

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

1/27/09

SUBJECT: Lake Zumbro Restoration – Funding Agreement with Olmsted County

PREPARED BY: Joseph S. Hensel, Director of Field Services

ITEM DESCRIPTION:

The State of Minnesota has appropriated \$175,000 for cost-sharing planning and engineering costs associated with the Lake Zumbro Restoration Project. The state funding must be matched by local dollars. RPU has budgeted \$100,000 for the local match. The balance will come from local sources and in-kind contributions.

Olmsted County has agreed to be the project manager and fiscal sponsor for the project. The Olmsted County Attorney's Office has drafted an agreement that defines responsibilities and funding for the planning and engineering phase of the rehabilitation project (see attached copy of: Agreement For Funding Lake Zumbro Restoration Professional Services).

The Olmsted County Board of Commissioners passed a resolution approving the agreement on January 20, 2009 (See attachment).

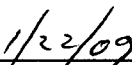
FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

RPU's budget contains \$100,000 for cost-sharing for this project.

UTILITY BOARD ACTION REQUESTED:

Management requests Board approval of cost-sharing for this project and approval of the resolution authorizing the Mayor and Clerk to execute the subject agreement with Olmsted County.


General Manager


Date

ROCHESTER PUBLIC UTILITIES

AGREEMENT FOR FUNDING LAKE ZUMBRO RESTORATION PROFESSIONAL SERVICES

This Agreement amended this ____ day of _____, 2009, by and between Olmsted County, Minnesota, a political subdivision of the State of Minnesota (hereinafter "the County") , the City of Rochester, Minnesota, a Minnesota municipal corporation acting by and through its public utility board (hereinafter "the City").

WHEREAS, the County borders upon a body of water commonly known as "Lake Zumbro" which is also located partially within Wabasha County. While not adjacent to the Lake, the City owns and operates a hydroelectric plant which is part of the Lake Zumbro Dam and Hydroelectric Facility located at the north end of the Lake; and

WHEREAS, the parties feel that Lake Zumbro is an important resource and major asset to each of them. The parties also believe that Lake Zumbro should be protected through collective actions designed to perpetuate and enhance this resource for the future; and

WHEREAS, sediment deposited into Lake Zumbro from the Zumbro River and its tributaries has damaged this resource and limits its use for recreation and power production; and

WHEREAS, the State of Minnesota has appropriated \$175,000 of state funding for planning and engineering costs associated with the restorations of Lake Zumbro;

WHEREAS, the parties have authority under Minn. Stat. §103G.245 to restore the resource by dredging sediment from the lake with authorization from the Minnesota Department of Natural Resources;

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

ARTICLE I

The parties hereto will work together in restoring Lake Zumbro through programs to fund and oversee the removal of deposited sediments through dredging. Said work will include, but is not limited

to, the administration of grant and loan contracts with local, state, and federal agencies, the contracting of engineering and construction services, and the purchase of land or easements for construction access and dredge materials management.

ARTICLE II

The County will act as project manager and fiscal agent for the parties to this agreement. As fiscal agent, the County will keep track of funds contributed by the parties for this project, as well as any federal, state or local grant or private funds which may be received for this purpose, and shall track disbursements made to vendors related to this project. The parties agree they are bound to comply with the requirements of the Minnesota Government Data Practices Act and any regulation thereto. The County also agrees to keep records relating to this contract for a period of 6 years and agrees to an audit if ordered by the State, as per Minnesota State Statute Section 16c.05, Subdivision 5.

ARTICLE III

The County agrees to make in-kind contributions in the form of staff and management time, materials and expenses needed to manage this project.

ARTICLE IV

The City shall make an up-front contribution of \$100,000 towards the out-of-pocket costs associated with the engineering and planning phases of the lake dredging project. This sum shall be transferred by the City to the County prior to March 31, 2009. City agrees to pay 35 percent of all actual costs, not to exceed \$100,000. In the event that total out-of-pocket cost associated with the planning and engineering phase of the lake dredging project is less than \$275,000, the remaining balance shall be returned by the County to the State and City on a pro-rata basis.

ARTICLE V

The County, with input and concurrence from the City, shall coordinate and manage engineering, planning and other professional services needed for this project.

ARTICLE VI

The parties shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes Chapter 466. Nothing in this Agreement shall be construed to waive the protections given by Chapter 466 of Minnesota Statutes. The statutory limits of liability provided for by that statute are not waived, and may not be added together, aggregated, or “stacked” for purposes of increasing the overall limits of liability of the parties to this agreement.

Each party shall fully defend, indemnify, and hold harmless the other parties against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of a party which is the subject of a claim and/or employees and/or agents of that party. This Agreement to indemnify and hold harmless does not constitute a waiver by any participant of limitations on liability provided under Minnesota Statutes Section 466.04.

The undertaking and obligations of the contracting parties set forth in this Agreement, and in any other agreements between them, are for the exclusive benefit of the parties.

ARTICLE VII

The parties may, upon thirty (30) days written notice, terminate their participation in the Agreement. However, the parties agree that in the event of termination, any vendor which has been hired by the parties to perform work pursuant to this Agreement shall be paid for any work as of the date of termination which has been satisfactorily performed.

ARTICLE VIII

This Agreement shall have an effective date as of the ratification of this Agreement by both parties. This Agreement shall be of force and effect until replaced, superseded, repealed, or voided by the parties hereto.

ARTICLE IX

The terms of this Agreement shall not be assigned, altered, waived, modified or amended in any manner whatsoever except by written instrument signed by the parties.

ARTICLE X

This Agreement constitutes the final expression of the parties' agreement, and the complete and exclusive statement of the terms agreed upon. This Agreement supersedes all prior negotiations, understandings, agreements and representations. There are no oral or written understandings, agreements or representations not specified herein.

ARTICLE XI

By executing this Agreement, the parties acknowledge that they: (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein. Both parties wish to avoid any delays associated with a legal challenge to any of the terms of this Agreement. As such, both parties agree that they will not challenge the legality of any term or condition found within this Agreement and specifically waive any and all legal objections they may have to

any such term or condition. Notwithstanding any provision in this Agreement to the contrary, this clause will survive the termination or expiration of this Agreement.

COUNTY OF OLMSTED

By: _____
Board Chairperson

ATTEST: _____
Clerk Administrator

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

REQUEST FOR COUNTY BOARD ACTION

AGENDA DATE: January 20, 2009 ITEM NO. _____

PREPARED BY: Bill Angerman and Dean Albertson, Lake Zumbro Association

STATE ITEM OF BUSINESS WITH BRIEF ANALYSIS AND ACTION REQUESTED OF THE COUNTY BOARD:

Lake Zumbro Restoration Project

In the last Legislative session, the Olmsted and Wabasha County Boards requested \$175,000 in state funding for completing the engineering work for the Lake Zumbro Restoration Project. The request was approved. Several steps will need to be taken by the Olmsted County Board to proceed with this work.

- The Olmsted and Wabasha Counties Joint Powers Agreement for Lake Zumbro adopted in May of 1995 needs to be amended to add the necessary authority. A copy of the Joint Powers Agreement with recommended amendments is attached. Note that the Wabasha County Board approved the proposed amendments at their December 2, 2008 Meeting.
- Two members need to be assigned to the Joint Powers Board.
- A fiscal sponsor resolution needs to be approved. Since most of the proposed engineering work will be done in Olmsted County, Wabasha County has requested that Olmsted serve as the fiscal sponsor. A proposed resolution is attached.
- A resolution approving the proposed agreement with the City of Rochester for their contribution to the project. A proposed agreement with the City of Rochester is attached.

The proposed agreements and Board resolution have been reviewed by the County Attorney. The County Environmental Management Team has reviewed this proposal and recommends Board approval.

Board Action Requested

Motions to approve:

1. the proposed Olmsted and Wabasha Counties Joint Powers Agreement amendments,
2. the proposed resolution authorizing Olmsted County to act as fiscal sponsor for the engineering work, and
3. the proposed Olmsted County and City of Rochester Agreement for funding professional planning and engineering services for the Restoration Project.

REVIEWED WITH ADDITIONAL MATERIAL PROVIDED: _____

County Administration

ALL REQUESTS FOR COUNTY BOARD AGENDA TIME MUST BE IN THE COUNTY ADMINISTRATOR'S OFFICE BY THE MONDAY OF THE WEEK BEFORE THE BOARD MEETING. WHEN MONDAY IS A HOLIDAY, THE PREVIOUS FRIDAY IS THE DEADLINE.

**OLMSTED COUNTY BOARD OF COMMISSIONERS
RESOLUTION #2009-_____**

**ADMINISTRATION OF A STATE GRANT FOR
THE LAKE ZUMBRO RESTORATION PROJECT**

BE IT RESOLVED that Olmsted County will act as a fiscal sponsor for the design and engineering of the Lake Zumbro Restoration Project, and

BE IT FURTHER RESOLVED that Olmsted County has the legal authority and financial capability to complete the design and engineering work, and

BE IT FURTHER RESOLVED that Olmsted County may enter into an agreement with the State of Minnesota jointly with Wabasha County for the above-referenced project, and certifies that it will comply with all applicable laws and regulations as stated in the grant agreement, and

NOW, THEREFORE BE IT RESOLVED that Richard Devlin, Clerk/Administrator is hereby authorized to execute such agreements as are necessary to implement the design and engineering work for the Lake Zumbro Restoration Project on behalf of the applicant.

I CERTIFY THAT the above resolution was adopted by the Olmsted County Board of Commissioners on January 20, 2009.

SIGNED:

WITNESSED:

Matt Flynn, Chair

Richard Devlin, Clerk/Administrator

Date

Date

REQUEST FOR COUNTY BOARD ACTION

AGENDA DATE: January 20, 2009 ITEM NO. 3-b

PREPARED BY: Bill Angerman and Dean Albertson, Lake Zumbro Association

STATE ITEM OF BUSINESS WITH BRIEF ANALYSIS AND ACTION REQUESTED OF THE COUNTY BOARD:

Lake Zumbro Restoration Project

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REVIEWED WITH ADDITIONAL MATERIAL PROVIDED 

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**OLMSTED COUNTY BOARD OF COMMISSIONERS
RESOLUTION #09-09**

**ADMINISTRATION OF A STATE GRANT FOR
THE LAKE ZUMBRO RESTORATION PROJECT**

BE IT RESOLVED that Olmsted County will act as a fiscal sponsor for the design and engineering of the Lake Zumbro Restoration Project, and

BE IT FURTHER RESOLVED that Olmsted County has the legal authority and financial capability to complete the design and engineering work, and

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NOW, THEREFORE BE IT RESOLVED that Richard Devlin, Clerk/Administrator is hereby authorized to execute such agreements as are necessary to implement the design and engineering work for the Lake Zumbro Restoration Project on behalf of the applicant.

I CERTIFY THAT the above resolution was adopted by the Olmsted County Board of Commissioners on January 20, 2009.

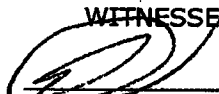
SIGNED:



Matt Flynn, Chair

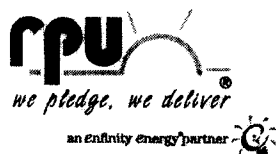
1-20-09
Date

WITNESSED:



Richard Devlin, Clerk/Administrator

1-21-09
Date



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a cost-sharing agreement with Olmsted County, Minnesota and to authorize funding for the planning and engineering of the Lake Zumbro Restoration Project, not to exceed \$100,000; and authorize the Mayor and the City Clerk to execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of January, 2009.

President

Secretary