

Prepared by the
Utility Agreements and Permits Unit
(Receivable)
(\$0.00)

S.P. 1917-45 (T.H. 149)
Location: on TH 149 from I494 in the City of
Mendota Heights to George Street in the City
of St. Paul and on TH 13 from TH 149 to
Cherokee Heights Boulevard in the City of
West Saint Paul
Utility Owner: Board of Water Commissioners
of the City of Saint Paul
MnDOT Agreement Number 1030402

AGENCY ADJUSTMENT AGREEMENT

This Agreement Number 1030402 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation and Board of Water Commissioners of the City of Saint Paul, including its agents, contractors, and subcontractors (Utility Owner). This Agreement outlines the separate responsibilities of the State and the Utility Owner as part of a construction project.

RECITALS

The State plans to let a contract to construct State Project Number 1917-45 (Project) on Trunk Highway Number 149. The Project is located on TH 149 from I494 in the City of Mendota Heights to George Street in the City of St. Paul and on TH 13 from TH 149 to Cherokee Heights Boulevard in the City of West Saint Paul.

The Utility Owner owns and operates a watermain, its fixtures, and related equipment (Facilities) that are located on property where the State will construct the Project; said Facilities being in place prior to the construction of TH 149.

On April 24, 1987, the District Court made an interpretation of Chapter 110, Special Laws of Minnesota for 1885, that the City of Saint Paul has the obligation to reimburse the Utility Owner for all adjustment costs whenever the City of Saint Paul makes improvements to city streets. When the State took Smith Avenue from the City, the State assumed the obligation to reimburse the Utility Owner for such adjustments of waterworks facilities as a result of street improvements. Therefore, the cost of adjusting facilities is eligible for reimbursement to the Utility Owner. The Facilities are within the limits of the Project.

The Project will require the adjustment of the Utility Owner's Facilities. The parties agree that, if the Utility Owner adjusted the Facilities or let a separate contract to adjust them that work would interfere with the Project. The Utility Owner has requested that the State perform the adjustment work as part of the Project, rather than being reimbursed for the work. Including the Utility Owner's adjustment work in the State's Construction contract may eliminate duplication of services, facilitate activity coordination, simplify supervision, and expedite Project construction, and the State agrees to do so.

Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the Utility Owner appoints the State as its agent to design and construct the adjustment work as part of the Project, and the State may adjust the Facilities as part of the Project on the trunk highway system.

State law requires a written agreement between the State and the Utility Owner that describes their separate responsibilities.

AGREEMENT

I. Term/Termination

- A. *Effective Date:* This Agreement is effective on the date the State obtains all signatures required by Minnesota Statutes, section 16C.05, subdivision 2.
- B. *Commencement of Work:* Upon notice of Agreement approval, the Utility Owner must promptly provide the State (and the State's Contractor (Contractor)) with any information necessary for the State to commence and successfully prosecute the adjustment work according to the terms of the Notice and Order and provide a work schedule the State's Project Engineer (Project Engineer) approves.
- C. *Expiration Date:* This Agreement will expire on the date that all obligations, excluding the Utility Owner's ongoing maintenance obligations, have been satisfactorily fulfilled.
- D. *Termination by the State:* The State may terminate this Agreement at any time, with or without cause, on 30 calendar days' written notice to the Utility Owner.
- E. *Survival of Terms:* The following articles survive this Agreement's expiration or termination: (III) Utility Owner's Ongoing Maintenance Requirements; (IV) Liability; and (V) Governing Terms.

II. Description of Work Procedures

- A. *Plans:* The plans, which are attached to this Agreement as Exhibit A, indicate the present and proposed locations of the Facilities.
 - 1. If any changes to the plans or character of the work become necessary, the State and the Utility Owner must agree to the changes before the State makes (or directs the Contractor to make) them. If these changes require an amendment or supplement to this Agreement, the parties will negotiate such amendment or supplement in good faith, and the State is not obligated to commence such changes until such amendment or supplement is fully

executed. The State will enter into such supplemental agreements with its Contractor as the State deems necessary to implement such changes.

2. The Utility Owner authorizes the Project Engineer to make any minor field changes and adjustments to the plans, specifications, and special provisions as the State deems necessary for efficient Project construction. The Utility Owner authorizes the State, on its behalf, to enter into supplemental agreements with the Contractor as necessary to implement these changes.

B. *State's Responsibilities*

1. The State will:
 - a. Advertise the Project for bids; and
 - b. Award a construction contract for the Project. This Project will include the adjustment work.
2. The Project Engineer will supervise and direct the Project, including the adjustment work, but the Utility Owner may inspect the work periodically. If the Utility Owner finds that any completed adjustment work is defective, it must inform the Project Engineer of these defects in writing; however, any recommendations the Utility Owner makes are not binding on the State. The State has the exclusive right to determine whether the Contractor has performed the work according to the plans, specifications, and special provisions.
3. The Project Engineer and the Utility Owner will perform a final inspection of the work. Once the State has accepted the adjustment work, the Project Engineer will inform the Utility Owner in writing, and the Utility Owner will assume ownership of the Facilities.

C. *Deletion of Work:* If the Utility Owner decides to delete the adjustment work from the Project, the Utility Owner will:

1. Be subject to the Notice and Order and remove and/or adjust the Facilities; and
2. Defend (at its own expense and to the extent Minnesota's Attorney General permits) indemnify, save, and hold the State and all of its agents and employees harmless of and from all claims, demands, actions, or causes of action that deleting the relocation work causes. This obligation to indemnify extends to any attorney's fees.

- D. *Risk:* Risk of loss of partial or complete adjustment work will be on the Contractor as the current *Standard Specifications for Construction* set forth.

III. Utility Owner's Ongoing Maintenance Requirements

- A. Once construction is complete, the Utility Owner will continue to maintain the Facilities at its own expense.
- B. The Utility Owner may open and disturb the trunk highway right of way without a permit in the case of an emergency that is dangerous to the public and requires immediate attention. Upon learning of the emergency, the Utility Owner must immediately notify the State Patrol. The Utility Owner must take all necessary and reasonable safety measures to protect the public and must cooperate fully with the State Patrol. In this event, the Utility Owner must request a permit from the proper authority no later than the working day after it begins working in the right of way.

IV. Liability

- A. 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 Utility Owner. This clause will not be construed to bar any legal remedies a party may have to fulfill its obligations under this contract.

V. Governing Terms

- A. *Data Practices:* All parties must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13) as it applies to any data that a party to this Agreement receives, collects, stores, or disseminates under it. The Act provides civil liability for failure to comply with its requirements.
- B. *Applicable Law:* 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 Ramsey County, Minnesota.
- C. *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 the provision or any subsequent breach of that provision.

- D. *Merger:* This Agreement contains all negotiations and agreements between the State and the Utility Owner with respect to the subject matter it contains. No prior understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- E. *Assignment:* The Utility Owner may neither assign nor transfer any rights or obligations under this Agreement without the State's consent and a fully executed assignment agreement. To be valid, the assignment agreement must be signed and approved by the same parties who signed and approved this Agreement, or their successors in office.
- F. *Amendments:* Any amendment to this Agreement must be in writing. An amendment will not be effective until the same parties who signed and approved this Agreement, or their successors in office, sign and approve the amendment.
- G. *Incorporation of Exhibits:* All exhibits attached to this Agreement are incorporated into this Agreement.

The remainder of this page was left blank intentionally.

IN TESTIMONY WHEREOF, the parties have duly executed this Agreement by their duly authorized officers and caused their respective seals to be hereunto affixed.

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

Approved:

By: _____
Stephen P. Schneider
General Manager
Saint Paul Regional Water Services

Date: _____

By: _____
Matt Anfang
President

Date: _____

Approved as to form:

By: _____
Mollie Gagnelius
Secretary

By: _____
Assistant City Attorney

Date: _____

Date: _____

By: _____
Todd Hurley
Director
Office of Financial Services

Date: _____

Utility Owner: Board of Water Commissioners of the City of Saint Paul

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

Department of Transportation

Recommended for Approval:

Approved:

By: _____
Metro Utility Coordinator

By: _____
Director, Office of Land Management

Date: _____

Date: _____

Office of Contract Management

Approved as to Form and Execution:

By: _____

Date: _____

Department of Administration

By: _____

Date: _____

JZ

