

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

| | | |
|---|-----------------------|------------------------------------|
| State Project Number (S.P.): | <u>8825-486</u> | Estimated Amount Receivable |
| Fed. Project Number (S.P.): | <u>SB11MN(007)</u> | <u>None</u> |
| Trunk Highway Number (T.H.): | <u>Various Routes</u> | |
| State Aid Project Number (S.P.): | <u>088-060-002</u> | |
| State Aid Project Number (S.P.): | <u>091-060-103</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 Mississippi River Trail (MRT) sign installation construction and other associated construction upon, along and adjacent to various Trunk Highways, County Roads, City Streets, Township Roads, or trails according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 8825-486 ("Project"); and
2. The City has stated its support of the development of the Mississippi River Trail (MRT) which traverses City roadways and trails in accordance with Resolution of Support dated January 22, 2013; and
3. The State wishes to sign the route and will do so through a construction contract; and
4. The State requests that the City grant the State and its contractor the right to enter upon City right of way or property for the purpose of installing the MRT signs, including posts and hardware as needed, along the designated routes; and
5. The State requests and the City agrees to maintain the signs in accordance with City standard maintenance practices; and
6. Minnesota Statutes § 160.266, subdivision 4 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority to establish, develop, maintain, and operate the bikeway and to interpret associated natural and cultural resources.

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: 4. Maintenance by the City; 7. Liability; Worker Compensation Claims; 9. State Audits; 10. Government Data Practices; 11. Governing Law; Jurisdiction; Venue; and 13. Force Majeure.
- 1.4. **Renewal of Contract.** At the time the MRT sign panels require systematic renewal, the parties will review this agreement.

- 1.5. **Plans, Specifications, Special Provisions.** Plans, specifications and special provisions designated by the State as State Project No. 8825-486 are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference. ("Project Plans")
- 1.6. **Exhibit A.** Proposed MRT route along with the resolution of support are attached and incorporated into this Agreement.

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, at no cost to the City. The State has obtained funding for the fabrication of the panels and the installation of the signs from the Mississippi River Parkway Commission of Minnesota agreement SB11MN(007).
- 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 sign installation 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.

3. Permit to Construct

The City, at no cost to the State, hereby grants to the State and its contractor, an immediate right of entry and permit to perform the sign installation construction, the location of such work is available on the Project Plans.

4. Maintenance by the City.

- A. Upon completion of the project, the City agrees to maintain the signs in accordance with City standard maintenance practices.
- B. The State will fabricate a limited number of additional sign panels to replace those panels that may become damaged or destroyed. The City may request replacement of damaged or destroyed MRT sign panels, and if available they will be provided at no cost.

5. 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.

5.1. The State's Authorized Representative will be:

Name/Title: Tim Mitchell, Bicycle and Pedestrian Coordinator, (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 315, St. Paul, MN 55155
 Telephone: (651) -366-4162
 E-Mail: tim.mitchell@state.mn.us

5.2. The City's Authorized Representative will be:

Name/Title: Paul St. Martin P.E., Assistant City Engineer (or successor)
 Dept: St. Paul Department of Public Works, Traffic & Lighting Division
 Address: 800 City Hall Annex, 25 West 4th Street, St. Paul, MN 55102
 Telephone: (651) 266-6118
 E-Mail: martin@ci.stpaul.mn.us

6. Assignment; Amendments; Waiver; Contract Complete

- 6.1. *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.
- 6.2. *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.
- 6.3. *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.
- 6.4. *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.

7. Liability; Worker Compensation Claims

- 7.1.** 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.
- 7.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

8. Nondiscrimination

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

9. 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.

10. 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.

11. 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.

12. Termination; Suspension

- 12.1. *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties.
- 12.2. *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.

12.3. *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.

13. 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 Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

By: _____

Title: Director of Public Works

Date: _____

By: _____

Title: Director of Financial Services

Date: _____

By: _____

Title: Mayor

Date: _____

APPROVED AS TO FORM

By: _____

Title: City Attorney

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

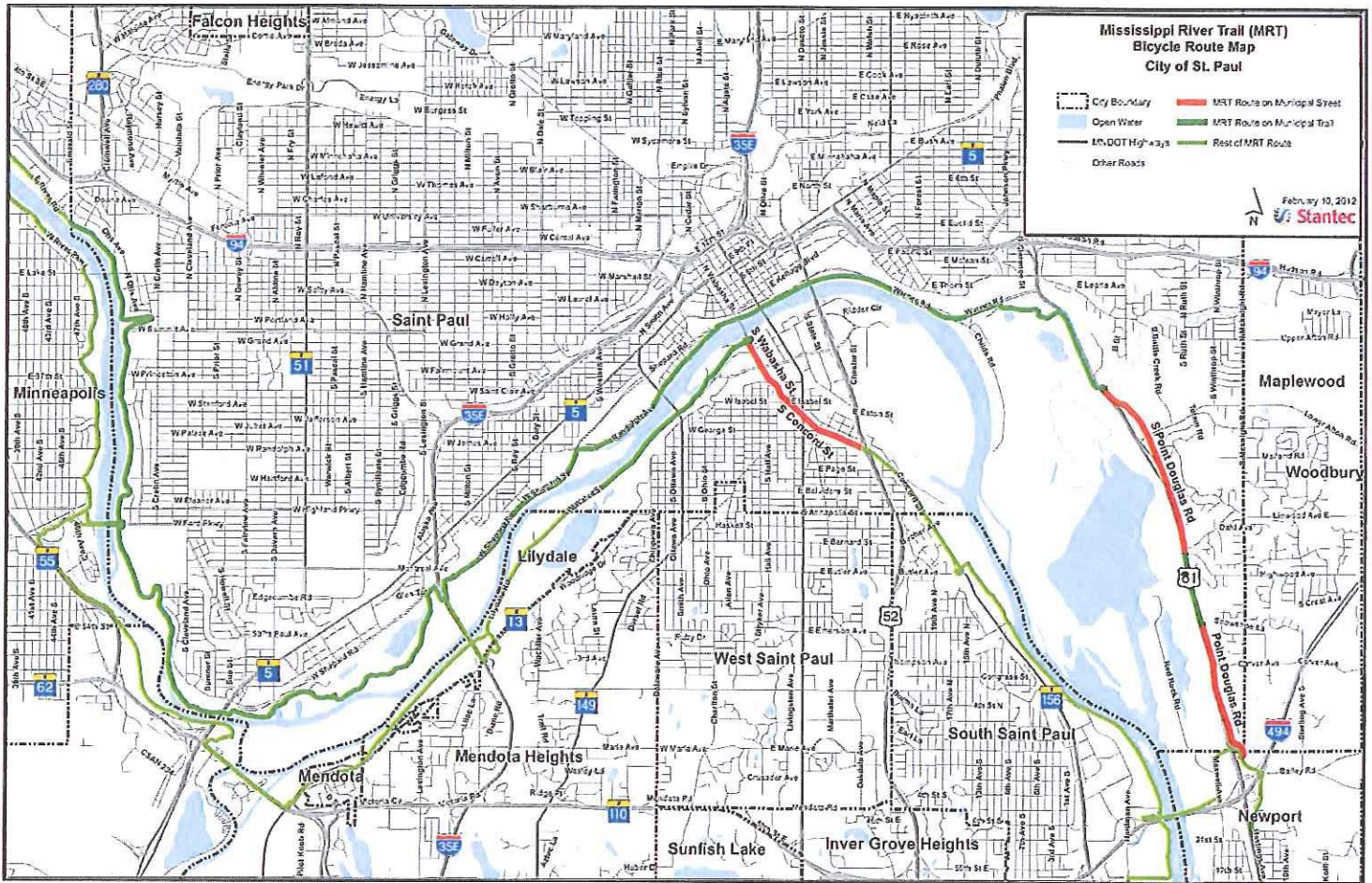
COMMISSIONER OF ADMINISTRATION

By: _____
(With delegated authority)

Date: _____

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

EXHIBIT A





City of Saint Paul

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

Signature Copy

Resolution: RES 13-71

File Number: RES 13-71

Supporting the MnDOT designation of Saint Paul's portion of the Mississippi River Trail as U.S. Bike Route 45.

WHEREAS, bicycle tourism is a growing industry in North America, presently contributing approximately \$47 billion dollars a year nationally to the economies of communities that provide facilities for said tourism; and

WHEREAS, the Minnesota Department of Transportation has convened several public meetings during the previous eighteen months locally and throughout the river's corridor to gather information, review route alternatives, and to provide assistance; and

WHEREAS, the Minnesota Department of Transportation, in cooperation with road and trail authorities, have proposed a specific route to be designated as the Mississippi River Trail (USBR 45), a map of which is herein incorporated into this resolution by reference; and

WHEREAS, the proposed Mississippi River Trail (USBR 45) traverses through Saint Paul and is expected to provide a benefit to local residents and businesses; and

WHEREAS, the Minnesota Department of Transportation will continue to maintain statewide mapping and information regarding Mississippi River Trail (USBR 45), convene meetings, and facilitate the resolution of issues and future alignment revisions within the State; and

WHEREAS, the City of Saint Paul has duly considered said proposed route and determined it to be a suitable route through the City of Saint Paul and desires that the route be formally designated so that it can be appropriately mapped and signed, thereby promoting bicycle tourism locally and throughout Minnesota along the Mississippi River;

NOW THEREFORE IT IS HEREBY RESOLVED that the City Council of Saint Paul hereby expresses its approval and support for the development of the Mississippi River Trail (USBR 45) and requests that the appropriate government officials take action to officially designate the route accordingly as soon as possible.
See Attachment

At a meeting of the City Council on 1/16/2013, this Resolution was Passed.

Yea: 5 Councilmember Brendmoen, Councilmember Carter III, City Council President Lantry, Councilmember Stark, and Councilmember Tolbert

Nay: 0

Absent: 2 Councilmember Bostrom, and Councilmember Thune

Vote Attested by
Council Secretary

Trudy Moloney

Date 1/16/2013

Approved by the Mayor

Chris Coleman

Date 1/22/2013