



City Council Memorandum

To: Mayor Hicks and City Council

From: John Hinzman, Community Development Director

Date: July 9, 2018

Item: Authorize Signature: Joint Powers Agreement – Dakota County East Transit Study

Council Action Requested:

Authorize signature of the attached Cost Sharing Joint Powers Agreement (JPA) between the City and Dakota County for the preparation of the Dakota County Eastern Transit Study. A simple majority is necessary for action.

Background Information:

Dakota County intends to retain a consultant to prepare a study and report on transit options in the northern and eastern portions of the County that will assist the County and local communities in future transit services planning.

Financial Impact:

The City will contribute \$10,000 towards the study. Funding was allocated in the 2018 budget.

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

- Joint Powers Agreement

**COST SHARING JOINT POWERS AGREEMENT
BETWEEN CITY OF HASTINGS
AND
DAKOTA COUNTY FOR FUNDING OF
DAKOTA COUNTY EASTERN TRANSIT STUDY**

This Cost Sharing Joint Powers Agreement (“Agreement”) is made and entered into by and between Dakota County (“County”) and the City of Hastings (“City”), collectively referred to as the “Parties”, pursuant to Minn. Stat. § 471.59 which authorizes local government units to jointly and cooperatively exercise any power common to the contracting parties; and

WHEREAS, Dakota County intends to retain a consultant to prepare a study and report on transit options in the northern and eastern portions of the County that will assist the County and local communities in future transit services planning; and

WHEREAS, the City and County wish to collaborate on the completion of transit service study to facilitate transit planning in the City; and

WHEREAS, the County and City support retaining a consultant to prepare a transit study referred to as the Dakota County Eastern Transit Study (Study).

THEREFORE, the County and the City agree to the following terms for sharing the cost of a consultant for these purposes.

**SECTION 1
PURPOSE**

The purpose of this Agreement is to provide for the joint exercise of powers common to the Parties to cooperate and jointly fund the Study. The Study will examine and recommendation options for future transit services and transit planning in the northern and eastern regions of the County.

**SECTION 2
TERM**

This Agreement shall be effective as of the date executed by all Parties and shall remain in effect until completion of the Parties’ respective obligations under this Agreement, unless earlier terminated by law or according to the provisions of this Agreement.

**SECTION 3
COOPERATION**

The Parties agree to cooperate and use their reasonable efforts to ensure timely completion of the obligations of the Parties under this Agreement and to, in good faith, undertake resolution of any dispute in an equitable and fair manner.

**SECTION 4
OBLIGATIONS OF THE PARTIES**

- 4.1. **Awarding Project.** The County will lead the project by issuing a Request for Proposals for a consultant to provide the services and will enter into an agreement with a qualified consulting firm.
- 4.2. **Project Funding.** The County will provide the majority of the funds for the consulting services, not to exceed \$150,000, and the City will provide \$10,000 of the funds for the consulting services.
- 4.3. **Authorized Purpose.** The funds the City provides to the County under this Agreement shall be used only for the transit study services.
- 4.4. **Payment of Unauthorized Claims.** All funds provided by the County and City under this Agreement shall only be used for the actual cost for the Study. The County and the City may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude the County or the City from questioning or later disputing the propriety of a claim or payment. If payment of any amount is disputed by the County or the City, payment of undisputed amounts will be made as set forth herein. The party submitting the disputed amount shall provide additional documentation to support the disputed amount, if necessary. The County and the City reserve the right to offset any overpayment or disallowance of a claim by reducing future payments.
- 4.5. **Acknowledgement.** The City and County shall appropriately acknowledge the funding assistance provided by the City and County in any promotional materials, signage, reports, publications, notices, and presentations relating to project.

**SECTION 5
LIABILITY**

Each party to this Agreement shall be liable for the acts or omissions of its officers, directors, employees or agents and the results thereof to the fullest extent authorized by law and shall not be responsible for the acts of the other party, its officers, directors, employees or agents. It is understood and agreed that the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466, and other applicable laws govern liability arising from the parties' acts or omissions. In the event of any claims or actions asserted or 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. To insure a unified defense against any third-party liability claims arising from work of the Project, the County agrees to require the contractor and any subcontractor retained to work on the Project to maintain commercial general liability insurance in the amounts consistent with minimum limits of coverage established by Minn. Stat. § 466.04 during the terms of

the Project. All such insurance policies shall name the City and County as additional insureds.

**SECTION 6
REPRESENTATIVES**

6.1. Representatives. The following named persons are designated as the Representatives of the parties for purposes of this Agreement. Notice required to be provided pursuant this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement.

County Representative

Mark Krebsbach
Dakota County Highway Engineer
14955 Galaxie Avenue
Apple Valley, MN 55124

In the event of notification of the termination of this Agreement by the City, notice shall also be provided to:

Office of the Dakota County Attorney
Civil Division
1560 Highway 55
Hastings, MN 55033

City Representative

City of Hastings
Attn: Nick Egger, P.E.
101 4th Street East
Hastings, MN 55033

In the event of notification of the termination of this Agreement by the County, notice shall also be provided to:

City of Hastings
Attn: Nick Egger, P.E.
101 4th Street East
Hastings, MN 55033

6.2. Liaisons. To assist the parties in the day-to-day performance of this Agreement and to ensure compliance and provide ongoing consultation, a liaison shall be designated by the City and County. The City and County shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

County Liaison Joe Morneau
Telephone: (952) 891-7986
Email: joe.morneau@co.dakota.mn.us

City Liaison John Hinzman
Telephone: (651) 480-2378
Email: JHinzman@hastings.mn.gov

**SECTION 7
TERMINATION**

- 7.1. In General.** Either party may terminate this Agreement for cause by giving seven (7) days’ notice of its intent to terminate, to the other party. Such notice to terminate for cause shall specify the circumstances warranting termination of the Agreement. Cause shall be a material breach of this Agreement. Notice of termination shall be made by certified mail or personal delivery to the Representative of the other Party. Termination of this Agreement shall not discharge any liability, responsibility or right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination.
- 7.2. Termination for Lack of Funding.** Notwithstanding any provision of this Agreement to the contrary, either Party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, Federal government, or other funding source, or if it’s funding cannot be continued at a level sufficient to allow payments of the amounts due under this Agreement. Notice of termination under this provision shall be accomplished as provided in Section 7.1. The Parties also agree to include a provision in the agreement with the contractor providing planning services that neither Party to this Agreement is obligated to pay for any services, labor, materials, equipment, or any benefits that are provided by the contractor after receipt of the written notice of termination of that agreement for lack of funding and that the Parties will not be assessed any penalty or damages if the agreement with the Contractor is terminated due to lack of funding.

**SECTION 8
REPORTING, ACCOUNTING AND AUDITING REQUIREMENTS**

- 8.1. Accounting and Records.** The County agrees to establish and maintain accurate and complete accounts, financial records and supporting documents relating to the receipt and expenditure of the funds provided by the City in accordance with this Agreement. Such accounts and records shall be kept and maintained by the County for a minimum of six (6) years following expiration of this Agreement. City shall have the right to inspect and copy such records. The County agrees to make such records available to City for inspection and copying during normal business hours.

8.2. Auditing. The books, records, documents and accounting procedures and practices of the County that are relevant to this Agreement are subject to the examination by the State Auditor for a minimum of six (6) years following expiration of this Agreement.

SECTION 9 MODIFICATIONS

Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid and binding when they have been reduced to writing, approved by their respective governing boards.

SECTION 10 MINNESOTA LAW TO GOVERN

The Agreement shall be governed by and construed in accordance with the substantive and procedural law of the State of Minnesota, without giving effect to principles of conflicts of law. All judicial proceedings related to this Agreement shall be venued in the County of Dakota, State of Minnesota.

SECTION 11 MERGER

This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements.

SECTION 12 SEVERABILITY

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity or enforceability of the remainder of this Agreement unless the part or parts that are void, invalid, or otherwise unenforceable substantially impairs the value or purpose of the entire Agreement with respect to either party.

SECTION 13 SURVIVORSHIP

The following provisions under this Agreement survive the termination of this Agreement: Section 4.4. (Acknowledgement), Section 5 (Liability), Section 8 (Reporting, Accounting and Auditing), Section 10 (Minnesota Law to Govern), and Section 12 (Severability).

**SECTION 14
CONTRA PROFERENTEM DISCLAIMER**

The parties agree that the *contra proferentem* principle of contract interpretation is not to be applied to this Agreement. Any ambiguity, inconsistency, or question of interpretation in this Agreement is not to be resolved strictly against the party that drafted the Agreement, but instead is to be resolved in accordance with the most reasonable construction. It is the intent of the parties that any dispute over the meaning or application of the Agreement shall be construed fairly and reasonably, and neither more strongly for nor against either party.

CITY OF HASTINGS

Date _____

By _____
Paul J. Hicks, Mayor

Resolution No. _____

Attest _____

Date _____

By _____
Julie F. Flaten, City Clerk

Approved by Dakota County
Board of Commissioners

DAKOTA COUNTY

Date: _____

By _____
Kathleen Gaylord, Chair
Dakota County Board of Commissioners

Resolution No. _____

Approved as to Form

By _____
Assistant County Attorney

Date of Signature _____