

COOPERATIVE AGREEMENT

THIS AGREEMENT, 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 New Prague**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "**City**".

RECITALS:

- A. County has programmed plans to improve a segment of County Highway (CH) 15 from Columbus Ave N to CH 8, County Project (CP) 15-20. The plans include milling bituminous pavement, plant-mixed asphalt pavement, and pavement markings (the Overlay work) along with concrete walk and Americans with Disabilities Act (ADA) improvements (the Trail work). Overlay work and Trail work, together referred to as the "Project".
- B. The above-described Project lies partially within the corporate limits of the City.
- C. City supports the planned Project and is willing to cooperate with County to complete the Project and share costs related to the Project.
- D. The Scott County Cost Participation Policy states the City and the County will split equally the cost of the walk, trail, and ADA improvements associated with all County-led projects and all pedestrian amenities, which apply to the Trail work in this Project.
- E. The County Engineer has prepared an estimate of the City's cost share for the Trail contract work in the sum of thirteen thousand nine hundred two dollars and thirty-two cents (\$13,902.32). A copy of said estimate (marked Exhibit "A") is attached hereto and made a part hereof.
- F. It is contemplated that the Project shall be carried out by the parties under the provisions of Minn. Stat. §162.17, subd. 1 and Minn. Stat. §471.59.

NOW, THEREFORE, in consideration of the mutual undertakings and agreement contained within this Agreement, the County and City hereby agree as follows:

1. **Incorporation**

The recitals set out above are hereby incorporated into this Agreement as if fully restated herein.

2. **Scope of Services**

- a. County shall advertise for bids for the work and construction of the aforesaid Project, 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.
- b. 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.
 - c. The County Engineer shall prepare monthly progress reports and furnish to the City upon request.

3. Payment

- a. It is specifically agreed that the estimate(s) mentioned in this Agreement is only a preliminary estimate of the cost for the 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 construction cost for apportioning the cost of the Project according to the provisions of this section.
- b. Based upon the total final construction costs:
 - 1) County shall pay one hundred percent (100%) of the Overlay work.
 - 2) City shall reimburse the County fifty percent (50%) of the final actual construction costs of the Trail work.
 - 3) City further agrees 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 related to the Trail work. For such costs, the City agrees to pay an additional three percent (3%) of the final work costs set out above for Engineering and an additional three percent (3%) of the final work costs set out above for Contract Administration.
- c. Upon completion of the Project, County will submit an invoice to City for the payment due, and City shall pay all amounts due within thirty (30) days.

4. Ongoing Maintenance Items

- a. Future Modifications. 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.
- b. Pavement Striping and Markings. Initial pavement striping and markings shall be included as part of the Project. The County shall be responsible for all subsequent pavement striping and markings on its county roads as required after the initial work and shall be responsible for one hundred percent (100%) of the subsequent related costs. The City shall be responsible for all subsequent striping and markings on its city roads, including pedestrian markings across its City roadway intersection legs, as required after the initial work and shall be responsible for one hundred percent (100%) of the subsequent related costs.
- c. Snow and Ice Control. 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.

- d. Trail Maintenance. All future maintenance costs of Trail improvements constructed under this Agreement will be shared equally between the County and City regardless of which party performs the maintenance work. Either party can initiate and complete such maintenance work with notice given to the other party. Upon completion of such work the initiating party will invoice the other for fifty percent (50%) of the actual total cost. The preventative maintenance on trails constructed with this project, including sealcoating, will be cost shared equally between the County and City with County administering the process.
- e. A future County Global Maintenance Agreement, upon execution, may supersede maintenance responsibilities stated in this Agreement.

5. Effective Date of Contract

This Agreement shall be effective upon execution by all parties to the Agreement.

6. Term of Contract

This Agreement will terminate upon City making final payment, the County's project completion and close out, provided that the Ongoing Maintenance section shall survive the Agreement termination.

7. Authorized Agents

The Parties shall appoint an authorized agent for the purpose of administration of this Agreement. City is notified of the authorized agent of County as follows:

Nathan Thomas, or his successor
Highway Division Program Manager
Scott County Transportation Services
200 Fourth Avenue West
Shakopee, MN 55379
(952) 496-8479
nthomas@co.scott.mn.us

The County is notified the authorized agent for City is as follows:

Josh Tetzlaff, or his successor
City Administrator
City of New Prague
118 Central Avenue N
New Prague, MN 56071
(952) 758-1129
jtetzlaff@newpraguemn.gov

8. County and State Audit

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.

9. Liability and Indemnity

- a. 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.
- b. 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 to limit each party's total liability for all claims arising from a single occurrence, including 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 Minn. Stat. §471.59, Subdivision 1a. as a single governmental unit.
- c. 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 Workers' 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.

10. Insurance

Since each party is a political subdivision of the State of Minnesota, each party shall maintain a program of self-insurance or insurance covering 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 coverage shall be kept in effect during the entire term of this Agreement.

11. Data Practices

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.

12. Equal Employment and Americans with Disabilities

In connection with the work under this Agreement, City agrees to comply with the applicable provisions of state and federal equal employment opportunity and nondiscrimination statutes and regulations. In addition, upon entering into this Agreement, City certifies that it has been made fully aware of Scott County's Equal Employment Opportunity and Americans With Disabilities Act Policies, that it supports these policies and that it will conduct its own employment practices in accordance therewith. Failure on the part of City to conduct its own employment practices in accordance with County Policy may result in the withholding of all or part of regular payments by the County due under this Agreement unless or until City complies with the County policy, and/or suspension or termination of this Agreement.

13. Controlling Law

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. Changes/Amendments

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.

15. Severability

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.

16. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the County and City relating to the subject matter hereof.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed intending to be bound thereby.

CITY OF NEW PRAGUE

By _____
Charles Nickolay, Mayor

And _____
Joshua Tetzlaff, City Administrator

Date _____

Date _____

COUNTY OF SCOTT

By _____
Lezlie Vermillion, County Administrator

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

Division of Cost Summary

Trail & ADA Construction Costs and Engineering/Administration Services to be shared 50% with the City of New Prague

Estimated Costs Based on Award

CH 15 Overlay Project (CP 15-20) - Trail/ADA

Construction Costs					
Item	Est. Quant.	Unit	Unit Price	Amount	
REMOVE CURB AND GUTTER	130	LF	\$ 15.00	\$	1,950.00
REMOVE CONCRETE WALK	221	SF	\$ 4.50	\$	994.50
REMOVE BITUMINOUS WALK	906	SF	\$ 2.45	\$	2,219.70
6" CONCRETE WALK	1127	SF	\$ 9.27	\$	10,447.29
CONCRETE CURB AND GUTTER	130	LF	\$ 36.05	\$	4,686.50
TRUNCATED DOMES	64	SF	\$ 92.70	\$	5,932.80
Total Estimated Construction Costs				\$	26,230.79
50% of Total Estimated Construction Costs				\$	13,115.40
Contract Work Percentage Costs					
Construction Engineering and Inspection - Three Percent (3%)				\$	393.46
Contract Administration - Three Percent (3%)				\$	393.46
Total Estimated Contract Work Percentage Costs				\$	786.92
ESTIMATED GRAND TOTAL				\$	13,902.32