



Minnesota Department of Transportation

1123 Mesaba Avenue
Duluth, MN 55811-2798
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Fax: 218/ 725-2800

101 N. Hoover Road
Virginia, MN 55792-3412
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Fax: 218/ 742-1086

August 26, 2015

Cindy Voigt
City of Duluth
411 West 1st Street - Rm 211
Duluth, MN 55802

Subject: Proposed Cooperative Construction Agreement No. 1000940
City of Duluth
S.P. 6910-98 (T.H. 23=185)
State Funds
City's Maintenance for T.H. 23 Bridge No. 6313 lighting system.

Dear Cindy:

Transmitted herewith in duplicate is a proposed agreement with City of Duluth. This agreement provides for City maintenance of T.H. 23 Bridge No. 6313 lighting.

Kindly present this agreement to the City Council for their approval and execution that includes original signatures of the City Council authorized city officers on the two copies of the agreement. Also required are two original copies of a resolution passed by the City Council authorizing its officers to sign this on its behalf.

When the two original copies of the agreement and resolution have been executed by the City Council, please return them to this office as soon as possible so that they may be returned to St. Paul for final execution. A copy will be returned to the City when fully executed.

Sincerely,

A handwritten signature in black ink, appearing to read 'John McDonald'.

John McDonald, P.E.
District State Aid Engineer

for

cc:
M. Kelly-Sonnek – M.S. 682
File



Minnesota Department of Transportation

Memo

Office of Project Management and Technical Support
Cooperative Agreements Unit
Mail Stop 682
395 John Ireland Boulevard
St. Paul, MN 55155

Office Tel: (651) 366-4634

August 24, 2015

To: Rex Bordson, D-1, Duluth
Agreement Coordinator

From: Maryanne Kelly-Sonnek *Maryanne Kelly-Sonnek*
Municipal Agreements Engineer

Subject: Proposed Coop. Const. Agree. No. 1000940
City of Duluth
S.P. 6910-98 (T.H. 23=185)
State Funds
City maintenance of T.H. 23 Bridge No. 6313
lighting

Transmitted herewith in duplicate is a proposed agreement with the City of Duluth. This agreement provides for City maintenance of T.H. 23 Bridge No. 6313 lighting.

Present this agreement to the City Council for their approval and execution that includes original signatures of the City Council authorized City officers on the two copies of the agreement. Also required are two original copies of a resolution passed by the City Council authorizing its officers to sign the agreement on its behalf. A suggested form of such resolution is enclosed. If the plan for this project is to be submitted to the City for approval, please coordinate the submittal of the plan and the agreement.

The executed agreements and resolutions (two originals of each) should be forwarded to this office as soon as possible. A copy will be returned to the City when fully executed.

Please send me a copy of your letter transmitting the agreement to the City for approval.

cc: File

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

State Project Number (S.P.): 6910-98
Trunk Highway Number (T.H.): 23=185

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 and concrete paving, lighting, ADA improvements, and Bridge No. 6313 (over the St. Louis River) rehabilitation construction and other associated construction upon, along and adjacent to Trunk Highway No. 23 from 0.30 miles south of Trunk Highway No. 210 to 0.10 miles south of Trunk Highway No. 210 according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6910-98 (T.H. 23=185)("Project"); and
2. The City will provide for the operation, maintenance and electrical energy of the Bridge No. 6313 lighting system; and
3. 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; 6. Liability; Worker Compensation Claims; 8. State Audits; 9. Government Data Practices; 10. Governing Law; Jurisdiction; Venue; and 12. Force Majeure.
- 1.4. *Plans, Specifications, Special Provisions.* Plans, specifications and special provisions designated by the State as State Project No. 6910-98 (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")

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.

- 2.3. 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. 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.

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. Lighting.** Maintenance of Bridge No. 6313 lighting facilities construction. 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.
- 3.2. Right of Way Access.** The State authorizes the City to enter upon State right of way to perform the maintenance activities described in this Agreement.

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: Perry Collins, Assistant District Engineer Operations
 Address: 1123 Mesaba Ave., Duluth, MN 55811
 Telephone: (218) 725-2827
 E-Mail: perry.collins@state.mn.us

4.2. The City's Authorized Representative will be:

Name/Title: Cari Pederson, Transportation Engineer (or successor)
 Address: 411 West 1st Street, Room 202, Duluth, MN 55802
 Telephone: (218) 730-5091

5. Assignment; Amendments; Waiver; Contract Complete

- 5.1. 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.
- 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; Worker Compensation Claims

6.1. 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.

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

7. Nondiscrimination

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

8. 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.

9. 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.

10. 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.

11. Termination; Suspension

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

11.2. *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.

11.3. *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.

12. 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.

[The remainder of this page has been intentionally left blank]

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.