

STATE OF MINNESOTA AGENCY AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
CITY OF MINNEAPOLIS

FOR FEDERAL PARTICIPATION IN RIGHT OF WAY
FOR
S.P. 141-091-07 and 141-090-21; M.P. NMTP 2708(120)

This agreement is entered into by and between City of Minneapolis (“City”) and the State of Minnesota acting through its Commissioner of Transportation (“Mn/DOT”),

Pursuant to Minnesota Statutes Section 161.36, the City desires Mn/DOT to act as the City's agent to accept and disburse federal funds for the construction, improvement, or enhancement of transportation financed in whole or in part by federal funds, hereinafter referred to as the “Project”; and

The City is proposing a federal aid project to construct the University of Minnesota Trail. Right of way purchase and right of way engineering costs will be reimbursed with federal funds. MnDOT Agreement No. 92905 addresses engineering costs associated with surveys, appraisals, review appraisals, easement descriptions and other documentation associated with right of way acquisition; hereinafter referred to as the “Right of way Engineering”; and

The Right of way Engineering is eligible for the expenditure of federal aid funds, and is identified in Mn/DOT records as State Project 141-091-07 and 141-090-21, and in Federal Highway Administration (“FHWA”) records as Minnesota Project NMTP 2708(120); and

Mn/DOT requires that the terms and conditions of this agency be set forth in an agreement.

THE PARTIES AGREE AS FOLLOWS:

I. DUTIES OF THE CITY.

A. DESIGNATION. The City designates Mn/DOT to act as its agent to accept and disburse federal funds made available for the Project.

B. ELIGIBILITY / COSTS. The estimated cost of the Right of way Engineering is \$50,000.

1. It is anticipated that up to \$ 50,000 of the cost of the Right of way Engineering is to be paid from federal funds made available by the FHWA. The City will pay any part of the cost or expense of the work that the FHWA does not pay.
2. Any costs incurred by the City prior to authorization of the Federal Funds, will not be eligible for federal participation.
3. Eligible cost and expense, if approved, may consist of the following:
 - a) The cost of right of way acquisition engineering—development of right of way maps, cost estimates, appraisals, etc.
 - b) The cost incurred by the City to employ outside forces to perform any or all of the work pursuant to this agreement is subject to the provisions of section I.D. SUBLETTING.
 - c) Purchase price, appraisal fees incurred by the City, appraisal fees incurred by the property owner (up to a maximum of \$1,500 for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property), condemnation costs, title work, title insurance, recording fees, and closing costs.
 - d) A credit will be required for any building sales or rental income.
4. Expenditures for general administration, supervision, maintenance and other overhead or incidental expenses of the City are not eligible for federal participation.
5. Acceptability of costs under this agreement will be determined in accordance with the cost principles and procedures set forth in the applicable Federal Engineering Regulations, Contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR) 31 which is hereby incorporated by reference and made a part of this agreement.
6. For costs expected to exceed \$ 50,000, the City must request the preparation and execution of a supplement to this agreement, prior to incurring such costs.

C. STAFFING.

1. The City will designate a publicly employed registered engineer or land surveyor, ("Project Engineer"), to be in responsible charge of the Project and to supervise and direct the work performed under any contract let for the Project. If City elects to use a private consultant for engineering services, the City will provide a qualified, full-time public employee of the City, to be in responsible charge of the Project. The services of the City to be performed pursuant to this agreement may not be assigned, sublet, or transferred unless the City is notified in writing by Mn/DOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105

Agreement no. 92905

and state law. This written consent will in no way relieve the City from its primary responsibility for performance of the work.

2. During the progress of the work on the Project, the City authorizes its Project Engineer to request in writing specific engineering and/or technical services from Mn/DOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If Mn/DOT furnishes the services requested, and if Mn/DOT requests reimbursement, then the City will promptly pay Mn/DOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current Mn/DOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make Mn/DOT a principal or co-principal with respect to the Project.
 3. The City will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.
- D. SUBLETTING. The City will prepare request for proposals in accordance with Minnesota law and applicable Federal laws and regulations.
1. The City will solicit proposals after obtaining written notification from Mn/DOT that the FHWA has authorized the Project. Any Project advertised prior to authorization will not be eligible for federal reimbursement.
 2. The City will prepare the request for proposal, which will include all of the federal-aid provisions supplied by Mn/DOT.
 3. The City will prepare and publish the proposal solicitation for the Project as required by state and federal laws. The City will include in the solicitation the required language for federal-aid contracts as supplied by Mn/DOT. The solicitation will state where the City will receive the sealed proposals.
 4. The City may not include other work in the contract for the authorized Project without obtaining prior notification from Mn/DOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project.
 5. The City will prepare and distribute any addendums, if needed.
 6. The City will receive open, and evaluate proposals.
 7. After the proposals are opened, the City governing body will consider the proposals and will award the contract as required by state and federal laws, or reject all proposals. If the proposal contains a goal for Disadvantaged Business Enterprises, the City will not award the contract until it has received certification of the Disadvantaged Business Enterprise participation from the Mn/DOT Equal Employment Opportunity Office.

Agreement no. 92905

8. This written consent will in no way relieve the City from its primary responsibility for performance of the work. Subcontractor agreements must contain all appropriate terms and conditions of this agreement.

E. CONTRACT ADMINISTRATION.

1. The City will request approval from Mn/DOT for all costs in excess of the amount of federal funds previously approved for the Project prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.
2. The City will prepare reports, keep records, and perform work so as to enable Mn/DOT to collect the federal aid sought by the City. The City will retain all records and reports in accordance with Mn/DOT's record retention schedule for federal aid projects.
3. Upon completion of the Project, the Project Engineer will determine whether the work will be accepted.

F. PAYMENTS.

1. The entire cost of the Project is to be paid from federal funds made available by the FHWA and by other funds provided by the City. The City will pay any part of the cost or expense of the Project that is not paid by federal funds.
2. The City may request partial payments not more than once each thirty (30) days. The Project Engineer will certify the amount of each partial estimate.
3. The invoice and supplements thereto, will contain all details that may be necessary for a proper audit. Such details will consist of at least the following:
 - (a) A breakdown of labor by individual, classification, dates and hours worked times the applicable rate to arrive at a total dollar amount for each individual.
 - (b) The labor additive may be applied to total labor dollars, not including overtime labor dollars.
 - (c) The equipment charges shall be broken down by type of equipment times the applicable rate and dates used to arrive at total equipment charges.
 - (d) A detailed breakdown of outside services used and supporting invoices and documentation that costs of outside services have been paid.
 - (e) Detail for materials, supplies, and other items with the description, units, and unit prices included in the invoice. If materials or supplies are purchased from an outside source, a copy of that invoice should be

Agreement no. 92905

included.

- (f) The invoices will include 100% of eligible charges applicable to the Right of way engineering so that the prorata share of federal and City participation can be applied to the total costs.

- 4. Following certification, by the Project Engineer, of the final estimate, the City may request reimbursement for costs eligible for federal funds. The City's request will be made to Mn/DOT and will include a copy of the certified final estimate along with the required records.
- 5. Reimbursement of costs under this agreement will be based on actual costs, but limited to eligible items.

G. LIMITATIONS.

- 1. The City will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
- 2. Nondiscrimination. It is the policy of the FHWA and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate for nondiscrimination in Title VI and through parallel legislation, the prescribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the City to carry out the above requirements.
- 3. Workers' Compensation. Any and all employees of the City or other persons while engaged in the performance of any work or services required or permitted by the City under this agreement will not be considered employees of Mn/DOT, and any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, will in no way be the obligation or responsibility of Mn/DOT. The City will require proof of Workers' Compensation Insurance from any contractor and sub-contractor.

H. AUDIT.

1. The City will comply with the Single Audit Act of 1984 and Office of Management and Budget (OMB) circular A-133 including amendments and successors thereto, which are incorporated herein by reference.
2. As provided under Minnesota Statutes Section 16C.05, subdivision 5, all books, records, documents, and accounting procedures and practices of the City are subject to examination by the United States Government, Mn/DOT, and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of six years. The City will be responsible for any costs associated with the performance of the audit.

I. MAINTENANCE. The City assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.

J. CLAIMS. The City acknowledges that Mn/DOT is acting only as the City's agent for acceptance and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. The City will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold Mn/DOT harmless from any claims or costs arising out of or incidental to the Project, including reasonable attorney fees incurred by Mn/DOT. The City indemnification obligation extends to any actions related to the certification of DBE participation, even if such actions are recommended by Mn/DOT.

II. DUTIES OF Mn/DOT.

A. ACCEPTANCE. Mn/DOT accepts designation as Agent of the City for the receipt and disbursement of federal funds and will act in accordance herewith.

B. PROJECT ACTIVITIES.

1. Mn/DOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project, and for reimbursement of eligible costs pursuant to the terms of this agreement.
2. Mn/DOT will provide to the City copies of the required Federal-aid clauses to be included in the proposal solicitation and will provide the required Federal-aid provisions to be included in the Proposal.
3. Mn/DOT will review and certify the DBE participation and notify the City when certification is complete. If certification of DBE participation (or good faith efforts to achieve such participation) cannot be obtained, then the City must decide whether to proceed with awarding the contract. Failure to obtain such certification will result in the project becoming ineligible for federal assistance, and the City must make up any shortfall.

C. PAYMENTS.

1. Mn/DOT will receive the federal funds paid by the FHWA for the Project, pursuant to Minnesota Statutes § 161.36, Subdivision 2.
2. Mn/DOT will review and sign each partial pay request. Following certification of the partial estimate, Mn/DOT will reimburse the City, from said federal funds made available to the Project, for each partial payment request, subject to the availability and limits of those funds.
3. Upon completion of the Project, the City will prepare a final payment request in accordance with the terms of this agreement. Mn/DOT will review and certify the final payment request with a final audit.
4. No more than 90% of the reimbursement due under this agreement will be paid until completion of the final audit and approval by Mn/DOT's authorized representative.
5. In the event Mn/DOT does not obtain funding from the FHWA or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the City may continue the work with local funds only, until such time as Mn/DOT is able to process the federal aid reimbursement requests.

D. AUTHORITY. Mn/DOT may withhold federal funds, if Mn/DOT or the FHWA determines that the Project was not reasonably completed in compliance with federal requirements.

E. INSPECTION. Mn/DOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this agreement. The City will make available all books, records, and documents pertaining to the work hereunder, for a minimum of seven years following the closing of the construction contract.

III. AUTHORIZED REPRESENTATIVES. Each authorized representative will have responsibility to insure that all payments due to the other party are paid pursuant to the terms of this agreement.

A. The City authorized representative for the purposes of administration of this agreement is Jon Wertjes, City of Minneapolis, Room 233 City Hall, 350 S. 5th Street, Minneapolis MN 55415, or his successor.

B. Mn/DOT's authorized representative is Lynnette Roshell, Minnesota Department of Transportation, State Aid for Local Transportation, Mail Stop 500, St Paul, MN 55155, phone 651-366-3822, or her successor.

IV. TORT LIABILITY. Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and

Agreement no. 92905

omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs Mn/DOT liability.

- V. ASSIGNMENT. Neither party will assign or transfer any rights or obligations under this agreement without prior written approval of the other party.
- VI. AMENDMENTS. Any amendments/supplements to this Agreement will be in writing and executed by the same parties who executed the original agreement, or their successors in office.
- VII. TERM OF AGREEMENT. This agreement will be effective upon execution by appropriate State officials, pursuant to Minnesota Statutes Section 16C.05, and will remain in effect for five (5) years from the effective date or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.
- VIII. TERMINATION. This agreement may be terminated by the City or Mn/DOT at any time, with or without cause, upon ninety (90) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the City as set forth in this Agreement. In the event of such a termination the City will be entitled to reimbursement for Mn/DOT-approved federally eligible expenses incurred for work satisfactorily performed on the Project to the date of termination subject to the terms of this agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY

City certifies that the appropriate person(s) have executed the contract on its behalf as required by applicable resolutions, ordinances, or charter provisions

Approved By:

Steve Kotke, P.E.
Title: City Engineer and Director of Public Works

Date: _____

Countersigned By:

Title: Finance Officer Designee

Date: _____

Approved as to Form By:

Title: City Attorney

Date: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Title: Director. _____
State Aid for Local Transportation

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Date: _____



Minnesota Department of Transportation
State Aid for Local Transportation
395 John Ireland Boulevard St. Paul, MN 55155
4th Floor - Mail Stop 500 - FAX (651) 366-3801
MEMORANDUM

|DATE: July 17, 2008

Deleted: July 15, 2008

TO: James Cownie
Contracts Management
MS 130

FROM: Lynnette Roshell
Project Development Engineer

PHONE: 651-366-3822

SUBJECT: **Agreement No. 92905**
SP 141-091-07 and 141-090-21; NMTP 2708(120)
AGREEMENT EXECUTION

Please process the attached agency agreement between Mn/DOT and the City of Minneapolis which provides for Mn/DOT to act as the City's agent in accepting federal aid for Right of way acquisition work. Attached are four copies.

Please contact me if you have any questions.



Minnesota Department of Transportation

State Aid for Local Transportation

Mail Stop 500, 4th Floor
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Office Tel.: 651 366-3822
Fax: 651 366-3801

July 17, 2008

Deleted: July 15, 2008

Jon Wertjes
City of Minneapolis
Room 233 City Hall
350 S. 5th St.
Minneapolis MN 55415

**SUBJECT: SP 141-091-07 and 141-090-21, NMTP 2708(120)
ROW acquisition for University Trail
Agency Agreement No. 92905**

Dear Mr. Wertjes:

Attached are four copies of the agency agreement between the City of Minneapolis and Mn/DOT, which allows for Mn/DOT to act as the City's agent in accepting federal aid in connection with the above referenced project.

Please review and if approved, have all four copies signed. A Board/Council resolution similar to the example attached, must be passed. The certified resolution should then be placed as the last page in each of the four copies of the agreement. Please verify that the person/title authorized to sign as stated in the resolution, corresponds to the signature (person/title) on the signature page. Please return all four copies of the agreement to me for Mn/DOT signatures. A fully executed copy will be returned to you.

If you have any questions or need any revisions, please feel free to contact me at 651-366-3822.

Sincerely,

Lynnette Roshell, PE
Project Development Engineer

Enclosures

cc: Greg Coughlin--DSAE
File

SAMPLE RESOLUTION FOR AGENCY AGREEMENT

BE IT RESOLVED, that pursuant to Minnesota Stat. Sec. 161.36, the Commissioner of Transportation be appointed as Agent of the City of Minneapolis to accept as its agent, federal aid funds which may be made available for eligible transportation related projects.

BE IT FURTHER RESOLVED, the * (Mayor) and the * (Clerk) are hereby authorized and directed for and on behalf of the City to execute and enter into an agreement with the Commissioner of Transportation prescribing the terms and conditions of said federal aid participation as set forth and contained in "Minnesota Department of Transportation Agency Agreement No. 92905", a copy of which said agreement was before the City Council and which is made a part hereof by reference.

Titles of persons authorized to sign on behalf of the City

SAMPLE CERTIFICATION

STATE OF MINNESOTA
COUNTY OF _____

I hereby certify that the foregoing Resolution is a true and correct copy of the Resolution presented to and adopted by the City of Minneapolis at a duly authorized meeting thereof held on the ____ day of _____, 20____, as shown by the minutes of said meeting in my possession.

Clerk

Notary Public
My Commission expires _____

(SEAL)

Minnesota Department of Transportation



State Aid for Local Transportation

Mail Stop 500, 4th Floor
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Office Tel.: 651 366-3822
Fax: 651 366-3801

July 17, 2008

Deleted: July 15, 2008

Jon Wertjes
City of Minneapolis
Room 233 City Hall
350 S. 5th St.
Minneapolis MN 55415

SUBJECT: **S.P. 141-091-07 and 141-090-21, NMTP 2708(120)**
ROW acquisition for University Trail
Agency Agreement No. 92905

Dear Mr. Wertjes:

Attached is a fully executed agency agreement between the City of Minneapolis and Mn/DOT, which allows for Mn/DOT to act as City's agent in accepting federal aid in connection with the above referenced project.

Also attached is a sample billing summary. Please include this information on any invoices you send me when requesting for payment. It must be signed or it will be returned for signature.

If you have any questions, please feel free to contact me at 651-366-3822, or by e-mail at Lynnette.Roshell@dot.state.mn.us.

Sincerely,

Lynnette Roshell, PE
Project Development Engineer

Enclosure

cc: Greg Coughlin—DSAE
Cyndi Degener—MS 215
Richard Walker—MS 215
Betty Brott—OIM Agreement projects
File

Your organization's letterhead

TO: Minnesota Department of Transportation

Date:

State Project number: SP 141-091-07 and 141-090-21

Federal Project number: NMTP 2708(120)

Agreement number: 92905

Invoice number:

Partial or Final Payment (circle one)

Dates this invoice covers: January 2008 to June 2008 (for example)

Agreement amount: List total amount of project(local and federal share).

Work completed to date: Briefly list what work has been done.

Percentage complete: pp%

Amount requested this invoice: \$nnnnnn.nn.

Amount requested to date: \$nnnnnn.nn.

Please forward payment to:

Payment requested by: **Project manager must sign.**

Approval to pay: GREG COUGHLIN

Date: xx/xx/xxx

Enclosures *(Include all backup documentation)*