

# EXHIBIT A

MnDOT Contract No: 1051989

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

State Project Number (SP): 6910-105  
Trunk Highway Number (TH): 23=185

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 State will perform grading, bituminous surfacing, ADA improvement construction, and other associated construction upon, along, and adjacent to Trunk Highway No. 23 from 1.35 miles east of TH 210 to TH 39 according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 6910-105 (TH 23=185) ("Project"); and
2. The State has included in its contract ADA improvements and the City is willing to maintain the sidewalk after completion of the construction; 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

### 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; 7. Liability; Worker Compensation Claims; Insurance; 8. State Audits; 9. Government Data Practices; 10. Governing Law; Jurisdiction; Venue; and 12. Force Majeure.
- 1.4. **Plans, Specifications, and Special Provisions.** Plans, specifications, and special provisions designated by the State as State Project No. 6910-105 (TH 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.** Exhibit A – Sidewalk Maintenance is attached and incorporated into this Agreement.

**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 construction covered under this Agreement will be open to inspection by the City. If the City believes the 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 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 and will enter into any necessary addenda and change orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner.
  - 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. The State reserves the right to invoice the City for the cost of any construction contract addenda and any additional City requested work and plan changes, including associated construction engineering, before the completion of the contract construction.
- 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. 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.
- 2.5. *Permits.*** 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 2525).

**Maintenance by the City**

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

- 3.1. *Sidewalks.*** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps as shown in Exhibit A. Maintenance includes, but is not limited to, snow, ice, and debris removal, patching, crack repair, panel replacement, mowing grass boulevards (if any), and any other maintenance activities necessary to perpetuate the sidewalks in a safe and useable condition according to the accepted City's ADA Transition Plan.

- 3.2. 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.

#### **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, Maintenance Engineer (or successor)  
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: Cindy Voigt, City Engineer (or successor)  
Address: 411 West First Street, Room 240, Duluth, MN 55802  
Telephone: (218) 730-5071  
E-Mail: cvoigt@duluth.mn.gov

#### **Assignment; Amendments; Waiver; Contract Complete**

- 5.1. 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. The foregoing does not prohibit the City from contracting with a third party to perform City maintenance responsibilities covered under this Agreement.
- 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.

#### **Liability; Worker Compensation Claims; Insurance**

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

#### **Nondiscrimination**

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

### **State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, 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.

### **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.

### **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.

### **Termination; Suspension**

**11.1. By Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

**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.

### **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.

[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**

Approved:

By: \_\_\_\_\_  
(District Engineer)

Date: \_\_\_\_\_

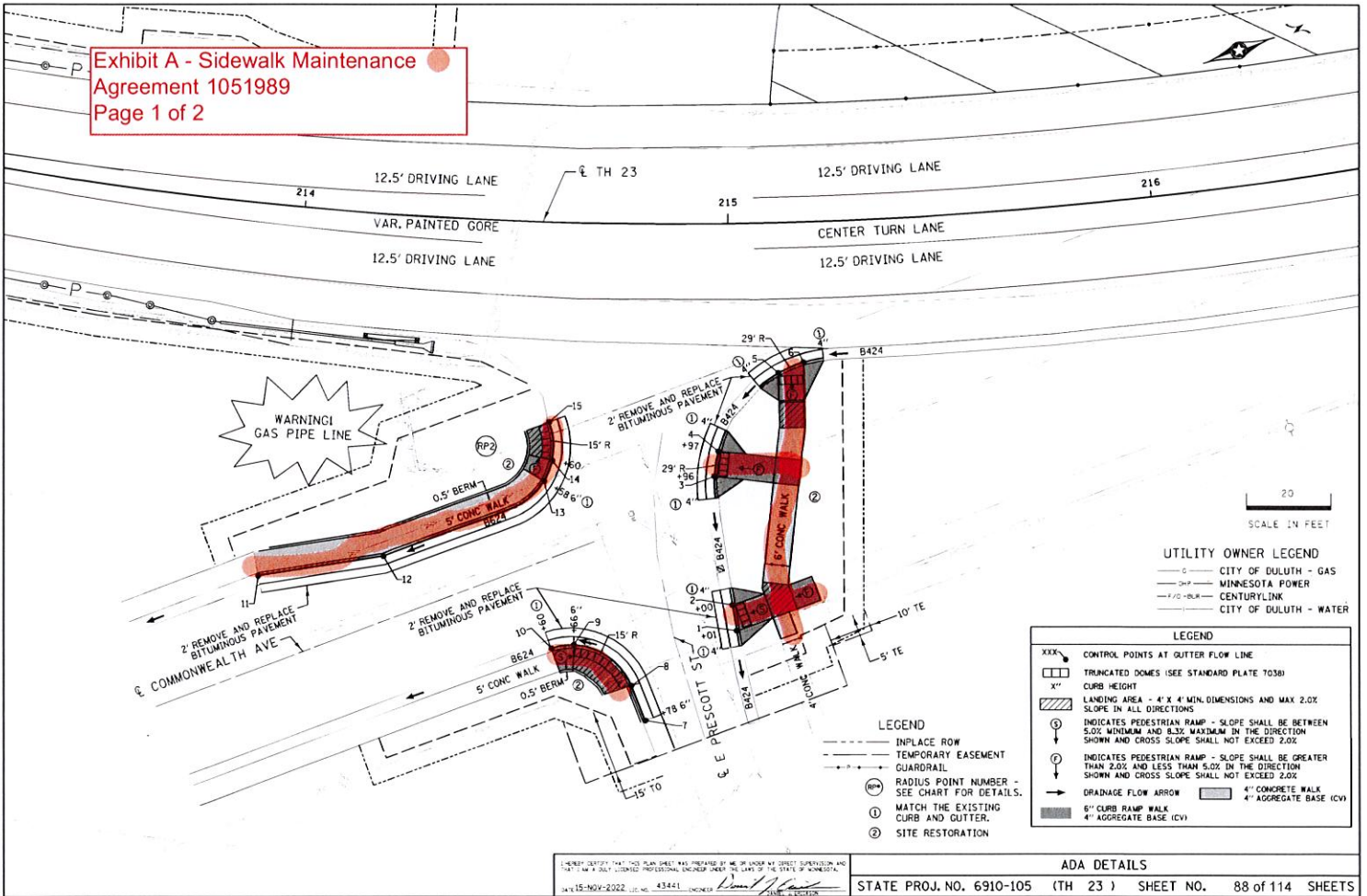
**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_  
(With Delegated Authority)

Date: \_\_\_\_\_

**INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.**

Exhibit A - Sidewalk Maintenance  
Agreement 1051989  
Page 1 of 2



**Exhibit A - Sidewalk Maintenance**  
**Agreement 1051989**  
**Page 2 of 2**

BEGIN 2" MILL & OVERLAY  
 STA. 219+66.43  
 END PAVEMENT REMOVAL

END MILL & OVERLAY  
 R.P. 338+00.689  
 END SP. 6910-105 (TH 23)  
 STA. 219+86.75

**UTILITY OWNER LEGEND**  
 — G — CITY OF DULUTH - GAS  
 — M — MINNESOTA POWER  
 — C — CENTURYLINK  
 — W — CITY OF DULUTH - WATER

**LEGEND**  
 --- IN PLACE ROW  
 --- TEMPORARY EASEMENT  
 --- GUARDRAIL  
 (R.P.) RADIUS POINT NUMBER - SEE CHART FOR DETAILS.  
 ① MATCH THE EXISTING CURB AND GUTTER  
 ② SITE RESTORATION

LEGEND	
XXX	CONTROL POINTS AT GUTTER FLOW LINE
□	TRUNCATED DOMES (SEE STANDARD PLATE 703B)
X"	CURB HEIGHT
▨	LANDING AREA - 4' X 4' MIN. DIMENSIONS AND MAX 2.0% SLOPE IN ALL DIRECTIONS
①	INDICATES PEDESTRIAN RAMP - SLOPE SHALL BE BETWEEN 5.0% MINIMUM AND 8.3% MAXIMUM IN THE DIRECTION SHOWN AND CROSS SLOPE SHALL NOT EXCEED 2.0%
②	INDICATES PEDESTRIAN RAMP - SLOPE SHALL BE GREATER THAN 2.0% AND LESS THAN 5.0% IN THE DIRECTION SHOWN AND CROSS SLOPE SHALL NOT EXCEED 2.0%
→	DRAINAGE FLOW ARROW
▨	6" CURB RAMP WALK
▨	4" AGGREGATE BASE (CV)
▨	4" CONCRETE WALK
▨	6" CONCRETE DRIVEWAY PAVEMENT
▨	4" AGGREGATE BASE (CV)

**ADA DETAILS**

I HEREBY CERTIFY THAT THIS PLAN SHEET WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULUTH LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.  
 DATE 11-15-2022, LICENSE NO. 43441, ENGINEER *David J. Hest*

STATE PROJ. NO. 6910-105 (TH 23) SHEET NO. 89 of 114 SHEETS

PROJECT REVISIONS: 15 NOV 2022

PROJECT NAME: ADA  
 PROJECT NO: 6910-105 (TH 23)  
 PROJECT LOCATION: TH 23 & MCCUEN ST

## CITY OF DULUTH

### RESOLUTION

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement No. 1051989 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for routine maintenance by the City upon, along, and adjacent to Trunk Highway No. 23, the limits of which are defined in said Agreement.

IT IS FURTHER RESOLVED that the Mayor and the \_\_\_\_\_  
(Title)  
are 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 \_\_\_\_\_, 20\_\_, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)