

FIRST AMENDED AND RESTATED
JOINT POWERS AGREEMENT FOR
PRELIMINARY ENGINEERING

BETWEEN

THE COUNTY OF DAKOTA,

AND

THE CITY OF WEST ST. PAUL

DAKOTA COUNTY PROJECT NO. 04-17

CITY OF WEST ST. PAUL PROJECT NO. 21-5

SYNOPSIS: Dakota County and the City of West St. Paul agree to conduct an alternatives analysis, trail feasibility study and preliminary engineering for County Road (CR) 4 (Butler Avenue) from Trunk Highway 952A (Robert Street) to Trunk Highway 52 in West St. Paul, Dakota County.

THIS AGREEMENT, made and entered into by and between the County of Dakota, referred to in this Agreement as "the County"; and the City of West St Paul, referred to in this Agreement as "West St Paul"; and witnesses the following:

WHEREAS, under Minnesota Statutes Section 162.17, subdivision 1 and 471.59, subdivision 1, two or more 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, it is considered mutually desirable to provide preliminary design to develop the County Road (CR) 4 (Butler Avenue) corridor from TH 952A (Robert Street) to TH 52 in West St Paul, Dakota County (the "Project"); and

WHEREAS, the purpose and need for the project is to improve safety, multi-modal mobility, and traffic operations on CR 4; and

WHEREAS, to address the purpose and need for this Project, safety, operations, and multi-modal mobility will be improved along the corridor by adding multi-use trails to the road; and

WHEREAS, there is \$30,000 in Statewide Health Improvement Partnership (SHIP) funding available for Butler Avenue/County Road 4 Trail Feasibility Study West St. Paul and;

WHEREAS, there is \$100,000 within the 2020-2024 Transportation Capital Improvement Program Bike Trail set-aside that will be allocated to the Butler Avenue/County Road 4 Trail Study and;

WHEREAS, there is \$17,647 City funds to be allocated to the Butler Avenue/County Road 4 Trail Study and;

WHEREAS, the City of West St Paul is the lead agency for is the lead agency and City and County will jointly participate in the costs of said engineering.

NOW, THEREFORE, it is agreed that the County and the City will share project responsibilities and jointly participate in the project costs associated with the traffic analysis, corridor study and preliminary engineering:

1. Administration. The City of West St. Paul will enter into and administer the contract with a consulting firm, the Consulting Engineer, and will coordinate the preliminary engineering work of the Consulting Engineer with Dakota County. The County and the City shall each retain final decision-making authority within their respective jurisdictions.
2. Engineering. "Engineering Costs" shall be defined as design engineering costs, including public involvement, agency involvement, preliminary/final design engineering, plans, specifications and proposal, surveying, mapping, consultant engineering, right of way mapping, construction engineering, construction management, construction inspection and all related materials testing, including the cost of County and City staff time for these purposes, collectively, "Engineering Costs".
3. Preliminary Engineering. "Preliminary Engineering" shall be defined as engineering work completed through preliminary layouts, which includes, but is not limited to:
 - a. Surveying and mapping;
 - b. Feasibility study and reports;
 - c. Public involvement process;
 - d. Environmental reports; and
 - e. Preliminary layouts

for the Butler Avenue corridor from Trunk Highway 952A (Robert Street) to Trunk Highway 52 in West St. Paul. The Preliminary Engineering process for this project shall satisfy all the planning and reporting requirements of the SHIP grant that are listed in Exhibit A. The City and the County shall divide the preliminary engineering costs for the preliminary engineering according to County policy F.1, Cost Participation – Roadway: *Trail and sidewalks along county highways as deemed necessary by the County for safe accommodation of pedestrians and bicycles in the highway right-of-way:*

Investment Goal: Replacement and Modernization

- *The County shall be responsible for 85% of all preliminary engineering costs,*
- *The City of West St. Paul shall be responsible for 15% of the preliminary engineering costs*

Division of preliminary engineering costs between the County and City shall be applied following the subtraction of funds received from regional federal solicitation, Trunk Highway Fund, Trunk Highway Jurisdictional Transfer Fund, and federal or state grants, with the balance of remaining costs divided according to above-mentioned cost split.

4. Plans and Specifications. A Consulting Engineer will be selected by the County and the City as the consulting engineering firm to perform the Preliminary Engineering. The anticipated completion date of the Preliminary Engineering is March 1, 2022.

5. Project Cost Updates. The lead agency must provide updated cost estimates showing the County and City shares of Project costs annually at the time of Capital Improvement Program development. Updated cost estimates will also be provided by the lead agency at the following times:

- prior to any mutually agreed upon change in scope to the Consulting Engineer's contract
- upon completion of the study

Project cost estimate updates include actual and estimated costs for engineering, right of way acquisition, utility relocation and construction.

The Parties acknowledge that Project cost estimates are subject to numerous variables causing the estimates to be subject to change and the updates are provided for informational purposes in good faith. Each party is responsible for informing their respective council or board regarding Project costs estimates.

6. Right-of-Way Pre-acquisition. The County will prepare right of way maps for the required permanent and temporary highway and drainage easements for this project based on the Project Layout. The costs for this work shall be included in the Engineering Costs.

7. Funding. Expenses incurred under this Agreement shall not exceed the total funding contributions from the SHIP funding, County Transportation CIP and the City funds, which is \$147,647, unless otherwise agreed to by the parties in writing.

8. Payment. The City of West St. Paul will administer the contract and act as the paying agent for all payments to the Consulting Engineer. Payments to the Consulting Engineer will be made as the Project work progresses and when certified by the City Engineer. The City of West St Paul, in turn, will bill the County for their share of the Project costs. Upon presentation of an itemized claim by one party to the other, the receiving party shall reimburse the invoicing party for its share of the costs incurred under this Agreement within 35 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving party, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

9. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect the Project cost participation must be approved by all parties prior to execution of work.

10. 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.

11. Effective Dates. 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 December 31, 2022.

12. Termination. This Agreement may be immediately terminated by the County if funds from County, State or Federal sources are not appropriated at a level sufficient to allow for payments of the allowed expenses.

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

14. Indemnification and Insurance. 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. Each Party warrants that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program and that each has minimum coverage consistent with liability limits contained in Minn. Stat. Ch. 466. All parties to this Agreement recognize that liability for any tort 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 tort 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 work of the Project, City agrees to require all consultants, subconsultants, contractors or subcontractors hired to do any of the work contemplated by this Agreement to maintain professional liability insurance and commercial general liability insurance in amounts consistent with minimum limits of coverage established under Minn. Stat. § 466.04 during the term of such activity. All such insurance policies shall name City and County as additional insureds. City agrees to promptly provide County copies of any insurance policy related to this Agreement upon the County's request.

15. 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, liability, 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, liability, or responsibility of the County.

16. Audits. Pursuant to Minnesota Statute § 16C.05, Subd. 5, any books, records, documents, and accounting procedures and practices of the County and City relevant to the Agreement are subject to examination by the County or the City and either the Legislative Auditor or the State Auditor as appropriate. The County and City agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement. Dakota County will be financially responsible for the cost of the audit.

17. 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 City and the County 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 improvements provided for in this Agreement together with each party's obligations under Section 14.

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

Mark Krebsbach, Dakota County Engineer (or successor) 14955 Galaxie Ave. Apple Valley, MN 55124 Office: (952) 891-7102 Mark.Krebsbach@co.dakota.mn.us	Ross Beckwith (or successor) City of West St. Paul Public Works Director 1616 Humboldt Avenue West St. Paul, MN. 55118 (651) 552-4130 RBeckwith@wspmn.gov
--	--

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 agreement to be executed by their duly authorized officials.

CITY OF WEST ST. PAUL

RECOMMENDED FOR APPROVAL:

Nathan Burkett, City Manager

By _____
Dave Napier, Mayor

(SEAL)

Date _____

DAKOTA COUNTY

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

County Engineer

Assistant County Attorney / Date

COUNTY BOARD RESOLUTION:

No: _____ Date: _____

By: _____
Physical Development Director

Date: _____

KS- _____