

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

<b>State Project Number (S.P.):</b>	<u>6280-367</u>	<b>Estimated Amount Receivable</b>
<b>Trunk Highway Number (T.H.):</b>	<u>I35E=390</u>	<b><u>\$369,388.00</u></b>
<b>State Aid Project (S.A.P.):</b>	<u>062-630-057</u>	
<b>State Aid Project (S.A.P.):</b>	<u>164-020-125</u>	
<b>State Aid Project (S.A.P.):</b>	<u>164-109-022</u>	
<b>Federal Project Number:</b>	<u>NHPP I35E (003)</u>	
<b>State Project Numbers (S.P.):</b>	<u>6280-(62646); 6280-(62927); 6280-(62928); 6280-(62929);</u>	
<b>(Bridges)</b>	<u>6280-(62930); 6280-(62931); 6280-(62932); 6280-(62933); 6280-(62934)</u>	
<b>Signal System ID</b>	<u>20563 and 20565</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").

**Recitals**

1. As part of the design and installation of a MnPASS system along Trunk Highway No. 35E, the State will perform grading, concrete and bituminous paving, bridge, drainage, sidewalk, trail, lighting, signals and utility construction and other associated construction upon, along and adjacent to T.H. 35E from Maryland Avenue to just north of Little Canada Road according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6280-367 (T.H. 35E=390) ("Project"); and
2. City cost participation is required for the construction of an extra width south shoulder on Larpenteur Avenue, extra width shoulders on Wheelock Parkway, and extra width shoulders and extra width north sidewalk on Arlington Avenue to be performed under the Project; and
3. The State requests the City participate in the costs of the shoulder and sidewalk construction (on and off respective bridges) and the City is willing to participate in the costs of said construction and associated design and construction engineering delivery costs; and
4. The design, construction, inspection and maintenance of the City-owned utilities 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
5. Agreement No. 03438, between the State and Ramsey County, will provide for the County's share of the Project construction cost and maintenance responsibilities upon completion of the Project; and
6. Agreement No. 02735, between the State of Minnesota's Department of Transportation and Department of Natural Resources ("DNR"), will address the construction, use, operation and maintenance of the Gateway Trail on Trunk Highway right-of-way along Arlington Avenue to the existing trail connection on L'Orient Street upon completion of the Project; and
7. 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 by the City; 7. Liability; Worker Compensation Claims; 9. State Audits; 10. Government Data Practices; 11. Governing Law; Jurisdiction; Venue; and 13. 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. 6280-367 (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.** 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 may request the Contractor to make changes in the design and/or contract construction, which may include City 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 official of any proposed addenda, change orders and supplemental agreements to the design-build contract that will affect the City participation construction covered under this Agreement.
  - B. The City 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 for the cost of any additional City 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'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 as to the satisfactory completion of the design-build contract construction.

### 3. Maintenance by the City.

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

- 3.1. **Roadways.** Maintenance of Arlington Avenue and Wheelock Parkway. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing and seal coating and any other maintenance activities according to accepted City maintenance practices.
- 3.2. **Storm Sewers.** Routine maintenance of any storm sewer facilities construction (if any) on Arlington Avenue and Wheelock Parkway. 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.
- 3.3. **Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps on Arlington Avenue and Wheelock Parkway. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, cross street 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.
- 3.4. **Lighting.** Maintenance and ownership of ornamental lighting facilities construction (on and off respective bridges) along Arlington Avenue, Wheelock Parkway and Larpenteur Avenue (C.S.A.H. 30). 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 be responsible for all monthly electrical service expenses necessary to operate the lighting facility. As owner of the 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 and ramps.
- 3.5. **Bridges (City Streets over Trunk Highway).** Maintenance and repair of Bridge No. 62927 (Arlington Avenue) and Bridge No. 62928 (Wheelock Parkway) construction carrying City streets over the Trunk Highway. Maintenance and repair includes, but is not limited to, keeping the roadways, bridge decks, shoulders, medians, gutters and sidewalks clear of ice, snow, litter and debris, appropriate disposal of such material, pavement markings, guardrail, and non-structurally supported signing and any other maintenance activities necessary to perpetuate the bridge in a safe, usable and aesthetically acceptable condition. The DNR is responsible for the maintenance of the Gateway Trail on Bridge No. 62927 (Arlington Avenue). The State is responsible for inspection and structural maintenance of the bridges, including concrete surfacing, abutments and non-ornamental railings, from bridge approach panel to bridge approach panel.
- 3.6. **Ornamental Bridge Railings.** Maintenance and repair of the ornamental railing construction on Bridge No. 62927 (Larpenteur Avenue), Bridge No. 62927 (Arlington Avenue) and Bridge No. 62928 (Wheelock Parkway). Maintenance includes, but is not limited to, graffiti removal, painting, panel repair and replacement and any other maintenance activities necessary to perpetuate the ornamental railings in a safe, usable and aesthetically acceptable condition.

3.7. **Noise Walls (Graffiti Removal).** The parties agree to work cooperatively together to remove graffiti from the non-highway side of noise walls to be constructed under the Project. Whichever party has resources available to perform the removal will do it. The City will notify the State's Metro District Dispatch if they plan to perform graffiti removal from the non-highway side of the noise walls.

3.8. **Additional Drainage.** Neither party to this Agreement will drain any additional drainage 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. 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 Unit at Roseville and is incorporated into this Agreement by reference.

#### 4. City Cost and Payment by the City

4.1. **City Cost.** \$369,388.00 is the City's full and complete lump sum cost for extra width shoulder and sidewalk construction (\$318,438.00) plus 16% design and construction engineering delivery costs (\$50,950.00).

4.2. **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.

#### 5. 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.

5.1. 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  
 E-Mail: maryanne.kellysonnek@state.mn.us

5.2. The City's Authorized Representative will be:

Name/Title: Paul Kurtz (or successor)  
 Address: 1500 City Hall Annex, 25 West Fourth Street, St. Paul, MN 55102  
 Telephone: 651-266-6203  
 E-Mail: paul.kurtz@ci.stpaul.mn.us

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

6.1. **Assignment.** Neither 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.

6.2. **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.

6.3. **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.

6.4. **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.

**7. Liability; Worker Compensation Claims**

- 7.1. 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.
- 7.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

**8. Nondiscrimination**

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

**9. State Audits**

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

**10. 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.

**11. 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.

**12. Termination; Suspension**

- 12.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.
- 12.2. *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.
- 12.3. *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.

**13. Force Majeure**

Neither 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.

[The remainder of this page has been intentionally left blank]

**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: \_\_\_\_\_

**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.**

*MK-S*