

CONSTRUCTION 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 and the City seek to improve County Highway (CH) 42, the project will reconstruct and modernize a 1.4 mile segment of CH 42 from CH 17 to CH 83 from a two lane undivided roadway to a four lane rural/urban hybrid divided roadway. The project will improve roadway profiles, install turn lanes, formalize access locations, improve storm water management, and add trails along the roadway (hereinafter referred to as the Project).
- B. A portion of the above described Project lies within the corporate limits of the City.
- C. The County Engineer has prepared an estimate of quantities and unit prices of material and labor based on bid results for the above described Project and an estimate of the total cost for contract work in the sum of nine hundred twenty six thousand one hundred ninety one dollars and fourteen cents (\$926,191.14). A copy of said estimate (marked **Exhibit "B"**) is attached hereto and made a part hereof.
- D. It is contemplated that said improvement work 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 incorporated herein.
- 2. The County shall advertise for bids for the work and construction of the aforesaid Project No. CP 42-19, receive and open bids pursuant to said advertisement and enter into a contract ("Contract") with the successful bidder at the unit prices specified in the bid of such bidder, according to law in such case provided for counties. The Contract will include the plans and specifications prepared by the County or its agents, which plans and specifications are by this reference made a part hereof.

3. County shall have overall authority to administer the Contract and inspect the construction of the Contract work for the Project. County shall have ultimate authority in initiating and determining change orders, supplemental agreements and final quantities. 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 the work.
4. City shall reimburse the County for its share in the construction cost of the Contract work for said Project and the total final contract construction cost shall be apportioned as set forth in the Cost Participation Summary in Exhibit "B". It is further specifically agreed that the estimate referred to in this agreement is only a preliminary estimate of the construction cost for the contract work on the project and that the unit prices set forth in the Contract and the final quantities as measured by the County Engineer shall govern in computing the total final contract construction cost for apportioning the cost of the Project according to the provisions of this paragraph.
5. In addition, the County and the City further agree to apportion costs designated as Engineering, and Contract Administration costs, which includes all actual costs of planning, design, environmental review, permits, preparation of bid, specifications and contract administration. Division of the aforementioned costs shall be determined by application of the same percentage used to calculate City's proportion of construction cost shown in Exhibit B to the engineering and administration costs determined by County.
6. In addition to costs above, Right of Way costs will be shared by the parties and shall be apportioned at a percentage set out in Exhibit B for the functional class of the existing roadway and include all associated costs of right of way in the City's jurisdiction within the project limits. These costs include right of way acquisitions, easements, private utilities with property rights, including appraisal costs, property management, demolition, staff, attorney fees, recording fees, plats, etc.
7. The City shall, based on the Contract price, deposit with the Scott County Treasurer one hundred percent (100%) of the estimated City's share of the construction, and estimated engineering and right of way costs (as shown in Exhibit B), within thirty (30) days after award of Contract or execution of this Agreement, whichever is later. The final amount of the City's share of the 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.
8. The County Engineer shall prepare monthly progress reports as provided in the specifications. A copy of these reports shall be furnished to the City upon request.

9. 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.
10. 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.
11. County reserves the right not to issue any permits for a period of five (5) years after completion of the Project for any service cuts in the roadway surfacing of the County Highway included in the Project 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.
12. City further agrees to guide the CH 42 Corridor as a Principal Arterial for access, right of way needs and land use consistent with a Principal Arterial. The City agrees that any redevelopment of the existing land use on the parcel known as Minnesota green shall have access relocated to a local public street. Both the City and County will work cooperatively through the development process to meet that requirement.
13. City shall, at its own expense, remove and replace all City owned signs that are within the construction limits of the Project.
14. Upon completion of the Project, the City at its expense shall perform debris removal on the trails constructed with the Project. The City shall also perform snow removal at its expense and discretion on the trails constructed with the Project.
15. Upon completion of the Project, the preventative maintenance on trails constructed with this project, including sealcoating and crack-sealing, will be a shared cost responsibility at 50% and Scott County will administer the process.
16. 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.

17. 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.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. 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.
The City's Authorized Agent for the purpose of the administration of this Agreement is Steve Lillehaug, Public Works Director or his successor. His current address and phone number are 485 Gorman St, Shakopee, MN 55379, 952-233-9300. 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 Reynolds, City Administrator

Date _____

Date _____

COUNTY OF SCOTT

ATTEST:

By _____
Lezlie A. Vermillion, County Administrator

By _____
Dave 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.



Leslie A. Vermillion 1-8-19
Scott County Administrator Date



Barb Weckman Brekke 1-8-19
Chair, Board of Commissioners Date

EXHIBIT B

Cost Allocated Based on Bid Results

*ROW/Engineering estimates subject to change

Scott County Local Cost Participation Policy		Principal Arterial CP 42-19				
	County	Shakopee	Prior Lake	SMSC	Total	
Highway Improvements - Reconstruction/Expansion						
Total Estimates*	\$8,972,776.74	\$6,350,963.86	\$2,621,812.88			
Cost Participation Percentage	92.5%	7.5%	7.5%			
Total Hwy Imp Cost	\$8,299,818.48	\$476,322.29	\$196,635.97	\$0.00		
Aesthetics						
Preliminary Aesthetics Estimate*	\$0.00	\$0.00				
Cost Participation Percentage	50%	50%				
Total Aesthetics Cost	\$0.00	\$0.00	\$0.00	\$0.00		
Multi-Use Trails & Sidewalks						
Total Trail, Sidewalk, ADA Estimates*	\$262,593.97	\$163,693.07	\$98,900.90			
Cost Participation Percentage	40%	60%	60%			
Total Trail, Sidewalk, ADA Cost	\$105,037.59	\$98,215.84	\$59,340.54	\$0.00		
Public Utilities						
Total Public Utilities Estimate*			\$10,366.56	\$21,078.93		
Cost Participation Percentage			100%	100%		
Total City Utilities Cost*	\$0.00	\$0.00	\$10,366.56	\$21,078.93		
TOTAL CONSTRUCTION COST	\$8,404,856.07	\$574,538.13	\$266,343.07	\$21,078.93	\$9,266,816.20	

	County	Shakopee	Prior Lake	SMSC	Total
Right of Way					
Total ROW Estimate**		\$770,000.00	\$280,000.00	\$500,000.00	\$1,550,000.00
Wetland Replacement Cost***					
Wetland Acreage***					
Cost Participation Percentage		30%	30%		
Total ROW & Wetland Cost	\$735,000.00	\$231,000.00	\$84,000.00	\$500,000.00	\$1,550,000.00
Engineering & Construction Engineering					
Total Construction Estimate (Hwy Imp, Aesthetics, Trail, Utilities)*		\$574,538.13	\$266,343.07		
Estimated Cost Participation Percentage		21%	21%		
Total Engineering Cost	\$0.00	\$120,653.01	\$55,932.04	\$0.00	\$176,585.05
Fiber					
Cost Participation Percentage	100%				
Total Fiber Cost	\$90,000.00	\$0.00	\$0.00	\$0.00	\$90,000.00
Total Other Costs	\$825,000.00	\$351,653.01	\$139,932.04	\$500,000.00	\$1,816,585.05

Snapshot Summary	County	Shakopee	Prior Lake	SMSC	Total
Total Construction Cost*	\$8,404,856.07	\$574,538.13	\$266,343.07	\$21,078.93	\$9,266,816.20
Total ROW Cost	\$735,000.00	\$231,000.00	\$84,000.00	\$500,000.00	\$1,550,000.00
Total Engineering Cost		\$120,653.01	\$55,932.04		\$176,585.05
Total Fiber Cost	\$90,000.00				\$90,000.00
PROJECT TOTAL COSTS	\$9,229,856.07	\$926,191.14	\$406,275.11	\$521,078.93	\$11,083,401.25

*Actual unit bid price will determine actual costs

**estimated SMSC ROW previously dedicated contribution

***This assumes all Wetland Impacts are LGRWRP eligible (potential wetland credits from previous estimates were \$311,197 for Shakopee and \$52,682 for Prior Lake), will update when LGRWRP credits withdrawn.