



## *Memorandum:*

TO: Mayor Krachmer and City Council Members

FROM: Nolan Wall, Planning/Community Development Director

DATE: June 20, 2023

SUBJECT: Request for Council Action  
Cooperative Construction Agreement No. 1035921 – MnDOT  
Memorandum of Understanding – The Luther Company LLLP  
TH 61/Willow Lake Boulevard Traffic Signal Improvements

### **Recommended Council Action**

Staff recommends the following actions concerning the requests in this matter:

1. Approve Cooperative Construction Agreement No. 1035921 between the City of Vadnais Heights and the State of Minnesota.
2. Approve Memorandum of Understanding between the City of Vadnais Heights and The Luther Company LLLP.

### **Description of the Request**

Approval of the attached agreements facilitates traffic signal improvements at the TH 61/Willow Lake Boulevard intersection as part of the Luther Cadillac project. The City agrees to pay MnDOT the specified amount and the developer agrees to reimburse the City for those improvement costs.

### **Background**

Traffic signal improvements are required as part of the ongoing Luther Cadillac project. At this time, the developer is funding the improvements at their cost – assuming approval of both agreements. The Cooperative Construction Agreement includes city maintenance cost/responsibilities, which is consistent with similar agreements in-place for other signals on MnDOT facilities in the community. The Consulting City Engineer and City Attorney reviewed/approved both documents.

### **Action Requested**

If the City Council desires to implement staff's recommendations, pass the following motions:

1. Approve Cooperative Construction Agreement No. 1035921 between the City of Vadnais Heights and the State of Minnesota.
2. Approve Memorandum of Understanding between the City of Vadnais Heights and The Luther Company LLLP.

These matters require a simple majority vote, respectively.

Attachment(s):

- MnDOT cover letter/Cooperative Construction Agreement
- Memorandum of Understanding

6/13/2023

Nolan Wall  
Planning/Community Development Director  
City of Vadnais Heights  
800 East County Road E  
Vadnais Heights, MN 55127

RE: Proposed Cooperative Construction Agreement No. 1035921  
Between the City of Vadnais Heights and the State of Minnesota  
SP 6222-187 (TH 61=001)  
TH 61 at Willow Lake Blvd in the City of Vadnais Heights  
Cooperative Construction Agreement

Dear Nolan:

Transmitted by email is a proposed agreement with the City of Vadnais Heights. This agreement provides for the signal and roadway work associated with the Luther Auto Dealership development on TH 61 at Willow Lake Blvd.

Please present this agreement to the City Council for their approval and execution. Given the current circumstances, we are processing documents with digital signatures. Please have the relevant digital signatures affixed to the attached pdf, and return it to me by email. Also required is a pdf copy of a resolution passed by the City Council authorizing its officers to sign the agreement in its behalf, again with the relevant digital signatures. A suggested form of such resolution is also attached.

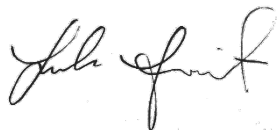
Note that the Minnesota Department of Transportation, as authorized by Minn. Stat. Ch. 13, will provide, upon request, data that may be classified as other than public. MnDOT requests that the data only be used for the purpose of partnering with MnDOT. Specifically, the data provided by MnDOT, should not be used by local officials making decisions to which the data pertains. The not-public data is not for public consumption and requests for the data should be submitted to MnDOT's Data Practices unit (<https://www.dot.state.mn.us/information/datapractices/index.html>). It is MnDOT's goal to provide appropriate information to our partners to assist them in their evaluation of projects and the deliberation may require data that is classified as other than public.

See the attached sheet for suggestions regarding use of digital signatures.

Please return the digitally signed copies of the agreement and resolution to me, once they have been executed by the City. An electronic copy will be returned to the City when fully executed.

Please contact me if you have any questions or additional comments.

Sincerely,



Leah Thornquist  
Local Partnership Project Manager  
Metro District State Aid

Attachments: Proposed Agreement  
Resolution

ecopy: Malaki Ruranika, MnDOT-Municipal Agreements  
Carrie Jones, MnDOT-Municipal Agreements  
Phil Bergem, MnDOT-Metro State Aid  
Molly McCartney, MnDOT-Metro Program Delivery  
Matthew Parent, MnDOT-Metro Program delivery  
Brandi Kastner, MnDOT-Metro Traffic Engineering  
Greg Kern, MnDOT-Metro Traffic Engineering  
Mike Fairbanks, MnDOT-Metro Traffic Engineering  
John Korth, Waters Edge Office, RTMC Building  
Geoff Prelgo, Waters Edge Office, RTMC Building  
Nolan Wall, City of Vadnais Heights  
Kevin Watson, City of Vadnais Heights  
Adrian Potter, SRF Consulting Group  
Project File

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF VADNAIS HEIGHTS  
COOPERATIVE CONSTRUCTION  
AGREEMENT**

<b>State Project Number:</b>	<u>6222-187</u>	<b>Estimated Amount Receivable</b>
<b>Trunk Highway Number:</b>	<u>61=001</u>	<b><u>\$72,538.30</u></b>
<b>Signal System ID Number:</b>	<u>4465199</u>	

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

**Recitals**

1. The City, through a Site Developer, will perform paving, signals, signing and striping, traffic control, RTMC fiber, and pedestrian ramps construction, and other associated construction upon, along, and adjacent to Trunk Highway (TH) 61 from 870 feet south of Hoffman Road to Hoffman Road according to City-prepared plans, specifications, and special provisions designated by the City and by the State as State Project 6222-187 (TH 61=001) (Project); and
2. The City requests the State allow the construction of the paving, signals, signing and striping, traffic control, RTMC fiber, and pedestrian ramps construction, and the State is willing to allow said construction; and
3. 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; 11. Liability; Worker Compensation Claims; Insurance; 13. State Audits; 14. Government Data Practices; 15. Governing Law; Jurisdiction; Venue; and 17. Force Majeure. The terms and conditions set forth in Article 6. Signal System and Emergency Vehicle Preemption System 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 City plans, specifications, and special provisions designated by the City and by the State as State Project 6222-187 (TH 61=001) are on file in the office of the City'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 City (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 City (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 City or its contractor. 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 City (and its contractors and consultants) to suspend their operations until the City (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 City (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 its contractors and consultants) are occupying the State's Trunk Highway 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, contractor, and consultant personnel occupying the State's Trunk Highway 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 City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City'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 City 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 City's consultants and contractors.

### 3. Contract Award and Construction

- 3.1. Contract Terms.** The City's contract with its construction contractor(s) must include the following terms:
- A. A clause making the State of Minnesota, acting through its Commissioner of Transportation, an intended third-party beneficiary of the contract with respect to the portion of work performed on the State's Right-of-Way; and
  - B. A clause requiring the State to be named as an additional insured on any insurance coverage which the contractor is required to provide; and
  - C. A clause stating that any warranties provided by the contractor, for the work performed on the trunk highway, will flow to, and be enforceable by, the State as the owner of such improvements.
- 3.2. Direction, Supervision, and Inspection of Construction.**
- A. The contract construction will be under the direction of the City 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 City will give the State Aid Agreements Engineer at Roseville 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 City 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".

**3.3. Completion of Construction.** The City 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 City 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 City 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 City will not require the contractor to follow local ordinances or to obtain local permits.

#### 4. Right-of-Way; Easements; Permits

**4.1.** The City will, without cost or expense to the State, 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 City 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 City will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings, and depiction of utilities affected by the contract construction.

#### 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. Sidewalks.** Maintenance and ownership 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, 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.

**5.2. Retaining Walls.** Maintenance and ownership of the retaining wall and guardrail construction in the southeast quadrant of the TH 61 and Willow Lake Boulevard intersection. Maintenance includes graffiti removal and any other maintenance activities necessary to perpetuate the walls in a safe, usable, 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 other party.

#### 6. Signal System and Emergency Vehicle Preemption System Operation and Maintenance

Operation and maintenance responsibilities will be as follows for the Signal System and Emergency Vehicle Preemption (EVP) System on TH 61 at Willow Lake Boulevard.

### 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 System and EVP System.
- B. **Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.
  - i. Maintain the signal pole mounted Light-emitting Diode (LED) luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended American Association of State Highway and Transportation Officials levels for the installation.
  - ii. Replace the Signal System 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 standards for light output.
  - iii. Clean the Signal System controller cabinet and service cabinet exteriors.
  - iv. Clean the Signal System and luminaire mast arm extensions.
  - v. Paint and maintain the cross street pedestrian crosswalk markings.

### 6.2. *State Responsibilities*

- A. **Timing; Other Maintenance.** The State will maintain the signing and perform all other Signal System, Accessible Pedestrian Signals, 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. **EVP System Operation.** The EVP System will be installed, operated, maintained, and removed according to the following conditions and requirements:
  - i. All maintenance of the EVP System 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 System must be reported to the State immediately.
  - iv. In the event the EVP System 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 System. Upon removal of the EVP System pursuant to this Paragraph, all of its parts and components become the property of the State.
  - v. All timing of the EVP System 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 Agreement.** This Agreement will supersede and terminate the operation and maintenance terms of Agreement 73028, dated June 27, 1995, between the parties.

7. **State Furnished Materials.** The State will furnish one ATC Cabinet 350, one Gridsmart video detection system, one additional Gridsmart camera, and a PTZ camera (State Furnished Materials), according to the Project Plans,

to operate the traffic control signal system covered under this Agreement. The City's lump sum share for State Furnished Materials is **\$72,538.30**.

## 8. City Cost and Payment by the City

**8.1. City Cost.** **\$72,538.30** is the City's full and complete lump sum cost for State Furnished Materials.

**8.2. Conditions of Payment.** The City 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 City.
- B. The City's receipt of a written request from the State for the advancement of funds.

## 9. 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.

**9.1.** 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  
 Email: malaki.ruranika@state.mn.us

**9.2.** The City's Authorized Representative will be:

Name, Title: Kevin Watson, City Administrator (or successor)  
 Address: 800 East County Road E, Vadnais Heights, MN 55127  
 Telephone: (651) 204-6010  
 Email: kevin.watson@cityvadnaisheights.com

## 10. Assignment; Amendments; Waiver; Contract Complete

**10.1. 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. The foregoing does not prohibit the City from contracting with a third party to perform City construction and/or maintenance responsibilities covered under this Agreement.

**10.2. 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.

**10.3. 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.

**10.4. 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.

## 11. Liability; Worker Compensation Claims; Insurance

**11.1.** 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. Notwithstanding the foregoing, the City 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 contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).

**11.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

**11.3.** The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

## **12. Nondiscrimination**

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

## **13. 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.

## **14. 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.

## **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 or by the State for insufficient funding as described below.

**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 payment or the provision of the services covered here. Termination must be by written or fax notice to the City. 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.

**16.3. *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.

## **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 VADNAIS HEIGHTS**

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.**

**CITY OF VADNAIS HEIGHTS**

**RESOLUTION**

IT IS RESOLVED that the City of Vadnais Heights enter into MnDOT Agreement 1035921 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 cost for materials furnished by the State for the signal system on Trunk Highway 61 at Willow Lake Boulevard, and for routine maintenance by the City upon, along, and adjacent to Trunk Highway 61, the limits of which are defined in said Agreement.

IT IS FURTHER RESOLVED that the Mayor and the \_\_\_\_\_  
(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 Vadnais Heights at an authorized meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, as shown by the minutes of the meeting in my possession.

<p>Subscribed and sworn to me this _____ day of _____, 2023</p> <p>Notary Public _____</p> <p>My Commission Expires _____</p>
---

_____	(Signature)
_____	(Type or Print Name)
_____	(Title)