

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

THIS FIRST AMENDMENT TO JOINT POWERS AGREEMENT FOR THE DESIGN, CONSTRUCTION, MAINTENANCE AND OPERATION OF TRUNK HIGHWAY 5 REGIONAL TRAIL AND UNDERPASS, (“**First Amendment to JPA**”), is made and entered into as of the ____ day of _____, 2020, 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 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 and the City entered a Joint Powers Agreement for the Design, Construction, Maintenance and Operation of Trunk Highway 5 Regional Trail and Underpass on or about July 2, 2019 (“**JPA**”); and

WHEREAS, Section 4.01 of Article IV (Project Fees and Cost Sharing) of the JPA sets forth the allocation of the costs between the County and the City, and sets forth the proportion of various costs for which the City shall make reimbursement payments to the County; and

WHEREAS, the Parties wish to amend Sections 4.01(b) and 4.05 (Payment to County) of Article IV (Project Fees and Cost Sharing) of the JPA according to the terms of this First Amendment to JPA.

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 the Minnesota Constitution and Minnesota Statutes §§ 398.32 and 471.59, and for other good and valuable consideration, receipt of which the Parties hereby acknowledge, the Parties hereby covenant and agree as follows:

**ARTICLE I.
THE AGREEMENT**

SECTION 1. AMENDED PROJECT COMPLETION DEFINITION.

The parties agree to amend the JPA to replace the definition of “Project Completion” in the JPA in its entirety with the following:

Project Completion occurs when the Parties agree that: 1) the Contractor has successfully completed all of the construction work concerning the original contract and any Change Orders

for the Project; and 2) the County received approval from its Board to make the final payment to the Contractor.

SECTION 2. ALLOCATION OF COSTS. Paragraph (b) (Costs Remaining) of Section 4.01 (Allocation of Costs) of ARTICLE IV (Project Fees and Cost Sharing) of the JPA reads as follows:

Section 4.01. Allocation of Costs.

(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.

SECTION 3. AMENDED ALLOCATION OF COSTS.

The Parties agree to amend Paragraph (b) (Costs Remaining) of Section 4.01 (Allocation of Costs) of ARTICLE IV (Project Fees and Cost Sharing) to include a payment schedule, and so that paragraph (b) reads as follows:

Section 4.01 Allocation of Costs.

(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.

(3) The City shall reimburse the County for the actual amount of the Costs Remaining allocated to the City pursuant to Section 4.01 in the annual amounts for each year listed below, and until the City makes the final payment of the actual amount of the Costs Remaining allocated to the City, which may be more or less than the amount of the annual payment listed below for the final year of 2025:

- 2020: Four Hundred Ninety-Seven Thousand Seven Hundred Forty-Six Dollars and Twenty-eight Cents (\$497,746.28)
- 2021: Seven Hundred Two Thousand Two Hundred Fifty-Three Dollars and Seventy-Two Cents (\$702,253.72) payable commensurate with invoices for work completed in 2020 and 2021 but invoiced in 2021, and Ninety-Six Thousand Three-hundred and Nine Dollars and Seventy-seven Cents for work completed and invoiced in 2021.
(\$96,309.77)
- 2022: Ninety-Six Thousand Three-hundred and Nine Dollars and Seventy-seven Cents (\$96,309.77)
- 2023: Ninety-Six Thousand Three-hundred and Nine Dollars and Seventy-seven Cents (\$96,309.77)
- 2024: Ninety-Six Thousand Three-hundred and Nine Dollars and Seventy-seven Cents (\$96,309.77)
- 2025: Ninety-Six Thousand Three-hundred and Nine Dollars and Seventy-seven Cents (\$96,309.77)

Payment Total: One Million Six-hundred and Eighty-One Thousand and Five Hundred and Forty-Eight Dollars and Eighty-Six Cents (\$1,681,548.86).

SECTION 4. PAYMENT TO COUNTY.

Paragraph 4.05 (Payment to the County) of Section 4.03 (Adjustments and Reconciliation) of Article IV (Project Fees and Cost Sharing) of the JPA reads as follows:

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 Cost 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.

SECTION 5. AMENDMENT TO PAYMENT TO COUNTY.

Paragraph 4.05 (Payment to the County) of Section 4.03 (Adjustments and Reconciliation) of Article IV (Project Fees and Cost Sharing) of the JPA shall be amended to read as follows:

Section 4.05. Payment to County and Default.

(a) Payment to County.

1. For the year of 2020, the County shall send an invoice (“Invoice”) by USPS Mail to the City whenever the County reasonably determines that a Contractor has completed that Contractor’s portion of the Concept and Design Phase Activities or the Construction Phase Activities, unless an alternate schedule is mutually agreed upon in writing by the authorized representatives of the Parties.

2. Beginning in the year of 2021 and ending in the final year of 2025, the billing cycle shall be from July 1st of one year to July 1st of the next year, "Billing Cycle." The County shall send the Invoice by USPS Mail on July 1st of each year identified herein, unless the Parties agree in writing upon an alternate schedule or as otherwise provided under 4.01(b)(3). The Invoice shall include the City's share of the Costs of Remaining which the County reasonably determines have been completed by the Contractor during that Billing Cycle, and which have not been included in a prior Invoice. The Billing Cycle shall not alter the overall amount of the City's annual obligations as set forth in Section 4.01(b)(3) above, although the Billing Cycle may alter when the City shall be obligated to pay said amounts to the County.
3. The City must pay the full obligation of the Invoice to the County within forty-five (45) business days of the date of the City's receipt of said Invoice, unless the City notifies the County according to Section 4.05 (a)(4) below, that the City in good faith disputes the Invoice.
4. To dispute an Invoice in good faith, the City must notify the County in writing that the City considers the Invoice to be incorrect, defective, or otherwise improper, within ten (10) business days of receipt by the City of said Invoice. Said notice must include a written explanation containing the basis or facts supporting the City's dispute.
5. Upon receiving written notification that the City in good faith disputes an Invoice according to Section 4.05(a)(4) above, the County may send a corrected invoice ("Corrected Invoice") by USPS Certified Mail, return receipt requested, to the City.

(b) Default.

1. In the absence the City notifying the County according to Section 4.05(a)(4) above, that the City in good faith disputes the payment obligation set forth in the Invoice or of a Corrected Invoice, any failure by the City to pay the full obligation of the Invoice or of the Corrected Invoice to the County within forty-five (45) business days of the date of receipt shall be an unexcused late payment ("Late Payment") and a default of the JPA.
2. If the City has a Late Payment, then the City must also pay interest at a rate of 1 ½ percent per month or per part of a month to the County on the outstanding balance of an obligation not paid, until said outstanding obligation, including interest, has been paid in full to the County.
3. The imposition by the County of interest on any Late Payment the City owes to the County under this JPA does not thereby waive any other lawful remedy available to the County if the City fails to pay the full obligation of the Invoice, or of a Corrected Invoice if applicable, within forty-five (45) business days of the date of the City's receipt of said invoice.

SECTION 6. OTHER TERMS OF JPA UNAFFECTED

Except as set forth in this First Amendment to JPA, the terms of the JPA are otherwise unaffected and the JPA shall continue in full force and affect in accordance with all of its other terms.

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

COUNTY OF CARVER

CITY OF CHANHASSEN

Tim Lynch, County Board Chair

Elise Ryan, City of Chanhassen Mayor

Date: _____

Date: _____

Attest: Attest:

Dave Hemze, County Administrator

Heather Johnston, Interim City Manager

Date: _____

Date: _____