



RINKE NOONAN
attorneys at law

OCT 16 2014

October 15, 2014

Direct Dial: 320-257-3868
Aripple@RinkeNoonan.com

Rena Weber
City of Rockville
P.O. Box 93
Rockville, MN 56369
SENT VIA EMAIL AND U.S. MAIL

Paul Hetland
City of Cold Spring
27 Red River Avenue South
Cold Spring, MN 56320
SENT VIA EMAIL AND U.S. MAIL

Martin Bode
City of Richmond
P.O. Box 400
Richmond, MN 56368
SENT VIA EMAIL AND U.S. MAIL

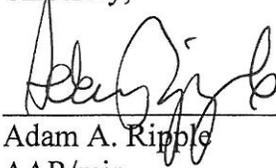
**Re: ROCORI Trail Phase II Project Agreement
Our File No. 21977-0007**

Dear Rena, Paul and Martin:

Enclosed please find two copies of the ROCORI Trail Phase II Project Agreement and the Escrow Agreement and Hold Harmless and Indemnification Agreement signed by Stearns County and the ROCORI Trail Joint Powers Board. Please sign the documents where indicated and return both copies to our office in the enclosed self-addressed, stamped envelope. An additional copy has been included for you to keep for your records.

If you have any questions, please let me know.

Sincerely,



Adam A. Ripple
AAR/mjr

Enclosures

cc: Marlys Tanner (via email)

ROCORI TRAIL PHASE II PROJECT AGREEMENT

THIS AGREEMENT between the County of Stearns ("County"), the ROCORI Trail Construction Board, a joint powers board pursuant to Minnesota Statute §471.59 ("RTCB"), and the RTCB's member Cities of Rockville, Cold Spring, and Richmond (collectively the "Cities").

WHEREAS; the RTCB in 2013 was awarded a grant of \$920,000 from the State of Minnesota for acquisition, design, engineering, and construction of the ROCORI Trail under the Minnesota Department of Natural Resources Local Grant Program ("2013 State Grant") that is eligible to fund design, right of way acquisition, and construction; and

WHEREAS; the portion of the Trail that is the subject of this Agreement and of the above referenced State Grant is known as Phase II of the Trail, as that portion of the eastern city limits of Cold Spring to the western edge of downtown Rockville ("the Project"); and

WHEREAS; the Trail is an undertaking of the RTCB; and

WHEREAS; the RTCB was organized for the purpose of acquiring, designing, constructing, and funding the Trail, a regional trail connecting the terminus of the anticipated Glacial Lakes Trail outside of Richmond, through Cold Spring, to the northern boundary of Rockville; and

WHEREAS, the County served as the fiscal agent for Phase I of the ROCORI Trail, which has been successfully completed; and

WHEREAS; the Cities applied for the 2013 State Grant, which requires a fiscal agent and the County is the only option to serve as the fiscal agent; and

WHEREAS; the County agrees to assist in the implementation of Phase II of the Trail (hereinafter "Project") for which the above identified grant has been appropriated; and

WHEREAS; the County will serve as the fiscal agent for the Project pursuant to an escrow and indemnification agreement ("Escrow Agreement") between the County, RTCB, and Cities (Attached and incorporated herein as **Exhibit A**).

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. County Execution of Contracts. The County agrees to execute the applications, contracts, and documents with the State of Minnesota so that the Cities and RTCB may obtain funds from the 2013 State Grant and other funds that may be secured for the Project. The County also agrees to act as and enter into this agreement to be the fiscal agent for the Cities and the RTCB on the Project. All duties, obligations, and liabilities incurred by the County pursuant to said applications, contracts, and documents with the State of Minnesota, MNDOT, and the Federal Government are accepted by and assumed by the Cities and the RTCB jointly and individually as their sole responsibility and the Cities and RTCB agree to indemnify and hold the County of Stearns harmless of same. For Phase I of the ROCORI Trail Project, the County agreed to contribute \$92,000. The Project was completed under budget and the County's contribution was not utilized.

2. County Financial Support. The County agrees to pledge its financial support toward the Trail in the amount of \$92,000.

3. Local Financial Support. The Cities and RTCB shall provide all additional financial support toward the Trail, including but not limited to the matching funds in the approximate amount of \$200,000, and shall ensure that the Trail will be acquired, designed, constructed and maintained as required by the State of Minnesota, MNDOT, and the Federal Government and further agrees that any costs over and above the grant amount, and the County specified financial support, shall be borne solely by the Cities and the RTCB. The Cities and the RTCB agree that any costs over and above the grant amount shall be borne solely by the Cities and the RTCB. The RTCB shall deposit into escrow any anticipated shortfall in the engineers' estimate of construction costs prior to the initiation of construction

4. Responsibilities of Cities and RTCB. The Cities and the RTCB have the following responsibilities under this Agreement:

- (a) *Programmatic Responsibility.* The Cities and the RTCB shall be wholly responsible for "programmatic responsibilities" including, but not limited to: procurement of right of way; planning; designing; engineering; construction; preparation of additional applications and grants; contracting; maintenance; liability; and all provisions and requirements of the grant applications and agreements, including, but not limited to ensuring that the Trail will be maintained as required by the State of Minnesota and the Federal Government.
- (b) *Comply with State and Federal Directives.* The Cities and the RTCB shall follow all directives of the State of Minnesota and the Federal Government relative to the Project.
- (c) *Financial Management.* The Cities and the RTCB shall assume the responsibility of complying with the general obligations of the grants and the State's Financial Management Manual for the Project. The Cities and the RTCB shall provide the

County with certified construction inspection, materials testing, and quantity documentation as required by the grants; shall obtain required permits for the project in their name; and shall maintain all financial records relating to the Project according to generally accepted accounting principles, retain records as long as required by law, and make records available for audit as required by law and as required by the County.

The County through the Stearns County Highway Department shall provide general oversight for the construction paperwork and reporting process, oversight of the bidding process and payment of bills; and will have the right to veto proposals of the Cities and RTCB which do not meet Mn/DOT and FHWA rules.

(d) Communication. The Cities and the RTCB shall keep the County informed of the progress of the Project and any changes from the grant shall be brought to the immediate attention of the County. The Cities and the RTCB shall submit the complete grant and final report to the County and to the State of Minnesota.

5. The Cities and the RTCB shall not write any contracts nor accept any other contributions for local match funds from anyone or any group for the Project without receiving prior written approval from the State of Minnesota. This provision in no way restricts the Cities and the RTCB from accepting contributions to pay for costs that are not eligible for reimbursement under the 2013 State Grant or other funding sources.

6. Payments. Payments made by the State of Minnesota shall be made to the County upon proper documentation as required under the grant program and this Agreement.

7. Agents of the Parties. Rockville Administrator/Clerk, Verena M. Weber at City of Rockville, 229 Broadway St. E., P.O. Box 93, Rockville, MN 56369, or her successor, shall serve as the authorized agent of the Cities and the RTCB with regard to this Agreement (including Exhibit A, Escrow Agreement) as well as with regard to the Project, and shall have authority to sign disbursement requests for the Project. The Stearns County Auditor, Randy Schreifels, or his successor, shall serve as the authorized agent of the County with regard to this Agreement and the Project, and shall serve as the fiscal agent and escrow agent for the Project.

8. Use of Funds. The Cities and the RTCB shall not directly or indirectly use any funding provided for the Project for any purpose other than as provided by the grants. The Cities and the RTCB shall comply with any and all requirements imposed by the State for the Project and shall not use the Project funding to carry on any activity that will in any way jeopardize the County's tax-exempt status.

9. Unused Funds. The Cities and the RTCB are responsible for, and agree that, any unused funds related to the grants for the Project shall be disbursed in accordance with all grant requirements.

10. Matching Funds in Escrow. The Cities and the RTCB agree that the matching funds required for grants and any other required matching funds shall be placed in an escrow account with the County pursuant to a separate escrow agreement (incorporated herein as Exhibit A)

11. County Administrative Fee. The Cities and the RTCB shall pay the County for services rendered an administrative fee equal to 15% of 1% (.15) of the total grant awards for the Project. The County Administrative Fee will be payable to Stearns County 30 days prior to completion of the Project. Should the Cities and the RTCB fail to pay the County Administrative Fee; the Cities agree that the County may withhold the necessary funds equally from the Cities future tax settlements.

12. Indemnification and Reimbursement. The Cities and the RTCB agree that any and all claims that arise or may arise against them, their agents, servants or employees as a

consequence of any act or omission on their part, or on the part of their agents, servants, or employees while engaged in fulfilling the obligations of the grants or the performance of the Project shall in no way be the obligation or responsibility of the County. The Cities and the RTCB shall indemnify, hold harmless, and defend the County, its officers, employees, and agents against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the county, its officers or employees may hereafter sustain, incur or be required to pay that is in any way associated with the Project or the grants described herein.

If the Cities and the RTCB fail to fulfill any of the obligations and timelines required for the State and Federal grants, the Cities and the RTCB agree to reimburse the County for all funds expended toward this project within six months of receiving notice of the failure and demand for reimbursement by the County. If the Cities and the RTCB fail to reimburse the County, the County may withhold the necessary funds equally from the three Cities future tax settlements.

13. Termination of Agreement. This Agreement shall terminate if any of the following events occur:

- (a) *Jeopardize Tax Exempt Status.* The County requests any one or all of the other parties to this Agreement to cease activities that it deems might jeopardize its tax exempt status and one or all of the other parties fail to cease such activities upon written demand within a period often (10) days of mailing, by certified mail, said demand to the authorized agent; or
- (b) *Default.* The Cities, the RTCB, or the County fail to perform or observe any other covenant of this Agreement, and this failure remains unremedied fifteen (15) days after notice in writing is sent by certified mail to the authorized agent's; or
- (c) *Nonappropriation.* Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by any party in the event sufficient funds from State, Federal, or other sources are not appropriated, obtained and continued at least at the level relied on for the performance of this Agreement and/or the Project; and the nonappropriation of funds did not result from any act of bad faith on the part of any of the parties. This includes the nonappropriation of funds, or appropriation of funds in an amount insufficient to acquire right-of-way.

14. Notice of Termination. In the event this Agreement is terminated, the Cities and the RTCB, and the County agree to immediately notify the State and other funding sources, and comply with any termination conditions and obligations imposed by the funding organization.

15. Effective Date. This Agreement shall become effective on the date that all parties have executed this document.

COUNTY OF STEARNS

Date: Sept. 23, 2014

By [Signature]
Mark J. Bromenschenkel, Chair
Stearns County Board of Commissioners

By [Signature]
Randy R. Schreifels, Clerk
Stearns County Auditor/Treasurer
Stearns County Board of Commissioners

Date: Sept. 23, 2014

The ROCORI Trail Construction Board Joint Powers Board:

By [Signature]
Kevin Mooney, Chair
ROCORI Trail Joint Powers Board

Date: 10-2, 2014

City of Rockville:

By _____
Jeff Hagen, Mayor
City of Rockville

Date: _____, 2014

This instrument was acknowledged before me on _____, 2014, by Jeff Hagen, Mayor, City of Rockville.

Verena M. Weber, Rockville City
Administrator

City of Cold Spring:

By _____
Doug Schmitz, Mayor
City of Cold Spring

Date: _____, 2014

This instrument was acknowledged before me on _____, 2014, by
Doug Schmitz, Mayor, City of Cold Spring.

Paul Hetland, Cold Spring City
Administrator

Richmond:

Date: _____, 2014

By _____
Mayor
City of Richmond

This instrument was acknowledged before me on _____, 2014, by
_____, Mayor, City of Richmond.

Martin Bode, Richmond City Administrator

EXHIBIT A

**Escrow Agreement and Hold Harmless and Indemnification Agreement
Relating to the ROCORI Trail Project, Phase II**

**ESCROW AGREEMENT AND HOLD HARMLESS
AND INDEMNIFICATION AGREEMENT
RELATING TO THE ROCORI TRAIL PROJECT, PHASE II**

OWNERS: The Cities of Rockville, Cold Spring, and Richmond; and the ROCORI Trail Construction Board Joint Powers Organization ("RTCB").

1. The parties above hereby appoint Randy Schreifels, Stearns County Auditor as "ESCROW AGENT."
2. The following funds shall be deposited with said ESCROW AGENT and shall be designated as matching funds for grant moneys received by the County and the RTCB for the ROCORI Trail Project Phase II (hereinafter referred to as "the Escrow Account"):
 - (a) \$200,000 - Local Matching Funds from OWNERS; and
 - (b) Any additional money secured by OWNERS for the ROCORI Trail Project.
3. These funds will be held by the ESCROW AGENT in a separate financial account.
4. Said funds shall be held by the ESCROW AGENT and paid out as required by the grant agreements relating to the ROCORI Trail, until completion of the following items: Completion of the ROCORI Trail Phase II Project from the eastern city limits of Cold Spring to the western edge of downtown Rockville ("Project"). Payments shall be made upon submission of required agreements, including grant agreements, and presentation of required documentation to substantiate solicitation of bids, contacts with selected contractors, invoices from those contractors, and all other reports and records required under the grant document. Partial payments shall be made in accordance with the above and the grant documents.
5. The Project shall be completed no later than September 15, 2019.
6. After said date, the ESCROW AGENT, after consulting with the Stearns County Highway Engineer (Jodi Teich or her designee), shall have the option to have the project completed by someone of the ESCROW AGENT's choice and have the costs that are incurred paid from the escrowed funds or funds later deposited, only after providing the OWNERS with

90 days written notice and an opportunity to cure. Any costs or expenses incurred by the County in completing the ROCORI Trail Project which exceed the funds available from funding sources and in the Escrow Account shall be the responsibility of the Cities and the RTCB; and the Cities and the RTCB agree to hold the County harmless and indemnify the County from any charges, expenses, costs, claims associated with having to exercise the option of completing the project.

7. To release the remaining Escrow Account funds, if any, the RTCB shall sign and deliver a written notice to the ESCROW AGENT that states:

- (a) The Project as described in this agreement has been completed;
- (b) The exact costs, paid and unpaid;
- (c) To whom and what amounts the ESCROW AGENT is to release the funds being held, together with lien waivers and receipts for paid items. ESCROW AGENT shall have no duty to OWNERS to initiate the release of the funds being held by the ESCROW AGENT unless and until the OWNERS comply with the procedures set forth in this ESCROW AGREEMENT;
- (d) Any unpaid bills requested from the funds held by the ESCROW AGENT; and
- (e) Approval from the State of Minnesota.

8. If the funds deposited above are not sufficient to meet the requirements under the grants, or the agreements with the County, or to cover the engineers' estimate or the actual costs of the project, the OWNERS will immediately send additional funds as needed to the ESCROW AGENT upon notification by said ESCROW AGENT.

- (a) Verbal notification will be given by the ESCROW AGENT to the OWNERS upon detection of any shortage of funds in the escrow account. If remedy is not made within 30 days of the date of the verbal notice, a written notice will be sent by the ESCROW AGENT to the OWNERS. If remedy is not made within 30 days of the date of the written notice, the ESCROW AGENT may withhold necessary funds equally from the three cities future tax settlements.

9. The ESCROW AGENT agrees to timely pay properly submitted requests for partial payment or timely provide RTCB with written notice of why a request for partial payment cannot be paid.

10. The OWNERS agree to hold harmless and indemnify the ESCROW AGENT against all costs and expenses associated with this agreement, including but not limited to attorney fees to enforce this agreement and defend against any claims.

11. The OWNERS further agree to hold harmless and indemnify STEARNS COUNTY from all claims relating in any way to the Project, including, but not limited to attorney fees to defend against any claims.

12. The OWNERS and STEARNS COUNTY have executed a separate agreement "ROCORI TRAIL PHASE 2 PROJECT AGREEMENT" in conjunction with this Agreement.

13. NOTICES under this document (Exhibit A), shall be made in accordance with the following:

ESCROW AGENT:

Randy Schreifels

Stearns County Auditor

705 Courthouse Square, Room 148

St. Cloud, MN 56303

OWNERS AGENT:

Verena M. Weber

Rockville Administrator/Clerk

229 Broadway Street East

Rockville, MN 56369

This Agreement is made this 23rd day of September, 2014, by:

COUNTY OF STEARNS

Date: Sept. 23, 2014

By 

Mark J. Bromenshenkel, Chair
Stearns County Board of Commissioners

By 

Randy R. Schreifels, Clerk
Stearns County Auditor/Treasurer
Stearns County Board of Commissioners

Date: Sept. 23, 2014

The ROCORI Trail Construction Board Joint Powers Board:

By *K. Mooney*
KEVIN MOONEY, Chair
ROCORI Trail Joint Powers Board

Date: 10-2, 2014

City of Rockville:

By _____
Jeff Hagen, Mayor
City of Rockville

Date: _____, 2014

This instrument was acknowledged before me on _____, 2014, by Jeff Hagen, Mayor, City of Rockville.

Verena M. Weber, Rockville City
Administrator

City of Cold Spring:

By _____
Doug Schmitz, Mayor
City of Cold Spring

Date: _____, 2014

This instrument was acknowledged before me on _____, 2014, by Doug Schmitz, Mayor, City of Cold Spring.

Paul Hetland, Cold Spring City
Administrator

Richmond:

Date: _____, 2014

By _____
Mayor
City of Richmond

This instrument was acknowledged before me on _____, 2014, by
_____, Mayor, City of Richmond.

Martin Bode, Richmond City Administrator