

Prepared by the
Utility Agreements and Permits Unit
(Receivable)
(\$119,070.00)

S.P. 6201-86 (T.H. 5)
Location: Hennepin-Ramsey County Line to
just north of Edgcumbe Road (CSAH 46) in
the City of Saint Paul
Utility Owner: Board of Water Commissioners
of the City of Saint Paul
MnDOT Agreement Number 03012

AGENCY AGREEMENT
FOR REMOVAL OF A
BRIDGE ATTACHMENT AND ASBESTOS ABATEMENT

This Agreement Number 03012 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation and Board of Water Commissioners of the City of Saint Paul, including its agents, contractors, and subcontractors (Utility Owner). This Agreement outlines the separate responsibilities of the State and the Utility Owner as part of a construction project.

RECITALS

The State plans to let a contract to construct State Project Number 6201-86 (Project) on Trunk Highway Number 5. The Project is located Hennepin-Ramsey County Line to just north of Edgcumbe Road (CSAH 46) in the City of Saint Paul.

The Utility Owner wishes to remove a watermain with asbestos abatement (Facility) on Bridge Number 9300, which is part of the Project.

The Utility Owner does not have adequate staff to remove the Facility. If the Utility Owner let a separate contract to remove the Facility, the removal would interfere with the Project. The Utility Owner has requested the State to remove the Facility as part of the Project. Including the Utility Owner's removal in the State's construction contract may eliminate duplication of services, facilitate activity coordination, simplify supervision, and expedite Project construction.

Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the State may remove the Facility as part of the Project on the trunk highway system.

Pursuant to Minnesota Statutes, section 161.46, subdivision 2, the Utility Owner appoints the State as its agent to remove the Facility as part of the Project.

State Law requires a written agreement between the State and the Utility Owner that describes their separate responsibilities.

AGREEMENT

I. Term/Termination

- A. *Effective Date:* This Agreement is effective on the date the State obtains all signatures required by Minnesota Statutes, section 16C.05, subdivision 2.
- B. *Commencement of Work:* Upon notice of Agreement approval, the Utility Owner must promptly provide the State (and the State's contractor (Contractor)) with any information necessary to commence and successfully prosecute the utility construction according to the terms of the Notice and Order and a work schedule the State's Project Engineer (Project Engineer) approves.
- C. *Expiration Date:* This Agreement will expire on the date that all obligations, excluding the Utility Owner's ongoing maintenance obligations, have been satisfactorily fulfilled.
- D. *Termination by the State:* The State may terminate this Agreement at any time, with or without cause, on 30 calendar days written notice to the Utility Owner. Upon termination, the State will be entitled to payment, on a pro rata basis, for satisfactorily performed services. The termination of this Agreement does not relieve the Utility Owner of its obligations under the Notice and Order.
- E. *Survival of Terms:* The following articles survive this Agreement's expiration or termination: (III) Utility Owner's Ongoing Maintenance Requirements; (V) Indemnification; and (VII) Governing Terms.

II. Description of Work Procedures

- A. *State's Responsibilities*
 - 1. The State will:
 - a. Provide the final Facility construction plans and specifications, which are attached to this Agreement as Exhibit A;
 - b. Advertise the Project for bids; and
 - c. Award the construction contract for the Project. This Project will include the removal of the Facility, bulk heading the watermain at the south end of the Facility at the wing wall of the bridge, and asbestos abatement.
 - 2. Immediately after completing the bid opening procedures, the State will notify the Utility Owner of the actual cost in writing.

3. The Project Engineer will supervise and direct the Project, including the Facility removal, but the Utility Owner may inspect the work periodically. If the Utility Owner finds that any completed work is defective, it must inform the Project Engineer of these defects in writing; however, any recommendations the Utility Owner makes are not binding to the State. The State has the exclusive right to determine whether the Contractor has performed the work according to the plans, specifications, and special provisions.
 4. The Project Engineer and the Utility Owner will perform a final inspection of the utility work. Once the State has accepted the Facility construction, the Project Engineer will inform the Utility Owner in writing, and the Utility Owner will assume ownership of the remaining Facility.
- B. *Deletion of the Work:* If the Utility Owner decides to delete the Facility removal from the Project, the Utility Owner will:
1. Be subject to a Notice and Order to remove the Facility; and
 2. Defend (at its own expense and to the extent Minnesota's Attorney General permits), indemnify, save, and hold the State and all of its agents and employees harmless of and from all claims, demands, actions, or causes of action that deleting the Facility removal causes. This obligation to indemnify extends to any attorney's fees.
- C. *Risk:* Risk of loss of partial or complete Facility removal will be on the Contractor or the Utility Owner as the current *Standard for Specifications for Construction* set forth.

III. Utility Owner's Ongoing Maintenance Requirements

- A. Once removal is complete, the Utility Owner must maintain the Facility at its own expense. After the removal, a non-pressurized portion of the watermain will remain which lies between the southwest wing wall and the meter room at the south end of the bridge.
- B. The Utility Owner may open and disturb the highway right of way without a permit in the case of an emergency that is dangerous to the public and requires immediate attention. Upon learning of the emergency, the Utility Owner must immediately notify the State Patrol. The Utility Owner must take all necessary and reasonable safety measures to protect the public and must cooperate fully with the State Patrol. In this

event, the Utility Owner must request a permit from the proper authority no later than the working day after it begins working in the right of way.

IV. Payment

- A. The State will determine the cost of the Facility removal on a contract-unit-price basis. The Utility Owner authorizes the State to pay the Contractor directly for this removal. As Exhibit B shows, the estimated cost for the Utility Owner's removal work is \$119,070.00.
- B. The Utility Owner agrees to pay the State the total cost it incurs to remove the Facility. The total cost will include:
 - 1. The construction cost, which consists of all of the Contractor's bid item costs to satisfactorily remove the Facility according to the plans, specifications, and special provisions;
 - 2. The construction engineering cost, which is equal to 8 percent of the construction cost.
- C. Immediately after opening bids and selecting the Contractor, the State will notify the Utility Owner of the total cost by providing a written cost schedule.
 - 1. The Utility Owner must accept or reject the total cost no more than 10 calendar days after receiving the cost schedule. If the Utility Owner does not provide this notification after 10 days, the State will consider the lack of response to be the Utility Owner's acceptance of the total cost and the State will proceed with the work.
 - 2. If the Utility Owner chooses to delete its work from the State's contract, the Utility Owner will be obligated to remove its Facility according to the terms of the Notice and Order.
- D. The State will issue the Utility Owner an invoice for the amount specified in the cost schedule. Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the Utility Owner will promptly reimburse the State for the invoiced costs.
- E. After the Contractor has completed the work required under its contract and the State has accepted that work, the State will prepare a final computation of the amount due from the Utility Owner.

1. If the final total amount is greater than the amount the State has already received from the Utility Owner, the Utility Owner must promptly pay the difference, without interest, to the State.
 2. If the final total amount is less than the amount the State has already received from the Utility Owner, the State must pay the difference, without interest, to the Utility Owner.
- F. The final cost the Utility Owner owes the State and the State's acceptance of the completed Facility removal will be final, binding, and conclusive. This amount constitutes payment in full for all utility work according to this Agreement. This amount also constitutes payment in full for any and all damages, claims, or causes of action of any kind or nature that the Utility Owner may have relating to the removal of the Facility.

V. Indemnification

- A. The Utility Owner will defend (at its own expense and to the extent Minnesota's Attorney General allows), indemnify, save, and hold the State and all of its agents and employees harmless of an from all claims, demands, actions, or causes of action arising from the Utility Owner's acts and omissions and from the State and its Contractor's use of plans, designs, shop drawings, specifications, and special provisions prepared, reviewed, or approved by the Utility Owner. This indemnity obligation extends to any attorney's fees the State incurs in seeking to enforce this obligation, and in defending against any claims covered by this indemnity clause.
- B. The Utility Owner does not waive any defense or immunity of third parties. The Utility Owner, in defending any action on behalf of the State, will entitled to assert every defense or immunity that the State could assert on its own behalf.

VI. Nondiscrimination

Minnesota Statutes, section 181.59 and any applicable local ordinances pertaining to civil rights and nondiscrimination are considered part of this Agreement.

VII. Governing Terms

- A. *Applicable Law:* 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 Ramsey County, Minnesota.

- B. *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 the provision or any subsequent breach of that provision.
- C. *Merger:* This Agreement contains all negotiations and agreements between the State and the Utility Owner with respect to the subject matter it contains. No prior understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- D. *Assignment:* The Utility Owner may neither assign nor transfer any rights or obligations under this Agreement without the State's consent and a fully executed assignment agreement. To be valid, the assignment agreement must be signed and approved by the same parties who signed and approved this Agreement, or their successors in office.
- E. *Amendments:* Any amendment to this Agreement must be in writing. An amendment will not be effective until the same parties who signed and approved this Agreement, or their successors in office, sign and approve the amendment.
- F. *Incorporation of Exhibits:* All exhibits attached to this Agreement are incorporated into this Agreement.

The remainder of this page was left blank intentionally.

County: Ramsey

IN TESTIMONY WHEREOF, the parties have duly executed this Agreement by their duly authorized officers and caused their respective seals to be hereunto affixed.

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

Approved:

By: _____
Stephen P. Schneider
General Manager
Saint Paul Regional Water Services

By: _____
Matt Anfang
President

Date: _____

Date: _____

Approved as to form:

By: _____
Mollie Gagnelius
Secretary

By: _____
Assistant City Attorney

Date: _____

Date: _____

By: _____
Todd Hurley
Director
Office of Financial Services

Date: _____

County: Ramsey
Utility Owner: Board of Water Commissioners of the City of Saint Paul

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

Department of Transportation
Recommended for Approval:

By: _____
Metro Utility Coordinator

Date: _____

Approved:

By: _____
Director, Office of Land Management

Date: _____

Office of Contract Management
Approved as to Form and Execution:

By: _____

Date: _____

Department of Administration

By: _____

Date: _____





