

## 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. The City has approved development plans for the Windermere South development adjacent to County State Aid Highway (CSAH) 78 at Zumbro Avenue.
- B. Left and right turn lanes are needed on CSAH 78 at Zumbro Avenue to address existing operational and safety issues for existing conditions and future development.
- C. As part of the development, the developer will construct left and right turn lanes at Zumbro Avenue and a median on CSAH 78 east of Zumbro Avenue (the "Work").
- D. The County will be overseeing the Work as part of the permit process.
- E. The above described project Work lies within the corporate limits of the City of Shakopee.
- F. Construction is anticipated to begin September 2020.
- G. The County and City support the Work on CSAH 78 at Zumbro Avenue.
- H. It is the intent of this agreement to provide a conveyance medium for the City to act as a facilitator of pass-thru funding from the County to the developer for the County's share of said improvements as part of the Windermere South development agreement, understanding that the City has no monetary obligation as part of this agreement.
- I. It is contemplated that said 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 are hereby restated and incorporated herein.
- 2. City shall enter an agreement with the developer or other appropriate party for completion of the Work.
- 3. All Work on County roads shall comply with State and County standards and requirements for such roadways and improvements.

4. This agreement does not excuse the developer from obtaining and complying with all necessary County permits. County's enforcement of permit requirements shall be based upon permit processes and do not arise out of, or connect to, this agreement.
5. County shall have no duty or obligation for any work, construction or effort related to the Work under this agreement beyond the permit inspection/approval and financial contribution contemplated herein. County's obligations are as set out herein and no duty or liability related to the Work shall be deemed attached to, assumed by, or acknowledged by County by its payment or this agreement.
6. The City shall have no duty to inspect or approve the Work and no other duty or liability related to the Work.
7. Upon completion of the Work, the City shall invoice the County for up to 50 percent of the actual costs of the Work up to a maximum of four-hundred fifty thousand dollars and no cents (\$450,000.00).
8. The County shall reimburse the City the County's share of the Work costs within thirty (30) days of invoicing by the City.
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 County shall not be responsible or liable to City 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 City further agrees to defend at its sole cost and expense and indemnify the County 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 work as provided herein. City's obligation to indemnify 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 total liability for all claims arising from a single occurrence, including claims 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, including Exhibit A, which is attached and hereby incorporated.
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 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 Micah Heckman, Project Manager or his successor. His current address and phone number are City of Shakopee, 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  
(SEAL)**

By \_\_\_\_\_  
William Mars, Mayor

And \_\_\_\_\_  
William Reynolds, City Administrator

Date \_\_\_\_\_

Date \_\_\_\_\_

**COUNTY OF SCOTT**

**ATTEST:**

By \_\_\_\_\_  
David Beer, Chair of Its County Board

By \_\_\_\_\_  
Lezlie A. Vermillion, County Administrator

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

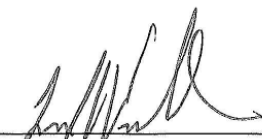
It is the policy of Scott County Government to provide Equal Opportunity to all employees and applicants for employment in accordance with all applicable Equal Employment Opportunity laws, directives, and regulations of Federal, State, and local governing bodies or agencies thereof, including Minnesota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

1/7/2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
David Beer  
Chair, Board of Commissioners

1/21/20  
\_\_\_\_\_  
Date