

PUBLIC WORKS & UTILITIES COMMITTEE

13-0316R

RESOLUTION AUTHORIZING THE CITY OF DULUTH TO ENTER INTO AGREEMENT NO. 04029 WITH THE MINNESOTA DEPARTMENT OF TRANSPORTATION TO PROVIDE STATE COMENSATION FOR MAINTENANCE AND ROAD LIFE CONSUMED BY THE T.H. 23 DETOUR.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into Agreement No. 04029, a copy of which is on file with the office of the city clerk as Public Document No. _____, with the Minnesota Department of Transportation to provide compensation to the city of Duluth in the estimated amount of \$3,673.60 for maintenance and road life consumed as part of the T.H. 23 detour, S.P. 6910-82 (T.H. 23 = 185), Federal project no. STPM 6913 (145).

Approved:



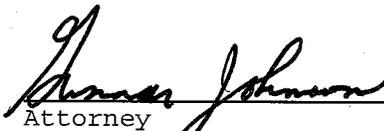
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



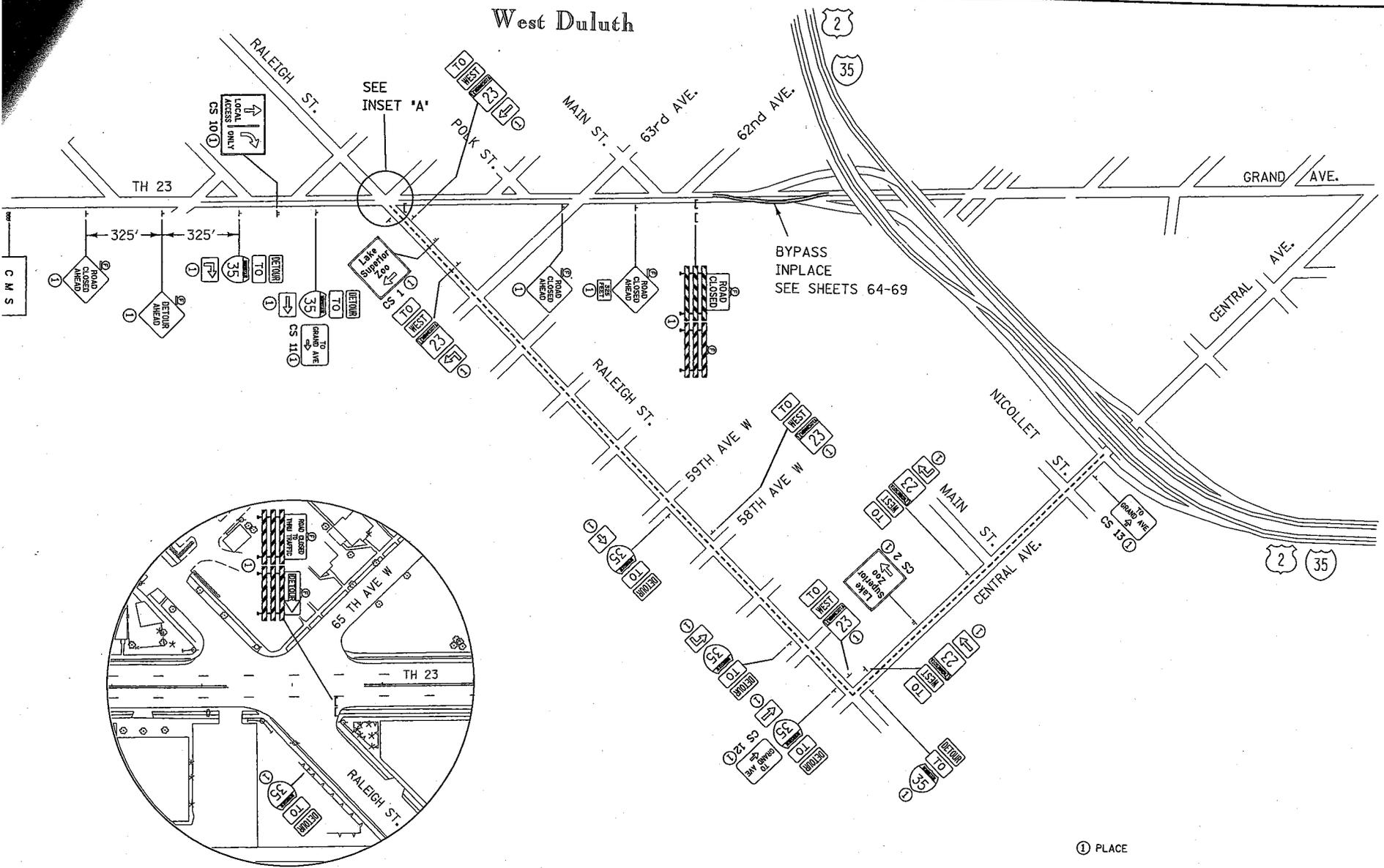
Auditor

ENG CLP:jh 6/11/2013

STATEMENT OF PURPOSE: The Minnesota Department of Transportation will be performing a mill and overlay of T.H. 23 and constructing a bridge at Keene Creek during the summer of 2013. While work is ongoing, T.H. 23 will be detoured on Central Avenue (MSAS 107) and Raleigh Street (MSAS 108).

The agreement provides compensation for maintenance and road life consumed by the detour. Both are calculated based on the "gas tax method" formula. This formula, as set forth in the detour management study final report dated January 1991, and updated by Technical Memorandum TM10-09-TS-03, multiplies the combined tax factor of .00513 per mile times the average daily traffic count times the city (MSA) street length in miles times the duration of the detour in days to determine the state's cost for the maintenance and road life consumed by the detour.

West Duluth



INSET 'A'

I HEREBY CERTIFY THAT THIS PLAN SHEET 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.
 DATE 17-JAN-2013 LIC. NO. 26405 ENGINEER *James A. Miles*
 JAMES A. MILES

TRAFFIC CONTROL - EASTBOUND TH 23 CLOSED
 STATE PROJ. NO. 6910-82 (TH 23) SHEET NO. 63 OF 79 SHEETS

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
CITY OF DULUTH
DETOUR AGREEMENT**

For Trunk Highway No. 23 Detour

State Project Number (S.P.):	<u>6910-82</u>	Original Amount Encumbered
Trunk Highway Number (T.H.):	<u>23</u>	<u>\$3,673.60</u>
Federal Project Number:	<u>STPM 6913(145)</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 is about to perform grading, bituminous mill and overlay, and bridge construction upon, along and adjacent to T.H. 23 from Polk Street to southbound T.H. 35 under State Project No. 6910-82 (T.H. 23); and
2. The State requires a detour to carry eastbound T.H. 23 traffic and westbound T.H. 23 ramp traffic from southbound T.H. 35 on M.S.A.S. 107 and M.S.A.S. 108 during the construction; and
3. The City is willing to maintain the T.H. 23 detour; and
4. The State is willing to reimburse the City for the road life consumed by the detour and detour maintenance as hereinafter set forth; and
5. Minnesota Statutes § 471.59, subdivision 10, § 161.25, and § 161.20, subdivision 2(b), authorize the parties to enter into this Agreement.

Agreement

1. Term of Agreement

- 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 the State removes all detour signs, returns the temporary trunk highway detour to the City, and pays for the detour compensation.

2. Agreement between the Parties

2.1 Detour

- A. **Location.** The State will establish the T.H. 23 detour route on the following City street(s) as detailed in the project plans or Special Provisions:
M.S.A.S. 107 and M.S.A.S. 108 for a total distance of 1.0 miles.
- B. **Axle Loads and Over-Dimension Loads.** The City will permit 10-ton axle loads on the detour route.
- C. **Traffic Control Devices.** The State may install, maintain and remove any traffic control devices it considers necessary to properly control the detoured traffic. The State may paint roadway markings, such as the centerline, edge lines and necessary messages.
- D. **Duration.** The State will provide the City with advance notice identifying the dates the State intends to place and remove the detour signing.

2.2 Maintenance

- A. The City will maintain the portion of the detour that is on City streets, and furnish all necessary labor and materials, to the satisfaction of the State's District Maintenance Engineer at 218-725-2707.
- B. **City's Failure to Adequately Maintain.** If the City fails to adequately maintain the detour as provided in Section 2.2.A. of this Agreement, of which failure the State shall be the sole judge, the State may perform such work or cause it to be performed, as the State's District Maintenance Engineer considers necessary, to properly and adequately maintain the T.H. 23 detour. The State may retain the cost of such maintenance from any moneys then due, or thereafter becoming due, to the City under this agreement. This paragraph shall not be construed to relinquish any rights of action that may accrue on behalf of the State against the City for any breach of agreement.

2.3 Basis of State Cost

- A. **Road Life Consumed.** The State will reimburse the City for the road life consumed by the detour using the following methods, as set forth in the Detour Management Study Final Report dated January 1991, and updated by Technical Memorandum TM10-09-TS-03.
 - i. The "Gas Tax Method" formula, multiplies the Combined Tax Factor per mile times the Average Daily Traffic ("ADT") count of vehicles diverted from the Trunk Highway times the City street length in miles times the duration of the detour in days to determine the State's cost for the road life consumed by the detour.
 - ii. The City may, at its option, perform an "Equivalent Overlay Method" analysis. A State-approved firm, at no cost or expense to the State, must perform the testing and analysis. The City will keep records and accounts to verify any claim it might bring against the State for additional costs using the "Equivalent Overlay Method."
- B. **Maintenance Costs.** The State's detour maintenance cost will be equal to the amount computed by using the "Gas Tax Method" formula under Section 2.3.A.

3. Payment. The State's payment consists of the sum of the road life consumed and maintenance amounts.

- 3.1 **For Road Life Consumed.** The State's total payment for the road life consumed by the detour is equal to the amount computed by using the "Gas Tax Method" formula plus any amount determined by using the "Equivalent Overlay Method" analysis that is in excess of twice the "Gas Tax Method" amount.

The State's estimated cost for the road life consumed by the detour is based on the data below:

<u>Tax Factor</u>	<u>ADT</u>	<u>Road Length</u>	<u>Duration (Days)</u>	<u>Cost</u>
0.00513	10,850	1.0	33	\$1,836.80
			Road Life Consumed Amount	\$1,836.80

- 3.2 **For Maintenance.** \$1,836.80 is the State's estimated cost for detour maintenance based on the "Gas Tax Method" amount.

The State may retain the cost of State performed detour maintenance, as provided for in Section 2.2 of this Agreement, from any moneys then due, or thereafter becoming due, to the City under this Agreement.

3.3 Total Payment and Maximum Obligation.

- A. \$3,673.60 is the State's estimated payment for road life consumed (\$1,836.80) and maintenance (\$1,836.80).
- B. \$15,000.00 is the maximum obligation of the State under this Agreement and must not be exceeded unless the maximum obligation is increased by execution of an amendment to this Agreement.

- 3.4 **Conditions of Payment.** The State will pay the City the State's total road life consumed and maintenance payment amount after performing the following conditions.
- A. Execution of this Agreement and the City's receipt of the executed Agreement.
 - B. State's encumbrance of the State's total payment amount.
 - C. State's removal of all detour signs.
 - D. State notifies the City of the removal of the detour signs, and the number of days the detour was in effect.
 - E. State's receipt of a written request from the City, signed by the State District Engineer's authorized representative, for payment.

4. Release of Road Restoration Obligations

By accepting the State's road life consumed and maintenance payment plan and total payment amount, the City releases the State of its obligation, under Minnesota Statutes § 161.25, to restore the City streets used as a T.H. 23 detour to as good condition as they were before designation as temporary trunk highways.

5. 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.

5.1 The State's Authorized Representative will be:

Name/Title: James A. Miles, P.E. (or successor)
Address: 1123 Mesaba Avenue, Duluth, MN 55811
Telephone: 218-725-2789
Fax: 218-725-2817
E-Mail: james.miles@state.mn.us

5.2 The City's Authorized Representative will be:

Name/Title: Caroline Pedersen, P.E. (or successor)
Address: 411 West 1st Street, Room 211, Duluth, MN 55802
Telephone: 218-730-5091
Fax: 218-730-5907
E-Mail: cpedersen@ci.duluth.mn.us

6. Assignment; Amendments, Waiver; Contract Complete

- 6.1 **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.
- 6.2 **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.
- 6.3 **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.
- 6.4 **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.

7. Liability

The City and State will be responsible for their own acts and omissions, to the extent authorized by law. Minnesota Statutes § 3.736 governs the State's liability. Minnesota Statutes, Chapter 466 governs the liability of the City.

8. 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.

9. 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 by the State 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.

10. 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.

11. Termination; Suspension

- 11.1 *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.
- 11.2 *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 payment of the services covered here. Termination must be by written or fax notice to the City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.
- 11.3 *Suspension.*** In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

12. 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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STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and § 16C.05.

Signed _____

Date _____

SWIFT Purchase Order: _____

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 _____
City Attorney

Date _____

Countersigned _____
City Auditor

Date _____

DEPARTMENT OF TRANSPORTATION

By _____
(District Engineer)

Date _____

COMMISSIONER OF ADMINISTRATION

By _____
(With delegated authority)

Date _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.