

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

State Project Number (S.P.):	<u>1917-45; 6223-19</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>149=001; 149=102</u>	<u>\$123,701.42</u>
State Project Number (S.P.):	<u>1902-79</u>	
Trunk Highway Number (T.H.):	<u>13=194</u>	
State Aid Project (S.A.P.):	<u>164-010-070</u>	
Federal Project Number:	<u>STPF 1918(183)</u>	
Signal System "E" ID:	<u>1736733 (Formerly 39096)</u>	
Signal System "F" ID:	<u>1736880 (Formerly 39478)</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 and overlay, signals, ADA improvement construction, and other associated construction upon, along and adjacent to Trunk Highway No. 149 from Trunk Highway No. 494 in Mendota Heights to George Street in the City of Saint Paul according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 1902-79 (T.H. 13=194), State Project No. 6223-19 (T.H. 149=102), and as State Project No. 1917-45 (T.H. 149=001) ("Project"); and
2. The City wishes to participate in the costs of the utility adjustments and signal construction and associated construction engineering; and
3. The City will furnish cabinets, controllers, and EVP systems for the signal systems covered under this agreement; and
4. Agreement No. 1029199 between the State and City of West Saint Paul will address signals, lighting, and utility adjustment construction and related maintenance; and
5. Agreement No. 1029136 between the State and City of Mendota Heights will address utility adjustment construction; and
6. A separate agreement between the State and Dakota County will address any required detours; and
7. Agreement No. 1030402 between the State and Saint Paul Regional Water Services will address valve box maintenance; and
8. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and
9. 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; 9. Liability; Worker Compensation Claims; 11. State Audits; 12. Government Data Practices; 13. Governing Law; Jurisdiction; Venue; and 15. 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. 1902-79 (T.H. 13=194), State Project No. 6223-19 (T.H. 149=102), and as State Project No. 1917-45 (T.H. 149=001) 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's Public Works Director 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 and change orders 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.
 - C.** The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, including 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 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. Additional Drainage.** Neither party to this Agreement will drain any additional drainage volume 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

- 4.1. Signal System "E".** All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement No. C1519 dated September 30, 1955, for the existing traffic control signal on T.H. 149 at Annapolis Street will remain in full force and effect.
- 4.2. Signal System "F".** All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement No. 63156 dated March 5, 1986, for the existing traffic control signal on T.H. 149 at George Street will remain in full force and effect.

5. Basis of Cost

- 5.1. Schedule "I".** The Preliminary Schedule "I" includes all anticipated City participation construction items, City Furnished Materials lump sum amounts and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.
- 5.2. City Participation Construction.** The City will participate in the following at the percentages indicated. The construction includes the City's proportionate share of item costs for mobilization, field office, and traffic control.
- A. 100 Percent will be the City's rate of cost participation in all of the utility adjustment construction.
 - B. 50 Percent will be the City's rate of cost participation in all of the Signal System "E" painting.
 - C. 12.5 Percent will be the City's rate of cost participation in all of the Signal System "E" construction.
 - D. 100 Percent will be the City's rate of cost participation in all of the Signal System "F" painting.
 - E. 50 Percent will be the City's rate of cost participation in all of the Signal System "F" construction.
- 5.3. City Furnished Materials.** The City will furnish a cabinet, controller, and EVP system ("City Furnished Materials"), according to the Project Plans, to operate the traffic control signal systems covered under this Agreement. The City's cost for City Furnished Materials for Signal System "E" is \$32,192.00 and for Signal System "F" is \$27,800.00 for a total of \$59,992.00. The State's cost share for City Furnished Materials will be deducted from the City's total construction cost share as shown in the Schedule "I" and calculated at the same rate of participation for each signal system.
- A. 75 Percent will be the State's rate of cost participation for Signal System "E".

B. 50 Percent will be the State's rate of cost participation for Signal System "F".

5.4. 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.

5.5. 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.

6. City Cost and Payment by the City

6.1. City Cost. \$123,701.42 is the City's estimated share of the costs of the contract construction, City Furnished Materials, 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.

6.2. 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.

6.3. 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.

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

7. 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.

7.1. The State's Authorized Representative will be:

Name/Title: Maryanne Kelly-Sonnek, Cooperative 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

7.2. The City's Authorized Representative will be:

Name/Title: Kathy Lantry, Public Works Director (or successor)
 Address: 25 West 4th Street, 1500 City Hall Annex, St. Paul, MN 55102
 Telephone: (651) 266-6099
 E-Mail: kathy.lantry@ci.stpaul.mn.us

8. Assignment; Amendments; Waiver; Contract Complete

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.

9. Liability; Worker Compensation Claims

- 9.1.** 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.
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

10. Nondiscrimination

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

11. 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.

12. 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.

13. 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.

14. Termination; Suspension

- 14.1. By Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties.
- 14.2. 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.

14.3. 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.

15. 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.

Recommended for Approval:

By: _____
(Director of Public Works)

Date: _____

Approved as to form and execution:

By: _____
(Assistant City Attorney)

Date: _____

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.

PRELIMINARY SCHEDULE "I"

Agreement No. 1029200

City of Saint Paul

S.P. 1917-45 (T.H. 149=001)

Preliminary: February 28, 2018

S.P. 6223-19 (T.H. 149=102)

S.P. 1902-79 (T.H. 13=194)

S.A.P. 164-010-070

Federal Proj. STPF 1918(183)

Bituminous mill and overlay, signals, and ADA improvement construction to start approximately June 1, 2018 under State Contract No. ____ with ____ located on T.H. 149 from T.H. 494 in Mendota Heights to George Street in the City of Saint Paul

CITY COST PARTICIPATION

S.P. 6223-19 Signals and Utility Adjustments (From Sheet No. 2)	148,775.00
Signal System E Painting	962.50
Signal System F Painting	1,925.00
S.P. 6223-19 Subtotal	151,662.50
S.P. 1902-79 Utility Adjustments (From Sheet No. 2)	500.00
City Furnished Materials Signal System E (Saint Paul Cost) (From Sheet No. 2)	4,024.00
City Furnished Materials Signal System F (Saint Paul Cost) (From Sheet No. 2)	13,900.00
Subtotal	\$170,086.50
Construction Engineering (8%)	13,606.92
Deduct for City Furnished Materials (State cost, Saint Paul cost, and West Saint Paul cost)	(59,992.00)
(1) Total City Cost	\$123,701.42

(1) Amount of advance payment as described in Article 6 of the agreement (estimated amount)

(1) 100% CITY

ITEM NUMBER	S.P. 6223-19 WORK ITEM	UNIT	QUANTITY	UNIT PRICE	COST (1)
2021.501	MOBILIZATION	LUMP SUM	0.02	\$450,000.00	\$9,000.00
2031.501	FIELD OFFICE TYPE D-MODIFIED	EACH	0.02	\$20,000.00	\$400.00
2506.502	ADJUST FRAME AND RING CASTING	EACH	14.00	500.00	7,000.00
2563.601	TRAFFIC CONTROL	LUMP SUM	0.02	275,000.00	5,500.00
2565.511	TRAFFIC CONTROL SIGNAL SYSTEM E	SIG SYS	0.125	203,000.00	25,375.00
2565.511	TRAFFIC CONTROL SIGNAL SYSTEM F	SIG SYS	0.50	203,000.00	101,500.00
				TOTAL	\$148,775.00
		(1) 100% CITY	\$148,775.00		

(1) 100% CITY

ITEM NUMBER	S.P. 1902-79 WORK ITEM	UNIT	QUANTITY	UNIT PRICE	COST (1)
2506.502	ADJUST FRAME AND RING CASTING	EACH	1.00	500.00	500.00
				TOTAL	\$500.00
		(1) 100% CITY	\$500.00		

(2) 12.5% SAINT PAUL, 12.5% WEST SAINT PAUL, 75% STATE

(3) 50% SAINT PAUL, 50% STATE

ITEM NUMBER	S.P. 6223-19 CITY FURNISHED MATERIALS	UNIT	QUANTITY	UNIT PRICE	COST (2) (3)
(2)	CITY FURNISHED MATERIALS FOR SIGNAL SYSTEM E	LUMP SUM	1.00	32,192.00	32,192.00
(3)	CITY FURNISHED MATERIALS FOR SIGNAL SYSTEM F	LUMP SUM	1.00	27,800.00	27,800.00
				TOTAL	\$59,992.00
		(2) 12.5% SAINT PAUL	\$4,024.00		
		12.5% WEST SAINT PAUL	\$4,024.00		
		75% STATE	\$24,144.00		
		(3) 50% SAINT PAUL	\$13,900.00		
		50% STATE	\$13,900.00		

CITY OF SAINT PAUL

RESOLUTION

IT IS RESOLVED that the City of Saint Paul enter into MnDOT Agreement No. 1029200 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 utility adjustments and signal construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 149 from 494 in Mendota Heights to George Street in the City of Saint Paul within the corporate City limits under State Project No. 1917-45 (T.H. 149=001).

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

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Saint Paul at an authorized meeting held on the _____ day of _____, 2018, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this
_____ day of _____, 2018

Notary Public _____

My Commission Expires _____

**NOTARY
STAMP**

(Signature)

(Type or Print Name)

(Title)