

**Amendment of the
COOPERATIVE AGREEMENT
Between Bearpath Golf and Country Club and
Riley-Purgatory-Bluff Creek Watershed District**

Middle Riley Creek Stabilization Project

DATE, 2022

This amendment is made by and between Bearpath Golf and Country Club, a Minnesota limited partnership (Bearpath), and Riley-Purgatory-Bluff Creek Watershed District, a special purposes local governmental unit created pursuant to Minnesota Statutes chapters 103B and 103D (RPBCWD), to make certain changes to the Middle Riley Creek Stabilization Project (the Project) that is the subject of the September 3, 2021, cooperative agreement between the parties (the Agreement), and to concur in the successful substantial completion of the Project. The purpose of the amendment is to reassign responsibility for completing certain work for the Project from RPBCWD to Bearpath to better align the parties' collaborative efforts with their key interests.

Recitals

Whereas Bearpath and RPBCWD entered the Agreement to cooperatively pursue the Project, which involves implementation of biostabilization measures along 815 feet of Riley Creek as it passes through property owned by Bearpath (the Bearpath Property) to improve in-channel and riparian habitat, reduce total suspended solids and total phosphorus in the creek, and reduce erosion of creek banks;

Whereas in conjunction with the implementation of the Project by a contractor acting under contract to RPBCWD, Bearpath has undertaken at the same certain improvements to the Bearpath Golf and Country Club on the Bearpath Property under a separate contract (the Golf Course Work);

Whereas under the Agreement, Bearpath committed to contributing \$43,500 in cash and other in-kind contributions to the Project, the cost of which is otherwise RPBCWD's obligation;

Whereas construction of the Project is close to substantially complete and in the course of construction, Bearpath and RPBCWD have determined that certain elements of the Project are better undertaken by Bearpath and its contractor, and the parties intend to amend the Agreement to shift responsibility for construction of these elements to Bearpath, and to adjust reimbursement amounts accordingly;

Whereas Minnesota Statutes section 103D.335, subdivisions 7 and 21, provide RPBCWD with the necessary authorization to enter the Agreement and this amendment.

Agreement

DATE, 2022

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Cooperative Agreement - Amendment

Bearpath Golf and Country - RPBCWD Middle Riley Creek Stabilization Project

NOW, THEREFORE Bearpath and RPBCWD enter into this amendment, acknowledging that the mutual covenants and conditions set forth herein constitute consideration, the receipt and sufficiency of which is hereby acknowledged by each party.

1. Exhibit C is incorporated into and made a part of the Agreement. Paragraph 2.A of the Agreement establishes that Exhibit C defines the Project by providing the specific designs, plans and specifications for construction (the Project Specs). Exhibit C is amended and superseded as follows and as shown in the plan sheets and specifications attached to and incorporated into this amendment as Exhibit C1:

- A. The date of Substantial Completion, as defined in the Project Specs, is extended to July 15, 2022, and the date of Final Completion, as also defined in the Project Specs, is extended to July 15, 2024.
- B. Bid items JJ-Remove and Dispose of Bituminous Golf Cart Path and KK-Furnish and Install Bituminous Golf Cart Path from the Project Specs and the Project, and will instead be completed by Bearpath as part of the Golf Course Work.
- C. Restoration of prairie in the area between the no. 13 golf course green and no. 14 golf course hole, shown and labeled "Prairie Restoration" in Exhibit C1, is removed from the Project Specs and the Project, and the Prairie Restoration and will instead be completed by Bearpath at its sole expense as part of the Golf Course Work after approval in writing by RPBCWD of any revisions to the design, plans and specifications from those included in Exhibit C of the Agreement. (The Prairie Restoration costs are portions of bid items MM-Furnish and Install Short Upland Seed Mix and UU-Furnish and Install Straw Mulch in the contract documents for the Project.) In addition, Bearpath will establish and maintain vegetation for the Prairie Restoration in accordance with the plans and specifications for same in Exhibit C of the Agreement.
- D. Bid item SS-Restore Golf Course Green (vegetation – sod) is removed from the Project Specs and the Project, and will instead be completed by Bearpath at its sole expense as part of the Golf Course Work.

Commented [MW1]: Make sure all of these were part of the Project, that will now be completed by Sunram.

2. Paragraph 3.B of the Agreement is revised to read as follows:

- B. As provided in paragraph 2.FE.i herein, Bearpath will be responsible for the costs of routine post-construction maintenance of the Project in conformance with the Maintenance Plan.

Commented [MW2]: This is just a correction.

3. Paragraph 3.E of the Agreement is revised to read as follows:

- E. Except as specifically provided otherwise herein, each of the parties will bear the costs of fulfilling its responsibilities and obligations under this agreement and, in the event of cancellation, the parties will bear all costs incurred prior to RPBCWD's issuance of notice to Bearpath in accordance with paragraph 2.ED.iv herein.

Commented [MW3]: Also just a correction.

4. Costs. Recognizing that, pursuant to paragraph 1.B of this amendment, RPBCWD will not incur the cost of removal and disposal of the bituminous cart path used for access to the Project location, or the subsequent reconstruction of the cart path, no reimbursement of 50

percent of the documented costs of bid items JJ – Remove and Dispose of Bituminous Golf Cart Path and KK – Furnish and Install Bituminous Golf Cart Path is due from Bearpath to RPBCWD. In addition, RPBCWD will not incur the cost of completing the Prairie Restoration – portions of each of bid items MM-Furnish and Install Short Upland Seed Mix and UU-Furnish and Install Straw Mulch. Accordingly, paragraph 3.C of the Agreement is amended to read as follows:

C. On receipt of documentation of payment as may be reasonably requested, Bearpath will reimburse RPBCWD ~~\$43,500~~^{\$35,154} of documented costs of construction of the Project plus all costs associated with rebuilding the portion so the boulder wall beyond the 50 feet associated with the slope failure into Riley Creek at the unit price per lineal foot secured through the project bidding process times the length rebuilt. ~~Because the RPBCWD and Bearpath Contractors will jointly access the site using the same route, Bearpath will reimburse RPBCWD 50 percent of the cost of restoring the access route jointly used by both contractors.~~ Additionally, Bearpath will commit the following expenditures or in-kind contributions:

Commented [MW4]: A reduction of \$7,067 + \$1,279 = \$8,346

- i. \$950 in payment to Barr Engineering for conceptual design development, information from which was used in the Middle Riley Creek Stabilization Feasibility Report;
- ii. \$6,550 in future payments planned, and under contract, from Bearpath to Barr Engineering, for consulting on final golf-related design development and golf feature construction related to the Project;
- iii. All design and construction costs, estimated at \$24,700, related to relocation of Hole #13 tee boxes and modifying Hole #12 green area to accommodate the Project;
- iv. In-kind long-term maintenance of the Project, in accordance with the Maintenance Plan, excluding material costs associated with implementing the Maintenance Plan, an estimated value of \$6,800 (40 hours of labor per year);

And as so amended, paragraph 3.C of the Agreement remains effectively.

5. Approval of construction. As of the date of this amendment, construction of the Project and associated work on the Bearpath golf course by the RPBCWD contractor are effectively complete for the intended purposes. By their signatures hereunder, the parties concur that the Project and associated work on the Bearpath golf course have been completed in accordance with plans and specifications, and that the parties have effectively collaborated in the completion of all work and jointly inspected the work and found that the Project and associated work on the Bearpath golf course by the RPBCWD contract have been competently and correctly completed for the intended purposes.

Except as expressly revised and amended by this amendment, the terms of the agreement remain in full force and effect.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have caused the amendment to be executed, intending to be legally bound thereby.

Bearpath Golf & Country Club
by Bearpath Holdings LLC, a Minnesota limited liability company, its general partner

_____ Date: _____
James E. Senske, President

Riley-Purgatory-Bluff Creek Watershed District

_____ Date: _____
Davie Ziegler, President

Approved as to form & execution:

RPBCWD counsel

Exhibit C1
Updated Design, Plans and Specifications

