

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
CITY OF FALCON HEIGHTS
And
CITY OF ST. PAUL
And
MINNESOTA STATE AGRICULTURAL SOCIETY
TRAFFIC CONTROL SIGNAL AGREEMENT

State Project Number (S.P.):	<u>6216-136</u>	Falcon Heights: Total Obligation	<u>\$94,684.14</u>
Trunk Highway Number (T.H.):	<u>51=125</u>		
State Aid Project Number (S.A.P.):	<u>124-010-001</u>	St. Paul: Total Obligation	<u>\$47,342.07</u>
State Aid Project Number (S.A.P.):	<u>164-010-073</u>		
Signal System ID:	<u>2401353</u>	MSAS: Total Obligation	<u>\$47,342.07</u>

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("MnDOT"), the City of Falcon Heights acting through its City Council ("Falcon Heights") and the City of St. Paul acting through its City Council ("St. Paul") and the Minnesota State Agricultural Society ("MSAS").

Recitals

1. MnDOT will remove the existing traffic control signal and install a new traffic control signal with signal pole mounted luminaires and signing ("Signal System"), on Trunk Highway No. 51 at Hoyt Avenue, in the Cities of Falcon Heights and St. Paul, located in Ramsey County, Minnesota, according to MnDOT-prepared plans, specifications and special provisions designated by MnDOT as State Project No. 6216-136, State Aid Project No. 124-010-001, and State Aid Project No. 164-010-073 (T.H. 51=125) ("Project"); and
2. MnDOT will install Emergency Vehicle Pre-emption System ("EVP System") and Accessible Pedestrian Signals ("APS") as part of the new Signal System; and
3. MnDOT will furnish a cabinet and controller Type R and Video Camera ("State Furnished Materials"), according to the Project Plans, to operate the Signal System covered under this Agreement; and
4. Falcon Heights, St. Paul, and the Minnesota State Agricultural Society wish to participate in the costs of the Signal System, APS, and EVP System construction, State Furnished Materials lump sum amounts, and associated construction engineering; and
5. MnDOT, Falcon Heights, and St. Paul will participate in the operation and maintenance of the new Signal System, APS, and EVP System; and
6. 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

- 1.1. **Effective Date.** This Agreement will be effective on the date MnDOT 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: 8. Liability; Worker Compensation Claims; 10. State

Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure. The terms and conditions set forth in Article 3. 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.*** Plans, specifications and special provisions designated by MnDOT as State Aid Project No. 124-010-001, State Aid Project No. 164-010-073, and State Project No. 6216-136 (T.H. 51=125) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference ("Project Plans").

2. Construction by MnDOT

- 2.1. *Contract Award.*** MnDOT will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.
- 2.2. *Direction, Supervision and Inspection of Construction.*** MnDOT will direct and supervise all construction activities performed under the construction contract, and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
- 2.3. *Plan Changes, Additional Construction, Etc.***
- A.** MnDOT will make changes in the Project Plans and contract construction, which may include Falcon Heights, St. Paul or MSAS participation construction covered under this Agreement, and will enter into any necessary addenda and change orders with MnDOT's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. MnDOT District Engineer's authorized representative will inform the appropriate Falcon Heights, St. Paul or MSAS officials of any proposed addenda and change orders to the construction contract that will affect Falcon Heights, St. Paul or MSAS participation construction covered under this Agreement.
 - B.** Falcon Heights, St. Paul or MSAS may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter with MnDOT. If MnDOT determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the Project, MnDOT will cause the additional work or plan changes to be made.
- 2.4. *Satisfactory Completion of Contract.*** MnDOT will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner.

3. 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. 51 at Hoyt Avenue.

3.1. *Falcon Heights and St. Paul Responsibilities.*

- A. *Power.*** Falcon Heights 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 Signal System and EVP System. St. Paul will reimburse Falcon Heights for 25% of the power costs.
- B. *Minor Signal System Maintenance.*** St. Paul will provide for the following, without cost to MnDOT. Falcon Heights will reimburse St. Paul for 75% of the Minor Signal System maintenance costs.
 - i.** Maintain the signal pole mounted LED luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.

- ii. Replace the Signal System LED indications. Replacing LED indications consists of replacing each LED indication when it reaches end of life per the MnDOT Traffic Engineering Manual or fails or no longer meets Institute of Traffic Engineers (ITE) standards for light output.
- iii. Clean the Signal System controller cabinet and service cabinet exteriors.
- iv. Clean the Signal System and luminaire mast arm extensions.

3.2. **MnDOT Responsibilities.**

- A. **Interconnect; Timing; Other Maintenance.** MnDOT will maintain the Interconnect and signing, and perform all other Signal System, APS, and signal pole luminaire circuit maintenance without cost to Falcon Heights, St. Paul, or MSAS. All Signal System timing will be determined by MnDOT, and no changes will be made without MnDOT's approval.
- B. **EVP System Operation.** The EVP System will be installed, operated, maintained, and removed according to the following conditions and requirements:
 - i. All maintenance of the EVP System must be done by MnDOT forces.
 - ii. Emitter units may be installed only on authorized emergency vehicles, as defined in Minnesota Statutes § 169.011, Subdivision 3. Authorized emergency vehicles may use emitter units only when responding to an emergency. Falcon Heights and St. Paul will provide MnDOT's District Engineer or their designated representative a list of all vehicles with emitter units, if requested by MnDOT.
 - iii. Malfunction of the EVP System must be reported to MnDOT immediately.
 - iv. In the event the EVP System or its components are, in the opinion of MnDOT, being misused or the conditions set forth in Paragraph ii. above are violated, and such misuse or violation continues after Falcon Heights or St. Paul receives written notice from MnDOT, the State may remove the EVP System. Upon removal of the EVP System pursuant to this Paragraph, all of its parts and components become the property of MnDOT.
 - v. All timing of the EVP System will be determined by MnDOT.

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

3.4. **Related Agreements.** This Agreement will supersede and terminate Agreement No. 88641M, dated October 3, 2006, between the parties.

4. **Basis of Falcon Heights, St. Paul, and MSAS Cost**

- 4.1. **Schedule "I".** The Preliminary Schedule "I" includes all anticipated Falcon Heights, St. Paul, and MSAS participation construction items, State Furnished Materials lump sum amounts, and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.
- 4.2. **Falcon Heights, St. Paul, and MSAS Participation Construction.** Falcon Heights, St. Paul, and MSAS will participate in the following at the percentages indicated.
 - A. Signal System, APS, EVP System, and State Furnished Materials on T.H. 51 at Hoyt Avenue.
 - i. 25 Percent will be Falcon Heights' rate of cost participation.
 - ii. 12.5 Percent will be St. Paul's rate of cost participation.
 - iii. 12.5 Percent will be the MSAS's rate of cost participation.
- 4.3. **Construction Engineering Costs.** Falcon Heights, St. Paul, and MSAS will pay a construction engineering charge equal to 8 percent of their respective total participation construction covered under this Agreement.
- 4.4. **Plan Changes, Additional Construction, Etc.** Falcon Heights, St. Paul, and MSAS will share in the costs of construction contract addenda and change orders that are necessary to complete the Falcon Heights, St. Paul,

and MSAS participation construction covered under this Agreement, including any Falcon Heights, St. Paul, or MSAS requested additional work and plan changes.

MnDOT reserves the right to invoice Falcon Heights, St. Paul, or MSAS for the cost of any additional Falcon Heights, St. Paul, or MSAS requested work and plan changes, construction contract addenda, change orders and associated construction engineering before the completion of the contract construction.

5. Falcon Heights, St. Paul and MSAS Cost and Payment

- 5.1. *Falcon Heights, St. Paul, and MSAS Cost.*** \$94,684.14 is Falcon Heights estimated share, \$47,342.07 is St. Paul's estimated share, and \$47,342.07 is MSAS's estimated share of the costs of the contract construction, State Furnished Materials, and the 8 percent construction engineering cost share 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. Upon award of the construction contract, MnDOT will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.
- 5.2. *Conditions of Payment.*** Falcon Heights, St. Paul, and MSAS will pay MnDOT their respective full and complete lump sum amount, as shown in the Revised Schedule "I", after the following conditions have been met:
- A. Execution of this Agreement and transmittal to Falcon Heights, St. Paul, and MSAS, including a copy of the Revised Schedule "I".
 - B. Falcon Heights, St. Paul, and MSAS receipt of a written request from MnDOT for the advancement of funds.
- 5.3. *Acceptance of Falcon Heights, St. Paul, and MSAS's Cost and Completed Construction.*** The computation by MnDOT of the amount due from Falcon Heights and St. Paul will be final, binding and conclusive. Acceptance by MnDOT of the completed contract construction will be final, binding and conclusive upon Falcon Heights, St. Paul, and MSAS as to the satisfactory completion of the contract construction.
- 5.4. *Final Payment; Additional Falcon Heights, St. Paul, and MSAS Requested Work.*** Upon completion of all contract construction and upon computation of the final amount due MnDOT's contractor, and only if additional work has been requested under Article 2.3.B of this Agreement, MnDOT will prepare a Final Schedule "I" and submit a copy to Falcon Heights, St. Paul, and MSAS. The Final Schedule "I" will be based on final quantities of any additional Falcon Heights, St. Paul, and MSAS requested participation construction items and the construction engineering cost share due to additional requested work. The computation by MnDOT of the amount due from Falcon Heights, St. Paul, and MSAS will be final, binding and conclusive.

MnDOT, Falcon Heights, St. Paul, and MSAS waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

6. 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.

6.1. MnDOT's Authorized Representative will be:

Name/Title: Greg Kern, MnDOT Metropolitan District Traffic Engineering (or successor)
 Address: 1500 County Road B2 West, Roseville, MN 55113
 Telephone: (651) 234-7877
 E-Mail: gregory.kern@state.mn.us

6.2. St. Paul's Authorized Representative will be:

Name/Title: Paul Kurtz, City Engineer (or successor)
Address: 25 West 4th Street, 1500 City Hall Annex, St. Paul, MN 55102
Telephone: 651-266-6203
E-Mail: paul.kurtz@ci.stpaul.mn.us

6.3. Falcon Heights' Authorized Representative will be:

Name/Title: Jesse Freihammer, City Engineer (or successor)
Address: 2077 W. Larpenteur Avenue, Falcon Heights, MN 55113
Telephone: 651-792-7042
E-Mail: jesse.freihammer@cityofroseville.com

6.4. MSAS' Authorized Representative will be:

Name/Title: Jerry Hammer, Executive Vice President (or successor)
Address: 1265 Snelling Avenue N., St. Paul, MN 55108
Telephone: 651-288-4400
E-Mail: jerry.hammer@mnstatefair.org

7. Assignment; Amendments; Waiver; Contract Complete

- 7.1. Assignment.** None of the parties may assign or transfer any rights or obligations under this Agreement without the prior consent of the other parties and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 7.2. 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.
- 7.3. 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.
- 7.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between MnDOT, Falcon Heights, St. Paul, and MSAS. No other understanding regarding this Agreement, whether written or oral, may be used to bind the parties.

8. Liability; Worker Compensation Claims

- 8.1.** 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 MnDOT. Minnesota Statutes Chapter 466 and other applicable law govern liability of Falcon Heights, St. Paul, and MSAS.
- 8.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

9. Nondiscrimination

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

10. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, Falcon Heights, St. Paul, and MSAS'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.

11. Government Data Practices

Falcon Heights, St. Paul, MSAS, and MnDOT 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 Falcon Heights, St. Paul, and MSAS under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by Falcon Heights, St. Paul, MSAS, or MnDOT.

12. 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.

13. Termination; Suspension

13.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

13.2. *Termination for Insufficient Funding.* MnDOT 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 performance of contract construction under the Project. Termination must be by written or fax notice to Falcon Heights, St. Paul, and MSAS.

13.3. *Suspension.* In the event of a total or partial government shutdown, MnDOT may suspend this Agreement and all work, activities and performance of work authorized through this Agreement.

14. 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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CITY OF FALCON HEIGHTS

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: _____

**MINNESOTA STATE AGRICULTURAL
SOCIETY**

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: _____

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: _____