

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

State Project Number (SP):	<u>8825-434</u>	Original Amount Encumbered
Trunk Highway Number (TH):	<u>5 & 51</u>	<u>\$702,000.00</u>
State Project Number (SP):	<u>164-070-011</u>	
City Project Number (CP):	<u>09-T-1331</u>	
Federal Project Number:	<u>CMAQ 6212 (105)</u>	
Signal System ID	<u>Various</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 City will perform traffic signal revisions and interconnect construction and other associated construction upon, along and adjacent to Trunk Highway No. 5 from Davern Street to Minnehaha Avenue and upon, along and adjacent to Trunk Highway No. 51 from Montreal Avenue to Hewitt Avenue and other various City routes according to City-prepared plans, specifications and special provisions designated by the City as City Project No. 09-T-1331 and by the State as State Project No. 8825-434 and State Project No. 164-070-011("Project"); and
2. The City requests the State participate in the costs of the traffic signal revision and interconnect construction and the State is willing to participate in the costs of said construction and associated construction engineering; and
3. 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: 2.4. State Ownership of Improvements; 5. Maintenance by the City; 11. Liability; Worker Compensation Claims; Insurance; 13. State Audits; 14. Government Data Practices; 15. Governing Law; Jurisdiction; Venue; and 17. Force Majeure. The terms and conditions set forth in Article 6. 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.** State-approved City plans, specifications and special provisions designated by the City as City Project No. 09-T-1331 and by the State as State Project No. 8825-434 (T.H. 5 & 51) are on file in the office of the City's Engineer and incorporated into this Agreement by reference. ("Project Plans")
- 1.5. **Exhibits.** Preliminary Schedule "I" is attached and incorporated into this Agreement.

2. Right-of-Way Use

- 2.1. *Limited Right to Occupy.*** The State grants to the City (and its contractors and consultants) the right to occupy trunk highway right-of-way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction, and may be revoked by the State at any time, with or without cause. Cause for revoking this right of occupancy includes, but is not limited to, breaching the terms of this or any other agreement (relevant to this project) with the State, failing to provide adequate traffic control or other safety measures, failing to perform the construction properly and in a timely manner, and failing to observe applicable environmental laws or terms of applicable permits. The State will have no liability to the City (or its contractors or consultants) for revoking this right of occupancy.
- 2.2. *State Access; Suspension of Work; Remedial Measures.*** The State's District Engineer or assigned representative retains the right to enter and inspect the trunk highway right-of-way (including the construction being performed on such right-of-way) at any time and without notice to the City or its contractor. If the State determines (in its sole discretion) that the construction is not being performed in a proper or timely manner, or that environmental laws (or the terms of permits) are not being complied with, or that traffic control or other necessary safety measures are not being properly implemented, then the State may direct the City (and its contractor) to take such remedial measures as the State deems necessary. The State may require the City (and its contractors and consultants) to suspend their operations until suitable remedial action plans are approved and implemented. The State will have no liability to the City (or its contractors or consultants) for exercising its rights under this provision.
- 2.3. *Traffic Control; Worker Safety.*** While the City (and its contractors and consultants) are occupying the State right-of-way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (<http://www.dot.state.mn.us/trafficeng/workzone/index.html>). All City, contractor, and consultant personnel occupying the State's right-of-way must be provided with required reflective clothing and hats.
- 2.4. *State Ownership of Improvements.*** The State will retain ownership of its trunk highway right-of-way, including any improvements made to such right-of-way under this Agreement, unless otherwise noted. The warranties and guarantees made by the City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City's consultants, and contractor (including its sureties) for non-performance of contract work, for design errors and omissions, and for defects in materials and workmanship. Upon request of the State, the City will undertake such actions as are reasonably necessary to transfer or assign contract rights to the State and to permit subrogation by the State with respect to claims against the City's consultants and contractors.

3. Contract Award and Construction

- 3.1. *Bids and Award.*** The City will receive bids and award a construction contract to the lowest responsible bidder (or best value proposer), subject to concurrence by the State in that award, according to the Project Plans. The contract construction will be performed according to the Project Plans.
- 3.2. *Bid Documents furnished by the City.*** The City will, within 7 days of opening bids for the construction contract, submit to the State's State Aid Agreements Engineer a copy of the low bid and an abstract of all bids together with the City's request for concurrence by the State in the award of the construction contract. The City will not award the construction contract until the State advises the City in writing of its concurrence.
- 3.3. *Rejection of Bids.*** The City may reject and the State may require the City to reject any or all bids for the construction contract. The party rejecting or requiring the rejection of bids must provide the other party written notice of that rejection or requirement for rejection no later than 30 days after opening bids. Upon the rejection of all bids, a party may request, in writing, that the bidding process be repeated. Upon the

other party's written approval of such request, the City will repeat the bidding process in a reasonable period of time, without cost or expense to the State.

3.4. *Direction, Supervision and Inspection of Construction*

- A.** 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. The City will give the State Aid Agreements Engineer at Roseville a five day notice of its intention to start the contract construction.
- B.** Responsibility for the control of materials for the contract construction will be on the City and its contractor and will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".

3.5. *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. The completion date for the contract construction may be extended, by an exchange of letters between the appropriate City official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.

3.6. *Plan Changes.* The State will not participate in the cost of any contract construction that is in addition to the State participation construction covered under this Agreement unless the following conditions have been met:

- A.** The necessary State funds have been encumbered.
- B.** All changes in the Project Plans and all addenda, change orders and supplemental agreements entered into by the City and its contractor for State participation construction are approved in writing by the State District Engineer's authorized representative.

3.7. *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. With respect only to that portion of work performed on the State's trunk highway right-of-way, the City will not require the contractor to follow local ordinances or to obtain local permits.

4. *Right-of-Way; Easements; Permits*

- 4.1.** 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.
- 4.2.** The City will convey to the State by quit claim deed, all newly acquired rights needed for the continuing operation and maintenance of the Trunk Highway, if any, upon completion of the Project, at no cost or expense to the State.
- 4.3.** 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.

5. *Maintenance by the City*

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

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.

6. Signal Systems and EVP Systems Operation and Maintenance

All operation and maintenance terms, including timing and power provisions, in the existing Traffic Control Signal Agreements pertaining to Trunk Highway No. 5 from Davern Street to Minnehaha Avenue and pertaining to Trunk Highway No. 51 from Montreal Avenue to Hewitt Avenue will remain in full force and effect.

7. Basis of State Cost

7.1. SCHEDULE "I". The Preliminary SCHEDULE "I" includes all anticipated State participation construction items and the construction engineering cost share covered under this Agreement.

7.2. State Participation Construction. The State will participate in the traffic signal revisions and interconnect construction as indicated in the Preliminary SCHEDULE "I". The construction includes the State's proportionate share of the item cost for mobilization.

A lump sum amount based on contract bids and not to exceed \$650,000.00 or 50% of the group 2 (S.P. 8825-434) work will be the State's rate of cost participation in all of the traffic signal revision and interconnect construction. The construction includes, but is not limited to, those construction items tabulated on Sheets No. 2 and No. 3 of the Preliminary SCHEDULE "I".

7.3. Construction Engineering Costs. The State will pay a construction engineering charge equal to 8 percent of the total State participation construction covered under this Agreement but not to exceed \$52,000.00.

7.4. Addenda, Change Orders and Supplemental Agreements. The State will share in the costs of construction contract addenda, change orders and supplemental agreements that are necessary to complete the State participation construction covered under this Agreement and are approved in writing by the State District Engineer's authorized representative.

7.5. Liquidated Damages. All liquidated damages assessed the City's contractor in connection with the construction contract will result in a credit shared by each party in the same proportion as their total construction cost share covered under this Agreement is to the total contract construction cost before any deduction for liquidated damages.

8. State Cost and Payment by the State

8.1. State Cost. \$702,000.00 is the maximum of the State's estimated share of the costs of the contract construction including 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 review of the construction contract bid documents described in Article 3.2, the State will decide whether to concur in the City's award of the construction contract and, if so, prepare a Revised SCHEDULE "I" based on construction contract unit prices.

8.2. Conditions of Payment. The State will pay the City the State's total estimated construction cost share, which includes the 8 percent construction engineering cost share as shown in the Revised SCHEDULE "I", after the following conditions have been met:

- A. Encumbrance by the State of the State's total estimated construction cost share and the 8 percent construction engineering cost share as shown in the Revised SCHEDULE "I".
- B. Approval by the State's Land Management Director at St. Paul of certified documentation, submitted by the City, for all right-of-way and easement acquisitions required for the contract construction.
- C. Execution of this Agreement and transmittal to the City, including a letter advising of the State's concurrence in the award of the construction contract.
- D. The State's receipt of a written request from the City for the advancement of funds. The request will include certification by the City that all necessary parties have executed the construction contract.

8.3. Limitations of State Payment; No State Payment to Contractor

The State's participation in the contract construction is limited to the State participation construction shown in Article 7, 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.

8.4. Records Keeping and Invoicing by the City (This Article only applies if the bids for the State construction cost is less than the capped amount of State funds)

The State will provide the City with a Payment Processing Package containing a Modified SCHEDULE "I" form, instructions, and samples of documents for processing final payment of the State participation construction covered under this Agreement.

The City will keep records and accounts that enable it to provide the State with the following prior to final payment:

- A. A copy of the Modified SCHEDULE "I" which includes final quantities of State participation construction.
- B. Copies of the City contractor's invoice(s) covering all contract construction.
- C. 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.
- D. Copies of all construction contract change orders and supplemental agreements.
- E. A certification form, attached to a copy of the Final Schedule "I", both provided by the State. The certification form will be 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.
- F. When requested, copies certified by the City's Engineer, of material sampling reports and material testing results for the materials furnished for the contract construction.
- G. A copy of the "as built" plan sent to the State Aid Agreements Engineer.
- H. A formal invoice (original and signed) in the amount due the City as shown in the Final SCHEDULE "I".

8.5. Final Payment by the State (This Article only applies if the bids for the State construction cost is less than the capped amount of State funds)

Upon completion of all contract construction, the State will prepare a Final SCHEDULE "I" according to the procedures detailed in the Payment Processing Package and submit a copy to the City. The Final SCHEDULE "I" will be based on final quantities, and include all State participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the State participation construction exceeds the amount of funds advanced by the State, the State will pay the difference to the City without interest. If the final cost of the State participation construction is less than the amount of funds advanced by the State, the City will refund the difference to the State without interest.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

9. 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.

9.1. 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

9.2. The City's Authorized Representative will be:

Name/Title: John Maczko, City Engineer (or successor)
Address: 1500 City Hall Annex, 25 4th Street West, St. Paul, MN 55102-1634
Telephone: (651) 266-6137
E-Mail: john.maczko@ci.stpaul.mn.us

10. Assignment; Amendments; Waiver; Contract Complete

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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.

11. Liability; Worker Compensation Claims; Insurance

11.1. 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. The State will have no liability or responsibility with respect to any claims asserted against the City by the City's contractor, whether those claims are based on alteration of the work, differing site conditions, or any other cause. The City's contractor will not be a third party beneficiary of this Agreement. The State assumes no liability for any injury to any third party caused by the act or omission of the City or the City's contractor, and the City will hold the State harmless against such claims, whether in tort, contract or otherwise.

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

11.3. The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

12. Nondiscrimination

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

13. 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.

14. 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.

15. 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.

16. Termination; Suspension

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

16.2. *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.

16.3. *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.

17. 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: _____

**PRELIMINARY SCHEDULE "I"
 AGREEMENT NO. 00764
 CITY OF ST. PAUL**

Preliminary: April 4, 2012

S.P. 8825-434 (T.H. 5 & 51)
 S.P. 164-070-011
 City Proj. 09-I-1331
 Fed. Proj. CMAQ 6212 (105)

Traffic signal revisions and interconnect construction performed under
 City contract with _____
 located on T.H. 5 from Davern St. to Minnehaha Ave. and on T.H. 51 from Montreal Ave. to Hewitt Ave.

COST PARTICIPATION

	Construction	FEDERAL	MATCH
From Sheet No. 2 - S.P. 8825-434 - Group 2	\$1,295,972.50	\$645,972.50	\$650,000.00
From Sheet No. 3 - S.P. 164-070-011 - Group 1	\$921,237.50	\$694,027.50	\$227,210.00
Subtotal (federal funds capped at \$1,340,000.00)		\$1,340,000.00	\$877,210.00
State Construction Funds (Capped at \$650,000.00) (or 50% whichever is less)			\$650,000.00
State Construction Engineering Funds (\$650,000.00 X 8%)			\$52,000.00
(1) Estimated State Cost Participation			\$702,000.00

(1) Amount of advance payment as described in Article 8.2 of the Agreement (Estimated amount)

CITY OF ST. PAUL

RESOLUTION

IT IS RESOLVED that the City of St. Paul enter into Mn/DOT Agreement No. 00764 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the City of the State's share of the costs of the traffic control signal revision and interconnect construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 5 from Davern St. to Minnehaha Ave. and along Trunk Highway No. 51 from Montreal Ave. to Hewitt Ave. within the corporate City limits under State Project No. 8825-434.

IT IS FURTHER RESOLVED that the Mayor and the _____ are authorized to execute the Agreement and any amendments to the Agreement.
(Title)

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of St. Paul at an authorized meeting held on the _____ day of _____, 2012, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this _____ day of _____, 2012

Notary Public _____

My Commission Expires _____

NOTARY
ST. PAUL

(Signature)

(Type or Print Name)

(Title)