

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
And  
CITY OF ST. PAUL  
COOPERATIVE CONSTRUCTION  
AGREEMENT**

<b>State Project Number (S.P.):</b>	<u>6244-30</u>	<b>Original Amount Encumbered</b>
<b>Trunk Highway Number (T.H.):</b>	<u>52=112</u>	<b><u>\$161,500.00</u></b>
<b>Federal Project Number:</b>	<u>NH BRNH BHNH 0052(324)</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of St. Paul acting through its City Council ("City").

**Recitals**

1. The State is performing grading, bituminous and concrete surfacing, retaining walls, signals, TMS, signing, lighting, anti-icing system, bridge and other associated construction upon, along, and adjacent to Trunk Highway No. 52 from 210 feet south of Plato Boulevard to Trunk Highway No. 5 according to State prepared plans, specifications and special provisions designated by the State as State Project No. 6244-30 (T.H. 52=112)("Project"); and
2. The State was to perform bituminous mill and overlay, concrete removal, paver salvage, paver installation and other associated construction upon and along 4<sup>th</sup> Street (see Exhibit "A") in the City of St. Paul as part of State Project No. 6244-30 (T.H. 52=112)("Project"); and
3. As part of the Saint Paul Saints Stadium construction project, the City will be reconstructing this portion of 4<sup>th</sup> Street that is currently included under S.P. 6244-30. The City has requested and the State agrees to remove the portion of 4<sup>th</sup> Street currently under S.P. 6244-30 and pay the City a lump sum dollar amount of \$161,500.00 which will be split equally between the Saint Paul Saints project and the 4<sup>th</sup> Street Public Works Reconstruction project; and
4. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

**Agreement**

**1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits**

- 1.1. **Effective date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 3. Maintenance by the City; 7. Liability; Worker Compensation Claims; Insurance; 9. State Audits; 10. Government Data Practices; 11. Governing Law; Jurisdiction; Venue; and 13. Force Majeure.
- 1.4. **Plans, Specifications, Special Provisions.** City plans, specifications and special provisions designated by the City are incorporated into this Agreement by reference. ("Project Plans")

- 1.5. **Exhibit.** Exhibit "A" shows the project area of 4<sup>th</sup> Street that was to be reconstructed by the State and is attached and incorporated into this Agreement.
- 1.6. **Direction, Supervision and Inspection of Construction.** The contract construction will be under the direction of the City and under the supervision of a registered professional engineer; however, the State participation construction covered under this Agreement will be open to inspection by the State District Engineer's authorized representatives.
- 1.7. **Completion of Construction.** The City will cause the contract construction to be started and completed according to the time schedule in the construction contract special provisions.
- 1.8. **Compliance with Laws, Ordinances, Regulations.** The City will comply and cause its contractor to comply with all Federal, State and Local laws, and all applicable ordinances and regulations.
- 1.9. **Construction Documents Furnished by the City.** The City will keep records and accounts that enable it to provide the State, when requested, with the following:
  - A. Copies of the City contractor's invoice(s) covering all contract construction.
  - B. Copies of the endorsed and canceled City warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued certified by an appropriate City official that final construction contract payment has been made.
  - C. Copies of all construction contract change orders and supplemental agreements.
  - D. A certification form, provided by the State, signed by the City's Engineer in charge of the contract construction attesting to the following:
    - i. Satisfactory performance and completion of all contract construction according to the Project Plans.
    - ii. Acceptance and approval of all materials furnished for the contract construction relative to compliance of those materials to the State's current "Standard Specifications for Construction".
    - iii. Full payment by the City to its contractor for all contract construction.
  - E. Copies, certified by the City's Engineer, of material sampling reports and of material testing results for the materials furnished for the contract construction.

## 2. Right-of-Way; Easements; Permits

- 2.1. The City will, without cost or expense to the State, obtain all rights-of-way, easements, construction permits and any other permits and sanctions that may be required in connection with the local and trunk highway portions of the contract construction. Before payment by the State, the City will furnish the State with certified copies of the documents for rights-of-way and easements, construction permits and other permits and sanctions required for State participation construction covered under this Agreement.
- 2.2. The City will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings and depiction of utilities affected by the contract construction.

## 3. Maintenance by the City

Upon completion of the project, the City will provide all maintenance in regards to 4<sup>th</sup> Street without cost or expense to the State.

## 4. State Cost and Payment by the State

- 4.1. **State Cost Lump Sum Payment.** \$161,500.00 is the State's full and complete lump sum cost for bituminous mill and overlay, concrete removal, paver salvage, paver installation and any other associated construction and maintenance.
- 4.2. **Conditions of Payment.** The State will pay the City the full and complete lump sum amount of \$161,500.00 after the following conditions have been met:

- A. Encumbrance by the State of the State's full and complete State funded lump sum cost share.
- B. Execution of this Agreement and transmittal to the City.
- C. The State's receipt of a written request from the City for the advancement of funds.

**4.3. *Limitations of State Payment; No State Payment to Contractor***

The State's participation in the contract construction is limited to the lump sum amount shown in Article 4.1, and the State's participation will not change except by a mutually agreed written amendment to this Agreement. The State's payment obligation extends only to the City. The City's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The City's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the City by the City's contractor.

**5. Authorized Representatives**

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

**5.1. The State's Authorized Representative will be:**

Name/Title: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)  
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155  
 Telephone: (651) 366-4634  
 E-Mail: maryanne.kellysonnek@state.mn.us

**5.2. The City's Authorized Representative will be:**

Name/Title: John Maczko, City Engineer (or successor)  
 Address: 25 West 4<sup>th</sup> Street, 1500 City Hall Annex, St. Paul, MN 55102  
 Telephone: (651) 266-6137  
 E-Mail: john.maczko@ci.stpaul.mn.us

**6. Assignment; Amendments; Waiver; Contract Complete**

- 6.1. **Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 6.2. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 6.3. **Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 6.4. **Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.



## **7. Liability; Worker Compensation Claims; Insurance**

- 7.1. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).
- 7.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 7.3. The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

## **8. Nondiscrimination**

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

## **9. State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

## **10. Government Data Practices**

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

## **11. Governing Law; Jurisdiction; Venue**

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## **12. Termination; Suspension**

- 12.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

**12.2. Termination for Insufficient Funding.** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

**12.3. Suspension.** In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

**13. Force Majeure**

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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**STATE ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: \_\_\_\_\_

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

SWIFT Purchase Order No. \_\_\_\_\_

**CITY OF ST. PAUL**

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

Recommended for Approval:

By: \_\_\_\_\_  
(Director of Public Works)

Approved as to form and execution:

By: \_\_\_\_\_  
(Assistant City Attorney)

By: \_\_\_\_\_  
(Mayor)

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

By: \_\_\_\_\_  
(Director of Finance & Management Services)

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

**DEPARTMENT OF TRANSPORTATION**

Recommended for Approval:

By: \_\_\_\_\_  
(District Engineer)

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

Approved:

By: \_\_\_\_\_  
(State Design Engineer)

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

**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_  
(With delegated authority)

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