

EXHIBIT A

Prepared by the
Utility Agreements and Permits Unit
(Receivable)
(\$3,148.75)

S.P. 6910-105 (T.H. 23)
Location: 1.35 miles east of TH 210 to TH 39
Utility Owner:
City of Duluth Public Works and Utilities
MnDOT Agreement Number 1051893

AGENCY RELOCATION AGREEMENT

This Agreement Number 1051893 (Agreement) is between the State of Minnesota (State), acting through its Commissioner of Transportation and City of Duluth Public Works and Utilities, 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 6910-105 (Project) on Trunk Highway Number 23. The Project is located From 1.35 miles east of TH 210 to TH 39.

The Utility Owner owns and operates Water Mains, their fixtures, and related equipment (Facilities) that are located on property where the State will construct the Project.

The Project will require the adjustment of the Utility Owner's Facilities. If the Utility Owner relocated the Facilities or let a separate contract to adjust them, that adjustment work would interfere with the Project. The Utility Owner has requested that the State perform the adjustment work as part of the Project. Including the Utility Owner's adjustment 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 adjust 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. *Commencement of Work:* Upon notice of Agreement approval, the Utility Owner must promptly provide the State (and the State's Contractor (Contractor)) with any information necessary to commence and successfully prosecute the utility work according to the terms of the Notice and Order and a work schedule the State's Project Engineer (Project Engineer) approves.
- C. *Expiration Date:* This Agreement will expire on the date that all obligations, excluding the Utility Owner's ongoing maintenance 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 State will be entitled to payment, on a pro rata basis, for satisfactorily performed services. The termination of this Agreement does not relieve the Utility Owner of its obligations under the Notice and Order.
- E. *Survival of Terms:* The following articles survive this Agreement's expiration or termination: (III) Utility Owner's Ongoing Maintenance Requirements; (V) Indemnification; and (VII) Governing Terms.

II. Description of Work Procedures

- A. *Plans:* The plans, which are attached to this Agreement as Exhibit A, indicate the location of the Facilities.
 - 1. If any changes to the plans or character of the work become necessary, the State and the Utility Owner must agree to the changes before the State makes (or directs the Contractor to make) them. If these changes require an amendment or supplement to this Agreement, the parties will negotiate such amendment or supplement in good faith, and the State is not obligated to commence such changes until such amendment or supplement is fully executed. The State will enter into such supplemental agreements with its Contractor as the State deems necessary to implement such changes.
 - 2. The Utility Owner authorizes the Project Engineer to make any minor field changes and adjustments to the plans, specifications, and special provisions

as the State deems necessary for efficient Project construction. The Utility Owner authorizes the State, on its behalf, to enter into supplemental agreements with the Contractor as necessary to implement these changes.

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 adjustment work.
2. The Project Engineer will supervise and direct the Project, including the adjustment work, but the Utility Owner may inspect the work periodically. If the Utility Owner finds that any completed adjustment 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 adjustment 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 adjustment work from the Project, the Utility Owner will:

1. Pay the State the design engineering cost in Article IV.B.3;
2. Be subject to the Notice and Order and adjust the Facilities; and
3. 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. 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.
- B. 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 adjustment on a contract-unit-price basis. The Utility Owner authorizes the State to pay the Contractor directly for the adjustment work. As Exhibit B shows, the estimated cost of the Utility Owner's adjustment work is \$3,148.75.
- B. The Utility Owner agrees to pay the State the total cost it incurs to adjust the Facilities. The total cost will include:
 - 1. The construction cost, which consists of all of the Contractor's bid item costs to satisfactorily adjust the Facilities according to the plans, specifications, and special provisions;
 - 2. The construction engineering cost, which is equal to 8 percent of the construction cost; and
 - 3. The design engineering cost, which is equal to 6.5 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 must still pay the State the design engineering cost specified in Article IV.A. The Utility Owner will be obligated to adjust 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 adjustment 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 adjustment 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 adjustment 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. Nondiscrimination

Minnesota Statutes, section 181.59 and any applicable local ordinances pertaining to civil rights and nondiscrimination are considered part of this Agreement.

VII. 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.

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**

Department of Transportation

Recommended for Approval:

Approved:

By: _____
District Engineer

By: _____
Director, Office of Land Management

Date: _____

Date: _____

Department of Administration

By: _____

Date: _____

PLOTTED/REVISED: 7-DEC-2022

PLOT NAME: d6910-105.tb2
PATH & FILENAME: Projects\01_DUL\023\6910\105\Design\6910-105.tb2.dgn

UTILITIES TABULATION - WATER							
PUBLIC UTILITIES WITHIN CONSTRUCTION AREA							
ADJUST OR RELOCATE IF NECESSARY TO BE DONE BY OTHERS UNLESS OTHERWISE NOTED							
STATION TO STATION	OFFSET (FT)	TYPE	OWNER	ACTION			REMARKS
				ADJUST	RELOCATE	LEAVE AS IS	
143+30 - 144+75	34 LT - 33 LT	WTR LIN INP	CITY OF DULUTH			X	
144+75 - 144+82	33 LT - 93 LT	WTR LIN INP	CITY OF DULUTH			X	
144+75 - 152+50	31 LT - 34 LT	WTR LIN INP	CITY OF DULUTH			X	
151+61 - 151+63	31 LT - 41 LT	WTR LIN INP	CITY OF DULUTH			X	
151+63	40 LT	WVLV	CITY OF DULUTH			X	
152+50	33 LT	WVLV	CITY OF DULUTH			X	
214+18 - 214+62	48 RT - 69 RT	WTR LIN INP	CITY OF DULUTH			X	
214+41	56 RT	WVLV	CITY OF DULUTH			X	
214+62 - 218+94	26 LT - 49 RT	WTR LIN INP	CITY OF DULUTH			X	
214+79	140 RT	WVLV	CITY OF DULUTH			X	
214+83	108 RT	WVLV	CITY OF DULUTH			X	
217+71	31 RT	WVLV	CITY OF DULUTH			X	
217+71	30 RT	WVLV	CITY OF DULUTH			X	
218+63 - 218+65	26 RT - 29 RT	WTR LIN INP	CITY OF DULUTH			X	
218+64	29 RT	WVLV	CITY OF DULUTH	X			(1)
218+65 - 218+66	26 LT - 29 RT	WTR LIN INP	CITY OF DULUTH			X	
218+65 - 218+69	28 LT - 47 RT	WTR LIN INP	CITY OF DULUTH			X	
218+94	26 LT	WVLV	CITY OF DULUTH	X			(1)
218+94 - 219+10	25 LT - 26 LT	WTR LIN INP	CITY OF DULUTH			X	
218+99	76 RT	WVLV	CITY OF DULUTH			X	
219+03	48 LT	HYD	CITY OF DULUTH			X	
219+05 - 219+10	25 LT - 48 LT	WTR LIN INP	CITY OF DULUTH			X	
219+10	36 LT	WVLV	CITY OF DULUTH	X			(1)
219+10 - 219+20	25 LT - 26 LT	WTR LIN INP	CITY OF DULUTH			X	
219+19 - 219+20	25 LT - 184 LT	WTR LIN INP	CITY OF DULUTH			X	
219+19 - 219+83	25 LT - 41 LT	WTR LIN INP	CITY OF DULUTH			X	
219+19 - 220+10	25 LT - 26 LT	WTR LIN INP	CITY OF DULUTH			X	
219+20	40 LT	WVLV	CITY OF DULUTH	X			(1)
219+83	35 LT	WVLV	CITY OF DULUTH	X			(1)
219+86 - 220+04	28 RT - 82 RT	WTR LIN INP	CITY OF DULUTH			X	
219+87	36 RT	WVLV	CITY OF DULUTH			X	
219+87 - 219+87	26 LT - 29 RT	WTR LIN INP	CITY OF DULUTH			X	

(1) ADJUSTMENTS TO BE DONE BY CONTRACTOR. SEE CITY UTILITY ADJUSTMENTS TABULATION FOR PAY ITEMS.

STATIONING AND OFFSETS BASED OFF T.H. 23 ALIGNMENT

UTILITIES TABULATION - SEWER							
PUBLIC UTILITIES WITHIN CONSTRUCTION AREA							
ADJUST OR RELOCATE IF NECESSARY TO BE DONE BY OTHERS UNLESS OTHERWISE NOTED							
STATION TO STATION	OFFSET (FT)	TYPE	OWNER	ACTION			REMARKS
				ADJUST	RELOCATE	LEAVE AS IS	
143+30 - 144+70	41 LT - 48 LT	SAN LIN INP	CITY OF DULUTH			X	
144+69 - 144+77	38 LT - 93 LT	SAN LIN INP	CITY OF DULUTH			X	
144+69 - 152+68	38 LT - 44 LT	SAN LIN INP	CITY OF DULUTH			X	
144+79	39 LT	SMH	CITY OF DULUTH			X	
152+67	42 LT	SMH	CITY OF DULUTH			X	
180+73 - 180+98	32 LT - 54 LT	SAN LIN INP	CITY OF DULUTH			X	
180+97 - 185+42	32 LT - 45 LT	SAN LIN INP	CITY OF DULUTH			X	
185+41 - 185+42	44 LT - 56 LT	SAN LIN INP	CITY OF DULUTH			X	
185+41 - 196+42	44 LT - 45 LT	SAN LIN INP	CITY OF DULUTH			X	
196+19 - 196+20	44 LT - 81 LT	SAN LIN INP	CITY OF DULUTH			X	
196+30 - 196+74	44 LT - 81 LT	SAN LIN INP	CITY OF DULUTH			X	
214+14 - 214+80	52 RT - 82 RT	SAN LIN INP	CITY OF DULUTH			X	
214+80	52 RT	SMH	CITY OF DULUTH			X	
214+79 - 215+37	52 RT - 245 RT	SAN LIN INP	CITY OF DULUTH			X	
215+37	245 RT	SMH	CITY OF DULUTH			X	
215+04 - 214+60	128 RT - 175 RT	SAN LIN INP	CITY OF DULUTH			X	
218+97 - 219+39	75 RT - 77 RT	SAN LIN INP	CITY OF DULUTH			X	
219+38 - 219+39	15 RT - 120 RT	SAN LIN INP	CITY OF DULUTH			X	
219+38	15 RT	SMH	CITY OF DULUTH			X	
219+38 - 219+39	39 LT - 15 RT	SAN LIN INP	CITY OF DULUTH			X	
219+38 - 220+10	15 RT - 16 RT	SAN LIN INP	CITY OF DULUTH			X	
219+88 - 220+02	15 RT - 81 RT	SAN LIN INP	CITY OF DULUTH			X	

PLOTTED/REVISED: 7-DEC-2022

PLOT NAME: d6910-105.tbl
PATH & FILENAME: Projects\01_DUL\023\6910\05\Design\6910-105.tbl.dgn

CLEARING			H
STATION	LOCATION	SPEC. 2101	REMARKS
		CLEARING (1)	
	RT / LT	EACH	
S.P. 6910-105 (T.H. 23)			
156+27	65 RT	1	6" BALM OF GILEAD
156+33	63 RT	1	6" BALM OF GILEAD
156+36	41 RT	1	6" BALM OF GILEAD
156+37	55 RT	1	6" BALM OF GILEAD
156+39	43 RT	1	6" BALM OF GILEAD
156+39	43 RT	1	6" BALM OF GILEAD
198+76	52 LT	1	6" ASH
206+13	83 LT	1	12" ASH
206+26	88 LT	1	12" ASH
206+27	99 LT	1	6" ASH
206+45	92 LT	1	6" MAPLE
206+50	96 LT	1	6" ASH
206+77	97 LT	1	6" ELM
SP 6910-105 TOTALS:		13	

(1) TREES WILL BE FELLED BY OTHERS. CLEARING ONLY INCLUDES REMOVAL OF PREVIOUSLY FELLED TREES.

CITY UTILITY ADJUSTMENTS			J
STATION	OFFSET (FT)	SPEC. 2504	REMARKS
		ADJUST VALVE BOX-WATER	
		(2)	
		EACH	
CITY OF DULUTH			
218+64	29 RT	1	
218+94	26 LT	1	
219+10	36 LT	1	
219+20	40 LT	1	
219+83	35 LT	1	
(A) SP 6910-105 TOTALS:		5	

(2) SEE CONSTRUCTION DETAILS

(A) 100% CITY OF DULUTH FUNDS.

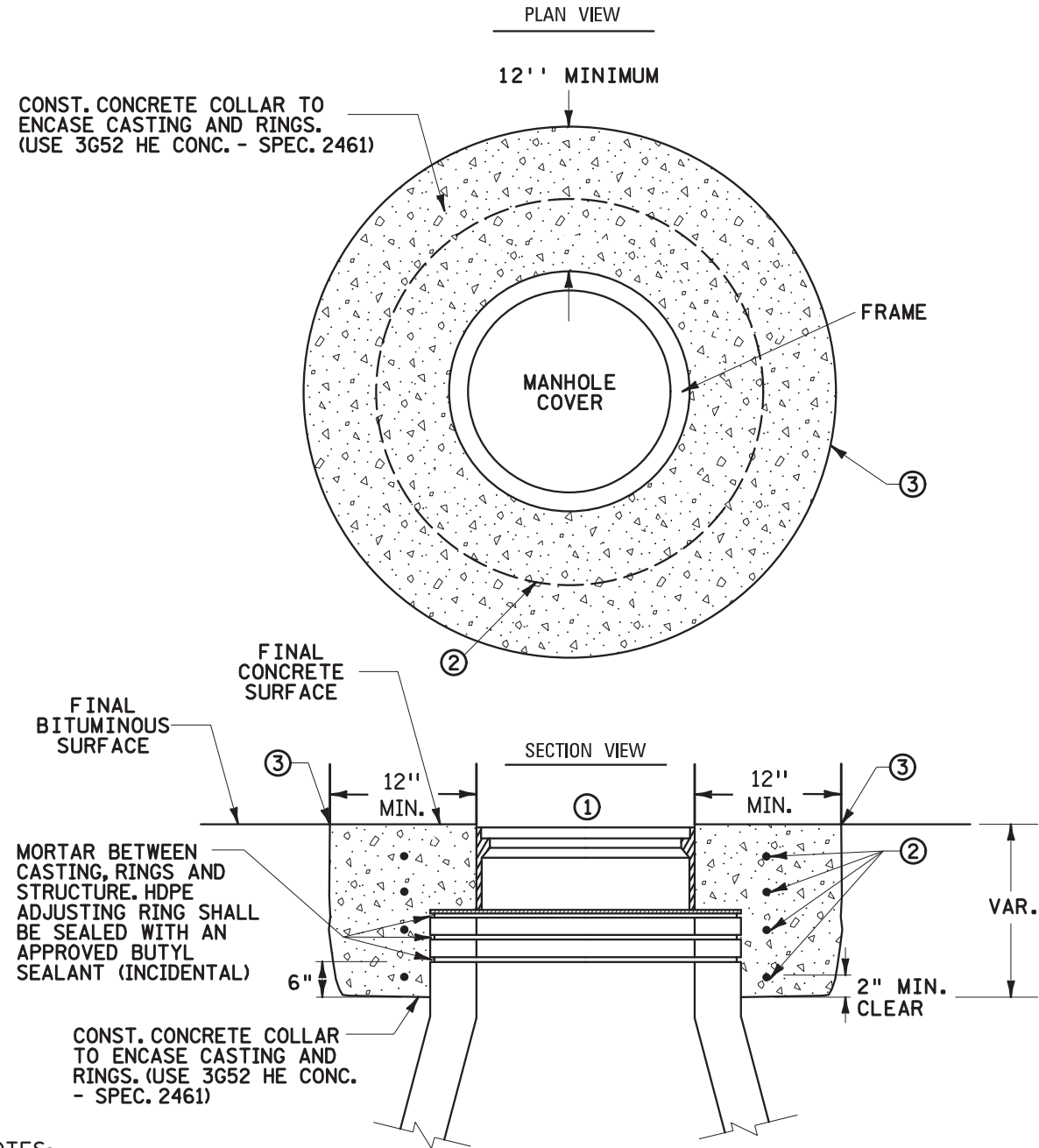
NOTE:
ALL FUNDING IS 80% FEDERAL,
20% STATE FUNDS UNLESS OTHERWISE NOTED

WEEP TRENCH				I
STATION - STATION	LOCATION	SPEC 2106	SPEC. 2573	REMARKS
		WEEP TRENCH	SEDIMENT CONTROL LOG TYPE COMPOST	
	LT / RT	EACH	LIN FT	
S.P. 6910-105 (T.H. 23)				
144+00	LT	1	28	
145+00	RT	1	34	
147+00	LT	1	31	
148+00	RT	1	32	
150+00	LT	1	34	
151+00	RT	1	34	
152+00	LT	1	22	
155+00	LT	1	35	
158+00	LT	1	32	
161+00	LT	1	43	
164+00	LT	1	33	
166+00	LT	1	22	
169+00	LT	1	26	
171+00	RT	1	28	
173+00	LT	1	21	
174+00	RT	1	23	
176+00	LT	1	30	
177+00	RT	1	34	
179+00	LT	1	22	
180+00	RT	1	30	
181+00	LT	1	37	
182+00	RT	1	22	
185+00	RT	1	22	
188+00	RT	1	26	
191+00	RT	1	26	
194+00	RT	1	42	
198+00	LT	1	22	
201+00	LT	1	20	
204+00	LT	1	20	
207+00	LT	1	22	
210+00	LT	1	22	
213+00	LT	1	18	
SP 6910-105 TOTALS:		32	893	

TABULATION CHARTS

STATE PROJ. NO. 6910-105 (TH 23) SHEET NO. 15 of 114 SHEETS

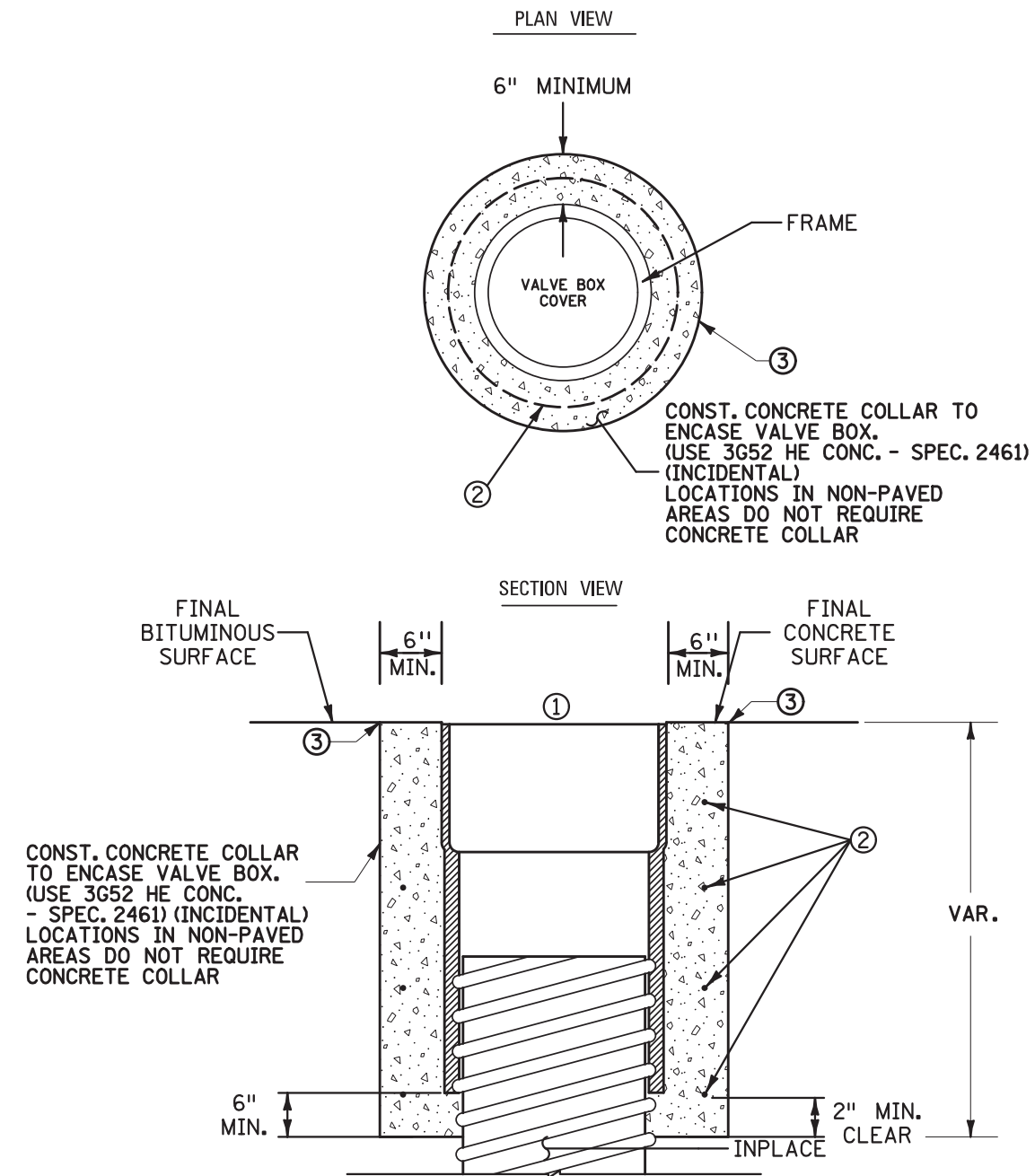
CONCRETE COLLAR DETAIL – MANHOLE ④
PAID FOR AS CONCRETE COLLAR



NOTES:

- ① TOP OF CASTING SHALL BE $\frac{1}{8}$ " BELOW FINISHED BITUMINOUS SURFACE.
- ② PLACE #4 REINFORCING BARS AT 3" INTERVALS AND TIE IN ACCORDANCE WITH MN/DOT SPEC. 2472. (INCIDENTAL)
- ③ CONCRETE COLLAR SHALL BE CIRCULAR LAYOUT. PAVEMENT AND BASE SHALL BE CUT OUT WITH ROTATING CUTTING SAW. LOCATIONS IN CONCRETE WALK OR CONCRETE SURFACING DO NOT REQUIRE CUT OUT.
- ④ LOCATIONS IN NON-PAVED AREAS, CONSTRUCT CONCRETE COLLAR TO 4" BELOW TOP OF COVER. PLACE 4" OF TOPSOIL, GRADE FLUSH WITH TOP OF COVER AND ESTABLISH TURF. (INCIDENTAL)

ADJUST VALVE BOX DETAIL
PAID FOR AS ADJUST VALVE BOX – WATER

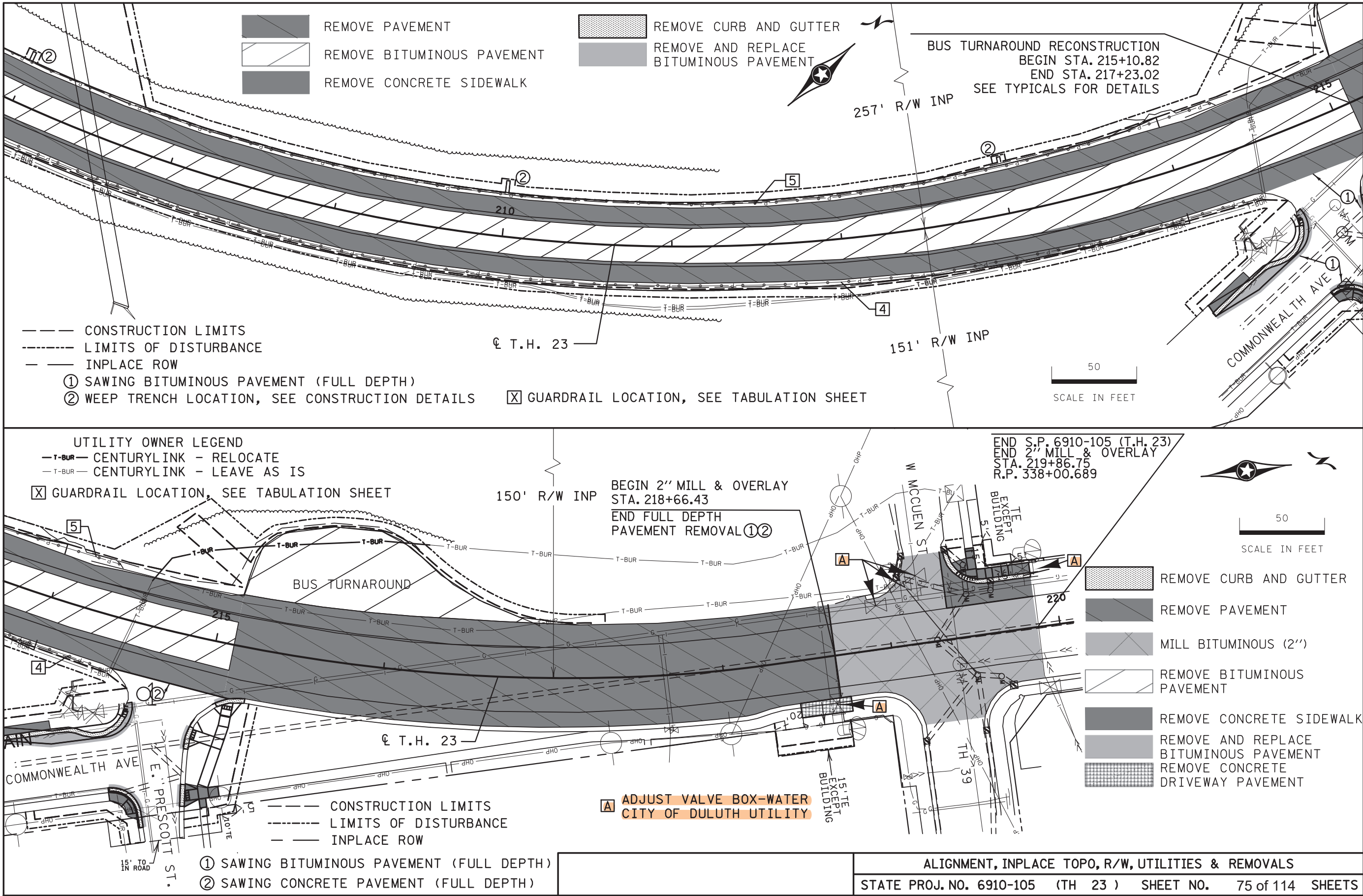


CONSTRUCTION DETAIL

STATE PROJ. NO. 6910-105 (TH 23) SHEET NO. 31 of 114 SHEETS

PLOTTED/REVISED: 7-DEC-2022

PLOT NAME: REM-6
PATH & FILENAME: Projects\01_DUL\023\6910\105\Design\PlanSheets\6910-105_REM.dgn



S.P. 6910-105 (T.H. 23) Agreement #1051893 City of Duluth					
			Engineers Estimate		
ITEM NUMBER	DESCRIPTION	UNITS	ESTIMATED QUANTITY	ESTIMATE UNIT PRICE	TOTAL ESTIMATE
2504.602	Adjust Valve Box - Water	Each	5	\$550.00	\$2,750.00
Sub-Totals =					\$2,750.00
Design Engineering				6.50%	\$178.75
MnDOT Construction Engineering Cost				8.00%	\$220.00
GRAND TOTAL					\$3,148.75