

**CONSTRUCTION COOPERATION AGREEMENT FOR
MANHOLE CONSTRUCTION AND CLEANING OF SANITARY SEWER
IN SAINT PAUL, MN**

THIS AGREEMENT is made and entered into by and between the **Metropolitan Council**, a public corporation and political subdivision of the State of Minnesota (“Council”), and the **City of Saint Paul**, a municipal corporation under the laws of the State of Minnesota (“City”).

BACKGROUND RECITALS

1. The Council plans to construct manholes on Council interceptor sewer 1-SP-230 in the area of State and Stevens Streets and clean the interceptor sewer downstream to the intersection of Winifred and Humboldt during the 2017-2018 construction seasons (“the Council Project”).

2. To avoid additional disruption to the community and to provide efficient removal of debris, the City desires to upgrade its sanitary sewer system by the construction of a manhole on the City 42-inch sewer at the intersection of State and Stevens (“the City Project”).

3. Both Council and City desire that the City Project be constructed in conjunction with the Council Project to minimize community impacts.

4. Therefore, the City desires to have the Council construct the City Project contemporaneously with the Council Project.

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

AGREEMENT

I.

Purpose of Agreement

1. This Agreement describes the responsibilities of each of the Parties for design and construction of the City Project.

2. The City appoints the Council as its agent to obtain bids, enter into a contract for the construction of the work, and supervise the work performed on the City Project for compliance with the City Project construction documents and this Agreement.

3. The scope of the City Project is:

Construction of a manhole over the 42-inch City sewer located on State Street, north of Stevens, adjacent to the Council Project.

4. The locations of the City Project and the Council Project are shown on Exhibit A to this Agreement.

II. Construction Documents

1. City or its agents, at no cost to the Council, will prepare the necessary detailed construction documents for the City Project (“City Project Construction Documents”). The City Project Construction Documents will contain plans and specifications and a schedule for construction of the City Project suitable for use by proposed contractors in the preparation of their bids. The City will develop the City Project Construction Documents using the most current industry standards and practices for sewer construction. The City or its agents have prepared a construction cost estimate for the City Project, attached as Exhibit B.

2. The City will have a Registered Professional Engineer licensed in the State of Minnesota prepare and certify the City Project Construction Documents that will be incorporated into the bidding documents for the Council Project. When requested by the Council, the City will make all City Project Construction Documents available to the Council in a timely manner for periodic review. The Council’s Engineer or their representative must approve all City Project Construction Documents before the City Project Construction Documents are incorporated into the plans for the Council Project.

3. The City will deliver to the Council original, reproducible, certified final City Project Construction Documents on a schedule that will allow the Council to timely let and award a construction contract for the Council Project.

4. The City retains ownership of all original City Project Construction Documents. When the Council completes its reproduction of the City Project Construction Documents, the Council will return the original documents to the City.

5. The Council’s Engineer will incorporate the City Project Construction Documents into the Council Project Construction Documents (“Combined Project Construction Documents”) for the Council and City Projects (“Combined Project”).

**III.
Easements and Permits**

1. The City gives the Council the right to enter onto City property, and any easements and rights-of-way the City obtained for construction of the City Project for the purpose of the Council fulfilling this Agreement.

2. The Council will acquire all permanent and temporary permits, easements and property interests necessary in the Council's name for the Combined Project. The Council is not acquiring any property on the City's behalf.

3. As of the date of this Agreement, no additional property acquisition is required for construction and installation of the City Project. The City is responsible for any land acquisitions outside of the Council Project boundaries.

4. Before the scheduled date for the start of construction, the City will get and pay all fees for the following for the City Project: (a) **[list specific licenses or permits, if applicable]**; and (b) **[other]**.

5. The Council is responsible for obtaining all other permits associated with construction of the Combined Project.

**IV.
Procedure for Acceptance of Bids**

1. **Bidding Procedure.** The Council will advertise for bids for the work and construction of the Combined Project, receive and open bids and may, subject to City's acceptance of the bid submitted, enter into a construction contract with the successful bidder in accordance with applicable law. The bidding documents will require separate line items, percentages, or agreed quantities within a line item for the City Project bid items.

After opening the bids, the Council will give the City a written tabulation of the bids with the Council's recommendation for selection of the lowest responsible bidder.

2. City May Accept or Reject of City Project Bid Amount.

- a. **City Project Bid Amount is less than 120% of estimate.** If the line items for the City Project in the bid recommended by Council total less than 120% of the construction cost estimate in the final City Project Construction Documents in Exhibit B (excluding contract administration costs), the City will accept the bid for the City Project via mail or other correspondence within 7 days of receipt of the tabulation, and the Council will award the City Project portion of the bid.

- b. **City Project Bid Amount is 120% or More of Estimate.** If the line items for the City Project in the bid recommended by Council are 120 percent or more of the construction cost estimate in the final City Project Construction Documents in Exhibit B (excluding contract administration costs), the Council will award the City Project portion of the bid, unless the City gives the Council written notice stating that the City does not agree to be bound by the bid prices for the City Project. The Council must receive the City's written notification within 14 days of the date the Council provided the City with the bid tabulation. If the City does not notify the Council within 14 days, the bids for the City Project will be deemed accepted by the City.

- c. **Compensation to the Council if the City Does Not Proceed with its Project.** If the City does not accept the bid amount for the City Project as described in section IV.2.b above, or otherwise decides before the Council's award of the Combined Project not to proceed with the City Project, the City will reimburse the Council for City Project-related costs incurred by the Council as of the date of termination. A decision by the City not to construct the City Project has no bearing on the Council's ability to proceed with the Council Project.

3. **Council decision not to award Council Project.** If the Council decides not to award the Council Project, this contract terminates without further liability between the Parties.

V.

Construction and Contract Administration

1. The Council will include in the construction contract for the Combined Project, the City Project Construction Documents, and require that the contractor construct the City Project according to these Documents. At least 14 days before the contractor begins work on the City Project, the Council will give written notice to the City that the contractor will begin construction by sending notice to:

Aaron Hass, P.E.
Saint Paul Public Works Sewer Utility
25 West 4th Street, 700 City Hall Annex Building
Saint Paul, MN 55102
Aaron.hass@ci.stpaul.mn.us

2. The Council will perform and direct all construction supervision, contract administration and inspections required to complete the Combined Project. The Council will not interrupt the City's sewer or water service during the construction of the City Project without the written consent of the City.

3. The City's authorized representative (Aaron Hass) or their designee identified to

the Council in writing) may observe the work during the construction of the City Project, but the City's authorized representative is not responsible for supervising the City Project. When observing the work, the City's authorized representative will cooperate with the Council's Engineer or designated representative. The City's authorized representative will be available to the Council at all times during construction of the City Project. The City will designate an authorized representative with the authority and experience to make decisions concerning the construction of the City Project so as not to delay construction of the Council Project or the Combined Project.

3. If after installation, the City determines that any portion of the City Project was not constructed substantially in accordance with the City Project Construction Documents, the City's authorized representative must inform the Council of the deficiency within seven days. The City's notice to the Council must also explain why the portion of the City Project does not conform to the City Project Construction Documents and the actions the City believes the contractor must take to correct the deficiency. The Council will require the contractor to make the corrections to meet the requirements of the City Project Construction Documents.

4. The City's authorized representative will participate in the inspection of the City Project for substantial completion. Within seven days of any substantial completion inspection, the City will provide the Council the punch list items that need to be addressed before final completion of the City Project. If the City does not provide punch list items within seven days, the contractor's work will be deemed accepted.

5. The Council will inform the City in writing of final completion of construction (including the punch list items) of the City Project. Within seven days of receiving the Council's written notice, the City will inform the Council in writing whether the City Project conforms to the City Project Construction Documents. The City makes the final decision on whether the contractor's City Project work conforms to the City Construction Documents. In order to accept the work on the City Project, the City must provide the Council a letter from the City's Public Works Director.

6. The City will participate in the claims process on the Combined Project for the following types of contractor claims:

- (a) Project delays relating in any way to site conditions; and
- (b) City requests for changes or modifications to any construction documents (City Project, Council Project, or Combined Project).
- (c) Project delays caused by untimely response to the inspection requirements in Sections 3 - 4 above.

The City will pay the portion of any claim that relates to the acts of the City.

**VI.
Modifications to Construction Documents**

1. The Council may make minor changes in the City Project Construction Documents and the Combined Project Construction Documents if the changes are necessary to complete construction. The Council may also enter into any change orders or supplemental agreements with the contractor on the Combined Project to incorporate these changes in the City Project or Combined Project Construction documents. These changes may result in a change to the City's cost participation described in Section VIII.

2. The Council will give the City's Authorized Representative all proposed amendments and material changes to the City Project Construction Documents. The City will review the documents and communicate in writing its acceptance or rejection to the Council within seven days. The Council will not amend or change the City Project Construction Documents until it receives the City's written acceptance.

3. The City may make changes to the City Project if the all of the following occur:
- a. The City gives the Council seven days written notice;
 - b. The City bears the costs of all changes; and
 - c. The change does not increase the cost or delay completion of the Council Project.

**VII.
Cost Participation and Payment**

1. The City will reimburse the Council for the costs shown in Exhibit B as specified in this Section VII. The City will reimburse the Council for the actual cost of construction for the City Project, actual costs of construction for portions of the Combined Project as identified in Exhibit B, actual land acquisition costs as shown below, plus seven percent. The additional seven percent is for the following:

- (a) surveying, inspection, and testing for the City Project;
- (b) other costs associated with the City or Combined Project including land acquisition and contract administration, and other administrative expenses associated with the City or Combined Project.

2. The Council, at its sole cost and expense, will acquire in its name all permanent and temporary permits, easements, and property interests necessary for the Combined Project. The City's estimated contribution is shown in Exhibit B (if applicable).

3. The parties further agree that the City Project costs are an estimate. The final City Project construction costs will be based on the unit prices in the Council's construction contract, the final quantities, and any amendments or change orders.

4. After the Council awards the Combined Project Construction Contract, the Council will prepare a revised Exhibit B and give it to the City. The revised Exhibit B will update the City Project costs for construction, land acquisition, and administration based on the actual design costs and contract unit prices. The parties will substitute the revised Exhibit B for the Exhibit B attached to this Agreement without any amendment to this Agreement.

5. The Council will pay its contractor for the contractor's work on the City Project. The City will then pay the Council under this section. During construction, the Council will submit monthly invoices to the City. The Council's monthly invoices will include a progress report. The City must pay the Council within 30 days after it receives the invoice. If the City disputes any portion of an invoice it must give the Council notice of the dispute within 14 days after the City receives the invoice. If the City disputes any portion of an invoice, the City must pay the undisputed portion of the invoice within 30 days after receives the invoice, and it must pay the remainder of any amount due within 30 days after the dispute is resolved.

6. When the work on the Combined Project is substantially complete, the Council will give the City an updated cost participation breakdown. This cost participation breakdown will show actual construction costs based on the contract unit prices and the units of work the contractor performed. The updated cost participation breakdown will also contain the updated administrative and other costs to be paid to the Council by City.

7. If after subtracting the City's payments from the updated cost participation breakdown the City owes the Council money, the Council will invoice the City for that amount. The City will then pay the Council the amount owed within 30 days of receiving the invoice. If the City has already paid more than the updated cost participation breakdown, the Council will refund the City's excess amount without interest.

VIII. Warranties/Maintenance

1. The City Project bonds and warranties will be issued in the name of the Council. Once construction of the City Project is complete and the City by written affirmation accepts the City Project, the City Project will be under the full control of the City and all bonds, warranties and guarantees provided by the sureties, construction contractors and subcontractors for the City Project are the property of City. If a surety prohibits assignment then the Council will require the contractor to ensure that the affected bond or warranty applies both to the Council and the City.

2. After acceptance of the City Project by the City the City is responsible for operation and maintenance of the City Project.

**IV.
Liability**

1. To the extent authorized by law each party is responsible only for its own acts and the results of its acts. The City's and Council's liability is governed by the provisions of Minnesota Statutes, Chapter 466.

2. The City and Council each warrant that they have an insurance or self-insurance program with minimum coverage consistent with the liability limits in Minnesota Statutes, Chapter 466. Nothing in this Agreement is a waiver or limitation of any immunity or limitation of liability by the City or Council.

3. The Council will ensure that the Combined Project construction contract includes clauses that:

A) require the Combined Project contractor to defend, indemnify, and hold harmless the City, its officers, agents and employees from claims, suits, demands, damages, judgments, costs, interest, expenses (including reasonable attorney's fees, witness fees and disbursements) arising out of or by reason of the acts or omissions of the Contractor, its officers, employees, agents or subcontractors;

B) require the Combined Project contractor to provide and maintain insurance and name the City as additional insured; and

C) require the Combined Project contractor to be an independent contractor for the purposes of completing the work on the City Project.

**X.
General Provisions**

1. All records kept by the City and Council with respect to the Council Project are subject to examination by representatives of each party. All data collected, created, received, maintained or disseminated for any purpose by the City and Council under this Agreement are governed by Minnesota Statutes, Chapter 13("Act"), and the Minnesota Rules implementing the Act.

2. The Council and the City agree to comply with all applicable laws relating to nondiscrimination, affirmative action, public purchases, contracting, employment, workers' compensation, and surety deposits required for construction contracts. Minnesota Statutes, Section 181.59 and any applicable local ordinance relating to civil rights and discrimination and the Affirmative Action Policy statement of the City is considered a part of this Agreement.

3. The employees of the parties, and all other persons engaged by each party will not be considered employees of the other party. Each party is solely responsible for all claims arising

from its employees including claims under the Worker's Compensation Act, the Minnesota Economic Security Law and all third-party claims resulting from an act or omission of an employee.

4. If hazardous wastes, pollutants or contaminants as those terms are defined in law exist on the Combined Project site, the City is responsible for any response or remedial action, monitoring or reporting under the law. The City will apply for and have the Council named as a beneficiary in any no-association letters, no action/no further action letters and other environmental regulatory assurances for the site. The City will give the Council copies of any Phase I and Phase II environmental investigations, approved Response Action Plans, and environmental assurance letters naming the Council as a beneficiary. Nothing in this paragraph requires that the City accept responsibility for any environmental conditions that are not the City's legal responsibility. This paragraph survives the termination of this Agreement.

5. The City's authorized representative will manage this Agreement for the City and act as a liaison between the City and Council.

6. The Council's Assistant General Manager of Technical Services in Environmental Services will manage this Agreement for the Council and act as a liaison between the Council and the City.

7. This Agreement is the entire agreement between the parties and supersedes all oral agreements and negotiations between the parties relating to this Agreement. All exhibits and attachments to this Agreement are incorporated into the Agreement. If there is a conflict between the terms of this Agreement and any of the exhibits, the Agreement governs.

8. The provisions of this Agreement are severable. If a court finds any part of this Agreement void, invalid, or unenforceable, it will not affect the validity and enforceability of the remainder of this Agreement. A waiver by a party of any part of this Agreement is not a waiver of any other part of the Agreement or of a future breach of the Agreement.

9. Any modifications to this Agreement must be in writing as a formal amendment.

10. This Agreement is binding upon and for the benefit of the parties and their successors and assigns. This Agreement is not intended to benefit any third-party.

11. Except as otherwise provided for in this Agreement, the Agreement may be terminated by the mutual agreement of the parties.

12. If a force majeure event occurs, neither party is responsible for a failure to perform or a delay in performance due to the force majeure event. A force majeure event is an event beyond a party's reasonable control, such as unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

13. Under Minnesota Statutes, Section 16C.05, subdivision 5, the Parties agree that the books, records, documents, and accounting procedures and practices relevant to this

Agreement are subject to examination by either Party and the state auditor or legislative auditor, as appropriate, for at least six years from the end of this Agreement.

14. A party must send all notices or demands under this Agreement either by:
- (A) certified mail;
 - (B) e-mail, as long as the recipient acknowledges receipt by e-mail or otherwise in writing; or
 - (C) delivered in person to the other party addressed to the following authorized representatives:

Assistant General Manager, Technical Services
 Metropolitan Council Environmental Services
 390 Robert Street North
 St. Paul, MN 55101-1805

St. Paul Public Works Sewer Utility
 25 West 4th Street
 700 City Hall Annex Building
 Saint Paul, MN 55102

15. The parties will use a dispute resolution process for any unresolved dispute between the parties before exercising any legal remedies. The dispute resolution process is a three-level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. At each level of the dispute resolution process, the Parties’ representatives will meet and explore resolution until either party determines that effective resolution is not possible at the current level, and notifies the other party that the process is elevated to the next level. The parties designate the following dispute resolution representatives:

	City Representative	Council Representative
Level 1	Project Manager	Manager, Interceptor Project Delivery
Level 2	St. Paul Public Works Sewer Utility Manager	Assistant General Manager
Level 3	St Paul Public Works Operations Manager	General Manager, Environmental Services

The parties must complete the dispute resolution process in good faith before resorting to any other legal process or remedy.

16. Council and the City are each authorized to enter into this Agreement pursuant to Council Action No. _____ approved on _____, and City Resolution No. _____, approved on _____.

Signatures

METROPOLITAN COUNCIL,
A public corporation and political subdivision
of the State of Minnesota

By: _____
Leisa Thompson, General Manager, MCES

Date: _____

Signatures

CITY OF ST. PAUL

This agreement is duly executed:

By: _____

Title: Director of Public Works

Date: _____

Approved as to form:

By: _____

Title: Assistant City Attorney

Date: _____

By: _____

Title: Office of Financial Services

Date: _____

By: _____

Title: Sewer Utility Manager

Date: _____

Funding Activity# _____

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

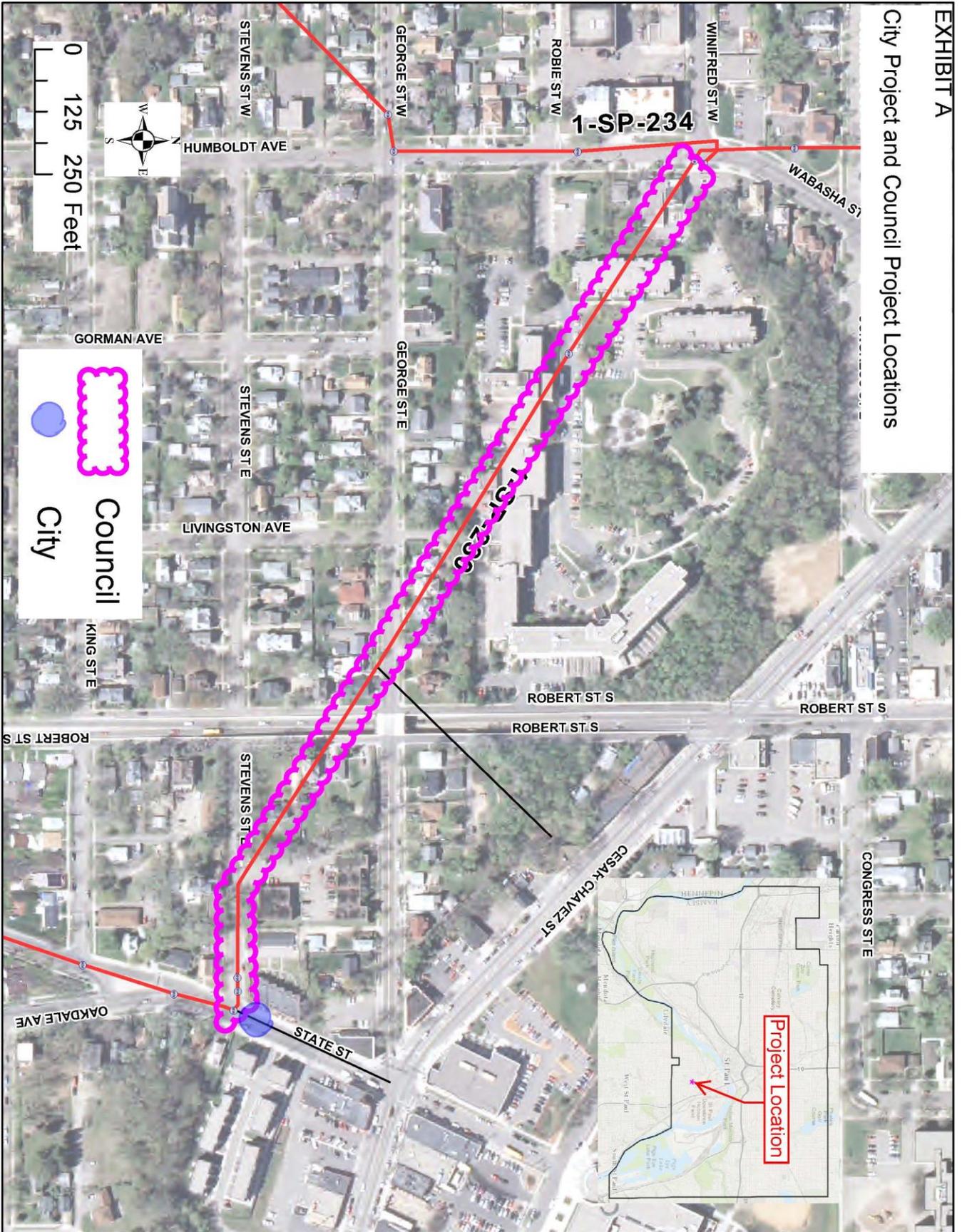
LIST OF EXHIBITS

Exhibit A - City Project and Council Project Locations

Exhibit B - Council Project Construction Costs Estimates

EXHIBIT A

City Project and Council Project Locations

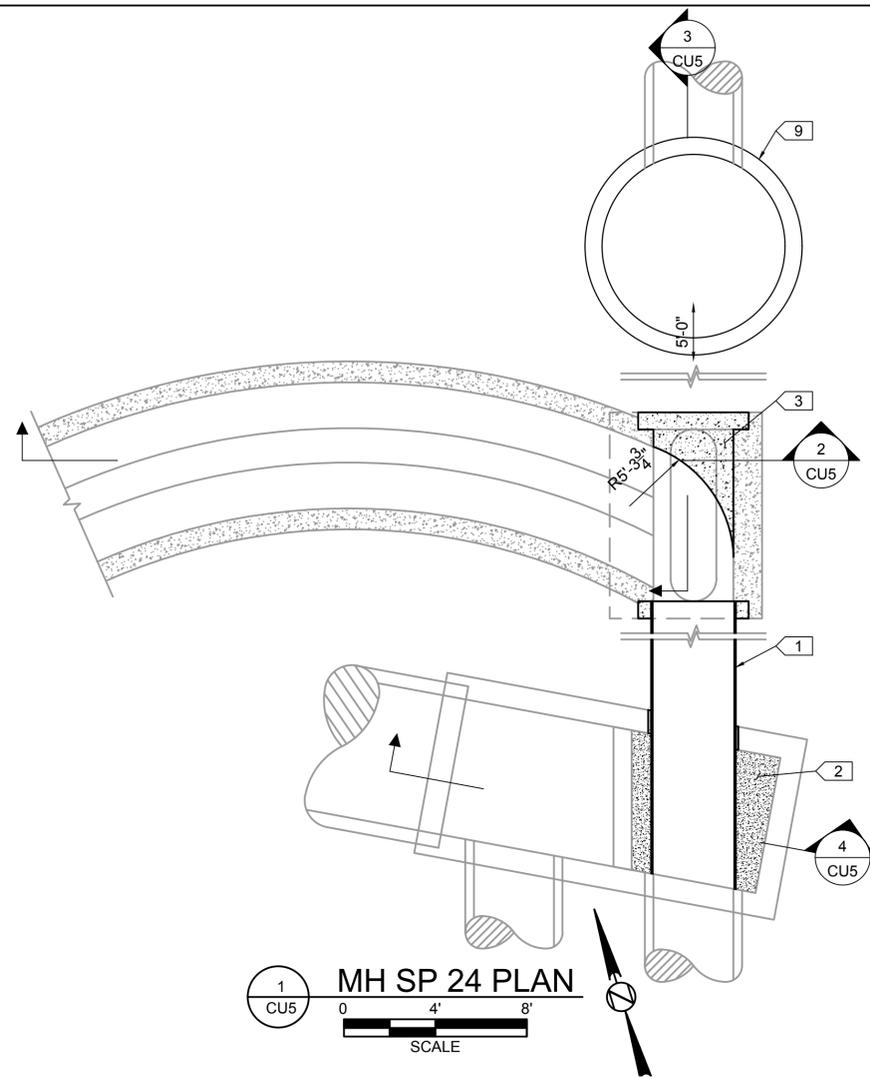


GENERAL NOTES:

1. SEE NOTES ON G13.

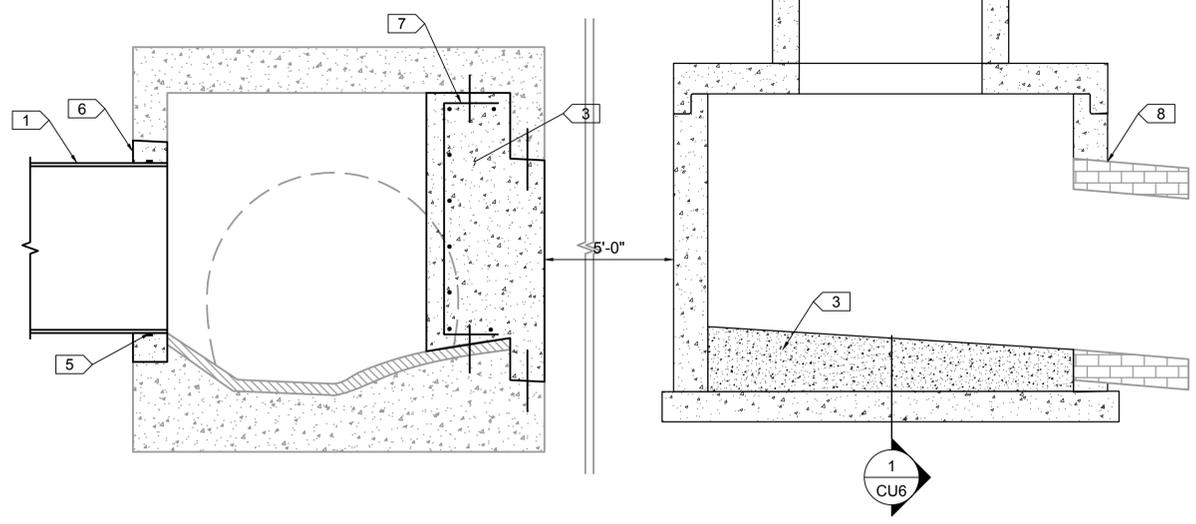
KEYNOTES:

1. PLACE 42" Ø SN46 RPMP PIPE. MATCH EXISTING INVERT ELEVATIONS.
2. PLACE 1200PSI CONCRETE.
3. PLACE 3000PSI CONCRETE SHAPING.
4. SEAL MAINTENANCE HOLE WITH 3000PSI CONCRETE.
5. PLACE WATERSTOP RX OR EQUAL, TYP
6. SEAL WITH 3000PSI CONCRETE PATCH.
7. PLACE #4 @ 9" OC, EW, EPOXY EMBED 6" MIN.
8. SEAL MAINTENANCE HOLE TO EXISTING TUNNEL.
9. SEE DETAIL 1/CU6.



1 CU5 MH SP 24 PLAN
0 4' 8'
SCALE

2 CU5 MH SP 24 PROFILE
0 2' 4'
SCALE



3 CU5 TUNNEL SECTION
0 2' 4'
SCALE

4 CU5 EXISTING REGULATOR
0 2' 4'
SCALE

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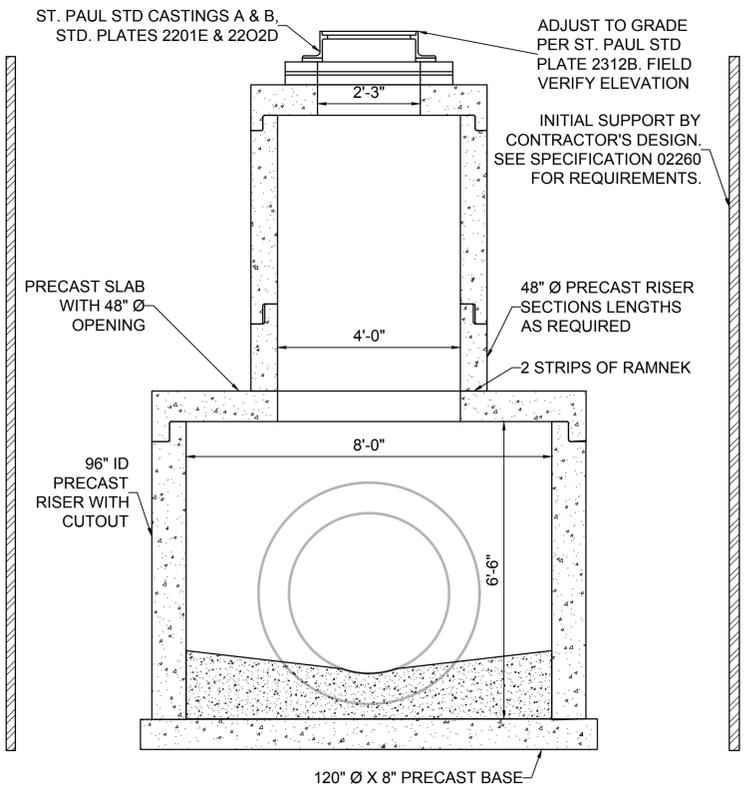
NO	DATE	BY	REVISIONS	REMARKS
	10/31/17	CRE	ISSUED FOR BIDDING	

DESIGNED	CRE	I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA. SIGNATURE: _____ TYPED OR PRINTED NAME: CRAIG ECKDAHL DATE: 10/31/2017 REG NO: 53544
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PROJECT	808841
FILE NAME	CU005

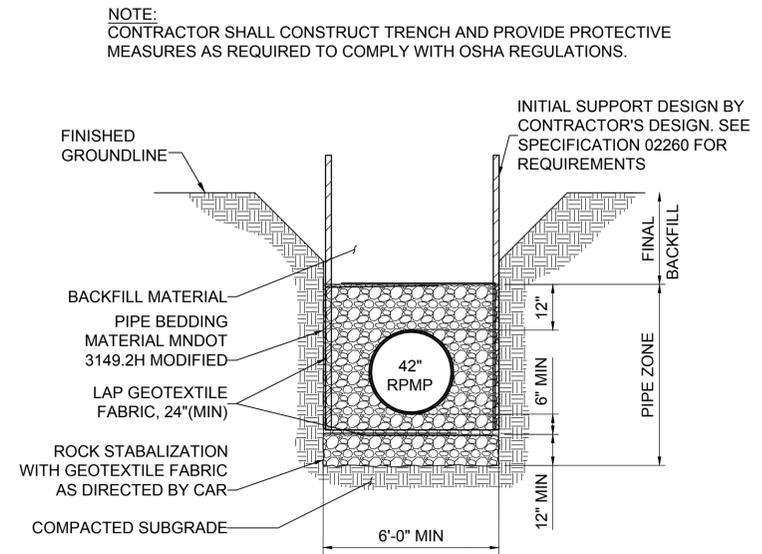
INTERCEPTOR 1-SP-230 IMPROVEMENTS
MAINTENANCE HOLE DETAILS



1
CU6

NEW CITY MAINTENANCE HOLE

SCALE



2
CU6

42" PIPE BEDDING

NO SCALE

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DESIGNED: CRE
DRAWN: CRE
CHECKED: BKN

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____
TYPED OR PRINTED NAME: CRAIG ECKDAHL
DATE: 10/31/2017 REG NO: 53544



PROJECT	808841
FILE NAME	CU006

INTERCEPTOR 1-SP-230 IMPROVEMENTS
DETAILS

Exhibit B
Council Project Construction Costs Estimates

See attached.

Interceptor 1-SP-230 Improvements Cost Estimate

No.	Item	Unit	Quantity	Unit Price	Amount
1	Mobilization	LS	1	\$ 60,000.00	\$ 60,000.00
2	Construction Documentation	LS	1	\$ 7,500.00	\$ 7,500.00
3	Traffic Control	LS	1	\$ 25,000.00	\$ 25,000.00
4	Bioroll	LF	460	\$ 5.00	\$ 2,300.00
5	Silt Fence	LF	160	\$ 5.00	\$ 800.00
6	Site Preparation	LS	1	\$ 20,000.00	\$ 20,000.00
7	Temporary Conveyance of Wastewater	LS	1	\$ 100,000.00	\$ 100,000.00
8	Modifications to Regulator Structure	LS	1	\$ 15,000.00	\$ 15,000.00
9	Demolition of 42" Brick Sanitary Sewer	LS	1	\$ 20,000.00	\$ 20,000.00
10	Modifications to MH SP 24	LS	1	\$ 20,000.00	\$ 20,000.00
11	Demolition of 12" CIP Pipe	LF	42	\$ 100.00	\$ 4,200.00
12	Demolition of 8" CIP Pipe	LF	50	\$ 100.00	\$ 5,000.00
13	Interceptor Cleaning	LF	2000	\$ 250.00	\$ 500,000.00
14	Cleaning Debris Disposal	TN	90	\$ 80.00	\$ 7,200.00
15	42" Gravity Sanitary Pipe Construction	LF	20	\$ 1,000.00	\$ 20,000.00
16	Access Shaft Construction	LS	1	\$ 425,000.00	\$ 425,000.00
17	Sod	SY	110	\$ 8.00	\$ 880.00
18	Bituminous Pavement Removal and Replacement	SY	600	\$ 50.00	\$ 30,000.00
19	City Maintenance Hole Construction	LS	1	\$ 75,000.00	\$ 75,000.00
20	Utility Relocation Allowance	*****	1	\$ 50,000.00	\$ 50,000.00
21	Directed Time and Material Allowance	*****	1	\$ 100,000.00	\$ 100,000.00
	TOTAL				\$ 1,487,880.00