

PRE-LETTING
SERVICES
SECTION

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
COOPERATIVE CONSTRUCTION
AGREEMENT

Mn/DOT
AGREEMENT NO.
90606-R

S.P. 4210-38 (T.H. 68=68)
Fed. Proj. STPX 4207(027)

The State of Minnesota
Department of Transportation, and
The City of Marshall
Re: City cost utilities, parking,
lighting, aesthetics and signal
construction by the State on
T.H. 68

AMOUNT ENCUMBERED

(None)

ESTIMATED AMOUNT
RECEIVABLE

\$1,890,528.30

THIS AGREEMENT is made and entered into by and between the State of Minnesota, Department of Transportation, hereinafter referred to as the "State" and the City of Marshall, Minnesota, acting by and through its City Council, hereinafter referred to as the "City".

WHEREAS, the State is about to perform grading, concrete surfacing, curb and gutter, sidewalk, municipal utilities, lighting, landscaping, traffic control signal construction and other associated construction upon, along and adjacent to Trunk Highway No. 68 from 176 feet northwest of the west junction of Trunk Highway No. 59 to the junction of Trunk Highway No. 19 within the corporate City limits in accordance with State plans, specifications and special provisions designated as State Project No. 4210-38 (T.H. 68=68) and in the records of the Federal Highway Administration as Minnesota Project STPX 4207(027); and

WHEREAS, at the request of the City, the State included in its contract colored and stamped concrete walk, aesthetic lighting, aesthetic crosswalks, landscaping, parking, water main and sanitary sewer construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 68; and

WHEREAS, the State shall provide the City a bid based lump sum credit as the State's share of City requested colored and stamped concrete walk as hereinafter set forth; and

WHEREAS, the State shall provide the City lump sum credits as the State's share of aesthetics and first move relocation of continuous standard lighting along Trunk Highway No. 68 in amounts equal to \$54,000.00 and \$139,000.00, respectively; and

WHEREAS, Minnesota Statutes Section 161.45, subdivision 2 allows for utility work to be included in a State contract and payment for such work in accordance with applicable statutes and rules for utilities on trunk highways; and

WHEREAS, Minnesota Rule 8810.3300, subpart 3, allows for the State to reimburse the City for the cost of the first relocation of City-owned lighting located within the limits of a City street at the time that

the street was taken over by the State as a trunk highway, when such relocation is required by construction or reconstruction of the trunk highway; and

WHEREAS, the State has determined that there is justification and it is in the public's best interest to remove the existing traffic control signals and install new traffic control signals including street lights and signing (Traffic Control Signals) on Trunk Highway No. 59/Trunk Highway No. 68 (West Main Street) at 3rd Street (System "A"), 4th Street (System "B"), 5th Street (System "C") and the west junction of Trunk Highway No. 59 (System "D"); and install a traffic control signal interconnect (Interconnect) on Trunk Highway No. 59/Trunk Highway No. 68 (West Main Street) from 5th Street to junction Trunk Highway No. 19/Trunk Highway No. 59 (College Drive); and

WHEREAS, it is considered in the public's best interest for the State to provide four new signal cabinets and controllers and four new battery backup ready service cabinets (State-furnished materials) for said new traffic control signal systems; and

WHEREAS, the City is willing to participate in the costs of the State-furnished materials for Systems "A", "B", and "C" in the lump sum amount of \$31,122.00; and

WHEREAS, the City requests and the State agrees to the installation of Emergency Vehicle Pre-emption systems (EVP system) as a part of the new traffic control signal system installations; and

WHEREAS, the City requests that it perform certain aspects of the construction engineering in connection with the water main, sanitary sewer and lighting construction and other associated construction

shown as 100 percent City cost participation construction in the plan and the State concurs in that request; and

WHEREAS, the City has expressed its willingness to participate in the costs of the colored and stamped concrete walk, aesthetic lighting, aesthetic crosswalks, landscaping, parking, traffic control signal, water main and sanitary sewer construction and associated construction engineering as hereinafter set forth; and

WHEREAS, it is anticipated that Federal funding will be applied to certain portions of the City cost participation construction, and if so, the cost of the City participation construction and associated construction engineering will be reduced by the amount of Federal funding received therefor; and

WHEREAS, in connection with the State contract, compensation for road life consumed by the Trunk Highway No. 68 detour will be provided for under Agreement No. 90605 between the State and Lyon County; and

WHEREAS, Minnesota Statutes Section 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purpose of constructing, maintaining and improving the trunk highway system.

IT IS, THEREFORE, MUTUALLY AGREED AS FOLLOWS:

ARTICLE I - RESPONSIBILITIES OF THE STATE

Section A. Contract Award

The State shall advertise for bids and award a construction contract to the lowest responsible bidder for State Project No. 4210-38 (T.H. 68=68) in accordance with State plans, specifications and special provisions which are on file in the office of the

Commissioner of Transportation at St. Paul, Minnesota, and are incorporated into this Agreement by reference.

Section B. Direction and Supervision of Construction

The State shall direct and supervise all construction activities performed under the construction contract, and, except as provided in Article II hereunder, perform all construction engineering functions in connection with the contract construction. All contract construction shall be performed in compliance with the approved plans, specifications and special provisions.

Section C. Plan Changes, Additional Construction, Etc.

The State shall make changes in the plans and contract construction, which may include the City cost participation construction covered under this Agreement, and shall enter into any necessary addenda, change orders and supplemental agreements with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. However, the State District Engineer's authorized representative will inform the appropriate City official of any proposed addenda, change orders and supplemental agreements to the construction contract that will affect the City cost participation construction covered under this Agreement.

Section D. Satisfactory Completion of Contract

The State shall perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner.

Section E. State-furnished Materials

The State shall furnish four new signal cabinets and controllers and four new battery backup ready service cabinets to operate traffic control signal Systems "A", "B", "C" and "D".

ARTICLE II - RESPONSIBILITIES OF THE CITY

Section A. Construction Engineering Performed by the City

The City shall assign its City Engineer or other registered professional engineer to the construction engineering to be performed in connection with the water main, sanitary sewer and lighting construction and other associated construction shown as 100 percent City cost participation construction in the plan. The engineer so assigned shall act under the supervision and direction of the State. All construction inspection, control of materials, staking and associated documentation for the 100 percent City cost participation construction to be performed in accordance with the plans, specifications and special provisions, and in accordance with the recognized and accepted practices and procedures as set forth in various State manuals which includes the State's current "Standard Specifications for Construction" under Specifications No. 1601 through and including No. 1609, shall be the responsibility of the engineer so assigned.

The City shall also furnish other personnel, services, supplies and equipment as shall be necessary in order to properly carry on the 100 percent City cost participation construction.

Section B. Documentation of City Engineered Construction Costs

At regular intervals after the State's contractor has started the 100 percent City cost participation construction, the City shall prepare partial estimates of the 100 percent City cost participation construction costs in accordance with the terms of the construction contract. Immediately after the preparation of each partial estimate, the City's engineer assigned to the 100 percent City cost participation construction shall submit the partial estimate to the State. The City shall also prepare the final estimate data for the 100 percent City cost participation construction and submit the final estimate to the State. Quantities listed on the partial and final

estimates shall be documented in accordance with the guidelines set forth in the applicable documentation manual.

ARTICLE III - INSPECTION OF CONSTRUCTION

When the State's contractor has completed the 100 percent City cost participation construction, the City shall inspect it and upon the completion of the inspection advise the State whether or not the 100 percent City cost participation construction performed should be accepted by the State as being performed in a satisfactory manner. If the City should, after the inspection, recommend to the State that it should not accept the 100 percent City cost participation construction, then the City shall, at the time such recommendation is made, identify the specific defects in the 100 percent City cost participation construction and the reasons why the 100 percent City cost participation construction should not be accepted. Any recommendations made by the City are not binding on the State. The State shall have the right to determine whether or not the 100 percent City cost participation construction has been acceptably performed and the right to accept or reject the 100 percent City cost participation construction.

The remainder of the City cost participation construction covered under this Agreement shall be open to inspection by the City. If the City believes such City cost participation construction has not been properly performed or that the construction is defective, the City shall 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 shall have the exclusive right to determine whether the State's contractor has satisfactorily performed such City cost participation construction.

ARTICLE IV - BASIS OF PAYMENT BY THE CITY**Section A. SCHEDULE "I"**

A Preliminary SCHEDULE "I" is attached and incorporated into this Agreement. The Preliminary SCHEDULE "I" includes all anticipated City cost participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.

Section B. City Cost Participation Construction

The City shall participate as indicated in the following construction to be performed upon, along and adjacent to Trunk Highway No. 68 from 176 feet northwest of the west junction of Trunk Highway No. 59 to the junction of Trunk Highway No. 19 within the corporate City limits under State Project No. 4210-38 (T.H. 68=68). The construction includes the City's proportionate share of item costs for mobilization and traffic control.

1. 100 Percent shall be the City's rate of cost participation in all of the water main, sanitary sewer, colored and stamped concrete walk, lighting, landscaping and aesthetics construction. The construction includes, but is not limited to, those construction items as tabulated on Sheets No. 2 thru No. 4 of the attached Preliminary SCHEDULE "I".

The City shall receive lump sum credits from the State as the State's full and complete lump sum cost share for aesthetics (\$54,000.00) and first move relocation of standard continuous lighting (\$139,000.00) as shown on Sheet No. 1 of the attached Preliminary SCHEDULE "I."

The City shall receive a bid based lump sum credit from the State as the State's share of the City requested colored and stamped concrete walk as shown on Sheet No. 1 of the attached Preliminary SCHEDULE "I". The lump sum amount shall be equal to

the sum of the total estimated quantities of 4" Concrete Walk Special and 4" Concrete Walk Special 1 multiplied by the unit bid price of 4" Concrete Walk.

2. 20 Percent minus all anticipated City Federal-aid funding shall be the City's rate of cost participation in all of the new parking construction requested by the City. The construction includes, but is not limited to, those construction items as tabulated on Sheet No. 5 of the attached Preliminary SCHEDULE "I".
3. 8 Percent minus all anticipated City Federal-aid funding shall be the City's rate of cost participation in all of the sidewalk and perpetuated parking construction requested by the City. The construction includes, but is not limited to, those construction items as tabulated on Sheet No. 5 of the attached Preliminary SCHEDULE "I".
4. 33 Percent shall be the City's rate of cost participation in all of the traffic control signal System "A" construction. 33 Percent of the total contract quantity for construction item Full Traffic Actuated Traffic Control Signal System "A" shall be tabulated as 100% City Cost on Sheet No. 6 of the attached Preliminary SCHEDULE "I".
5. 50 Percent shall be the City's rate of cost participation in all of the traffic control signal System "B" construction. 50 Percent of the total contract quantity for construction item Full Traffic Actuated Traffic Control Signal System "B" shall be tabulated as 100% City Cost on Sheet No. 6 of the attached Preliminary SCHEDULE "I".
6. 50 Percent shall be the City's rate of cost participation in all of the traffic control signal System "C" construction.

50 Percent of the total contract quantity for construction item Full Traffic Actuated Traffic Control Signal System "C" shall be tabulated as 100% City Cost on Sheet No. 6 of the attached Preliminary SCHEDULE "I".

7. 36 Percent shall be the City's rate of cost participation in all of the traffic control signal interconnect construction.

36 Percent of the total contract quantity for construction item Traffic Control Interconnection shall be tabulated as 100% City Cost on Sheet No. 6 of the attached Preliminary SCHEDULE "I".

8. A lump sum in the amount of \$31,122.00 shall be the City's full and complete lump sum cost share for State-furnished Materials as tabulated on Sheet No. 6 of the attached Preliminary SCHEDULE "I".

Section C. Construction Engineering Costs

The City shall pay a construction engineering charge in an amount equal to 5 percent of the cost of the 100 percent City cost participation construction cover under Section B.1 of this article and an amount equal to 8 percent of the cost of the remainder of the City cost participation construction covered under Sections B.2 thru B.8.

Section D. Addenda, Change Orders and Supplemental Agreements

The City shall share in the costs of construction contract addenda, change orders and supplemental agreements that are necessary to complete the City cost participation construction covered under this Agreement.

Section E. Liquidated Damages

All liquidated damages assessed the State's contractor in connection with the construction contract shall 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.

Section F. City Cost May Include Anticipated Federal Aid

It is anticipated that Federal funding will be applied to the City cost participation construction as indicated in Section B of this article, and to the associated construction engineering. City costs shall include an amount equal to all anticipated Federal funding not applied to the City cost participation construction and associated construction engineering.

ARTICLE V - PAYMENT BY THE CITY

Section A. Estimate and Advancement of the City's Cost Share

It is estimated that the City's share of the costs of the contract construction, minus lump sum credits, plus State-furnished Materials cost share, plus the construction engineering cost share is the sum of \$1,890,528.30 as shown in the attached Preliminary SCHEDULE "I". Upon award of the construction contract the State shall prepare a Revised SCHEDULE "I" based on construction contract unit prices.

After the following conditions have been met, the City shall advance to the Commissioner of Transportation the City's total estimated construction cost share, which does not include the construction engineering cost share, as shown in the Revised SCHEDULE "I":

1. Execution and approval of this Agreement and the State's transmittal of it to the City along with a copy of the Revised SCHEDULE "I".
2. Receipt by the City of a written request from the State for the advancement of funds.

Section B. Final Payment by the City

Upon completion and acceptance of the contract construction, computation of the final amount due the State's contractor and determination by the Federal Highway Administration of the amount of its reimbursement to the State, the State shall prepare a Final SCHEDULE "I" and submit a copy to the City. The Final SCHEDULE "I" shall be based on final quantities, and include all City cost participation construction items, minus lump sum credits, plus State-furnished Materials cost share and the construction engineering cost share covered under this Agreement. In accordance with Article IV, Section F. of this Agreement, the Final SCHEDULE "I" shall also include City costs in an amount equal to all Federal funding not applied to the City cost participation construction and associated construction engineering. If the final cost of the City participation covered under this Agreement exceeds the amount of funds advanced by the City, the City shall, upon receipt of a request from the State, promptly pay the difference to the State without interest. If the final cost of the City participation covered under this Agreement is less than the amount of funds advanced by the City, the State shall promptly return the balance to the City without interest.

Pursuant to Minnesota Statutes Section 15.415, the State waives claim for any amounts less than \$5.00 over the amount of City funds previously advanced to the State, and the City waives claim for the return of any amounts less than \$5.00 of those funds advanced by the City.

Section C. Acceptance of City's Cost and Completed Construction

The computation by the State of the amount due from the City shall be final, binding and conclusive. Acceptance by the State of the completed contract construction shall be final, binding and

conclusive upon the City as to the satisfactory completion of the contract construction.

ARTICLE VI - GENERAL PROVISIONS

Section A. Plan Changes

The City may request changes in the plans. If the State determines that the requested plan changes are necessary or desirable, the State will cause those plan changes to be made.

Section B. Replacement of Castings

The City shall furnish the State's contractor with new castings and parts for all in-place City-owned facilities constructed hereunder when replacements are required, without cost or expense to the State or the State's contractor, except for replacement of castings and parts broken or damaged by the State's contractor.

Section C. Utility Permits

The City shall submit to the State's Utility Engineer an original permit application for all City-owned utilities, including lighting, to be constructed hereunder that are upon and within the trunk highway right-of-way. Applications for permits shall be made on State form "Application For Utility Permit On Trunk Highway Right-Of-Way" (Form TP2525).

The City, through the State, shall submit to the Minnesota Pollution Control Agency the plans and specifications for the construction or reconstruction of its sanitary sewer facilities to be performed under the construction contract and obtain, pursuant to Minnesota Statutes Section 115.07 or Minnesota Rules 7001.1030, subpart 2C, either a permit or written waiver from that agency for that construction or reconstruction to be performed by others under the construction contract. When the Minnesota Pollution Control Agency issues that permit or waiver, the City will promptly furnish the State a copy of that permit or waiver so that the State's contractor may perform the

construction or reconstruction. The City is advised that pursuant to Minnesota Rules 7001.1040, a written application for the permit or waiver must be submitted to the Minnesota Pollution Control Agency at least 180 days before the planned date of the sanitary sewer facility construction or reconstruction.

Section D. Maintenance by the City

Upon satisfactory completion of the storm sewer facilities construction to be performed within the corporate City limits under the construction contract, the City shall provide for the proper routine maintenance of those facilities, without cost or expense to the State. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from structures, grates and pipes, repair of minor erosion problems, and minor structure and pipe repair, and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities.

Upon satisfactory completion of the City-owned utilities construction to be performed within the corporate City limits under the construction contract, the City shall become the owner of and provide for the proper maintenance of those utilities, without cost or expense to the State.

Upon satisfactory completion of the walkways, including colored and stamped concrete walk, construction to be performed within the corporate City limits under the construction contract, the City shall provide for the proper maintenance of the walkways, without cost or expense to the State. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, and any other maintenance activities necessary to

perpetuate the walkways in a safe, usable and aesthetically acceptable condition.

Upon completion of the lighting facilities construction, including ornamental street and aesthetic accent lighting, to be performed within the corporate City limits under the construction contract, the City shall become the owner of and provide for the proper maintenance of and keep in repair those facilities, without cost or expense to the State. The City will pay all monthly electrical service expenses necessary to operate the lighting facilities. The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pads or poles.

Upon satisfactory completion of the aesthetic planters, bollards, amenity poles, tree grates and trash receptacles construction and any other aesthetic feature construction performed upon, along, and adjacent to Trunk Highway No. 68 within the corporate City limits under the construction contract, the City shall become the owner of and provide for the proper maintenance of and keep in repair these items to perpetuate them in a safe, usable and aesthetically acceptable condition, without cost or expense to the State.

Upon satisfactory completion of the landscape construction to be performed within the corporate City limits under the construction contract and after the expiration of the contractor's two year landscaping materials warranty period, the City shall provide for the proper maintenance of the landscape materials placed under the construction contract without cost or expense to the State. Maintenance shall include, but not be limited to, removal and/or replacement of all materials that fail to survive.

Section E. Signal Maintenance

Upon satisfactory completion of the traffic control signal Systems "A", "B", "C" and "D" construction to be performed within the corporate City limits under the construction contract, the City shall provide for the following, without cost or expense to the State.

1. Maintain the traffic control signal attached luminaires and all of its components, including replacing the luminaire when necessary.
2. Re-lamp the new traffic signals and luminaires.
3. Clean and paint the new traffic signals, cabinets and luminaire mast arm extensions.
4. Paint and maintain pedestrian crosswalk markings, including the colored concrete pedestrian crossings.

The State shall, at its cost and expense, maintain the signing and perform all other traffic control signal and street light maintenance for traffic control signal Systems "A", "B", "C" and "D" and maintain the interconnect on Trunk Highway No. 59/Trunk Highway No. 68 (West Main Street) from 5th Street to junction Trunk Highway No. 19/Trunk Highway No. 59 (College Drive).

The City shall be responsible for the cost and application to secure an adequate power supply to the traffic signal service pads or poles. Upon satisfactory completion of the traffic signal construction to be performed within the corporate City limits under the construction contract, the City shall pay all monthly electrical service expenses necessary to operate the traffic signals, their interconnection and the EVP systems, without cost or expense to the State.

Section F. Operation of EVP Systems

The EVP systems shall be installed, operated and removed in accordance with the following conditions and requirements.

1. Emitter units may be installed only on authorized emergency vehicles, as defined in Minnesota Statutes Section 169.01, subdivision 5. Authorized emergency vehicles may use emitter units only when responding to an emergency. The City shall provide the State's District Engineer or his authorized representative with a list of all City-owned vehicles with emitter units.
2. Upon the City gaining knowledge of a malfunction of an EVP system, the City shall immediately report such malfunction to the State.
3. If an EVP system or its components are, in the opinion of the State, being misused or the conditions set forth in item 1 of this section are violated, and such misuse or violation continues after the State has provided written notice to the appropriate party, 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.
4. The State shall determine all timing and perform all maintenance of the EVP systems.

Section G. Traffic Signal Timing and Related Agreements

The State shall determine all timing of the traffic signals constructed within the corporate City limits under the construction contract and no changes may be made except with the written approval of the State.

Upon execution and approval of this Agreement, and completion of the contract construction, this Agreement supersedes and terminates the following Traffic Control Signal Agreements: No. C-1376, dated December 1, 1954; and No. C-1914, dated July 30, 1957; and No. 53966, dated May 26, 1964; and No. 58530M, dated April 12, 1977; all between the City and the State.

Section H. Additional Drainage

Neither party to this Agreement shall drain any additional drainage into the storm sewer facilities to be constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining permission to do so from the other party. The drainage areas served by the storm sewer facilities constructed under the construction contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics Engineer at Willmar and is incorporated into this Agreement by reference.

Section I. Future Responsibilities

Upon satisfactory completion of the contract construction to be performed within the corporate City limits under the construction contract, the City shall thereafter accept full and total responsibility and all obligations and liabilities arising out of or by reason of the use, operation, maintenance, repair and reconstruction of the aesthetic planters, bollards, amenity poles, tree grates, trash receptacles and lighting facilities, and all of the facilities a part thereof constructed hereunder, without cost or expense to the State.

Section J. Examination of Books, Records, Etc.

As provided by Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of

each party relevant to this Agreement are subject to examination by each party, and either the legislative auditor or the state auditor as appropriate, for a minimum of six years from final payment.

Section K. Claims

Each party is responsible for its own employees for any claims arising under the Workers Compensation Act. 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 Section 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

Section L. Agreement Approval

Before this Agreement becomes binding and effective, it shall be approved by a City Council resolution and executed by such State and City officers as the law may provide in addition to the Commissioner of Transportation or their authorized representative.

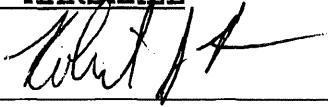
ARTICLE VII - AUTHORIZED AGENTS

The State's Authorized Agent for the purpose of the administration of this Agreement is Maryanne Kelly-Sonnek, Municipal Agreements Engineer, or her successor. Her current address and phone number are 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155, (651) 296-0969.

The City's Authorized Agent for the purpose of the administration of this Agreement is Glen Olson, City Engineer, or his successor. His current address and phone number are 344 West Main Street, Marshall, MN 56258-1313, (507) 537-6773.

IN TESTIMONY WHEREOF the parties have executed this Agreement by their authorized officers.

CITY OF MARSHALL

By 
Mayor

Date 2-12-07

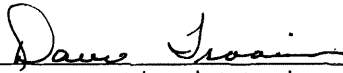
By Thomas M. Muehlebeck

Title Finance Director/City Clerk

Date 2-12-07

DEPARTMENT OF TRANSPORTATION

Recommended for approval:

By 
District Engineer

Approved: 
By State Design Engineer

Date Mar 16 2007

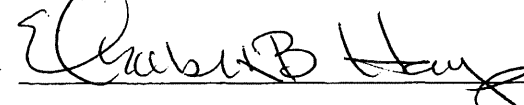
Approved as to form and execution:

By 
Contract Management

Date 3/19/07

COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

By 

Date 3/30/07