

COUNTY STATE AID HIGHWAY 101 COOPERATIVE CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this day of , 2021, by and between the **County of Scott**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "**County**" and the **City of Shakopee**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "**City**".

RECITALS:

- A. City has undertaken two recent projects that involved placement of stormwater facilities within County right of way (ROW).
- B. The first project is in response to storm water drainage issues adjacent to and south of the County State Aid Highway (CSAH) 101 right of way that resulted from the development of the Amazon Fulfillment Center. Storm water that previously drained from the south side of CSAH 101 northerly across the CSAH 101 right of way to the Minnesota River is currently limited from draining naturally.
- C. To address those issues, the City requested County approval of a project to install a 30 inch storm sewer pipe along the median of and across CSAH 101 ROW. This project, known City of Shakopee Project STS-19-003 ("Project 1"), was specifically initiated to improve stormwater drainage while also protecting documented cultural resources in the area from stormwater discharge and is led by the City.
- D. In conjunction with the Project 1, the County has agreed to permit installation of the 30 inch storm sewer pipe in its ROW via execution of Utility Permit No. U97-2020 in accordance with the County's Ordinance No. 22, "Management of the Public Right-of-Way";
- E. The County also agreed to contribute funding to the City to assist with construction of Project 1.
- F. The second project is for the establishment of a stormwater BMP along the south side of CSAH 101 immediately east of Stagecoach Road as depicted in project SAP 166-126-220 ("Project 2"). Project 2 involves the reconstruction of Stagecoach Road and new construction of Hentges Way and is located immediately south of CSAH 101. Construction of this project is scheduled to be performed in 2021;

- G. The County has reviewed the design of Project 2 in relation to the stormwater BMP, and has agreed to permit its construction within CSAH 101 right of way via execution of Right of Way Permit No. CA7-2021 in accordance with the County's Ordinance No. 22, "Management of the Public Right-of-Way";
- H. The installation of the 30 inch storm sewer pipe and the construction of the storm water BMP associated with the reconstruction of Stagecoach Road in County Right-of-Way will heretofore be referred to collectively as the "Projects";
- I. It is contemplated that cooperation of the Parties related to the Projects shall be carried out under the provisions of Minn.Stat. Sec. 162.17, subd. 1.

NOW, THEREFORE, IT IS HEREBY AGREED:

- 1. The recitals above are hereby restated and incorporated herein.
- 2. County shall compensate the City a lump sum amount of seventy-five thousand dollars and no cents (\$75,000.00) upon satisfactory completion of Project 1. Total compensation under this agreement shall not exceed seventy-five thousand dollars and no cents (\$75,000.00).
- 3. City shall submit one invoice to the authorized agent of the County for payment of work completed on Project 1. The authorized agent of the County shall have the authority to review the invoice, and no payment shall be made without the approval of the authorized agent. Payment shall be made within thirty (30) days after receipt of invoice for services performed and acceptance of such services by the authorized agent of the County.
- 4. All work completed by City for construction of the Projects shall be performed to the satisfaction of the County, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. Payment shall be withheld for work found by the County to be unsatisfactory, or performed in violation of federal, state and local laws, ordinances, rules or regulations.
- 5. Ongoing Rights, Duties and Maintenance of the Projects:
 - a. The County reserves the right not to issue any permits for a period of five (5) years after completion of the Projects for any service cuts in the roadway surfacing of CSAH 101 included in the Projects for any installation of underground utilities which would be considered as new work; service cuts shall be allowed for the maintenance and repair of any existing underground utilities.

- b. All future maintenance of the Projects' improvements described under this agreement shall be the responsibility of the City. All maintenance work performed by the City or its contractors shall be performed in accordance with County Ordinance No. 22, Management of the Public Right-of-Way.
 - c. Should the City fail to perform maintenance of the Projects to the County's satisfaction, the County shall provide written notification to the City. This notification shall describe the maintenance work the County determines is necessary and provide ~~and~~ a timeline for the City to accomplish the work. Should the City fail to meet the terms of the notification, the County may cause the work performed itself or through a contractor. All costs associated with the County having the work performed shall be the responsibility of the City. The County shall provide the City an itemized invoice documenting the costs involved in the County having the work performed. The City shall reimburse the County within 30 days of receipt of this invoice.
 - d. The City and County hereby establish a right of way dividing line for that section of CSAH 101 and Stagecoach Road east of the existing CSAH 101/Stagecoach Road intersection. The purpose of this right of way line is to demarcate right of way responsibilities for CSAH 101 to the County and Stagecoach Road to the City. The right of way line shall be defined as being and located 100.00 feet south of the centerline of the median of CSAH 101. The right of way line shall begin at the relocated centerline of the intersection of CSAH 101 and Stagecoach Road and shall extend easterly along CSAH 101 to the termination of CSAH 101 at the Trunk Highway (TH) 169/TH 13/CSAH 101 interchange.
 - e. Responsibility for ongoing maintenance of roadway features that extend beyond the newly established right of way line shall be determined based upon which roadway (either CSAH 101 or Stagecoach Road) is predominantly served by the feature and shall lie with the party that is responsible for that roadway.
6. Pursuant to Minn. Stat. Section 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of City relative to this agreement shall be subject to examination by the County and the State Auditor. Complete and accurate records of the work performed pursuant to this agreement shall be kept by City for a minimum of six (6) years following termination of this agreement for such auditing purposes. The retention period shall be automatically extended during the course of any administrative or judicial action involving the County regarding matters to which the records are relevant. The retention period shall be automatically extended until the administrative or judicial action is finally completed or until the authorized agent of the County notifies City in writing that the records need no longer be kept.

7. City agrees to defend, indemnify, and hold the County, its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney's fees and expenses resulting directly or indirectly from any negligent act or omission on the part of City, or its subcontractors, partners or independent contractors or any of their agents or employees, in the performance of or with relation to any of the work or services to be performed or furnished by the City or the subcontractors, partners or independent contractors or any of their agents or employees under the agreement.

City shall be responsible for the professional quality, technical accuracy, and the coordination of all work completed by City under this agreement. City shall, without additional compensation, correct or revise any errors or deficiencies in City's work.
8. City, its agents, employees and any subcontractors of City, in providing all services hereunder, agree to abide by the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as amended, and Minn. Rules promulgated pursuant to Ch. 13. City understands that it must comply with these provisions as if it were a government entity. City agrees to indemnify and hold the County, its officers, department heads and employees harmless from any claims resulting from City's unlawful disclosure, failure to disclose or use of data protected under state and federal laws.
9. This agreement may be terminated by mutual agreement of both parties. Termination of this agreement shall be made via an agreement that includes the signatures of both parties.
10. Any notices to be given under this agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same with the United States Postal Service, addressed to the authorized agent of City, at its address stated herein, or to the authorized agent of the County at the address stated herein.
11. The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this agreement, the legal relations between the parties and performance under the agreement. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located within the County of Scott, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota.
12. The County and City, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this agreement. Neither the

County nor City shall assign, sublet, or transfer any interest in this agreement without the prior written consent of the other.

13. The parties agree that no change or modification to this agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this agreement. The execution of the change shall be authorized and signed in the same manner as this agreement, or according to other written policies of the original parties.
14. County, its officers, agents or employees, either in their individual or official capacity, shall not be responsible or liable in any manner to City for any claim, demand, action or cause of action of any kind or character arising out of, allegedly arising out of or by reason of the performance, negligent performance or nonperformance of the described maintenance, restoration, repair or replacement work by County, or arising out of the negligence of any contractor under any contract let by County for the performance of said work.
15. It is further agreed that neither party to this Agreement shall be responsible or liable to any third party, other person or entity for any claims, damages, actions, or causes of actions of any kind or character arising out of, allegedly arising out of or by reason of the performance, negligent performance or nonperformance of any work or part hereof by the other party as provided herein; and each party further agrees to defend at its sole cost and expense and indemnify the other party for any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising in connection with or by virtue of performance of its own work as provided herein. Each party's obligation to indemnify the other under this clause shall be limited in accordance with the statutory tort liability limitation as set forth in Minnesota Statutes Chapter 466.04 to limit each party's total liability for all claims arising from a single occurrence, include the other party's claim for indemnification, to the limits prescribed under 466.04. It is further understood and agreed that the Parties' total liability shall be limited by Minnesota Statute Section 471.59, Subdivision 1(a) as a single governmental unit.
16. It is further agreed that any and all employees of each party and all other persons engaged by a party in the performance of any work or services required or provided herein to be performed by the party shall not be considered employees, agents or independent contractors of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said

employees while so engaged shall be the sole responsibility of the employing party and shall not be the obligation or responsibility of the other party.

17. The County's Authorized Agent for the purpose of the administration of this Agreement is Miranda Chard, Program Specialist, or her successor. Her current address and phone number are Scott County Highway Department, 600 Country Trail East, Jordan, MN 55352, (952) 496-8053.
18. The City's Authorized Agent for the purpose of the administration of this Agreement is Steve Lillehaug, Public Works Director/City Engineer or his successor. His current address and phone number are City of Shakopee, 485 Gorman Street, Shakopee, MN 55379, (952) 233-9361. Any change in name, address, or telephone shall be noticed to the other party.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

**CITY OF SHAKOPEE
(SEAL)**

By _____
William Mars, Mayor

And _____
William H. Reynolds, City Administrator

Date _____

Date _____

COUNTY OF SCOTT

ATTEST:

By _____
Jon Ulrich, Chair of Its County Board

By _____
Lezlie A. Vermillion, County Administrator

Date _____

Date _____

**Upon proper execution, this agreement
will be legally valid and binding.**

RECOMMEND FOR APPROVAL:

By _____
Jeanne Andersen, Assistant County Attorney

By _____
Anthony J. Winiecki, County Engineer

Date _____

Date _____