

# EXHIBIT A

MnDOT Agreement No. 1028476

STATE OF MINNESOTA AGENCY AGREEMENT  
BETWEEN  
DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF DULUTH

FOR FEDERAL PARTICIPATION IN ADVANCE CONSTRUCTION  
FOR  
S.P. 118-060-012; M.P. TA 6917(223)

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This agreement is entered into by and between City of Duluth ("City") and the State of Minnesota acting through its Commissioner of Transportation ("MnDOT"),

Agency Agreement No. 99887 which has been executed between the City and MnDOT, appoints MnDOT as the City's agent to receive and disburse transportation related federal funds, and sets forth duties and responsibilities for letting, payment, and other procedures for a federally funded contract let by the City; and

Pursuant to Minnesota Statutes Section 161.36, the City desires MnDOT to act as the City's agent to accept and disburse federal funds for the construction, improvement, or enhancement of transportation financed in whole or in part by federal funds; and

The City is proposing a federal aid project to restore historic rock retaining walls at various scenic overlooks along the Skyline Parkway Scenic Byway, hereinafter referred to as the "Project"; and

The Project has been determined to be eligible for the expenditure of federal aid funds and is programmed in the approved federally approved STIP for the fiscal years 2017 and 2018; and the project is identified in MnDOT records as State Project 118-060-012, and in Federal Highway Administration ("FHWA") records as Minnesota Project TA 6917(223); and

The City desires to proceed with the construction of the project in advance of the year it is programmed for the federal funds; and

It is permissible under Federal Highway Administration procedures to perform advance construction of eligible projects with non-federal funds, with the intent to request federal funding for the federally eligible costs in a subsequent federal fiscal year(s), if sufficient funding and obligation authority are available; and

The City desires to temporarily provide City State Aid and/or other local funds in lieu of the federal funds so that the project may proceed prior to the fiscal year(s) designated in the STIP; and

MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

THE PARTIES AGREE AS FOLLOWS:

I. DUTIES OF THE CITY.

- A. The City will let a contract and construct the Project in accordance with Agency Agreement No. 99887. Payment provisions for federally eligible costs will be as stated herein.
- B. It is estimated that the total cost of the Project is \$ 1,542,000. The remaining share will be paid by the City.
  - 1. Of these Transportation Alternatives funds, \$828,330 is available in federal fiscal year 2017.
  - 2. Of these Transportation Alternatives funds, \$400,000 is available in federal fiscal year 2018.
- C. The City will pay any part of the cost or expense of the Project that is not paid by federal funds.
- D. Request for reimbursement of the federal aid share of the federally eligible costs can be made any time after the work is completed, however payment may not be made until after October 1, 2017 for federal fiscal year 2018. It could be earlier if funding and obligation authority are available (subject to the Area Transportation Partnership (ATP) policy).
- E. If the project is converted to federal funding before completion and final acceptance, requests for reimbursement will occur as partial estimates in accordance with Agency Agreement No. 99887.
- F. Under Minnesota Statutes § 16C.05, subd. 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.

II. DUTIES OF MnDOT.

- A. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project and designation as an Advance Construction project.
- B. MnDOT will request the conversion of the Project to federal funding of eligible costs, when funding and obligation authority are available.
- C. At such time that the project is converted to federal funding and such funding is received by MnDOT, MnDOT will reimburse to the City the federal aid share of the federally eligible costs, previously provided by the City. Reimbursement for City State Aid funds used in lieu of federal funds, will be deposited in the City's State Aid Account. Reimbursement for other City funds used in lieu of federal funds will be forwarded to the City.

- III. **AUTHORIZED REPRESENTATIVES.** Each authorized representative will have responsibility to administer this agreement and to ensure that all payments due to the other party are paid pursuant to the terms of this agreement.
- A. The City authorized representative is Cindy Voigt, Duluth City Engineer, 411 West 1<sup>st</sup> Street, Room 211 City Hall, Duluth, MN 55802-1191, phone 218-730-5200, or her successor.
- B. MnDOT's authorized representative is Lynnette Roshell, Minnesota Department of Transportation, State Aid for Local Transportation, 395 John Ireland Boulevard, Mail Stop 500, St Paul, MN 55155, phone 651-366-3822, or her successor.
- IV. **TORT LIABILITY.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.
- V. **ASSIGNMENT.** Neither party will assign or transfer any rights or obligations under this agreement without prior written approval of the other party.
- VI. **AMENDMENTS.** Any amendments/supplements to this Agreement must be in writing and be executed by the same parties who executed the original agreement, or their successors in office.
- VII. **TERM OF AGREEMENT.** This agreement will be effective upon execution by the City and by appropriate State officials, pursuant to Minnesota Statutes Section 16C.05, and will remain in effect for five (5) years from the effective date or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.
- VIII. **TERMINATION.** This agreement may be terminated by the City or MnDOT at any time, with or without cause, upon ninety (90) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the City as set forth in this Agreement. In the event of such a termination the City will be entitled to reimbursement for MnDOT-approved federally eligible expenses incurred for work satisfactorily performed on the Project to the date of termination subject to the terms of this agreement.

**Remainder of this page left intentionally blank**

**CITY**

City certifies that the appropriate person(s) have executed the Amendment on behalf of City as required by applicable articles, bylaws or resolutions.

By: \_\_\_\_\_

Title: Mayor

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

By: \_\_\_\_\_

Title: City Clerk

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

By: \_\_\_\_\_

Title: City Attorney

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

By: \_\_\_\_\_

Title: City Auditor

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

**DEPARTMENT OF TRANSPORTATION**

Individual certifies that the applicable provisions of Minnesota Statutes §16C.08 subdivisions 2 and 3 are reaffirmed

By: \_\_\_\_\_

Title: Director  
State Aid for Local Transportation

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

**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY

City certifies that the appropriate person(s) have executed the contract on its behalf as required by applicable resolutions, ordinances, or charter provisions

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: Director  
State Aid for Local Transportation

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

COMMISSIONER OF ADMINISTRATION

By: \_\_\_\_\_

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