

PUBLIC WORKS & UTILITIES COMMITTEE

13-0161R

RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DULUTH AND THE MINNESOTA DEPARTMENT OF TRANSPORTATION, INCLUDING PLAN APPROVAL, FOR GRADING, BITUMINOUS MILL AND OVERLAY, AND CONSTRUCTION OF BRIDGE NO. 69X12 ON TH23 FROM POLK STREET TO I-35, AT AN ESTIMATED COST OF \$101,357.66.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement between the city of Duluth and the Minnesota Department of Transportation (MnDOT), a copy of which is on file in the office of the city clerk as Public Document No. \_\_\_\_\_, for grading, bituminous mill and overlay, and construction of Bridge No. 69X12 on TH23 from Polk Street to I-35, at an estimated cost of \$101,357.66. Of the city's costs for this project, \$41,405.79 is payable from Water Fund 510, Agency 500 (Public Works & Utilities), Organization 1905 (Capital), Object 5533 (Capital Improvements - Revenue), \$20,227.03 from Sanitary Sewer Fund 530, Agency 500, Object 1905, Organization 5533, and \$39,724.84 from Street Lighting Fund 550, Agency 120 (Public

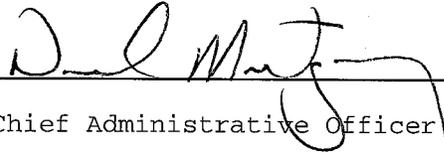
Administration), Object 5533, S.P. 6910-82, city project no. 1231.

Approved:



Department Director

Approved for presentation to council:

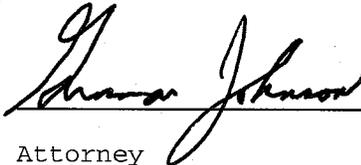


Chief Administrative Officer

Purchasing Agent



Approved as to form:



Attorney

Approved:



Auditor

ENG CJV:jh 4/2/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement with MnDOT to make roadway and lighting improvements, and replace some city utilities as part of the project, on TH23 from Polk Street to I-35. The city is paying for all of the water, sanitary sewer and lighting improvements. Water utility costs are estimated at \$41,405.79, sanitary sewer costs at \$20,227.03, and lighting costs at \$39,724.84.

# MINNESOTA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION PLAN FOR GRADING, BITUMINOUS MILL & OVERLAY, LIGHTING, BRIDGE NO. 69X12

LOCATED ON T.H. 23 FROM POLK ST. TO S.B. T.H. 35

STATE PROJ. NO. S.P. 6910-82 (T.H. 23)  
 GROSS LENGTH 1976.50 FEET 0.374 MILES  
 BRIDGES-LENGTH FEET MILES  
 EXCEPTIONS-LENGTH FEET MILES  
 NET LENGTH 1976.50 FEET 0.374 MILES  
 REF. POINT 344+00.717 TO REF. POINT 345+00.020

## GOVERNING SPECIFICATIONS

THE 2005 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION  
 "STANDARD SPECIFICATIONS FOR CONSTRUCTION", SMALL GOVERN.

## INDEX

SHEET NO.	DESCRIPTION
1	TITLE SHEET
2 - 4	ESTIMATED QUANTITIES
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13 - 14	PUBLIC UTILITIES
15 - 18	TYPICAL SECTIONS
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51	STORM SEWER PROFILES
52 - 56	LIGHTING
57 - 78	TRAFFIC CONTROL, PAVEMENT MARKING & SIGNING
79	SWPPP
B1 - B10	BRIDGE #69X12
X1	CROSS SECTION

THIS PLAN CONTAINS 90 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.

PRINT NAME: TOOD CAMPBELL LICENSE # 20407

DATE: SIGNATURE:

DESIGN SQUAD J. MADILL, S. SMITH, B. ZIGICH, J. HOBAN, G. HENDRICKSON, S. RONES

RECOMMENDED FOR APPROVAL DISTRICT TRANSPORTATION ENGINEER 20

RECOMMENDED FOR APPROVAL DISTRICT MATERIALS ENGINEER 20

RECOMMENDED FOR APPROVAL DISTRICT WATER RESOURCES/HYDRAULICS ENGINEER 20

RECOMMENDED FOR APPROVAL DISTRICT TRAFFIC ENGINEER 20

RECOMMENDED FOR APPROVAL STATE PRE-LETTING ENGINEER 20

OFFICE OF LAND MANAGEMENT APPROVAL DIRECTOR, LAND MANAGEMENT 20

APPROVED 20 STATE DESIGN ENGINEER

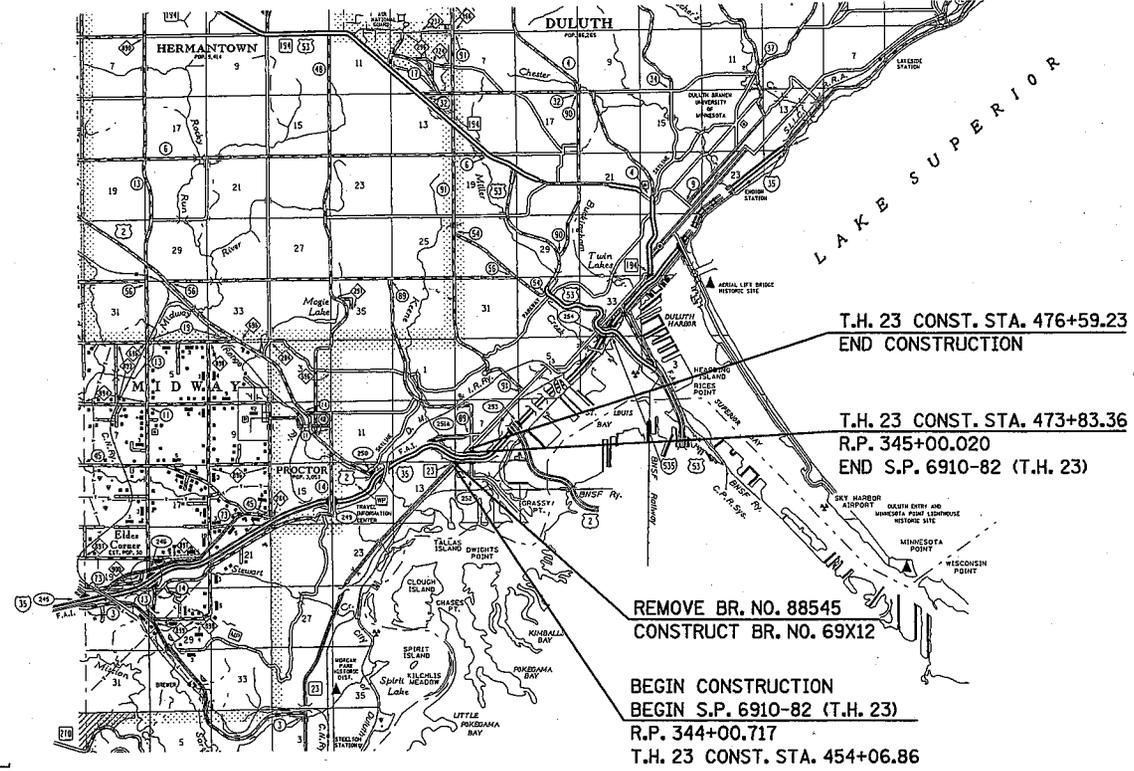
I HEREBY CERTIFY THAT THE FINAL FIELD REVISIONS, IF ANY, WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

PRINT NAME: LICENSE #

DATE: SIGNATURE:

STATE PROJ. NO: 6910-82 (TH 23 = 185) SHEET NO. 1 OF 79 SHEETS

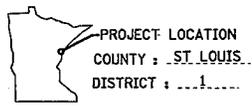
## ST. LOUIS CO.



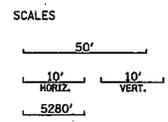
REMOVE BR. NO. 88545  
 CONSTRUCT BR. NO. 69X12

BEGIN CONSTRUCTION  
 BEGIN S.P. 6910-82 (T.H. 23)  
 R.P. 344+00.717  
 T.H. 23 CONST. STA. 454+06.86

FOR PLANS AND UTILITIES SYMBOLS SEE TECHNICAL MANUAL  
 STATE PROJ. NO. 6910-82 CHARGE IDENTIFIER



PROJECT LOCATION  
 COUNTY: ST. LOUIS  
 DISTRICT: 1



### DESIGN DESIGNATION

Design ESALS	=		Design Speed	MPH
ADT (Current Year) 2011	=	15,600	Based on	Sight Distance
ADT (Future Year) 2031	=	16,550	Height of eye	Height of object
DHV (Design Hr. Vol.)	=	1750	Design Speed not achieved at:	
D (Directional Distr.)	=	55 %	STA. TO STA.	MPH
T (Heavy Commercial)	=	41 %	STA. TO STA.	MPH

### PLAN REVISIONS

DATE	SHEET NO.	APPROVER

DISTRICT # 1  
 PILOT NAME: 66910-82\_1sh  
 PATH & FILENAME: Proj\6910-82\Design\6910-82\_1sh.dgn  
 PLOTTED/REVISED: 28-FEB-2013

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

<b>State Project Number (S.P.):</b>	<u>6910-82</u>	<b>Estimated Amount Receivable</b>
<b>Trunk Highway Number (T.H.):</b>	<u>23=185</u>	<u>\$101,357.66</u>
<b>Federal Project Number:</b>	<u>STPM 6913 (145)</u>	
<b>Lighting System Feed Point No.</b>	<u>CITY FDPT NO. 2</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 box culvert Bridge No. 69X12 replacement, grading, bituminous mill & overlay and construction and other associated construction upon, along and adjacent to Trunk Highway No. 23 from Polk Street to South Bound Trunk Highway No. 35 according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6910-82 (T.H. 23=185)("Project"); and
2. The City's cost participation portion of the Project consists of lighting, watermain and sanitary sewer construction and the City agrees to participate in those costs; and
3. The City requests that it perform the construction and material inspection portion of the construction engineering in connection with the lighting, watermain and sanitary sewer construction and the State concurs in that request; and
4. 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
5. 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; 8. Liability; Worker Compensation Claims; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.
- 1.4. *Plans, Specifications, Special Provisions.* Plans, specifications and special provisions designated by the State as State Project No. 6910-82 (T.H. 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.* Preliminary Schedule "I" is on file in the office of the City Chief Engineer of Utilities 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 except as provided below, 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. **Construction Engineering and Inspection by the City.** The City will assign its City Engineer or other registered professional engineer to perform construction engineering in connection with the lighting, watermain and sanitary sewer construction. The engineer so assigned will act under the supervision and direction of the State and be responsible for construction inspection and material inspection for said construction. The construction will be performed according to the Project Plans and recognized and accepted practices and procedures as set forth in various State manuals, including Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction". The City will furnish other personnel, services, supplies and equipment needed to properly carry on the construction.
- i. **Documentation of Construction Costs.** At regular intervals after the State's contractor has started the lighting, watermain and sanitary sewer construction, the City will prepare partial estimates of the construction costs according to the terms of the construction contract and immediately submit the partial estimates to the State. The City will also prepare the final estimate data for said construction and submit the final estimate to the State. Quantities listed on the partial and final estimates will be documented according to guidelines in the applicable documentation manual.
- ii. **Final Inspection of Construction.** Upon completion of the lighting, watermain and sanitary sewer construction, the City will advise the State whether or not said construction should be accepted by the State as being performed in a satisfactory manner. If the City recommends that the State not accept the construction, then the City will, as part of their recommendation, identify the specific defects in the construction and the reasons why it should not be accepted. Any recommendations made by the City are not binding on the State. The State will determine, after considering the City's recommendations, whether or not the construction has been properly performed and whether to accept or reject it.

### 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, change orders and supplemental agreements with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. The State District Engineer's authorized representative will inform the appropriate City official of any proposed addenda, change orders and supplemental agreements to the construction contract that will affect the City participation construction covered under this Agreement.
- 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.

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.

- 2.5. **Permits.** The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City including lighting facilities 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 TP2525).
- 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 (if any) sidewalk 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, mowing grass 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 includes but is not limited to; replacing faulty luminaries and knocked down or otherwise damaged poles; repairing or replacing underground facilities and wiring; repairing service cabinets, photocells, and all other miscellaneous hardware to keep the lighting facilities in working order; cleaning and re-lamping the luminaries; and if needed, painting the lighting facilities. 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. As owner of the lighting facilities, the City will be responsible for all "Gopher State One Call" locates.

### 4. Basis of City Cost

- 4.1. **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.
- 4.2. **City Participation Construction.** The City will participate in 100 Percent of the lighting, watermain and sanitary sewer construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary SCHEDULE "I" and includes the City's proportionate share of item costs for mobilization and traffic control.
- 4.3. **Construction Engineering Costs.** The City will pay a construction engineering charge equal to 5 percent of the total City participation construction covered under Article 4.2.
- 4.4. **Plan Changes, Additional Construction, Etc.** The City will share in the costs of construction contract addenda, change orders and supplemental agreements that are necessary to complete the City participation construction covered under this Agreement, including any City requested additional work and plan changes. The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, construction contract addenda, change orders and supplemental agreements, and associated construction engineering before the completion of the contract construction.
- 4.5. **Liquidated Damages.** All liquidated damages assessed the State's contractor in connection with the construction contract will result in a credit shared by each party in the same proportion as their total construction cost share covered under this Agreement is to the total contract construction cost before any deduction for liquidated damages.

**5. City Cost and Payment by the City**

- 5.1. City Cost.** \$101,357.66 is the City's estimated share of the costs of the contract construction and the 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.
- 5.2. Conditions of Payment.** The City will pay the State the City's total estimated construction and construction engineering cost share, 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.
- 5.3. Acceptance of the City's Cost and Completed Construction.** The computation by the State of the amount due from the City will be final, binding and conclusive. 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.
- 5.4. Final Payment by the City**

Upon completion of all contract construction and upon computation of the final amount due the State's contractor, 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, and include all City participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the City participation construction exceeds the amount of funds advanced by the City, the City will pay the difference to the State without interest. If the final cost of the City participation construction is less than the amount of funds advanced by the City, the State will refund the difference to the City without interest.

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

**6. 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.

**6.1. The State's Authorized Representative will be:**

Name/Title: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)  
Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155  
Telephone: (651) 366-4634  
Fax: (651) 366-4769  
E-Mail: maryanne.kellysonnek@state.mn.us

**6.2. The City's Authorized Representative will be:**

Name/Title: Eric Shaffer P.E., Chief Engineer of Utilities (or successor)  
Address: 411 West 1<sup>st</sup> Street, Duluth, MN 55802  
Telephone: (218) 730-5072  
E-Mail: eshaffer@duluthmn.gov

**7. Assignment; Amendments; Waiver; Contract Complete**

- 7.1. *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.
- 7.2. *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.
- 7.3. *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.
- 7.4. *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.

**8. Liability; Worker Compensation Claims**

- 8.1. 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.
- 8.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

**9. Nondiscrimination**

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

**10. 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.

**11. 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.

**12. 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.

**13. Termination; Suspension**

- 13.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.
- 13.2. *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.
- 13.3. *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.

**14. 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.

[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: \_\_\_\_\_

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.**

**PRELIMINARY SCHEDULE "I"**

Agreement No. 02996

City of Duluth

S.P. 6910-82 (T.H. 23)

Fed. Proj. STPM 6913 (145)

Preliminary: January 18, 2013

Watermain, sanitary sewer and lighting construction to start approximately June 2013 under  
State Contract No. \_\_\_\_\_ with \_\_\_\_\_

Located on T.H. 23 from Polk Street to S.B. T.H. 35

CITY COST PARTICIPATION	
From Sheet No. 2	96,531.10
Subtotal	\$96,531.10
Construction Engineering (5%)	4,826.56
<b>(1) Total City Cost</b>	<b>\$101,357.66</b>

(1) Amount of advance payment as described in Article \_\_\_\_\_ of the agreement (Estimated amount)

