

PUBLIC WORKS & UTILITIES COMMITTEE

11-0013R

RESOLUTION AUTHORIZING AGREEMENT NO. 97864 WITH MNDOT TO RELOCATE A GAS MAIN SOUTH OF I-35 NEAR RECYCLE WAY AND RECEIVE REIMBURSEMENT IN THE AMOUNT OF \$167,510.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. _____, with the state of Minnesota department of transportation to relocate a natural gas main located south of Interstate Highway 35 near Recycle Way for the benefit of the Interstate Highway 35 reconstruction project and to receive reimbursement therefor in an amount not to exceed \$167,510, payable to the Gas Fund 520, Agency 500, Organization 1905, Object 5533.

Approved:



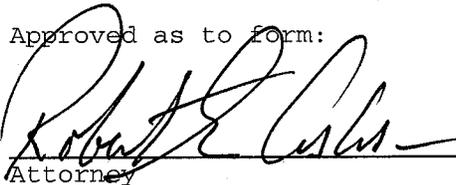
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PW&U/ATTY REA:dma 12/30/2010

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with MnDOT pursuant to which the City will cause a natural gas main, currently located south of Interstate Highway 35 near Recycle Way, to be relocated to adjacent property to facilitate the reconstruction of I-35 in the area by the State's contractor.

MnDOT will reimburse the City for the cost thereof up to the estimated amount of \$167,510.

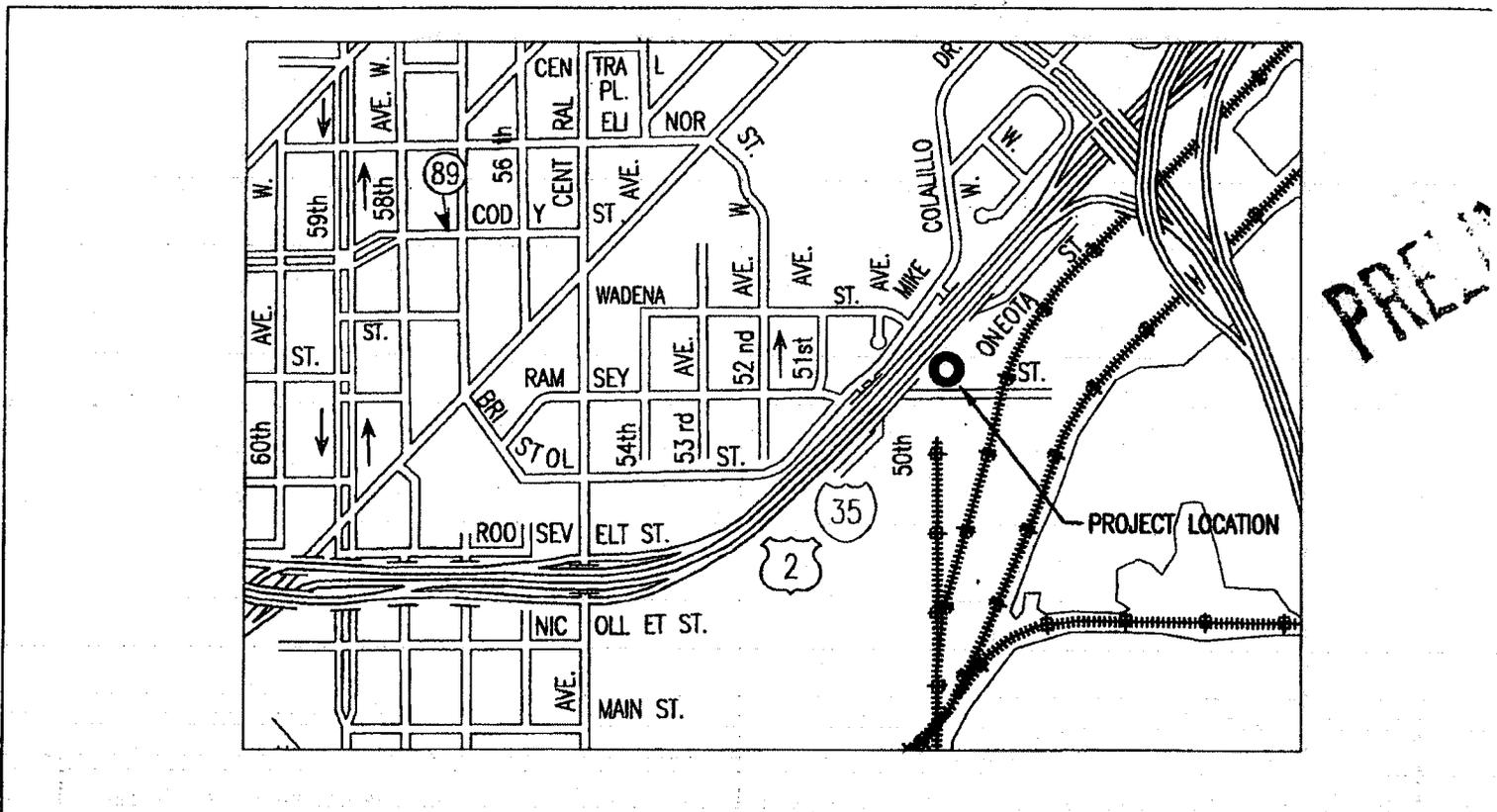
CITY OF DULUTH

DEPARTMENT OF PUBLIC WORKS AND UTILITIES ENGINEERING DIVISION

CONSTRUCTION PLANS FOR:

RELOCATION OF 16" STEEL GAS MAIN SOUTH OF I-35
NEAR RECYCLE WAY

CITY PROJECT NO. 0953GS



THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY LEVEL D. THIS QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF ANSI/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".

WARNING:
LOCATION OF UNDERGROUND UTILITIES TO BE VERIFIED BY CONTRACTOR. CALL BEFORE DIGGING. GOPHER STATE ONE CALL 1-800-252-1166 REQUIRED BY LAW



CITY OF

PLAN LEGEND

- RIGHT OF WAY LINE
- DITCH CENTERLINE
- FENCE LINE
- RETAINING WALL
- GRAVEL LINE
- GUARD RAIL LINE
- RAILROAD TRACK LINE
- ROAD CENTERLINE
- TREE LINE
- STREAM LINE
- WETLAND LINE
- EX SANITARY LINE
- PR SANITARY LINE
- AB SANITARY LINE
- EX FORCEMAIN LINE
- PR FORCEMAIN LINE
- AB FORCEMAIN LINE
- EX STORM LINE
- PR STORM LINE
- AB STORM LINE
- EX WATER LINE
- PR WATER LINE
- AB WATER LINE
- EX GAS LINE
- PR GAS LINE
- AB GAS LINE
- EX STEAM LINE
- PR STEAM LINE
- AB STEAM LINE
- UG CABLE TV LINE
- AB CABLE TV LINE
- UG ELECTRIC LINE
- AB ELECTRIC LINE
- UG FIBEROPTIC LINE
- AB FIBEROPTIC LINE
- UG TELEPHONE LINE
- AB TELEPHONE LINE
- OH ELECTRIC LINE
- OH TELEPHONE LINE
- OH CABLE TV LINE

SYMBOLS

- EX SANITARY MANHOLE
- EX SANITARY CLEANOUT
- EX STORM MANHOLE
- EX STORM CATCHBASIN
- EX WATER MANHOLE
- EX WATER VALVE
- EX WATER HYDRANT
- EX WATER SHUTOFF
- EX WATER & GAS MH
- EX GAS MANHOLE
- EX GAS VALVE
- EX GAS SHUTOFF
- EX STEAM MANHOLE
- EX TELEPHONE MANHOLE
- EX ELECTRIC MANHOLE
- EX POWERPOLE
- EX LIGHT POLE
- EX ELECTRIC VAULT
- EX ANCHOR
- EX ELECTRIC TRANSFORMER
- EX STREET LIGHT
- EX SIGNAL W/ STREET LIGHT
- EX HANDHOLE
- EX HANDHOLE
- EX TELEPHONE PEDESTAL
- EX WELL
- BENCHMARK
- FOUND CI MONUMENT
- EX SIGN
- CONTROL POINT
- EX DECIDUOUS TREE
- EX CONIFEROUS TREE
- EX PARKING METER
- EX SOIL BORING

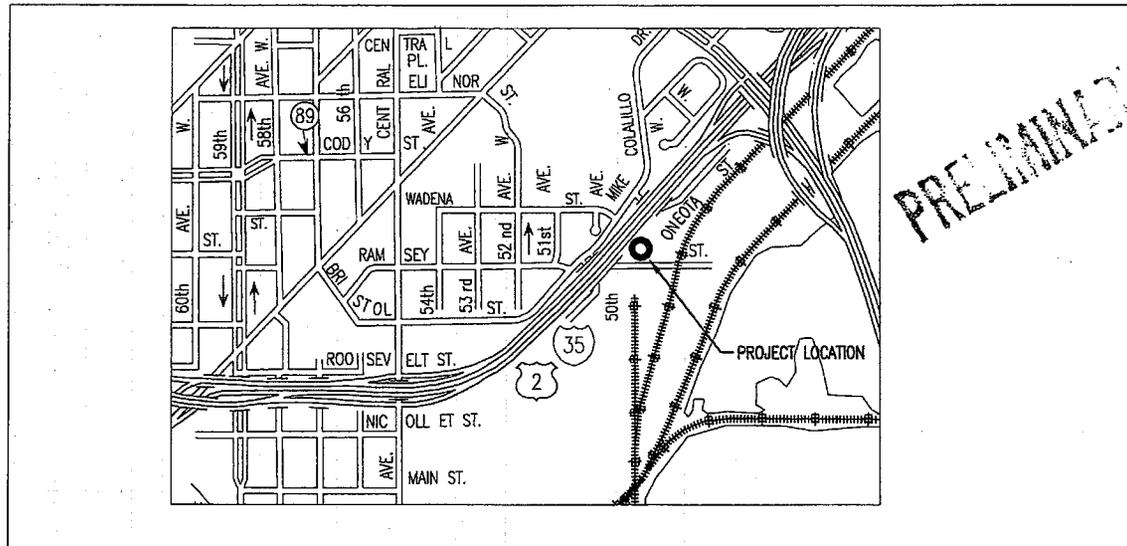
CITY OF DULUTH

DEPARTMENT OF PUBLIC WORKS AND UTILITIES ENGINEERING DIVISION

CONSTRUCTION PLANS FOR:

RELOCATION OF 16" STEEL GAS MAIN SOUTH OF I-35
NEAR RECYCLE WAY

CITY PROJECT NO. 0953GS



PRELIMINARY PLANS

**Agreement #97864
Exhibit A**



THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY LEVEL D. THIS QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF C/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".

WARNING: LOCATION OF UNDERGROUND UTILITIES TO BE VERIFIED BY CONTRACTOR. CALL BEFORE DIGGING. GOPHER STATE ONE CALL 1-800-252-1186 REQUIRED BY LAW

GOVERNING SPECIFICATIONS

THE 2005 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" SHALL GOVERN. AVAILABLE AT: <http://www.dot.state.mn.us/pre-letting/spec/index.html>

THE 2360 PLANT MIXED ASPHALT PAVEMENT COMBINED 2360/2350 (GYRATORY/MARSHALL DESIGN) SPECIFICATION DATED 12/23/2008 SHALL APPLY. AVAILABLE AT: <http://www.dot.state.mn.us/materials/bituminous.html>

ALL TRAFFIC CONTROL DEVICES AND SIGNING SHALL CONFORM TO THE MN MUTCD, INCLUDING THE FIELD MANUAL DATED JANUARY 2007.

AVAILABLE AT: <http://www.dot.state.mn.us/trafficeng/otepubl/fieldmanual2007/index.html>

THE 2009 EDITION OF THE CITY OF DULUTH PUBLIC WORKS AND UTILITIES DEPARTMENT STANDARD CONSTRUCTION SPECIFICATIONS AND SUPPLEMENTS OR ADDENDUMS SHALL APPLY.

INDEX

SHEET NO.	DESCRIPTION
1	TITLE SHEET
2	STATEMENT OF ESTIMATED QUANTITIES/PROCEDURES
	DETAILS
	PLAN AND PROFILE

THIS PLAN CONTAINS 4 SHEETS

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

LARRY L. WINNER
PROJECT ENGINEER (TYPED OR PRINTED NAME)

PROJECT ENGINEER _____ DATE _____ 12473
RES. NO.

CITY APPROVAL

APPROVED _____ CHIEF ENGINEER OF TRANSPORTATION _____ DATE _____

APPROVED _____ CHIEF ENGINEER OF UTILITIES _____ DATE _____

APPROVED _____ CITY ENGINEER _____ DATE _____

CITY OF DULUTH PROJECT NO. 0953GS

DRAWN BY: BRB

SHEET NO. 01 OF 04

ITEM NO.	NOTES	SPEC. NO.	DESCRIPTION	UNIT	Quantity
1		2021.501	Mobilization	Lump Sum	1
2	3	2505.601	Tie-ins	Lump Sum	1
3	5	2505.602	Excavate for Anode Installation	Each	2
4		2505.602	F & I - 16" Ball Valve, Grove B-5 W x W And Valve Box	Each	2
5	1	2505.602	F & I - 16" Weld On Stop Fittings	Each	2
6	2	2505.603	F & I - Excess Granular Encasement, compacted in trench per detail	Lin Ft	180
7		2505.603	F & I - 16" H.P. Steel Gas Main (X52-312" Wall) w granular encasement	Lin Ft	249
8	4	2575.523	Erosion Control Blanket Cat 3	Sq. Yd.	400

1. INCLUDES EXCAVATION, STOP FITTING, PURGE POINTS, WELDING AND ALL PROCEDURERS TO MAKE STOP STOP OPERATIONAL
2. INCLUDES NON-FROZEN GRANULAR BACKFILL, COMPACTION, AND REMOVAL AND DISPOSAL OF UNACCEPTABLE BACKFILL MATERIAL
3. INCLUDES ABANDONMENT OF EXISTING 16" GAS MAIN (PROPERLY SEALING ENDS)
4. INCLUDES FERTIZER AND SEED MIX APPLIED PER SPECIFICATION
5. SEE G-17 OF DULUTH STANDARD SPECIFICATIONS FOR ANODE DETAIL

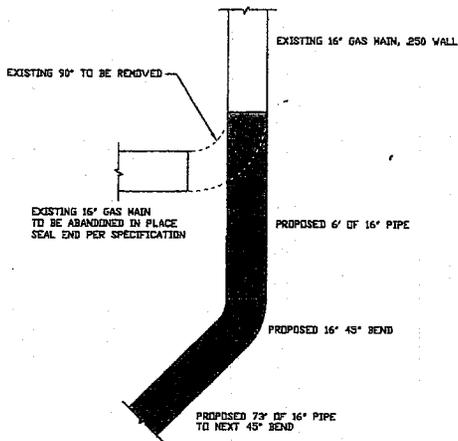
PRELIMINARY PLANS

**Agreement #97864
Exhibit A**

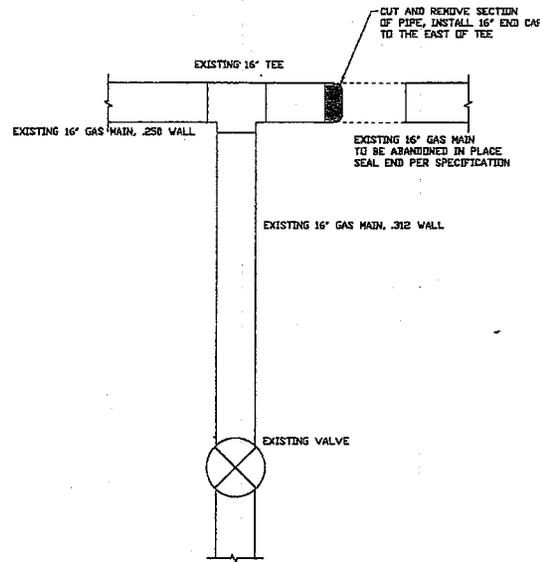
PROCEDURES FOR 16" STEEL GAS MAIN @ RECYCLE WAY

#	Contractor Procedures	STATION	STATION
	Contractor is responsible for any ground thawing needed for stops and connections areas , amount depends on the existing ground conditions at the time the job starts.		
	Contractor to notify City of Duluth @ 730-5200, minimum 48 hours in advance of excavating for stop fittings, tie - ins and/or end cap, to make advance arrangements to schedule a Public Works employee to be on site during any excavation within 6' of gas main. The excavation for (2) anode installation can be done with tie-in excavations , see standard detail G-17	0+68	3+21
	Contractor to Furnish & Install (2) - 16" stops @ Recycle Way and I-35. The contractor will be responsible for all excavation, backfilling, all equipment, and labor needed to install and stop two 16" stops, Contractor shall weld and air test the two stop fittings and drill nipples. Contractor shall supply air movers & compressors for purging gas to air. Please notify the City @ 730-4130 a minimum of 48 hours in advance to arrange for the shutdown meeting and the Department to shut down the Regulator station at Storenzo. Do not stop unless , new main constructed , tested & shutdown meeting has been held	0+10 4+60	TO TO 0+12 4+62
	Contractor to Furnish & Install approximately 250' of 16" Steel gas Main including (1) - 16" tee with 3' - 5' stubs & caps on north side of tee and south side of valve (2) - 16" gate valves off east side of tee and south side of tee (1) - 45 degree bend SEE DETAILS #1, #2 & #3 (1) - 45 degree bend and 6' of 16" pipe and cap with testing fittings. (1) - 16" cap for end of existing main per detail #3 All welds have been x-rayed and are passing. (by others)	0+70.5 0+70.5 0+72 2+41 3+14 0+70.5	TO TO TO TO TO 3+19 0+75 3+19
	REMINDER: Minimum 48 hours before the pipeline can be stopped and gas pipe shutdown, the Public Works & Utilities must be notified @ 730-4130 for future pipeline shutdown. The City shall hold a shutdown meeting prior to shut down or stops.		
	Test 16" gas pipe to City of Duluth standards using chart recorder and dead weight. See chart recorder and air test requirements per S.P. - _____		
	After air test has passed and shutdown meeting has been held , the contractor can tap and stop the pipeline. Contractor to check for 100% shutdown.		
	The pipe line shall then be purged gas to air by the contractor, from one drill nipple to the other drill nipple, until a mixture of less than 10% LEL is measured at venting end.		
	Contractor to cut off and make tie-ins at both ends , and end cap on existing main Sta. 0+74 approximately 50' north of new tee and valve. All welds in tie-ins and end cap must be x-rayed, prior to purging air to gas.		
	Contractor shall open stops, to purge air to gas and pressurize pipeline, from one drill nipple to the other drill nipple. Department to direct the purging of the 16" gas main. All welds for tie-ins shall be x-rayed, soap tested and checked with CGI.		
	Contractor to complete stops and remove all equipment. All fittings and stops to be checked for leaks, F & I granular encasement , backfill and restore areas.		
	Department to perform complete leak survey upon completion of new pipeline. Department to turn Regulator station back on when all work has been completed		

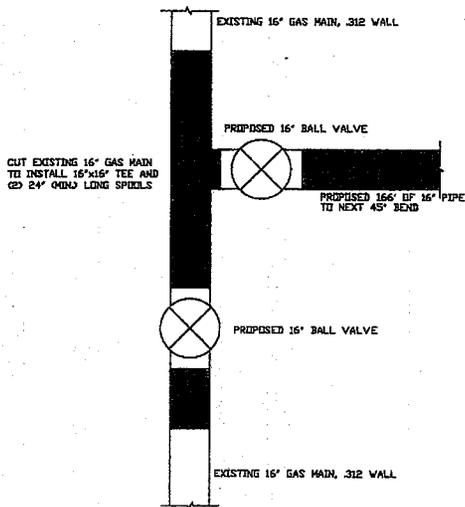
16" GAS MAIN RELOCATION NEAR STORA ENSO REGULATOR STATION			
CITY OF DULUTH	CERTIFIED BY : LARRY L. WINNER	REVISION # & DESCRIPTION	DRAWN BY: BRB
CITY PROJECT NO.: 09536S	CITY OF DULUTH	REVISION # & DESCRIPTION	ESTIMATED QUANTITIES
SIGNATURE: _____	DATE: _____	REVISION # & DESCRIPTION	SHEET NO. 2 OF 4



DETAIL 1
SCALE: 1"=4'



DETAIL 3
SCALE: 1"=4'

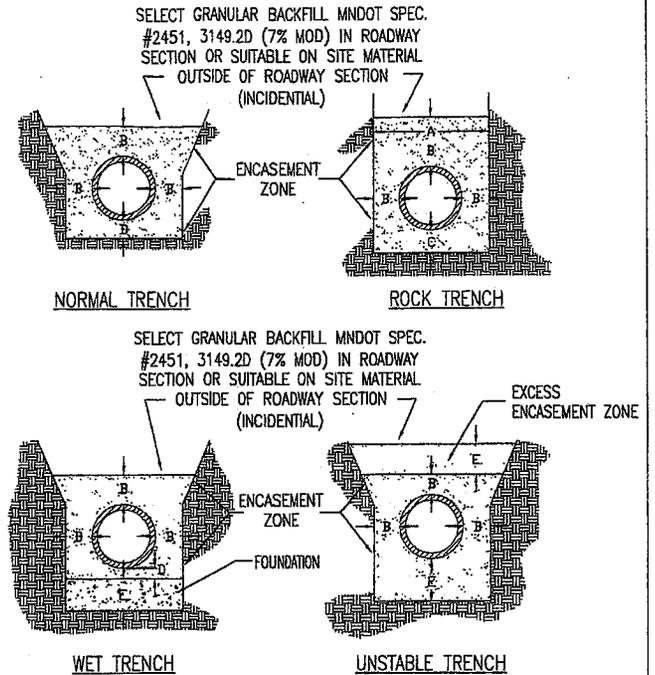


DETAIL 2
SCALE: 1"=4'

NEW PIPING

PRELIMINARY PLANS

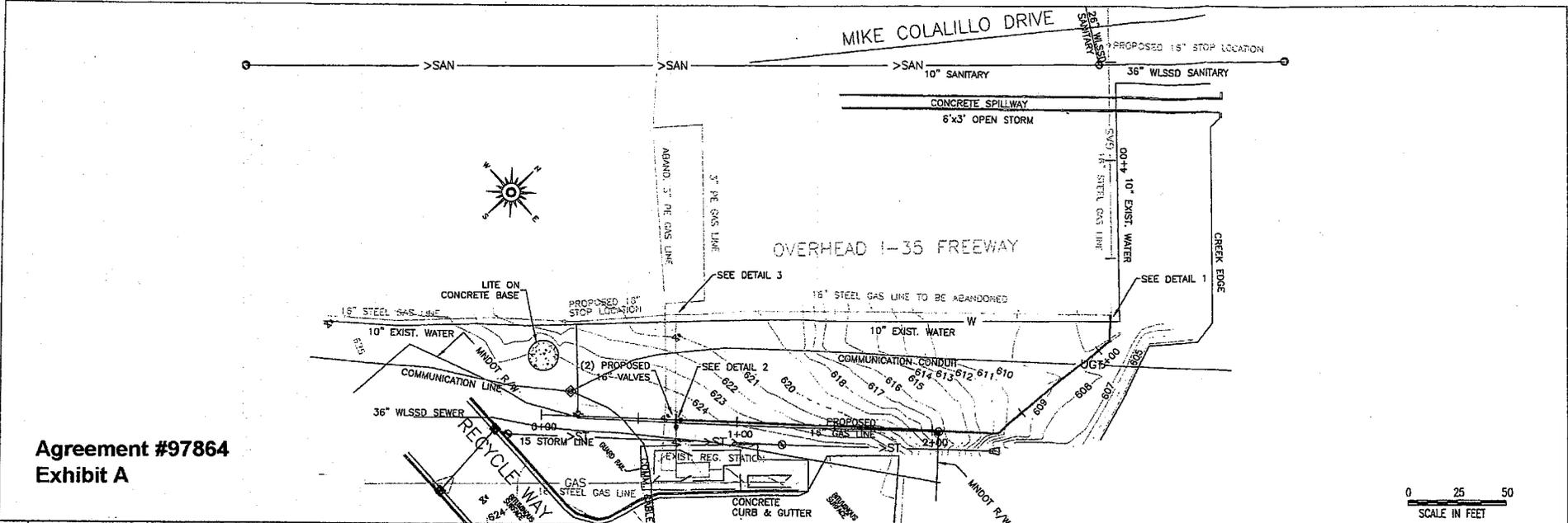
Agreement #97864
Exhibit A



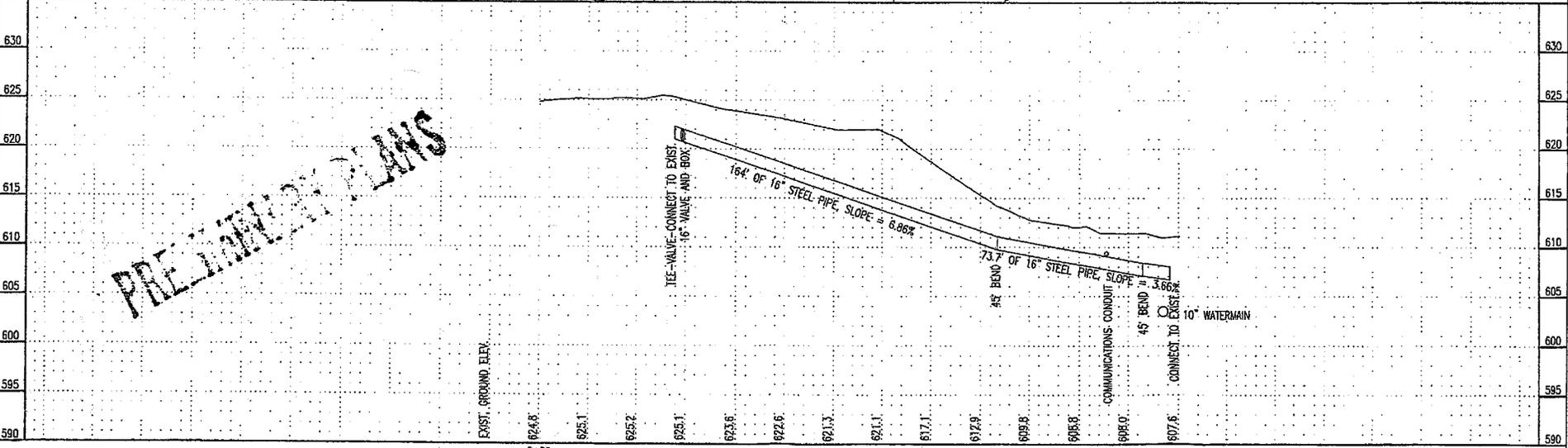
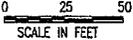
- DIMENSIONS:
 - MAXIMUM PAY WIDTH - O.D. PIPE +24"
 - MINIMUM - 6"
 - 6" BELOW PIPE
 - 4" BELOW PIPE
 - DETERMINED BY THE ENGINEER
- ENCASEMENT MATERIAL TO BE MNDOT SPEC. #2451, 3149.2B2 SELECT GRANULAR BORROW EXCEPT THAT 100% BY WEIGHT SHALL PASS THE 1" SIEVE
- FOUNDATION MATERIAL SHALL BE GRADED AS FOLLOWS:

SIEVE SIZE	FOUNDATION
2"	100
1"	85-100
3/4"	30-60
3/8"	0-10

16" GAS MAIN RELOCATION NEAR STORA ENSO REGULATOR STATION		REVISION # & DESCRIPTION		DRAWN BY: BRB
CITY OF DULUTH	CERTIFIED BY: LARRY L. WINNER	REVISION # & DESCRIPTION		DETAIL SHEET
CITY PROJECT NO.: 0953GS	CITY OF DULUTH	REVISION # & DESCRIPTION		SHEET NO. 3 OF 4
SIGNATURE: _____		DATE: _____		



Agreement #97864
Exhibit A



PRELIMINARY PLANS

CERTIFIED BY: LARRY L. WINNER	REG. NO.: 12473	REVISION	RELOCATION OF 16" GAS MAIN SOUTH OF I-35 NEAR RECYCLE WAY	DRAWN BY: BRB
SIGNATURE: _____	DATE: _____		CITY OF DULUTH	PLAN & PROFILE
			CITY PROJECT NO.: 09536S	SHEET NO. 04 OF 04

PRELIMINARY COST ESTIMATE
16" HP GAS MAIN RELOCATION IN RECYCLE WAY
PROJECT NO. 0953GS
OCTOBER 18, 2010

ITEM NO.	ITEM	UNIT	Quantity	UNIT PRICE	AMOUNT
2021.501	Mobilization	Lump Sum	1	\$4,500.00	\$4,500.00
2505.601	Tie-ins	Lump Sum	1	\$20,000.00	\$20,000.00
2505.602	Excavate for Anode Installation	Each	2	\$800.00	\$1,600.00
2505.602	F & I - 16" Ball Valve, Grove B-5 W x W	Each	2	\$23,500.00	\$47,000.00
2505.602	F & I - 16" Weld On Stop Fittings	Each	2	\$8,000.00	\$16,000.00
2505.603	F & I - Excess Granular Encasement, compacted in trench per detail	Lin Ft	180	\$22.00	\$3,960.00
2505.603	F & I - 16" H.P. Steel Gas Main (X52-.375" Wall) w granular encasement	Lin Ft	250	\$285.00	\$71,250.00
	Non-Destructive Radiographic Testing and Visual Inspections	Weld	20	\$160.00	\$3,200.00
	TOTALS				\$167,510.00

Agreement #97864
Exhibit B

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 work according to the terms of the Notice and Order and prosecute the work according to a 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 obligation have been satisfactorily fulfilled.
- D. *Termination by the State:* The State may terminate this Agreement at any time, with 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. 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) Audits; (VI) Indemnification; and (VIII) Governing Terms.

II. Utility Owner's Duties

- A. *Relocation:* The Utility Owner must:
 - 1. Relocate its Facilities according to:
 - a. The terms of the Notice and Order that was issued on January 18, 2010;
 - b. All applicable codes;
 - c. The directions of the Project Engineer (Utilities Engineer);
 - d. The plans for the utility work, which are attached to this Agreement as Exhibit A. If any changes must be made to the plans, the Utilities Engineer must approve these changes in writing before the Utility Owner performs the work to qualify for reimbursement; and
 - e. Mn/DOT's standard construction specifications.

2. Submit one copy of the State's Application for Utility Permit, Form 2525, including two copies of "proposed" sketches, for all Facilities within the trunk highway right of way to the Utilities Engineer before beginning relocation work.
3. Coordinate its operations with the State's contractor's (Contractor) operations and notify the Project Engineer at least two days before beginning and after completing each operational phase.
4. Stake the location and elevation of the proposed Facilities within the trunk highway right of way. The Utility Owner must not begin construction until the Project Engineer approves the location and elevation.
5. Subcontract the relocation work under the terms of an existing contract because the Utility Owner does not have adequate staff to perform the work. If the subcontracted relocation work costs \$10,000.00 or more, the Utility Owner must:
 - a. Enter into a written contract with the subcontractor for that work. The contract must include or incorporate the "Audits" clause in substantially the same form as it appears in Article (V) 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.
 - b. 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 the overtime work to qualify for reimbursement.

6. Rent equipment necessary to perform the work because it does not have that equipment. Before renting and using this equipment, the Utility Owner must obtain:
 - a. The Utilities Engineer's written approval of the equipment rental and rental rates; and
 - b. The Project Engineer's approval of the equipment's proposed use.

The Utility Owner must obtain the approvals listed above before renting and using equipment to perform any other work.

7. Complete all underground installations within the proposed roadways before the Contractor begins the base work operations. If the Utility Owner must perform its work concurrently with that of the Contractor, it must coordinate with the Contractor to ensure that all work is completed to the State's satisfaction without delays. The Utility Owner must mechanically compact all material replaced in the excavation. The Utility Owner must restore all drainage and slopes to the Project Engineer's satisfaction.
8. Maintain accurate and up-to-date relocation cost records throughout the course of the Project.

B. *Compliance with Safety Regulations*

1. The Utility Owner must comply with the safety regulations contained in Minnesota Rules, part 8810.3300, subpart 5, during all construction and maintenance operations. The Utility Owner will furnish and require each flagger to carry a copy of the current edition of the State's *Field Manual*, which is Part IV of the *Minnesota Manual of Uniform Traffic Control Devices*. The Utility Owner must furnish each flagger with the required vest, hat, hand sign, flags, and any other necessary safety equipment.
2. The provisions of this Agreement do not relieve the Utility Owner of any legal responsibility or liability associated with the construction, operation, or maintenance of its Facilities.

C. *Compliance with Pollution Control Requirements*

The Contractor installs pollution control measures according to the National Pollution Discharge Elimination System permit (NPDES Permit). Pollution control measures include silt fences, slope stabilization measures such as seed and mulch, and any other measures the State deems necessary to comply with the NPDES Permit. If the Utility Owner's work affects such pollution control measures, the Utility Owner must restore them to their original condition and to the Project Engineer's satisfaction. If the Utility Owner is relocating Facilities before the Contractor begins construction, the Utility Owner must work with the Project Engineer to determine if pollution control measures are necessary and how to implement them if they are.

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 an 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 date after it begins working in the right of way.

IV. Payment

A. *Payment*

1. Exhibit B, which is attached to this Agreement, is a detailed, itemized estimate of the cost of the Utility Owner's relocation work. Actual cost includes all expenses attributable to design engineering and construction relocation work. Reimbursement will be based on the actual costs for work that conforms to Exhibit A. Betterment, increase in value, and salvage value derived from the relocated Facilities will not be included in this reimbursement.
2. 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 \$167,510.00, upon receiving:
 - a. Proof that the Facilities have been relocated 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 no later than 90 days after completing the relocation.
3. The State's payment constitutes payment in full for all work the Utility Owner performs and for any and all damages, claims, or causes of action of any kind accruing to the Utility Owner because of the State's order to relocate the Facilities. Notwithstanding anything in this Agreement to the contrary, the Utility Owner reserves the right to pursue any lawful remedy it may have for tortious acts that may arise out of the relocation of the Facilities.
4. If acceptable to the Utilities Engineer, the State may process periodic progress billings of incurred cost without prior audit.

5. The Utility Owner will record its actual and indirect costs according to the Utility Owner's established accounting procedures that have been approved by the State and the FHWA's Division Engineer.

B. *Federal Reimbursement*

1. Pursuant to Code of Federal Regulations, title 23, part 645, subpart A, and as amended, the federal government may reimburse the State for a portion of the relocation cost the State pays the Utility Owner. The amount of the federal reimbursement will be determined upon the State's audit of the cost the Utility Owner claims according to the Agreement. The amount the State pays the Utility Owner for its relocation must not exceed the amount on which the federal government bases its reimbursement.
2. If the amount the State pays the Utility Owner exceeds the amount on which the federal government bases its reimbursement, the Utility Owner, upon the State's request, must immediately pay the difference to the State.

C. *Limitation on Payment*

1. The total amount the State is required to pay the Utility Owner is limited to the amount shown in Article IV.A.2.
2. If the Utility Owner deems it necessary to perform additional work not covered by this Agreement, or anticipates costs exceeding the amount shown in Article IV.A.2., then the Utility Owner must promptly 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 additional amount of State funds requested and reason(s) supporting the request. The Utilities Engineer may approve the request subject to the availability and encumbrance of necessary 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 IV.B.2. does not exceed 10 percent of the amount in Article IV.A.2., 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 has approved the work and encumbered funds before beginning the additional work, or that work will be ineligible for reimbursement.

4. If the amount the Utility Owner request exceeds 10 percent of the amount shown in Article IV.A.2., this Agreement must be amended to reflect the new cost before the State will be responsible for paying that additional cost.

V. Audits

- A. The Utility Owner's costs to relocate its Facilities according to this Agreement and the costs for any additions or alterations to these Facilities 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.

VI. 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 fees the State incurs due to this Agreement and the Utility Owner's performance or nonperformance under it.
- 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 in its own behalf.
- C. 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.

VII. 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.

VIII. Governing Terms

- A. *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.
- B. *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.
- C. *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.
- D. *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.
- E. *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.
- F. *Incorporation of Exhibits:* All exhibits attached to this Agreement are incorporated into this Agreement.

The remainder of this page was left blank intentionally.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed to be bound hereby.

CITY OF DULUTH

By: _____

By: _____
Mayor

Its: _____

Date: _____

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: _____

Maps Contract Number: _____

Maps Order Number: _____

Department of Transportation

Recommended for Approval:

By: _____
District Engineer

Date: _____

Approved:

By: _____
Director, Office of Technical Support

Date: _____

Office of Contract Management

Approved as to form and execution:

By: _____

Date: _____

Department of Administration

By: _____

Date: _____