

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

State Project Number (S.P.):	<u>6215-108</u>	Original Amount Encumbered
Trunk Highway Number (T.H.):	<u>51=125</u>	<u>\$1,014,853.53</u>
State Project Number (S.P.):	<u>6215-99</u>	
State Aid Project Number (S.A.P.):	<u>164-010-067</u>	
City Project Number:	<u>15-T-1351</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 reconstruction, interconnect, and lighting construction and other associated construction upon, along and adjacent to Trunk Highway No. 51 (Snelling Avenue) from Selby Avenue to Pierce Butler Route according to City-prepared plans, specifications and special provisions designated by the State as State Project No. 6215-108 (T.H. 51=125)("Project"); and
2. The City requested and the State agrees that the project be performed by City forces with State and City costs of that construction being determined by estimated plan quantities and negotiated unit prices; and
3. The City requests the State participate in the costs of the traffic signal system with APS, interconnect, and street lighting construction as City "force account work" and the State is willing to participate in the costs of said construction and associated construction engineering; and
4. Agreement No. 07518 between the State and City will address City responsible cost participation to be performed by the State's construction contractor under State Project No. 6215-99; and
5. 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; 10. Liability; Worker Compensation Claims; Insurance; 12. State Audits; 13. Government Data Practices; 14. Governing Law; Jurisdiction; Venue; and 16. Force Majeure.
- 1.4. *Plans, Specifications, Special Provisions.*** State-approved City plans, specifications and special provisions designated by the City as City Project No. 15-T-1351 and by the State as State Project No. 6215-108 (T.H. 51=125) are on file in the office of the City's Engineer and incorporated into this Agreement by reference. ("Project Plans")
- 1.5. *Exhibits.*** 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. *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.
- 3.2. *Direction, Supervision and Inspection of Construction***
- A.** The City force account 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 District 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 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".

3.3. Completion of Force Account and Coordination of S.P. 6215-99 Construction.

- A. The City will cause the force account construction to be started and completed according to the time schedule in the construction force account special provisions. The completion date for the force account 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 force account construction.
- B. The State's contractor for State Project No. 6215-99 is required under Special Provisions S-39 and S-39.1 to coordinate concurrent work with the City of St. Paul. The City shall also coordinate all work with the State's construction contractor performing work under State Project No. 6215-99 to ensure that City force account work does not impact progress of the State's contractor. Should any impacts occur to the State's contractor which results in a payable claim to the State's contractor and which is determined to be caused by City force account work, the City agrees to be responsible for payment of the claim amount to the State. Claim payments by the City, if any, shall be done under Agreement No. 07518 between the State and the City.

3.4. Plan Changes. All changes in the Project Plans for City Force Account construction must be approved in writing by the State District Engineer's authorized representative.

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

3.6. Documents Furnished by the City. The City will keep records and accounts that enable it to provide the State, when requested, with the following:

- A. Records of labor, materials and equipment hours covering all City Force Account construction.
- B. A certification form, provided by the State, signed by the City's Engineer in charge of the City Force Account construction attesting to the following:
 - i. Satisfactory performance and completion of all City Force Account construction according to the Project Plans.
 - ii. Acceptance and approval of all materials furnished for the City Force Account construction relative to compliance of those materials to the State's current "Standard Specifications for Construction".
- C. Copies, certified by the City's Engineer, of material sampling reports and of material testing results for the materials furnished for the City Force Account construction.
- D. A copy of the "as built" plan.

4. Right-of-Way; Easements; Permits

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:

- 5.1. Lighting.** Maintenance of any lighting facilities construction. Maintenance of electrical lighting systems includes everything within the system, from the point of attachment to the power source or utility, to the last light on the feed point, including but not limited to re-lamping of lighting units or replacing of LED luminaires, repair or replacement of all damaged luminaire glassware, loose connections, luminaires when damaged or when ballasts fail, photoelectric control on luminaires, defective starter boards or drivers,

damaged fuse holders, blown fuses, knocked down poles including wiring within the poles, damaged poles, pullboxes, underground wire, damaged foundations, equipment pad, installation of approved splices or replacement of wires, repair or extending of conduit, lighting cabinet maintenance including photoelectric cell, electrical distribution system, Gopher State One Call (GSOC) locates and painting of poles and other equipment. The City will be responsible for the hook up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting facility.

6. Basis of State Cost

- 6.1. SCHEDULE "I".** The SCHEDULE "I" includes all anticipated State participation construction items and the construction engineering cost share covered under this Agreement.
- 6.2. State Participation Construction.** The State will participate in the following at the percentages indicated.
- A.** 100 Percent will be the State's rate of cost participation in the signal and lighting construction as shown and tabulated on Sheet No. 2, Item (1) of the SCHEDULE "I".
 - B.** 50 Percent will be the State's rate of cost participation in the interconnect construction as shown and tabulated on Sheet No. 2, Item (2) of the SCHEDULE "I".
 - C.** 75 Percent will be the State's rate of cost participation in the City Furnished Materials as shown and tabulated on Sheet No. 2, Item (3) of the SCHEDULE "I".
- 6.3. Construction Engineering Costs.** The State will pay the City \$70,968.79 for construction engineering costs which are 8 percent of the total State's share of the signal, lighting, and interconnect construction covered under this Agreement.

7. State Cost and Payment by the State

- 7.1. State Cost.** \$1,014,853.53 is the State's calculated share of the costs of the City force account construction including the 8 percent construction engineering cost share as shown in the SCHEDULE "I". The SCHEDULE "I" was prepared using estimated quantities and negotiated unit prices.
- 7.2. Conditions of Payment.** The State will pay the City the full and complete lump sum amount for the City force account construction after the following conditions have been met:
- A.** Encumbrance by the State of the State's full and complete State funded lump sum cost share.
 - B.** Execution of this Agreement and transmittal to the City.
 - C.** The State's receipt of a written request from the City for the advancement of funds. The request will include a letter certifying, with concurrence of the State, that City Force Account construction has started.

8. 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.

8.1. 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
 E-Mail: maryanne.kellysonnek@state.mn.us

8.2. The City's Authorized Representative will be:

Name/Title: John Maczko, City Engineer (or successor)
 Address: 25 West 4th Street, Suite 1500, St. Paul, MN 55102-1966
 Telephone: (651) 266-6137
 E-Mail: john.maczko@ci.stpaul.mn.us

9. Assignment; Amendments; Waiver; Contract Complete

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.
- 9.4. 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.

10. Liability; Worker Compensation Claims; Insurance

- 10.1.** 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).
- 10.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 10.3.** The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

11. Nondiscrimination

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

12. 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.

13. 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.

14. 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.

15. Termination; Suspension

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

15.2. *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.

15.3. *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.

16. 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: _____

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: _____

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

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With delegated authority)

Date: _____

SCHEDULE "I" - NEGOTIATED UNIT PRICE BASIS

Agreement No. 1000022

City of St. Paul

S.P. 6215-108 (T.H. 51=125)

Preliminary: March 30, 2015

State Funds

Signal revision, interconnect, and street lighting construction performed by the City under Force Account located on T.H. 51 (Snelling Ave.) from Selby Ave. to Pierce Butler in the City of St. Paul

STATE LUMP SUM - NEGOTIATED UNIT PRICE COST PARTICIPATION	
From Sheet No. 2 - Item (1) Signal Revisions and T.H. Lighting	790,879.75
From Sheet No. 2 - Item (2) Interconnect	96,230.00
From Sheet No. 2 - Item (3) City Furnished Materials	56,775.00
Subtotal	\$943,884.75
Construction Engineering - 8%	70,968.78
(1) Total Encumbered Amount	\$1,014,853.53

(1) Amount of advance payment as described in Article 7.1 of the Agreement

ITEM NUMBER	S.P. 6215-108 WORK ITEM - SIGNAL REVISIONS AND T.H. LIGHTING	UNIT	QUANTITY	UNIT PRICE	COST (1)
2545.501	ELECTRIC LIGHT SYSTEM - ROADWAY	LUMP SUM	1.00	296,800.00	296,800.00
2565.616	REVISE SIGNAL SYSTEM B	SYS	1.00	87,809.50	87,809.50
2565.616	REVISE SIGNAL SYSTEM H	SYS	1.00	107,468.00	107,468.00
2565.616	REVISE SIGNAL SYSTEM M	SYS	1.00	98,994.75	98,994.75
2565.616	REVISE SIGNAL SYSTEM Q	SYS	1.00	118,867.50	118,867.50
2565.616	REVISE SIGNAL SYSTEM T	SYS	1.00	80,940.00	80,940.00
				TOTAL	\$790,879.75
	(1) 100% STATE			\$790,879.75	
ITEM NUMBER	S.P. 6215-108 WORK ITEM - INTERCONNECT	UNIT	QUANTITY	UNIT PRICE	COST (2)
2565.601	TRAFFIC CONTROL INTERCONNECTION	LUMP SUM	1.00	192,460.00	192,460.00
				TOTAL	\$192,460.00
	(2) 50% STATE			\$96,230.00	
	50% CITY			\$96,230.00	
ITEM NUMBER	S.P. 6215-108 WORK ITEM - CITY FURNISHED MATERIALS SNELLING @ CONCORDIA AVE. & ST. ANTHONY AVE.	UNIT	QUANTITY	UNIT PRICE	COST (3)
2565.602	TYPE ASC3/RM CONTROLLER AND 332D CABINET	EACH	2.00	21,000.00	42,000.00
2565.602	DUAL METER SERVICE CABINET WITH BATTERY BACKUP	EACH	2.00	9,500.00	19,000.00
2565.602	EVP DISCRIMINATOR	EACH	2.00	3,250.00	6,500.00
2565.602	INFRARED DETECTOR AND LIGHT	EACH	6.00	500.00	3,000.00
2565.601	LABOR & TRUCK	EACH	40.00	130.00	5,200.00
				TOTAL	\$75,700.00
	(3) 75% STATE			\$56,775.00	
	25% CITY			\$18,925.00	