



## Request for City Council Committee Action From the Department of Public Works

**Date:** July 27, 2004  
**To:** Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee  
**Referral to:** Honorable Barb Johnson, Chair Ways & Means Committee  
**Subject:** **Mn/DOT Agreement No. 86814, Federal Participation in Force Account – Richfield Road Project**

### Recommendation:

1. Authorize the appropriate City Officers to execute Minnesota Department of Transportation Agreement No. 86814 to allow the reimbursement of Federal Funds for force account work on the Richfield Road Project S.P. 141-201-02 M.P. STPX 2705(042).

### Previous Directives:

- 2004 capital budget resolution authorizing and appropriating funds for Richfield Road

**Prepared by:** Lisa Cerney, Project Manager, 673-3061

### Approved by:

Klara A. Fabry, P.E., City Engineer, Director of Public Works

### Presenters:

Lisa Cerney, P.E., Project Manager, Engineering Services

### Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.  
(If checked, go directly to Background/Supporting Information)

Action requires an appropriation increase to the Capital Budget

Action requires an appropriation increase to the Operating Budget

Action provides increased revenue for appropriation increase

Action requires use of contingency or reserves

Other financial impact (Explain):

Request provided to the Budget Office when provided to the Committee Coordinator

### Background/Supporting Information:

Public Works is requesting that the proper City Officers be directed to execute Agreement 86814 with Mn/DOT in the amount of \$166,164 to allow the City to use the existing Federal Aid Funds in the amount of \$132,931 and the existing State Aid Funds in the amount of \$33,233 for traffic signal controller installations to be done by City Forces. These installations are required to operate and communicate with the signal systems installed in conjunction with the Richfield Reconstruction Project. These signal systems will replace the existing systems at the intersections of West 39<sup>th</sup> Street and Sheridan Avenue South, Richfield Road and William Berry Parkway and Richfield Road and West 36<sup>th</sup> Street.

The funds for the traffic signal controller installations are a part of the 2004 capital budget resolution authorizing and appropriating funds for Richfield Road.

The signal work on the Richfield Road project is a portion of the overall project. Other work included in the project is removing the existing surface and repaving, bike lanes, new storm drain, catch basins and water treatment chambers, and lighting. This work will be done by a contractor and is scheduled to start in July.

Attachments: Mn/DOT Agreement No. 86814

cc: Rhonda Rae, Public Works  
Jon Wertjes, Public Works  
Steve Mosing, Public Works  
Don Elwood, Public Works  
Lisa Cerney, Public Works  
Council Member Barret Lane, Ward 13  
Council Member Dan Niziolek, Ward 10

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

FOR FEDERAL PARTICIPATION IN FORCE ACCOUNT  
FOR  
S.P. 141-201-02; M.P. STPX 2705(042)

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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 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 reconstruct Richfield Road between West 39<sup>th</sup> Street to Sheridan Avenue. A public interest finding has determined that City of Minneapolis crews can install temporary signals and cabinets more economically as a Force Account than a contract letting, hereinafter referred to as the "Force Account"; and

The Force Account is eligible for the expenditure of federal aid funds, and is identified in Mn/DOT records as State Project 141-201-02, and in Federal Highway Administration ("FHWA") records as Minnesota Project STPX 2705(042); 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 Force Account is \$166,164.

1. It is anticipated that 80% (up to \$ 132,931) of the cost of the Force Account is to be paid from federal funds made available by the FHWA, and that the remaining 20% will be paid by the City. The City will pay any part of the cost or expense of the work that the FHWA does not pay.

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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 furnishing and installing temporary traffic signals and controller cabinets.
  - b) The direct labor charges for City 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 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 owned equipment used by the City and mileage charges for employee owned vehicles used by the City on work performed pursuant to this agreement, at rates reflective of the City actual cost.
  - d) Expenditures for materials, supplies, mechanical data processing and equipment rental, limited to the actual expenditures for the purposes of this agreement.
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 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 \$ 166,164, 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, ("Project Engineer"), to be in responsible charge of the Project and to supervise and direct the work to be performed under any construction contract let for the Project.
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

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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. 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.

#### E. 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 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 must 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 must be included.
  - (f) The invoices will include 100% of eligible charges applicable to the Force account 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.

F. 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.

G. 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.

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

I. CLAIMS. The City will pay any and all lawful claims arising out of or incidental to the performance of the Project work. The City acknowledges that Mn/DOT is acting only as the City'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 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 for the receipt and disbursement of federal funds and will act in accordance herewith.

B. PROJECT ACTIVITIES. 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.

C. PAYMENTS.

1. Mn/DOT will receive the federal funds to be 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.
  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 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 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 Lisa Cerney, City of Minneapolis, 309 Second Ave. South, Room 300, Minneapolis, Mn. 55401-2268 or her 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.
- 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.

Remainder of this page left intentionally blank

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.

By: *Arty Keller*

Date: 7-8-2007

CFMS Contract No. A- 5-8423

CITY

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: \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

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

Title: Director, \_\_\_\_\_  
State Aid for Local Transportation

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

COMMISSIONER OF ADMINISTRATION

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

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