

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

State Project Number: 6981-26
Trunk Highway Number: 535=390
Federal Project Number: I535 (005)

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 removal of the John A. Blatnik Bridge (Bridge 9030) over St. Louis Bay; and construction of Bridges 69913, WI B-16-0155, and WI B-16-0154, ramps and roundabouts, local streets, retaining walls, ADA improvements, lighting, permanent intelligent transportation systems, roadway and weather information systems, fiber optics, dynamic message signs, utilities, permanent signing and striping, stormwater treatment facilities, and storm sewer and other associated construction upon, along and adjacent to Trunk Highway 535 from Garfield Avenue in Duluth, Minnesota to US 53 in Superior, Wisconsin, according to State-prepared plans, specifications and special provisions designated by the State as State Project 6981-26 (TH 535=390) ("Project"); and
2. The City will maintain roadway, sidewalk, and drainage system construction as described in this Agreement; and
3. Upon State acceptance of the final Release for Construction (RFC) design submittal by the contractor for the construction of the roadway, sidewalk, and drainage system that the City will maintain, the State, in consultation with the City, will prepare revised Agreement exhibits and execute an amendment to this Agreement.
4. Agreement 1060460 between the State and the Duluth Seaway Port Authority and Agreement 1060562 between the State and the City of Superior, Wisconsin, will cover Project maintenance responsibilities not covered in this Agreement; and
5. 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; 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; 6. Liability; Worker Compensation Claims; 9. State Audits; 10. Government Data Practices; 11. Governing Law; Jurisdiction; Venue; and 13. Force Majeure.

- 1.4. Exhibits.** Exhibit A: Roadway and Shared Use Path Ownership and Maintenance Responsibilities and Exhibit B: Storm Sewer Ownership and Nonroutine Maintenance Responsibilities are on file in the office of the City Engineer and attached incorporated into this Agreement. Upon State acceptance of the final Release for Construction (RFC) design submittal by the contractor for the construction of the roadway, sidewalk, and drainage system that the City will maintain, the State, in consultation with the City, will prepare revised Agreement exhibits and execute an amendment to this Agreement.

2. Construction by the State

- 2.1. Contract Award.** The State will advertise for technical and price proposals and award a design-build contract to the "Best Value Proposer" for State Project 6981-26 (TH 535=390) according to the State Request for Qualifications and Request for Proposal documents, which are on file in the office of the Commissioner of Transportation at Saint Paul, Minnesota, and incorporated into this Agreement by reference ("Project Plans").
- 2.2. Direction, Supervision, and Inspection of Construction**
- A. Supervision and Inspection by the State.** The State will direct and supervise all design-build activities performed under the design-build construction contract and oversee all construction engineering and inspection functions in connection with the design-build construction. All design-build construction will be performed according to the State's Request for Proposals, the Contractor's technical proposal, and approved plans.
- B. Inspection by the City.** The construction covered under this Agreement will be open to inspection by the City. If the City believes the 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 construction covered under this Agreement.
- 2.3. Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the design-build contract to be completed in a satisfactory manner. Acceptance by the State of the completed design-build contract construction will be final, binding and conclusive upon the City as to the satisfactory completion of the design-build contract construction.
- 2.4. As-Built Plans.** Upon completion of the Project construction, the State will provide the City with an electronic copy of the drainage, roadway, and shared use path as-built plans at no cost to the City.

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 Port Terminal Drive, as shown on Exhibit A: Roadway and Shared Use Path Ownership and Maintenance Responsibilities.
- 3.2. Storm Sewers.** Routine maintenance of storm sewer facilities construction on City owned storm sewer within Exhibit B. 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.
- Ownership and nonroutine maintenance of storm sewer facilities will be as shown on Exhibit B: Storm Sewer Ownership and Nonroutine Maintenance Responsibilities.
- 3.3. Shared Use Path.** Ownership, routine, and nonroutine maintenance of shared use path construction along Garfield Avenue as shown on Exhibit A: Roadway and Shared Use Path Ownership and Maintenance Responsibilities.

3.4. Future Responsibilities. Upon completion of the Port Terminal Drive 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 Port Terminal Drive and all of the facilities constructed as part of this Agreement, without cost or expense to the State.

4. Maintenance by the State

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

4.1. Snow Plowing on City Road. Snow plowing on Garfield Avenue as shown on Exhibit A: Roadway and Shared Use Path Ownership and Maintenance Responsibilities.

5. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

5.1. The State's Authorized Representative will be:

Name, Title: Perry Collins, District 1 Maintenance Engineer. (or successor)
 Address: 1123 Mesaba Avenue, Duluth, MN 55811
 Telephone: (218) 725-2827
 Email: perry.collins@state.mn.us

5.2. The City's Authorized Representative will be:

Name, Title: Cari Pederson, Chief Transportation Engineer (or successor)
 Address: 411 West 1st Street, Room 240, Duluth, MN 55802
 Telephone: (218) 730-5091
 Email: cpedersen@duluthmn.gov

6. Assignment; Amendments; Waiver; Contract Complete

6.1. 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.

6.2. Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

6.3. Waiver. If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

6.4. Contract Complete. This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

7. Liability; Worker Compensation Claims

7.1. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

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

8. Nondiscrimination

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

9. Title VI/Non-discrimination Assurances

The City agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. If federal funds are included in this Agreement, the City will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. The State may conduct a review of the City's compliance with this provision. The City must cooperate with the State throughout the review process by supplying all requested information and documentation to the State, making City staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by the State.

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 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

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.

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

Approved:

By: _____
(District Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

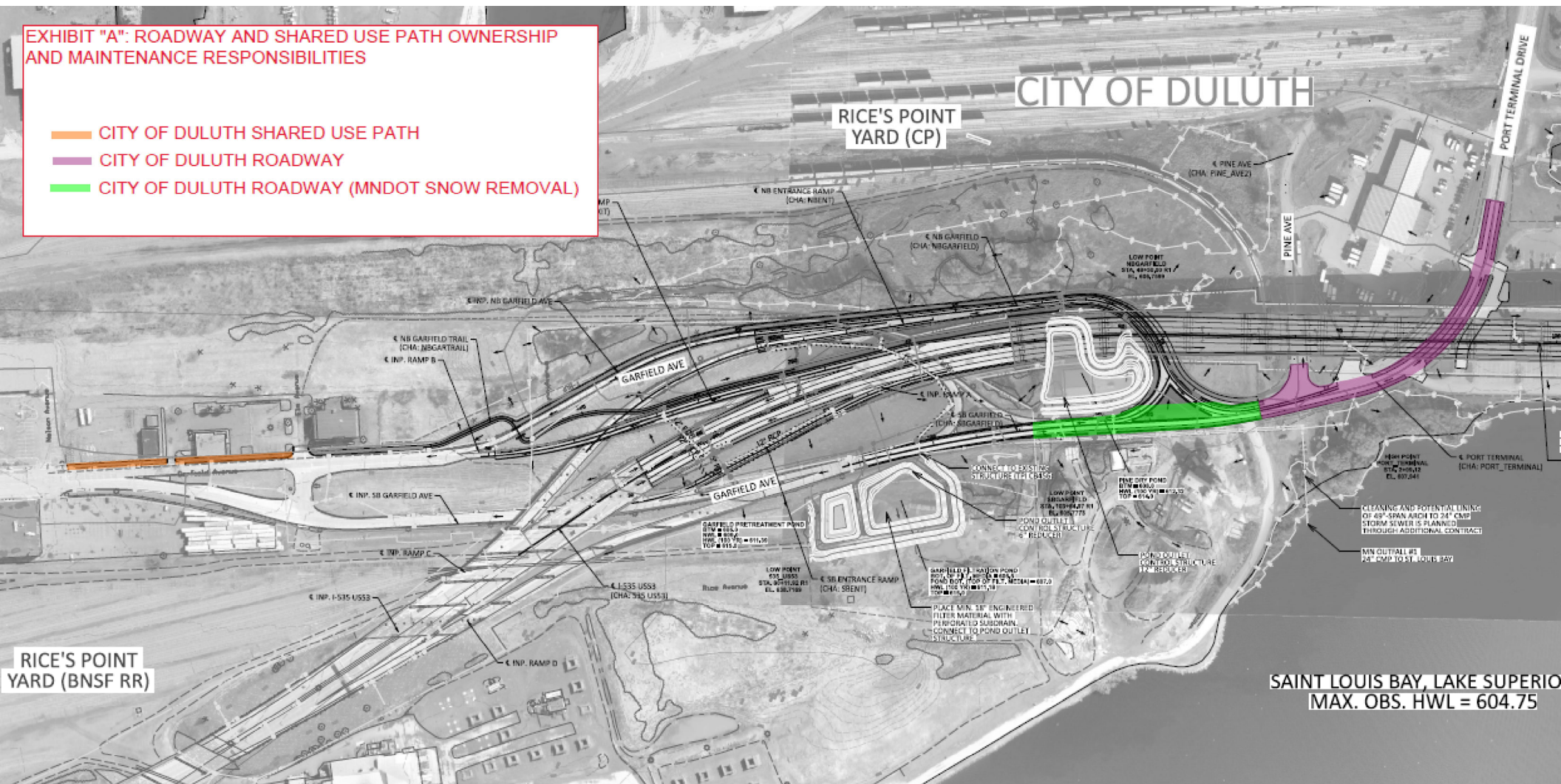
By: _____
(With Delegated Authority)

Date: _____

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





EXHIBIT "A": ROADWAY AND SHARED USE PATH OWNERSHIP AND MAINTENANCE RESPONSIBILITIES

- CITY OF DULUTH SHARED USE PATH
 CITY OF DULUTH ROADWAY
 CITY OF DULUTH ROADWAY (MNDOT SNOW REMOVAL)



PLOT NAME: copy_0908126 of MN_AH1
 PATH & FILENAME: Projects\DOT_OUT\ES35084\026\Design\Mainroad Working\DWG\Main Agreements\copy_0908126 of MN_AH1.dwg
 PLOTTED/REVIEWED: 25-SEP-2025

EXHIBIT "B": STORM SEWER OWNERSHIP AND
NONROUTINE MAINTENANCE RESPONSIBILITIES

-  PROPOSED CITY OF DULUTH STORM SEWER
 EXISTING CITY OF DULUTH STORM SEWER
 PROPOSED MNDOT STORM SEWER
 EXISTING MNDOT STORM SEWER

To be removed

EXHIBIT					
STATE PROJ. NO.	6981-26	(TH 535)	SHEET NO.	OF	SHEETS

CITY OF DULUTH

RESOLUTION

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement 1060489 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for maintenance by the City upon, along, and adjacent to Trunk Highway 535, the limits of which are defined in said Agreement.

IT IS FURTHER RESOLVED that the Mayor and the _____
(Title)
are authorized to execute the Agreement and any amendments to the Agreement.

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Duluth at an authorized meeting held on the _____ day of _____, 2025, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this
_____ day of _____, 2025

Notary Public _____

My Commission Expires _____

(Signature)

(Type or Print Name)

(Title)