

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

State Project Number (SP):	<u>6220-95</u>
Trunk Highway Number (TH):	<u>61=104</u>
State Project Number (SP):	<u>164-090-017</u>
Federal Project Number:	<u>TA 6223(172)</u>
Lighting System Feed Point:	<u>City - A</u>

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of St. Paul, acting through its City Council ("City").

Recitals

1. The City will perform trail reconstruction construction, and other associated construction upon, along, and adjacent to Battle Creek Park Entrance at Trunk Highway No. 61 to the intersection of Warner Road according to City-prepared plans, specifications, and special provisions designated by the City and the State as State Project No. 6220-95 (TH 61=104) ("Project"); and
2. The City requests the State allow the construction of Fish Hatchery Trail on Trunk Highway No. 61 Right-of-Way and the State is willing to allow said construction; 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 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; 8. Liability; Worker Compensation Claims; Insurance; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.
- 1.4. **Plans, Specifications, and Special Provisions.** State-approved City plans, specifications, and special provisions designated by the City and the State as State Project No. 6220-95 (TH 61=104) are on file in the office of the City's Project Engineer and incorporated into this Agreement by reference ("Project Plans").

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 notify and require the City (and its contractors and consultants) to suspend their operations until the City (and its contractors and consultants) take all necessary actions to rectify the situation to the satisfaction of the State. The State will have no liability to the City (or its contractors or consultants) for exercising or failing to exercise its rights under this provision.
- 2.3. Traffic Control; Worker Safety.** While the City (and its contractors and consultants) are occupying the State's Trunk Highway 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 Trunk Highway 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. 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".

- 3.2. 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.

- 3.3. *Compliance with Laws, Ordinances, and 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.

4. Right-of-Way; Easements; Permits

- 4.1.** The City will, without cost or expense to the State, 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.
- 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 St. 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 2525).
- 4.5. *Limited Use Permit No. 6220-0227.*** The City will obtain, through the District's Right-of-Way Area Manager, a Limited Use Permit to cover the City's liability responsibilities of the Fish Hatchery Trail, benches, and other related appurtenances to be constructed upon the State Right-of-Way.

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. *Storm Sewers.*** Routine maintenance of any storm sewer facilities construction. 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.
- 5.2. *Fish Hatchery Trail.*** Maintenance of the Fish Hatchery Trail 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 Fish Hatchery Trail in a safe and usable condition. The Limited Use Permit will further define the City's responsibilities for the Fish Hatchery Trail.
- 5.3. *Basin B-4.*** Upon completion of the Basin B-4 construction to be performed within the corporate City limits under the construction contract, the City will provide for proper maintenance of Basin B-4 without cost or expense to the State. Maintenance will include, but not limited to, litter, debris and silt removal, mowing, erosion repairs and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities. The City will be responsible, to the extent provided by law, for its own acts and omissions in connection with maintaining Basin B-4.

- 5.4. Lighting.** Maintenance and ownership 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, pull boxes, 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.
- 5.5. Additional Drainage.** No 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.

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. The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: malaki.ruranika@state.mn.us

6.2. The City's Authorized Representative will be:

Name, Title: Bryan Murphy, Project Manager (or successor)
 Address: 25 W. 4th Street, Suite 400, St. Paul, MN 55102
 Telephone: (651) 266-6411
 E-Mail: bryan.murphy@ci.stpaul.mn.us

7. Assignment; Amendments; Waiver; Contract Complete

- 7.1. Assignment.** No 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. The foregoing does not prohibit the City from contracting with a third party to perform City maintenance responsibilities covered under this Agreement.
- 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 the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

8. Liability; Worker Compensation Claims; Insurance

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

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, the City's books, records, documents, 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

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.

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 or by the State for insufficient funding as described below.
- 13.2. *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 or the provision of the services covered here. Termination

must be by written or fax notice to the City. 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.

13.3. *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.

14. Force Majeure

No 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.

15. Counterparts

The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

16. Electronic Signatures

The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

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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: _____
(Deputy Mayor)

Date: _____

By: _____
(Director, Office of Finance 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.