

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF DULUTH  
COOPERATIVE CONSTRUCTION  
AGREEMENT**

State Project Number (SP):	<u>6910-102</u>	Estimated Amount Receivable
Trunk Highway Number (TH):	<u>23=185</u>	<u>\$254,864.52</u>
State Project Number (SP):	<u>6910-103</u>	
Lighting System Feed Point:	<u>C</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of Duluth, acting through its City Council ("City").

**Recitals**

1. The State will perform grading, bituminous surfacing, and lighting construction and other associated construction upon, along, and adjacent to Trunk Highway No. 23 from 633 feet south of St. Louis County State Aid Highway (CSAH) No. 3 (Becks Road) to 268 feet south of St. Louis County State Aid Highway No. 3 (Becks Road) and on Trunk Highway No. 23 from 2.94 miles south of Trunk Highway No. 35 to 2.9 miles south of Trunk Highway No. 35 according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 6910-103 and No. 6910-102 (TH 23=185) ("Project"); and
2. The City has requested the State include in its Project storm sewer, lighting, and utilities construction; and
3. The City requests that it perform certain aspects of the construction engineering in connection with the utility construction and the State concurs in that request; and
4. The City will participate in the costs of the storm sewer, lighting, and utilities construction and associated State performed construction engineering; and
5. Agreement No. 1051374 between the State and Minnesota Department of Natural Resources will address additional cost participation construction on the Project not covered by this Agreement; and
6. Agreement No. 1051605 between the State and the City and Agreement No. 1051606 between the State and St. Louis County will address the detours needed on the Project; and
7. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and
8. 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, and Special Provisions.** Plans, specifications, and special provisions designated by the State as State Project No. 6910-102 and No. 6910-103 (TH 23=185) 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 attached and incorporated into this Agreement.

## 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 except as provided below, 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. **Construction Engineering and Inspection by the City.** The City will assign its City Engineer or other registered professional engineer to perform construction engineering in connection with the water main and gas main construction. The engineer so assigned will act under the supervision and direction of the State and be responsible for construction inspection and control of materials for said construction. The construction will be performed according to the Project Plans and recognized and accepted practices and procedures as set forth in various State manuals, including Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction". The City will furnish other personnel, services, supplies, and equipment needed to properly carry on the construction.
    - i. **Documentation of Construction Costs.** At regular intervals after the State's contractor has started the water main and gas main construction, the City will prepare partial estimates of the construction costs according to the terms of the construction contract and immediately submit the partial estimates to the State. The City will also prepare the final estimate data for said construction and submit the final estimate to the State. Quantities listed on the partial and final estimates will be documented according to guidelines in the applicable documentation manual.
    - ii. **Final Inspection of Construction.** Upon completion of the water main and gas main construction, the City will advise the State whether or not said construction should be accepted by the State as being performed in a satisfactory manner. If the City recommends that the State not accept the construction, then the City will, as part of their recommendation, identify the specific defects in the construction and the reasons why it should not be accepted. Any recommendations made by the City are not binding on the State. The State will determine, after considering the City's recommendations, whether or not the construction has been properly performed and whether to accept or reject it.

- iii. **Inspection of Other City Participation Construction.** The remainder of 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 and change orders 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 and change orders 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.

- 2.5. **Permits.** 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 2525).

- 2.6. **Replacement of Castings.** Adjustments to certain City-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The City will furnish the contractor with new units and/or parts for those in place City-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

### **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. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.2. **Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, vegetation control of boulevards (if any), and any other maintenance activities necessary to perpetuate the sidewalks in a safe and useable condition according to the City's ADA transition plan.

- 3.3. Lighting.** Maintenance and ownership of any lighting facilities construction. 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, pull boxes, 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.
- 3.4. 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.

#### **4. Basis of City Cost**

- 4.1. Schedule "I".** The Preliminary Schedule "I" includes anticipated City participation construction items 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, Combination Field Laboratory-Office, and Traffic Control.
- A.** 100 Percent will be the City's rate of cost participation in all of the SP 6910-102 construction and associated construction engineering. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".
  - B.** 100 Percent will be the City's rate of cost participation in all of the SP 6910-103 construction and associated construction engineering. The construction includes, but is not limited to, those construction items tabulated on Sheet Nos. 3 and 4 of the Preliminary Schedule "I".
- 4.3. Construction Engineering Costs.** The City will pay a construction engineering charge equal to 5 percent of the total water main and gas main City participation construction covered under Articles 4.2.A and 4.2.B denoted by and asterisk (\*) on the Preliminary Schedule "I". The City will pay a construction engineering charge equal to 8 percent of the remainder of the City participation construction covered under this Agreement.
- 4.4. Plan Changes, Additional Construction, Etc.** The City will share in the costs of construction contract addenda and change orders 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 associated construction engineering before the completion of the contract construction.
- 4.5. Liquidated Damages.** All liquidated damages assessed the State'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.

## 5. City Cost and Payment by the City

- 5.1. City Cost. \$254,864.52** is the City's estimated share of the costs of the contract construction and the construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using anticipated construction items and 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 construction items, quantities, and unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.
- 5.2. Conditions of Payment.** The City will pay the State the City's total estimated construction and construction engineering cost share, 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. Acceptance of the City's Cost and Completed Construction.** The computation by the State of the amount due from the City will be final, binding and conclusive. 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.
- 5.4. Final Payment by the City.** Upon completion of all contract construction and upon computation of the final amount due the State's contractor, 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, and include all City participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the City participation construction exceeds the amount of funds advanced by the City, the City will pay the difference to the State without interest. If the final cost of the City participation construction is less than the amount of funds advanced by the City, the State will refund the difference to the City without interest.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

## 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: 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

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

Name, Title: Cindy Voigt, City Engineer (or successor)  
 Address: 411 West First Street, Room 240, City Hall, Duluth, MN 55802  
 Telephone: (218) 730-5200  
 E-Mail: cvoigt@duluthmn.gov

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

- 7.1. Assignment.** No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office. The foregoing does not prohibit the City from contracting with a third-party to perform City maintenance responsibilities covered under this Agreement.
- 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, 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 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**

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 DULUTH**

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

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

Attested: \_\_\_\_\_  
(City Clerk)

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

Approved as to form:

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

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

Countersigned: \_\_\_\_\_  
(City Auditor)

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

**DEPARTMENT OF TRANSPORTATION**

Recommended for Approval:

By: \_\_\_\_\_  
(District Engineer)

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

Approved:

By: \_\_\_\_\_  
(State Design Engineer)

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

**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_  
(With Delegated Authority)

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

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