

**STATE OF MINNESOTA
TRUNK HIGHWAY
JURISDICTIONAL TRANSFER
CITY
("TURNBACK") AGREEMENT**

State Project Number (S.P.):	<u>SP 6217-51</u>
Trunk Highway Number:	<u>TH 3</u>
Control Section Number:	<u>6217</u>

Original Amounts Encumbered
State Funds FY 2024
\$20,613,000.00

\$19,720,000.00 Consisting of:
SRC: \$9,000,000.00
MnSHIP: \$10,710,000.00 and

Turnback Funds: \$893,000.00

Purpose: State transfer of a portion of Trunk Highway (TH) No. 3 to the City of Saint Paul.

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("MnDOT") and City of Saint Paul, a political subdivision of the State of Minnesota acting through its CITY COUNCIL ("Political Subdivision").

RECITALS

1. Minnesota Statutes §161.20 authorizes MnDOT to enter into agreements with other governmental authorities to carry out the purposes of Minnesota Statutes Chapter 161; and
2. The Political Subdivision is a Road Authority as defined in Minnesota Statutes §160.02 (subd. 25); and
3. MnDOT has determined that a portion of Trunk Highway 3 from 11th Street East to Kellogg Boulevard East ("Roadway Segment") is no longer needed for trunk highway purposes; and
4. The parties agree that Political Subdivision is the proper road authority; and
5. MnDOT has determined that the Roadway Segment will revert to another road authority in accordance with Minnesota Statutes §161.16 and MnDOT has further determined that the Political Subdivision is the proper road authority; and
6. Minnesota Rules Chapter 8820, State-Aid Operations govern eligibility and requirements for adding roadways to state aid roadway systems; and govern eligibility for State-Aid transportation funding included in this Agreement Municipal Turnback Account; and
7. The Roadway Segment is in need of pavement repair and improvements; and
8. The parties have entered into this Agreement to provide for the orderly reversion of the Roadway Segment to the jurisdiction of the Political Subdivision.

AGREEMENT

1. Effective Date; Survival of Terms

This Agreement will be effective on the date last signed below by the parties and by such other State of Minnesota officials as required by Minnesota Statutes §16C.05. This Agreement will remain in effect until MnDOT has (1) served a Notice of Release, and (2) made payments (if any) as required by this Agreement. 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 of this Agreement.

2. Identification of Trunk Highway Segment; Right-of-Way Determination

The Roadway Segment covered by this Agreement is described as 11th Street East (north side of the intersection) to Kellogg Boulevard East (south side of the vacated alley line). MnDOT will confer with Political Subdivision determining the final right-of-way limits prior to transfer of jurisdiction to the Political Subdivision.

3. Notice of Release; Future Responsibility; Conveyance Documents

3.1. Notice of Release. MnDOT will deliver to the Political Subdivision a "Notice of Release" citing the effective date of release ("Effective Date"). Upon the Effective Date, the Roadway Segment is released from MnDOT's jurisdiction, and the Political Subdivision is the Road Authority with jurisdiction over the Roadway Segment and will assume all responsibility of the Roadway Segment and of all structures and facilities that are a part of the Roadway Segment.

3.2. Conveyance Documents. Subsequent to issuing the Notice of Release, MnDOT will prepare and execute necessary and appropriate documents conveying MnDOT's interest, if any, in the Roadway Segment to the Political Subdivision.

4. Delivery of Records

Following delivery of the Notice of Release, MnDOT will, upon request, provide the Political Subdivision with available records concerning the Roadway Segment. Such records must be in MnDOT's possession, and will be released only if such release is lawful under the provisions of the Minnesota Government Data Practices Act. Such records may include the following:

- (a) A list of active maintenance agreements, including signal and routine maintenance agreements with other governmental agencies that will be cancelled, and a list of agreements with utility companies that will be cancelled;
- (b) Records concerning utility permits, drainage permits, driveway, and other access permits, advertising and sign permits, and other limited-use permits;
- (c) Construction plans and records, as-built construction plans (if available);
- (d) Bridge inspection reports and ratings;
- (e) Aerial photos and other photo and video files, in either hard copy or digital form;
- (f) Right-of-way maps and parcel files;
- (g) Inventory Data;
- (h) Pavement condition ratings;
- (i) Traffic signal files including timing sequence information and repair history;
- (j) Crash reports and statistics;
- (k) Most current traffic counts;

- (l) Alignment ties, horizontal and vertical control monuments, and related data;
- (m) Partially or fully completed plans for construction projects;
- (n) Road opening and right-of-way documentation.

5. Responsibility for Claims

MnDOT will remain responsible, to the extent authorized by Minnesota Statutes §3.736 and other applicable law, for claims related to construction, maintenance, and operation of the Roadway Segment during the period when it was a state trunk highway to the extent the claims are a result of MnDOT's acts and omissions, even if such claims are filed after the Political Subdivision receives the Notice of Release. The Political Subdivision will be responsible for claims arising out of its own construction, maintenance, or operation of the Roadway Segment after it received the Notice of Release.

6. Payment by MnDOT

6.1. MnDOT's Maximum Obligation. MnDOT's maximum obligation under this Agreement is \$19,720,000.00. This obligation may be increased only by amending this Agreement.

6.2. Conditions of Payment.

*MnDOT will pay Political Subdivision a partial payment of **\$19,720,000.00** (on or about July 1, 2024) after the following conditions have been met:*

1. Encumbrance by MnDOT of the full and complete amount.
2. Execution of this Agreement and transmittal to Political Subdivision.
3. Transfer of the Roadway Segment to the jurisdiction of Political Subdivision.
4. MnDOT's receipt of a written request from Political Subdivision for the payment of funds. The request will include a copy of the "Notice of Release", described under Article 3.1, indicating the Roadway Segment has transferred to the jurisdiction of Political Subdivision.

7. Municipal Turnback Account Funds

7.1 Authorization. Upon the Effective Release Date, and upon designation of the Roadway Segment as state aid route Political Subdivision will be authorized to use funds from the Municipal Turnback Account in accordance with Minnesota Statutes §161.083.

7.2 Eligibility –In Lieu Payment. The parties agree that in lieu of being paid for contracting or force account work, the Political Subdivision will receive a lump sum payment of **\$893,000.00** in accordance with Minnesota Rules 8820.2300 subp. 6a.

7.3 Payment Schedule – In Lieu Payment. The In Lieu payment is anticipated to be made calendar year 2024. The availability of these funds is contingent on legislative approval and appropriation. MnDOT will use its best efforts to secure appropriation of such funds; however, Political Subdivision acknowledges that any expenses incurred prior to such authorization are at the sole risk of Political Subdivision.

7.3 Maximum Authorized Eligibility. The maximum authorized eligibility under this Agreement is **\$893,000.00**. This obligation may be increased only by amending this Agreement.

8. Release of Claims; Covenant not to Sue

By accepting the payment provided for in this Agreement, the Political Subdivision releases MnDOT from any and all claims related to the condition of the Roadway Segment, regardless of whether such claims result from surface or sub-surface conditions, and regardless of whether such conditions were known or unknown at the time of reversion. The political subdivision is encouraged to perform its own geotechnical explorations and will not rely on previous geotechnical studies performed by MnDOT. In consideration of the payment provided by

MnDOT, the Political Subdivision covenants not to sue MnDOT or any other state agency or official with respect to MnDOT's decision to make the reversion or for any claim arising out of the condition of the Roadway Segment.

9. General Provisions

- 9.1. **Venue.** Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.
- 9.2. **Termination.** This Agreement may be terminated only by mutual written agreement of the parties, except that MnDOT may terminate this Agreement if it does not obtain funding from the Minnesota Legislature.
- 9.3. **Suspension.** MnDOT may suspend its payment obligations under this Agreement in the event of a total or partial government shutdown due to failure to have an approved budget by the legal deadline. The period of suspension will end when MnDOT is legally authorized to resume such payments.
- 9.4. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, such provision will not affect the validity or enforceability of any other provision of this Agreement, which will remain in force and effect.
- 9.5. **Merger.** This Agreement contains all prior negotiations and agreements between MnDOT and the Political Subdivision. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- 9.6. **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 this Agreement, or their successors in office.
- 9.7. **Government Data.** This Agreement, and any data exchanged by the parties pursuant to this Agreement, will be "government data" and subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.
- 9.8. **State Audits.** The books, records, documents, and accounting practices and procedures of the Political Subdivision relevant to this Agreement are subject to examination by MnDOT and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years.

10. Additional Provisions

- 10.1. **Counterparts.** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- 10.2. **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.

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: _____

POLITICAL SUBDIVISION*

The Political Subdivision certifies that the appropriate person(s) have executed the Agreement on its behalf as required by applicable resolutions, ordinances, or charter provisions.

By: _____
Director of Public Works

Date: _____

By: _____
Director of Financial Services

Date: _____

By: _____
Mayor

Date: _____

Approved as to form:

By: _____
Assistant City Attorney

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer or ADE State Aid)

Date: _____

Approved:

By: _____
(State Aid Engineer)

Date: _____

Approved:

By: _____
(Operations Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

***INCLUDE RESOLUTION**