

Prepared by the
Utility Agreements and Permits Unit
(Receivable)
(\$522.59)

S.P. 8825-1334 (T.H. 5)
Location: at Site 13 and Site 15 from Shepard
Road to Edgumbe Road in the City of Saint
Paul
Utility Owner: City of Saint Paul
MnDOT Agreement Number 1063291

AGENCY AGREEMENT

This Agreement Number 1063291 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation and City of Saint Paul, including its agents, contractors, and subcontractors (Utility Owner). This Agreement outlines the separate responsibilities of the State and the Utility Owner as part of a construction project.

RECITALS

The State plans to let a contract to construct State Project Number 8825-1334 (Project) on Trunk Highway Number 5. The Project is located at Site 13 and Site 15 from Shepard Road to Edgumbe Road in the City of Saint Paul.

The Utility Owner owns and operates lighting system conduits, their fixtures, and related equipment (Facilities) that are located on property where the State will construct the Project.

The Project will require the removal and reinstallation of the Utility Owner's Facilities. If the Utility Owner removed and replaced the Facilities or let a separate contract to relocate them, that removal and reinstallation work would interfere with the Project. The Utility Owner has requested that the State perform the work as part of the Project. Including the Utility Owner's work in the State's Construction contract may eliminate duplication of services, facilitate activity coordination, simplify supervision, and expedite Project construction.

Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the Utility Owner appoints the State as its agent to design and construct the removal and reinstallation work as part of the Project and the State may remove and replace the Facilities as part of the Project on the trunk highway system.

State law requires a written agreement between the State and the Utility Owner that describes their separate responsibilities.

AGREEMENT

I. Term/Termination

- A. *Effective Date:* This Agreement is effective on the date the State obtains all signatures required by Minnesota Statutes, section 16C.05, subdivision 2.
- B. *Commencement of Work:* Upon notice of Agreement approval, the Utility Owner must promptly provide the State (and the State's Contractor (Contractor)) with any information necessary to commence and successfully prosecute the utility work according to the terms of the Notice and Order and a work schedule the State's Project Engineer (Project Engineer) approves.
- C. *Expiration Date:* This Agreement will expire on the date that all obligations, excluding the Utility Owner's ongoing maintenance obligations, have been satisfactorily fulfilled.
- D. *Termination by the State:* The State may terminate this Agreement at any time, with or without cause, on 30 calendar days' written notice to the Utility Owner. Upon termination, the State will be entitled to payment, on a pro rata basis, for satisfactorily performed services. The termination of this Agreement does not relieve the Utility Owner of its obligations under the Notice and Order.
- E. *Survival of Terms:* The following articles survive this Agreement's expiration or termination: (III) Utility Owner's Ongoing Maintenance Requirements; (V) Indemnification; and (VII) Governing Terms.

II. Description of Work Procedures

- A. *Plans:* The State will provide removal and reinstallation plans. These plans, which are attached to this Agreement as Exhibit A, indicate the present and proposed locations of the Facilities.
 - 1. If any changes to the plans or character of the work become necessary, the State and the Utility Owner must agree to the changes before the State makes (or directs the Contractor to make) them. If these changes require an amendment or supplement to this Agreement, the parties will negotiate such amendment or supplement in good faith, and the State is not obligated to commence such changes until such amendment or supplement is fully executed. The State will enter into such supplemental agreements with its Contractor as the State deems necessary to implement such changes.

2. The Utility Owner authorizes the Project Engineer to make any minor field changes and adjustments to the plans, specifications, and special provisions as the State deems necessary for efficient Project construction. The Utility Owner authorizes the State, on its behalf, to enter into supplemental agreements with the Contractor as necessary to implement these changes.

B. *State's Responsibilities*

1. The State will:
 - a. Advertise the Project for bids; and
 - b. Award a construction contract for the Project. This Project will include the work.
2. The Project Engineer will supervise and direct the Project, including the removal and reinstallation work, but the Utility Owner may inspect the work periodically. If the Utility Owner finds that any completed removal and reinstallation work is defective, it must inform the Project Engineer of these defects in writing; however, any recommendations the Utility Owner makes are not binding to the State. The State has the exclusive right to determine whether the Contractor has performed the work according to the plans, specifications, and special provisions.
3. The Project Engineer and the Utility Owner will perform a final inspection of the removal and reinstallation work. Once the State has accepted the removal and reinstallation work, the Project Engineer will inform the Utility Owner in writing, and the Utility Owner will assume ownership of the Facilities.

C. *Deletion of Work:* If the Utility Owner decides to delete the removal and reinstallation work from the Project, the Utility Owner will:

1. Pay the State the design engineering cost in Article IV.B.3;
2. Be subject to the Notice and Order and remove and/or relocate the Facilities; and
3. Defend (at its own expense and to the extent Minnesota's Attorney General permits) indemnify, save, and hold the State and all of its agents and employees harmless of and from all claims, demands, actions, or causes of action that deleting the removal and reinstallation work causes. This obligation to indemnify extends to any attorney's fees.

- D. *Risk*: Risk of loss of partial or complete removal and reinstallation work will be on the Contractor or the Utility Owner as the current *Standard Specifications for Construction* set forth.

III. Utility Owner's Ongoing Maintenance Requirements

- A. No more than 90 calendar days after receiving as-built plans for the removal and reinstallation from the State, the Utility Owner must submit one copy of the State's Application for Utility Accommodation on Trunk Highway Right of Way, Form 2525 (Permit), including two copies of "as-built" sketches, for all Facilities within the State's trunk highway right of way to the Utilities Engineer.
- B. Once construction is complete, the Utility Owner must maintain the Facilities at its own expense. The Utility Owner must follow the terms of the Permit when it performs any maintenance work.
- C. The Utility Owner may open and disturb the trunk highway right of way without a permit in the case of an emergency that is dangerous to the public and requires immediate attention. Upon learning of the emergency, the Utility Owner must immediately notify the State Patrol. The Utility Owner must take all necessary and reasonable safety measures to protect the public and must cooperate fully with the State Patrol. In this event, the Utility Owner must request a permit from the proper authority no later than the working day after it begins working in the right of way.

IV. Payment

- A. The State will determine the cost of the removal and reinstallation on a contract-unit-price basis. The Utility Owner authorizes the State to pay the Contractor directly for the removal and reinstallation work. As Exhibit B shows, the estimated cost of the Utility Owner's removal and reinstallation work is \$522.59.
- B. The Utility Owner agrees to pay the State the total cost it incurs to relocate the Facilities. The total cost will include:
1. The construction cost, which consists of all of the Contractor's bid item costs to satisfactorily relocate the Facilities according to the plans, specifications, and special provisions;
 2. The construction engineering cost, which is equal to 8 percent of the construction cost; and

3. The design engineering cost, which is equal to 3 percent of the construction cost.
- C. After acceptance of the bids, the State will notify the Utility Owner of the total cost by providing a written cost schedule.
1. The Utility Owner must accept or reject the total cost no more than 10 calendar days after receiving the cost schedule. If the Utility Owner does not provide this notification after 10 days, the State will consider the lack of response to be the Utility Owner's acceptance of the total cost and the State will proceed with the work.
 2. If the Utility Owner chooses to delete its work from the State's contract, it must still pay the State the design engineering cost specified in Article IV.A. The Utility Owner will be obligated to remove or relocate its Facilities according to the terms of the Notice and Order.
- D. The State will issue the Utility Owner an invoice for the amount specified in the cost schedule. Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the Utility Owner will promptly reimburse the State for the removal and reinstallation costs.
- E. After the Contractor has completed the work required under its contract and the State has accepted the work, the State will prepare a final computation of the amount due from the Utility Owner.
1. If the final total amount is greater than the amount the State has already received from the Utility Owner, the Utility Owner must promptly pay the difference, without interest, to the State.
 2. If the final total amount is less than the amount the State has already received from the Utility Owner, the State must pay the difference without interest, to the Utility Owner.
- F. The final total cost constitutes payment in full for all removal and reinstallation work according to this Agreement. This amount also constitutes payment in full for any and all damages, claims, or causes of action of any kind or nature that the Utility Owner may have relating to the removal and reinstallation of the Facilities.

V. Indemnification

- A. The Utility Owner will defend (at its own expense and to the extent Minnesota's Attorney General allows), indemnify, save, and hold the State and all of its agents and

employees harmless of and from all claims, demands, actions, or causes of action arising from the Utility Owner's acts and omissions and from the State's (and its Contractor's) use of plans, designs, shop drawings, specifications, and special provisions prepared, reviewed, or approved by the Utility Owner. This indemnity obligation extends to any attorney's fees the State incurs in seeking to enforce this obligation, and in defending against any claims covered by this indemnity clause.

- B. The Utility Owner does not waive any defense or immunity of third parties. The Utility Owner, in defending any action on behalf of the State, will be entitled to assert every defense or immunity that the State could assert on its own behalf.

VI. Nondiscrimination

Minnesota Statutes, section 181.59 and any applicable local ordinances pertaining to civil rights and nondiscrimination are considered part of this Agreement.

VII. Governing Terms

- A. *Data Practices:* All parties must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13) as it applies to any data that a party to this Agreement receives, collects, stores, or disseminates under it. The Act provides civil liability for failure to comply with its requirements.
- B. *Applicable Law:* 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 Ramsey County, Minnesota.
- C. *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 the provision or any subsequent breach of that provision.
- D. *Merger:* This Agreement contains all negotiations and agreements between the State and the Utility Owner with respect to the subject matter it contains. No prior understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- E. *Assignment:* The Utility Owner may neither assign nor transfer any rights or obligations under this Agreement without the State's consent and a fully executed assignment agreement. To be valid, the assignment agreement must be signed and approved by the same parties who signed and approved this Agreement, or their successors in office.

- F. *Amendments:* Any amendment to this Agreement must be in writing. An amendment will not be effective until the same parties who signed and approved this Agreement, or their successors in office, sign and approve the amendment.
- G. *Incorporation of Exhibits:* All exhibits attached to this Agreement are incorporated into this Agreement.
- H. *Counterparts.* The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- I. *Electronic Signatures.* The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

The remainder of this page was left blank intentionally.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed to be bound hereby.

CITY OF SAINT PAUL

By: _____
Director of Public Works

Date: _____

By: _____
Director of Financial Services

Date: _____

By: _____
Mayor

Date: _____

Approved as to form:

By: _____
Assistant City Attorney

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

Department of Transportation

Recommended for Approval:

Approved:

By: _____
Metro Utility Coordinator

By: _____
Director, Office of Land Management

Date: _____

Date: _____

Department of Administration

By: _____

Date: _____