

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
and
CITY OF SAINT PAUL
and
RAMSEY COUNTY
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (S.P.):	<u>062-653-011</u>	Amount Encumbered FY 2020
State Project Number (S.P.):	<u>6282-235</u>	<u>\$1,750,000.00</u>
Trunk Highway Number (T.H.):	<u>94=104</u>	
State Project Number (S.P.):	<u>164-020-145</u>	Amount Encumbered FY 2021
Bridge Number:	<u>62735</u>	<u>\$226,000.00</u>
Federal Project Number:	<u>STPF 6219 (160)</u>	
Lighting System Feed Point:	<u>A, B, C, and V</u>	
Signal System "A" ID:	<u>1736982</u>	Total State Encumbrance
Signal System "B" ID:	<u>1736981</u>	<u>\$1,976,000.00</u>

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

Recitals

1. The County will perform grading, bituminous surfacing, ADA improvements, retaining walls, lighting, signals, TMS, and Bridge No. 62735 construction and other associated construction upon, along, and adjacent to Trunk Highway No. 94 from County State Aid Highway (C.S.A.H.) No. 53 (Dale Street) from Iglehart Avenue to County State Aid Highway No. 34 (University Avenue) according to County-prepared plans, specifications, and special provisions designated by the County and by the State as State Project No. 164-020-145, No. 062-653-011, and No. 6282-235 (T.H. 94=104) ("Project"); and
2. The County requests the State participate in the costs of Bridge No. 62735, roadway, and storm sewer construction in relation to the said local Project. This Agreement will address a portion of the payment for Bridge No. 62735; and
3. The State will provide construction engineering services for Bridge No. 62735 at no cost to the County. State construction engineering will include construction inspection and materials inspection. The State will be responsible for the cost of contractor construction surveying for Bridge No. 62735 up to capped amount of available State funds. The County will be responsible for contract administration. The County will set survey markers for the said Project at no cost to the State; and
4. The State will encumber District Risk Management Program ("DRMP") funds in Fiscal Year 2020 and Local Partnership Project ("LPP") funds in Fiscal Year 2021 to fund a portion of Bridge No. 62735. These said funding sources are capped at their respective amounts as described in this Agreement; and
5. MnDOT Contract Number No. 1035777 which will be executed between the County and the State, appoints the State as the County's agent to receive and disburse transportation related federal funds, and sets forth

duties and responsibilities for letting, payment, and other procedures for a federally funded contract let by the County; and

6. For Fiscal Year 2021 Local Partnership Project funds, the State can only pay the County for the State participation construction after funds have been encumbered, which encumbrance must be preceded by the appropriation of such funds by the Minnesota Legislature; and
7. Bridge No. 62735 construction is currently part of the State's 2020 fiscal year road construction program, and the State will seek the appropriation of Local Partnership Project funds in fiscal year 2021, and encumber the funds, if available; and
8. Since a portion of the Project is on the National Highway System Right-of-Way, the State will perform oversight engineering of that portion of the Project in connection with the construction as required by the Stewardship Plan between the FHWA and the State, dated May 2015, to ensure that the Federal Highway program is delivered consistent with applicable laws, regulations, and policies and any construction activity undertaken on or affecting the trunk highway system is designed and constructed in accordance with the laws and rules of the State of Minnesota and policies of the Department of Transportation; and
9. The City will be responsible for the operation and maintenance of the Signal Systems as outlined in this Agreement that are located on State Trunk Highway Right-of-Way; and
10. 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 County; 6. Maintenance by the City; 12. Liability; Worker Compensation Claims; Insurance; 14. State Audits; 15. Government Data Practices; 16. Governing Law; Jurisdiction; Venue; and 18. Force Majeure. The terms and conditions set forth in Article 7. Signal Systems and EVP Systems 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 and State-Aid approved County plans, specifications, and special provisions designated by the County and by the State as State Project No. 164-020-145, No. 062-653-011, and No. 6282-235 (T.H. 94=104) are on file in the office of the City's Engineer, County's Public Works Director, and incorporated into this Agreement by reference ("Project Plans").
- 1.5. **Exhibits.** The Preliminary Schedule "I" is attached and incorporated into this Agreement. Maintenance Exhibit "A" is attached and incorporated into this Agreement by reference.

2. Right-of-Way Use

- 2.1. **Limited Right to Occupy.** The State grants to the City and County (and its contractors and consultants) the right to occupy State 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 County (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 State Trunk Highway Right-of-Way (including the construction being performed on such right-of-way) at any time and without notice to the County 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 direct the County (and its contractor) to take such remedial measures as the State deems necessary. The State may require the County (and its contractors and consultants) to suspend their operations until suitable remedial action plans are approved and implemented. The State will have no liability to the County (or its contractors or consultants) for exercising its rights under this provision.
- 2.3. Traffic Control; Worker Safety.** While the County (and its contractors and consultants) are occupying the State's 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 County, contractor, and consultant personnel occupying the State's 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 State 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 County's contractor with respect to such improvements (if any) will flow to the State. The County will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the County'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 County 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 County's consultants and contractors.

3. Contract Award and Construction

- 3.1. Bids and Award.** The County will receive bids and award a construction contract to the lowest responsible bidder (or best value proposer), subject to concurrence by the State in that award, according to the Project Plans. The contract construction will be performed according to the Project Plans.
- 3.2. Bid Documents Furnished by the County.** The County will, within 7 days of opening bids for the construction contract, submit to the State's State Aid Agreements Engineer a copy of the low bid and an abstract of all bids together with the County's request for concurrence by the State in the award of the construction contract. The County will not award the construction contract until the State advises the County in writing of its concurrence.
- 3.3. Rejection of Bids.** The County may reject and the State may require the County to reject any or all bids for the construction contract. The party rejecting or requiring the rejection of bids must provide the other party written notice of that rejection or requirement for rejection no later than 30 days after opening bids. Upon the rejection of all bids, a party may request, in writing, that the bidding process be repeated. Upon

the other party's written approval of such request, the County will repeat the bidding process in a reasonable period of time, without cost or expense to the State.

3.4. Contract Terms. The County'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.

3.5. Direction, Supervision, and Inspection of Construction Unrelated to Bridge No. 62735 Construction on State Trunk Highway Right-of-Way.

- A. The contract construction will be under the direction of the County 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 County 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 County 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".

3.6. Direction, Supervision, and Inspection of Bridge No. 62735 Construction. The contract construction will be under the direction of the County; however, the County will utilize the services of a registered professional engineer, to be furnished by the State without cost or expense to the County, to perform the construction engineering (construction inspection and materials inspection) in connection with said Bridge No. 62735 construction. Provision of such services will not be deemed to make the State a principal or co-principal with respect to liability regarding the contract construction. The County will give the State Aid Agreements at Roseville five days' notice of its intention to start the contract construction.

- A. **Performance of Construction Engineering.** The State will perform the construction inspection and materials inspection and the contractor will provide surveying for Bridge No. 62735 according to the Project Plans in the manner currently used by the State and according to the following:
 - i. The State will provide all labor, equipment, and materials necessary to perform the construction inspection and material inspection for the contract.
 - ii. The State's engineer assigned to the contract construction will perform all inspection, control of materials, and associated documentation for the contract construction.
 - iii. At regular intervals after the County's contractor has started the construction, the State will prepare partial estimates of construction costs according to the terms of the construction contract. Immediately after the preparation of each partial estimate, the State's engineer assigned to the contract construction will submit the partial estimate to the County. The State will also prepare the final construction cost data for the contract construction and submit the final construction cost data to the County. The County will be responsible for making payments to the contractor based on the partial estimates and final cost certified by the State's engineer.

- iv. County and State concurrence must be obtained before the State authorizes change orders that significantly increase their cost. The County will concur with, or object to, authorization of additional work within a reasonable amount of time of notification by the State that additional work is deemed necessary.
- v. All changes in the Project Plans and all addenda and change orders must be approved by the State District Engineer's authorized representative. All changes that result in increased costs to the County must be approved by the County in the manner provided for in its Charter and Ordinances enacted pursuant thereto.

3.7. Performance of Oversight Engineering.

- A. The State will perform oversight engineering on that portion of the Project involving the construction of Bridge No. 62735 over the State's Trunk Highway Right-Of-Way as required by the FHWA Stewardship Agreement pertaining to work by local agencies on the National Highway System.
- B. Oversight engineering will consist of the following items which impact the National Highway System:
 - i. Review, approve, and provide concurrence of all change orders that pertain to the work on the Interstate Right-of-Way and;
 - ii. Review of documented inspection and materials testing and;
 - iii. Periodic construction inspections and;
 - iv. Review traffic control and;
 - v. Periodically attend weekly meetings and;
 - vi. Review contractor's schedules and;
 - vii. Review/approval of any closures of lanes on the Interstate and;
 - viii. Any other oversight engineering duties required by the Federal Highway Administration, or the State.

3.8. Contaminated Soils and Groundwater within the State's Cost Participation Limits. 24 Hour Notification. The County will notify the State District Engineer's authorized representative a minimum of 24 hours prior to the contractor beginning the excavation and removal of any contaminated soils that have been identified within the Project limits.

- A. **Immediate Notification.** The County will notify the State District Engineer's authorized representative immediately upon the contractor encountering contaminated soils and/or groundwater in areas that are within the Project limits. The County will confer with the State as to the handling, disposal, and any other issues related to contaminated materials found on State Trunk Highway Right-of-Way or import of materials onto State Trunk Highway Right-of-Way.
- B. **Environmental Consultant.** The County will provide for an Environmental Consultant to be on site to observe and document the excavation, handling, and disposal of contaminated soils that have been identified within the Project limits. If the contractor encounters contaminated materials in areas not previously identified and upon notification by the County to MnDOT, the County hired Environmental Consultant will be provided to collect and analyze soil and/or groundwater samples to determine contaminant levels, work with the landfill for disposal of the soil waste, and provide oversight of any soil and groundwater handling and disposal. The County will not allow the contractor to excavate any contaminated soil unless the Environmental Consultant is present.

- 3.9. Completion of Construction.** The County 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 County official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.
- 3.10. Plan Changes.** The State will not participate in the cost of any contract construction that is in addition to the State participation construction covered under this Agreement unless the following conditions have been met:
- A. The necessary State funds have been encumbered.
 - B. All changes in the Project Plans and all addenda, change orders, supplemental agreements, and work orders entered into by the County and its contractor for State participation construction are approved in writing by the State District Engineer's authorized representative.
- 3.11. Compliance with Laws, Ordinances, and Regulations.** The County 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 County will not require the contractor to follow local ordinances or to obtain local permits.

4. Right-of-Way; Easements; Permits

- 4.1.** The County will 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. Before payment by the State, the County will furnish the State with certified copies of the documents for rights-of-way and easements, construction permits, and other permits and sanctions required for State participation construction covered under this Agreement.
- 4.2.** The County 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 County 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 County

Upon completion of the Project, the County will provide or cause, through the Joint Powers Agreement with the City, the following without cost or expense to the State:

- 5.1. Roadways.** Maintenance of C.S.A.H. 53. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing, seal coating, and any other maintenance activities according to accepted County maintenance practices.
- 5.2. Storm Sewers.** Routine maintenance and ownership of any storm sewer facilities construction on State Trunk Highway Right-of-Way and on Bridge No. 62735. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from grates and catch basins, and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, or sedimentation, this also includes informing the District Maintenance Engineer of any needed repairs.
- 5.3. Sidewalks.** Maintenance of any sidewalk construction upon Dale Street (excluding St. Anthony Avenue and Concordia Avenue) on State Trunk Highway Right-of-Way and on Bridge No. 62735, 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.

- 5.4. Shared Use Paths.** Maintenance of any bikeways and shared use paths construction on State Trunk Highway Right-of-Way and on Bridge No. 62735. Maintenance includes, but is not limited to, snow and ice control/removal, sweeping and debris removal, patching, crack repair, pavement replacement, vegetation control, signing, pavement markings, and any other maintenance activities necessary to perpetuate the bikeways and shared use paths in a safe and usable condition.
- 5.5. Retaining Wall "A" and "B".** Maintenance of retaining wall "A" (along the east side of Dale Street, south of Concordia Avenue) and "B" (along the east side of Dale Street, north of St. Anthony Avenue) construction. Maintenance includes graffiti removal and any other maintenance activities necessary to perpetuate the walls in a safe, usable, and aesthetically acceptable condition.
- 5.6. Bridge No. 62735 (over T.H. 94) Maintenance and Repair.** Maintenance and repair of Bridge No. 62735 construction carrying a C.S.A.H. 53 (Dale Street) over T.H. 94. Maintenance and repair includes, but is not limited to, keeping the roadway, bridge deck, shoulders, medians, gutters, sidewalks and shared use paths clear of ice, snow, litter and debris, appropriate disposal of such material, pavement markings, guardrail, non-structurally supported signing, concrete treatments, polycarbonate railing panel inserts, 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 said bridge, concrete bridge approach panels, concrete surfacing, abutments, and non-ornamental railings.
- A. Aesthetics on Bridge No. 62735.** The County will own, maintain, perform annual inspections, repair, and or replace the ornamental metal trees located in the southeast and northwest quadrants of Bridge No. 62735 as necessary to perpetuate in a safe, usable, and aesthetically acceptable condition. The State reserves the right to remove the ornamental trees if deemed a hazard to the public or if found to be unsafe, unusable, or aesthetically unpleasing condition. The County will maintain, replace, or repair concrete treatments or polycarbonate railing panel inserts if the State deems it necessary. If a request is made to the County for any maintenance or repair and the said maintenance or repair is not made the State will provide maintenance and or repair and bill the County for said maintenance or repair.
- B. Public Art on Bridge No. 62735.** Ownership and maintenance responsibilities for Public Art associated with the metal railings, concrete treatments, and ornamental trees on or near the said bridge are covered under Agreement No. 1035813.
- 5.7. 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. Maintenance by the City

- 6.1. Lighting on Bridge No. 62735.** Maintenance and ownership of any lighting facilities construction on State Trunk Highway Right-of-Way and Bridge No. 62735. Maintenance of electrical lighting systems includes everything within the system, from the point of attachment to the power source or utility, to the last light on the feed point, including but not limited to re-lamping of lighting units or replacing of LED luminaires, repair or replacement of all damaged luminaire glassware, loose connections, luminaires when damaged or when ballasts fail, photoelectric control on luminaires, defective starter boards or drivers, damaged fuse holders, blown fuses, knocked down poles including wiring within the poles, damaged poles, pullboxes, underground wire, damaged foundations, equipment pad, installation of approved splices or replacement

of wires, repair or extending of conduit, lighting cabinet maintenance including photoelectric cell, electrical distribution system, Gopher State One Call (GSOC) locates, and painting of poles and other equipment. The City will be responsible for the hook up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting facility.

7. Signal Systems and EVP Systems Operation and Maintenance

Operation and maintenance responsibilities will be as follows for the Signal Systems and EVP Systems on State Trunk Highway Right-of-Way at the intersection of St. Anthony Avenue and C.S.A.H. 53 (Dale Street), at the intersection of Concordia Avenue and C.S.A.H. 53 (Dale Street), and for the Interconnect on C.S.A.H. 53 from University Avenue to Selby Avenue.

7.1. City Minor Maintenance Responsibilities.

- A. **Power.** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pads or poles and will pay all monthly electrical service expenses necessary to operate the Signal Systems, EVP Systems, Enforcement Lights, and Interconnect.
- B. **Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.
 - i. Maintain the signal pole mounted LED luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.
 - ii. Replace the Signal Systems 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 (ITE) standards for light output.
 - iii. Clean the Signal Systems controller cabinet and service cabinet exteriors.
 - iv. Clean the Signal Systems and luminaire mast arm extensions.

7.2. City Major Maintenance Responsibilities.

- A. **Interconnect; Timing; Other Maintenance.** The City will maintain the Interconnect and signing, and perform all other Signal System, APS, and signal pole luminaire circuit maintenance without cost to the State. All signal timing will be determined initially by the City, and maintained and modified as needed by the City. Adjustments of said signal timing may be determined by the State, through its Commissioner of Transportation, and no changes shall be made thereafter except with approval of the State.
- B. **EVP System(s) Operation.** The EVP Systems will be installed, operated, maintained, and removed according to the following conditions and requirements:
 - i. All maintenance of the EVP Systems must be done by City 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 Systems must be reported to the State immediately.
 - iv. In the event the EVP Systems 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 Systems. Upon removal of the EVP Systems pursuant to this Paragraph, all of its parts and components become the property of the State.

v. All timing of the EVP Systems will be determined by the City.

7.3. 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.

7.4. Related Agreements. This Agreement will supersede and terminate the operation and maintenance terms of any Agreement between the State, City, and County at the intersection of St. Anthony Avenue and C.S.A.H. 53 (Dale Street and at the intersection of Concordia Avenue and C.S.A.H. 53 (Dale Street)).

8. Basis of State Cost

8.1. Schedule "I". The Preliminary Schedule "I" includes all anticipated State participation construction items and the construction engineering cost share covered under this Agreement.

8.2. State Participation Construction. The State will participate in the following at the percentages indicated. The construction includes the State's proportionate share of item costs for Construction Surveying, Mobilization, Field Office Type-D Modified, and Traffic Control.

A. 100 Percent will be the State's rate of cost participation in all of the Bridge No. 62735 construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I" up to the capped amount.

8.3. Addenda, Change Orders, Supplemental Agreements, and Work Orders. The State will share in the costs of construction contract addenda, change orders, supplemental agreements, and work orders that are necessary to complete the State participation construction covered under this Agreement and are approved in writing by the State District Engineer's authorized representative.

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

9. State Cost and Payment by the State

9.1. State Cost. \$1,976,000.00 is the State's estimated share of the costs of the contract construction as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon review of the construction contract bid documents described in Article 3.2, the State will decide whether to concur in the County's award of the construction contract and, if so, prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.

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

A. Encumbrance by the State of the State's total estimated construction cost share as shown in the Revised Schedule "I".

B. Approval by the State's Land Management Director at St. Paul of certified documentation, submitted by the County, for all right-of-way and easement acquisitions required for the contract construction.

- C. Execution of this Agreement and transmittal to the County, including a letter advising of the State's concurrence in the award of the construction contract.
- D. Legislative appropriation of LPP funds for the State's road construction program. It is anticipated that payment by the State depends on legislative appropriation of funds that will be made after July 1, 2021 and before June 30, 2022 for Fiscal Year 2021.
- E. Encumbrance of LPP funds by the State of the State's total estimated construction cost share as shown in the Revised Schedule "I," no earlier than July 1, 2020.
- F. The State's receipt of a written request from the County for the advancement of funds according to the following payment schedule. The request will include certification by the County that all necessary parties have executed the construction contract.

Payment Schedule

1st Payment = **\$1,750,000.00** upon award of the construction contract and upon completion of the conditions outlined in Article 9.2.

2nd Payment = **\$226,000.00** upon encumbrance of FY 2021 LPP funding after July 1, 2020.

- 9.3. *Limitations of State Payment; No State Payment to Contractor.*** The State's participation in the contract construction is limited to the State participation construction shown in Article 8.2.A, and the State's participation will not change except by a mutually agreed written amendment to this Agreement. The State's payment obligation extends only to the County. The County's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The County's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the County by the County's contractor.
- 9.4. *Construction Costs Exceeding Encumbered and Anticipated Encumbered Amount.*** Whenever it appears the cost of the State participation construction covered under this Agreement is about to exceed the current amount of encumbered State funds or the anticipated amount of State funds to be encumbered the County will notify the State District Engineer's authorized representative in writing prior to performance of the additional State participation construction. Notification will include an estimate in the amount of additional funds necessary to complete the State participation construction including construction engineering costs and the reason(s) why the current amount encumbered or the anticipated amount of State funds to be encumbered will be exceeded. The State will, upon its approval of the additional State participation construction, program or encumber the necessary additional funds. That action will have the effect of amending this Agreement so as to include the State's share of the costs of the additional construction.
- Should the County cause the performance of additional contract construction which would otherwise qualify for State participation construction covered under this Agreement, but the cost of which exceeds the anticipated amount of State funds to be encumbered, that additional contract construction is done at the County's own risk. The County will notify the State District Engineer's authorized representative in writing of the additional State participation construction. Notification will include an estimate in the amount of additional funds necessary to cover the additional State participation construction including construction engineering costs and the reason(s) why the anticipated amount of State funds to be encumbered was exceeded.
- 9.5. *Records Keeping and Invoicing by the County.*** The State will provide the County with a Payment Processing Package containing a Modified Schedule "I" form, instructions, and samples of documents for processing final payment of the State participation construction covered under this Agreement.

The County will keep records and accounts that enable it to provide the State with the following prior to final payment:

- A. A copy of the Modified Schedule "I" which includes final quantities of State participation construction.
- B. Copies of the County contractor's invoice(s) covering all contract construction.
- C. Copies of the endorsed and canceled County warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued, certified by an appropriate County official that final construction contract payment has been made.
- D. Copies of all construction contract change orders, supplemental agreements, and work orders.
- E. A certification form, attached to a copy of the Final Schedule "I", both provided by the State. The certification form will be signed by the County's Engineer in charge of the contract construction attesting to the following:
 - i. Satisfactory performance and completion of all contract construction according to the Project Plans.
 - ii. Acceptance and approval of all materials furnished for the contract construction relative to compliance of those materials to the State's current "Standard Specifications for Construction".
 - iii. Full payment by the County to its contractor for all contract construction.
- F. When requested, copies certified by the County's Engineer, of material sampling reports and material testing results for the materials furnished for the contract construction.
- G. A copy of the "as built" plan sent to the State Aid Agreements Engineer.
- H. A formal invoice (original and signed) in the amount due the County as shown in the Final Schedule "I".

9.6. Final Payment by the State. Upon completion of all contract construction and appropriation of funds, the State will prepare a Final Schedule "I" according to the procedures detailed in the Payment Processing Package and submit a copy to the County. The Final Schedule "I" will be based on final quantities, and include all State participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the State participation construction exceeds the amount of funds previously paid by the State, the State will pay the difference to the County without interest. If the final cost of the State participation construction is less than the amount of funds previously paid by the State, the County will refund the difference to the State without interest.

10. 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.

10.1. The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
Telephone: (651) 366-4634
E-Mail: malaki.ruranika@state.mn.us

10.2. The City's Authorized Representative will be:

Name, Title: Paul Kurtz, City Engineer (or successor)
Address: 900 City Hall Annex, 25 West Fourth Street, St. Paul, MN 55102
Telephone: (651) 266-6203
E-Mail: paul.kurtz@ci.stpaul.mn.us

10.3. The County's Authorized Representative will be:

Name, Title: Erin Laberee, Ramsey County Public Works (or successor)
Address: 1425 Paul Kirkwold Drive, Arden Hills, MN 55112
Telephone: (651) 266-7105
E-Mail: erin.laberee@co.ramsey.mn.us

11. Assignment; Amendments; Waiver; Contract Complete

- 11.1. 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.
- 11.2. 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.
- 11.3. 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.
- 11.4. 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.

12. Liability; Worker Compensation Claims; Insurance

- 12.1.** 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 County. Notwithstanding the foregoing, the County 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 attorney's fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the County's contractor(s) or consultant(s) or by a third party because of an act or omission by the County or its contractor(s) or consultant(s).
- 12.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 12.3.** The County may require its contractor to carry insurance to cover claims for damages asserted against the County's contractor.

13. Nondiscrimination

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

14. State Audits

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

15. 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 either the City, County, or the State.

16. 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.

17. Termination; Suspension

17.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

17.2. *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 of the services covered here. Termination must be by written or fax notice to the City and County. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. 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.

17.3. *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. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

18. 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.

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CITY OF SAINT 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: _____

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

MMR

STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: _____

Date: _____

SWIFT Purchase Order: _____

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: _____
(Chair, Board of County Commissioners)

Date: _____

By: _____
(Chief Clerk, Ramsey County Board)

Date: _____

Approved to as form:

By: _____

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: _____

MMR

PRELIMINARY SCHEDULE "I"
Agreement No. 1035026
City of Saint Paul and Ramsey County

Preliminary: November 5, 2019

S.P. 062-653-011

S.P. 164-020-145

S.P. 6282-235 (T.H. 94=104)

Fed. Proj. STPF 6219 (160)

Grading, bituminous surfacing, ADA improvements, retaining walls, lighting, signals, TMS, and Bridge No. 62735 construction performed under County contract with _____

located on County State Aid Highway No. 53 (Dale Street) from Iglehart Avenue to County State Aid Highway No. 34 (University Avenue)

STATE COST PARTICIPATION				
	FEDERAL	LRIP*	STATE FUNDED	TOTALS
Bridge No. 62735 Work Items From Sheet No. 2				5,473,477.00
Local Partnership Program (LPP) Funds (Capped at \$226,000.00 to be paid in FY 2021)			226,000.00	
District Risk Management Program (DRMP) Funds (Capped at \$1,750,000.00)			1,750,000.00	
Total State Cost				\$1,976,000.00
<i>Remaining Balance of Bridge No. 62735 Costs</i>	3,001,888.73	495,588.27		\$3,497,477.00
(1) <i>Total Bridge Cost</i>				\$5,473,477.00
(2)(3) Encumbered Amount FY 2020				\$1,750,000.00
(4) Encumbered Amount FY 2021				\$226,000.00

(1) Total cost of Bridge No. 62735 including State, Federal, and LRIP* Funding

(2) Amount of advance payment as described in Article 9.2 of the Agreement (estimated amount)

(3) DRMP Funds to be in encumbered in Fiscal Year 2020

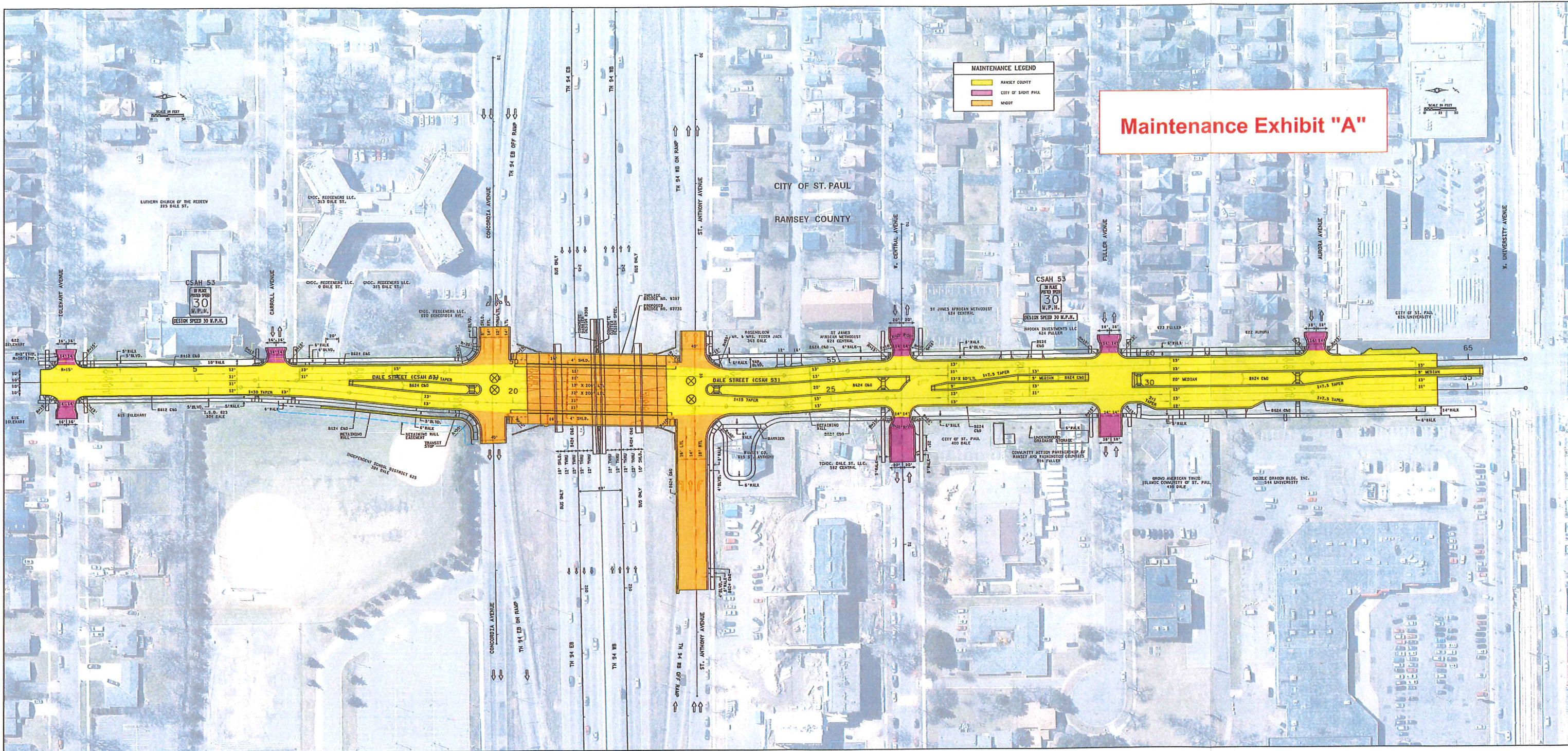
(4) LPP funds to be encumbered in Fiscal Year 2021

* Local Road Improvement Project Funding

(1) 100% STATE COST
(P) PLAN QUANTITY

1035026

ITEM NUMBER	S.P. 6282-235 AND S.P. 062-653-011 BRIDGE NO. 62735 WORK ITEMS	UNIT	QUANTITY	UNIT PRICE	COST (1)
2011.601	CONSTRUCTION SURVEYING	LUMP SUM	0.48	50,000.00	24,000.00
2021.501	MOBILIZATION	LUMP SUM	0.48	500,000.00	240,000.00
2031.502	FILED OFFICE TYPE-D MODIFIED	LUMP SUM	0.48	65,000.00	31,200.00
2011.601	VIBRATION MONITORING	LUMP SUM	1.00	50,000.00	50,000.00
2104.601	REMOVE REGULATED WASTE MATERIAL (BRIDGE)	LUMP SUM	1.00	2,400.00	2,400.00
2105.507	ROCK EXCAVATION	CU YD	32.00	275.00	8,800.00
2401.503	TYPE MOD. P-4 (TL-4) BARRIER CONC (3S52)	LIN FT (P)	528.00	175.00	92,400.00
2401.503	LOW PROFILE CONCRETE BRIDGE RAIL	LIN FT (P)	438.00	300.00	131,400.00
2401.507	STRUCTURAL CONCRETE (1G52)	CU YD (P)	883.00	600.00	529,800.00
2401.507	STRUCTURAL CONCRETE (1P62)	CU YD (P)	32.00	275.00	8,800.00
2401.507	STRUCTURAL CONCRETE (3B52)	CU YD (P)	1,009.00	850.00	857,650.00
2401.508	REINFORCEMENT BARS	POUND (P)	71,085.00	1.25	88,856.25
2401.508	REINFORCEMENT BARS (EPOXY COATED)	POUND (P)	262,335.00	1.50	393,502.50
2401.508	REINFORCEMENT BARS (STAINLESS-75 KSI)	POUND (P)	965.00	3.25	3,136.25
2401.601	FOUNDATION PREPARATION SOUTH ABUT	LUMP SUM	1.00	240,000.00	240,000.00
2401.601	FOUNDATION PREPARATION NORTH ABUT	LUMP SUM	1.00	240,000.00	240,000.00
2401.601	FOUNDATION PREPARATION PIER	LUMP SUM	1.00	25,000.00	25,000.00
2401.618	BRIDGE SLAB CONCRETE (3YHPCIC-M)	SQ FT (P)	20,816.00	35.00	728,560.00
2401.618	BRIDGE DECK PLANING	SQ FT (P)	15,994.00	1.50	23,991.00
2402.503	ORNAMENTAL METAL RAILING TYPE SPECIAL 1PC	LIN FT (P)	368.00	320.00	117,760.00
2402.503	ORNAMENTAL METAL RAILING TYPE SPECIAL 2PC	LIN FT (P)	142.00	275.00	39,050.00
2402.595	BEARING ASSEMBLY	EACH	68.00	950.00	64,600.00
2405.503	PRESTRESSED CONCRETE BEAMS 30MH	LIN FT (P)	3,094.00	350.00	1,082,900.00
2433.618	SILANE 100 PERCENT	SQ FT (P)	6,850.00	1.10	7,535.00
2442.501	REMOVE EXISTING BRIDGE	LUMP SUM	1.00	250,000.00	250,000.00
2451.507	AGGREGATE BACKFILL (CV)	CU YD	463.00	12.00	5,556.00
2502.502	DRAINAGE SYSTEM TYPE (B910)	LUMP SUM	1.00	3,500.00	3,500.00
2514.504	CONCRETE SLOPE PAVING	SQ YD (P)	428.00	160.00	68,480.00
2545.501	CONDUIT SYSTEM (OVERHEAD LIGHTING)	LUMP SUM	1.00	3,000.00	3,000.00
2545.501	CONDUIT SYSTEM (UNDER BRIDGE LIGHTING)	LUMP SUM	1.00	3,000.00	3,000.00
2545.501	CONDUIT SYSTEM (SIGNALS)	LUMP SUM	1.00	3,000.00	3,000.00
2563.601	TRAFFIC CONTROL	LUMP SUM	0.48	220,000.00	105,600.00
				TOTAL	\$5,473,477.00
					\$5,473,477.00



Maintenance Exhibit "A"

MAINTENANCE LEGEND	
Yellow	RAMSEY COUNTY
Orange	CITY OF SAINT PAUL
White Box with Red Border	MOOT