

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**", with County and City collectively hereinafter referred to as "**Parties**" or individually as "**Party**".

RECITALS:

- A. The County plans to improve County Highway (CH) 83 by reconstruction to a 4-lane highway which includes improvement to grading, paving, curb and gutter, storm sewer, sidewalks, trails, traffic signal modifications and installations, sanitary sewer and other related improvements (hereinafter referred to as the "Project").
- B. The 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 for the above described Project and an estimate of the total cost for contract work plus engineering and contract administration, and right of way costs as contained in paragraphs 5 and 6 in the sum of four million five hundred fourteen thousand four hundred fifty dollars and thirty nine cents (\$4,514,450.39). 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 83-24, 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. County shall have concurrence from the City Engineer for change orders pertaining to 12th Avenue construction activities.
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 to payment of the City's proportionate share of the contract construction cost, 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 percentage of the City's actual total construction cost divided by the project actual total construction cost as estimated in the Cost Participation Summary shown in Exhibit B.
6. Right of Way costs are also apportioned at a percentage set out in the Scott County Local Cost Participation Policy 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, temporary easements, private utilities with property rights, including appraisal costs, property management, demolition, staff, attorney fees, recording fees, plats, etc.
7. The City agree to provide, at no cost to the County, and further assigns non-exclusive use, all of any kind whatsoever, on and of its real property, title, rights, interests, all of any nature whatsoever, which is for and to the benefit of the Project.
8. The County and the City acknowledge that applicable Minnesota statutes, including but not limited to, Minn. Stat. §117.016, provides for the joint acquisition of real property, rights and interests for public use or public purpose. The Parties agree that the County shall be the lead agency to acquire joint right-of-way needed on common private property for both County Highway 83, 12th Avenue and Secretariat Drive and that the City shall be the lead agency to acquire joint right-of-way needs on common private property for

that part of County Highway 83 and Unbridled Avenue that are on PIN 27-406-002-0 and PIN 27-406-001-0 by either direct purchase or by condemnation proceedings under the rights of eminent domain as shown on Scott County Right of Way Plat No. 110. The Parties agree that right-of-way costs shall be allocated for joint acquisition on common private property as follows:

- a) PIN 27-406-002-0 with an address of 600 Canterbury Road, South:
Per agreement entitled “Agreement” dated as of October 14, 2020;
- b) PIN 27-406-001-0 with an address of 600 Canterbury Road, South:
Per agreement entitled “Agreement” dated as of October 14, 2020;
- c) PINs 27-245-004-2 & 27-245-004-3 with a property address of 3990 – 12th Avenue, East:
Allocation per the Cost Participation Policy in the County’s 2040 Comprehensive Plan;
- d) PIN 27-156-002-0 with a property address of 1244 Canterbury Road, South:
Allocation per the Cost Participation Policy in the County’s 2040 Comprehensive Plan;
- e) PIN 27-155-002-1 with a property address of 1195 Canterbury Road, South:
Allocation per the Cost Participation Policy in the County’s 2040 Comprehensive Plan;
- f) PIN 27-212-002-1 with a property address of 4058 – 12th Avenue, East:
Allocation per the Cost Participation Policy in the County’s 2040 Comprehensive Plan;
- g) PINs 27-212-001-0 & 27-155-002-0 with a property address of 4241 -12th Avenue, East:
Allocation 100% to the City;
- h) PIN 27-317-001-1 with a property address of 4100 - 12th Avenue, East:
Allocation 100% to the City;
- i) PIN 27-317-001-0 with a property address of 4250 – 12th Avenue, East:
Allocation 100% to the City.

Further, the Parties agree to assign that part of the right-of-way needs to each Party who is the road authority.

9. 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, engineering costs and right of way (as shown in Exhibit B) as partial payment 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 construction and engineering 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.

10. 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.
11. 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.
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 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.
13. 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.
14. City shall, at its own expense, remove and replace all City owned signs that are within the construction limits of the Project.
15. Upon completion of the Project, the City, at its expense, shall maintain all sanitary and storm sewer appurtenances, including all stormwater quality, rate control, and volume control features such as ponds, infiltration basins and all aesthetic landscaping elements. All future maintenance of these stormwater features shall be the responsibility of the City. The City may in the future alter the stormwater quality, rate control, and volume control features to accommodate future development as long as County drainage is maintained. The County will be responsible for catch basins, pipes and drainage structures, with the exception of maintaining sumps and water quality structures as stated above within the roadway and its rights-of-way. The City shall be responsible for the maintenance of these structures outside of the County right-of-way.
16. Upon completion of the Project, the County and City will include maintenance and operations requirements of the overhead dynamic message sign and all components as an addendum to an existing Traffic Management System Operation, Maintenance, and Repair Cooperative Agreement.
17. Upon completion of the Project, the City, at its expense and discretion, shall perform snow, ice, and debris removal on all trails and sidewalks constructed with the Project.

18. 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 between the County and City at fifty percent (50%) each and the City will administrate the process.
19. Upon completion of the Project, the City, at its expense, shall maintain all landscaping and material as part of this Project. The City shall be responsible for maintaining such material including removing the material if the material spills onto these surfaces. If landscape and/or growth negatively impacts sight lines or safety, the County can direct the City to remove landscape elements at City cost.
20. Future County Global Maintenance and Landscape Agreement(s), upon execution, may supersede maintenance responsibilities stated in this Agreement.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. The City's Authorized Agent for the purpose of the administration of this Agreement is Steve Lillehaug, City Public Works Director/City Engineer or his successor. His current address and phone number are City

of Shakopee, 400 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 _____
David Beer, Chair of Its County

By _____
Lezlie 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.



Leslie A. Vermillion
Scott County Administrator

4/7/2020

Date



David Beer
Chair, Board of Commissioners

1/21/20

Date

EXHIBIT B
Cost Participation Summary

Preliminary Cost Estimate
Based on 100% Plans
All estimates subject to change

Scott County Local Cost Participation Policy	Minor Arterial CP 83-24
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	County	Shakopee	SPUC	MnDOT	Total
Federal Funding Eligible Construction Costs	Highway Improvements - Reconstruction/Expansion				
	Clearing Grubbing Contract	\$ 21,000.00	\$ 21,000.00		
	Total Hwy Imp Estimate*	\$9,013,487.77	\$9,013,487.77		
	Cost Participation Percentage	80%	20.00%		
	Total Hwy Imp Cost	\$7,227,590.22	\$1,806,897.55		\$9,034,487.77
	Traffic Signals & Intersection Improvements				
	EVP System B Estimate*	\$7,725.00	\$7,725.00		
	Cost Participation Percentage	50%	50%		
	EVP System B Cost	\$3,862.50	\$3,862.50		\$7,725.00
	Traffic Control Interconnect Estimate*	\$10,300.00	\$0.00		
	Cost Participation Percentage	100%	0%		
	Traffic Control Interconnect Cost	\$10,300.00	\$0.00		\$10,300.00
	Traffic Control Signal System B Estimate*	\$309,000.00	\$309,000.00		
	Cost Participation Percentage	50%	50%		
	Traffic Control Signal System B Cost	\$154,500.00	\$154,500.00		\$309,000.00
	Traffic Control Signal System C Estimate*	\$0.00	\$0.00	\$75,000.00	
	Cost Participation Percentage	0%	0%	100%	
	Traffic Control Signal System C Cost	\$0.00	\$0.00	\$75,000.00	\$75,000.00
	Revise Signal System D Estimate*	\$51,500.00	\$0.00		
	Cost Participation Percentage	100%	0%		
	Traffic Control Signal System D Cost	\$51,500.00	\$0.00		\$51,500.00
	Total Traffic Signals & Intersection Improvements Cost	\$220,162.50	\$158,362.50	\$0.00	\$453,525.00
	Multi-Use Trails & Sidewalks				
	Total Trail, Sidewalk, ADA Estimates*	\$409,141.75	\$409,141.75		
	Cost Participation Percentage	44.45%	55.55%		
	Total Trail, Sidewalk, ADA Cost	\$181,863.51	\$227,278.24		\$409,141.75
	Total Federal Funding Eligible Construction Cost	\$7,629,616.22	\$2,192,538.30	\$0.00	\$9,897,154.52
	Federal Funding Allocation Percentage	77.68%	22.32%		
	Federal Funding Allocation (using allocation %)	-\$4,769,872.16	-\$1,370,727.84		-\$6,140,600.00
	ESTIMATED TOTAL FEDERAL ELIGIBLE CONSTRUCTION COST	\$2,859,744.07	\$821,810.45	\$0.00	\$3,756,554.52
Non-Eligible Costs Construction Costs	Landscaping				
	Landscaping Estimate*	\$ 163,641.25	\$ 163,641.25		
	Cost Participation Percentage	50%	50%		
	Total Utilities Cost	\$81,820.63	\$81,820.63		\$163,641.25
	Utilities				
	Utilities Estimate*		\$15,759.00	\$963,771.00	
	Cost Participation Percentage		100%	100%	
	Total Utilities Cost		\$15,759.00	\$963,771.00	\$979,530.00
	TIF Costs				
	TIF Estimate*		\$1,418,145.20		
	Cost Participation Percentage		100%		
	City TIF Cost		\$1,418,145.20		\$1,418,145.20
	City (12th Avenue) East of CH 83				
	City 12th Ave Estimate*		\$368,020.55		
	Cost Participation Percentage		100%		
	City 12th Ave Cost		\$368,020.55		\$368,020.55
	Estimated Total Non-Eligible Construction Cost	\$81,820.63	\$1,883,745.37	\$963,771.00	\$2,929,337.00
	Total Est Fed Eligible + Est Non-Eligible Construction Cost	\$2,941,564.69	\$2,705,555.82	\$963,771.00	\$6,685,891.52

	County	Shakopee	SPUC	MnDOT	Total
Non-Eligible Other Costs	Right of Way				
	Total ROW Estimate	\$2,117,500.00	\$2,117,500.00		
	Cost Participation Percentage	55.00%	45.00%		
	Total ROW & Wetland Cost	\$1,164,625.00	\$952,875.00	\$0.00	\$2,117,500.00
	Engineering & Construction Engineering				
	Total Construction Estimate (Hwy Imp, Trail, Utilities)*		\$4,076,283.67	\$963,771.00	
	Estimated Cost Participation Percentage		21%	9%	
	Total Engineering Cost		\$856,019.57	\$86,739.39	\$942,758.96
	Fiber				
	Cost Participation Percentage	100%			
	Total Fiber Cost	\$45,000.00			\$45,000.00
	Total Non Eligible Other Costs	\$1,209,625.00	\$1,808,894.57	\$86,739.39	\$3,105,258.96

Snapshot Summary	County	Shakopee	SPUC	SMSC	Total
Total Federal Funding Eligible Construction Cost	\$7,629,616.22	\$2,192,538.30		\$75,000.00	\$9,897,154.52
Federal Funding Allocation	-\$4,769,872.16	-\$1,370,727.84			-\$6,140,600.00
ESTIMATED TOTAL FEDERAL ELIGIBLE CONSTRUCTION COST	\$2,859,744.07	\$821,810.45	\$0.00	\$75,000.00	\$3,756,554.52
Total Utilities Cost		\$15,759.00	\$963,771.00		\$979,530.00
City TIF Cost		\$1,418,145.20			
City 12th Ave Cost		\$368,020.55			
Estimated Total Non-Eligible Construction Cost	\$81,820.63	\$1,883,745.37	\$963,771.00	\$0.00	\$2,929,337.00
Total Est Fed Eligible + Est Non-Eligible Construction Cost	\$2,941,564.69	\$2,705,555.82	\$963,771.00	\$75,000.00	\$6,685,891.52
Total ROW & Wetland Cost	\$1,164,625.00	\$952,875.00			\$2,117,500.00
Total Engineering Cost		\$856,019.57	\$86,739.39		\$942,758.96
Total Fiber Cost	\$45,000.00				\$45,000.00
PROJECT TOTAL COSTS	\$4,151,189.69	\$4,514,450.39	\$1,050,510.39	\$75,000.00	\$9,791,150.47

*Cost estimate have been inflated 3% for 2021

*Trail estimate based on 10' and 8' costs split

*Actual construction costs will change Federal allocation percentage

Project Total with Fed Funding	\$15,931,750.47
City of Shakopee less TIF Costs	\$3,096,305.19