

JOINT POWERS AGREEMENT FOR
PRELIMINARY & FINAL ENGINEERING, RIGHT-OF-WAY ACQUISITION, HIGHWAY
CONSTRUCTION, AND MAINTENANCE

BETWEEN

THE COUNTY OF DAKOTA
AND
THE CITY OF WEST ST. PAUL

FOR

COUNTY PROJECT NO. 06-06
CITY OF WEST ST. PAUL PROJECT NO. 20-2

SYNOPSIS: Dakota County Transportation Department and the City of West St. Paul agree to preliminary and final design engineering, right-of-way acquisition, construction, and installation of traffic control (roundabout) at the intersection of County State Aid Highway 73 and County Road 6 (Future City Roadway), constructed in conjunction with collateral multi-use trail and sidewalk projects along County State Aid Highway 73 and County Road 6 (Future City Roadway) 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 "the City".

WHEREAS, under Minnesota Statutes Section 162.17, subdivision 1 and 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, the County is proceeding with County Project (CP) 6-06 which will construct a roundabout at the intersection of County Road (CR) 6 (Thompson Avenue) and County State Aid Highway (CSAH) 73 (Oakdale Avenue) as well as a mill and overlay of CSAH 73 between CR 4 (Butler Avenue) and Wentworth Avenue ("the Project"); and

WHEREAS, the Parties previously executed a Jurisdictional Transfer Agreement, identified as Dakota County Contract No. C0033619 (Attachment A) concerning the portion of CR 6 between Trunk Highway (TH) 3 and TH 52, which set forth the rights and obligations of the Parties as they relate to the Project;

WHEREAS, to more efficiently deliver the Project, the Parties wish to supplement said Jurisdictional Transfer Agreement; and

WHEREAS, it is considered mutually desirable to complete the preliminary and final engineering design, right-of-way acquisition, and construction for the Project in conjunction with the preliminary and final engineering design, and construction of trail and sidewalk improvements occurring along CSAH 73 as part of County Project (CP) 73-34 (City Project No. 21-6), as agreed upon in Dakota County Contract No. C0033944 (Attachment B) and along CSAH 6 (future City roadway) as part of CP 06-12 (City Project No. 23-2), as agreed upon in Dakota County Contract No. C0033691 (Attachment C); and

WHEREAS, the County and City have included all three projects in their Capital Improvement Programs; and

NOW, THEREFORE, it is agreed the County and City will share Project responsibilities and jointly participate in Project costs as shown on the Project Funding and Agreements Map (Attachment D), and as described in the following sections:

1. Administration: The City is the lead agency for implementation, execution, and completion of the Project, including administering the preliminary and final design contract, and construction administration and inspection. The County is the lead agency for right-of-way acquisition. Subject to the requirements of Section 20 (Rules and Regulations) below, the County and the City shall each retain final decision-making authority within their respective areas of responsibility.
2. Cost Share. The Opinion of Cost Participation (Attachment E) reflects the estimated cost share for this Project and the adjacent projects referenced within this agreement. It is understood that this reflects an estimated cost share and final costs will be based on actuals at the time of construction. After application of all applicable cost sharing provisions of this Agreement and Dakota County 2040 Transportation Plan cost sharing policies F.1 through F.19 the County will participate in the Project as defined below:

F.1 Cost Participation – Roadway

The County will be responsible for 100% of the costs of existing pavement and/or curb and gutter retained and/or rehabilitated through mill and overlay, resurfacing, reclamation, or other methods, as part of the final project.

Due to new development, improvements consisting of roadway widening and striping for left turn lanes at the intersection of Oakdale Avenue and Schletty Lane will be constructed to address traffic changes and improve safety. The County will participate up to 50 percent (50%) of all costs associated with the design and construction of left turn lane improvements at this intersection. The City shall be responsible for 50 percent (50%) of the cost of this improvement.

F.2 Cost Participation – Aesthetic

Aesthetic elements for the Project consist of roundabout center island landscaping and plantings to improve traffic safety and operations of the roundabout by making it more conspicuous and by lowering speeds. The roundabout landscaping design shall adhere to Dakota County and MnDOT standard practices to maintain adequate sight distances

while also enhancing the sight blockage zones. The County will participate up to 50 percent (50%) of the cost of the center island 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. Irrigation systems are considered a maintenance cost and the City shall be responsible for 100 percent (100%) of the install, maintenance and operational costs. The responsibility for maintenance of all aesthetic elements shall be in accordance with County policies included in the current adopted Dakota County Transportation Plan.

F.3 Cost Participation - Right-of-Way`

As formalized in the CSAH 6 (Thompson Avenue) turnback agreement with the City of West St. Paul (Contract No. C0033619; Attachment A), the County will participate in the cost of right-of-way for the Project at 100% of cost where right-of-way is required for:

1. The construction of items described in F.1, above, and F.13 (Roundabouts) below.
2. The County's portion of storm sewer and other drainage facilities based on contributing flows meeting State Aid sharing factors.
3. The County portion of water pollution control best management practice items based on the County's share of the contributing flows and meeting NPDES standards. This includes recognition of the best management practices and systems necessary to meet all local, County, state or federal storm water treatment requirements.

F.5 Cost Participation Involving Federal and State Funds

Subtract from the County eligible project costs, funds received from the Highway Safety Improvement Program (\$1,395,000) for the CR 6/CSAH 73 roundabout, with the balance of remaining costs funded 100% by the County.

F.7 Cost Participation for Storm Sewer System Maintenance

Share the cost of city maintenance of the following elements of County transportation facility storm water drainage systems:

1. Roadway catch basins and pipes connecting catch basins to mainline pipes are eligible for up to 80 percent County participation, or the County share of contributing flows, whichever is less.

2. Mainline pipes at a minimum of 20 percent or the County's share of contributing flows, whichever is greater.
3. Storm water treatment and mitigation facilities based on the County's share of contributing flows.
4. To be eligible for County participation, a system-wide maintenance agreement between the County and local agency will be required to identify system-wide storm water roles and cost responsibilities. These cost share agreements are for actual repair and replacement projects and not for routine maintenance activities such as cleaning.
5. To be eligible for County participation, storm sewer repair and maintenance projects must be included in the currently adopted CIP or be approved by the County prior to incurring costs.

F.8 Multi-Use Trails and Sidewalk Maintenance

The County agrees to participate in pavement preservation, overlay, or reconstruction of trails and sidewalks along the County highway system up to 100 percent. The City is responsible for snow and ice removal. To be eligible for County participation in trails and sidewalks, a system-wide maintenance agreement between the County and local agency will be required to identify system-wide trail and sidewalk roles and cost responsibilities.

F.13 Cost Participation – Roundabouts

The County agrees to fund 100% the Project after the application of federal funds, as previously agreed upon as part of Dakota County Contract No. C0033619, Agreement for Jurisdictional Transfer of a Portion of County Road 6 in West Saint Paul (Attachment A).

F.17 Traffic Signal and Street Lighting Power Costs and Maintenance Responsibilities

County agrees to participate in the maintenance and power costs for new and replacement traffic signals and standard streetlights as follows. Aesthetically enhanced and decorative streetlights are subject to Policy F.2.

A. New and Replacement

- a. Installation (New and Replacement) Streetlights at intersections, marked pedestrian crossing locations and lighting along County highway trails within school zones with demonstrated safety benefit based on County

evaluation – Participate up to 100 percent for power and maintenance costs.

- b. Street lighting at roundabouts – The County will be responsible for power costs and maintenance on County-County and state-County intersection roundabouts and the city will be responsible on city-County intersection roundabouts. Power and maintenance responsibility for the roundabout at County State Aid Highway 73 and County Road 6 (Future City Roadway) will be the responsibility of the City at completion of construction to adhere to the jurisdictional transfer arrangement as outlined in Dakota County Contract No. C0033619, Agreement for Jurisdictional Transfer of a Portion of County Road 6 in West Saint Paul (Attachment A).
- c. The city is responsible for maintenance of streetlights and all costs for unmetered services.

B. Existing

- a. Energy saving light retrofits - The County does not participate. Cities may elect to retrofit streetlights at their cost and by permit through the County.

F.18 County Advanced Funding for City Cost Participation

The County will consider advancing the local share of the Project, consistent with adopted County cost participation policies, in the approved CIP's by agreement with the City involved when all the following criteria are met:

1. The County determines there is a need on the County transportation system that should be addressed sooner than city funding allows.
 2. The County has the available funds to pay the city cost share at the time the cost will be incurred.
 3. The City submits a request to the County explaining the reason(s) for the County to advance fund their share.
 4. The plan for city repayment is defined in an agreement between the City and County.
 5. County advance funding is limited to a maximum 3-year period.
3. Engineering. "Engineering Costs" shall be defined as design engineering costs, including public involvement, agency involvement, preliminary/final design, 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").

4. Non-Project Costs. It is understood that for efficiency and cost effectiveness, the City may request elements exceeding the City's Municipal State Aid street standards, such as City utilities and aesthetic improvements, be included in the projects. The City shall be responsible for 100% of the costs of City utilities not required due to construction, and 100% of all aesthetic elements that exceed the County share of aesthetic participation as defined by current adopted County Transportation Plan Cost Participation Policy F.2 – Aesthetic.
5. Municipal Construction Items. The costs for the design and reconstruction of improvements to any street under City jurisdiction, outside of the scope and construction limits for the projects, and any access or access improvements to local developments that are planned but not required by the projects, shall be the responsibility of the City.
6. Right-of-Way Acquisition. The County will undertake all actions necessary to acquire all permanent and temporary road right-of-way, all right-of-way for trails, drainage and ponds, and water pollution control best management practices necessary for the Project. The City shall convey to the County, at no cost, effective on the title and possession date of the Project, all necessary public easements and rights of way necessary for project purposes, on all adjacent City-controlled or dedicated real property for Project purposes including the right to grade within drainage, utility, and ponding easements and permanent right of way for City streets shall be owned by the City.
7. Plans, Specifications and Award of Contract. The City is the lead agency for design and construction of the Project. The City and County will prepare plans and specifications consistent with County and City's design practices, State-Aid design standards, and MnDOT standards and specifications. County concurrence with the plans and specifications is required prior to advertising for bids. The City will advertise for bids for the construction of the Project in accordance with applicable state laws and Delegated Contract Process (DCP) for Local Agency Federal Aid Projects. The City shall, within 7 days of opening bids for the construction contract, submit to the County a copy of the low bid and an abstract of all bids together with the City 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, 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 on file in the office of the County's Engineer and are made a part hereof by reference with the same force and effect as though fully set forth herein.

8. 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 this Project. Further, the City shall be responsible for the maintenance of all such facilities upon final acceptance of the Project.
9. Miscellaneous Elements: General maintenance will be handled in accordance with County policies included in the County's current Transportation Plan.
10. Operation: The geometric configuration of the CSAH 73 and CR 6 (future city roadway) intersection for both roadways, including lane alignments and traffic assignments for all approaches, traffic signing, and traffic operations will be determined by the County in cooperation with the City. The City agrees to make no changes to the intersection operation through pavement marking, signing, or other construction measures.
11. Pavement Marking and Traffic Signing Maintenance: Pavement markings will be installed as applicable for the operation of the highway and intersections along the Project area as outlined in the plans. The City shall be responsible for all pavement marking and sign maintenance within City right-of-way and the County shall be responsible for all pavement marking and sign maintenance within the County right-of-way, including signing and striping within the roundabout, unless necessitated by installation of new facilities.
12. Pavement Maintenance. Upon final acceptance of the Project, the City shall be responsible for all pavement maintenance within City right-of-way and the County shall be responsible for all pavement maintenance within County right-of-way unless necessitated by a failure of a municipal utility system or installation of new facilities.
13. Drainage Area and Stormwater or Drainage Facilities Maintenance. Upon final acceptance of the Project, maintenance of any drainage areas and any stormwater or drainage facilities shall be provided in accordance with the current County and City Maintenance Agreement.

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

- Prior to approval of the appraised values for any necessary right-of-way acquisitions,
- Prior to advertising a construction contract,
- After bid opening (prior to contract award),
- During construction if total contract changes exceed \$100,000,
- Once per year following the construction season until the Project is complete.

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 that the updates are provided for informational purposes in good faith. Each agency is responsible for informing their respective council or board regarding Project cost estimates.

15. Subsequent Excavation. Upon final acceptance of the Project, and after expiration of the warranty period regarding repair, if excavation within the highway right-of-way is necessary to repair or install water, sanitary sewer, or other city utilities, the City shall apply for a permit from the County and shall be responsible to restore the excavated area and road surface to its original condition at the time of disturbance. If the City fails to have the highway properly restored, the County Engineer may have the work done and the City shall pay for the work within 35 days following receipt of a written claim by the County.

16. Payment. The City will administer the contract and act as the paying agent for all payments to the consulting engineers. Payments will be made as the Project work progresses and when certified by the Public Works Director. The City, in turn, will bill the County for their share of the Project costs. 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 within 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 amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

17. 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.

18. 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.

19. Final completion. Final completion of the construction Project must be approved by both parties.

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

21. 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. 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. For purposes of determining total liability for damages, the City and County are considered a single governmental unit pursuant to

Minn. Stat. § 471.59, subd. 1a. The City shall include the County as additional insured in the contract documents.

22. 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.
23. Audits. Pursuant to Minnesota Statutes Sec 16 C. 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 the City agree to maintain these records for a period of seven years after project closing of all services covered under this Agreement. Dakota County will be financially responsible for the cost of the audit.
24. 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 highway construction provided for in this Agreement.
25. Authorized Representatives. The authorized representatives for the purpose of the administration of this Agreement are:

COUNTY OF DAKOTA

Erin Laberee (or successor)
Dakota County Engineer
14955 Galaxie Ave.

CITY OF WEST ST. PAUL

Ross Beckwith (or successor)
West St. Paul Public Works
Director/City Engineer

Apple Valley, MN 55124
Office: (952) 891-7122
Erin.laberee@co.dakota.mn.us

1616 Humboldt Ave.
West St. Paul, MN 55118
Office: (651) 552-4130
rbeckwith@wspmnm.gov

Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses, unless otherwise stated in this Agreement or in a modification of this Agreement.

[SIGNATURE PAGES 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:

Public Works Director/City Engineer, Ross Beckwith

By _____
Mayor, Dave Napier

APPROVED AS TO FORM:

(SEAL)

City Attorney, _____

By _____
City Clerk, Nicole Tillander

Date _____

DAKOTA COUNTY

RECOMMENDED FOR APPROVAL:

County Engineer, Erin Laberee

By _____
Physical Development Director,
Georg Fischer

Date: _____

APPROVED AS TO FORM:

Assistant County Attorney Date
Joe Marek
(File #: **KS-2022-####**)

COUNTY BOARD RESOLUTIONS

No. 23-075 Date: February 28, 2023