

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF ST. MICHAEL
AND
WRIGHT COUNTY
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (S.P.):	<u>8612-26</u>	Original Amount Receivable from the County <u>\$122,876.78</u>
Trunk Highway Number (T.H.):	<u>241=241</u>	
State Project Number (S.P.):	<u>086-619-035</u>	
State Aid Project Number (S.A.P.):	<u>227-020-011</u>	
Federal Project Number:	<u>STBG 8622(227)</u>	
Signal System "A" ID:	<u>4370126</u>	
Signal System "B" ID:	<u>4370125</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), the City of St. Michael, acting through its City Council ("City"), and Wright County, acting through its Board of Commissioners ("County").

Recitals

1. The County will perform grading, concrete and bituminous surfacing, signal system, watermain, storm sewer, and ADA improvements construction and other associated construction upon, along, and adjacent to County State Aid Highway (C.S.A.H.) No. 19 from Chestnut Avenue Northeast to Ash Avenue Northeast according to County-prepared plans, specifications, and special provisions designated by the State as State Project No. 8612-26 (T.H. 241=241) ("Project"); and
2. The County requests the State provide State Furnished Materials for the County's signal system construction and the State is willing to provide said materials; and
3. The County will reimburse the State for the full cost of the State Furnished Materials; and
4. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of Terms.** 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 or termination of this Agreement, including, without limitation, the following clauses: 2.4. State Ownership of Improvements; 5. Maintenance by the City; 10. Liability; Worker Compensation Claims; Insurance; 12. State Audits;

13. Government Data Practices; 14. Governing Law; Jurisdiction; Venue; and 16. Force Majeure. The terms and conditions set forth in Article 6. Signal Systems and EVP Systems Operation and Maintenance will survive the expiration of this Agreement, but may be terminated by another agreement between the parties.

- 1.4. Plans, Specifications, and Special Provisions.** State-approved County plans, specifications, and special provisions designated by the State as State Project No. 8612-26 (T.H. 241=241) are on file in the office of the County's Engineer and incorporated into this Agreement by reference ("Project Plans").

2. Right-of-Way Use

- 2.1. Limited Right to Occupy.** The State grants to the County (and its contractors and consultants) the right to occupy Trunk Highway Right-of-Way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction, and may be revoked by the State at any time, with or without cause. Cause for revoking this right of occupancy includes, but is not limited to, breaching the terms of this or any other agreement (relevant to this project) with the State, failing to provide adequate traffic control or other safety measures, failing to perform the construction properly and in a timely manner, and failing to observe applicable environmental laws or terms of applicable permits. The State will have no liability to the County (or its contractors or consultants) for revoking this right of occupancy.
- 2.2. State Access; Suspension of Work; Remedial Measures.** The State's District Engineer or assigned representative retains the right to enter and inspect the Trunk Highway Right-of-Way (including the construction being performed on such right-of-way) at any time and without notice to the County or its contractor(s). If the State determines (in its sole discretion) that the construction is not being performed in a proper or timely manner, or that environmental laws (or the terms of permits) are not being complied with, or that traffic control or other necessary safety measures are not being properly implemented, then the State may notify and require the County (and its contractors and consultants) to suspend their operations until the County (and its contractors and consultants) take all necessary actions to rectify the situation to the satisfaction of the State. The State will have no liability to the County (or its contractors or consultants) for exercising or failing to exercise its rights under this provision.
- 2.3. Traffic Control; Worker Safety.** While the City and the County (and their contractors and consultants) are occupying the State right-of-way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (<http://www.dot.state.mn.us/trafficeng/workzone/index.html>). All City, County, contractor, and consultant personnel occupying the State's Right-of-Way must be provided with required reflective clothing and hats.
- 2.4. State Ownership of Improvements.** The State will retain ownership of its Trunk Highway Right-of-Way, including any improvements made to such right-of-way under this Agreement, unless otherwise noted. The warranties and guarantees made by the County's contractor with respect to such improvements (if any) will flow to the State. The County will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the County's consultants, and contractor (including its sureties) for non-performance of contract work, for design errors and omissions, and for defects in materials and workmanship. Upon request of the State, the County will undertake such actions as are reasonably necessary to transfer or assign contract rights to the State and to permit subrogation by the State with respect to claims against the County's consultants and contractors.
- 2.5. Utility Relocation.** The State authorizes the County to issue Notices and Orders for utility relocation in accordance with Minnesota Statutes §161.45 and Minnesota Rules Part 8810.3100 through 8810.3600.

3. Contract Award and Construction

3.1. *Direction, Supervision, and Inspection of Construction.*

- A. The contract construction will be under the direction of the County and under the supervision of a registered professional engineer; however, the State participation construction covered under this Agreement will be open to inspection by the State District Engineer's authorized representatives. The County will give the District Engineer at Baxter five days' notice of its intention to start the contract construction.
- B. Responsibility for the control of materials for the contract construction will be on the County and its contractor and will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".

3.2. *Contaminated Soils and Groundwater within the State's Cost Participation Limits.*

- A. **24 Hour Notification.** The County will notify the State District Engineer's authorized representative a minimum of 24 hours prior to the contractor beginning the excavation and removal of any contaminated soils that have been identified within the Project limits.
- B. **Immediate Notification.** The County will notify the State District Engineer's authorized representative immediately upon the contractor encountering contaminated soils and/or groundwater in areas that are within the Project limits. The County will confer with the State as to the handling, disposal, and any other issues related to contaminated materials found on State Right-of-Way or import of materials onto State Right-of-Way.
- C. **Environmental Consultant.** The County will provide for an Environmental Consultant to be on site to observe and document the excavation, handling and disposal of contaminated soils that have been identified within the Project limits. If the contractor encounters contaminated materials in areas not previously identified and upon notification by the County to the State, the County hired Environmental Consultant will be provided to collect and analyze soil and/or groundwater samples to determine contaminant levels, work with the landfill for disposal of the soil waste, and provide oversight of any soil and groundwater handling and disposal. The County will not allow the contractor to excavate any contaminated soil unless the Environmental Consultant is present.

3.3. Completion of Construction. The County will cause the contract construction to be started and completed according to the time schedule in the construction contract special provisions. The completion date for the contract construction may be extended, by an exchange of letters between the appropriate County official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.

3.4. Compliance with Laws, Ordinances, and Regulations. The County will comply and cause its contractor to comply with all Federal, State, and Local laws, and all applicable ordinances and regulations. With respect only to that portion of work performed on the State's Trunk Highway Right-of-Way, the County will not require the contractor to follow local ordinances or to obtain local permits.

4. Right-of-Way; Easements; Permits

4.1. The County will obtain all rights-of-way, easements, construction permits, and any other permits and sanctions that may be required in connection with the local and trunk highway portions of the contract construction.

- 4.2. The County will convey to the State by quit claim deed, all newly acquired rights needed for the continuing operation and maintenance of the Trunk Highway, if any, upon completion of the Project, at no cost or expense to the State.
- 4.3. The County will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings, and depiction of utilities affected by the contract construction.
- 4.4. The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City to be constructed upon and within the Trunk Highway Right-of-Way. Applications for permits will be made on State form "Application for Utility Permit on Trunk Highway Right-of-Way" (Form 2525).

5. Maintenance by the City

Upon completion of the Project, the City will provide the following without cost or expense to the State:

- 5.1. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 5.2. **Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, pedestrian crosswalk markings, vegetation control of boulevards (if any), and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
- 5.3. **Additional Drainage.** No party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the owner of the storm sewer facilities.

6. Signal Systems and EVP Systems Operation and Maintenance

Operation and maintenance responsibilities will be as follows for the Signal Systems and EVP Systems on T.H. 241 westbound (Central Ave. E.) at C.S.A.H. 19 (Signal System "A"), and on T.H. 241 eastbound (St. Michael Pkwy. E.) at C.S.A.H. 19 (Signal System "B"), and for the Interconnect on C.S.A.H. 19 from T.H. 241 westbound (Central Ave. E.) to T.H. 241 eastbound (St. Michael Pkwy. E.).

6.1. City Responsibilities.

- A. **Power.** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pad(s) or pole(s) and will pay all monthly electrical service expenses necessary to operate the Signal Systems, EVP Systems, and Interconnect.
- B. **Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.
 - i. Maintain the signal pole mounted LED luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.
 - ii. Replace the Signal Systems LED indications. Replacing LED indications consists of replacing each LED indication when it reaches end of life per the MnDOT Traffic Engineering Manual or fails or no longer meets Institute of Traffic Engineers (ITE) standards for light output.
 - iii. Clean the Signal Systems controller cabinet and service cabinet exteriors.

- iv. Clean and paint the Signal Systems and luminaire mast arm extensions. Painting will be in accordance with MnDOT Standard Specification 2565.3U, unless approved by the State's District Traffic Engineer.
- v. Paint and maintain the pedestrian crosswalk markings.
- vi. Reimburse the State for the costs associated with battery replacement for the battery back-up system which includes battery purchase, installation, and disposal.

6.2. *State Responsibilities.*

- A. ***Interconnect; Timing; Other Maintenance.*** The State will maintain the interconnect and signing, and perform all other Signal System, APS, and signal pole luminaire circuit maintenance without cost to the City. All Signal System timing will be determined by the State, and no changes will be made without the State's approval.
- B. ***Battery Backup and Replacement Batteries.*** Perform all tasks associated with battery replacement for the battery backup system, which includes battery purchase, installation, and disposal, and maintain the remainder of the battery backup system and invoice the City 100% of the costs associated with this work.
- C. ***EVP Systems Operation.*** The EVP Systems will be installed, operated, maintained, and removed according to the following conditions and requirements:
 - i. All maintenance of the EVP Systems must be done by State forces.
 - ii. Emitter units may be installed only on authorized emergency vehicles, as defined in Minnesota Statutes § 169.011, Subdivision 3. Authorized emergency vehicles may use emitter units only when responding to an emergency. The City will provide the State's District Engineer or their designated representative a list of all vehicles with emitter units, if requested by the State.
 - iii. Malfunction of the EVP Systems must be reported to the State immediately.
 - iv. In the event the EVP Systems or its components are, in the opinion of the State, being misused or the conditions set forth in Paragraph ii. above are violated, and such misuse or violation continues after the City receives written notice from the State, the State may remove the EVP Systems. Upon removal of the EVP Systems pursuant to this Paragraph, all of its parts and components become the property of the State.
 - v. All timing of the EVP Systems will be determined by the State.

6.3. ***Right-of-Way Access.*** Each party authorizes the other party to enter upon their respective public right-of-way to perform the maintenance activities described in this Agreement.

6.4. ***Related Agreements.*** This Agreement will supersede and terminate the operation and maintenance terms of Agreement No. 79342R, dated July 28, 2000, between the State, the City, and the County, for the intersection of T.H. 241 westbound (Central Ave. E.) at C.S.A.H. 19.

This Agreement will supersede and terminate the operation and maintenance terms of Agreement No. 92799, dated July 8, 2008, between the State and the City, for the intersection of T.H. 241 eastbound (St. Michael Pkwy. E.) at C.S.A.H. 19.

6.5. ***State Furnished Materials.*** The State will furnish two traffic control cabinets, two video detection systems with six detection cameras, and two fiber termination panels ("State Furnished Materials"), according to

the Project Plans, to operate the traffic control signal systems covered under this Agreement. The County's lump sum share for State Furnished Materials is **\$122,876.78**.

7. County Cost and Payment by the County

7.1. County Cost. **\$122,876.78** is the County's full and complete lump sum cost for State Furnished Materials construction.

7.2. Conditions of Payment. The County will pay the State the full and complete lump sum amount after the following conditions have been met:

- A. Execution of this Agreement and transmittal to the County.
- B. The County's receipt of a written request from the State for the advancement of funds.

8. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

8.1. The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: malaki.ruranika@state.mn.us

8.2. The City's Authorized Representative will be:

Name, Title: Steve Bot, City Administrator/Public Works Director (or successor)
 Address: 11800 Town Center Drive Northeast, St. Michael, MN 55376
 Telephone: (763) 416-7931
 E-Mail: sbot@ci.st-michael.mn.us

8.3. The County's Authorized Representative will be:

Name, Title: Virgil Hawkins, County Engineer (or successor)
 Address: 3600 Braddock Avenue Northeast, Buffalo, MN 55313
 Telephone: (763) 682-7388
 E-Mail: virgil.hawkins@co.wright.mn.us

9. Assignment; Amendments; Waiver; Contract Complete

9.1. Assignment. No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

9.2. 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 the original Agreement, or their successors in office.

9.3. Waiver. If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

9.4. Contract Complete. This Agreement contains all prior negotiations and agreements between the State, the City, and the County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

10. Liability; Worker Compensation Claims; Insurance

- 10.1.** Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City and County. Notwithstanding the foregoing, the City and County will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys' fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's or County's contractor(s) or consultant(s) or by a third party because of an act or omission by the City, the County, or their contractor(s) or consultant(s).
- 10.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 10.3.** The County may require its contractor to carry insurance to cover claims for damages asserted against the County's contractor.

11. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

12. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's and County's books, records, documents, accounting procedures, and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

13. Government Data Practices

The City, County, and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City and the County under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City, the County, or the State.

14. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15. Termination; Suspension

- 15.1. *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.
- 15.2. *Termination for Insufficient Funding.*** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the City and the County. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City and the County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are

available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

15.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

16. Force Majeure

No party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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CITY OF ST. MICHAEL

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

WRIGHT COUNTY

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.