLUTION NO. 2010-11
CITY OF COLD SPRING, MINNESOTA RESOLUTION NO. _____

Amendment to ROCORI Trail Construction Board Joint Powers Agreement

It is hereby resolved by the City of Richmond, City of Rockville, and City of Cold Spring (the "Cities"), that:

WHEREAS, the Cities entered into the ROCORI Trail Construction Board Joint Powers Agreement (the "Agreement") effective July 1, 2010;

WHEREAS, Stearns County will serve as fiscal agent for the ROCORI Trail Project and has voiced concerns about some of the language in the Agreement; and

WHEREAS, legal counsel for the ROCORI Trail Construction Board recommends amending the language of the Agreement to address Stearns County's concerns and provide clarification of the ROCORI Trail Construction Board's powers;

THEREFORE, the City Councils of the Cities hereby resolve:

- A. The amendments to the Joint Powers Agreement for the ROCORI Trail Construction Board, as shown in **Exhibit A** (additions are noted by underlining, deletions are noted by ~~strikeout~~), are hereby adopted;
- B. The revision to the ROCORI Trail Construction Board Joint Powers Agreement shall be effective upon the latest date all three Cities execute this Resolution.
- D. For the convenience of the Cities, this Resolution may be executed in counterpart copies.

(Signature pages to follow)

CITY OF COLD SPRING

DATED: _____

Doug Schmitz, Mayor

Paul Hetland, Administrator

CITY OF RICHMOND

DATED: _____

Jim Hemmesch, Mayor

Dan Coughlin, Administrator/Clerk

CITY OF ROCKVILLE

DATED: _____

Jeff Hagen, Mayor

Rena Weber, Administrator/Clerk

EXHIBIT A

Amended Joint Powers Agreement for ROCORI Trail Construction Board

**JOINT POWERS AGREEMENT
ROCORI Trail Construction Board**

The parties to this Agreement are governmental units of the State of Minnesota. This Agreement is made pursuant to the authority conferred upon the parties by Minnesota Statute §471.59.

1. **PURPOSE**

The Cities of Cold Spring, Richmond and Rockville (collectively, "Cities" and individually, by their common names) have been working together to acquire trail right of way, design, construct and fund a regional trail connecting the terminus of the anticipated Glacial Lakes Trail outside of Richmond, through Cold Spring, to the northern boundary of Rockville ("Project" or "ROCORI Trail"). Operating independently, the Cities have obtained grants and other funds for the funding of the design and Project. Stearns County ("County") has agreed to serve as a fiscal agent for the Project, but requires the designation of a single entity to be responsible for the Project and serve as the representative in communicating with the County. The Cities seek to establish a joint powers board for the purpose of acquiring trail right of way, designing the ROCORI Trail, soliciting funding, and providing for the construction thereof. The joint powers board shall terminate upon the termination of this Agreement.

2. **EFFECTIVE DATE.** Upon the latest date all three Cities execute the agreement.

3. **BOARD**

- A. **ROCORI TRAIL CONSTRUCTION BOARD.** There is hereby created a body to be known as the ROCORI Trail Construction Board ("Board").
- B. **MEMBERSHIP.** The Board shall consist of two representatives of each of the member Cities. There shall be no alternate member, but the member City may recall any representative, or replace a representative, if provided by their own procedures. Each representative shall have a single vote. The representatives shall serve without compensation, except as provided by their respective city. The Administrators of the member Cities shall serve as non-voting representatives.
- C. **QUORUM.** Quorum shall consist of one-half of all voting representatives.
- D. **CHAIR.** A new Chair shall be appointed annually by the voting members among each City in alphabetical order (Cold Spring, Richmond and Rockville), beginning with Cold Spring. The Chair must be a voting member of the Board.
- E. **MEETINGS.** The meetings shall be subject to Open Meeting laws, and shall be held at a place convenient to all representatives.

4. **STAFF**

Administrative functions of the Board shall be performed by the Administrators of the member Cities, and by any consultant or staff retained by the Board.

5. POWERS AND DUTIES OF BOARD

The Board shall have the following powers:

- A. Retain and contract for legal counsel, engineering services, grant-writing services and government relations services, and encumber the Board with the same;
- B. Negotiate and enter into agreements with Stearns County to serve as a fiscal agent for the Board and the Project;
- C. Transfer property interest in the Project to an appropriate entity for the continuance as a regional trail and for the continued maintenance and operation of the Project as a regional trail, subject to state or federal authorization requirements;
- D. Solicit and accept donations, grants, loans and other funding for the purpose of designing and constructing the Project, or for ancillary costs, such as legal and administrative fees;
- E. Acquire and hold real property. Negotiate purchase agreements for easements, right-of-way and fee interest in real property for the purpose of constructing the Project. Any purchase agreement must provide for ratification by the member Cities prior to the agreement being enforceable;
- F. Designate a member representative to serve as spokesperson for the Board, to negotiate with other entities on behalf of the Board and to execute contracts and other documents on behalf of the Board;
- G. Negotiate and enter into Memorandums of Understanding (“MOU”) with appropriate entities for the purpose of furthering the design and construction of the Project. Any MOU must provide for ratification by the member Cities prior to the document being finalized;
- H. Accept contributions and loans from member Cities and enter into agreements to repay funds with other revenue of the Board;
- I. Negotiate and enter into Joint Powers Agreements with other governmental entities and non-profit organizations to facilitate the purposes of the Board,
- J. Must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13,
- K. Purchase insurance, and
- K. Terminate this Agreement.

6. ENCUMBRANCE OF COSTS

The Board may enter into contracts, as follows:

- A. The Board shall not have any independent taxation authority.
- B. The Board may not enter into any contract, unless:
 - 1. It is for ongoing professional services,
 - 2. The contract, including a contract for the acquisition of real property interests, has a quantified maximum amount and the Board has identified the source of funds to pay the entire maximum amount, or
 - 3. It is for a term of less than one (1) year, and the Board has identified the source of funding.

7. MEMBER SHARE OF COSTS

The costs of the Board shall be the ultimate responsibility of the member Cities. These costs shall be born equally by each City, and each City agrees to take whatever means necessary to reimburse the Board for costs in excess of the Board's funds, including levying any ad valorem tax necessary.

8. FINANCING

While the Board will own, maintain and operate the Project, and may contract as provide above, the Board will not have any power to bond, assess, charge or incur any obligation or indebtedness to finance the construction of the Project. Accordingly, each member City will have to separately bond, assess, charge or otherwise finance its share of all construction costs and expenses related to Project.

9. GRANTS, LOANS AND DONATIONS

The Cities recognize, at the Effective Date, the following grants have been allocated for the design and construction of the Project:

- A. \$526,000 was granted to Stearns County on behalf of the member Cities and the ROCORI Trail Project from the SAFETEA-LU federal grant program.
- B. \$372,000 was granted to City of Rockville on behalf of the member Cities and the ROCORI Trail Project from the Department of Natural Resources trail grant program (appropriated from the State of Minnesota 2008 Capital Bonding Bill).
- C. \$13,000 from Cold Spring, Rockville and the Cold Spring Jaycees.

10. TERMINATION

Upon termination of this Agreement, all property purchased or owned pursuant to this Agreement together with monies on hand, shall be distributed to the member Cities. Such distribution of monetary and personal property assets shall be made equally to all members, except that any amount that was loaned to the Board with a written agreement to repay funds from other revenue will be repaid first. Any real property interest shall be conveyed to the City with jurisdiction or, if not within a jurisdiction, to Stearns County or the township with jurisdiction. State authorization may be required for the transfer of real property acquired with grant or bonding money. Nothing herein is intended to remove the ability of the Board to transfer property in a different manner prior to termination. The Board shall continue to exist after dissolution for such period, no longer than six (6) months, as is necessary to wind up its affairs, but for no other purpose.

11. WITHDRAWAL

A City may withdraw from this Agreement upon satisfying all of the following conditions:

- A. Providing six (6) months written notice to the Board;
- B. Payment of all amounts in arrears and all contributions to the Board, including without limitation all amounts for which the Board was encumbered, or was reasonably expecting to be encumbered, at the time the notice was received.

- C. Cooperating with the transfer of any deeds or other transfer documentation to convey real property or other property interests, and all grants, donations or other funds, to the Board that were held by the City for the Project.
- D. Reaching mutual agreement with the remaining Cities regarding liability and other issues on any existing contracts.
- E. Upon withdrawal, no distribution of assets or property will be made to any withdrawing City, if the Board continues with at least two Cities. If less than two Cities continue, this Agreement shall terminate, and assets will be distributed as if the Agreement was terminated.
- F. The withdrawing Municipality must agree to indemnify and hold harmless the remaining Cities and the Board against any claims, suits, liabilities or contracts that may arise from the withdrawal, and the withdrawing member will pay any attorneys fees and costs associated with any litigation arising as a result of its withdrawal.

12. INDEMNIFICATION

- A. Each member City shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless and defend the other, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the other, its officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the City, its agents, servants or employees, in the execution, performance, or failure to adequately perform its obligations pursuant to this Agreement.
- B. It is understood and agreed that nothing in this Agreement shall affect or otherwise constitute a waiver of the limits on the liability of any City provided by Minnesota Statutes Chapter 466 (Tort Liability, Political Subdivisions) or other applicable law.
- C. It is understood and agreed that the Board is a single governmental unit, consistent with Minnesota Statutes 471.59 Subd. 1a.(b), for purposes of determining total liability for damages arising from this Agreement.
- D. The Board agrees to defend and indemnify the Parties for any liability claims arising from Board activities or operations, and decisions of the Board. Nothing in this Agreement shall constitute a waiver of the statutory limits on liability set forth in Minnesota Statutes Chapter 466 or a waiver of any available immunities or defenses. Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any Party for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty or bad faith. Any excess or uninsured liability shall be borne equally by all the Parties, but this does not include the liability of any

individual officer, employee, or volunteer which arises from his or her own malfeasance, willful neglect of duty or bad faith.

13. RECOGNITION OF AUTHORITY

Each member City recognizes the authority of the Board formed by this Agreement and agrees to be bound by this Agreement and the Board's decisions, to contribute its pro-rata share of financing and costs pursuant to this Agreement, to pay all charges, fees and costs to the Board in a timely manner and to otherwise abide by this Agreement's terms and the Board's decisions.

14. AUTHORIZING RESOLUTIONS

Before executing this Agreement, each member City will deliver to the other member Cities a certified copy of a resolution authorizing and directing this Agreement's execution.

15. SEVERABILITY

If any portion of this Agreement is found to be void, unenforceable or unconstitutional, or any combination of these, by a court of competent jurisdiction, the remaining portion of this Agreement shall remain in effect.

16. DISPUTE RESOLUTION

If a dispute arises between any of the Cities, or between the Board and any member City or Cities, regarding this Agreement, the Board will promptly meet and attempt in good faith to negotiate a resolution to the dispute. If the parties have not negotiated a resolution of the dispute within 30 days after the Board's meeting, the parties will submit the dispute to binding arbitration before a panel of three arbitrators in accordance with the commercial arbitration rules of the American Arbitration Association, except that any disputes less than \$25,000 will be submitted to a single arbitrator. The disputing parties will equally share the arbitration costs, excluding each party's cost to prepare its own case. In addition to the dispute resolution mechanism in this Section, any party may seek specific performance of another party's obligations under this Agreement.

17. ENTIRE AGREEMENT

This Agreement is the parties' entire agreement regarding its subject matter and supercedes all prior agreements and negotiations regarding its subject matter. The parties may amend this Agreement only in a writing signed by all of the parties.

18. RATIFICATION OF PAST CONTRACTS

The Cities ratify the agreement with Rinke Noonan Law Firm originally made with the ad hoc committee, and assumes the responsibility thereto, as previously agreed.

19. COUNTERPARTS

For the convenience of the Cities, this Agreement has been executed in counterpart copies, which are in all respects similar and each of which shall be deemed to be complete in itself so that any one may be introduced in evidence or used for any other purpose without the production of the other counterparts.

(Signature pages to follow)

IN WITNESS WHEREOF, the undersigned governmental unit, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statute §471.59.

CITY OF COLD SPRING

DATED: _____

Doug Schmitz, Mayor

Larry Lahr, Administrator

IN WITNESS WHEREOF, the undersigned governmental unit, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statute §471.59.

CITY OF RICHMOND

DATED: _____

Jim Hemmesch, Mayor

Dan Coughlin, Administrator/Clerk

IN WITNESS WHEREOF, the undersigned governmental unit, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statute §471.59.

CITY OF ROCKVILLE

DATED: _____

Jeff Hagen, Mayor

Rena Weber, Administrator/Clerk

ROCORI TRAIL CONSTRUCTION BOARD

BY-LAWS

ARTICLE I NAME

The name of this organization shall be the ROCORI Trail Construction Board (the "Board").

ARTICLE II PURPOSE

The purpose of these Bylaws is to provide efficient organization and proper administration for the Board for the advancement of the objectives of the joint powers agreement between the Cities of Cold Spring, Richmond and Rockville (the "Cities).

ARTICLE III FISCAL YEAR

The fiscal year of the Board shall be January 1st to December 31st inclusive.

ARTICLE IV MEETINGS

Section 1. REGULAR MEETINGS. The regular meetings of the Board shall be held monthly on the first Thursday of every month. The regular meetings shall be held at 9:00 a.m. in the Rockville City Hall.

Section 2. SPECIAL MEETINGS. A special meeting of the Board may be called at any time upon the request of any voting Board member. Written notice of special meetings shall be given by the Secretary or Member calling the meeting, by delivering written notice either personally, by mail, or email at least seven days in advance of such meeting to each Board member. Such notice shall specify the place, date, time and purpose of the meeting.

ARTICLE V QUORUM

The presence in person of four voting members of the Board shall be necessary for a quorum at any meeting of the Board. Every act or decision made by a majority of the members present at a duly held meeting at which a quorum is present shall be regarded as the action of the Board.

ARTICLE VI
TRANSPARENCY

Section 1. DATA. The Board shall comply with the Government Data Practices Act found in Minnesota Statute Chapter 13.

Section 2. OPEN MEETING LAW. Notices of all meetings and hearings of the Board shall comply with the Open Meeting Law found in Minnesota Statutes Chapter 13D.

ARTICLE VII
OFFICERS AND DUTIES

Section 1. OFFICERS. The Officers of the Board shall be Chair, Vice Chair, and Secretary. The Chair, Vice Chair and Secretary shall be appointed annually by the voting members.

Section 2. DUTIES OF OFFICERS. The duties of the Officers are as follows:

- I. **CHAIR.** The Chair shall preside over regular and special meetings of the Board. The Chair shall prepare the agenda for the meeting and provide the agenda to all Board members.
- II. **VICE-CHAIR.** If the Chair is unable to perform the duties of the office for any reason, the Vice-Chair shall perform the duties with the same authority as the Chair.
- III. **SECRETARY.** The Secretary shall keep and maintain general records of the Board, including but not limited to minutes of regular and special meetings held by the Board.

Section 3. ROTATION OF OFFICE. Each office shall annually rotate among each of the three Cities in alphabetical order, beginning with Cold Spring:

- | | |
|-------|---|
| 2010: | Chair - Cold Spring
Vice Chair - Richmond
Secretary - Rockville |
| 2011: | Chair - Richmond
Vice Chair - Rockville
Secretary - Cold Spring |
| 2012: | Chair - Rockville
Vice Chair - Cold Spring
Secretary - Richmond |

The Chair and Vice Chair must be voting members of the Board, but the Secretary may be a non-voting Board member.

ARTICLE VIII
COMPENSATION AND EXPENSES

Members of the Board shall serve without compensation from the Board. This does not limit the Cities from individually compensating their representatives.

ARTICLE IX
DISCLOSURES

No member or group of members of this Board shall present a decision, opinion or viewpoint of the Board unless at a meeting of the Board or authorized and directed to do so by the Board.

ARTICLE X
RULES OF PROCEDURE

Section 1. PURPOSE OF PROCEDURAL RULES. This Article, and the rules in it, is adopted to facilitate the transaction of Board business and functions. The rules should not be permitted to defeat or hinder the plainly expressed intent and desire of the Board. Informal compliance and substantial performance is sufficient under the rules, unless reasonably objected to, or “Robert’s Rules of Order, Revised” are invoked.

Section 2. ORDER OF BUSINESS. At the designated meeting time, the members shall be called to order by the Chair and in the Chair’s absence by the Vice-Chair, and in the absence of both, the Chair shall appoint a Chair Pro Tem. The Board shall proceed with business on its agenda.

Section 3. MOTIONS AND VOTING. The Chair shall preserve order and decorum and shall decide questions of order subject to an appeal to the Board. The Chair shall call for motions and votes.

Section 4. POINT OF ORDER. A member called to order shall immediately stop speaking until the point of order is decided by the Chair.

Section 5. MOTIONS DURING DEBATE. When a question is under debate, no separate motion shall be entertained, unless to adjourn or to lay on the table. A motion to adjourn or to lay on the table shall be decided without debate.

Section 6. VOTING. When a question is called by the Chair, it is the duty of every member to vote unless a conflict of interest is possible. The yeas and nays shall be recorded by the names of the members in the minutes in the event any vote is not unanimous. Abstentions have the same effect of voting on the prevailing side.

Section 7. INVOKING ROBERT’S RULES OF ORDER. The Chair, or a majority of the Board, may invoke the use of “Robert’s Rules of Order, Revised” for matters requiring the use of formal procedure or when necessary to maintain order.

ARTICLE XI
AMENDMENT OF THE BY-LAWS

After ten days' written notice, these Bylaws may be altered, amended or repealed at any regular or special meeting of the Board where a quorum is present, by a vote of a majority of the members present in person and voting.

ARTICLE XII
SIGNATURES

Except as otherwise provided in these Bylaws, all legal documents and papers authorized by the Board shall be executed on behalf of the Board by one of the three City Administrators, together with any other voting member.

Adopted _____, 2010.

Member

City Administrator