

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
CITY OF ST. PAUL
AMENDMENT NO. 1**

State Project Number (S.P.):	<u>6215-91</u>	Original Amount Receivable
Trunk Highway Number (T.H.):	<u>51=125</u>	<u>\$157,871.41</u>
State Aid Number (S.A.P.):	<u>164-010-064</u>	
		Amended Amount Receivable
		<u>\$0.00</u>
		Total City Obligation
		<u>\$0.00</u>

This Amendment 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 has a contract with the City identified as Mn/DOT Contract No. 00769 ("Original Contract") to provide payment by the City to the State for the City's share of the costs of the bituminous mill, ADA improvements, and overlay construction and other associated construction upon, along and adjacent to Trunk Highway No. 51 from West 7th Street to Dayton Avenue under State Project No. 6215-91 (T.H. 51=125); and
2. This Agreement is amended to modify the introduction in Section 3 for maintenance by the City ; and
3. The State and the City are willing to amend the Original Contract as stated below.

Contract Amendment

In this amendment deleted contract terms will be ~~struck out~~ and added contract terms will be underlined.

REVISION 1. The introductory paragraph of Section 3 is amended to read as follows:

3. Maintenance by the City.

Upon completion of the project, the City will provide ~~the following~~ Sections 3.1 - 3.3 as specified in the Biennial Routine Maintenance Agreement, and Sections 3.4 - 3.5 without cost or expense to the State:

The terms of the Original Contract are expressly reaffirmed and are incorporated by reference. Except as amended herein, the terms and conditions of the Original Contract and all previous amendments remain in full force and effect.

[The remainder of this page has been intentionally left blank]

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.

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: _____

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

State Project Number (SP):	<u>6215-91</u>	Amount Receivable
Trunk Highway Number (TH):	<u>51=125</u>	<u>\$157,871.41</u>
State Aid Project (SAP):	<u>164-010-064</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 will perform bituminous mill, ADA improvements, and overlay construction and other associated construction upon, along and adjacent to Trunk Highway No. 51 from West 7th Street to Dayton Avenue according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6215-91 (T.H. 51=125)("Project"); and
2. The City has requested the State include in its Project parking lanes, ADA improvements and revision of traffic control signals (Signal Systems) construction; and
3. The State requests the City participate in the costs of the parking lanes, ADA improvements and revised Signal Systems construction and the City is willing to participate in the costs of said construction; 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; 8. Liability; Worker Compensation Claims; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure. The terms and conditions set forth in Article 4. Signal Systems and EVP Systems Operation and Maintenance will survive the expiration of this Agreement, but may be terminated by another Agreement between the parties.
- 1.4. *Plans, Specifications, Special Provisions.* Plans, specifications and special provisions designated by the State as State Project No. 6215-91 (T.H. 51=125) 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. 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. The State District Engineer's authorized representative will inform the appropriate City official of any proposed addenda, change orders and supplemental agreements to the construction contract that will affect the City participation construction covered under this Agreement.
- 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.
- C. The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, construction contract addenda, change orders and supplemental agreements, and associated construction engineering before the completion of the contract construction.

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. Replacement of Castings. Adjustments to certain City-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The City will furnish the contractor with new units and/or parts for those in place City-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

3. Maintenance by the City.

Upon completion of the project, the City will provide the following without cost or expense to the State:

- 3.1. Roadways.** Maintenance of Trunk Highway No. 51 (Snelling Avenue/ Montreal Avenue). Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing and seal coating and any other maintenance activities according to accepted City maintenance practices.
- 3.2. Storm Sewers.** Routine maintenance of any storm sewer facilities construction. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from structures, grates and pipes; repair of minor erosion problems; minor structure repair; and any other maintenance activities

necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities.

- 3.3. Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk markings, mowing grass boulevards (if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
- 3.4. Lighting.** Maintenance and ownership of any lighting facilities construction. Maintenance includes but is not limited to; replacing faulty luminaries and knocked down or otherwise damaged poles; repairing or replacing underground facilities and wiring; repairing service cabinets, photocells, and all other miscellaneous hardware to keep the lighting facilities in working order; cleaning and re-lamping the luminaries; and if needed, painting the lighting facilities. The City will pay all monthly electrical service expenses necessary to operate the lighting facilities. As owner of the lighting facilities, the City will be responsible for all "Gopher State One Call" locates.
- 3.5. Additional Drainage.** Neither party to this Agreement will drain any additional drainage into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party. The drainage areas served by the storm sewer facilities constructed under the construction contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics Unit at Roseville and is incorporated into this Agreement by reference.

4. Signal Systems and EVP Systems Operation and Maintenance

All operation and maintenance terms, including timing and power provisions, that may exist in any existing Traffic Control Signal Agreements between the parties will remain in full force and effect. The revised Signal Systems and EVP Systems that are covered by the existing maintenance terms and conditions are located at the intersection of T.H. 51 (Montreal Ave.) at Edgcombe Rd. / Hamline Ave., and at the intersections of T.H. 51 (Snelling Ave.) at Montreal Ave., Ford Pkwy., Highland Pkwy., Randolph Ave., Jefferson Ave., St. Claire Ave., Grand Ave., Summit Ave., and Selby Ave.

5. City Cost and Payment by the City

- 5.1. City Cost.** \$157,871.41 is the City's full and complete lump sum cost for parking lanes, ADA improvements and revised Signal Systems construction and construction engineering.
- 5.2. Conditions of Payment.** The City will pay the State the full and complete lump sum amount after the following conditions have been met:
- A. Execution of this Agreement and transmittal to the City.
 - B. The City's receipt of a written request from the State for the advancement of funds.

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

6.2. The City's Authorized Representative will be:

Name/Title: Paul St. Martin, City of St. Paul Traffic Engineer(or successor)
Address: Department of Public Works, 800 City Hall, 25 West 4th Street, St. Paul, MN 55102-1600
Telephone: (651) 266-6200

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.

- 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.

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 ST. PAUL

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

By: [Signature]

Title: Director of Public Works

Date: 4/13/12

By: [Signature] *per*

Title: Director Office of Financial Services

Date: 4/20/12

By: [Signature]

Title: Mayor

Date: 4/23/12

Approved as to form and execution

By: [Signature]

Title: Assistant City Attorney

Date: 4/16/12

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: [Signature]
(District Engineer)

Date: 4/26/12

Approved:

By: [Signature]
(State Design Engineer)

Date: 5/2/12

COMMISSIONER OF ADMINISTRATION

By: [Signature]
(With delegated authority)

Date: May 3, 2012



City of Saint Paul

City Hall and Court
House
15 West Kellogg
Boulevard
Phone: 651-266-8560

Certified Copy

Resolution: RES 12-667

File Number: RES 12-667

Authorizing the City to enter into Cooperative Construction Agreement 00769 Minnesota Department of Transportation.

IT IS RESOLVED that the City of Saint Paul enter into Mn/DOT Agreement No. 00769 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the parking lanes, ADA improvements and revised signal systems construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 51 from West 7th Street to Dayton Avenue within the corporate City limits under State Project No. 6215-91 (T.H. 51=125)

IT IS FURTHER RESOLVED, that the Mayor and the Director of Public Works are authorized to execute the Agreement and any amendments to the Agreement.

I, Shari Moore, City Clerk of the City of Saint Paul, Minnesota, do hereby certify that I have compared RES 12-667, as adopted by the City Council on 4/11/2012 and approved by the Mayor on 4/18/2012, with the original thereof on file in my office.

Attest:

Shari Moore

April 18, 2012

Date Certified