

EXHIBIT A

Prepared by the
Utility Agreements and Permits Unit
(Payable)
(\$38,964.00)
(Actual Cost)

S.P. 6915-138 (T.H. 53)
Location: from W. Michigan St. to West 4th
St. in City of Duluth
Utility Owner: City of Duluth
MnDOT Agreement Number 1049143

PRELIMINARY AGREEMENT

This Agreement Number 1049143 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation, and City of Duluth, including its agents, contractors, and subcontractors (Utility Owner). This Agreement describes how the parties will mitigate the effects of a State construction project on the Utility Owner.

RECITALS

The State plans to let a contract to construct State Project Number 6915-138 (Project) on Trunk Highway Number 53. The Project is located from W. Michigan St. to West 4th St. in City of Duluth.

The Utility Owner owns and operates Watermain and Sanitary Sewer, their fixtures, and related equipment (Facilities) that are located on property where the State will construct the Project. The State has determined that the Project will require the Utility Owner to relocate these Facilities. In order to relocate its Facilities, the Utility Owner must complete preliminary engineering before the State begins construction. Preliminary engineering includes staking location surveys and preparing plans, specifications, and estimates. The Utility Owner has requested reimbursement for this work.

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

The remainder of this page was left blank intentionally.

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. *Commencement of Work:* Upon notice of Agreement approval, the Utility Owner must commence and prosecute the work according to a schedule the State's Project Engineer approves.
- C. *Expiration Date:* This Agreement will expire on the date that all obligations have been satisfactorily fulfilled.
- D. *Termination by the State:* The State may terminate this Agreement at any time, with or without cause, on 30 calendar days' written notice to the Utility Owner. Upon termination, the Utility Owner will be entitled to payment, on a pro rata basis, for satisfactorily performed services.
- E. *Survival of Terms:* The following articles survive the Agreement's expiration or termination: (IV) Audits; (V) Indemnification; and (VIII) Governing Terms.

II. Utility Owner's Duties

- A. The Utility Owner will complete the necessary preliminary engineering for its relocation.
- B. Use the Utility Owner's regular forces at its standard schedule of wages and working hours to accomplish all utility work. If the Utility Owner must subcontract any work at a later date, it must obtain written approval from the Utilities Engineer before awarding the contract for that work. If the subcontracted utility work costs \$10,000.00 or more, the Utility Owner must:
 - 1. Enter into a written contract with the subcontractor for that work. The contractor must include or incorporate the "Audits" clause in substantially the same form as it appears in Article (IV) of this Agreement; provide a detailed breakdown of the basis for compensation; and state that there will be no "penalty" or "winding up" charges for contract termination.
 - 2. Provide copies of the contract to the State prior to its execution or before commencing work under an already executed "retainer-type" contract.

Except in an emergency or for the minor completion of a phase of work, obtain the Utilities Engineer's approval for overtime work to qualify for reimbursement.

- C. Submit one copy of the State's Application for Utility Accommodation on Trunk Highway Right of Way, Form 2525, including two copies of "proposed" sketches, for all work within the trunk highway right of way to the Utilities Engineer before beginning that work.

III. Payment

A. *Cost Estimate*

The estimated cost of the preliminary engineering is \$38,964.00. Exhibit A, which is attached to this agreement, shows a breakdown of this cost.

B. *Payment*

- 1. The State will pay the Utility Owner for the actual cost the Utility Owner incurs performing its obligations pursuant to this Agreement, in an amount not to exceed \$38,964.00, upon receiving:
 - a. Proof that the utility work has been completed to the Project Engineer's and Utilities Engineer's satisfaction; and
 - b. One original, signed invoice that is supported by an itemized statement of costs. An authorized representative of the Utility Owner must sign the invoice and submit the final bill to the Utilities Engineer not later than 90 days after completing the work.
- 2. If acceptable to the Utilities Engineer, the State may process periodic progress billings of incurred cost without prior audit.

C. *Limitation on Payment*

- 1. The total amount the State is required to pay to the Utility Owner is limited to the amount shown in Article III.B.1.
- 2. If the Utility Owner deems it necessary to perform additional work not covered by this Agreement or anticipates costs exceeding the amount in Article III.B.1, then the Utility Owner must notify the Utilities Engineer, in writing, of the nature and cause of the additional work or costs prior to performing or incurring them. Notification must include the amount of additional State funds requested and

reason(s) supporting the request. The Utilities Engineer may approve the request subject to the availability and encumbrance of funds. If the Utility Owner performs additional work for which the State has not previously encumbered funds, the State is not obligated to pay for that additional work.

3. If the amount the Utility Owner requests under Article III.C.2 does not exceed 10 percent of the amount in Article III.B.1., the State may authorize payment of that pre-approved additional amount without amending this agreement. The Utility Owner must receive notification from the State that the State approved the additional work and encumbered the additional funds before beginning the additional work, or that work will be ineligible for reimbursement.
4. If the final cost of the Utility Owner's work is more than 110 percent of the amount in Article III.B.1., this Agreement must be amended to reflect the new cost before the State will be responsible for that cost. The Utility Owner must promptly notify the State if it appears likely that costs will exceed 110 percent of the Agreement.

IV. Audits

- A. The Utility Owner's costs are subject to the State and federal government's examination and audit. Pursuant to Minnesota Statutes, section 16C.05, subdivision 5, the Utility Owner's accounting books, records, documents, procedures, and practices that are relevant to this Agreement are subject to Legislative or State Audit for six years after this Agreement expires.
- B. The Utility Owner must respond to requests for audit information to support claimed costs no later than 60 days after receiving the request or the State will cite all costs in question. If the Utility Owner does not respond during this 60-day period, the State will consider the audit citations accepted and will make payment accordingly.

V. Indemnification/Insurance

- 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. This indemnity obligation extends to any attorney's fees the State incurs due to this Agreement and the Utility Owner's performance or nonperformance under it.
- B. 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 loss or liability for personal injury, death, or

property damage that this Agreement causes anyone including, but not limited to, the Utility Owner, the State, and the State's employees. This obligation to indemnify does not include any loss or liability resulting from the State's negligence.

- C. 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 in its own behalf.
- D. The Utility Owner certifies that its workers' compensation insurance coverage complies with Minnesota Statutes, section 176.181, subdivision 2. The Utility Owner's employees and agents are not considered State employees. The State is not responsible for any claims asserted by the Utility Owner's employees, agents, subcontractors, or any third parties under the Minnesota Workers' Compensation Act.

VI. Nondiscrimination

- A. The Utility Owner will comply with the United States Department of Transportation's nondiscrimination regulations. These regulations are in the current version of the Code of Federal Regulations, title 49, part 21. The Utility Owner must incorporate these regulations by reference in all contracts.
- B. Minnesota Statutes, section 181.59 and any applicable local ordinances pertaining to civil rights and nondiscrimination are considered part of this Agreement.

VII. Buy America Requirements

- A. All utility work must comply with the "Buy America" provisions in 23 U.S.C. 313 and 23 CFR 635.410. If the Utility Owner uses steel or iron as part of its work, and the cost of that steel or iron is more than 0.1 percent of the total relocation cost or \$2500 (whichever is greater), it must use steel or iron melted or manufactured in the United States. Materials that have been removed from the United States for any process (e.g., change of chemical content, shape, size, or finish) are not considered domestic materials.
- B. If the Utility Owner wishes to use foreign steel or iron, and the cost of that steel or iron exceeds the limits above, it must submit the "Stipulation for Use of Foreign Steel" to the Utilities Engineer and receive approval.
- C. Upon completing its work, the Utility Owner must sign and submit the State's Certificate of Compliance, which states that all iron and steel items are domestic. If any of the iron or steel are foreign, the certification must include the waiver it received.

The State will not process any invoices that do not include the signed Certificate of Compliance.

VIII. 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 the State fails to enforce any provision of this Agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- D. *Merger:* This Agreement contains all negotiations and agreements between the State and the Utility Owner. 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.

The remainder of this page was left blank intentionally.

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**

State Encumbrance Verification

Individual certifies that funds have been encumbered as required by Minnesota Statutes §§ 16A.15 and 16C.05.

By: _____

Date: _____

Contract Number: _____

Order Number: _____

Department of Transportation

Recommended for Approval:

Approved:

By: _____
Resident Engineer

By: _____
Director, Office of Land Management

Date: _____

Date: _____

Department of Administration

By: _____

Date: _____

Work Package 3
COST ESTIMATE
CITY OF DULUTH - PROFESSIONAL ENGINEERING STAFF

CITY OF DULUTH - UTILITY RELOCATIONS
Twin Ports Interchange Project - WP3 & WP4

November 18, 2021

DESIGN SERVICES
LABOR COSTS - DESIGN SERVICES

JOB TITLE	PWD	CUE	SR ENG	ENG1	TECH	TECH	SR	CLR	SURV	TOTAL HRS	TOTAL COST
BILLING RATE	96	88	84	77	55	59	43		84		
WP3 - TH53 / FINAL PLANS											
WATER MAIN - 19TH-21ST AVE W		10	40		16	16	4			86	\$ 6,210
SANITARY SEWER - 19TH-21ST AVE W		10	40		16	16	4			86	\$ 6,210
WP4-I-535/PRELIM & FINAL PLANS											
WATER MAIN - GARFIELD TO AMERISTEEL		10	40		16	16	4			86	\$ 6,210
SANITARY FORCE MAIN		8	20		4	4				36	\$ 2,830
GAS MAIN		8	20		4	4				36	\$ 2,830
WP3 & WP4 PKG - UTIL SPEC PROVS		4	40							48	\$ 3,868
BNSF RR XING LICENSE COORD.		2	40			4	4			50	\$ 3,926
TOTAL DESIGN LABOR	0	52	240	0	56	60	20		0	428	\$ 32,084

W.P. 3

\$12,420.00

x 50% = \$1,934.00

\$14,354.00

DIRECT COSTS - DESIGN SERVICES

	RATE	UNIT	# UNITS	TOTAL
Mileage (xxx miles per trip)	\$0.560	per mile	0	\$ -
Lodging	\$0	per day	0	\$ -
Computer Time	\$0	per hour	0	\$ -
CAD	\$0	per hour	60	\$ -
Printing	\$0.05	each	0	\$ -
Postage/fax	\$0	per project	0	\$ -
Survey Direct Costs	\$0	per day	0	\$ -
Survey Direct Staking	\$0	per day	0	\$ -
JLL / BNSF RR XING LICENSE FEE	\$3,500	per project	1	\$ 3,500
	\$0	per project	0	\$ -
TOTAL DESIGN DIRECT COSTS				\$ 3,500

DESIGN SUMMARY		
LABOR	\$	32,084
DIRECT	\$	3,500
TOTAL	\$	35,584

City of Duluth - W.P. 3 sub-total = \$14,354.00

Work Package 3

FEE ESTIMATE WORKSHEET				Project Name				WP-3 & WP-4 UTILITY DESIGNS				Project Number				210757				11/18/21				LHB Labor Summary				LHB			
LHB Labor Summary				Client				CITY OF DULUTH				Date																			
Preparer																															
Project Breakdown Summary Description				P1		P2		P5		P4		P3		T1		P2		T3		T5		T7		A1		Total Labor Costs (\$)					
						PM				CE				TECH		RLS				CREW CHIEF				Admin. Assist.							
						\$165				\$135				\$106		\$165				\$84				\$59							
WP-3 UTILITY DESIGN																															
Design Meetings & Coordination (Assumes 3 Meetings)						6				6																\$0					
Update Existing Design with Current Project Base Files						4				12				40												\$1,800					
Review Design Changes and Conflict Analysis						4				16				20												\$6,520					
Prepare Final Plans & Provisions						4				30				40												\$4,940					
MnDOT FGR and QA Review Process						8				8																\$8,950					
																										\$2,400					
																										\$0					
WP-4 UTILITY DESIGN																										\$0					
Design Meetings & Coordination (Assumes 3 Meetings)						6				6																\$1,800					
Prepare and Compile Utility Base Mapping						8				20				40												\$8,260					
Preliminary Project Utility Scope and Evaluation						8				4																\$1,860					
Utility Record Research / Establish Onwership						6				8				4		10										\$4,144					
Review Design and Conflict Analysis						4				8				20												\$3,860					
Water Main Layout						4				12				24												\$4,824					
Final Design						24				48				120		4								6		\$24,174					
																										\$0					
Total Hours				0		86		0		178		0		308		14		0		0		0		6							
Travel								Cost		Direct Costs								Cost		Labor Cost						\$73,532					
								\$0										\$0		Travel Costs						\$0					
								\$0										\$0		Direct Costs						\$0					
								\$0										\$0													
Total Travel Costs								\$0		Total Direct Costs								\$0		Total LHB Est. Cost						\$73,532					

LHB - W.P. 3 sub-total = \$24,610.00
W.P. 3 Total = 38,964.00