

# EXHIBIT A

MnDOT Contract No.: 1044549

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

Control Section (C.S.):	<u>6925</u>
Trunk Highway Number (T.H.):	<u>61=103</u>
City Project Number (C.P.):	<u>1927</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 City will allow for the London East Development construction, and other associated construction upon, along, and adjacent to Trunk Highway No. 61 (London Road) on State Trunk Highway Right-of-Way according to City-approved plans, specifications, and special provisions designated by the City as City Project No. 1927 and by the State according to State prepared Amended Permit No. 1A-A-2020-90880 and located in State Control Section No. 6925 (T.H. 61=103) ("Project"); and
2. The City requests the State allow the construction of sidewalk, driveway, and other associated construction on State Trunk Highway Right-of-Way and the State is willing to allow said construction; and
3. Amended State Permit No. 1A-A-2020-90880 between the State and MSA Professional Services further defines the Project and said construction; and
4. 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: 2. Maintenance by the City; 5. Liability; Worker Compensation Claims; Insurance; 7. State Audits; 8. Government Data Practices; 9. Governing Law; Jurisdiction; Venue; and 11. Force Majeure.
- 1.4. **Plans, Specifications, and Special Provisions.** State-approved City plans, specifications, and special provisions designated by the City as City Project No. 1927 and by the State according to State prepared Amended Permit No. 1A-A-2020-90880 and located in State Control Section No. 6925 (T.H. 61=103) are on file in the office of the City's Engineer and incorporated into this Agreement by reference ("Project Plans").

1.5. **Exhibits.** Amended Permit No. 1A-A-2020-90880 is incorporated in this Agreement by reference.

## 2. Maintenance by the City

Upon completion of the project, the City will provide the following without cost or expense to the State:

- 2.1. **London East Development Driveways.** Maintenance of the driveway construction. Maintenance includes, but is not limited to, snow, ice, and debris removal, resurfacing, seal coating, and any other maintenance activities according to accepted City maintenance practices.
- 2.2. **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.
- 2.3. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 2.4. **Sidewalks.** Maintenance and ownership 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.
- 2.5. **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.
- 2.6. **Future Responsibilities.** Upon completion of the London East Development construction, the City will accept full and total responsibility and all obligations and liabilities arising out of or by reason of the use, operation, maintenance, repair, and reconstruction of driveway, sidewalk, and all of the facilities constructed as part of this Agreement, without cost or expense to the State.

## 3. 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.

### 3.1. The State's Authorized Representative will be:

Name, Title: Perry Collins, District Maintenance Engineer (or successor)  
Address: 1123 Mesaba Avenue Duluth, MN 55811  
Telephone: (218) 725-2827  
E-Mail: perry.collins@state.mn.us

### 3.2. The City's Authorized Representative will be:

Name, Title: Cindy Voigt, City Engineer (or successor)  
Address: 411 West First Street, Room 211, Duluth, MN 55802  
Telephone: (218) 730-5200  
E-Mail: cvoigt@duluthmn.gov

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

- 4.1. **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.
- 4.2. **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.
- 4.3. **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.
- 4.4. **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.

**5. Liability; Worker Compensation Claims; Insurance**

- 5.1. 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, 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. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorney's fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).
- 5.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 5.3. The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

**6. Nondiscrimination**

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

**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 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 or the provision of the services covered here. Termination must be by written or fax notice to the City. 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.

**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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**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.**