

JOINT POWERS AGREEMENT
BETWEEN
THE COUNTY OF DAKOTA AND
THE CITY OF WEST ST PAUL
FOR
DAKOTA COUNTY PROJECT NO. 73-034

Design, right-of-way acquisition, construction, operation and maintenance of the Multiuse Trail and sidewalk on CSAH 73 (County Project 73-034)

SYNOPSIS Dakota County and the City of West St. Paul agree to the design, construction, operation and maintenance of a multiuse trail along County State Aid Highway 73 (Oakdale Avenue) between CSAH 8 (Wentworth Avenue) and CR 4 (Butler Avenue). This project intends to fill important trail and sidewalk gaps as well as construct intersection improvements that will improve the safety for pedestrians and bicyclists using the corridor. The project will also reconstruct a greenway trail connection to the River to River Greenway from Oakdale to Sperl Street.

THIS JOINT POWERS AGREEMENT (“Agreement”) is entered into by and between the County of Dakota (“County”) and the City of West St. Paul (“City”) (County and City are hereinafter collectively referred to as the “Parties”) and witnesses the following:

WHEREAS, under Minnesota Statutes Section 471.59, subdivision 1, two governmental units may enter into an Agreement to cooperatively exercise any power common to the contracting Parties, and one of the participating governmental units may exercise one of its powers on behalf of the other governmental units; and

WHEREAS, to provide a safe and efficient transportation system, the County and the City are partnering on development and construction of a multiuse trail on the east side of CSAH 73 (Oakdale Avenue) between CSAH 8 (Wentworth Avenue) and CR 4 (Butler Avenue); a sidewalk on the west side of CSAH 73; and reconstruction of 800 feet of a greenway trail connection from Oakdale Avenue to the entrance of Thompson County Park at Sperl Street (the “Project”); and

WHEREAS, the City has secured federal funding through the regional solicitation in the amount of \$1,785,600 which will cover a portion of the Project’s construction costs; and

WHEREAS, the City shall be the lead agency for the project; and

WHEREAS, the County has, in consultation with the City, programmed the design, right-of-way acquisition and construction of the multiuse trail, sidewalk, and greenway trail reconstruction (**Exhibit A**); and

WHEREAS, the City is responsible for securing land necessary to accommodate the construction, maintenance, and operation of the Project; and

WHEREAS, this Agreement defines the roles and responsibilities of each party in regard to the design, right-of-way acquisition, construction, maintenance and operation of the Project.

NOW, THEREFORE, it is agreed that the County and the City will share Project responsibilities and jointly participate in the costs associated with the Project, and related activities as described in the following sections:

1. Engineering. Design engineering including all aspects of the Project (public involvement, agency involvement, preliminary/final design etc.), surveying, mapping, environmental documentation, construction engineering, construction management, construction inspection and all related materials testing, including the cost of County and City staff time for these purposes. shall be the City’s full responsibility.

2. Construction. Cost sharing for construction includes all street, highway, trail, sidewalk, and greenway construction items; construction, replacement or restoration of trails and sidewalks, landscaping and driveways when affected by construction; replacement or adjustment of water and storm sewer systems, if required due to reconstruction; relocating or adjusting privately owned utilities when not performed at the expense of the utility; replacement of roadway lighting, and all other construction aspects outlined in the Project plan.

3. Cost Share. The cost participation for design, right-of-way, and construction activities for the sidewalk and trail along Oakdale will be in accordance with the adopted Cost Share Policy F.1 Roadway. The County's cost share is 85% and the City's share is 15% after the application of \$1,785,600 of federal funds received through the regional solicitation. The greenway trail reconstruction from Oakdale to County Thompson Park will be funded by the Dakota County Parks Department with a construction cost estimate of \$100,000.

4. Right-of-Way. The preliminary design for the projects will determine the existing right of way, permanent and temporary highway easement and drainage and utility easements required to complete the improvements. The City will undertake all actions necessary to acquire all permanent and temporary highway right-of-way, including relocations, and will acquire all right-of-way for trail, sidewalk, greenway trail, and intersection improvements for the Project. Except as set forth below, the costs of acquiring highway right of way, including right of way for drainage inlets and outlets, shall be shared based on the County's and City's share of the final construction costs in accordance with the current Dakota County Cost Participation policies. The City shall convey to the County, at no cost, before construction of the Project begins, all necessary permanent highway and temporary easements, including the right to grade within drainage and utility easements as necessary on forms approved by the County Attorney's office, on all adjacent City-controlled real property for Project purposes. Upon completion of the Project, the ownership of the drainage and ponding easements and permanent right of way for City streets shall be owned by City. Any right of way costs for new sanitary sewer, water mains and appurtenances, and aesthetic elements outside of the right of way needed for the highway improvements shall be the responsibility of the City.

5. Construction Items. Cost sharing includes all trail, sidewalk, greenway, highway and roadway construction items, including removals; sidewalks and trails; mobilization and traffic control, temporary widening or other measures if required as part of traffic control or project staging; County furnished materials; mitigation as required by state and federal permits including accessibility requirements; replacement or restoration of fences, landscaping and driveways when affected by construction; replacement or adjustment of sanitary sewer, water and storm sewer systems, if required due to construction; relocating or adjusting privately owned utilities when not performed at the expense of the utility; water pollution best management practices, including storm sewer and other stormwater management facilities, eligible for County/City State Aid funding and based on contributing flows from the County right of way, meeting National Urban Runoff Protection (NURP) standards; modifications, replacement or adjustment of lighting if required due to construction, and all other construction aspects outlined in the plan except for elements as called out under this Agreement or County policies included in the current adopted Dakota County Transportation.

6. Aesthetic Elements. Aesthetic elements for the Project consist of decorative pavements, trail lighting excluding tunnel lighting, undergrounding of private utilities, landscaping and plantings. The County will participate up to 50 percent (50%) of the cost of aesthetic elements up to a maximum amount of three percent (3%) of the County's share (prior to application of Federal funding) of highway construction costs. Highway construction costs exclude costs for items such as right of way, storm sewer and ponding. The City shall be responsible for 50 percent (50%) of the costs of all aesthetic elements and 100 percent (100%) of the costs that exceed the County's maximum participation for aesthetic elements. The responsibility for maintenance of all aesthetic elements shall be in accordance with County policies included in the current adopted Dakota County Transportation Plan.

7. Plans, Specifications and Award of Contract. The City will prepare plans and specifications consistent with County and City design standards, State-Aid design standards and MnDOT standards and specifications. Concurrence with the plans and specifications is required prior to advertising for bids. Within 7 days of opening bids for the construction contract, the City shall submit a copy of the low bid and an abstract of all bids together with the request for concurrence by the State in the award of the construction

contract to the lowest responsible bidder. The City may award the contract for construction to the lowest responsive and responsible bidder in accordance with state law. If a bid is not awarded, this Agreement shall terminate for the specific project that is not awarded, and all costs incurred as of the date of termination shall be apportioned in accordance with the terms of this Agreement. The contract construction shall be performed in accordance with State approved plans, specifications and special provisions which are made a part hereof by reference with the same force and effect as though fully set forth herein.

8. Construction Standards. All construction, including traffic control, shall be accomplished in accordance with applicable State Aid, County and City standards, specifications, and policies to the satisfaction of the County and City. The County and City reserves the right to inspect construction materials and methods as needed.

9. City Utilities. Except as stated in the above sections of this Agreement, the City shall pay all other costs associated with city utilities impacted as part of the applicable Projects. Further, the City shall be responsible for the maintenance of all such utilities after the completion of the Project.

10. Payment. The City will administer the contract and act as the paying agent for all payments to the Contractor. Payments to the Contractor will be made as the project work progresses and when certified by the Public Works Director. Upon presentation of an itemized claim by one agency to the other, the receiving agency shall reimburse the invoicing agency for its share of the costs incurred under this Agreement upon receipt or within a maximum of 35 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving agency, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any outstanding amount will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

The County will advance the federal portion of project costs in 2023 in the total amount of \$1,785,600 in accordance with County Policy F.18, County Advanced Funding for City Cost Participation. The City will request reimbursement of federal funds beginning in October 2023 with full repayment anticipated by December 2024. Payments to the County

shall be received no later than 35 days after federal reimbursement to the City. In the event that federal funding is not received, the City shall reimburse the County 15% (\$267,840) of the federal award according to the County's adopted Cost Share Policy.

11. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect any of the Projects' cost participation must be approved by the Authorized Representative of each party prior to execution of work. Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.

12. Amendments. Any amendments to this Agreement will be effective only after approval by each governing body and execution of a written amendment document by duly authorized officials of each body.

13. Effective Dates for Design and Construction of Project. This Agreement will be effective upon execution by duly authorized officials of each governing body and shall continue in effect until all work to be carried out in accordance with this Agreement has been completed. Absent an amendment, however, in no event will this Agreement continue in effect after January 1, 2025.

14. Final Acceptance. Final acceptance of the Projects must be approved by both parties. The City requires a maintenance bond from the Contractor for the installation of City infrastructure (street and utilities) to be installed with the Projects. The warranty period for materials and workmanship shall be two years from the date of final acceptance by the City. This requirement shall be included in the bidding documents for the Projects.

15. Storm Sewer Construction and Maintenance. The City shall be responsible for assisting with the storm sewer inspection including having an inspector on-site during storm sewer installation. The City and County entered into a Maintenance Agreement for Storm Sewer Systems dated 08/27/2013 (Dakota County Contract #C0025406) ("Maintenance Agreement") which governs maintenance, repair and replacement duties and costs shared by the County and City for stormwater sewer system located on or along County Highway right-of-way. Upon acceptance of the Projects, on-going maintenance and repairs of storm sewer systems shall be provided in accordance with the current

County and City Maintenance Agreement. The County will participate in replacement or repair of storm sewer systems constructed by these Projects in accordance with County policies included in the current adopted Dakota County Transportation Plan.

16. Sidewalks and Trails. Upon acceptance of the Project, maintenance of sidewalk and trails shall be provided in accordance with current County policy F. 8 Multi-Use Trails and Sidewalk Maintenance. The County shall be responsible for pavement preservation, overlay or reconstruction of trails and sidewalks along the county highway system. The city is responsible for snow and ice removal.

17. Rules and Regulations. The County and the City shall abide by Minnesota Department of Transportation and standard specifications, rules, and contract administration procedures as applicable.

18. Indemnification. The County agrees to defend, indemnify, and hold harmless the City against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the County and/or those of County employees or agents. The City agrees to defend, indemnify, and hold harmless the County against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the City and/or those of City employees or agents. Both Parties to this Agreement recognize that liability for any claims arising under this agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466.

In the event of any claims or actions filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual Parties. In order to insure a unified defense against any third-party liability claim arising from the construction or maintenance of the Project, the Parties agree to require any contractors or subcontractors hired to do any of the work contemplated by this Agreement to maintain commercial general liability insurance in amounts consistent with minimum limits of coverage established under Minnesota Statutes §466.04 during the term of such activity. All such insurance policies shall name County and City as additional insureds.

19. Employees of Parties. Any and all persons engaged in the work to be performed by the County shall not be considered employees of the City for any purpose, including Worker's Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged. Any and all claims made by any third party as a consequence of any act or omission on the part of said County employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the City. The opposite situation shall also apply: the County shall not be responsible under the Worker's Compensation Act for any employees of the City and any and all claims made by any third party as a consequence of any act or omission on the part of said City employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the County.

20. Audit. Pursuant to Minnesota Statutes Section 16C.05, Subd. 5, any books, records, documents, and accounting procedures and practices of the County and the City relevant to the Agreement are subject to examination by the County and the City and either the Legislative Auditor or the State Auditor as appropriate. The County and the City agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement.

21. Integration and Continuing Effect. The entire and integrated agreement of the Parties contained in this Agreement shall supersede all prior negotiations, representations or agreements between the County and the City regarding the Project, whether written or oral. All agreements for future maintenance or cost responsibilities shall survive and continue in full force and effect after completion of the construction provided for in this Agreement together with each parties indemnification obligations.

22. Authorized Representatives. The authorized representatives for the purpose of the administration of this Agreement are:

Mark Krebsbach (or successor)
Dakota County Transportation
Director/County Engineer
14955 Galaxie Avenue
Apple Valley, MN. 55124
(952) 891-7102

Ross Beckwith (or successor)
Public Works & Parks Director
City Engineer
City of West St. Paul
1616 Humboldt Avenue
West St. Paul, MN 55118
(651) 552-4130

The Authorized Representative shall obtain authorization to implement or administer any provision of this Agreement from his or her respective governing body as required by the governing body's policies and procedures. The parties shall promptly provide notice to each other when an Authorized Representative's successor is appointed. The Authorized Representative's successor shall thereafter be the Authorized Representative for purposes of this Agreement.

All notices or communications required or permitted by this Agreement shall either be hand delivered or mailed by certified mail, return receipt requested, to the above addresses. Either party may change its address by written notice to the other party. Mailed notice shall be deemed completed two business days after the date of mailing.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the Parties have caused this Joint Powers Agreement to be executed by their duly authorized officials.

CITY OF West St. Paul

RECOMMENDED FOR APPROVAL:

Ross Beckwith, Public Works Director

Date _____

By _____
Dave Napier, Mayor

Date _____

APPROVED AS TO FORM:

City Attorney/Date

Attest: _____
Shirley Buecksler, Clerk

Date _____

COUNTY OF DAKOTA

RECOMMENDED FOR APPROVAL:

Mark Krebsbach, Transportation Director

By _____
Steve Mielke,
Physical Development Director

Date _____

Date _____

APPROVED AS TO FORM:

County Attorney
Date:
File #:

Dakota County Board
Resolution No. 21-208

Contract No. C0033944

EXHIBIT A

Project Location Map - CSAH 73 Oakdale

