

**JOINT POWERS AGREEMENT FOR  
DESIGN, CONSTRUCTION, MAINTENANCE AND OPERATION OF  
TRUNK HIGHWAY 5 REGIONAL TRAIL AND UNDERPASS**

**THIS JOINT POWERS AGREEMENT FOR THE DESIGN, CONSTRUCTION, MAINTENANCE AND OPERATION OF TRUNK HIGHWAY 5 REGIONAL TRAIL AND UNDERPASS, (“Agreement”)**, is made and entered into as of the \_\_\_\_\_ day of 2019, by and between the County of Carver, a political subdivision organized and existing under the Constitution and the laws of the State of Minnesota (“**County**”) and the City of Chanhassen, a political subdivision organized and existing under the Constitution and the laws of the State of Minnesota (“**City**”). The County and the City are each sometimes referred to hereinafter as “**Party**,” and are both sometimes referred to hereinafter as “**Parties**.”

**RECITALS:**

**WHEREAS**, the County has the authority to construct, maintain, and operate a regional recreation trail and underpass within the County for public outdoor recreational purposes pursuant to Minnesota Statute § 398.32; and

**WHEREAS**, the City has the authority to construct, install, maintain, and operate a regional recreation trail and underpass within the City for public outdoor recreational purposes pursuant to Minnesota Statute § 412.221 Subdivision 6; and

**WHEREAS**, Minnesota Statutes, § 471.59 provides that two or more governmental units, by agreement entered into through action of their governmental bodies, may jointly or cooperatively exercise any power common to the contracting parties; and

**WHEREAS**, the Parties wish to jointly or cooperatively construct, install, maintain, and operate a regional recreational trail (“**Trail**”) along Trunk Highway 5, (“**TH 5**”) and an underpass through a box culvert under Trunk Highway 41, (“**TH 41**”), as generally depicted in Exhibit A, attached hereto and incorporated herein, both located within the corporate limits of the City, the University of Minnesota Landscape Arboretum, (“**Arboretum**”), and/or the corporate limits of the County. The Trail and the box culvert are referred to collectively hereinafter as the “**Improvements**;” and

**WHEREAS**, Carver County applied for and was selected to receive Federal funds (“**Funds**”) in 2015 to construct the aforementioned Improvements in 2019; and

**WHEREAS**, the Parties wish to jointly or cooperatively undertake a joint project involving the design, construction and installation of the Improvements (“**Project**”); to share the fees and costs for all professional services related to the Project; to allocate the Routine Maintenance and Bituminous Maintenance duties of the Improvements after Project Completion,

and to share the fees and cost of the Routine Maintenance and Bituminous Maintenance and operation duties of the Improvements after Project Completion.

**NOW THEREFORE**, in consideration of the mutual promises and covenants of each to the other Party as contained herein, and subject to the provisions of Minnesota §§ 398.32, 412.221 Subdivision 6, and 471.59, and for other good and valuable consideration, receipt of which the Parties hereby acknowledge, the County and City hereby covenant and agree as follows:

## **ARTICLE I. THE AGREEMENT**

**Section 1.01. Purpose.** The purpose of this Agreement is to define the obligations and rights of the County and the City related to the design, construction, installation, maintenance and operation of the Improvements, and related to sharing the costs between the Parties of the design, construction, installation, maintenance and operation of the Improvements.

**Section 1.02. Cooperation.** The County and the City shall cooperate with one another, and each Party shall use its best effort to ensure the most expeditious implementation of the provisions of this Agreement. The Parties shall act in good faith to undertake resolution of any disputes that arise between them, if any, in an equitable and timely manner. The Improvements shall be open to inspection by duly authorized representatives of each Party at any time during normal business hours and as often as reasonably deemed necessary.

**Section 1.03. Relationship to Other Contracts.** Subject to approval of the Contracts and Change Order by the City, **which shall not be unreasonably withheld by the City**, the County and City acknowledge that the County may enter contracts and Change Orders with respect to the Project on behalf of the Parties. This Agreement shall be construed so as to give the fullest effect to each of the provisions of this Agreement, consistent with the provisions of the other contracts and documents referred to above.

**Section 1.04. Term.** The term of this Agreement shall commence on the date specified in this Agreement and shall not terminate until the Parties mutually agree in writing.

**Section 1.05. Recitals.** The above recitals are true and correct as of the date hereof, are incorporated herein, and constitute a part of this Agreement.

**Section 1.06. Enabling Authority.** Minnesota Statutes, § 471.59, authorizes two or more governmental units, by agreement entered into and through action of their governing bodies, to jointly or cooperatively exercise any power common to the contracting Parties.

## **ARTICLE II DEFINITIONS**

**Section 2.01. Definitions.** For purposes of this Agreement, the following terms shall have the following meanings, unless the context requires otherwise:

(a) **Agreement**: This Agreement, as it may be amended, supplemented, or restated in writing, approved by each of the Parties, from time to time.

(b) **Bituminous Surface Maintenance**: Preservation, repair and replacement of bituminous surface through sealcoating, crack sealing and/or overlay.

(c) **Chanhassen Segment**: The segment of the Trail from the boundary of the right-of-way on the west side of TH41, and extending through the box culvert to the west side of Century Boulevard, as generally depicted in Exhibit B, attached hereto and incorporated herein.

(d) **Change Order**: A written order, change order or supplemental agreement to the Contractor approved in writing, which may be electronic, by both Parties hereto and signed by the County Representative on behalf of the Parties authorizing a change in the work included within the Contract Documents and/or an adjustment in the price and/or an adjustment in the construction schedule, issued after execution of the contract for the construction of the Project.

(e) **City**: The City of Chanhassen.

(f) **City Representative**: The City of Chanhassen Parks and Recreation Director.

(g) **City/County Costs**: The direct and indirect costs of City and County agents and Contractors performing professional services for the Project, and other incidentals, which shall be allocated between the City and County as provided in this Agreement.

(h) **Concept and Design Phase Activities**: Include but are not limited to the tasks of conducting field surveys, overseeing preliminary design process, obtaining approval of the construction plans and specifications before advertising for bids, advertising for bids, and other related matters.

(i) **Construction Phase Activities**: Include but are not limited to the activities of awarding bids or contracts, preparation of Contract Documents, entering into contracts, acquiring real property interests, conducting construction inspections and surveys, performing other engineering services, and other related matters.

(j) **Concept and Design Phase Professional Services Costs**: The fees and costs for all professional services performed in the Concept and Design Phase Activities for the Project.

(k) **Construction Phase Professional Services Costs**: The fees and costs for all professional services performed in Construction Phase Activities for the Project.

(l) **Contract Documents**: Include the Engineer's Estimate; the advertisement for bids; proposal; contract; contract bond; standard specifications; general and supplemental special specifications; special provisions; plans; notice to proceed; work orders; and supplemental agreement, if any;

Change Orders; and contracts to complete the construction of the work for the Project in an acceptable manner, including authorized extension, approved by the Parties, or their respective representatives.

(m) **Contractor**: the person or entity that is awarded a bid or contract for the construction of the Project.

(n) **Costs Remaining**: The costs that remain after the Funds are applied to the direct and necessary costs of constructing and installing the Improvements. The Costs Remaining shall include, but shall not be limited to, the fees and costs of all professional services necessary to complete the Concept and Design Phase Activities and the Construction Phase Activities, costs of wetland mitigation, costs of relocating utilities, and the balance of any other fees and costs not covered by the Funds.

(o) **County**: Carver County.

(p) **County Representative**: Carver County Parks and Recreation Director, Carver County Public Works Division.

(q) **Engineers Estimate**: The professional engineer's opinion of probable cost prior to the advertising bids for the work to be performed and materials to be furnished to construct the Project, which encompasses all projected costs tabulated for each Party. The Parties shall compare the Engineer's Estimate with the bids to determine if the Project should be awarded. The Engineer's Estimate shall be nonpublic data maintained by the County as part of the evaluation or selection of bids for the Project, and shall not become public data until completion of the bid evaluation or selection process.

(r) **Funds**: The federal funds that the County applied for and received in 2015 to construct the Improvements in 2019, and which can only be applied to cover the necessary and direct costs of constructing and installing the Improvements.

(s) **Improvements**: The Trail along TH5 and the underpass through a box culvert under TH41, as generally depicted in Exhibit A.

(t) **Lowest Responsible Bidder**: A qualified bidder with the most economical or best price bid, and whose business and financial capabilities, past performance, and reputation meet the required standards.

(u) **Permitting Costs**: The costs associated with obtaining all permits necessary for the Project.

(v) **Project**: The design, construction, installation, maintenance, and operation of the area of the Trail along TH5 and an underpass through a box culvert under TH41, the area of which is generally depicted in Exhibit A.

(w) **Project Completion**: Approval by the County Board that: 1) The Contractor has successfully completed all of the construction work concerning the original contract and any

Change Orders for the Project; 2) The City, University, and the County have each paid their full share of the Costs Remaining under the provisions this Agreement, and any amendments thereto; and 3) the County may make the final payment to the Contractor.

(x) **Project Costs**: All service costs for and associated with the construction of the Project, including the Concept and Design Phase Professional Services Costs, Construction Phase Professional Services Costs, Utility Costs, and the City/County Costs as set forth in Section 4.01 herein.

(y) **Project Location**: TH5 and TH41, as generally depicted in Exhibit A, located within the corporate limits of the City, the jurisdiction of the Arboretum, and the corporate limits of the County.

(z) **Routine Maintenance**: Includes snow removal, grass moving, sweeping, litter removal, and tree trimming.

(aa) **Standard Specifications**: Minnesota Department of Transportation Facility Design Manual, DNR Trails Manual, and AASHTO Standards, according to which the Improvements must be constructed.

(bb) **State of Good Repair**. A State of Good Repair for bituminous surfaces means the pavement is generally in good repair, including such things as a smooth riding surface, and a surface that has been either seal coated and cracked sealed within the previous four years or overlaid within the previous ten years. A State of Good Repair for drainage structures means that bridges pass inspection, railings are sound, the structures are in good appearance, and there are no erosion issues.

(cc) **TH5**: Trunk Highway 5.

(dd) **TH41**: Trunk Highway 41.

(ee) **Trail**: The regional recreational trail that extends from Century Boulevard along TH5, including the underpass through a box culvert under TH41 at Minnewashta Parkway, as generally depicted in Exhibit A.

(ff) **Uncontrollable Circumstances**: The occurrence or non-occurrence of acts or events beyond the reasonable control of the Party relying thereon, and not the result of willful or negligent action or inaction of the Party claiming the event as an Uncontrollable Circumstance, that materially adversely affects the performance of the Party claiming the event as an Uncontrollable Circumstance including but not limited to the following:

(1) Acts of God, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lighting and earthquakes (but not including reasonably anticipated weather conditions for the geographic area), riots insurrections, war or civil disorder affecting the performance of work, blockades, power or other utility failure, and fires or explosions.

(2) The adoption of or change in any federal, state, or local laws, rules, regulations, ordinances, permits, or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency having appropriate jurisdiction after the date of the execution of this Agreement.

(3) A suspension, termination, interruption, denial, or failure of renewal of any permit, license, consent, authorization, or approval essential to the construction of the Project.

(4) Orders and/or judgment of any federal, state, or local court, administrative agency, or governmental body, provided, however, that the contesting in good faith by such Party of any such order and/or judgment shall not constitute or be construed to constitute a willful or negligent action or inaction of such Party.

(5) Strikes or other such labor disputes shall not be considered an Uncontrollable Circumstance, unless such strike or labor dispute involves persons with whom the Parties have no employment relationship and the Parties, or either of them, cannot, using best efforts, obtain substitute performance.

(gg) **University:** Regents of the University of Minnesota.

(hh) **University Segment:** The segment of the trail from the boundary of the right-of-way on the west side of TH41 and extending to the bike and pedestrian trail on the south side of the right-of-way at TH5, as generally depicted in Exhibit C, attached hereto and incorporated herein.

(ii) **Utility Costs:** The costs associated with installing and/or relocating direct and necessary utilities.

### ARTICLE III ALLOCATION OF DESIGN AND CONSTRUCTION DUTIES

**Section 3.01. Concept and Design Phase Activities.** Concept and design phase activities, shall be completed by the Parties as follows:

The County shall be the lead agency in the Construction Phase Activities.

**Section 3.02. Construction Phase Activities.** Construction phase activities, including, but not limited to, solicitation of bids, preparation of Contract Documents, awarding of bids or contracts, construction inspection and surveying and other matters, shall be completed by the Parties as follows:

The County shall be the lead agency in the Construction Phase Activities.

**Section 3.03. Contract Award.** The Contract Documents shall be approved in writing, which may be electronic, by each of the Parties prior to the solicitation of bids. In accordance with the applicable provisions of Minnesota Statutes, the County will cause bids to be received by it for the construction of the Project. If the bid from the Lowest Responsible Bidder exceeds

the Engineers Estimate by 15%, then the County shall not award the Contract unless the Parties agree in writing to accept the bid from the Lowest Responsible Bidder.

**Section 3.04. Project Construction.** Subject to Uncontrollable Circumstances, the Parties shall cause the Project to be constructed in accordance with the Contract Documents. The City shall have the right to review and approve of any proposed changes to the plans and specifications as they relate to City's cost participation prior to the work being performed.

**Section 3.05. Maintenance Upon Project Completion.**

(a) **Chanhassen Segment.**

- (1) The City will assume jurisdiction of the Chanhassen Segment upon Project Completion.
- (2) The City shall provide Routine Maintenance of the Chanhassen Segment upon Project Completion and thereafter, and shall provide said Routine Maintenance in a manner and according to a schedule that keep the Chanhassen Segment in a State of Good Repair.
- (3) The City shall provide Bituminous Surface Maintenance of the Chanhassen Segment upon Project Completion and thereafter, and shall provide said Bituminous Surface Maintenance in a manner and according to a schedule that keep the bituminous surface and major drainage structures of the Chanhassen Segment in a State of Good Repair.

(b) **University Segment.**

- (1) The University will assume jurisdiction of, and maintain the University Segment upon Project Completion.
- (2) The University shall provide Routine Maintenance of the University Segment upon Project Completion and thereafter, and shall provide said Routine Maintenance in a manner and according to a schedule that keep the University Segment in a State of Good Repair.
- (3) The University shall provide Bituminous Surface Maintenance of the University Segment upon Project Completion and thereafter, and shall provide said Bituminous Surface Maintenance in a manner and according to a schedule that keep the bituminous surface and major drainage structures of the University Segment in a State of Good Repair.

**ARTICLE IV  
PROJECT FEES AND COST SHARING**

**Section 4.01. Allocation of Costs.**

- (a) **Allocation of Funds.** The County shall apply 100% of the Funds toward the direct and

necessary costs of designing and constructing the Improvements.

(b) **Costs Remaining.**

(1) The Costs Remaining shall be allocated so that the County shall pay 50% of the Cost Remaining, the City shall pay 25% of the Cost Remaining, and the University shall pay 25 % of the Cost Remaining.

(2) The Costs Remaining for the Design Phase Activities shall be allocated between the County, the City, and the University as set forth in this Agreement, regardless of whether a Party or the Parties exercise(s) its/their rights to withdraw from and cancel this Agreement under the terms of Article V, Section 5.01 of this Agreement.

(c) **Costs of Future Repair, Replacement or Improvement.**

(1) -. The Carver County Parks and Recreation Director and the City Parks and Recreation Director shall work in good faith to seek approval from its respective governing body to share equally (50% County/ 50% City) the cost of any routine repair, replacement, or improvement to the Chanhassen Segment after Project Completion, provided the County receives written notice of the work and estimated cost by April 1<sup>st</sup> of the year preceding the planned work. If the Chanhassen Segment requires an emergency repair, then the City Parks and Recreation Director shall notify the Carver County Parks and Recreation Director as soon as possible of the needed emergency repair, and the City shall make said repair. The County and City shall share equally (50% County/ 50% City) the reasonable cost of any such emergency repair.

(2) -. The Carver County Parks and Recreation Director and the University Director of Operations shall work in good faith to seek approval from its respective governing body to share equally (50% County/ 50% University) the cost of any routine repair, replacement, or improvement to the University Segment after Project Completion, provided the County receives written notice of the work and estimated cost by April 1<sup>st</sup> of the year preceding the planned work. If the University Segment requires an emergency repair, then the University Director shall notify the Carver County Parks and Recreation Director as soon as possible of the needed emergency repair, and the University shall make said repair. The County and University shall share equally (50% County/ 50% University) the reasonable cost of any such emergency repair.

(3) The County shall pay any monies it owes to the City within thirty (30) business days of being invoiced for such costs allocated to the County.

**Section 4.02. Payments to Contractor.**

(a) **Payments.** The County shall make partial progress payments to the Contractor and, upon approval of both Parties hereto, the final payment to the Contractor in accordance with the Contract Documents.

(b) **Change Orders.** The designated City Representative shall have the right to approve of any

Change Orders prepared by the County that affect the City's share of the Cost Remaining.

**Section 4.03. Adjustments and Reconciliation.**

(a) **Invoice Adjustment.** To the extent that the actual value of any item included in an invoice cannot be accurately determined at the time of submission of the invoice, such item shall be invoiced on an estimated basis and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the next invoice after determination of the actual amount.

(b) **Reconciliation.** Prior to final acceptance of the Project, the County Representative shall provide the City with a reconciliation of all costs for the Project and the respective contributions of the Parties for the review and approval of the Parties.

**Section 4.04. Exclusive Responsibility.** All aspects of administration of the Funds are the exclusive responsibility of the County.

**Section 4.05. Payment to County.** The City shall reimburse the County for the City's share of the Costs Remaining, pursuant to Section 4.01. Unless previously deposited as provided herein, the City shall pay these monies to the County within thirty (30) business days of being invoiced for the City's share of the Costs Remaining. The County shall invoice the Costs Remaining at the completion of Concept and Design Phase Activities, and upon completion of the Construction Phase Activities, unless an alternate schedule is mutually agreed upon in writing by the authorized representatives of the Parties.

**ARTICLE V  
GENERAL PROVISIONS**

**Section 5.01. Withdrawal from and Cancellation of Agreement.**

(a) **Withdrawal or Cancellation Circumstances.** The County shall promptly notify the City of the bids when they are opened. Either Party or the Parties may withdraw from and cancel this Agreement within fifteen (15) business days from the date the sealed bids are opened for the professional services for the Construction Phase Activities, if:

- (1) The Lowest Responsible Bidder exceeds the Engineer's Estimate by 15 %; or
- (2) Either Party or the Parties consider(s) the bids to be unsatisfactory for any other reason; or
- (3) The University does not agree to pay 25% of the Costs Remaining for the Construction Phase Activities.

(b) **Method and Time to Withdraw or Cancel.** The withdrawal from and cancellation of this Agreement under the terms of Article V, Section 5.01(a) shall be accomplished by either Party or the Parties serving written Notice thereof upon the other within fifteen (15) business days of

opening of the sealed bids, unless the Parties waive the aforementioned right in writing.

(c) **Governing Body.** Only the governing body of a Party has the authority to act pursuant to Section 5.01 of this Agreement.

**Section 5.02. Notices.** All notices or communications required or permitted pursuant to this Agreement shall be either hand-delivered or mailed to City and County by certified mail, return receipt requested, at the following address:

County: Carver County Parks and Recreation Director  
Carver County Public Works Division  
11360 Hwy212 West, Suite 1  
Cologne, MN 55322

City: City of Chanhassen Parks and Recreation Director  
City of Chanhassen  
7700 Market Boulevard  
P.O. Box 147  
Chanhassen, MN 55317

Either Party may change its address or authorized representative by written notice delivered to the other Party pursuant to this Section 5.01.

**Section 5.03. Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

**Section 5.04. Survival of Terms, Representations and Warranties.** The representations, warranties, covenants, and agreements of the Parties under this Agreement, and the remedies of either Party for the breach of such representations, warranties, covenants, and agreements by the other Party shall survive the execution and termination of this Agreement. The terms of Sections 3.05, 4.01(a) and (b), 4.02, 4.03, 4.05, 5.02- 5.20 shall survive the expiration, termination or withdrawal from this Agreement.

**Section 5.05. Non-Assignability.** Neither the City nor the County shall assign any interest in this Agreement nor shall transfer any interest in the same, whether by subcontract, assignment or novation, without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

**Section 5.06. Alteration.** It is understood and agreed that the entire Agreement between the Parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. Any alteration, variation, modification or waiver of the provisions of the Agreement shall be valid only after it has been reduced to writing and duly signed by all Parties.

**Section 5.07. Waiver.** The waiver of any of the rights and/or remedies arising under the terms of this Agreement on any one occasion by any Party hereto shall not constitute a waiver of any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

**Section 5.08. Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining provisions of this Agreement.

**Section 5.09. Interpretation According to Minnesota Law.** The Laws of the State Minnesota shall apply to this Agreement.

**Section 5.10. Final Payment.** Before final payment is made to the Contractor, the Contractor shall provide a certificate of compliance with the Commissioner of Revenue certifying that the Contractor and any out-of-state subcontractors have complied with the provisions of Minnesota Statutes, § 290.92.

**Section 5.11. Headings.** The headings to the various sections of this Agreement are included only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the Parties as expressed in this Agreement.

**Section 5.12. Further Actions.** The Parties agree to execute such further documents and take such further actions as may reasonably be required or expedient to carry out the provisions and intentions of this Agreement, or any agreement or document relating hereto or entered into in connection herewith.

**Section 5.13. Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature under or by reason of this Agreement.

**Section 5.14. Employees.**

(a) **Employees of County.** It is further agreed that any and all full-time employees of County and all other employees of said County engaged in the performance of any work or services required or provided for herein to be performed by the County shall be considered employees of County only and not of City, and that any and all claims that may or might arise under Workman's 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 County employees while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of County.

(b) **Employees of City.** It is further agreed that any and all full-time employees of City and all other employees of said City engaged in the performance of any work or services required or

provided for herein to be performed by City shall be considered employees of City only and not of County and that any and all claims that may or might arise under Workman's 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 City employees while so engaged on any of the work or services to be rendered herein shall be the sole obligation and responsibility of City.

#### **Section 5.15. Indemnification.**

(a) **Total Liability.** The Parties' total liability under this Agreement shall be governed by Minnesota Statutes, § 471.59, Subdivision 1a.

(b) **Government Unit Liability.** Each Party shall be responsible for the acts or omissions of its officials, agents, and employees, and the results thereof, in carrying out the terms of this Agreement, to the extent authorized by law and shall not be responsible for the acts/omissions of the other Party and the results thereof. For purposes of determining total liability for damages, the participating governmental units shall be considered to be a single governmental unit, the total liability of which shall not exceed the limits for a single governmental unit as provided in Minnesota Statutes, § 466.04, Subdivision 1.

(c) **Indemnification.** Each Party shall defend, hold harmless, and indemnify the other Party, its officials, agents, and employees, from any liability, loss, or damages the other Party may suffer or incur as the result of demands, claims, judgments, or cost arising out of, or caused by the indemnifying Party's negligence in the performance of its respective obligations under this Agreement. This provision shall not be construed nor operate as a waiver of any applicable limitation of liability, defenses, immunities, or exceptions by statute or common law.

(d) **Single Government Unit.** To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purposes of liability, all as set forth in Minnesota Statutes, § 471 .59, Subdivision 1a(a); provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

(e) **Other Participants.** The Parties of this Agreement are not liable for the acts or omissions of the other participants to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Parties.

#### **Section 5.16. Records Availability and Access.**

(a) **County Contract Subject to Audit.** Pursuant to Minnesota Statutes, § 16C.05, Subdivision 5, the County agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and

procedures of the County, and involve transactions relating to this Agreement.

The County agrees to maintain these records for a period of six years from the date of termination of this Agreement.

(b) **City Contract Subject to Audit.** Pursuant to Minnesota Statutes, § 16C.05, Subdivision 5, the City agrees that the County, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the City and involve transactions relating to this Agreement.

The City agrees to maintain these records for a period of six years from the date of termination of this Agreement.

**Section 5.17. Data Practices.** Each Party, its employees, agents, owners, partners, and subcontractors agree to abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and implementing regulations, if applicable, and all other applicable Federal and State laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended from time to time.

**Section 5.18. Nondiscrimination.** During the performance of this Agreement, each Party agrees to the following: No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment light in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable Federal and State laws against discrimination.

**Section 5.19. Default.** Default in this Agreement may occur when a Party fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement. Unless the Party's default is excused in writing by the non-defaulting Party, the non-defaulting Party may, upon written notice to the defaulting Party representative listed herein, cancel this Agreement in its entirety.

**Section 5.20. Third Party.** This Agreement does not create any rights, claims or benefits inuring to any person that is not a Party hereto nor create or establish any third Party beneficiary.

**IN TESTIMONY WHEREOF,** The Parties hereto have caused these presents to be executed.

**COUNTY OF CARVER**

**CITY OF CHANHASSEN**

\_\_\_\_\_

\_\_\_\_\_

Randy Maluchnik, County Board Chair

Elise Ryan, City of Chanhassen Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest: Attest:**

\_\_\_\_\_  
Dave Hemze, County Administrator

\_\_\_\_\_  
Todd Gerhardt, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved As To Form:**

**Approved As To Form:**

\_\_\_\_\_  
Mary E. Shimshak, Assistant County Attorney

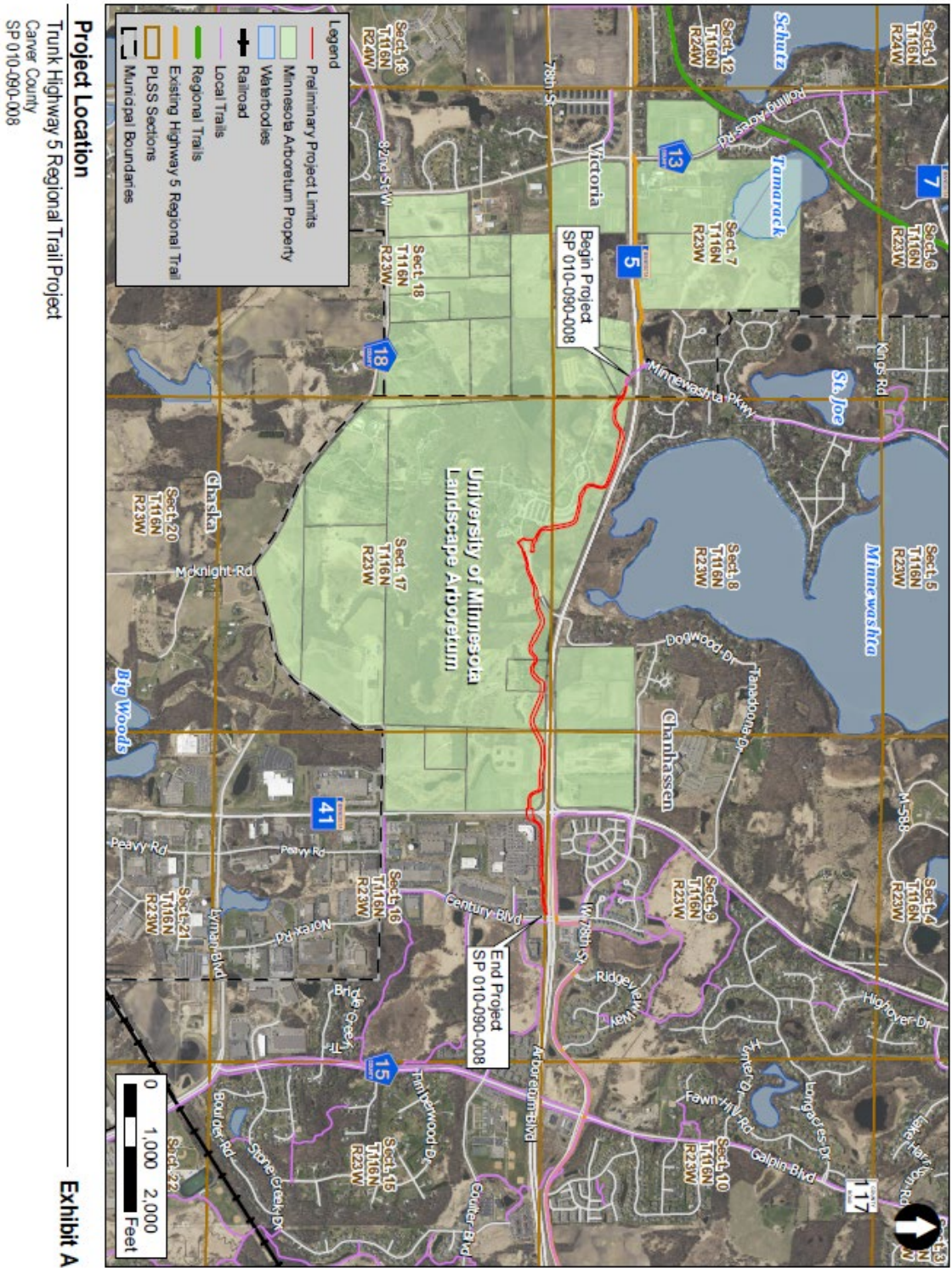
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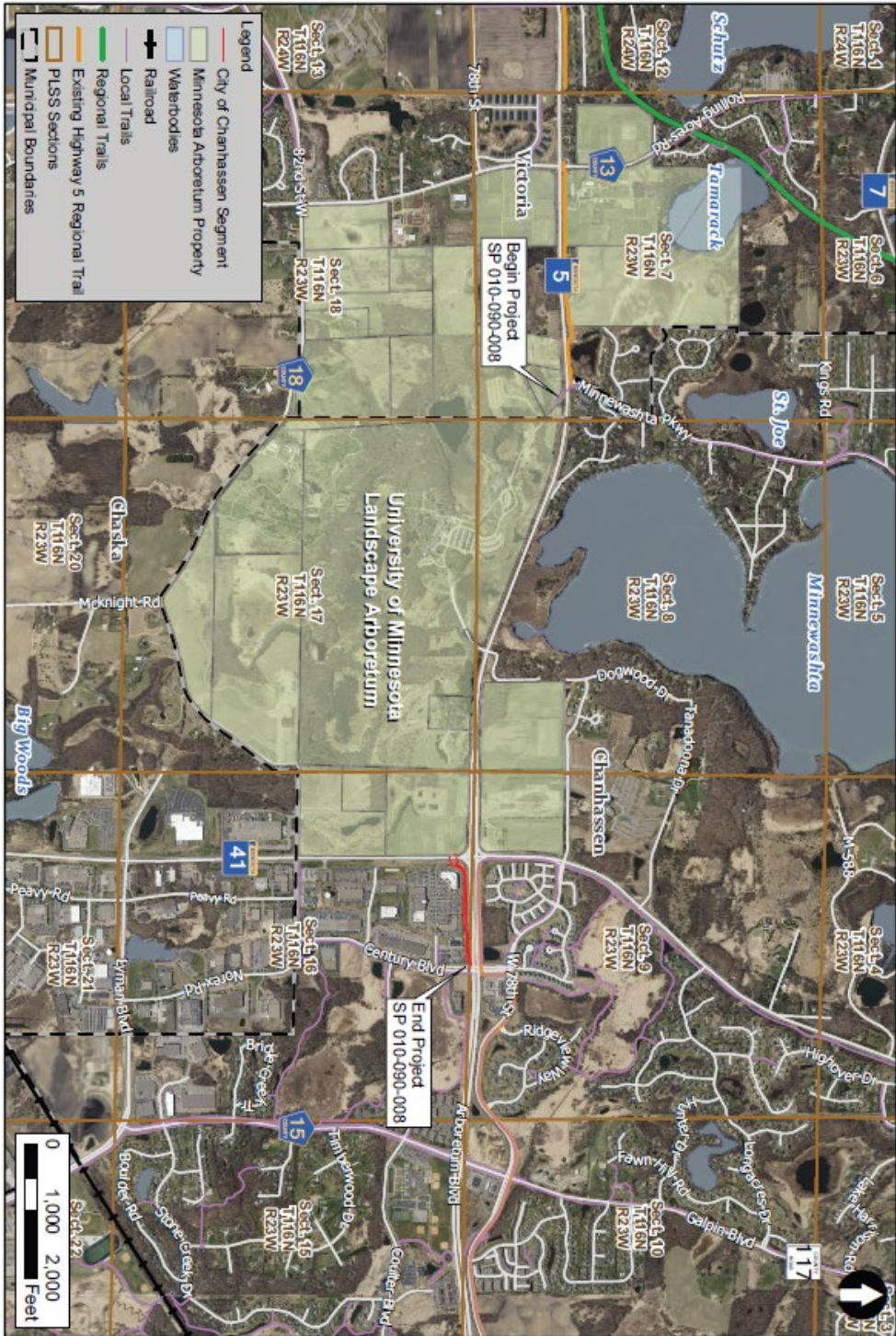
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DRAFT

# EXHIBIT A



# EXHIBIT B



**City of Chanhassen Segment**  
 Trunk Highway 5 Regional Trail Project  
 Carver County  
 SP 010-090-008

Exhibit B

# EXHIBIT C

