

# EXHIBIT A

MnDOT Contract No.: 1046012

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

State Project Number (S.P.):	<u>6910-112</u>
Trunk Highway Number (T.H.):	<u>23=185</u>
City Project Number:	<u>1403</u>
Signal System ID:	<u>4154755</u>

Original Amount Encumbered  
\$247,000.00

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 City will perform grading, bituminous pavement, concrete curb and gutter, ADA, utilities, and signals construction and other associated construction upon, along, and adjacent to Trunk Highway No. 23 (Grand Avenue) at Riverwest Drive and upon, along, and adjacent to Riverwest Drive from Trunk Highway No. 23 (Grand Avenue) to terminus at BNSF Rail Line according to City-prepared plans, specifications, and special provisions designated by the City as City Project No. 1403 and by the State as State Project No. 6910-112 (T.H. 23=185) ("Project"); and
2. The City requests the State participate in the costs of the signal system and ADA improvements construction and the State is willing to participate in the costs of said construction and associated construction engineering; and
3. The City has applied for funding through Minnesota Statutes §174.12 Transportation Economic Development ("TED") Program allowing State Trunk Highway funds to be used for up to 70 percent of the total project costs, based on MnDOT's Cost Participation Policy. The TED funds are capped at \$247,000.00 and cannot exceed 70 percent of the total project costs or the eligible trunk highway total project costs, whichever is less; and
4. 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 City; 11. 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 6. Signal System and EVP System 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-approved City plans, specifications, and special provisions designated by the City as City Project No. 1403 and by the State as State Project No. 6910-112 (T.H. 23=185) are on file in the office of the City's Engineer and incorporated into this Agreement by reference ("Project Plans").

**1.5. Exhibits.** Preliminary Schedule "I" is attached and incorporated into this Agreement.

## **2. Right-of-Way Use**

**2.1. Limited Right to Occupy.** The State grants to the City (and its contractors and consultants) the right to occupy 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 City (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 Trunk Highway Right-of-Way (including the construction being performed on such right-of-way) at any time and without notice to the City 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 City (and its contractor) to take such remedial measures as the State deems necessary. The State may require the City (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 City (or its contractors or consultants) for exercising its rights under this provision.

**2.3. Traffic Control; Worker Safety.** While the City (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 City, 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 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 City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City'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 City 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 City's consultants and contractors.

**2.5. Utility Relocation.** The State authorizes the City to issue Notices and Orders for utility relocation in accordance with Minnesota Statutes §161.45 and Minnesota Rules Part 8810.3100 through 8810.3600.

**3. Contract Award and Construction**

- 3.1. *Bids and Award.*** The City 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 City.*** The City will, within 7 days of opening bids for the construction contract, submit to the State's District Engineer a copy of the low bid and an abstract of all bids together with the City's request for concurrence by the State in the award of the construction contract. The City will not award the construction contract until the State advises the City in writing of its concurrence.
- 3.3. *Rejection of Bids.*** The City may reject and the State may require the City 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 City will repeat the bidding process in a reasonable period of time, without cost or expense to the State.
- 3.4. *Direction, Supervision, and Inspection of Construction.***
- A. The contract construction will be under the direction of the City 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 City will give the District Engineer at Duluth 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 City 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".
- 3.5. *Completion of Construction.*** The City 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 City official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.
- 3.6. *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 City and its contractor for State participation construction are approved in writing by the State District Engineer's authorized representative.
- 3.7. *Compliance with Laws, Ordinances, and Regulations.*** The City 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 City will not require the contractor to follow local ordinances or to obtain local permits.

**4. Right-of-Way; Easements; Permits**

- 4.1. The City 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 City 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 City 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 City will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings, and depiction of utilities affected by the contract construction.
- 4.4. The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City of Duluth to be constructed 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).
- 4.5. 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.

**5. Maintenance by the City**

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

- 5.1. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 5.2. **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, 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.
- 5.3. **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. Signal System and EVP System Operation and Maintenance**

Operation and maintenance responsibilities will be as follows for the Signal System and Emergency Vehicle Preemption (EVP) System on T.H. 23 at Riverwest Drive.

**6.1. 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 pad(s) or pole(s) and will pay all monthly electrical service expenses necessary to operate the Signal System and EVP System.
- B. Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.
  - i. Maintain the signal pole mounted Light Emitting Diode (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 System 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 System controller cabinet and service cabinet exteriors.
  - iv. Clean the Signal System and luminaire mast arm extensions.

**6.2. City Major Maintenance Responsibilities.**

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

**6.3. 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. Basis of State Cost**

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

- 7.2. Available Funding.** TED Program funds allow State Trunk Highway funds to be used for up to 70 percent of the total project costs based on MnDOT's Cost Participation Policy. The TED funds are capped at **\$247,000.00** and cannot exceed 70 percent of the total project costs or the eligible trunk highway total project costs, whichever is less.
- 7.3. State Participation Construction.** The State will participate in the following at the percentages indicated, up to the capped amount described in Article 7.2. The construction includes the State's proportionate share of item costs for Mobilization and Traffic Control.
- A.** 100 Percent will be the State's rate of cost participation in all of the signal system and ADA improvements construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".
- 7.4. Construction Engineering Costs.** The State will pay a construction engineering charge equal to 8 percent of the total State participation construction covered under this Agreement, up to the capped amount described in Article 7.2.
- 7.5. 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.
- 7.6. Liquidated Damages.** All liquidated damages assessed the City'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.

## **8. State Cost and Payment by the State**

- 8.1. State Cost.** **\$247,000.00** is the State's estimated share of the costs of the contract construction which includes the 8 percent construction engineering cost share and a **\$2,288.20** contingency amount 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 City'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. The contingency amount is provided to cover the cost difference between the Preliminary Schedule "I" and the Revised Schedule "I", overruns of the plans estimated quantities of State participation construction, and State approved additional construction including construction engineering costs.
- 8.2. Conditions of Payment.** The State will pay the City the State's total estimated construction cost share, which does not include the 8 percent construction engineering cost share or the contingency amount, 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, the 8 percent construction engineering cost share, and the contingency amount, 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 City, for all right-of-way and easement acquisitions required for the contract construction.
- C.** Execution of this Agreement and transmittal to the City, including a letter advising of the State's concurrence in the award of the construction contract.

- D. The State's receipt of a written request from the City for the advancement of funds according to the following schedule. The request will include certification by the City that all necessary parties have executed the construction contract.

**Payment Schedule for TED Funds**

1st Payment = 50 percent of the State's total anticipated cost share amount, as shown in the Revised Schedule "I", upon award of the construction contract.

2nd Payment = Remainder of the State's total anticipated cost share amount, as shown in the Revised Schedule "I", upon completion of 50 percent of the contract construction.

- 8.3. *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 8.1, 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 City. The City's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The City's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the City by the City's contractor.
- 8.4. *Records Keeping and Invoicing by the City.*** If the State's cost share changes from the amount shown in the Revised Schedule "I", the State will provide the City 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 City 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 (if applicable).
- B. Copies of the City contractor's invoice(s) covering all contract construction.
- C. Copies of the endorsed and canceled City warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued, certified by an appropriate City 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" (if a Final Schedule "I" is prepared as described in Article 8.5, both provided by the State. The certification form will be signed by the City'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 City to its contractor for all contract construction.
- F. When requested, copies certified by the City'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 District Engineer.

H. A formal invoice (original and signed) in the amount due the City. This amount will be shown in the Final Schedule "I" if one is prepared.

**8.5. Final Payment by the State.** Upon completion of all contract construction, and only if the State's cost share has changed from the amount shown in the Revised Schedule "I", the State will prepare a Final Schedule "I" according to the procedures detailed in the Payment Processing Package and submit a copy to the City. 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 advanced by the State, the State will pay the difference to the City without interest, up to the capped amount described in Article 7.2. If the final cost of the State participation construction is less than the amount of funds advanced by the State, the City will refund the difference to the State without interest.

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

**8.6. Reporting of Economic Benefits.** The City will provide an annual report on the economic benefits that have materialized, including the increase in jobs, in tax base and property development. This report must be provided annually on January 1st of each year for a period of 5 years after the completion of construction. This report will be provided to the Transportation Economic Development Coordinator at MnDOT.

## 9. 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.

**9.1.** 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

**9.2.** The City's Authorized Representative will be:

Name, Title: Cindy Voigt, City Engineer (or successor)  
 Address: 411 West 1<sup>st</sup> Street, Suite 211, Duluth, MN 55802  
 Telephone: (218) 730-5071  
 E-Mail: cvoigt@duluthmn.gov

## 10. Assignment; Amendments; Waiver; Contract Complete

**10.1. 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.

**10.2. 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.

**10.3. 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.



**10.4. 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.

#### **11. Liability; Worker Compensation Claims; Insurance**

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

#### **12. Nondiscrimination**

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

#### **13. 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](https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035). 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.

#### **14. 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.

#### **15. 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.

**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. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City 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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**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: 3000579472

**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: \_\_\_\_\_

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

**DEPARTMENT OF TRANSPORTATION**

Recommended for Approval:

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

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

Approved:

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

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

**COMMISSIONER OF ADMINISTRATION**

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

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

**PRELIMINARY SCHEDULE "I"****Agreement No. 1046012****City of Duluth**

S.P. 6910-112 (T.H. 23=185)

Preliminary: April 14, 2021

City Proj. 1403

State Funds

Grading, bituminous pavement, concrete curb and gutter, ADA, utilities, and signals construction performed under  
City contract with \_\_\_\_\_  
located at T.H. 23 (Grand Ave.) and Riverwest Dr. and on Riverwest Dr. from T.H. 23 (Grand Ave.) to terminus at BNSF Rail Line

**STATE COST PARTICIPATION**

Work Items (From Sheet No. 2)	226,585.00
Construction Engineering (8%)	18,126.80
<b>Subtotal</b>	<b>\$244,711.80</b>
(1) Total Amount Eligible for TED funding (capped at \$247,000.00)	\$244,711.80
(2) Contingency Amount	\$2,288.20
<b>Encumbered Amount</b>	<b>\$247,000.00</b>

**PAYMENT SCHEDULE**

Total Amount Eligible for TED Funding	\$244,711.80
(3) Payment No. 1, paid upon award	<b>\$122,355.90</b>
Payment No. 2, paid upon completion of 50% of the contract construction	\$122,355.90

- (1) 70 percent of the total Project cost or eligible trunk highway total Project cost, whichever is less as described in Article 7.2 of the Agreement  
(2) For the State's use only as described in Article 8.1 of the Agreement  
(3) Payment schedule as described in Article 8.2 of the Agreement