

PUBLIC WORKS & UTILITIES COMMITTEE

14-0212R

RESOLUTION AUTHORIZING A COOPERATIVE CONSTRUCTION AGREEMENT WITH MN/DOT FOR DRAINAGE REPAIRS, GRADING, BITUMINOUS PAVEMENT AND CONCRETE PAVEMENT ON T.H. 61 (LONDON ROAD) WITHIN THE CORPORATE CITY LIMITS IN THE AMOUNT OF \$25,763.40.

CITY PROPOSAL:

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into Cooperative Construction Agreement No. 05553, a copy of which is on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with the Minnesota Department of Transportation. This agreement provides for payment by the city to the state for the city's share of the cost of water main relocation, design and construction performed on T.H. 61 (London Road) within the corporate city limits in the amount of \$25,763.40, payable out of Water Fund 510, Agency 35 (Capital Projects Accounts), Object 5530 (Improvements Other than Buildings), S.P. 6925-137, city project no. 1361.

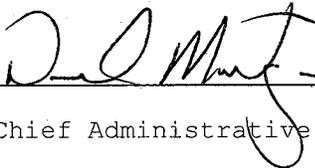
FURTHER RESOLVED, that the proper city officials are hereby authorized to

execute the agreement and any amendments to the agreement.

Approved:

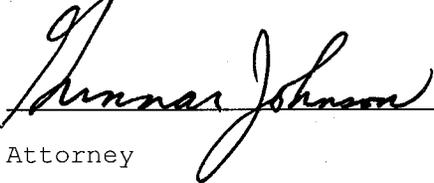
  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Purchasing Agent \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

ENG CJV:jh 5/1/2014

STATEMENT OF PURPOSE: This resolution will authorize an agreement with Mn/DOT providing for payment by the city to the state for the city's share of construction costs associated with state-performed drainage repairs, grading, bituminous pavement, concrete pavement and relocation of city water main on T.H. 61 (London Road) within the corporate limits of the city of Duluth. The city's share is for the removal of 6" water main and installation of 10" HDPE at a lower elevation in order to accommodate the 48" storm sewer. The city's costs are \$25,763.40, which include \$22,075 for the water main and \$3,688.40 for the city's share of engineering expenses. These costs are estimated amounts and will require an amendment after bids are received.

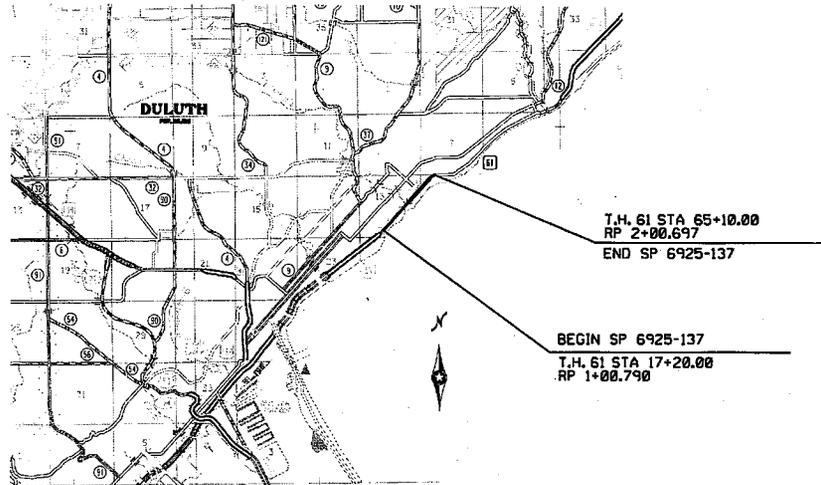
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# MINNESOTA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION PLAN FOR DRAINAGE REPAIRS, GRADING, BITUMINOUS PAVEMENT, AND CONCRETE PAVEMENT

LOCATED ON T.H. 61 (LONDON ROAD) FROM 0.32 MI. NORTH OF 26TH AVE. E. TO 0.31 MI. NORTH OF 36TH AVE. E.

STATE PROJ. NO. 6925-137  
 GROSS LENGTH 4,790.00 FEET 0.907 MILES  
 BRIDGES-LENGTH NA FEET NA MILES  
 EXCEPTIONS-LENGTH NA FEET NA MILES  
 NET LENGTH 4,790.00 FEET 0.907 MILES  
 REF. POINT 1+00.790 TO REF. POINT 2+00.697



SCALES

INDEX MAP 5000'  
 GENERAL LAYOUT VARIES  
 PLAN 25'

PLAN REVISIONS		
DATE	SHEET NO.	APPROVER

FOR PLANS AND UTILITIES SYMBOLS SEE TECHNICAL MANUAL

STATE PROJ. NO. CHARGE IDENTIFIER  
 6925-137



FED. PROJ. NO. MN12 (252)

GOVERNING SPECIFICATIONS

THE 2014 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION AND THE 2014 EDITION OF THE "MATERIALS" LAB SUPPLEMENTAL SPECIFICATIONS FOR CONSTRUCTION SHALL GOVERN.

INDEX

SHEET NO.	DESCRIPTION
1	TITLE SHEET
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7	SOILS & CONSTRUCTION NOTES
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18-32	CONSTRUCTION DETAILS
33-37	STANDARD PLAN SHEETS
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80-86	CULVERT A PLANS AND DETAILS <i>Res/Rec</i>
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106-107	TYPICAL DETAILS

THIS PLAN CONTAINS 107 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: JOSEPH D. LITMAN LICENSE # 21833

DATE: SIGNATURE:

DESIGN SQUAD J. LITMAN, C. MILLER, M. MAGDEN, J. HINNENKAMP, B. SCOTT, Z. JULMA, D. KRATOCHWILL

RECOMMENDED FOR APPROVAL 20  
 TRANSPORTATION DISTRICT ENGINEER

RECOMMENDED FOR APPROVAL 20  
 DISTRICT MATERIALS ENGINEER

RECOMMENDED FOR APPROVAL 20  
 DISTRICT HYDRAULICS ENGINEER

RECOMMENDED FOR APPROVAL 20  
 DISTRICT TRAFFIC ENGINEER

RECOMMENDED FOR APPROVAL 20  
 STATE PRE-LETTING ENGINEER

OFFICE OF LAND MANAGEMENT APPROVAL 20  
 DIRECTOR, LAND MANAGEMENT

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:

DATE: 2/20/2014  
 FILENAME: 1252528011.dgn

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

<b>State Project Number (S.P.):</b>	<u>6925-137</u>	<b>Estimated Amount Receivable</b>
<b>Trunk Highway Number (T.H.):</b>	<u>61=103</u>	<b><u>\$25,763.40</u></b>
<b>Federal Project Number:</b>	<u>MN12 (252)</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 drainage repairs, grading, bituminous and concrete pavement construction and other associated construction upon, along and adjacent to Trunk Highway No. 61 from 0.32 miles north of 26<sup>th</sup> Avenue E. to 0.31 miles north of 36<sup>th</sup> Avenue E. according to State-prepared plans, specifications and special provisions designated by the State as State Project No. 6925-137 (T.H. 61=103)("Project"); and
2. The City has requested the State include in its Project watermain construction; and
3. The City wishes to participate in the costs of the design engineering and watermain construction and associated construction engineering; 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. 6925-137 (T.H. 61=103) 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 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 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, 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. 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. 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. Basis of City Cost

- 4.1. **SCHEDULE "I"**. The Preliminary SCHEDULE "I" includes all anticipated City participation construction items, design engineering 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 the following at the percentages indicated.
- A. 100 Percent will be the City's rate of cost participation in all of the watermain construction.
- 4.3. **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.
- 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**. \$25,763.40 is the City's estimated share of the costs of the contract construction, design engineering 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.
- 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  
E-Mail: maryanne.kellysonnek@state.mn.us

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

Name/Title: Eric Shaffer, 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: \_\_\_\_\_  
(Mayor)

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

Attested: \_\_\_\_\_  
(City Clerk)

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

Approved as to form:

By: \_\_\_\_\_  
(City Attorney)

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

Countersigned: \_\_\_\_\_  
(City Auditor)

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.**

*MKS*

**CITY OF DULUTH**

**RESOLUTION**

IT IS RESOLVED that the City of Duluth enter into Mn/DOT Agreement No. 05553 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 watermain construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 61 from 0.32 miles north of 26<sup>th</sup> Avenue E. to 0.31 miles north of 36<sup>th</sup> Avenue E. within the corporate City limits under State Project No. 6925-137 (T.H. 61=103).

IT IS FURTHER RESOLVED that the Mayor and the \_\_\_\_\_ are authorized to execute the Agreement and any amendments to the Agreement.  
(Title)

**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 \_\_\_\_\_, 2014, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**NOTARY  
STAMP**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)

**PRELIMINARY SCHEDULE "T"**  
**Agreement No. 05553**  
**City of Duluth**

S.P. 6925-137 (T.H. 61=103)  
 Fed. Proj. MN12 (252)

Preliminary: March 5, 2014

Drainage repairs, grading, bituminous and concrete pavement construction  
 to start approximately July 7, 2014 under State Contract No. \_\_\_\_ with \_\_\_\_  
 located on 61 from 0.32 miles north of 26th Avenue E. to 0.31 miles north of 36th Avenue E.

CITY COST PARTICIPATION	
From Sheet No. 2	22,075.00
City Lump Sum for Design Engineering	1,780.00
Subtotal	\$23,855.00
Construction Engineering (8%)	1,908.40
(1) Total City Cost	\$25,763.40

(1) Amount of advance payment as described in Article 5 of the agreement (Estimated amount)

