

EXHIBIT C

Prepared by the
Utility Agreements and Permits Unit
(Receivable)
(\$186,745.34)

S.P. 6910-92 (T.H. 23)
Location: On Trunk Highway 23 at Mission
Creek
Utility Owner: City of Duluth
MnDOT Agreement Number 1027177

AGENCY RELOCATION AGREEMENT

This Agreement Number 1027177 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation and the City of Duluth, including its agents, contractors, and subcontractors (Utility Owner). This Agreement outlines the separate responsibilities of the State and the Utility Owner as part of a construction project.

RECITALS

The State plans to let a contract to construct State Project Number 6910-92 (Project) on Trunk Highway Number 23. The Project is located on Trunk Highway 23 at Mission Creek.

The Utility Owner owns and operates water mains and sanitary sewer lines, their fixtures, and related equipment (Facilities) that are located on property where the State will construct the Project.

The Project will require the relocation and adjustment of the Utility Owner's Facilities. If the Utility Owner relocated the Facilities or let a separate contract to relocate them, that relocation work would interfere with the Project. The Utility Owner has requested that the State perform the relocation work as part of the Project. Including the Utility Owner's relocation work in the State's construction contract may eliminate duplication of services, facilitate activity coordination, simplify supervision, and expedite Project construction.

Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the Utility Owner appoints the State as its agent to design and construct the relocation work as part of the Project and the State may relocate the Facilities as part of the Project on the trunk highway system.

State law requires a written agreement between the State and the Utility Owner that describes their separate responsibilities.

AGREEMENT

I. Term/Termination

- A. *Effective Date:* This Agreement is effective on the date the State obtains all signatures required by Minnesota Statutes, section 16C.05, subdivision 2.

B. *State's Responsibilities*

1. The State will:
 - a. Advertise the Project for bids; and
 - b. Award a construction contract for the Project. This Project will include the relocation work.
2. The Project Engineer will supervise and direct the Project, including the relocation work, but the Utility Owner may inspect the work periodically. If the Utility Owner finds that any completed relocation work is defective, it must inform the Project Engineer of these defects in writing; however, any recommendations the Utility Owner makes are not binding to the State. The State has the exclusive right to determine whether the Contractor has performed the work according to the plans, specifications, and special provisions.
3. The Project Engineer and the Utility Owner will perform a final inspection of the work. Once the State has accepted the relocation work, the Project Engineer will inform the Utility Owner in writing, and the Utility Owner will assume ownership of the Facilities.

C. *Deletion of Work:* If the Utility Owner decides to delete the relocation work from the Project, the Utility Owner will:

1. Be subject to the Notice and Order and remove and/or relocate the Facilities; and
2. Defend (at its own expense and to the extent Minnesota's Attorney General permits) indemnify, save, and hold the State and all of its agents and employees harmless of and from all claims, demands, actions, or causes of action that deleting the relocation work causes. This obligation to indemnify extends to any attorney's fees.

D. *Risk:* Risk of loss of partial or complete relocation work will be on the Contractor or the Utility Owner as the current *Standard Specifications for Construction* set forth.

III. **Utility Owner's Ongoing Maintenance Requirements**

- A. No more than 90 calendar days after receiving as-built plans for the relocation from the State, the Utility Owner must submit one copy of the State's Application for Utility Accommodation on Trunk Highway Right of Way, Form 2525 (Permit), including two

copies of "as-built" sketches, for all Facilities within the State's trunk highway right of way to the Utilities Engineer.

- B. Once construction is complete, the Utility Owner must maintain the Facilities at its own expense. The Utility Owner must follow the terms of the Permit when it performs any maintenance work.
- C. The Utility Owner may open and disturb the trunk highway right of way without a permit in the case of an emergency that is dangerous to the public and requires immediate attention. Upon learning of the emergency, the Utility Owner must immediately notify the State Patrol. The Utility Owner must take all necessary and reasonable safety measures to protect the public and must cooperate fully with the State Patrol. In this event, the Utility Owner must request a permit from the proper authority no later than the working day after it begins working in the right of way.

IV. Payment

- A. The State will determine the cost of the relocation on a contract-unit-price basis. The Utility Owner authorizes the State to pay the Contractor directly for the relocation work. As Exhibit B shows, the estimated cost of the Utility Owner's relocation work is \$186,745.34.
- B. The Utility Owner agrees to pay the State the total cost it incurs to relocate the Facilities. The total cost will include:
 - 1. The construction cost, which consists of all of the Contractor's bid item costs to satisfactorily relocate the Facilities according to the plans, specifications, and special provisions; and
 - 2. The construction engineering cost, which is equal to 8 percent of the construction cost.
- C. After acceptance of the bids, the State will notify the Utility Owner of the total cost by providing a written cost schedule.
 - 1. The Utility Owner must accept or reject the total cost no more than 10 calendar days after receiving the cost schedule. If the Utility Owner does not provide this notification after 10 days, the State will consider the lack of response to be the Utility Owner's acceptance of the total cost and the State will proceed with the work.

2. If the Utility Owner chooses to delete its work from the State's contract, it will still be obligated to remove or relocate its Facilities according to the terms of the Notice and Order.
- D. The State will issue the Utility Owner an invoice for the amount specified in the cost schedule. Pursuant to Minnesota Statutes, section 161.46, subdivision 5, the Utility Owner will promptly reimburse the State for the relocation costs.
- E. After the Contractor has completed the work required under its contract and the State has accepted the work, the State will prepare a final computation of the amount due from the Utility Owner.
1. If the final total amount is greater than the amount the State has already received from the Utility Owner, the Utility Owner must promptly pay the difference, without interest, to the State.
 2. If the final total amount is less than the amount the State has already received from the Utility Owner, the State must pay the difference without interest, to the Utility Owner.
- F. The final total cost constitutes payment in full for all relocation work according to this Agreement. This amount also constitutes payment in full for any and all damages, claims, or causes of action of any kind or nature that the Utility Owner may have relating to the relocation of the Facilities.

V. Indemnification

- A. The Utility Owner will defend (at its own expense and to the extent Minnesota's Attorney General allows), indemnify, save, and hold the State and all of its agents and employees harmless of and from all claims, demands, actions, or causes of action arising from the Utility Owner's acts and omissions and from the State's (and its Contractor's) use of plans, designs, shop drawings, specifications, and special provisions prepared, reviewed, or approved by the Utility Owner. This indemnity obligation extends to any attorney's fees the State incurs in seeking to enforce this obligation, and in defending against any claims covered by this indemnity clause.
- B. The Utility Owner does not waive any defense or immunity of third parties. The Utility Owner, in defending any action on behalf of the State, will be entitled to assert every defense or immunity that the State could assert on its own behalf.

VI. Governing Terms

- A. *Data Practices:* All parties must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13) as it applies to any data that a party to this Agreement receives, collects, stores, or disseminates under it. The Act provides civil liability for failure to comply with its requirements.
- B. *Applicable Law:* 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 Ramsey County, Minnesota.
- C. *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 the provision or any subsequent breach of that provision.
- D. *Merger:* This Agreement contains all negotiations and agreements between the State and the Utility Owner with respect to the subject matter it contains. No prior understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- E. *Assignment:* The Utility Owner may neither assign nor transfer any rights or obligations under this Agreement without the State's consent and a fully executed assignment agreement. To be valid, the assignment agreement must be signed and approved by the same parties who signed and approved this Agreement, or their successors in office.
- F. *Amendments:* Any amendment to this Agreement must be in writing. An amendment will not be effective until the same parties who signed and approved this Agreement, or their successors in office, sign and approve the amendment.
- G. *Incorporation of Exhibits:* All exhibits attached to this Agreement are incorporated into this Agreement.

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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: _____

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

Department of Transportation

Recommended for Approval:

Approved:

By: _____
District Engineer

By: _____
Director, Office of Land Management

Date: _____

Date: _____

Office of Contract Management

Approved as to Form and Execution:

By: _____

Date: _____

Department of Administration

By: _____

Date: _____