

TRAFFIC MANAGEMENT SYSTEM OPERATION, MAINTENANCE AND REPAIR COOPERATIVE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, 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. County recently constructed a Traffic Management System (TMS) installed along County and City roadway routes. The TMS was developed to aid in the management of traffic at major traffic generating events held within the City.
- B. The above described TMS lies within the corporate limits of the City of Shakopee.
- C. Recognizing the benefits to the City from the operation of the system, City is willing to share in the ongoing cost of the operation, maintenance and repair of the TMS.
- D. The County owns and operates the TMS and has entered into annual agreements with vendors to host and maintain the TMS software platform and to have routine and preventative maintenance performed on the TMS electronic components. In addition, the County will monitor and, as necessary, repair TMS hardware that includes seven dynamic message sign boards, two closed circuit television cameras and three nonintrusive detection devices.

NOW, THEREFORE, IT IS HEREBY AGREED:

- 1. The recitals above are incorporated herein.
- 2. This agreement shall be effective upon signatures by both parties and shall remain in effect while the TMS is being used in the City.
- 3. County shall have overall authority to negotiate software, preventative maintenance, and hardware repair agreements with vendors and to inspect the construction of the repair work for the TMS. County shall have ultimate authority in initiating and determining work to be performed. The City Engineer shall cooperate with the County Engineer and his staff at their request to the extent necessary, but shall have no other responsibility for the supervision of work.

4. The City will contribute to the cost of operating the TMS by paying 33% of all costs for hosting and maintaining the software platform, performing routine and preventative maintenance, and repairing TMS hardware.
5. For budgeting purposes, beginning September 1, 2024, on or before September 1 of each year, County will notify City of a projected estimate for at least the next year's cost of hosting, preventative maintenance and repairs. Estimates shall be based upon contracts that County has in place with vendors for hosting and preventative maintenance services. Similarly, County shall advise City if there is any hardware suspected to be failing or in need of repair in the upcoming year. The parties agree that such notice is simply for the City's planning purposes and is not in any way a limitation on City's liability to pay for actual expenses incurred by County. The parties further agree that these cost estimates through the year 2024 have been disclosed to City and are attached herein as **Exhibit B**.
6. For payment, the County will annually invoice the City for the City's share of the previous year's costs. Invoices shall be submitted by February 1 of each year and will set out total expenses paid by County allocated between hosting, preventative maintenance and repairs, and amounts due from City allocated in the same manner. Payments shall be made within thirty (30) days to the County after receipt of invoices by the authorized agent of the City.
7. The parties agree that, beginning in 2024, the parties will meet at least once on an annual basis to discuss ongoing use, condition, repair, and plans for the TMS. Meetings will be scheduled at the request of the Authorized Agents of the parties. The parties agree that all final decisions regarding the operation, maintenance and repair of the TMS are at the sole discretion of County.
8. The City shall not revise by addition or deletion, nor alter or adjust any component, part, sequence, or timing of the aforesaid TMS without County consent; however, nothing herein shall be construed as restraint of prompt, prudent action by properly constituted authorities in situations where a part of such TMS system may be directly involved in an emergency.
9. 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.

10. It is further agreed that neither party to this Agreement shall be responsible or liable to the other party 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.
11. 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.
12. 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, including **Exhibit A**, which is attached and hereby incorporated.
13. 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.
14. 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.

15. The County's Authorized Agent for the purpose of the administration of this Agreement is Mandy Flum, Program Specialist, or her successor. Her current address and phone number are Scott County Highway Department, 600 Country Trail East, Jordan, MN 55352, (952) 496-8043.
16. 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 Shakopee City Hall, 485 Gorman Street, Shakopee, MN 55379, (952) 233-9361. Any change in name, address, or telephone shall be noticed to the other parties.
17. Termination:
 - a. This agreement will terminate upon the earlier of: 1) a decision by County to retire the TMS; or 2) a decision to upgrade the TMS in a manner that would increase the expected annual costs by over 30% over prior annual amounts.
 - b. The parties agree that upon any termination County shall submit a final invoice to City within sixty (60) days of the termination setting out the final expenses which shall be paid by City within thirty (30) days of receipt of the invoice.
18. 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.

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 Reynolds, City Administrator

Date _____

Date _____

COUNTY OF SCOTT

ATTEST:

By _____
Lezlie Vermillion, County Administrator
Board

By _____
David Beer, Chair of Its County

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 _____

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.


Lezlie A. Vermillion
Scott County Administrator

1-8-19

Date


Barb Weckman Brekke
Chair, Board of Commissioners

1-8-19
Date

EXHIBIT B

Expense	Estimated Annual Cost				
	2020	2021	2022	2023	2024
Software Platform Hosting/Maintenance Agreement	\$22,500	\$23,500	\$24,400	\$25,000	\$25,800
Preventative Maintenance on Electronic Components	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Projected TMS Hardware Repair Needs	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000
Total Estimated Annual Cost:	\$57,500	\$58,500	\$59,400	\$60,000	\$60,800