

Prepared by the
Utility Agreements and Permits Unit
(Payable)
(\$100,264.81)
(Actual Cost)

S.P. 6223-20 (T.H. 149)
Location: over Mississippi River on Bridge
62090 (High Bridge) in the City of St. Paul
Utility Owner: Board of Water Commissioners
of the City of Saint Paul
MnDOT Agreement Number 1028362

UTILITY RELOCATION AGREEMENT

This Agreement Number 1028362 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation, and Board of Water Commissioners of the City of Saint Paul, including its agents, contractors, and subcontractors (Utility Owner). This Agreement describes how the parties will mitigate the effects of a State construction project on the Utility Owner.

RECITALS

The State plans to let a contract to construct State Project Number 6223-20 (Project) on Trunk Highway Number 149. The Project is located over Mississippi River on Bridge 62090 (High Bridge) in the City of St. Paul.

The Utility Owner owns and operates watermain, its fixtures, and related equipment (Facilities) on publicly owned right of way; said Facilities being in place prior to the constructions of Bridge 62090.

On April 24, 1987, the District Court made an interpretation of Chapter 110, Special Laws of Minnesota 1885, that the City of Saint Paul has the obligation to reimburse the Utility Owner for all relocation costs whenever the City of Saint Paul makes improvements to city streets. When the State took Smith Avenue from the City, the State assumed the obligation to reimburse the Utility Owner for such relocations of waterworks facilities as a result of street improvements. Therefore, the cost of relocating Facilities is eligible for reimbursement to the Utility Owner. The Facilities are within the limits of the Project.

The Utility Owner must relocate the Facilities that are within the Project limits. The Utility Owner has requested reimbursement for the cost of this relocation from the State.

State law requires a written agreement between the State and the Utility Owner that describes their separate responsibilities.

AGREEMENT

I. Term/Termination

- A. *Effective Date:* This Agreement is effective on the date the State obtains all signatures required by Minnesota Statutes, section 16C.05, subdivision 2.
- B. *Commencement of Work:* Upon notice of Agreement approval, the Utility Owner must commence work according to the terms of the Notice and Order and prosecute the work according to a schedule the State's Project Engineer (Project Engineer) approves.
- C. *Expiration Date:* This Agreement will expire on the date that all obligations, excluding the Utility Owner's ongoing maintenance obligation, have been satisfactorily fulfilled.
- D. *Termination by the State:* The State may terminate this Agreement at any time, with or without cause, on 30 calendar days' written notice to the Utility Owner. Upon termination, the Utility Owner will be entitled to payment, on a pro rata basis, for satisfactorily performed services. The termination of this Agreement does not relieve the Utility Owner of its obligations under the Notice and Order.
- E. *Survival of Terms:* The following articles survive the Agreement's expiration or termination: (III) Utility Owner's Ongoing Maintenance Requirements; (V) Audits; (VI) Indemnification/Insurance; and (VIII) Governing Terms.

II. Utility Owner's Duties

- A. *Relocation:* The Utility Owner must:
 - 1. Relocate its Facilities according to:
 - a. The terms of the Notice and Order;
 - b. All applicable codes;
 - c. The directions of the Project Engineer and the State's Utilities Engineer (Utilities Engineer);
 - d. The plans for the utility work, which are attached to this Agreement as Exhibit A. If any changes must be made to the plans, the Utilities Engineer must approve these changes in writing before the Utility Owner performs the work to qualify for reimbursement; and
 - e. MnDOT's standard construction specifications.

2. Submit one copy of the State's Application for Utility Accommodation on Trunk Highway Right of Way, Form 2525 (Permit), including two copies of "proposed" sketches, for all Facilities within the trunk highway right of way to the Utilities Engineer before beginning relocation work.
3. Coordinate its operations with the State's contractor's (Contractor) operations and notify the Project Engineer at least two days before beginning and after completing each operational phase.
4. Stake the location and elevation of the proposed Facilities within the trunk highway right of way. The Utility Owner must not begin construction until the Project Engineer approves the location and elevation.
5. Use the Utility Owner's regular forces at its standard schedule of wages and working hours to accomplish all utility work. If the Utility Owner must subcontract any work at a later date, it must obtain written approval from the Utilities Engineer before awarding the contract for that work. If the subcontracted utility work costs \$10,000.00 or more, the Utility Owner must:
 - a. Enter into a written contract with the subcontractor for that work. The contract must include or incorporate the "Audits" clause in substantially the same form as it appears in Article (V) of this Agreement; provide a detailed breakdown of the basis for compensation; and state that there will be no "penalty" or "winding up" charges for contract termination.
 - b. Provide copies of the contract to the State prior to its execution or before commencing work under an already executed "retainer-type" contract.

Except in an emergency or for the minor completion of a phase of work, obtain the Utilities Engineer's approval for overtime work to qualify for reimbursement.

6. Accomplish the relocation work with its own equipment. If the Utility Owner must rent any equipment at a later date, it must first obtain:
 - a. The Utilities Engineer's written approval of the equipment rental and rental rates; and
 - b. The Project Engineer's approval of the equipment's proposed use.

The Utility Owner must obtain the approvals listed above before renting and using equipment to perform any other work.

7. The Utility Owner must perform its work concurrently with that of the Contractor and it must coordinate with the Contractor to ensure that all work is completed to the State's satisfaction without delays.
8. Maintain accurate and up-to-date relocation cost records throughout the course of the Project.
9. Leave materials in place at the Project Engineer's discretion. Any materials left within the right of way after the Utility Owner completes its work will become the property of the Contractor.

B. *Compliance with Safety Regulations*

1. The Utility Owner must comply with the safety regulations contained in Minnesota Rules, part 8810.3400, subpart 5, during all construction and maintenance operations. The Utility Owner will furnish and require each flagger to carry a copy of the current edition of the State's *Field Manual*, which is Part IV of the *Minnesota Manual of Uniform Traffic Control Devices*. The Utility Owner must furnish each flagger with the required vest, hat, hand sign, flags, and any other necessary safety equipment.
2. The provisions of this Agreement do not relieve the Utility Owner of any legal responsibility or liability associated with the construction, operations, or maintenance of its Facilities.

C. *Compliance with Pollution Control Requirements*

1. The Contractor installs pollution control measures according to the National Pollution Discharge Elimination System permit (NPDES Permit). Pollution control measures include silt fences, slope stabilization measures such as seed and mulch, and any other measures the State deems necessary to comply with the NPDES Permit. If the Utility Owner's work affects such pollution control measures, the Utility Owner must restore them to their original condition and to the Project Engineer's satisfaction. If the Utility Owner is relocating Facilities before the Contractor begins construction, the Utility Owner must work with the Project Engineer to determine if pollution control measures are necessary and how to implement them if they are.

III. *Utility Owner's Ongoing Maintenance Requirements*

- A. Once construction is complete, the Utility Owner must maintain the Facilities at its own expense. The Utility Owner must follow the terms of the Permit when it performs any

maintenance work.

- B. The Utility Owner may open and disturb the trunk highway right of way without a permit in the case of an emergency that is dangerous to the public and requires immediate attention. Upon learning of an emergency, the Utility Owner must immediately notify the State Patrol. The Utility Owner must take all necessary and reasonable safety measures to protect the public and must cooperate fully with the State Patrol. In this event, the Utility Owner must request a permit from the proper authority no later than the working date after it begins working in the right of way.

IV. Payment

A. *Payment*

1. Exhibit B, which is attached to this Agreement, is a detailed, itemized estimate of the cost of the Utility Owner's relocation work. Actual cost includes all expenses attributable to design engineering and construction relocation work. Reimbursement will be based on the actual costs for work that conforms to Exhibit A. Betterment, increase in value, and salvage value derived from the relocated Facilities will not be included in this reimbursement.
2. The State will pay the Utility Owner for the actual cost the Utility Owner incurs performing its obligations pursuant to this Agreement, in an amount not to exceed \$100,264.81, upon receiving:
 - a. Proof that the Facilities have been relocated to the Project Engineer's and Utilities Engineer's satisfaction; and
 - b. One original, signed invoice that is supported by an itemized statement of costs. An authorized representative of the Utility Owner must sign the invoice and submit the final bill to the Utilities Engineer no later than 90 days after completing the work.
3. The State's payment constitutes payment in full for all work the Utility Owner performs and for any and all damages, claims, or causes of action of any kind accruing to the Utility Owner because of the State's order to relocate the

Facilities. Notwithstanding anything in this Agreement to the contrary, the Utility Owner reserves the right to pursue any lawful remedy it may have for tortious acts that may arise out of the relocation of the Facilities.

4. If acceptable to the Utilities Engineer, the State may process periodic progress billings of incurred cost without prior audit.

B. *Limitation on Payment*

1. The total amount the State is required to pay is limited to the amount shown in Article IV.A.2.
2. If the Utility Owner deems it necessary to perform additional work not covered by this Agreement, or anticipates costs exceeding the amount in Article IV.A.2., then the Utility Owner must promptly notify the Utilities Engineer, in writing, of the nature and cause of the additional work or costs prior to performing or incurring them. Notification must include the amount of additional State funds requested and reason(s) supporting the request. The Utilities Engineer may approve the request subject to the availability and encumbrance of funds. If the Utility Owner performs additional work for which the State has not previously encumbered funds, the State is not obligated to pay for that additional work.
3. If the amount the Utility Owner requests under Article IV.B.2. does not exceed 10 percent of the amount in Article IV.A.2., the State may authorize payment of that pre-approved additional amount without amending this Agreement. The Utility Owner must receive notification from the State that the State has approved the additional work and encumbered the additional funds before beginning the additional work, or that work will be ineligible for reimbursement.
4. If the amount the Utility Owner requests exceeds 10 percent of the amount shown in Article IV.A.2., this Agreement must be amended to reflect the new cost before the State will be responsible for paying that additional cost.

V. *Audits*

- A. The Utility Owner's costs to relocate its Facilities according to this Agreement and the costs for any additions or alterations to these Facilities are subject to the State and federal government's examination and audit. Pursuant to Minnesota Statutes, section 16C.05, subdivision 5, the Utility Owner's accounting books, records, documents, procedures, and practices that are relevant to this Agreement are subject to Legislative or State Audit for six years after this Agreement expires.

- B. The Utility Owner must respond to requests for audit information to support claimed costs no later than 60 days after receiving the request or the State will cite all costs in question. If the Utility Owner does not respond during this 60-day period, the State will consider the audit citations accepted and will make payment accordingly.

VI. Liability; Worker Compensation Claims; Insurance

- A. 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 Utility Owner. This clause will not be construed to bar any legal remedies a party may have to fulfill its obligations under this contract.
- B. The Utility Owner certifies that its workers' compensation insurance coverage complies with Minnesota Statutes, section 176.181, subdivision 2. The Utility Owner's employees and agents are not considered State employees. The State is not responsible for any claims asserted by the Utility Owner's employees, agents, subcontractors, or any third parties under the Minnesota Workers' Compensation Act.

VII. Nondiscrimination

- A. The Utility Owner will comply with the United States Department of Transportation's nondiscrimination regulations. These regulations are in the current version of the Code of Federal Regulations, title 49, part 21. The Utility Owner must incorporate these regulations by reference in all contracts.
- B. Minnesota Statutes, section 181.59 and any applicable local ordinances pertaining to civil rights and nondiscrimination are considered part of this Agreement.

VIII. Governing Terms

- A. *Data Practices:* All parties must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13) as it applies to any data that a party to this Agreement receives, collects, stores, or disseminates under it. The Act provides civil liability for failure to comply with its requirements.

- B. *Applicable Law:* 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 Ramsey County, Minnesota.
- C. *Waiver:* If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- D. *Merger:* This Agreement contains all negotiations and agreements between the State and the Utility Owner. No prior understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- E. *Assignment:* The Utility Owner may neither assign nor transfer any rights or obligations under this Agreement without the State's consent and a fully executed assignment agreement. To be valid, the assignment agreement must be signed and approved by the same parties who signed and approved this Agreement, or their successors in office.
- F. *Amendments:* Any amendment to this Agreement must be in writing. An amendment will not be effective until the same parties who signed and approved this Agreement, or their successors in office, sign and approve the amendment.
- G. *Incorporation of Exhibits:* All exhibits attached to this Agreement are incorporated into this Agreement.

The remainder of this page was left blank intentionally.

IN TESTIMONY WHEREOF, the parties have duly executed this Agreement by their duly authorized officers and caused their respective seals to be hereunto affixed.

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

Approved:

By: _____
Stephen P. Schneider
General Manager
Saint Paul Regional Water Services

Date: _____

By: _____
Matt Anfang
President

Date: _____

Approved as to form:

By: _____
Assistant City Attorney

Date: _____

By: _____
Mollie Gagnelius
Secretary

Date: _____

By: _____
Todd Hurley
Director
Office of Financial Services

Date: _____

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

State Encumbrance Verification

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

By: _____

Date: _____

Contract Number: _____

Order Number: _____

Department of Transportation

Recommended for Approval:

Approved:

By: _____
Metro Utility Coordinator

By: _____
Director, Office of Land Management

Date: _____

Date: _____

Office of Contract Management

Approved as to Form and Execution:

By: _____

Date: _____

Department of Administration

By: _____

Date: _____

(JZ)

WORK DESIGN ESTIMATE REPORTMnDOT Agreement Number 1028362 27/APR/2017
Exhibit B 12:17 PM

Report Select Criteria: WORK_DESIGN_NO = 1700044 PLANT = 01

Report Ordered By: PLANT

Project/Subproject: 17-00-019 / 1

Work Design No: 1700044

Old Shepard - Smith - Offset main due to Bridge work - Option 2 Revised (Excavation by Contractor)

DESIGN ESTIMATE SUMMARY	AMOUNT
Material	51,327.86
Labor	3,757.19
Equipment	1,295.20
Other Costs	43,884.56
Discount	0.00
Standard Price Adjustment	0.00
Subtotal	100,264.81
Contractor Amount	0.00
Subtotal with Contractor	100,264.81
State	0.00
Federal	0.00
Local	0.00
Estimated Total	100,264.81

DETAILS

Cost Type	Amount
ENGINEERING ADDITIVE	10,484.70
FRINGES - REGULAR TIME	1,596.81
MATERIAL ADDITIVES - BILLABLE	19,687.40
OVERHEAD ADDITIVE	12,115.65
RESTORATION	0.00
Other Costs Total	43,884.56

Str.	Stock Type / Code	Item Description	Qty.	UOM	Unit Price	Total
WWH	WWH	BF VALVE-MJ-20	2.00	EA	2,671.06	5,342.11
WWH	WWH	ADAPT-20 -CONC SPIG X MJ BELL	1.00	EA	5,832.70	5,832.70
WWH	WWH	DI PIPE-SJ-6	1.00	EA	394.52	394.52
WWH	WWH	DI PIPE-SJ-20	19.00	EA	1,553.06	29,508.20
WWH	WWH	TEE MJ 20 X 6	1.00	EA	807.29	807.29
WWH	WWH	BEND MJMJ 1/16 OR 22 1/2 - 20	4.00	EA	721.77	2,887.10
WWH	WWH	MEGA LUG-20	18.00	EA	248.57	4,474.22
WWH	WWH	RETAINER GLAND-6	4.00	EA	17.82	71.26
WWH	WWH	PACER 100 FIRE HYDRANT DS WITH STORZ FITTING	1.00	EA	2,010.45	2,010.45
Subtotal						51,327.86
Adjustment						0.00
Material Total						51,327.86

WORK DESIGN ESTIMATE REPORT

MnDOT Agreement Number 1028362 27/APR/2017
Exhibit B 12:17 PM

Craft	Description	# of People	Hours	Rate	Total
072A	H WELDER	1	3	29.89	29.89
277-E	H WATER UTILITY WORKER I	2	32	22.43	22.43
297A	H WATER UTILITY WORKER II	1	32	27.16	27.16
369B	B WATER DISTRIBUTION SUPV III	1	32	42.59	42.59

Subtotal 3,757.19

Travel 0.00

Subtotal with Travel 3,757.19

Adjustment 0.00

Labor Total 3,757.19

Equipment	Description	Qty.	Duration	UOM	Rate	Total
W_E513-17	Water - 2017 Pickup F450 4X2 #513	1.00	3	HOUR	13.60	40.80
W_E606-15	Water - 2015 FORD F350 PICKUP #606	1.00	32	HOUR	11.00	352.00
W_E616-12	Water - 2012 Ford step Utilivan #616	1.00	32	HOUR	17.20	550.40
W_E641-12	Water - 2012 Ford F350 pickup #641	1.00	32	HOUR	11.00	352.00

Subtotal 1,295.20

Adjustment 0.00

Equipment Total 1,295.20

Additives and what they are applied to:

engineering additive	13.50% applied to materials, material additive, labor, equip and fringe applied to those projects which require input and/or review from the engineering group
overhead additive	15.60% applied to materials, material additive, labor, equip and fringe Applies to all activities of the utility for recovery of the mangement and support functions of the organization as a whole
material additive	47.60% applied to materials from our warehouse to recover costs of operating warehouse and yards (rate is 47.6% for billable jobs, and 24.1% for internal jobs)
fringes -regular time	42.50% applied to regular labor hours for fringe benefits

Example of how applied to Work design estimate:

labor	3,757.19	warehouse materials	51,327.86	
fringe	x .425		-1.241	less 24.1% warehouse add. already incl. in the
				51,327.86 mtl cost
fringe	<u>1,596.81</u>		x .476	material additive on billable jobs
			<u>19,687.40</u>	material additive
mtl	51,327.86		51,327.86	
mtl additive	19,687.40		19,687.40	
labor	3,757.19		3,757.19	
equip	1,295.20		1,295.20	
fringes	<u>1,596.81</u>		<u>1,596.81</u>	
	77,664.46		77,664.46	
	x .156		x .135	
		engin.		
overhead additive	<u>12,115.66</u>	additive		
			<u>10,484.70</u>	