

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

State Project Number (S.P.):	<u>6910-96</u>	City Non-Federal Aid
Trunk Highway Number (T.H.):	<u>23 = 185</u>	<u>\$468,007.13</u>
State Aid Project (S.A.P.):	<u>118-101-006</u>	
Federal Project Number:	<u>STPM 6916 (096)</u>	
Signal System ID	<u>40086 "A"</u>	

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

Recitals

1. The State will perform grading, bituminous mill & overlay, concrete paving, ADA, signal and Bridge No. 69091 construction and other associated construction upon, along and adjacent to Trunk Highway No. 23 from C.S.A.H. 3 (Becks Road) to 83rd Avenue West according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6910-96 (T.H. 23=185)("Project"); and
2. The City has requested the State include in its Project traffic control signal system, utility work and concrete and bituminous paving construction; and
3. The City wishes to participate in the costs of the traffic control signal system, utility work and concrete and bituminous paving construction and associated construction engineering; and
4. The federally eligible City participation construction and associated construction engineering will be reduced by the amount of Federal aid funding received for said construction; and
5. 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
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; 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, Special Provisions.* Plans, specifications and special provisions designated by the State as State Project No. 6910-96 (T.H. 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 incorporated into this Agreement by reference.

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, change orders and supplemental agreements 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, change orders and supplemental agreements 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*

A. 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 TP2525).

B. Limited Use Permit. The City will obtain, through the District's Right of Way Area Manager, a Limited Use Permit to cover the City's liability responsibilities of the bikeway and multi-use trail to be constructed upon the State right-of-way.

- 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. Storm Sewers.** Routine maintenance of any storm sewer facilities construction. 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.
- 3.2. Special Drainage Structures.** Routine maintenance of the SAFL baffle construction. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from structures, grates and pipes; repair of erosion problems; structure repair; SAFL baffle repair; and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities.
- 3.3. Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.4. 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.
- 3.5. Bikeways/Shared Use Paths.** Maintenance of any bikeways and shared use paths 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, and any other maintenance activities necessary to perpetuate the bikeways and shared use paths in a safe and usable condition.
- 3.6. Additional Drainage.** Neither 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. The drainage areas served by the storm sewer facilities constructed under the construction contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics Engineer at Duluth and is incorporated into this Agreement by reference.
- 3.7. 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. 23 at Arbor Street (System "A").

3.8. City 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 or pole and will pay all monthly electrical service expenses necessary to operate the Signal System, EVP System and Interconnect.
- B. 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 cross street pedestrian crosswalk markings.
- C. 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.

3.9. 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.

3.10. Related Agreements. This agreement will supersede and terminate the operation and maintenance terms of Agreement No. 56004, dated May 6, 1971, between the parties, for the intersection of T.H. 23 at Arbor Street.

4. Basis of City Cost

- 4.1. SCHEDULE "I".** The Preliminary SCHEDULE "I" includes all 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, field office, field laboratory and traffic control. It is anticipated that Federal aid funding will be available to the City as

defined below. The City may be billed for the match of their cost participation as shown on the Schedule "I". City costs will include an amount equal to all anticipated Federal aid funding not applied to the federally eligible City participation construction and associated construction engineering.

- A. 100 Percent will be the City's rate of cost participation in all of the City non utilities work items construction. 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 City utilities work items construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 3 of the Preliminary SCHEDULE "I".
- C. 1/3 of the traffic signal system cost is the City share. Federal aid funds will be applied at 80% to the City share so that 6.7 Percent will be the City's rate of cost participation in all of the traffic control signal work items construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 4 of the Preliminary SCHEDULE "I".

4.3. Construction Engineering Costs. The City will pay a construction engineering charge equal to 8 percent of the total City non utilities and traffic control signal system and 5 percent of City utilities covered under this Agreement.

4.4. Plan Changes, Additional Construction, Etc. The City will share in the costs of construction contract addenda, change orders and supplemental agreements 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 supplemental agreements, 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. \$468,007.13 is the City's estimated share of the costs of the contract construction including Federal aid, and the 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.

5.2. Conditions of Payment. The City will pay the State the City's total estimated construction and construction engineering cost share, minus anticipated City Federal aid, 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 and determination by the Federal Highway Administration of the amount of its reimbursement to the State, 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. The Final SCHEDULE "I" may also include City costs in an amount equal to all Federal aid funding not applied to the federally eligible City participation construction and associated construction engineering. 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: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: maryanne.kellysonnek@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, Rm 202, Duluth, MN 55802
 Telephone: 218-730-5071
 E-Mail: cvoigt@duluthmn.gov

7. Assignment; Amendments; Waiver; Contract Complete

- 7.1. Assignment.** Neither 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.
- 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, 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.

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

Neither 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: _____

MLK-5

CITY OF DULUTH

RESOLUTION

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement No. 1002317 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the States of the City's share of the costs of the Sewer, ADA improvements, traffic signal and City utilities construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 23 from County State Aid Highway No. 3 (Becks Road) to 83rd Avenue West within the corporate City limits under State Project No. 6910-96.

IT IS FURTHER RESOLVED that the Mayor and the _____ are
(Title)
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 _____, 2016, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this
_____ day of _____, 2016

Notary Public _____

My Commission Expires _____

NOTARY
STAMP

(Signature)

(Type or Print Name)

(Title)