

CONSTRUCTION COOPERATIVE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2017, 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 seeks to construct a trail along a portion of County State Aid Highway (CSAH) 78 and County Highway (CH) 79, starting at CSAH 17 and ending at CSAH 16 (hereinafter referred to as "Project").
- B. This Project is in conformance with the County's cost participation policy.
- C. The above described Project lies within the corporate limits of the City Shakopee.
- D. The County Engineer has prepared an engineer's estimate of quantities and unit prices of material and labor for the above described Project and an estimate of the total cost for contract work is five hundred eighty-three thousand three hundred and seven dollars and seventy eight cents (\$583,307.78).
- E. It is agreed 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 City and County mutually agree on the Project design at the 90% plan level, as submitted to MnDOT on January 10, 2017 . County staff will generate and finalize 100% construction plans and estimates based on this agreement, which will be presented to the City Engineer and County Engineer to sign prior to advertisement for bids.
- 2. The County shall advertise for bids for the work and construction of the Project, receive and open bids pursuant to said advertisement and enter into a contract with the successful bidder at the unit prices specified in the bid of such bidder, according to law. The County shall administer the contract and inspect the construction of the contract work for the Project. The City Engineer shall cooperate with the County Engineer and his staff at their request to the extent necessary.
- 3. City related permit fees for construction shall be waived by the City.
- 4. A work schedule shall be provided to the City after award of the contract and the City will be notified upon the start and completion of the work. Near Project completion, County

staff will deliver a Project Punch List to City staff for review. The City will have five (5) working days to review and comment on the Punch List. Upon County's request, a Final Inspection will be scheduled with the City within five (5) working days of the request. The City will have two (2) working days after the Final Inspection to notify County of incomplete or unacceptable work after which City will indefinitely waive its right to comment or request action on the Punch List and Final Inspection.

5. The federal Project requires a minimum 20% local match. As part of the agreement, the City and County will split equally the local match requirement. The City shall reimburse the County fifty percent (50%) of the local match final construction cost of the contract work for said Project. It is further agreed that the estimate of total cost for contract work referred to in this agreement are estimates and that the unit prices set forth in the contract with the successful bidder, and the final quantities as measured and accepted by the County Engineer, shall govern in computing the total final contract construction costs for apportioning the cost of the Project according to the provisions of this paragraph.
6. The City shall reimburse the County their share of the engineering and design, construction engineering and inspection services, and contract administration services for the Project, which shall be equal to ten percent (10%), three percent (3%), and two percent (2%), respectively. The rates stated herein shall be applied to half of the final construction cost of the Project based on the final quantities as measured and accepted by the County Engineer and the unit prices set forth in the contract with the successful bidder.
7. The City shall reimburse the County the City's share of the construction costs within thirty (30) days of invoicing by the County.
8. The City shall reimburse the County the City's share of the engineering and design, construction engineering and inspection services, and contract administration service costs within thirty (30) days of invoicing by the County.
9. The City shall maintain the trail as constructed in the Project as follows:
 - A. Maintain said trail in a smooth condition and in good repair for the passage of bicycles and pedestrians and free from all obstructions and impediments. Activities under this agreement include:
 - Snow and ice control activities
 - Surface maintenance, such as patching, edge repairs, and sweeping
 - Addressing drainage issues on or related to the trail

- Vegetation Control, such as mowing, tree trimming or removal, spraying noxious weeds, replacing damaged sod, etc.
 - Maintenance of any trail signs and sign posts
- B. Furnish all labor, materials, supplies, tools and other items necessary for the performance of any and all maintenance of the trail, at its sole cost.
- C. Maintenance inspection, repair, or reconstruction of all features that are part of the approved/permitted trail design.
10. Future sealcoat and crack sealing will be done as joint projects with the County contributing a lump sum payment of up to fifty percent (50%) of the project. The City will prepare plans, specifications, and administer the construction contract. The future overlay must be communicated and programmed three years in advance of the work being performed via the County's TIP solicitation process.
11. If a future overlay is deemed necessary by the City at the end of the initial trail pavement life as constructed by the Project, the County will contribute a lump sum payment of up to fifty percent (50%) of the overlay cost. The City will prepare plans, specifications, and administer the construction contract. The future overlay must be communicated and programmed three years in advance of the work being performed via the County's TIP solicitation process.
12. Conditions outlined in a future Global Maintenance Agreement between the City and County will supersede paragraphs 9,10, and 11 of this agreement.
13. 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.
14. All records kept by the County and the City 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.

15. 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.
16. 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.
17. 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.
18. 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. See Exhibit "A".

19. 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.
20. 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 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.
21. 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.
22. The County's Authorized Agent for the purpose of the administration of this Agreement is Tony Winiecki, Scott County Engineer, or his successor. His current address and phone number are Scott County Highway Department, 600 Country Trail East, Jordan, MN 55352, (952) 496-8008.

The City's Authorized Agent for the purpose of the administration of this Agreement is Bruce Loney, City Public Works Director, or his successor. His current address and phone number 400 Gorman Street, Shakopee, MN 55379. 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 _____
Bill Mars, Mayor

And _____
William H. Reynolds, City Administrator

Date _____

Date _____

COUNTY OF SCOTT

By _____
Michael L. Beard, Chair of Its County Board

Date _____

ATTEST:

By _____
Gary L. Shelton, County Administrator

Date _____

RECOMMEND FOR APPROVAL:

APPROVED AS TO EXECUTION:

By _____
Anthony J. Winiecki, County Engineer

By _____
Jeanne Andersen, Assistant County Attorney

Date _____

Date _____

EXHIBIT A

POLICY STATEMENT

It is the policy of Scott County Government to provide Equal Opportunity to all employees and applicants for employment in accordance with all applicable Equal Employment Opportunity laws, directives, and regulations of Federal, State, and local governing bodies or agencies thereof, including Minnesota Statutes, Chapter 363A.

Scott County will not engage in any employment practices which discriminate against or harass any employee or applicant for employment because of race, color, creed, religion, national origin, sex, disability, age, marital status, sexual orientation, or status with regard to public assistance. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, selection, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Further, Scott County fully supports incorporation of nondiscrimination rules and regulations into contracts and will commit the necessary time and resources to achieve the goals of Equal Employment Opportunity.

Any employee of the County who does not comply with the Equal Employment Opportunity Policies and Procedures set forth in this Statement and Plan will be subject to disciplinary action. Any subcontractor of the County not complying with all applicable Equal Employment Opportunity laws, directives, and regulations of Federal, State, and local governing bodies or agencies thereof, including Minnesota Statutes, Chapter 363A, will be subject to appropriate contractual sanctions.

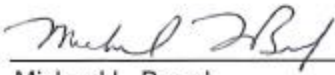
Scott County has designated the Employee Relations Director as the manager of the Equal Opportunity Program. These responsibilities will include monitoring all Equal Employment Opportunity activities and reporting the effectiveness of this program, as required by Federal, State, and local agencies. The Scott County Administrator will receive and review reports on the progress of the program. If any employee or applicant for employment believes he or she has been discriminated against, please contact the Scott County Employee Relations Director, Scott County Employee Relations, Government Center Room 201, 200 Fourth Avenue West, Shakopee, Minnesota 55379-1220, or call (952) 496-8103.



Gary L. Shelton
Scott County Administrator

1/3/17

Date



Michael L. Beard
Chair, Board of Commissioners

1/3/17

Date