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

State Project Number (SP):	**6215-95**	**Original Amount Encumbered**
Trunk Highway Number (TH):	**51**	**$72,504.00**
State Aid Number (SAP):	**164-010-065**	
Signal System ID	**39112, 39070**	

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 signal system revisions, ADA and APS construction and other associated construction upon, along and adjacent to Trunk Highway No. 51 at Marshall Avenue and Trunk Highway No. 51 at Trunk Highway No. 5 (7th Street) according to City-prepared plans, specifications and special provisions designated by the City as 10-T-1342 and by the State as State Project No. 6215-95 (T.H. 51) and State Aid Project No. 164-010-065 ("Project"); and
2. The City requested that the signal system revisions, ADA and APS construction to be performed upon, along and adjacent to Trunk Highway No. 51 at Marshall Avenue and Trunk Highway No. 51 at Trunk Highway No. 5 (7th Street) to be performed by City forces with State and City costs of that construction being determined by plan quantities and negotiated unit prices; and
3. The City requests the State to participate in the costs of the signal system revisions, ADA and APS construction, and the State is willing to participate in the costs of said construction and associated construction engineering; 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: 2.4. State Ownership of Improvements; 6. Maintenance by the City; 12. Liability; Worker Compensation Claims; Insurance; 14. State Audits; 15. Government Data Practices; 16. Governing Law; Jurisdiction; Venue; and 18. Force Majeure.

1.4. ***Plans, Specifications, Special Provisions.*** State-approved City plans, specifications and special provisions designated by the City as 10-T-1342 and by the State as State Project No. 6215-95 (T.H. 51) are on file in the office of the City's Engineer and incorporated into this Agreement by reference. ("Project Plans")

2. ***Exhibits.*** Preliminary Schedule "I" is attached and incorporated into this Agreement.

3. **Right-of-Way Use**

   3.1. ***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.

   3.2. ***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.

   3.3. ***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.

   3.4. ***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.

4. **Contract Award and Construction**

   4.1. ***Construction.*** The Cost of Construction, (Construction Cost) consists of the contract cost of the work or, if the work is not contracted, the actual cost of all labor, materials and equipment rental required to complete the work and shall hereinafter be referred to as "City Force Account Work". The contract construction will be performed according to the Project Plans.

   4.2. ***Force Account Records.*** The City force account records shall be made for all labor, materials and equipment. Copies of these force account records shall be made available to the State's District Engineer at Roseville or his duly authorized representative. All actual and related indirect costs of the City shall be accumulated in accordance with established accounting procedures.

   4.3. ***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 five days 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 will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".

4.4. ***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.

4.5. ***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 for State participation construction are approved in writing by the State District Engineer's authorized representative.

4.6. ***Compliance with Laws, Ordinances, Regulations.*** The City will comply with all Federal, State and Local laws, and all applicable ordinances and regulations.

5. Right-of-Way; Easements; Permits

5.1. 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.

5.2. 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.

5.3. 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.

6. Maintenance by the City

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

6.1. ***Roadways.*** Maintenance of T.H. 51 at Marshall Avenue and T.H. 51 at T.H. 5 (7th Street). 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.

6.2. ***Sidewalks.*** Maintenance of the sidewalk and ADA improvements 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.

7. Signal System(s) Operation and Maintenance

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement No. 53347 dated July 3, 1962, for the existing traffic control signals on T.H. 51 at T.H. 5 (7th Street) will remain in full force and effect.

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement No. 65446 dated May 2, 1989, for the existing traffic control signals on T.H. 51 at Marshall Avenue will remain in full force and effect.

7.1. ***Right of Way Access.*** Each party authorizes the other party to enter upon their respective public right of way to perform the maintenance activities described in this Agreement.

8. Basis of State Cost

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

8.2. ***State Participation Construction.*** The State will participate in the following at the percentages indicated. The construction includes the State's proportionate share of item costs for mobilization.

A. 60 Percent will be the State's rate of cost participation in all of the ADA, APS and traffic signal revisions construction at T.H 51 at T.H. 5 (7th St.). The construction includes, but is not limited to, those construction items tabulated on Sheet(s) No. 2 of the Preliminary SCHEDULE "I".

B. 50 Percent will be the State's rate of cost participation in all of the ADA, APS and traffic signal revisions construction at T.H. 51 at Marshall Ave. The construction includes, but is not limited to, those construction items tabulated on Sheet(s) No. 3 of the Preliminary SCHEDULE "I".

8.3. ***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.

8.4. ***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.

9. State Cost and Payment by the State

9.1. ***State Cost.*** $72,504.00 is the State's estimated share of the costs of the contract construction plus the 8 percent construction engineering cost share and a $6,300.00 contingency amount 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. The contingency amount is provided to cover overruns of the plans estimated quantities of State participation construction and State approved additional construction including construction engineering costs.

9.2. ***Conditions of Payment.*** The State will pay the City the State's total estimated construction cost share, which does not include the 8 percent construction engineering cost share or the contingency amount, as shown in the Preliminary SCHEDULE "I", after the following conditions have been met:

A. Encumbrance by the State of the State's total estimated construction cost share, the 8 percent construction engineering cost share, and the contingency amount, as shown in the Preliminary 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.

D. The State's receipt of a written request from the City for the advancement of funds.

9.3. ***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 8, 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.

9.4. ***Construction Costs Exceeding Encumbered Amount***

Whenever it appears the cost of the State participation construction covered under this Agreement is about to exceed the current amount of encumbered State funds, the City will notify the State District Engineer's authorized representative in writing prior to performance of the additional State participation construction. Notification will include an estimate in the amount of additional funds necessary to complete the State participation construction including construction engineering costs and the reason(s) why the current amount encumbered will be exceeded. The State will, upon its approval of the additional State participation construction, encumber the necessary additional funds. That action will have the effect of amending this Agreement so as to include the State's share of the costs of the additional construction.

Should the City cause the performance of additional contract construction which would otherwise qualify for State participation construction covered under this Agreement, but for which the State has not previously encumbered funds, that additional contract construction is done at the City's own risk. The City will notify the State District Engineer's authorized representative in writing of the additional State participation construction. Notification will include an estimate in the amount of additional funds necessary to cover the additional State participation construction including construction engineering costs and the reason(s) why the current amount encumbered was exceeded. If the State District Engineer's authorized representative approves the additional State participation construction, the City's claim for compensation along with a request for encumbrance of the necessary additional funds will be submitted to the State's Budget Section for review of compliance with Minnesota Statutes § 16A.15, subdivision 3, but no guarantee is made that the claim will be approved by the State's Budget Section. If the claim for compensation and the request for encumbrance of the necessary additional funds are approved by the State's Budget Section, that action will have the effect of amending this Agreement so as to include the State's share of the costs of the additional construction.

9.5. ***Records Keeping and Invoicing by the City***

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's force account records covering all contract construction.

C. Copies of all construction contract change orders and supplemental agreements.

D. 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".

E. 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.

F. A copy of the "as built" plan sent to the State Aid Agreements Engineer.

G. A formal invoice (original and signed) in the amount due the City as shown in the Final SCHEDULE "I".

9.6. ***Final Payment by the State***

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.

10. 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.

10.1. 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

10.2. The City's Authorized Representative will be:

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

11. Assignment; Amendments; Waiver; Contract Complete

11.1. ***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.

11.2. ***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.

11.3. ***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.

11.4. ***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.

12. Liability; Worker Compensation Claims; Insurance

12.1. 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. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).

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

13. Nondiscrimination

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

14. 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.

15. 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.

16. 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.

17. Termination

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

17.2. ***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.

18. 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.

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

STATE ENCUMBRANCE VERIFICATION
Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: _____

Date: _____

MAPS Encumbrance 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.

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: _____

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

MK-9