



Joint City & County Commission Meeting Agenda

**Ramsey County Courthouse Basement - Large Meeting Room
524 4th Ave NE, Devils Lake, 58301**

Monday, March 13, 2023

5:30 PM

Meeting Items

- 1) Law Enforcement Center Facility Ownership
 - a. Draft LEC Joint Powers Agreement - Facilities

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JOINT POWERS AGREEMENT - FACILITIES

This Agreement is made and entered into this ____ day of _____ 2023 by and between the City of Devils Lake, a North Dakota municipal corporation, which has an address of 423 Sixth Street N.E., P.O. Box 1048, Devils Lake, ND 58301, hereinafter referred to as "City"; and Ramsey County, ND, a North Dakota municipal corporation, which has an address of 524 Fourth Avenue N.E., Devils Lake, ND, 58301, hereinafter referred to as "Ramsey County".

RECITALS

WHEREAS, the City and Ramsey County, both municipal corporations of the State of North Dakota, combined in 1973 to construct and furnish a law enforcement building, situated in the City of Devils Lake, within the County of Ramsey to accommodate their respective correctional needs, law enforcement offices, and court facilities;

WHEREAS, the City and Ramsey County jointly own the property located at 222 W. Walnut Street, Devils Lake, ND 58301 and the building located upon it, which is commonly referred to as the law enforcement center;

WHEREAS, there have been prior joint powers agreements made between the parties that have not addressed which entities are responsible for the upkeep of facilities and funding of capital improvements for the law enforcement building ;

WHEREAS, the City and Ramsey County are entering this Agreement to address who is responsible for upkeep of the facilities and funding of capital improvements for the law enforcement building located at 222 W. Walnut Street, Devils Lake, ND 58301; and,

WHEREAS, the City and Ramsey County intend to contribute to the responsibilities of ownership and the funding of capital improvements in an equal allocation as set forth in this Agreement;

NOW, THEREFORE, based upon the foregoing recitals and further based upon the mutual covenants contained herein, it is hereby agreed and understood, by and between the parties hereto as follows:

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1. Parties to Agreement

City of Devils Lake
423 Sixth Street N.E.
P.O. Box 1048
Devils Lake, ND 58301

Ramsey County, ND
524 Fourth Avenue N.E.
Devils Lake, ND 58301

(Hereafter collectively referred to as "the Parties")

2. Authority and Purpose

The Parties enter into this Agreement pursuant to N.D.C.C. Chapters 54-40 and 54-40.3 for the exercise of governmental powers and to utilize an intergovernmental approach to provide for upkeep of facilities and funding of capital improvements for the Lake Region Law Enforcement Center building located at 222 W. Walnut Street, Devils Lake, ND 58301.

3. Governmental Purpose

Any and all services or activities performed or undertaken pursuant to this Agreement shall be deemed for public and governmental purposes only. It is the intention of the Parties hereto that all privileges, protections, defenses, immunity, and damage limitations afforded to political subdivisions and its employees shall extend to the Parties to this Agreement and to the services performed hereunder.

4. Effective Date and Term

The term of this Agreement shall commence on the _____ day of _____ 2023 and shall continue in force and effect until terminated in accordance with this Agreement.

5. Definitions

5.1. "Capital Improvements"

5.2. "Responsibilities of Ownership"

6. Cost Allocation; Capital Improvements; Fiscal Year

6.1. Cost Allocation

The parties agree to fund and make payments to the Law Enforcement Center in equal amounts as needed for general upkeep and maintenance of the facilities responsibilities of ownership subject to approval by the Law Enforcement Center Board in the following amounts:

City of Devils Lake	50%
Ramsey County, ND	50%

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TOTAL:	100%
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6.2. Capital Improvements

The parties recognize that the law enforcement building and its facilities may, from time to time, require capital improvements including structural alterations or repairs which substantially affect the use and enjoyment of the property. The parties agree to fund and make payments to the Law Enforcement Center in equal/equitable amounts for capital improvements subject to approval by the Law Enforcement Center Board in the following amounts:

City of Devils Lake	50%
Ramsey County, ND	50%
TOTAL:	100%

6.3. Fiscal Year

The first fiscal year is the period from the date of this Agreement through December 31, 2023. Each subsequent fiscal year will begin on January 1 and ends on December 31. All payments for responsibilities of ownership and capital improvements must be received by the Law Enforcement Center prior to the end of the fiscal year.

7. Withdrawal

Each Party shall have the right to withdraw from this Agreement by giving written notice of withdrawal no later than ninety (90) days after effective date of this Agreement. No Party may withdraw from this Agreement until that Party has fully paid its share of the costs incurred or committed to by that Party prior to the date of withdrawal.

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8. Termination; Breach; Default; Force Majure

8.1. Termination

This Agreement may only be terminated upon the mutual agreement of the Parties through their respective governing bodies. Either party may begin the termination process by providing 180 days' notice to the other party (hereafter "the moving party")

8.1.1. Right of First Refusal

The moving party shall agree to provide the non-moving party with the right of first refusal to buy out the moving party's interest in the law enforcement building and its facilities, including real property and other chattels. Termination of this agreement may only occur after the right of first refusal has been exercised or waived by the non-moving party.

8.1.2. Liquidation of Assets; Equitable/Equal Distribution of Profits

Upon termination of this Agreement all real property, personal property, chattels, or other assets jointly owned and held by the Parties in relation to the law enforcement building and its facilities shall be liquidated and sold. Any profits from the sale shall first be applied to offset any costs involved with liquidation and termination of this Agreement, any remaining profits shall then be distributed in equitable/equal shares to the Parties.

8.2. Rights upon Breach

In the event one Party refuses further participation under the Agreement or is in breach of its obligations under this Agreement, the remaining Party may elect to operate the Program on such terms as they may mutually agree upon. The remaining rights and duties upon the breach will be determined in accordance with this Agreement.

8.3. Default

The failure of a Party to comply with any provision of this Agreement that has a material and adverse effect on any other Party will constitute an Event of Default under this Agreement; except that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period will extend for a total of sixty (60) days, so long as the defaulting Party is diligently trying to cure the failure throughout such period and such failure does not materially adversely impact the ownership and operation of the law enforcement building and its facilities.

8.4. Force Majeure

The Parties will not be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive, or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations under this Agreement will be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent reasonable.

9. Dispute Resolution

Representatives of the Parties shall meet and use their best efforts to settle any dispute, claim, question, or disagreement (hereafter "Dispute") arising from or relating to this Agreement or to the interpretation of this Agreement. To that end, representatives of the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all Parties. If the Parties do not or cannot reach such a solution within a period of thirty (30) days after the first meeting regarding a Dispute, then the Parties shall convene a joint meeting of their respective governing boards within sixty (60) days after the first meeting regarding a Dispute. If the Parties do not settle the Dispute at the joint meeting or within five (5) calendar days after the joint meeting, either Party may request a voluntary mediation of the Dispute. If a mediation is not requested or is not successful, any Party may pursue any and all legal and equitable remedies that may be available. Any Party with a Dispute over the amount of money to be paid related to the ownership and capital improvements of the law enforcement building and its facilities shall first pay the disputed amount under protest before commencing dispute resolution under this section. The respective costs for resolving any Dispute shall be borne by the individual Parties.

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10. Insurance

The parties shall procure, carry, and maintain in full force and effect at all times during the term of this Agreement, at their own expense, and until the termination of this Agreement, the following insurance coverage with the following limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to the Parties.

The insurance that the Authority is to provide under this Section 18 must be written as “occurrence” type policies, must provide for defense costs “ex-limits,” and must protect the Authority and the Parties, their directors, officers, employees and agents, and such other persons, firms, or corporations as the Parties may designate (collectively “Insured Parties”) as having an interest in the Program, in such a manner and at such amounts as set forth below:

11. Notices

All notices required pursuant to this Agreement shall be provided by pre-paid First-Class Mail, personal service, or email to the following persons and addresses or their respective legal counsels:

City of Devils Lake
% City Attorney
423 Sixth Street N.E.
P.O. Box 1048
Devils Lake, ND 58301

Ramsey County, ND
% State’s Attorney’s Office
524 Fourth Avenue N.E.
Devils Lake, ND 58301

12. Agreement Not for Benefit of Third Parties

This Agreement will not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties will have any right of action under this Agreement for any cause whatsoever. Any services performed or expenditures made in connection with this Agreement by any Party will be deemed conclusively to be for the direct protection and benefit of the property within the jurisdiction of such Party. No person or entity, other than the Parties and their permitted successors and assigns, is authorized to enforce the provisions of this Agreement.

13. Successors and Assigns

The terms and conditions of this Agreement inure to the benefit of and will be binding upon the Parties. Except as otherwise specifically provided herein, no party may assign or subcontract their rights or agreements or obligations hereunder to any successor in interest without the prior written consent of the other Party.

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14. Assignment

No Party may assign a right, claim, or interest it may have under this Agreement. No creditor, assignee or third-party beneficiary of a Party has a right, claim or title to any part, share, interest, fund, property, or other asset of the law enforcement building and its facilities.

15. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and other agreements and understandings of the parties in connection herewith, and all prior negotiations, agreements, letters of intent, contracts, negotiations, memorandums of understanding, discussions and/or understandings of the parties with respect to the subject matter hereof. No agreement, covenant, representation or condition not expressed in this Agreement shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

16. Further Acts, Assurances, and Documents

The Parties shall execute, acknowledge, and deliver any and all additional papers, documents, and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations under this Agreement and to carry out the intent of the Parties.

17. Modifications and Amendments

This Agreement will not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

18. Severability

If any paragraph, sentence, clause or phrase of this Agreement is for any reason determined to be invalid or constitutional by a decision of any court of a competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Agreement.

19. Interpretation

Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.

20. Governing Law; Compliance with State and Federal Law; Changes of Law Incorporated

20.1. Governing Law

This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of North Dakota

20.2. Compliance with State and Federal Law

The parties hereto recognize that because of the nature of the correctional services provided by the LRLEC ownership and capital improvements contemplated by this Agreement must be rendered in accordance with applicable state and federal law and regulations.

20.3. Changes of Law Incorporated

Any provision of this Agreement which refers to or incorporates any federal, state or local law, regulation, standard or practice, shall be construed to refer to the most current applicable version of the same so as to ensure that the requirements of this Agreement are consistent at all times with the currently applicable requirements and standards.

21. Government Immunity

Nothing in this Agreement, whether express or implied, is intended to alter, limit, or otherwise modify the application of any governmental immunity or protection provided under law to the parties hereto.

22. Duplicate Originals

This Agreement may be executed in multiple counterparts or duplicate originals, each of which constitute and is considered as one and the same document.

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The Parties are signing this Joint Exercise of Powers Agreement as of the date stated in the introductory clause.

COUNTY OF RAMSEY, ND
a municipal corporation

By: _____
Jeff Frith
Its: Chairman

Attest:

By: _____
Kandy Christopherson
Its: Auditor

Approved as to Form:

By: _____
Beau M. Cummings
Its: Legal Counsel

CITY OF DEVILS LAKE
a municipal corporation

By: _____
James "Jim" Moe
Its: Mayor

Attest:

By: _____
Spencer Halvorson
Its: City Administrator/Auditor

Approved as to Form:

By: _____
Jonathon "Jack" F. Yunker
Its: Legal Counsel