

COOPERATIVE MAINTENANCE AGREEMENT

THIS AGREEMENT, is entered 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. Extensive residential and commercial development has and will continue to occur in the vicinity of County State Aid Highway (CSAH) 15 and CSAH 16.
- B. This growth has led to traffic congestion and right-angle crashes at the CSAH 15/CSAH 16 intersection.
- C. County is preparing to install a traffic control signal system at the intersection of CSAH 15/CSAH 16 (Marystown Road/17th Avenue West), (hereinafter referred to as the "Project").
- B. It is contemplated that said maintenance and operation of the Project shall be carried out by the parties 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. The County shall maintain and repair the traffic control signal system at the sole cost and expense of the County except that the cost of maintenance and repairs to the Emergency Vehicle Pre-emption (EVP) system shall be at the sole cost and expense of the City. The County will invoice the City for any expense associated with County work performed on the EVP System and for the costs of maintenance of the integral streetlights.
- 3. The City shall not revise by addition or deletion, or alter or adjust any component, part, sequence, or timing of the traffic control signal system or EVP system installed with the Project; however, nothing herein shall be construed as restraint of prompt, prudent action by properly constituted authorities in situations where a part of such traffic control signal system may be directly involved in an emergency.
- 4. The City shall provide the electrical energy for the operation of the traffic control signal system and integral street lights installed under the Project, all at the sole cost and expense of the City.

5. The City shall maintain the integral streetlights including the luminaire and all its components at the sole cost and expense of the City, except for the County maintaining electrical energy to the luminaire head at the sole cost and expense of the County.
6. The EVP system provided for in this Agreement shall be installed, operated, maintained or removed in accordance with the following conditions and requirements:
 - a. Emitter units may be installed and used only on vehicles responding to an emergency as defined in Minn. Stat. Secs. 169.01, subd. 5 and 169.03. The City will provide the County Engineer or his duly appointed representative a list of all such vehicles with emitter units upon request.
 - b. Malfunctions of the EVP system shall be reported to the County immediately.
 - c. In the event said EVP system or components are, in the opinion of the County, being misused or the conditions set forth herein are violated, and such misuse or violation continues after receipt by the City of written notice thereof from the County, the County shall remove the EVP system. Upon removal of the EVP system pursuant to this paragraph, the field wiring, cabinet wiring, detector receivers, infrared detector heads and indicator lamps and all other components shall remain the property of the County.
7. A future County Global Maintenance Agreement, upon execution, may supersede maintenance responsibilities stated in this Agreement.
8. Since each party is a political subdivision of the State of Minnesota, each party shall maintain general liability and automobile liability coverage protecting itself, its officers, agents, employees and duly authorized volunteers against any usual and customary public liability claims to the limits prescribed under Minn. Stat. Sec. 466.04 and Workers' Compensation in accordance with the Minnesota statutory requirements. Said policies shall be kept in effect during the entire term of this Agreement.
9. All records kept by the City and the County with respect to the Project shall be subject to examination by the representatives of each party. All data collected, created, received, maintained or disseminated for any purpose by the activities of the County or City pursuant to this Agreement shall be governed by Minnesota Statutes Chapter 13, as amended, and the Minnesota Rules implementing such Act now in force or hereafter adopted.
10. Neither party, its officers, agents or employees, either in their individual or official capacity, shall be responsible or liable in any manner to the other party 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 the other party, or arising out of the negligence of any contractor under any contract let by the other party

for the performance of said work; and each party agrees to defend, save, keep and hold harmless the other, its officers, agents and employees harmless from all claims, demands, actions or causes of action arising out of negligent performance by its officers, agents or employees.

11. It is further agreed that neither party to this Agreement shall be responsible or liable to the other or to any 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 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.
12. 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.
13. The provisions of Minn. Stat. Sec. 181.59 and of any applicable local ordinance relating to Civil Rights and discrimination and the affirmative action policy statement of Scott County shall be considered a part of this Agreement as though fully set forth herein.
14. Pursuant to Minn. Stat. Sec. 16C.05, subd. 5, the books, records, documents, and accounting procedures and practices of the County and City pursuant to this Agreement shall be subject to examination by the County, City and the State Auditor. Complete and accurate records of the work performed pursuant to this Agreement shall be kept by the County and 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 or the City 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 or City notifies each party in writing that the records no longer need to be kept.

15. The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder shall be those courts located with the County of Scott, State of Minnesota. Litigation, however, in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.
16. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the Agreement to fail its purpose. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
17. The County's Authorized Agent for the purpose of the administration of this Agreement is Mary Keen, Contract Management Coordinator-Transportation , or her successor. Her current address and phone number are Scott County Highway Department, 200 Fourth Avenue W, Shakopee, MN 55379, (952) 496-8491.

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 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

By _____
Lezlie A. Vermillion, County Administrator

Date _____

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

RECOMMEND FOR APPROVAL:

By _____
Jeanne Andersen, Assistant County Attorney

By _____
Lisa Freese, Transportation Services Director

Date _____

Date _____