

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

FOR FEDERAL PARTICIPATION IN  
FORCE ACCOUNT CONSTRUCTION  
FOR  
S.P. 27-603-34; M.P. TEAX 2705(136)

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This agreement is entered into by and between HENNEPIN COUNTY ("County") and City of Minneapolis ("City") and the State of Minnesota acting through its Commissioner of Transportation ("Mn/DOT").

Agency Agreement No. 84122 which has been executed between the County and Mn/DOT, appoints Mn/DOT as the County's agent to receive and disburse transportation related federal funds, and sets forth duties and responsibilities for letting, payment, and other procedures for a federally funded contract let by the County; and

Pursuant to Minnesota Statutes Section 161.36, the County and City desire Mn/DOT to act as their agent to accept and disburse federal funds for the construction, improvement, or enhancement of transportation related projects financed in whole or in part by federal funds; and

The enhancement of County State Aid Highway (CSAH) 3 between Hiawatha Avenue South and West River Parkway, hereinafter referred to as the "Project", has been determined to be eligible for the expenditure of federal aid funds and is programmed in the approved federally approved STIP for the fiscal year 2005; and is identified in Mn/DOT records as State Project 27-603-34, and in Federal Highway Administration ("FHWA") records as Minnesota Project TEAX 2705(136); and

The County and City are proposing a federal aid project to reconstruct and enhance CSAH 3/Lake Street between Hiawatha Avenue and West River Parkway. A public interest finding has determined that the necessary signing can be completed more economically as a Force Account by the City of Minneapolis, 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 27-603-34, and in Federal Highway Administration ("FHWA") records as Minnesota Project TEAX 2705(136); 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 COUNTY.

A. DESIGNATION. The County and City designate Mn/DOT to act as its agent to accept and disburse federal funds made available for the project. The County shall be the lead local agency on the project.

B. The County will let a contract and construct the Project in accordance with Agency Agreement No. 84122. Payment provisions for federally eligible costs will be as stated herein. It is estimated that the total cost of the Project is \$1,650,509.86 and that the anticipated federal funding will be \$1,008,336.00. The remaining share will be paid by the County and City per their agreement No. PW 37-20-05.

C. ELIGIBILITY/COSTS FOR FORCE ACCOUNT.

1. The estimated cost of the Force Account is \$8,026.21. It is anticipated that 80% (up to \$6,420.97) of the cost of the Force Account may be paid from federal funds made available by the FHWA, and that the remaining 20% will be paid by the County and City per their Agreement No. PW 37-20-05. The County and 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 County and City prior to authorization of the federal funds, will not be eligible for federal participation. The County and City will pay any part of the cost or expense of the Project that is not paid by federal funds.
3. Eligible cost and expense for the Force Account, if approved, may consist of the following:
  - a) The cost of installation and modification of street sign fabrication, removal, installation, and wayfinding signage.
  - 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 the 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 County or 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 \$8,026.21, the County must request the preparation and execution of a supplement to this Agreement, prior to incurring such costs. Request for reimbursement of the federal aid share of the federally eligible costs will be made after funding and obligation authority are available.
- D. If the Project is converted to federal funding before completion and final acceptance, requests for reimbursement will occur as partial estimated in accordance with Agency Agreement No. 84122.

E. STAFFING.

- 1. The County will designate a publicly employed registered engineer, ("Project Engineer"), to be in charge of the Project and to supervise and direct the work to be performed under any construction contract let for the Project. If County elects to use a private consultant for engineering services, the County will provide a qualified, full-time public employee of the County, to be in charge of the Project. The services of the County to be performed pursuant to this Agreement may not be assigned, sublet, or transferred unless the County 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 County from its primary responsibility for performance of the work.
- 2. During the progress of the work on the Project, the County 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 County 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 County will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.

#### F. CONTRACT ADMINISTRATION.

1. The County 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 County will prepare reports, keep records, and perform work so as to enable Mn/DOT to collect the federal aid sought by the County. The County 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.

#### G. 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 County and City. The County and City will pay any part of the cost or expense of the Project that is not paid by federal funds.
2. The County 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 County participation can be applied to the total costs.

4. Following certification by the Project Engineer of the final estimate, the County may request reimbursement for costs eligible for federal funds. The County'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.

#### H. LIMITATIONS.

1. The County and City will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
2. Nondiscrimination. It is the policy of the Federal Highway Administration 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 County and City to carry out the above requirements.
3. Workers' Compensation. Any and all employees of the County and City or other persons while engaged in the performance of any work or services required or permitted by the County and 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 County and City will require proof of Workers' Compensation Insurance from any contractor and sub-contractor.

#### I. AUDIT.

1. The County and 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 County and 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 County and City will be responsible for any costs associated with the performance of the audit.

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

K. CLAIMS. The County and City acknowledge that Mn/DOT is acting only as the County's and 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 County and 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 County and 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 designation as an Advance Construction project and for reimbursement of eligible costs pursuant to the terms of this agreement.

C. Mn/DOT will request the conversion of the Project to federal funding of eligible costs, when funding and obligation authority are available.

D. At such time that the Project is converted to federal funding and such funding is received by Mn/DOT, Mn/DOT will reimburse to the County the federal aid share of the federally eligible costs, previously provided by the County and City. Reimbursement for County or Municipal State Aid funds used in lieu of federal funds, will be deposited in the County's and City's State Aid Accounts. Reimbursement for other County and City funds used in lieu of federal funds will be forwarded to the County and City.

### E. 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 County, 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 County 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 County may continue the work with local (either State Aid or non-State Aid) funds only, until such time as Mn/DOT is able to process the federal aid reimbursement requests.

F. **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.

G. **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 County 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. **DUTIES OF THE CITY.** The City will be responsible for the following Force Account activities: S.P. 27-603-34 – CSAH 3 ENHANCEMENT. In conjunction with the introduction of street side enhancements, the City will fabricate and install street (name) signs and way finding signs that connect CSAH 3 with area resources such as the Midtown Greenway and regional trails and parks.

IV. **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 County authorized representative is James Grube, Hennepin County, 1600 Prairie Drive, Medina, Minnesota 55340, phone 612.596.0307, or his successor.

B. The City authorized representative is Jon Wertjes, Director of Traffic & Parking Services, City of Minneapolis Department of Public Works, City Hall – Room 233, 350 South 5<sup>th</sup> Street, Minneapolis, MN 55415-1316, or his successor.

C. 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.

V. **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. Minnesota Statutes Section 466 et. Seq. governs County and City liability.

- VI. ASSIGNMENT. Neither party will assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- VII. 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.
- VIII. TERM OF AGREEMENT. This Agreement is be effective upon execution by the County and 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.
- IX. TERMINATION. This Agreement may be terminated by the County, 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 County and City as set forth in this Agreement. In the event of such a termination the County or 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.