

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

State Project Number (SP):	<u>6201-84 (T.H. 5)</u>	Original Amount Encumbered
State Project Number (SP):	<u>6221-42 (T.H. 61)</u>	<u>\$82,155.59</u>
State Project Number (SP):	<u>6228-59 (T.H. 5)</u>	
State Project Number (SP):	<u>6229-33 (T.H. 5)</u>	
Federal Project Number:	<u>ESTE-10ES (048)</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 performed concrete sidewalk, truncated domes and striping construction and other associated construction upon, along and adjacent to Trunk Highway No. 5 from Wordsworth Avenue to Mounds Boulevard and from Trunk Highway No. 61 to McKnight Avenue; and on Trunk Highway No. 61 from Mounds Boulevard to Wheelock Parkway according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6201-84 (T.H. 5=102)("Project"); and
2. The City performed work associated with the State concrete sidewalk and truncated domes construction that was not included in the Project Plans, including but not limited to, repair and adjustment of electrical handholes and conduit for signals and lighting systems and re-installation of signs; and
3. The City installed conduit for future Accessible Pedestrian Signals ("APS") during the construction project in order to avoid disturbing the new concrete sidewalk during future installation of the APS; and
4. The City performed the work referred to in Recital 2 and 3 with their own forces and requests the State participate in the costs of said work and the State is willing to participate in those costs; and
5. 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

- 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: 5. Liability; Worker Compensation Claims; 7. State Audits; 8. Government Data Practices; 9. Governing Law; Jurisdiction; Venue; and 11. Force Majeure.
- 1.4. *Plans, Specifications, Special Provisions.* Plans, specifications and special provisions designated by the State as State Project No. 6201-84 (T.H. 5=102) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference. ("Project Plans")

2. State Cost and Payment by the State

2.1. **State Cost.** \$82,155.59 is the State's full and complete lump sum cost for work performed by City forces under this Agreement. The work included, but was not limited to, repairing, replacing and adjusting handholes and conduit associated with the State concrete sidewalk and truncated domes construction; re-installing signs; and installing new conduit for future APS installation.

2.2. **Conditions of Payment.** The State will pay the City the full and complete lump sum amount after the following conditions have been met:

- A. Encumbrance by the State of the State's full and complete lump sum cost share.
- B. Execution of this Agreement and transmittal to the City.
- C. Receipt of copies of the invoice(s) covering all City performed work.
- D. The State's receipt of a written request from the City for the payment of funds.

2.3. Limitations of State Payment

The State's participation in the City performed work is limited to the lump sum amount shown in Article 2.1, and the State's participation will not change except by a mutually agreed written amendment to this Agreement.

3. 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.

3.1. 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
 Fax: (651) 366-4769
 E-Mail: maryanne.kellysonnek@state.mn.us

3.2. The City's Authorized Representative will be:

Name/Title: Brian Vitek, P.E., St. Paul Traffic Operations (or successor)
 Address: 899 North Dale Street, St. Paul, MN 55103
 Telephone: (651) 487-7203
 Fax: (651) 487-7245
 E-Mail: brian.vitek@ci.stpaul.mn.us

4. Assignment; Amendments; Waiver; Contract Complete

4.1. **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.

4.2. **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.

4.3. **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.

- 4.4. *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.

5. Liability; Worker Compensation Claims

- 5.1.** 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).
- 5.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

6. Nondiscrimination

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

7. 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.

8. 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.

9. 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.

10. Termination

- 10.1. *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.
- 10.2. *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.

11. 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: _____

MAPS Encumbrance 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: _____

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