

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

State Project Number (SP):	<u>6280-308</u>	Estimated Amount Receivable
Trunk Highway Number (TH):	<u>35E=390</u>	<u>\$1,359,689.42</u>
State Aid Project (SAP):	<u>164-137-008</u>	
State Aid Project (SAP):	<u>164-020-122</u>	
State Aid Project (SAP):	<u>164-288-013</u>	
State Aid Project (SAP):	<u>164-267-004</u>	
State Aid Project (SAP):	<u>062-633-004</u>	
	<u>HPP-HPPH-HPPS-</u>	
	<u>BRIM-IM 6213</u>	
Federal Project Number:	<u>(094)</u>	
Lighting System Feed Point No.	<u>City</u>	
Signal System ID	<u>39451, 39452, 39479</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. The State will perform grading, bituminous and concrete surfacing, retaining walls signals, TMS, signing lighting, ADA improvements and bridges No.'s 62608, 62609, 62610, 62856, 62918, 62919, 62920, 62921, 62924, 62925, 62926 construction and other associated construction upon, along and adjacent to Trunk Highway No. 35E from 580' south of University Avenue to 760' north of Maryland Avenue according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6280-308 (T.H. 35E=390)("Project"); and
2. The City has requested the State include in its Project extra width sidewalk, signal systems, lighting and extra bridge width construction; and
3. The City wishes to participate in the costs of the extra width sidewalk, signal systems, lighting and extra bridge width construction and associated construction engineering; and
4. A separate agreement between the State and Ramsey County, Agreement No. 01607, Met Council, Agreement No. 01542, Metropolitan Airports Commission, Agreement No. 01846 and MN/DNR, Agreement No. 01585, and will address other agreements that are associated with this Project and cover such things as detours, design, const. eng., signal and lighting maintenance; and
5. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract; and
6. 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: 3. Maintenance by the City; 8. Liability; Worker Compensation Claims; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.
- 1.4. **Plans, Specifications, Special Provisions.** Plans, specifications and special provisions designated by the State as State Project No. 6280-308 (T.H. 35E=390) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference. ("Project Plans")
- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the City Engineer and incorporated into this Agreement by reference. EXHIBIT "A" drainage maintenance, EXHIBIT "B" lighting maintenance and EXHIBIT "C" lighting cost participation is on file in the office of the State's Municipal Agreements Engineer at St. Paul and incorporated into this Agreement by reference.

1.6.

2. Construction by the State

- 2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.
- 2.2. **Direction, Supervision and Inspection of Construction.**
- A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract, and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project 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 will make changes in the Project Plans and contract construction, which may include the 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 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 construction contract that will affect the City participation construction covered under this Agreement.
- B. The City may request additional work or changes to the work in the plans as part of the construction 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.
- 2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner. Acceptance by the State of the completed contract construction will be final, binding and conclusive upon the City as to the satisfactory completion of the contract construction.

2.5. Permits

- A. The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City to be constructed hereunder that are upon and within the trunk highway right-of-way. Applications for permits will be made on State form "Application For Utility Permit On Trunk Highway Right-Of-Way" (Form TP2525).
- B. The City will 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, under Minnesota Statutes § 115.07 or Minnesota Rules 7001.1030, subpart 2C, either a permit or written waiver from that agency for that construction or reconstruction. The City is advised that under 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.

3. Maintenance by the City.

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

- 3.1. **Roadways.** Maintenance of Cayuga Street, Phalen Boulevard, Mississippi Street, L'Orient Street, Minnehaha Avenue, Granite Street, Terrace Court, York Avenue, Case/Mississippi Street and University Avenue. 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 and Sims/Agate Pond.** Routine maintenance of the storm sewer facilities construction is shown on Exhibit "A" which is attached to this agreement. 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. The State shall own the Sims/Agate pond.
- 3.3. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.4. **Sidewalks.** Maintenance of Cayuga Street, Phalen Boulevard, Mississippi Street, L'Orient Street, York Avenue, Case/Mississippi Street and University Avenue sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk markings, mowing grass boulevards(if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
- 3.5. **Bikeways/Multi-use Trails.** Maintenance of Cayuga Street, Phalen Boulevard, and Trillium trail bikeways and multi-use trails construction. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, mowing, trimming, signing, pavement markings, and any other maintenance activities necessary to perpetuate the bikeways and multi-use trails in a safe and usable condition.
- 3.6. **Retaining Walls.** Maintenance of retaining wall construction adjacent to L'Orient Street and frontage road. Maintenance includes graffiti removal, ornamental railing repair and replacement and any other maintenance activities necessary to perpetuate the walls in a safe, usable and aesthetically acceptable condition. Trillium Trail retaining wall maintenance includes ornamental railing repair and replacement.
- 3.7. **Lighting.** Maintenance and ownership of L'Orient Street, Mississippi Street, Frontage Road, Cayuga Street, Phalen Boulevard, Terrace Court, York Avenue, Case/Mississippi Street and the trail between Jessamine and Maryland Avenue lighting facilities construction and is shown in Exhibit "B". 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 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. As owner of the lighting facilities, the City will be responsible for all "Gopher State One Call" locates.

- 3.8. *Bridges (City Street).*** Maintenance and repair of Cayuga street bridge No. 62609 construction. Maintenance and repair 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, guardrail, and nonstructurally 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, until such time as the State release's Cayuga Street and bridge No. 62609 to the City.
- 3.9. *Signal Systems and EVP systems Ownership, Operation and Maintenance.*** Ownership, operation and maintenance responsibilities will be as follows for the Signal Systems, Interconnect and EVP Systems on T.H. 35E at Cayuga St. west ramp (System "A"), and on T.H. 35E at Cayuga St. east ramp (System "B"), and on Pennsylvania Ave at L'Orient St./frontage road (System "D") and on T.H. 35E at University Ave. ramp (System "C") and for the Interconnect adjacent to Cayuga St. and frontage road/L'Orient St.

A. *City Responsibilities*

- i. *Power.*** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pad(s) or pole(s) and will pay all monthly electrical service expenses necessary to operate the Signal Systems, EVP Systems and Interconnect.
 - ii. *Signal System Maintenance.*** Maintain the signal pole mounted luminaires and all internal components, including replacing the luminaires and lamps when necessary, replace the Signal Systems, EVP systems, controllers and Interconnect master controllers, L.E.D. indications, clean the Signal Systems controller cabinet and service cabinet exteriors, clean and paint the Signal Systems and luminaire mast arm extensions. Painting will be in accordance with Mn/DOT Standard Specification 2565.3T, unless approved by the State's District Traffic Engineer, paint and maintain the cross street pedestrian crosswalk markings. Replacing 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 signal systems facilities in working order. As owner of the signal systems facilities, the City will be responsible for all "Gopher State One Call" locates.
 - iii. *Timing.*** All Signal System timing will be determined by the City.
 - iv. *Related Agreements.*** This agreement will supersede and terminate the operation and maintenance terms of Agreement No. 64395, dated 21 March, 1988, between the parties, for the intersection of T.H. 35E at University Ave. ramp and Agreement No. 88681, dated 4 January, 2006 between the parties, for the intersection of 35E at Pennsylvania Ave. ramp.
- 3.10. *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.
- 3.11. *Future Responsibilities.*** Upon completion of the Cayuga Street, Phalen Boulevard, Mississippi Street, L'Orient Street, Minnehaha Avenue, Granite Street, Terrace Court, York Avenue, Case/Mississippi Street and University Avenue and all facilities there on construction, the City 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 Cayuga Street, Phalen Boulevard, Mississippi Street, L'Orient Street, Minnehaha Avenue, Granite Street, Terrace Court, York Avenue, Case/Mississippi Street and

University Avenue and all facilities there on and all of the facilities constructed as part of this Agreement, without cost or expense to the State.

3.12. Release and Conveyance of Roadways. Upon completion of the Cayuga Street, Phalen Boulevard, Mississippi Street, L'Orient Street, Minnehaha Avenue, Granite Street, Terrace Court, York Avenue, Case/Mississippi Street and University Avenue construction, the State will serve upon the City a "Notice of Release" placing those roadway portions under the jurisdiction of the City; and subsequent thereto, after all required documents have been prepared and processed, the State will convey to the City all right, title and interest of the State in those roadway portions. Upon receipt of that "Notice of Release", the City will become the road authority responsible for the roadway portions so released.

4. Basis of City Cost

4.1. SCHEDULE "I". The Preliminary SCHEDULE "I" includes all anticipated City participation construction items, City Furnished Materials lump sum credit amount and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.

4.2. City Participation Construction. The City will participate in the following at the percentages indicated. The construction includes the City's proportionate share of item costs for mobilization and traffic control.

A. 100 Percent will be the City's rate of cost participation of the sidewalk on north side of Cayuga St. off of the bridges, sidewalk on bridges No. 62608 and 62609 on Cayuga St., 40% signal system "A" at west ramp, 50% signal system "B" east ramp, 100% EVP systems "A" and "B", shoulder on Phalen Blvd. East of Mississippi St. greater than 4 feet wide, 75% of sidewalk on the south side of Pennsylvania Ave. west of L'Orient St., 75% of sidewalk greater than 6 feet wide on the south side of Pennsylvania Ave. under 35E between L'Orient St. and Mississippi St., 25% signal system "D", 100% EVP system "D", 62.5% signal system "C", 100% of EVP system "C", Interconnect and ornamental lighting as shown on Exhibit "C" on City streets over and above the cost of standard lighting construction. The construction includes, but is not limited to, those construction items tabulated on Sheet(s) No. 2 thru No. 6 of the Preliminary SCHEDULE "I".

4.3. City Furnished Materials. The City will furnish 3 cabinets and controllers, 3 battery backup/Signal/Lighting service cabinets and 4 EVP's, ("City Furnished Materials"), according to the Project Plans, to operate the traffic control signal system(s) covered under this Agreement. The City's lump sum credit from the State for City Furnished Materials is \$139,600.00. The City's credit for City Furnished Materials will be subtracted from the City's total construction cost share as shown in the SCHEDULE "I".

4.4. Construction Engineering Costs. The City will pay a construction engineering charge equal to 8 percent of the total City participation construction covered under this Agreement.

4.5. Plan Changes, Additional Construction, Etc. The City will share in the costs of construction contract addenda, change orders and supplemental agreements that are necessary to complete the City participation construction covered under this Agreement, including any City requested additional work and plan changes.

The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, construction contract addenda, change orders and supplemental agreements, and associated construction engineering before the completion of the contract construction.

5. City Cost and Payment by the City

5.1. City Cost. \$1,359,689.42 is the City's estimated share of the costs of the contract construction, minus the City Furnished Materials plus the 8 percent construction engineering cost share 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 award of the construction contract, the State will prepare a Revised SCHEDULE "I" based on construction contract unit prices.

5.2. Conditions of Payment. The City will pay the State the full and complete lump sum amount, as shown in the Revised SCHEDULE "I", after the following conditions have been met:

- A. Execution of this Agreement and transmittal to the City, including a copy of the Revised SCHEDULE "I".
- B. The City's receipt of a written request from the State for the advancement of funds.

5.3. Final Payment, Additional City Requested Work

Upon completion of all contract construction and upon computation of the final amount due the State's contractor and only if additional work has been requested under Article 2.3.B of this Agreement, the State will prepare a Final SCHEDULE "I" and submit a copy to the City. The Final SCHEDULE "I" will be based on final quantities of any additional City requested participation construction items and the construction engineering cost share due to additional requested work. The computation by the State of the amount due from the City will be final, binding and conclusive.

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: John Maczko, City Engineer (or successor)
Address: 25 West 4th St., 1500 City Hall Annex, St. Paul, MN 55102
Telephone: 651-266-6209

7. Assignment; Amendments; Waiver; Contract Complete

- 7.1. **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.
- 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 and the City. 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.
- 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'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 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.

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 contract construction under the Project. Termination must be by written or fax notice to the City.

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

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.

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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: _____

Activity 003 - 25145 - 3409 - 00000

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-5