

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

State Project Number (S.P.):	<u>6228-61</u>	Original Amount Encumbered
Trunk Highway Number (T.H.):	<u>5=102</u>	<u>\$695,000.00</u>
State Aid Number (S.A.P.):	<u>164-020-139</u>	
State Aid Number (S.A.P.):	<u>062-658-018</u>	
Signal System ID:	<u>1734975</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 City will perform grading, bituminous surfacing, ADA improvements, water main and traffic control signal construction and other associated construction upon, along and adjacent to Trunk Highway No. 5 at County State Aid Highway (C.S.A.H.) No. 58 and on County State Aid Highway No. 58 from Trunk Highway No. 5 to Woodward Avenue according to City-prepared plans, specifications and special provisions designated by the State as State Project No. 6228-61 (T.H. 5=102) ("Project"); and
2. The City requests the State participate in the costs of the roadway improvement, storm sewer, and traffic signal construction and the State is willing to participate in the costs of said construction and associated construction engineering as a lump sum amount; 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 Exhibit

- 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. The terms and conditions set forth in Article 6. Signal System and EVP System 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 State as State Project No. 6228-61 (T.H. 5=102) are on file in the office of the City's Engineer and incorporated into this Agreement by reference ("Project Plans").
- 1.5. *Exhibit.*** Exhibit A 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. *Contract Terms.* The City's contract with its construction contractor(s) must include the following terms:

- A. A clause making the State of Minnesota, acting through its Commissioner of Transportation, an intended third-party beneficiary of the contract with respect to the portion of work performed on the State's Right-of-Way; and
- B. A clause requiring the State to be named as an additional insured on any insurance coverage which the contractor is required to provide; and
- C. A clause stating that any warranties provided by the contractor, for the work performed on the trunk highway, will flow to, and be enforceable by, the State as the owner of such improvements.

3.5. *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 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".

3.6. *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.

3.7. *Plan Changes.* All changes in the Project Plans and all addenda, work orders, change orders and supplemental agreements entered into by the City and its contractor for contract construction must be approved in writing by the State District Engineer's authorized representative.

3.8. *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.

3.9. *Construction 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. Copies of the City contractor's invoice(s) covering all contract construction.
- B. 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.
- C. Copies of all construction contract change orders and supplemental agreements.
- D. A certification form, provided by the State, 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.

E. Copies, certified by the City's Engineer, of material sampling reports and of 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.

4. Right-of-Way; Easements; Permits

- 4.1. The City will 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.
- 4.4. The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City of Saint Paul to be constructed upon and within the trunk highway Right-of-Way. Applications for permits will be made on State form "Application for Utility Permit on Trunk Highway Right-of-Way" (Form TP2525).
- 4.5. The City will submit to the Minnesota Pollution Control Agency the plans and specifications for the construction or reconstruction of its sanitary sewer facilities to be performed under the construction contract and obtain, under Minnesota Statutes § 115.07 or Minnesota Rules 7001.1030, subpart 2C, either a permit or written waiver from that agency for that construction or reconstruction. The City is advised that under Minnesota Rules 7001.1040, a written application for the permit or waiver must be submitted to the Minnesota Pollution Control Agency at least 180 days before the planned date of the sanitary sewer facility construction or reconstruction.

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. **Roadways.** Maintenance of Payne Avenue. 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.
- 5.2. **Storm Sewers.** Routine maintenance of storm sewer facilities construction as shown in attached Exhibit A. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from grates and catch basins and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, or sedimentation, this also includes informing the District Maintenance Engineer of any needed repairs.
- 5.3. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 5.4. **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, vegetation control of boulevards (if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.

- 5.5. *Bikeways.*** Maintenance of any bikeways and shared use paths construction. Maintenance includes, but is not limited to, snow and ice control/removal, sweeping and debris removal, patching, crack repair, pavement replacement, vegetation control, signing, pavement markings, and any other maintenance activities necessary to perpetuate the bikeways and shared use paths in a safe and usable condition.
- 5.6. *Lighting.*** All power, operation and maintenance terms in Cooperative Construction Agreement No. 84974 dated May 29, 2003 for the revised lighting system on T.H. 5 (formerly T.H. 212) / East 7th Street at Payne Avenue will remain in full force and effect.
- 5.7. *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.

6. Signal System and EVP System Operation and Maintenance

Operation and maintenance responsibilities will be as follows for the Signal System and EVP System on T.H. 5 at Payne Avenue, and for the Interconnect on T.H. 5 from Kittson Street to Mounds Boulevard.

- 6.1. *City Responsibilities.*** All power, operation and maintenance, including timing, interconnect, and EVP system operation for the new traffic control signal on T.H. 5 (formerly T.H. 212) / East 7th Street at Payne Avenue will be the responsibility of the City.
- 6.2. *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.
- 6.3.** This Agreement will supersede and terminate the operation and maintenance terms of Agreement No. 59215, dated December 26, 1978, between the parties, for the intersection of T.H. 5 / East 7th Street (formerly 212) at Payne Avenue.
- 6.4. *City Furnished Materials.*** The City will furnish a cabinet according to the Project Plans, to operate the traffic control signal system covered under this Agreement.

7. State Cost and Payment by the State

- 7.1. *State Cost.*** **\$695,000.00** is the State's full and complete lump sum cost for roadway improvement, storm sewer, and traffic signal construction and associated construction engineering.
- 7.2. *Conditions of Payment.*** The State will pay the City the full and complete lump sum amount or the total cost of the contract construction as shown in the awarded contract bid document plus an 8 percent construction engineering cost share, whichever amount is smaller, 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.** 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.
- 7.3. *Limitations of State Payment; No State Payment to Contractor.*** The State's participation in the contract construction is limited to the lump sum amount shown in Article 7.1, 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. 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: Dan Haak, Assistant City Engineer (or successor)
 Address: 900 City Hall Annex, 25 West Fourth Street, St Paul, MN 55102
 Telephone: (651) 266-6084
 E-Mail: dan.haak@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, to the extent caused by 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 No. 3000298085

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: _____

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