

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

State Project Number (S.P.):	<u>6201-86</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>5=111</u>	<u>\$55,743.12</u>
Lighting System Feed Point No.	<u>City</u>	

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

Recitals

1. The State will perform bituminous mill, bituminous surfacing, concrete surfacing, concrete pavement rehabilitation, bridge approach panels and bridge nos. 9300, 9489, 9490 and 9491 construction and other associated construction upon, along and adjacent to Trunk Highway No. 5 from 0.18 miles north of T.H. 55 to 0.16 miles south of Davern Street according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6201-86 (T.H. 5=111)("Project"); and
2. The City has requested the State include in its Project salvage of aesthetic lighting units, hauling of salvage material and reinstalling of lighting units and camera wire construction; and
3. The City request the State contractor refurbish the aesthetic metal bridge railing and the City will refurbish the aesthetic bridge lighting units; and
4. The City wishes to participate in the costs of the salvage of lighting units, hauling of salvage material, reinstalling of lighting units and refurbishing of the aesthetic metal railing construction and associated construction engineering; and
5. Existing Maintenance Agreement No. 85853 dated April 7, 2004 between the State and the City will remain in place and address the City maintenance responsibility of the aesthetic metal bridge railing and aesthetic lighting system; and
6. 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; 8. Liability; Worker Compensation Claims; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.

- 1.4. **Plans, Specifications, Special Provisions.** Plans, specifications and special provisions designated by the State as State Project No. 6201-86 (T.H. 5=111) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference. ("Project Plans")
- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the City Engineer and incorporated into this Agreement by reference. EXHIBIT "Cost Participation" is on file in the office of the State's Municipal Agreements Engineer at St. Paul and incorporated into this Agreement by reference.

2. Construction by the State

2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.

2.2. *Direction, Supervision and Inspection of Construction.*

- A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract, and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
- B. **Inspection by the City.** The City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the City participation construction covered under this Agreement.

2.3. *Plan Changes, Additional Construction, Etc.*

- A. The State will make changes in the Project Plans and contract construction, which may include the City participation construction covered under this Agreement, and will enter into any necessary addenda, change orders and supplemental agreements with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner.
- B. The City may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter(s) with the State. If the State determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the project, the State will cause the additional work or plan changes to be made.

2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner. Acceptance by the State of the completed contract construction will be final, binding and conclusive upon the City as to the satisfactory completion of the contract construction.

2.5. **Permits.** The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City to be constructed hereunder that are upon and within the trunk highway right-of-way. Applications for permits will be made on State form "Application for Utility Permit on Trunk Highway Right-Of-Way" (Form TP2525).

3. Maintenance by the City.

Agreement No. 85853 dated April 7, 2004 for the maintenance of aesthetic lighting and aesthetic metal bridge railing located on Trunk Highway No. 5 from the southwest limit of Bridge Number 9300 over the Mississippi River to Munster Avenue within the corporate limits of the City of Saint Paul and to the southwest limits of Bridge Number 9300 will remain in full force and effect.

4. Basis of City Cost

4.1. **SCHEDULE "I".** The Preliminary SCHEDULE "I" includes all anticipated City participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.

A. **City Participation Construction.** The City will participate in the following at the percentages indicated.

B. 100 Percent will be the City's rate of cost participation in salvage of lighting units, refurbishing of light poles and aesthetic railing, hauling of salvage material, reinstalling of lighting units and camera wire construction items as tabulated on Sheet No. 2 of the Preliminary SCHEDULE "I".

4.2. **Construction Engineering Costs.** The City will pay a construction engineering charge equal to 8 percent of the total City participation construction covered under this Agreement.

4.3. **Plan Changes, Additional Construction, Etc.** The City will share in the costs of construction contract addenda for the City participation construction covered under this Agreement and any additional City requested work and plan changes.

The State reserves the right to invoice the City for the cost of any construction contract addenda and any additional City requested work and plan changes, including associated construction engineering, before the completion of the contract construction.

5. City Cost and Payment by the City

5.1. **City Cost.** \$55,743.12 is the City's estimated share of the costs of the contract construction and the 8 percent construction engineering cost share as shown in the Preliminary SCHEDULE "I". The Preliminary SCHEDULE "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised SCHEDULE "I" based on construction contract unit prices, which will replace and supersede the Preliminary SCHEDULE "I" as part of this agreement.

5.2. **Conditions of Payment.** The City will pay the State the full and complete lump sum amount, as shown in the Revised SCHEDULE "I", after the following conditions have been met:

A. Execution of this Agreement and transmittal to the City, including a copy of the Revised SCHEDULE "I".

B. The City's receipt of a written request from the State for the advancement of funds.

5.3. Final Payment, Additional City Requested Work

Upon completion of all contract construction and upon computation of the final amount due the State's contractor and only if additional work has been requested under Article 2.3.B of this Agreement, the State will prepare a Final SCHEDULE "I" and submit a copy to the City. The Final SCHEDULE "I" will be based on final quantities of any additional City requested participation construction items and the construction engineering cost share due to additional requested work. The computation by the State of the amount due from the City will be final, binding and conclusive.

6. 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.

6.1. 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

6.2. The City's Authorized Representative will be:

Name/Title: Brian P. Vitek, Traffic Operations Engineer (or successor)
Address: 899 North Dale Street, St. Paul, Minnesota 55103-1512
Telephone: 651-266-9773
Fax: 651-298-4559
E-Mail: Brian.Vitek@ci.stpaul.mn.us

7. Assignment; Amendments; Waiver; Contract Complete

- 7.1. **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.
- 7.2. **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.
- 7.3. **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.
- 7.4. **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.

8. Liability; Worker Compensation Claims

- 8.1. 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.
- 8.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

9. Nondiscrimination

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

10. 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.

11. 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.

12. 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.

13. Termination; Suspension

13.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

13.2. *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 performance of contract construction under the Project. Termination must be by written or fax notice to the City.

13.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities and performance of work authorized through this Agreement.

14. 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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CITY OF SAINT 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.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

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: _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

MKS

PRELIMINARY SCHEDULE "I"

Agreement No. 05185

City of St Paul

S.P. 6201-86 (T.H. 5=111)

Preliminary: February 7, 2014

State Funds

Bridge 9300 rehabilitation construction to start approximately 6/1/2014 under

State Contract No. _____ with _____

located on Trunk Highway No. 5 from 0.18 miles north of T.H. 55 to 0.16 miles south of Davern Street.

CITY COST PARTICIPATION

From Sheet No. 2	\$51,614.00
Subtotal	\$51,614.00
Construction Engineering (8%)	\$4,129.12
(1) Total City Cost	\$55,743.12

(1) Amount of advance payment as described in Article 5 of the agreement (Estimated amount)

