

CONSTRUCTION COOPERATIVE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2023, by and between the **City of Shakopee**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "**City** " and the **County of Scott**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "**County** ".

RECITALS:

- A. The County and City seek to improve multi-modal connectivity on County Highway (CH 16) by installing a multi-use trail along CH 16 between Spring Lake Drive and CH 18.
- B. The above-described improvements lie within the corporate limits of the City.
- C. A trail along CH 16 is consistent with the County's adopted 2040 Comprehensive Plan and the City of Shakopee's 2040 Comprehensive Plan and has been approved in the County's 2023-2027 Capital Improvement Program and the City's 2023-2027 Capital Improvement Plan.
- D. The trail construction has been divided into three distinct segments. From East to West:
 - a. Segment 1 – CH 18 to Moraine Drive Emergency Access
 - b. Segment 2 – Moraine Drive Emergency Access to Portage Lane
 - c. Segment 3 – Portage Lane to Spring Lake Drive
- E. The City has requested the County fund the full construction cost for Segment 1 as part of the Moraine Addition Housing Trust development project, as shown on the County's plans for County Project No. CPUTILITY01 (hereinafter referred to as the Project).
- F. The City and County have mutually agreed to fund 50% of Segment 2 construction costs as part of the Project.
- G. The City and County have mutually agreed to fund 50% of Segment 3 construction costs as part of a city-led trail project, as shown on the City Engineer's plans.
- H. It is contemplated that said improvement work shall be carried out by the parties hereto 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 has advertised for bids for the work and construction of the aforesaid County Project No. CPUTILITY01 to include Segments 1 and 2, received and opened bids pursuant to said advertisement and entered into a contract ("Contract") at the unit prices specified in the bid, according to law in such case provided

for counties. The Contract includes the plans and specifications for the Project work prepared by the County or its agents, which plans and specifications are by this reference made a part hereof.

3. The County shall administer the contract and inspect the construction of the contract work for the aforesaid Segments 1 and 2 at the sole cost of the County. The City Engineer shall cooperate with the County Engineer and his staff at their request to the extent necessary.

4. The City shall deposit with the Scott County Treasurer one hundred percent (100%) of the estimated City's share of the Project (\$41,980) as payment within thirty (30) days after execution of this Agreement. The final amount of the City's share of costs of the Project shall be determined upon completion of the Project and any amount remaining due to the County shall be reflected in the County's final, itemized, statement of the Project costs submitted to the City. In the event the initial payment exceeds the City's share of these final costs, such overpayment shall be returned to the City by the County.

5. The City or its agents, shall advertise for bids, or receive quotes for the work and construction of the aforesaid Segment 3, receive and open bids pursuant to said advertisement or quotes, and enter into a contract with the successful bidder at the unit prices specified in the bid of such bidder, according to law in such case provided for cities.

6. The City shall administer the contract and inspect the construction of the contract work for Segment 3 at the sole cost of the City. The County Engineer shall cooperate with the City Engineer and his staff at their request to the extent necessary.

7. The County shall, based on the Contract price, deposit with the City of Shakopee Finance Director one hundred percent (100%) of the estimated County's share of the project for Segment 3 as payment within thirty (30) days after award of Contract or execution of this Agreement, whichever is later. The final amount of the County's share of costs of the Project shall be determined upon completion of the Project and any amount remaining due to the City shall be reflected in the City's final, itemized, statement of the Project costs submitted to the County. In the event the initial payment exceeds the County's share of these final costs, such overpayment shall be returned to the County by the City.

8. This agreement serves as a permit for the City and its contractor to work in the County's right of way. The City is responsible for obtaining any other required permits for Segment 3 work.

9. The City Engineer shall prepare monthly progress reports as provided in the specifications. A copy of these reports shall be furnished to the County each month. The City shall request an acceptance inspection when the work and restoration is completed.

10. The County and the City agree that all disputes between them arising out of or relating to this agreement shall be submitted, upon agreement of both parties, to mediation, with the cost being shared equally.
11. Since each party recognizes each other as 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 and shall be in accordance with the Minnesota statutory requirements. Said policies shall be kept in effect during the entire term of this Agreement.
12. 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 City or County 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.
13. The City further agrees to provide any and all permanent or temporary right-of-way on City owned property needed for the completion of the Project.
14. The City shall, at its own expense, remove and replace all City and County owned signs that are within the construction limits of this Project for Segment 3. The County shall remove and replace all City and County owned signs that are within the construction limits for Segments 1 and 2.
15. The City shall be responsible for all routine maintenance of the trail improvement such as patching, snow plowing, ice removal, signing, trash removal, and mowing.
16. All preventative maintenance activities on the trail improvement such as overlays, sealcoating, and crack sealing shall be done as joint projects with a 50/50 cost share.
17. A future County Global Maintenance Agreement, upon execution, may supersede maintenance responsibilities stated in this Agreement.
18. Neither the County, its officers, agents or employees, either in their individual or official capacity, shall be responsible or liable in any manner to the 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 the City, or arising out of the negligence of any contractor under any contract let by the City for the performance of said work; and the City agrees to defend, save and keep said County, its officers, agents and employees harmless from all claims, demands, actions or causes of action arising out of negligent performance by the City, its officers, agents or employees.

19. It is further agreed that neither the City, its officers, agents or employees, either in their individual or official capacity, shall be responsible or liable in any manner to the County 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 County, or arising out of the negligence of any contractor under any contract let by the County for the performance of said work; and the County agrees to defend, save and keep said City, its officers, agents and employees harmless from all claims, demands, actions or causes of action arising out of negligent performance by the County, its officers, agents or employees.

20. It is further agreed that each party to this Agreement shall not 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 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.

21. It is further agreed that any and all employees of the City and all other persons engaged by the City in the performance of any work or services required or provided herein to be performed by the City shall not be considered employees, agents or independent contractors of the County, 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 City 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 City employees while so engaged shall be the sole responsibility of the City and shall not be the obligation or responsibility of the County.

Any and all employees of the County and all other persons engaged by the County in the performance of any work or services required or provided for herein to be performed by the County shall not be considered employees, agents or independent contractors of the City, 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 County 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 County employees while so engaged in any of the work or services provided to be rendered herein shall be the sole responsibility of the County and shall not be the obligation or responsibility of the City.

22. 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.

23. 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.

24. 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 will be those courts located within 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.

25. 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.

26. The County's Authorized Agent for the purpose of the administration of this Agreement is Adam Jessen, Project Manager, or his successor. His current address and phone number are Scott County Government Center, 200 4th Ave W, Shakopee, MN 55379, (952) 496-8048.

27. The City's Authorized Agent for the purpose of the administration of this Agreement is Assistant City Engineer Micah Heckman or his successor. His current address and phone number are 485 Gorman Street, Shakopee, MN 55379; (952) 233-9363. 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

By _____
Matt Lehman, Mayor

And _____
William H. Reynolds, City Administrator

Date _____

Date _____

COUNTY OF SCOTT

ATTEST:

By _____
Lezlie Vermillion, County Administrator

Date _____

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

By _____
Jeanne Andersen, Assistant County Attorney

Date _____

RECOMMEND FOR APPROVAL:

By _____
Anthony J. Winiecki, County Engineer

Date _____