

JOINT POWERS AGREEMENT FOR

**BITUMINOUS RESURFACING, DRAINAGE IMPROVEMENTS, CITY UTILITY REPAIRS,
AND COST PARTICIPATION**

BETWEEN

THE COUNTY OF DAKOTA

AND

THE CITY OF SAINT PAUL BOARD OF WATER COMMISSIONERS

FOR

DAKOTA COUNTY PROJECT NO. 73-044 AND 73-045

CITY PROJECT NO. XX-XX AND XX-XX

SYNOPSIS: Dakota County and the City of Saint Paul Board Of Water Commissioners agree to include the necessary watermain repairs with the 2025 resurfacing of County State Aid Highway (CSAH) 73 (Oakdale Avenue) from 980' north of CSAH 14 (Mendota Road) to County Road 8 (Wentworth Avenue), and CSAH 73 (Oakdale Avenue) from County Road 4 (Butler Avenue) to Annapolis Street in West Saint Paul, Dakota County. All sharing of project costs will be in accordance with the Cost Sharing Policies within the Dakota County 2040 Transportation Plan.

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THIS JOINT POWERS AGREEMENT ("Agreement"), is made and entered into by and between the County of Dakota ("County"), a political subdivision of the State of Minnesota, and the City of Saint Paul Board of Water Commissioners ("City"), a municipal corporation existing under the laws of the State of Minnesota, hereafter collectively referred to as "Parties", and individually as "Party", and witnesses the following:

WHEREAS, under Minnesota Statutes sections 162.17, subd. 1 and 471.59, subd. 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 unit; and

WHEREAS, to provide a safe and efficient transportation system, the County and the City are performing County Projects 73-044 and 73-045 and City Projects XX-XX and XX-XX (the "Projects"); and

WHEREAS, County Project 73-044 will include resurfacing the pavement of County State Aid Highway 73 (Oakdale Avenue) between 980' north of CSAH 14 (Mendota Road) and County Road 8 (Wentworth Avenue), and includes upgrades to the pedestrian facilities to meet modern ADA standards; and

WHEREAS, County Project 73-045 will include resurfacing the pavement of County State Aid Highway 73 (Oakdale Avenue) between County Road 4 (Butler Avenue) and Annapolis Boulevard, and includes upgrades to the pedestrian facilities to meet modern ADA standards; and

Should there be descriptions of the city projects too?

WHEREAS, the City desires to repair watermain infrastructure within the project limits of CSAH 28 and CSAH 30 (the "City Work"); and

WHEREAS, to more efficiently perform the Projects, the County and the City mutually desire to partner with one another to complete final design, construction, administration, and maintenance of the Projects, as well as to determine each parties' respective share of Project costs; and

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WHEREAS, the County and City have included the Projects in their Capital Improvement Programs and will jointly bear the costs of said final design engineering, construction, administration, and maintenance, per the Cost Sharing Policy outlined in the Dakota County 2040 Transportation Plan (July 2021); and

NOW, THEREFORE, it is agreed the County and City will share Project responsibilities as detailed in this Agreement and, in accordance with the County's adopted cost share policy, will jointly bear Project costs as set forth herein. The above recitals are incorporated by reference and are made a part of the Agreement as if fully set forth below.

1. Project Administration. The County shall be the lead agency for design, construction, construction administration, and maintenance of the Projects. Subject to the requirements below, the County and the City shall each retain final decision-making authority within their respective jurisdictions.
2. Engineering. Engineering costs shall include the cost of preparing final designs, plans, specifications and proposals, surveying, mapping, consultant engineering, right-of-way mapping, construction management, construction inspection and all related materials testing, including the cost of County and City staff time, as well as the cost of facilitating public and/or third-party agency involvement.
3. Plans, Specifications and Award of Contract. The County will prepare plans and specifications consistent with County and City design standards, State-Aid design standards and MnDOT standards and specifications. The City shall be responsible for inventorying and identifying necessary watermain system repairs, and preparing plans and specifications associated with watermain system repairs to be incorporated into the County's project plans and specifications. The parties' must mutually agree on all plans and specifications prior to advertising for bids. Within 7 days of opening bids for the construction contract, the lead agency shall submit a copy of the low bid and an abstract of all bids together with the request for concurrence to the State and the award of the construction contract to the lowest responsible bidder. The lead agency may award the contract for construction to the lowest responsive and responsible bidder in

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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 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.

4. Construction. Construction costs shall include all highway and roadway construction items, including removals; mobilization and traffic control, including temporary widening or other measures if required as part of traffic control or project staging; 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; wetland mitigation and banking; and all other construction aspects outlined in the plan except for elements otherwise designated this Agreement or County policies included in the current adopted Dakota County Transportation Plan. The City shall be responsible for inspecting and approving the work associated with utility repairs of watermain for all Projects. During any construction activities on watermain, an inspector from the City must be available at the site. Upon completion of the Project, the City shall be responsible for maintaining all watermain facilities.
5. 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.
6. Traffic Control. Prior to the start of any construction activities on City watermain, a traffic control meeting must be conducted. This meeting can take place at the preconstruction conference. A representative from each the City, County, and contractor must be in attendance. The contractor will provide details of their traffic control plans and must receive concurrence from both the City and County before proceeding with the work. As part of construction inspection, the parties shall monitor

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the traffic conditions and ensure the traffic control measures are in accordance with what was agreed upon during the traffic control meeting. The Parties must coordinate with the Engineer and contractor in the case that traffic control measures are ineffective or are creating unsafe conditions.

7. Cost Share. After application of all applicable cost sharing provisions of this Agreement and the Dakota County 2040 Transportation Plan (July 2021) Appendix A (Attachment A) policies F.1 through F.19, the County will participate in the Projects as shown in the Opinion of Cost Participation (Attachment B) and as defined below after deducting federal and state cost participation amounts. It is understood that the Opinion of Cost Participation reflects an estimated cost share at the time of Agreement execution. Final costs will be based on actual Project costs at the time of construction.

Cost Participation – Roadway (County Cost Policy F.1)

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

Multi-Use Trails and Sidewalk Maintenance (County Cost Policy F.8)

- Repairs and updates to pedestrian facilities including both trail and sidewalk are included in the construction plans. The County shall pay for 100% of the costs for this work.

8. Project Costs: City Utility Repairs. The City has inspected their facilities within the Project locations and documented a request for specific watermain repair items to be included in the construction plans.

The City shall be solely responsible for:

- all costs associated with utility repairs to watermain systems made as part of the Projects;
- inspecting and approving said utility work; and
- maintaining all such facilities after the completion of the Projects.

9. 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

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Improvement Program development. Updated cost estimates will also be provided by the lead agency at the following times:

- At construction plan milestones (30%/60%/90%/Final)
- prior to advertising any construction contracts;
- after bid opening (prior to contract award);
- during construction if total contract price changes exceed \$25,000;

Project cost estimate updates include actual and estimated costs for Engineering Costs, right-of-way acquisition, utility relocation, construction, and administration.

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 agency is responsible for informing their respective council or board regarding Project costs estimates.

10. Payment. The County shall administer the contract and act as the paying agent for all payments to the Contractor. Payments to the Contractor will be made as Project work progresses and when certified by the County Engineer. After the construction contract has been awarded, the County shall invoice the City 95% of the City's estimated construction costs based on awarded contract amount. Upon Project completion, the County shall reconcile the final contract amount and invoice the City for any additional amount owed under this Agreement. In the event the County owes payment to the City, then the City shall invoice the County for the amount owed. 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.

11. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect any of the Project's cost participation must be approved by the authorized representative of each party prior to execution of work. The City's

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appointed representative is Aaron Nelson, City Engineer, and the County's appointed representative is Todd Howard, Assistant County Engineer, or their successors. 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 December 31, 2031.
14. Final Acceptance. Final completion of the Project must be approved by both the County and the City. The contractor shall provide a maintenance bond for the City Work. The warranty period for materials and workmanship shall be one year from the date of final acceptance by the City, as approved by the City Engineer. The County shall include this requirement in the contract documents.
15. Pavement Maintenance. The County shall be responsible for all pavement maintenance within County-owned right-of-way unless repairs are necessitated due to a failure of a City utility system or installation of new City-owned facilities.
16. Subsequent Excavation. After completion of the Project, and after expiration of the warranty period regarding repair, if excavation within the County right-of-way is necessary to repair or install water systems, the City shall apply for a permit from the County and shall be responsible for restoring the excavated area and road surface to substantially the condition prior to the disturbance. If the City employs its own contractor for the above-described water facility repair or installation, the City shall hold the County harmless from any and all liability incurred due to the repair or installation of said water facilities including, but not limited to, the costs of repair as well as liability to third parties injured or damaged as a result of the work. If the City

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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.

17. Rules and Regulations. The County and the City shall abide by Minnesota Department of Transportation standard specifications, rules, and contract administration procedures unless amended by the contract specifications.
18. Indemnification. Each party agrees that it will be responsible for its own acts and/or omissions and those of its employees, representatives, and agents in carrying out the terms of this Agreement and the results thereof to the extent authorized by law and shall not be responsible for the acts and/or omissions of the other party and the results thereof. All 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. The County shall include the City as additional insured in the contract documents.
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, and 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 the County's employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the City. Any and all persons engaged in the work to be performed by the City shall not be considered employees of the County for any purpose, including Worker's Compensation, and any and all claims that may or might arise out of said employment context on behalf of said employee while so engaged. Any and all claims made by any third party as a consequence of any act or omissions of the part of the City's employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the County.

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20. Audits. Pursuant to Minnesota Statutes Sec 16 C. 05, Subd. 5, any books, records, documents, and accounting procedures and practices of the County and the City relevant to this 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 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 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 in accordance with the Dakota County Transportation Plan after completion of the construction provided for in this Agreement.

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

COUNTY OF DAKOTA
Erin Laberee, Dakota County
Engineer (or successor)
14955 Galaxie Ave.
Apple Valley, MN 55124
Office: (952) 891-7100
Erin.Laberee@co.dakota.mn.us

General Manager, Saint Paul
Regional Wate Services
c/o: BOARD OF WATER
COMMISSIONERS
1900 Rice Street
Saint Paul, MN 55113
Office: 651-266-
Racquel.Vaske@ci.stpaul.mn.us

All notices or communications required or permitted by this Agreement shall be either 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 complete two business days after the date of mailing.

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF SAINT PAUL BOARD OF WATER COMMISSIONERS

RECOMMENDED FOR APPROVAL:

_____ By _____

_____ By _____
Chris Tolbert, President

By _____
Mollie Gagnelius, Secretary

_____ By _____
Cristina Cruz-Jennings, Assistant City Attorney Laura Logsdon, Interim Director
Office of Financial Services

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COUNTY OF DAKOTA

RECOMMENDED FOR APPROVAL:

County Engineer

By: _____
Physical Development Director

Date: _____

APPROVED AS TO FORM:

COUNTY BOARD RESOLUTION

No. _____ Date: _____

Assistant County Attorney Date
KS- _____

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DRAFT