

# EXHIBIT A

MnDOT Contract No.: 1036093

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

State Project Number (S.P.):	<u>6982-331</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>35=103</u>	<u>\$103,460.22</u>
State Project Number (S.P.):	<u>6982-338 (SFM)</u>	
State Aid Project Number (S.A.P.):	<u>118-140-034</u>	
Federal Project Number:	<u>NHPP I350(128)</u>	
Lighting System Feed Point No.:	<u>City</u>	
Signal System ID:	<u>4020250</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 approaches, ADA improvements, lighting, revise traffic signal, Bridge No. 69816 construction, and other associated construction upon, along, and adjacent to Trunk Highway No. 35 at Lake Avenue according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 6982-331 (T.H. 35=103) ("Project"); and
2. The City has requested the State include in its Project lighting, Emergency Vehicle Preemption (EVP), and revise signal system construction; and
3. The City wishes to participate in the costs of the lighting, Emergency Vehicle Preemption, and revise signal system construction and associated construction engineering; and
4. Existing Signal Agreement No. 63970M between the State and the City of Duluth will be partially terminated by this Agreement; and
5. State Furnished Materials that will be installed on this project were purchased under State Project No. 6982-338; and
6. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

### Agreement

#### 1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 3. Maintenance by the City; 9. Liability; Worker

Compensation Claims; 11. State Audits; 12. Government Data Practices; 13. Governing Law; Jurisdiction; Venue; and 15. Force Majeure. The terms and conditions set forth in Article 4. 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.** Plans, specifications, and special provisions designated by the State as State Project No. 6982-331 (T.H. 35=103) 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 perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
  - B. **Inspection by the City.** The City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the City participation construction covered under this Agreement.
- 2.3. **Plan Changes, Additional Construction, Etc.**
  - A. The State will make changes in the Project Plans and contract construction, which may include the City participation construction covered under this Agreement, and will enter into any necessary addenda 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).

### 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 Lake Avenue. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing, seal coating, striping, and any other maintenance activities according to accepted City maintenance practices.
- 3.2. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.3. **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.

The State will perform patching, crack repairs, and panel replacement for sidewalks on Bridge No. 69816 and on the Trunk Highway at ramps which intersect with City roads. The City will maintain crosswalk markings on the Trunk Highway at ramps which intersect with City roads.

- 3.4. **Bikeways.** Maintenance of any bikeways construction. Maintenance includes, but is not limited to, snow and ice control/removal, sweeping and debris removal, patching, crack repair, pavement replacement, vegetation control, signing, pavement markings according to the City's established pavement marking standards, and any other maintenance activities necessary to perpetuate the bikeways in a safe and usable condition.

The State will perform patching, crack repair, and pavement replacement for bikeways on Bridge No. 69816.

- 3.5. **Lighting.** Maintenance and ownership of lighting facilities on Lake Avenue and on Bridge No. 69816. 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, pullboxes, 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.
- 3.6. **Bridge No. 69816 (City Street over Trunk Highway).** Maintenance and repair of Bridge No. 69816 construction carrying a City street over the Trunk Highway. Maintenance and repair includes, but is not limited to, keeping the roadway, bridge deck, shoulders, medians, gutters, sidewalks and shared use paths clear of ice, snow, litter and debris, appropriate disposal of such material, pavement markings, guardrail, and any other maintenance activities necessary to perpetuate the bridge in a safe, usable, and aesthetically acceptable condition. The State is responsible for inspection and structural maintenance of

the bridge, concrete bridge approach panels, concrete surfacing, abutments, signing, bridge driving surface, bikeways, sidewalks and pedestrian ramps on the bridge, and non-ornamental railings.

- 3.7. 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. Signal System and EVP System Operation and Maintenance

Operation and maintenance responsibilities will be as follows for the Signal System and EVP System on T.H. 35 North and South Ramps at Lake Avenue, and for the Interconnect on Lake Avenue from Superior Street to Railroad Street.

##### 4.1. 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, EVP System, and Interconnect.
- B. Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.
- i. Maintain the signal pole mounted 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.
  - v. Paint and maintain the Lake Avenue pedestrian crosswalk markings.

##### 4.2. City Major Maintenance Responsibilities

- A. Interconnect; Timing; Other Maintenance.** The City will maintain the Interconnect, and perform all other Signal System, APS, 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. The State will maintain any signing on the signal system.
- 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 City 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.

**4.3. 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.

**4.4. Related Agreements.** This Agreement will supersede and terminate the operation and maintenance terms of Agreement No. 63970M, dated May 19, 1987, between the State and the City, for the intersection of T.H. 35 North and South Ramps at Lake Avenue.

## 5. Basis of City Cost

**5.1. Schedule "I".** The Preliminary Schedule "I" includes all anticipated City participation construction items, State Furnished Materials lump sum amounts and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.

**5.2. 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, Field Office Type D, and Traffic Control.

**A.** 50 Percent will be the City's rate of cost participation in all of the lighting, EVP, and revise signal system construction as 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 Traffic Control Interconnect construction as tabulated on Sheet No. 2 of the Preliminary Schedule "I".

**5.3. State Furnished Materials.** The State will furnish two signal mast arms, two signal pole standards, two transformer bases, two pairs of swing away hinges, and two luminaire extensions ("State Furnished Materials"), according to the Project Plans, to operate the traffic control signal system covered under this Agreement. The City's lump sum share for State Furnished Materials is **\$21,446.50**. The City's cost share for State Furnished Materials will be added to the City's total construction cost share as shown in the Schedule "I".

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

**5.5. 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.

**5.6. 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.

**6. City Cost and Payment by the City**

- 6.1. City Cost. \$103,460.22** is the City's estimated share of the costs of the contract construction, State Furnished Materials and the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.

**7. 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.

**7.1. 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

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

Name, Title: Cindy Voigt, City Engineer (or successor)  
 Address: City Hall, Rook 211, 311 West First Street, Duluth, MN 55802  
 Telephone: (218) 730-5071  
 E-Mail: cvoigt@duluthmn.gov

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

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.

**9. Liability; Worker Compensation Claims**

- 9.1.** 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.
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

**10. Nondiscrimination**

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

**11. State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

**12. 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.

**13. 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.

**14. Termination; Suspension**

- 14.1. By Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties.

**14.2. 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.

**14.3. 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.

**15. 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.**

MMR

**CITY OF DULUTH**

**RESOLUTION**

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement No. 1036093 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the approaches, ADA improvements, lighting, revise traffic signal, Bridge No. 69816 construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway No. 35 at Lake Avenue within the corporate City limits under State Project No. 6982-331 (T.H. 35=103).

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 \_\_\_\_\_, 2020, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this _____ day of _____, 2020
Notary Public _____
My Commission Expires _____

_____ (Signature)
_____ (Type or Print Name)
_____ (Title)

**PRELIMINARY SCHEDULE "I"**

**Agreement No. 1036093**

**City of Duluth**

S.P. 6982-331 (T.H. 35=103)

Preliminary: February 27, 2020

S.A.P. 118-140-034

FED. PROJ. NO. NHPP I350(128)

Approaches, ADA improvements, lighting, revise traffic signal, and Bridge No. 69816 construction to start approximately April 27, 2020 under State Contract No. \_\_\_\_ with \_\_\_\_ located on T.H. 35 at Lake Avenue

**CITY COST PARTICIPATION**

Pro Rata Work Items (From Sheet No. 2)	8,100.00
Lighting and Revise Signal System Work Items (From Sheet No. 2)	59,250.00
Traffic Control Interconnect Work Items (From Sheet No. 2)	7,000.00
State Furnished Materials (From Sheet No. 3)	21,446.50
Subtotal	\$95,796.50
Construction Engineering (8%)	7,663.72
<b>(1) Total City Cost</b>	<b>\$103,460.22</b>

(1) Amount of advance payment as described in Article 6 of the Agreement (estimated amount)



