

PUBLIC WORKS & UTILITIES COMMITTEE

14-0037R

RESOLUTION AUTHORIZING THE CITY OF DULUTH TO ENTER INTO AGREEMENT NO. 5268 WITH THE MINNESOTA DEPARTMENT OF TRANSPORTATION TO PROVIDE STATE COMPENSATION FOR MAINTENANCE AND ROAD LIFE CONSUMED BY THE T.H. 35 DETOUR.

CITY PROPOSAL:

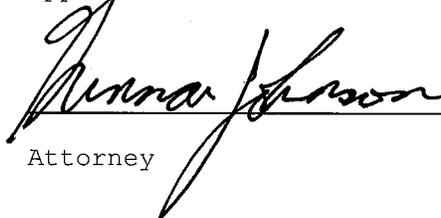
RESOLVED, that the proper city officials are hereby authorized to enter into Agreement No. 5268, a copy of which is on file with the office of the city clerk as Public Document No. _____, with the Minnesota Department of Transportation to provide compensation to the city of Duluth in the estimated amount of \$15,391.22 for maintenance and road life consumed as part of the T.H. 35 detour, S.P. 6982-69887E (T.H. 35 = 390).

Approved:



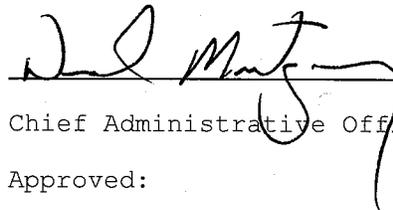
Department Director

Approved as to form:



Attorney

Approved for presentation to council:



Chief Administrative Officer

Approved:



Auditor

ENG CLP:jh 1/2/2014

STATEMENT OF PURPOSE: MnDOT performed emergency bridge repairs to southbound T.H. 35, which required a detour of traffic to London Road, 12th Avenue East, Third Street, Michigan Street and 21st Avenue West during construction. This 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.

5.1 The State's Authorized Representative will be:

Name/Title: James A. Miles, P.E., Assistant District Traffic Engineer (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., Chief Engineer of Transportation (or successor)
Address: 411 West 1st Street, 211 City Hall, 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: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Approved:

By: _____
(District Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With delegated authority)

Date: _____

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