

EXHIBIT A

MnDOT Contract No: 1029895

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

State Project Number (S.P.):	<u>6933-97 & 6933-95</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>194 = 204</u>	<u>\$100,396.80</u>
State Project Number (S.P.):	<u>6982-325</u>	
Trunk Highway Number (T.H.):	<u>35 = 103</u>	
State Aid Project (S.A.P.):	<u>069-604-082</u>	
Federal Project Number:	<u>STPF-NHPP 6918(127)</u>	
Signal System ID:	<u>1735194 "A", 2094148 "B"</u>	
	<u>2094149 "C", 1735745 "D"</u>	
	<u>1692373 "E"</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Duluth acting through its City Council ("City").

Recitals

1. The State will perform grading, bituminous and concrete surfacing, concrete pavement rehabilitation, ADA improvements, lighting, signal system revision construction, and other associated construction upon, along and adjacent to Trunk Highway No. ("T.H.") 194 from 150 feet north of Interstate No. 35 to 400 feet north of Central Entrance and on Interstate No. 35 from 180 feet north of South 16th Avenue East to 150 feet south of South 17th Avenue East according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6933-97 (T.H. 194=204) ("Project"); and
2. The City of Duluth and the State wish to define their respective power, operation, and maintenance responsibilities for the Traffic Control Signals with Signal Pole Mounted Luminaires, Accessible Pedestrian Signals ("APS") and Signing ("Signal Systems") and Emergency Vehicle Pre-emption Systems ("EVP Systems"), on T.H. 194 at 1st Street (Signal System "A"), on T.H. 194 at 3rd Street (Signal System "B"), on T.H. 194 at 7th Street (Signal System "C"), on T.H. 194/Mesaba Avenue and T.H. 194/Central Entrance at C.S.A.H. 4/Rice Lake Road and 6th Avenue East (Signal System "D"), and on T.H. 194 at 2nd Street (Signal System "E") in the City of Duluth, St. Louis County, Minnesota; and
3. The City has requested the State include in its Project utility adjustments, lighting, Emergency Vehicle Preemption construction, and signal system painting; and
4. The City wishes to participate in the costs of the utility adjustments, lighting, Emergency Vehicle Preemption, signal system painting construction and associated construction engineering; and
5. The City will participate in the maintenance of the Traffic Signal Systems A through E; and
6. Agreement No. 1029892 between the State and St. Louis County will address concrete pavement rehabilitation; and
7. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and

8. 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: 3. Maintenance by the City; 9. Liability; Worker Compensation Claims; 11. State Audits; 12. Government Data Practices; 13. Governing Law; Jurisdiction; Venue; and 15. Force Majeure. The terms and conditions set forth in Article 4. Signal System(s) and EVP Systems Operation and Maintenance will survive the expiration of this Agreement, but may be terminated by another Agreement between the parties.
- 1.4. *Plans, Specifications, Special Provisions.*** Plans, specifications, and special provisions designated by the State as State Project No. 6933-97 (T.H. 194=204) 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.*** Preliminary Schedule "I" is on file in the office of the City Engineer and incorporated into this Agreement by reference.

2. 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 City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation 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 City participation 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, which may include the City participation construction covered under this Agreement, 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.

- C. The State reserves the right to invoice the City for the cost of 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 T2525).
- 2.6. **Replacement of Castings.** Adjustments to certain City-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The City will furnish the contractor with new units and/or parts for those in place City-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

3. Maintenance by the City

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

- 3.1. **Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.2. **Sidewalks.** Maintenance 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.
- 3.3. **Lighting.** Maintenance and ownership of any lighting facilities construction. Maintenance of electrical lighting systems includes everything within the system, from the point of attachment to the power source or utility, to the last light on the feed point, including but not limited to re-lamping of lighting units or replacing of LED luminaires, repair or replacement of all damaged luminaire glassware, loose connections, luminaires when damaged or when ballasts fail, photoelectric control on luminaires, defective starter boards or drivers, damaged fuse holders, blown fuses, knocked down poles including wiring within the poles, damaged poles, pullboxes, underground wire, damaged foundations, equipment pad, installation of approved splices or replacement of wires, repair or extending of conduit, lighting cabinet maintenance including photoelectric cell, electrical distribution system, Gopher State One Call (GSOC) locates and painting of poles and other equipment. The City will be responsible for the hook up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting facility.
- 3.4. **Additional Drainage.** Neither 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. The drainage areas served by the storm sewer facilities constructed under the construction contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics Engineer at Duluth and is incorporated into this Agreement by reference.

4. Signal Systems and EVP Systems Operation and Maintenance

- A. Operation and maintenance responsibilities will be as follows for the Signal Systems and EVP Systems on T.H. 194 at 1st Street ("Signal System "A"), on T.H. 194 at 3rd Street ("Signal System "B"), and on T.H. 194 at 7th Street ("Signal System "C").
- B. Operation and maintenance responsibilities will be as follows for the Signal Systems on T.H. 194 / Mesaba Avenue & T.H. 194 / Central Entrance at C.S.A.H. 4 / Rice Lake Road & 6th Avenue East ("Signal System "D"), and on T.H. 194 at 2nd Street ("Signal System "E").

4.1. City Responsibilities.

- A. **Power.** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pads or poles and will pay all monthly electrical service expenses necessary to operate the Signal Systems and EVP Systems.
- B. **Signal System Maintenance.** The City will provide for the following, without cost to the State.
 - i. Maintain the signal pole mounted LED luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.
 - ii. Replace the Signal Systems LED indications. Replacing LED indications consists of replacing each LED indication when it reaches end of life per the MnDOT Traffic Engineering Manual or fails or no longer meets Institute of Traffic Engineers (ITE) standards for light output.
 - iii. Clean the Signal Systems controller cabinet and service cabinet exteriors.
 - iv. Clean the Signal Systems and luminaire mast arm extensions.
 - v. Paint and maintain the 1st Street, 3rd Street, 7th Street, C.S.A.H. 4 / Rice Lake Road & 6th Avenue East, and 2nd Street pedestrian crosswalk markings along T.H. 194.
- C. **EVP Systems Operation.** The EVP Systems will be installed, operated, maintained, and removed according to the following conditions and requirements:
 - i. All maintenance of the EVP Systems must be done by City forces.
 - ii. Emitter units may be installed only on authorized emergency vehicles, as defined in Minnesota Statutes § 169.011, Subdivision 3. Authorized emergency vehicles may use emitter units only when responding to an emergency. The City will provide the State's District Engineer or their designated representative a list of all vehicles with emitter units, if requested by the State.
 - iii. Malfunction of the EVP Systems must be reported to the State immediately.
 - iv. In the event the EVP Systems or its components are, in the opinion of the State, being misused or the conditions set forth in Paragraph ii. above are violated, and such misuse or violation continues after the City receives written notice from the State, the State may remove the EVP Systems. Upon removal of the EVP Systems pursuant to this Paragraph, all of its parts and components become the property of the State.
 - v. All timing of the EVP Systems will be determined by the city.

4.2. **Right-of-Way Access.** Each party authorizes the other party to enter upon their respective public right-of-way to perform the maintenance activities described in this Agreement.

4.3. **Related Agreements.** This Agreement will supersede and terminate the operation and maintenance terms of Agreement No. 67705, dated November 16, 1990, between the parties of the City of Duluth, St. Louis County, and the State, for the intersection of T.H. 194 / Mesaba Avenue & T.H. 194 / Central Entrance at C.S.A.H. 4 / Rice Lake Road & 6th Avenue East.

5. Basis of City Cost

- 5.1. *Schedule "I".*** The Preliminary Schedule "I" includes all anticipated City participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.
- 5.2. *City Participation Construction.*** The City will participate in the following at the percentages indicated. The construction includes the City's proportionate share of item costs for mobilization, field office, and traffic control.
- A.** 100 Percent will be the City's rate of cost participation in all of the utilities adjustment, lighting, and traffic signals construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".
 - B.** 100 Percent will be the City's rate of cost participation in all of the signal system painting costs. These lump sum costs are tabulated on Sheet No. 1 of the Preliminary Schedule "I".
- 5.3. *Construction Engineering Costs.*** The City will pay a construction engineering charge equal to 8 percent of the total City participation construction covered under this Agreement.
- 5.4. *Plan Changes, Additional Construction, Etc.*** The City will share in the costs of construction contract addenda for the City participation construction covered under this Agreement and any additional City requested work and plan changes.

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.

6. City Cost and Payment by the City

- 6.1. *City Cost.*** **\$100,396.80** is the City's estimated share of the costs of the contract construction and the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this agreement.
- 6.2. *Conditions of Payment.*** The City will pay the State the full and complete lump sum amount, as shown in the Revised Schedule "I", after the following conditions have been met:
- A.** Execution of this Agreement and transmittal to the City, including a copy of the Revised Schedule "I".
 - B.** The City's receipt of a written request from the State for the advancement of funds.
- 6.3. *Final Payment, Additional City Requested Work.*** Upon completion of all contract construction and upon computation of the final amount due the State's contractor and only if additional work has been requested under Article 2.3.B of this Agreement, the State will prepare a Final Schedule "I" and submit a copy to the City. The Final Schedule "I" will be based on final quantities of any additional City requested participation construction items and the construction engineering cost share due to additional requested work. The computation by the State of the amount due from the City will be final, binding, and conclusive.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

7. 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.

- 7.1.** The State's Authorized Representative will be:

Name/Title: Maryanne Kelly-Sonnek, Cooperative Agreements Engineer (or successor)

Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
Telephone: (651) 366-4634
E-Mail: marianne.kellysonnek@state.mn.us

7.2. The City's Authorized Representative will be:

Name/Title: Cari Pedersen, Chief Engineer of Transportation (or successor)
Address: 411 West 1st Street, Duluth, MN 55802
Telephone: (218) 730-5091
E-Mail: cpedersen@duluthmn.gov

8. Assignment; Amendments; Waiver; Contract Complete

- 8.1. *Assignment.*** Neither 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.
- 8.2. *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.
- 8.3. *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.
- 8.4. *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.

9. Liability; Worker Compensation Claims

- 9.1.** 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 and 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.
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

10. Nondiscrimination

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

11. 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.

12. 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.

13. 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.

14. Termination; Suspension

14.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

14.2. *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.

14.3. *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.

15. Force Majeure

Neither 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: _____

Title: _____

Date: _____

By: _____

Title: _____

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.

CITY OF DULUTH

RESOLUTION

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement No. 1029895 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the grading, bituminous and concrete surfacing, concrete pavement rehabilitation, ADA improvements, lighting, traffic signals construction, and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 194 from 150 feet north of Trunk Highway No. 35 to 400 feet north of Central Entrance and on Trunk Highway No. 35 from 180 feet north of South 16th Avenue East to 150 feet south of South 17th Avenue East within the corporate City limits under State Project No. 6933-97 (T.H. 194=204).

IT IS FURTHER RESOLVED that the Mayor and the _____ are
(Title)
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 _____, 2018, as shown by the minutes of the meeting in my possession.

(Signature)

(Type or Print Name)

(Title)

Subscribed and sworn to before me this
_____ day of _____, 2018

Notary Public _____

My Commission Expires _____

NOTARY
STAMP