

**DRAFT 7-27-06**

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

FOR FEDERAL PARTICIPATION IN PRELIMINARY ENGINEERING  
FOR  
S.P. 141-090-28; M.P. NMTP MN06(100)

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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 in accepting federal funds on the City's behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by federal funds, hereinafter referred to as the “Project”; and

The City is proposing a federal aid project to develop the Non-motorized Transportation Pilot Project for Minneapolis as outlined in Section 1807 of the Federal Transportation legislation, commonly known as SAFETEA-LU, hereinafter referred to as the “Preliminary Engineering;” and

The City is proposing to write a separate agreement with the not for profit group, Transit for Livable Communities (“TLC”), TLC will manage the day to day operations of the Project, develop policies, and implement them as outlined in Section 1807 of the Federal Transportation bill, commonly known as SAFETEA-LU, hereinafter referred to as the “Preliminary Engineering;” and

The Preliminary Engineering is eligible for the expenditure of federal aid funds, and is identified in Mn/DOT records as State Project 141-090-28, and in Federal Highway Administration (“FHWA”) records as Minnesota Project NMTP MN06(100); 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 in accepting federal funds in its behalf made available for the Project.

B. ELIGIBILITY / COSTS. The estimated cost of the Preliminary Engineering is

\$996,000.

1. It is anticipated that 100% (up to \$ 996,000) of the cost of the Preliminary 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. The parties contemplate that this Agreement will be amended annually to incorporate the workplan and budget for each subsequent year of the Agreement.
2. Any costs incurred by the City and/or TLC 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 developing and conducting the Non-motorized Transportation Pilot Project for Minneapolis and surrounding communities.
  - b) The direct labor charges for City and/or TLC employees for the time that said employees are performing work pursuant to this agreement. Said labor charges may include the prorata share of "labor additives" applicable to said labor charges. Costs to the City and/or TLC of "labor additives" consisting of holiday pay, vacation, sick leave, retirement, pension, unemployment taxes, compensation and liability insurance, lost time charges and similar costs incidental to labor employment will be reimbursed only when supported by adequate records.
  - c) The applicable equipment rental charges for City and/or TLC owned equipment used by the City and/or TLC and mileage charges for employee owned vehicles used by the City and/or TLC on work performed pursuant to this agreement, at rates reflective of the City and/or TLC actual cost.
  - d) Expenditures for materials, supplies, mechanical data processing and equipment rental, limited to the actual expenditures for the purposes of this agreement.
  - e) The cost incurred by the City and/or TLC to employ outside forces to perform any or all of the work pursuant to this agreement, subject to the provisions of section I.D. SUBLETTING.
4. Expenditures for general administration, supervision, maintenance and other overhead or incidental expenses of the City and/or TLC 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 Acquisition 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 \$ 996,000, the City and/or TLC 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, ("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. 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 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 and/or TLC will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.

D. SUBLETTING. The City and/or TLC will prepare request for proposals in accordance with Minnesota law and applicable Federal laws and regulations, as specified in Exhibit \_\_ and in accordance with the following requirements:

1. The City and/or TLC will solicit proposals for Preliminary Engineering 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 and/or TLC will prepare the request for proposal, which will include all of the federal-aid provisions supplied by Mn/DOT.
3. The City and/or TLC will prepare and publish the proposals solicitation for the Project as required by state and federal laws. The City and/or TLC will include in the solicitation the required language for federal-aid contracts as supplied by Mn/DOT. The solicitation will state where the City and/or TLC will receive the sealed proposals.
4. The City and/or TLC 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 and/or TLC will prepare and distribute the proposal packages and prepare and distribute any addendums, if needed.
6. The City and/or TLC will receive open, and evaluate proposals.
7. After the proposals are opened, the City and/or TLC governing body will consider the proposals and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. If the proposal contains a goal for Disadvantaged Business Enterprises, the City and/or TLC will not award the bid until it has received certification of the Disadvantaged Business Enterprise participation from the Mn/DOT Equal Employment Opportunity Office.
8. This written consent will in no way relieve the City and/or TLC 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 and/or TLC 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 and/or TLC will prepare reports, keep records, and perform work so as to enable Mn/DOT to collect the federal aid sought by the City and/or TLC. The City and/or TLC will retain all records and reports in accordance with Mn/DOT's record retention schedule for federal aid projects. **(Note: MnDOT should specify the time frame.)**
3. The Project Engineer will review and approval all contract administration records and documentation including but not limited to Project close out approvals.

**Deleted:** Upon completion of the Project, t

**Deleted:** 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. 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 each partial payment.
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 shall be applied to total 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 included.
- (f) The invoices will include 100% of eligible charges applicable to the Preliminary Engineering.
- (g) [TLC invoices may use a fully loaded fixed hourly rate if approved by MnDOT.](#)

4. Following certification 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.

#### G. LIMITATIONS.

1. The City and/or TLC 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 and/or TLC to carry out the above requirements.

3. **Workers' Compensation.** Any and all employees of the City and/or TLC or other persons while engaged in the performance of any work or services required or permitted by the City and/or TLC 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 [City of Minneapolis](#) facility constructed or improved under this Agreement. [Other public agencies may be encumbered by similar provisions under separate agreements.](#)

- J. **CLAIMS.** The City and/or TLC will pay any and all lawful claims arising out of or incidental to the performance of the Project work. The City and/or TLC acknowledges that Mn/DOT is acting only as the City and/or TLC's agent for receipt and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. In all events, the City and/or TLC will indemnify Mn/DOT and hold Mn/DOT harmless from any claims arising out of the Project.

#### II. DUTIES OF Mn/DOT.

- A. **ACCEPTANCE.** Mn/DOT accepts designation as Agent of the City and/or TLC 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 and TLC copies of the required Federal-aid clauses to be included in the proposals solicitation and will provide the required Federal-aid provisions to be included in the proposals.
3. Mn/DOT will review and certify the DBE participation and notify the City and/or TLC when certification is complete.

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 certify 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, within [REDACTED] days of receipt of the request.
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. If 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 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 and/or TLC 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 administer this agreement and to ensure that all payments due to the other party are paid pursuant to the terms of this agreement.

A. The City authorized representative is Jon Wertjes, City of Minneapolis, Room 233 City Hall, 350 S. 5th Street, Minneapolis MN 55415, phone 612-673-2614, 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 651.282.6479, 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 omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs Mn/DOT liability. (Note - Should this include a reference to the tort liability limits of the City?)
- 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 must be in writing and be 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 the City and 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.

STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: Director,  
State Aid for Local Transportation

CFMS Contract No. A- \_\_\_\_\_

Date: \_\_\_\_\_

COMMISSIONER OF ADMINISTRATION

By: \_\_\_\_\_

CITY

Date: \_\_\_\_\_

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

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

