

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF TYLER
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (S.P.):	<u>8828-222</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>14=007</u>	<u>\$30,024.00</u>
Federal Project Number:	<u>STPF 8821(115)</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of Tyler acting through its City Council ("City").

Recitals

1. The State will perform ADA Improvements construction and other associated construction upon, along, and adjacent to multiple trunk highways, including Trunk Highway No. 14 from C.S.A.H. No. 8 to Danebod Village Drive in the City of Tyler according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 8828-222 (T.H. 14=007) ("Project"); and
2. The City has requested the State include in its Project Pedestrian Crosswalk Flasher System construction; and
3. The City will participate in the costs of the Pedestrian Crosswalk Flasher System construction and associated construction engineering; and
4. The City will participate in the maintenance of bench, Pedestrian Crosswalk Flasher System, and sidewalk construction; and
5. 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: 3. Maintenance by the City; 9. Liability; Worker Compensation Claims; 12. State Audits; 13. Government Data Practices; 15. Governing Law; Jurisdiction; Venue; and 17. Force Majeure.
 - 1.4. **Plans, Specifications, and Special Provisions.** Plans, specifications and special provisions designated by the State as State Project No. 8828-222 (T.H. 14=007) are on file in the office of the Commissioner of

Transportation at St. Paul, Minnesota, and Incorporated into this Agreement by reference ("Project Plans").

- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the City Administrator and attached and incorporated into this Agreement.

2. Construction by the State

- 2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.

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

- A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract, and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
- B. **Inspection by the City.** The City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the City participation construction covered under this Agreement.

2.3. **Plan Changes, Additional Construction, Etc.**

- A. The State will make changes in the Project Plans and contract construction, which may include the City participation construction covered under this Agreement, and will enter into any necessary addenda and change orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. The State District Engineer's authorized representative will inform the appropriate City official of any proposed addenda and change orders to the construction contract that will affect the City participation construction covered under this Agreement.
- B. The City may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter(s) with the State. If the State determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the project, the State will cause the additional work or plan changes to be made.

- 2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner.

- 2.5. **Permits.** The City will obtain, through the District's Right-of-Way Area Manager, a Limited Use Permit (L.U.P.), currently L.U.P. 4102-0004, to cover the City's liability responsibilities of the bench and amenity zone (as defined in the L.U.P.) to be constructed upon the State Right-of-Way.

3. Maintenance by the City

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

- 3.1. **Bench and Amenity Zone.** Maintenance of the bench and amenity zone to be constructed within the City limits. Maintenance includes, but is not limited to, snow, ice, and debris removal and any other activities necessary to perpetuate the bench and amenity zone in a safe, useable, and aesthetically acceptable condition. The Limited Use Permit, currently L.U.P. 4102-0004, will further address maintenance and liability responsibilities.
 - 3.2. **Sidewalks.** Maintenance of any sidewalk construction within the City limits, 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, cross street 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.
 - 3.3. **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 other party.
4. **Pedestrian Crosswalk Flasher System Power, Ownership, Operation, Maintenance, and Compliance**
- Power, ownership, operation, maintenance, and compliance responsibilities will be as follows for the new Pedestrian Crosswalk Flasher System on T.H. 14 at Kaye Street:
- 4.1. **Power.** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly service expenses necessary to operate the Pedestrian Crosswalk Flasher System.
 - 4.2. **Ownership, Operation, and Maintenance.** Upon completion of this project, the City will own the Pedestrian Crosswalk Flasher System. The City will operate and maintain the Pedestrian Crosswalk Flasher System, perform all Gopher State One Call locating, and be responsible for future system replacement, all at the City's cost and expense. The maintenance includes, but is not limited to: snow, ice, and debris removal of the pedestrian landings, associated signing, crosswalk pavement markings, and lighting without cost or expense to the State. The City will perform all system maintenance in a timely manner.
 - 4.3. **Compliance.** The City will also be responsible for replacement or upgrades to meet compliance of current and future ADA requirements without cost or expense to the State. If the City fails to comply with the maintenance terms or ADA requirements, or if a safety issue develops, the State may require the City to remove the Pedestrian Crosswalk Flasher System or the State may remove it at the City's cost.
5. **Basis of City Cost**
- 5.1. **Schedule "I".** The Preliminary Schedule "I" includes all anticipated City participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.
 - 5.2. **City Participation Construction.** The City will participate in the following at the percentages indicated. The construction includes the City's bid-based lump sum proportionate share of item costs for mobilization and traffic control.
 - A. 100 Percent will be the City's rate of cost participation in all of the Pedestrian Crosswalk Flasher System construction. The construction includes, but is not limited to, those construction items tabulated on Sheets No. 2 through No. 3 of the Preliminary Schedule "I".

5.3. **Construction Engineering Costs.** The City will pay a construction engineering charge equal to 8 percent of the total City participation construction covered under this Agreement.

5.4. **Plan Changes, Additional Construction, Etc.** The City will share in the costs of construction contract addenda and change orders that are necessary to complete the City participation construction covered under this Agreement, including any City requested additional work and plan changes.

The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, construction contract addenda, change orders, and associated construction engineering before the completion of the contract construction.

5.5. **Liquidated Damages.** All liquidated damages assessed the State's contractor in connection with the construction contract will result in a credit shared by each party in the same proportion as their total construction cost share covered under this Agreement is to the total contract construction cost before any deduction for liquidated damages.

6. City Cost and Payment by the City

6.1. **City Cost.** \$30,024.00 is the City's estimated share of the costs of the contract construction and the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.

6.2. **Conditions of Payment.** The City will pay the State the City's total estimated construction and construction engineering cost share, as shown in the Revised Schedule "I", after the following conditions have been met:

- A. Execution of this Agreement and transmittal to the City, including a copy of the Revised Schedule "I".
- B. The City's receipt of a written request from the State for the advancement of funds.

6.3. **Acceptance of the City's Cost and Completed Construction.** The computation by the State of the amount due from the City will be final, binding, and conclusive. Acceptance by the State of the completed contract construction will be final, binding, and conclusive upon the City as to the satisfactory completion of the contract construction.

6.4. **Final Payment by the City.** Upon completion of all contract construction and upon computation of the final amount due the State's contractor, the State will prepare a Final Schedule "I" and submit a copy to the City. The Final Schedule "I" will be based on final quantities, and include all City participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the City participation construction exceeds the amount of funds advanced by the City, the City will pay the difference to the State without interest. If the final cost of the City participation construction is less than the amount of funds advanced by the City, the State will refund the difference to the City without interest.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

7. 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.

7.1. 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

7.2. The City's Authorized Representative will be:

Name, Title: Stephanle LaBrune, City Administrator (or successor)
Address: 230 North Tyler Street, Tyler, MN 56178
Telephone: (507) 247-5556
E-Mail: cityadmin@heartlandpower.org

8. Assignment; Amendments; Waiver; Contract Complete

- 8.1. **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.
- 8.2. **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.
- 8.3. **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.
- 8.4. **Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

9. Liability; Worker Compensation Claims

- 9.1. 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, 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.
- 9.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

10. Nondiscrimination

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

11. Title VI/Non-discrimination Assurances.

The City agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docid=11149035. The City will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. The State may conduct a review of the City's compliance with this provision. The City must cooperate with the State throughout the review process by supplying all requested information and documentation to the State, making

City staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by the State.

12. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City'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 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 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 or the State.

14. Telecommunications Certification.

By signing this agreement the City certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the City does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The City will include this certification as a flow down clause in any contract related to this agreement.

15. 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.

16. Termination; Suspension

16.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

16.2. *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 performance of contract construction under the Project. Termination must be by written or fax notice to the City.

16.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities and performance of work authorized through this Agreement.

17. 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.

CITY OF TYLER

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: *Jan M Jagt*

Title: Mayor

Date: 12-7-2020

By: *Stephanie Labaree*

Title: City Administrator

Date: 12-7-2020

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

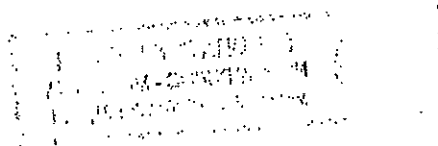
Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

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



CITY OF TYLER

RESOLUTION 2020-28

IT IS RESOLVED that the City of Tyler enter into MnDOT Agreement No. 1044976 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the ADA Improvements construction and other associated construction to be performed upon, along, and adjacent to multiple trunk highways, including Trunk Highway No. 14 from County State Aid Highway No. 8 to Danebod Village Drive within the corporate City limits under State Project No. 8828-222 (T.H. 14=007).

IT IS FURTHER RESOLVED that the Mayor and the City Administrator (Title) are authorized to execute the Agreement and any amendments to the Agreement.

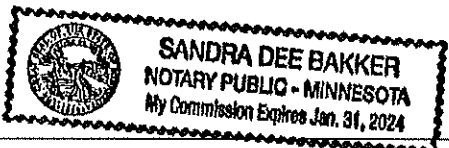
CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Tyler at an authorized meeting held on the Seventh day of December, 2020, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this 14 day of December, 2020

Notary Public Sandra Dee Bakker

My Commission Expires 1-31-2024



Stephanie Labrune (Signature)

Stephanie Labrune (Type or Print Name)

City Administrator (Title)

PRELIMINARY SCHEDULE "I"

Agreement No. 1044976

City of Tyler

S.P. 8828-222 (T.H. 14-007)
 Fed. Proj. STPF 8821(115)

Preliminary: December 23, 2020

ADA improvements construction to start approximately summer 2021 under
 State Contract No. _____ with _____
 located on T.H. 14 from C.S.A.H. 8 to Danebod Village Drive in the City of Tyler

CITY COST PARTICIPATION

Work Items (From Sheet No. 2)	25,000.00
Lump Sum Based on Bid Work Items (From Sheet No. 3)	2,800.00
Subtotal	27,800.00
Construction Engineering (8%)	2,224.00
(1) Total City Cost	\$30,024.00

(1) Amount of advance payment as described in Article 6 of the Agreement (estimated amount)

