

EXHIBIT A

MnDOT Contract No.: 1051605

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
CITY OF DULUTH
DETOUR AGREEMENT
For Trunk Highway No. 23 Detour**

State Project Number (S.P.):	<u>6910-102</u>	Original Amount Encumbered
Trunk Highway Number (T.H.):	<u>23=185</u>	<u>\$1,060.06</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 is about to perform grading, bituminous surfacing, lighting and bridge construction upon, along, and adjacent to Trunk Highway No. 23 from 633 feet south of County State Aid Highway No. 3 (Becks Road) to 268 feet south of County State Aid Highway No. 3 (Becks Road) under State Project No. 6910-102 (T.H. 23=185); and
2. The State requires a detour to carry T.H. 23 traffic on West Gary Street during the construction; and
3. The State is willing to reimburse the City for the road life consumed by the detour as hereinafter set forth; and
4. Minnesota Statutes § 471.59, subdivision 10, § 161.25, and § 161.20, subdivision 2(b), authorize the parties to enter into this Agreement.

Agreement

1. Agreement Between the Parties

1.1. Detour.

- A. Location.** The State will establish the T.H. 23 detour route on the following City street(s) as detailed in the project plans or Special Provisions:
West Gary Street for a total distance of 1.2 miles.
- B. Modification of the Detour Route.** The State may modify the detour route or may add additional roadways to the official detour during construction. The State will request concurrence from the City for changes to the detour route. If such change increases the States total payment amount over the maximum obligation in Article 3.2, the Agreement will be amended.
- C. Axle Loads and Over-Dimension Loads.** The City will permit 10-ton axle loads on the detour route.
- D. Traffic Control Devices.** The State may install, maintain, and remove any traffic control devices it considers necessary to properly control the detoured traffic. The State may paint roadway markings, such as the centerline, edge lines, and necessary messages.
- E. Detour Maintenance.** The State will perform any necessary bituminous patching and ordinary maintenance on the roadway or shoulder of the City streets used for the detour, at no cost or expense to the City. Bituminous patching is defined as any work, including continuous full width overlays, less

than 100 feet in length. All State expenditures beyond those required for bituminous patching and ordinary maintenance will be credited against the road life consumed reimbursement due the City.

F. Duration. The State will provide the City with advance notice identifying the dates the State intends to place and remove the detour signing.

1.2. Basis of State Cost (Road Life Consumed). The State will reimburse the City for the road life consumed by the detour using the following methods, as set forth in the Detour Management Study Final Report dated January 1991, and updated by MnDOT's Policy on Cost Participation for Cooperative Construction Projects and Maintenance Responsibilities between MnDOT and Local Units of Government.

- A.** The "Gas Tax Method" formula, multiplies the Combined Tax Factor per mile times the Average Daily Traffic ("ADT") count of vehicles diverted from the Trunk Highway times the city street length in miles times the duration of the detour in days to determine the State's cost for the road life consumed by the detour. If an ADT changes, the parties will amend the Agreement.
- B.** The City may, at its option, perform an "Equivalent Overlay Method" analysis. A State-approved firm, at no cost or expense to the State, must perform the testing and analysis. The City will keep records and accounts to verify any claim it might bring against the State for additional costs using the "Equivalent Overlay Method".

2. Payment

2.1. For Road Life Consumed. \$1,060.06 is the State's estimated cost for the road life consumed by the detour based on the data below:

<u>Roadway</u>	<u>Tax Factor</u>	<u>ADT</u>	<u>Road Length (Miles)</u>	<u>Duration (Days)</u>	<u>Cost</u>
W Gary St.	0.00513	8200	1.2	21	\$1,060.06
Road Life Consumed Amount:					<u>\$1,060.06</u>

The State's total payment for the road life consumed by the detour is equal to the amount computed by using the "Gas Tax Method" formula plus any amount determined by using the "Equivalent Overlay Method" analysis that is in excess of twice the "Gas Tax Method" amount.

2.2. Maximum Obligation. \$2,500.00 is the maximum obligation of the State under this Agreement and must not be exceeded unless the maximum obligation is increased by execution of an amendment to this Agreement.

2.3. Conditions of Payment. The State will pay the City the State's total road life consumed payment amount after performing the following conditions.

- A.** Execution of this Agreement and the City's receipt of the executed Agreement.
- B.** State's encumbrance of the State's total payment amount.
- C.** State's removal of all detour signs.
- D.** State notifies the City of the removal of the detour signs, and the number of days the detour was in effect.
- E.** State's receipt of a written request from the City for payment.

3. Release of Road Restoration Obligations

By accepting the State's road life consumed payment plan and total payment amount, the City releases the State of its obligation, under Minnesota Statutes § 161.25, to restore the city streets used as a T.H. 23 detour to as good of condition as they were before designation as temporary trunk highways.

4. 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.

4.1. The State's Authorized Representative will be:

Name, Title: Morris Luke, Assistant District Traffic Engineer (or successor)
 Address: 1123 Mesaba Ave., Duluth, MN 55811
 Telephone: (218) 725-2778
 E-Mail: morris.luke@state.mn.us

4.2. The City's Authorized Representative will be:

Name, Title: Cari Pedersen, P.E., Chief Engineer of Transportation (or successor)
 Address: 411 West 1st Street, 211 City Hall, Duluth, MN 55802
 Telephone: (218) 730-5091
 E-Mail: cpedersen@ci.duluth.mn.us

5. Assignment; Amendments; Waiver; Contract Complete

- 5.1. 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.
- 5.2. 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.
- 5.3. 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.
- 5.4. 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.

6. Liability

The City and State will be responsible for their own acts and omissions, to the extent authorized by law. Minnesota Statutes § 3.736 governs the State's liability. Minnesota Statutes, Chapter 466 governs the liability of the City.

7. 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.

8. 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 by the State 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.

9. 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.

10. Termination; Suspension

10.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

10.2. *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.

10.3. *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.

11. 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: 3000661437

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 THE RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

DEPARTMENT OF TRANSPORTATION

Approved:

By: **Duane Hill** Digitally signed by Duane Hill
Date: 2022.08.31 12:11:47
-05'00'
(District Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

CITY OF DULUTH

RESOLUTION

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement No. 1051605 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the City for the use of West Gary Street as a detour route during the construction to be performed upon, along, and adjacent to Trunk Highway No. 23 from 633 feet south of County State Aid Highway No. 3 (Becks Road) to 268 feet south of County State Aid Highway No. 3 (Becks Road) under State Project No. 6910-102 (T.H. 23=185).

IT IS FURTHER RESOLVED that the _____
(Title)

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 _____, 2022, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this
_____ day of _____, 2022

Notary Public _____

My Commission Expires _____

(Signature)

(Type or Print Name)

(Title)