

**STATE OF MINNESOTA**  
**DEPARTMENT OF TRANSPORTATION**  
**And**  
**CITY OF ST. PAUL**  
**And**  
**RAMSEY COUNTY**  
**COOPERATIVE CONSTRUCTION**  
**AGREEMENT**

State Project Number (SP):	<u>6280-353</u>	City Amount Receivable
Trunk Highway Number (TH):	<u>35E=390</u>	<u>\$343,098.00</u>
S.A.P. Number:	<u>062-631-012</u>	
S.A.P. Number:	<u>164-020-118</u>	
State Project Number (SP):	<u>6280-(62626)</u>	County Amount Receivable
State Project Number (SP):	<u>6280-(62X03)</u>	<u>\$572,104.00</u>
Federal Proj. Number:	<u>HFL 0354(274)</u>	
Signal System ID(s)	<u>20561, 20562, 38807</u>	

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

**Recitals**

1. The State will perform roadway, bridge, sidewalk, median, pedestrian tunnel, pond, lighting and signal construction and other associated construction upon, along and adjacent to Trunk Highway No. 35E at the Maryland Avenue interchange (County State Aid Highway No. 31) in St. Paul, Mn according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6280-353 (T.H. 35E=390)("Project"); and
2. City cost participation is required for extra width sidewalk (on and off the bridge), median (upgrade to permeable pavers) and signal construction to be performed under the Project; and
3. County cost participation is required for extra width sidewalk and shoulder (on and off the bridge) and signal construction to be performed under the Project; and
4. The City and County wish to participate in their respective costs of the sidewalk, shoulder, median paver upgrade and signal construction and associated design and construction engineering delivery costs; and
5. The design, construction, inspection and maintenance of the City-owned utilities, except lighting systems, to be constructed under the Project will be covered under a Master Utility Agreement between the State, the design-build contractor and the City; and
6. A separate agreement between the State of Minnesota's Department of Transportation and Department of Natural Resources will address the cost and maintenance of the pedestrian tunnel construction to be performed under the Project; and
7. A separate agreement between the City and County further defines the maintenance responsibilities for C.S.A.H. 31 (Maryland Avenue), including the signals on C.S.A.H. 31 (Maryland Avenue) at L'Orient Street.
8. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and

9. 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**

- 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; 8. Liability; Worker Compensation Claims; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.

#### **2. Construction by the State**

- 2.1. *Contract Award.*** The State will advertise for technical and price proposals and award a design-build contract to the "Best Value Proposer" for State Project No. 6280-353 (T.H. 35E=390) according to the State Request for Qualifications (RFQ) and Request for Proposal (RFP) documents, which are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference.

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

- A. *Supervision and Inspection by the State.*** The State will direct and supervise all design-build activities performed under the design-build contract, and oversee all construction engineering and inspection functions in connection with the design-build contract construction. All design-build construction will be performed according to the State's Request for Proposals, the Contractor's technical proposal, and approved plans.
- B. *Inspection by the City and County.*** The City and County's respective participation construction covered under this Agreement will be open to inspection by the City and/or County. If the City and/or County believe their respective participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City and/or County will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City and/or County 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 and County participation construction covered under this Agreement.

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

- A.** The State may request the Contractor to make changes in the design and/or contract construction, which may include City and County participation construction covered under this Agreement, and will enter into any necessary addenda, change orders and supplemental agreements with the State's contractor that are necessary to cause the design-build contract construction to be performed and completed in a satisfactory manner. The State District Engineer's authorized representative will inform the appropriate City and/or County officials of any proposed addenda, change orders and supplemental agreements to the design-build contract that will affect the City and/or County participation construction covered under this Agreement.
- B.** The City and/or County may request additional work or changes to the work performed as part of the design-build 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.

- C. The State reserves the right to invoice the City and/or County for the cost of any additional City and/or County requested work and plan changes, design-build contract addenda, change orders and supplemental agreements, and associated design and construction engineering delivery costs before the completion of the contract construction. If the design and construction engineering delivery costs are not included in any change order or work order estimates, the amount will be added to the City and/or County's estimate of costs.

2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the design-build contract to be completed in a satisfactory manner. Acceptance by the State of the completed design-build contract construction will be final, binding and conclusive upon the City and County as to the satisfactory completion of the design-build contract construction.

### 3. Maintenance.

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

- A. **Roadways.** Maintenance of L'Orient Drive. Maintenance includes, but is not limited to, snow, ice and debris removal, and any other maintenance activities according to accepted City maintenance practices. Under a separate agreement between the City and County, the City is responsible for the maintenance of C.S.A.H. 31 (Maryland Avenue).
- B. **Storm Sewers.** Routine maintenance of L'Orient Drive and C.S.A.H. 31 (Maryland Avenue) storm sewer facilities construction. 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; minor structure 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.
- C. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- D. **Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, pedestrian crosswalk markings, mowing grass boulevards (if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
- E. **Aesthetic Medians and Boulevards.** Maintenance of any median and boulevard construction with aesthetic pavers. Maintenance includes, but is not limited to, snow, ice and debris removal and paver replacement, and any other maintenance activities necessary to perpetuate the medians and boulevards in a safe, useable, and aesthetically acceptable condition.
- F. **Lighting.** Maintenance and ownership of the continuous lighting facilities construction along Maryland Avenue (C.S.A.H. 31), including Bridge No. 62626 ornamental lighting facilities. Maintenance includes but is not limited to; replacing faulty luminaries and knocked down or otherwise damaged poles; repairing or replacing underground facilities and wiring; repairing service cabinets, photocells, and all other miscellaneous hardware to keep the lighting facilities in working order; cleaning and re-lamping the luminaries; and if needed, painting the lighting facilities. The City will pay all monthly electrical service expenses necessary to operate the lighting facilities. As owner of the above lighting facilities, the City will be responsible for all "Gopher State One Call" locates. The State will be responsible for the maintenance, power and "Gopher State One Call" locates of any lighting facilities construction on the T.H. 35E mainline, ramps to the T.H. 35E/Maryland Avenue (C.S.A.H. 31) interchange and under Bridge No. 62626.

**3.2. Shared Maintenance (Bridge, Additional Drainage).** Upon completion of the project, the City, County and State will share the following maintenance responsibilities as indicated.

- A. Bridge No. 62626 (County Road/City Street over Trunk Highway).** Shared maintenance and repair of Bridge No. 62626 construction carrying C.S.A.H. 31 (Maryland Avenue) over T.H. 35E. The County will provide for maintenance and repair that includes, but is not limited to, keeping the roadway, bridge deck, shoulders, medians, gutters, sidewalks and trails clear of ice, snow, litter and debris, appropriate disposal of such material, pavement markings, ornamental railings, guardrail, and nonstructural supported signing and any other maintenance activities necessary to perpetuate the bridge in a safe, usable and aesthetically acceptable condition. The State is responsible for inspection and structural maintenance of the bridge, including concrete surfacing, abutments and non-ornamental railings, from bridge approach panel to bridge approach panel.
- B. Additional Drainage.** No party to this Agreement will drain any additional drainage into the storm sewer facilities constructed under the design-build 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 parties. The drainage areas served by the storm sewer facilities constructed under the design-build contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics Unit at Roseville and is incorporated into this Agreement by reference.
- C. Future Responsibilities.** Upon completion of the C.S.A.H. 31 (Maryland Avenue) construction, the City and County will 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 C.S.A.H. 31 (Maryland Avenue) and all of the facilities constructed as part of this Agreement, without cost or expense to the State.

**3.3. Signal System(s) and EVP System(s) Operation and Maintenance**

- A. T.H. 35E East and West Ramps at C.S.A.H. 31 (Maryland Avenue).** All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement No. 74951 dated August 5, 1996, for the existing traffic control signals on T.H. 35E East and West Ramps at C.S.A.H 31 (Maryland Avenue) will remain in full force and effect.
- B. C.S.A.H. 31(Maryland Avenue) at L' Orient Street.** The City and County will be responsible for all operation and maintenance activities and will pay all monthly electrical service expenses necessary to operate the Signal System, EVP system and Interconnect for the traffic control signal on C.S.A.H 31 (Maryland Avenue) at L'Orient Street without cost or expense to the State.

**4. City Furnished Materials Costs**

The City will provide three signal cabinets with controllers and one master controller ("City Furnished Materials") to operate the three traffic control signal system(s) on C.S.A.H. 31 (Maryland Avenue) covered under this Agreement. The total cost for City Furnished Materials is \$74,400.00 and will be deducted from the City's lump sum construction cost share. The City and County's cost share for City Furnished Materials is as indicated below and is included in their respective lump sum construction cost shares.

**T.H. 35 East Ramp**

50% County - \$12,400.00      50% State - \$12,400.00

**T.H. 35 West Ramp**

50% County - \$12,400.00      50% State - \$12,400.00

**L'Orient Street**

50% County - \$12,400.00      50% City - \$12,400.00

**5. City and County Cost and Payment****5.1. City and County Cost**

- A. \$343,098.00 is the City's full and complete lump sum cost for sidewalk, median paver upgrade and signal construction (\$370,174.00) minus the total City Furnished Materials lump sum (\$74,400.00) plus 16% design and construction engineering delivery costs (\$47,324.00).
- B. \$572,104.00 is the County's full and complete lump sum cost for sidewalk, signal and shoulder construction (\$493,193.00) plus 16% design and construction engineering delivery costs (\$78,911.00).

**5.2. Conditions of Payment.** The City and County will pay the State their respective full and complete lump sum amounts after the following conditions have been met:

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

**6. 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.

**6.1.** The State's Authorized Representative will be:

Name/Title: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)  
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155  
 Telephone: (651) 366-4634  
 Fax: (651) 366-4769  
 E-Mail: maryanne.kellysonnek@state.mn.us

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

Name/Title: Mike Klassen, Traffic Engineer (or successor)  
 Address: 25 Fourth Street West, 800 City Hall Annex, St. Paul, MN 55102  
 Telephone: (651) 266-6209  
 Fax: (651) 298-4559

**6.3.** The County's Authorized Representative will be:

Name/Title: James Tolaas, County Engineer (or successor)  
 Address: 1425 Paul Kirkwold Drive, St. Paul, MN 55112-3931  
 Telephone: (651) 266-7100

**7. Assignment; Amendments; Waiver; Contract Complete**

- 7.1. 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.
- 7.2. 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.
- 7.3. 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.
- 7.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between the State, City and County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**8. Liability; Worker Compensation Claims**

- 8.1.** Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City and County.
- 8.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

**9. Nondiscrimination**

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

**10. State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City and County's books, records, documents, and 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.

**11. Government Data Practices**

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

**12. 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.

**13. Termination; Suspension**

- 13.1. *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties.
- 13.2. *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 design-build contract construction under the Project. Termination must be by written or fax notice to the City and County.
- 13.3. *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.

**14. Force Majeure**

No party will be responsible to the other parties 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 ST. PAUL**

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.

Recommended for Approval:

By: \_\_\_\_\_  
(Director of Public Works)

Approved as to form and execution:

By: \_\_\_\_\_  
(Assistant City Attorney)

By: \_\_\_\_\_  
(Mayor)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Director of Finance & Management Services)

Date: \_\_\_\_\_

Log No: SU - 5502955  
Activity No: 25400

**RAMSEY COUNTY**

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

By: \_\_\_\_\_  
(Ramsey County Engineer)

Date: \_\_\_\_\_

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.**