

Exhibit A

**AGREEMENT FOR  
PROPERTY ACQUISITION FOR AND  
DESIGN AND CONSTRUCTION OF  
AN UP TO 1400 STALL PARKING RAMP  
REGIONAL EXCHANGE DISTRICT PROJECT**

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, entered into by and between and among the CITY OF DULUTH, a Minnesota municipal corporation (the "City"), and St. Mary's Duluth Clinic Health System, DBA Essentia Health East, a Minnesota nonprofit corporation ("SMDC").

WHEREAS, the City, in cooperation with SMDC, secured authorization to implement the Regional Exchange District development, hereinafter defined and referred to as the "RED", in the portion of the City generally referred to as the City's Medical District pursuant to the hereinafter-defined "Act"; and

WHEREAS, the RED provides generally for the development of new hospital and related facilities and parking facilities along with the redevelopment and extension of new and existing streets and utilities, which will enhance the provision of medical services in the City and will facilitate and strengthen the City's position as a regional hub for the provision of medical services in the northcentral region of the country; and

WHEREAS, City and SMDC have determined that it is mutually beneficial to cooperate and coordinate in the design and construction of a new car parking ramp with up to 1400 stalls to be owned and operated by the City and necessary to the development of the RED; and

WHEREAS, pursuant to the Act, various funds have been appropriated by the State to the City to pay, up to the amount appropriated therefore, for various elements of the RED as provided for in the Act, which funds will be used by City to reimburse SMDC for elements of the RED as is provided for in the Act; and

WHEREAS, City has determined that it is in the best interests of the City to contract with SMDC for SMDC to acquire the real property necessary for the

construction of the hereinafter-defined “Project” which shall consist of the hereinafter-defined motor vehicle parking ramp and to design and construct said Project and to thereafter transfer said Project to the City for public use, all as is necessary to the RED under the terms and conditions of this Agreement; and

WHEREAS, SMDC is willing to undertake such acquisition, design and construction work and to accept reimbursement, all in accordance with the terms and conditions of this Agreement as hereinafter set forth, and SMDC intends to be a paying tenant of the parking ramp once completed.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE I        Definitions

1.1. The words and phrases set forth in this Article I below shall have the meanings hereinafter ascribed to them:

1.1.1.        Act: shall mean Minnesota Laws 2019, 1<sup>st</sup> Special Session Chapter 6, Article 10. In addition all words and phrases defined in the Act which are used in this Agreement shall have the meanings ascribed to them in the Act unless otherwise specifically stated herein.

1.1.2.        A&E: shall mean the firm or firms contracted for by SMDC under the terms and conditions of this Agreement to provide professional architectural services or professional engineering services or both with regard to the Project.

1.1.3.        Chief Financial Officer: shall mean the City’s Chief Financial Officer or such person or persons designated by him to perform various functions of the Director as hereinafter set forth.

1.1.4        Completion Date: shall mean a date no later than the date on which SMDC occupies and commences use of the new hospital facility to be constructed by it to the east of the Ramp as part of the RED development as contemplated by the Act.

1.1.5.        Consultant: shall mean a nationally-recognized expert in the design of public parking ramp structures with expertise in physical design, traffic flow, maintenance, revenue control and all other aspects of good parking ramp design.

1.1.6. CM: shall mean the firm or firms contracted for by SMDC under the terms and conditions of this Agreement to provide professional construction management services with regard to design and construction of the Project.

1.1.7. Contractor: shall mean the construction contractor or contractors contracted for by SMDC or the CM to construct any element or portion of the Project.

1.1.8. Costs: shall mean all costs of the Project which are eligible for reimbursement from State Funds in accordance with the requirements of the Act, the Grant Agreement and this Agreement, as determined by the State.

1.1.9. DEED: shall mean the State Department of Employment and Economic Development.

1.1.10. Director: shall mean the City's Director of Planning and Economic Development or such person or persons designated by him to perform various functions of the Director as hereinafter set forth.

1.1.11. Grant Agreement: shall mean one or more agreements between the City and the State of Minnesota, either directly or through one or more of its Departments establishing any terms and conditions and obligations required of the City by the State in order for the City to have access to and to be able to expend the State funding provided for in the Act. As of the Effective Date, the parties acknowledge no Grant Agreement has been executed.

1.1.12. Plans: shall mean all plans and specifications prepared by the A & E for the Project at any stage of preparation and specifically including construction plans and specifications and any modifications thereto, all approved as provided for in Article V below.

1.1.13. Project: shall mean the acquisition of the Property, the demolition of any structures existing on the Property, the performance of all site work necessary to the construction of the Ramp and the design and construction of the Ramp, which Project shall include the Skywalk, subject to the State Funds for the Project authorized therefore pursuant to Section 5 (2) of the Act.

1.1.14. Property: shall mean that real property located in St. Louis County, Minnesota legally described on **EXHIBIT A** attached hereto and made a part

hereof, and any further property that City and SMDC agree is necessary to complete the Project.

1.1.15. Ramp shall mean a motor vehicle parking ramp facility having a capacity as agreed to by the parties pursuant to Article 5 below, but having the goal of having no fewer than 800 motor vehicle parking spaces if possible, subject to the available State Funds for the Project authorized therefore pursuant to Section 5 (2) of the Act, constructed on the Property. It is the intention of the parties that the capacity of the Ramp be maximized to meet the need for parking of SMDC in the RED and the need for parking of the City and the neighborhood in the RED.

1.1.16. Regional Exchange District Development or RED: shall mean the Regional Exchange District development as described in the Act.

1.1.17. Skywalk: shall mean an elevated and enclosed pedestrian bridge conforming generally to similar structures which are part of the City's Downtown Skywalk System over 4<sup>th</sup> Avenue East from the Ramp to a new hospital facility to be constructed by SMDC on the east side of 4<sup>th</sup> Avenue East.

1.1.18. State: shall mean the State of Minnesota.

1.1.19. State Funds: shall mean all funds to be provided by State for the Project pursuant to the Act Section 469.53 subd. (a)(2).

1.1.20. Title: shall mean a title insurance company licensed to do business in the State of Minnesota, the identity of which has been approved by the Director in writing.

1.1.21. Title Commitment: shall mean a commitment by Title to issue a Title Policy insuring title to the Property.

1.1.22. Title Policy: shall mean an ALTA policy of insurance insuring title to the Property in the amount of at least \$36,400,000.

## ARTICLE II Grant Agreement

### 2.1 Generally

It is anticipated by the parties that in order for the City to access and expend funds to be provided for the RED pursuant to the Act, the City will be required to enter into the Grant Agreement which will place certain requirements, conditions and

limitations on the City and its ability to access said funds for the RED. At the time of the signing of this Agreement, the exact terms, conditions and limitations are not known to either party. City agrees that, in negotiating the terms, conditions and limitations of the Grant Agreement, it will use its best efforts to keep SMDC informed of the nature and character of any of those terms, conditions and limitations that will impact the Project and will use its best efforts to mitigate any negative impacts which said terms, conditions and limitations might have on the design, construction and funding of the Project.

## 2.2 Grant Agreement-Meet and Confer

The City acknowledges that SMDC is herein committing to accept obligations under the Grant Agreement which Grant Agreement has not yet been received by City and therefore which the nature and scope of which obligations are as yet unknown to SMDC. The parties hereby agree that, in the event that, upon receipt of the Grant Agreement, SMDC shall reasonably determine that its obligations under the Grant Agreement and this Agreement, taken together, are so onerous as to jeopardize the reasonable feasibility of the Project, the parties shall meet and confer in good faith to seek to have the State modify the Grant Agreement to ameliorate the onerous obligations or to modify this Agreement or both as is reasonably necessary to make the Project reasonably feasible for both parties. If the terms and conditions of the Grant Agreement cause the Project to be not reasonably financially feasible within the parameters of the State Funds allocated therefore by the Act and the parties are not able to reach agreement with the State to modify the Grant Agreement or modify this Agreement or both as is reasonably necessary to make the Project reasonably feasible for both parties within ninety (90) days of SMDC's receipt of the Grant Agreement, ("Consideration Period") then SMDC may terminate this Agreement by giving written notice to City within seven (7) days of expiration of the Consideration Period, without default or penalty to SMDC.

## 2.3 SMDC Bound

SMDC agrees that to the extent that the Grant Agreement imposes any requirements or obligations on the design or construction of the Project or upon the availability of State Funds to reimburse either the City or SMDC for any portion of the costs of the Project, SMDC shall be bound by the terms, conditions and

limitations contained in the Grant Agreement, should SMDC not terminate this Agreement as permitted by Section 2.2

#### 2.4 SMDC Cooperation

SMDC hereby commits that it will cooperate fully with City in assisting the City to meet all of its obligations under the Grant Agreement to the extent that it can, including but not limited to providing all information and documentation required by the State under the Grant Agreement in order to demonstrate compliance with the requirements of the Act and access to the State Funds.

### ARTICLE III Property Acquisition

#### 3.1. Acquisition of the Property

In order to implement the terms and conditions of this Agreement, SMDC has acquired the Property, as defined above, in fee simple absolute.

#### 3.2. Uniform Relocation and Acquisition Act

Without regard to whether or not it is under any legal obligation to do so, SMDC commits to City that its acquisition of the Property shall be in conformance with the requirements of Minnesota Statutes 117.50 through 117.56 and statutes and regulations applicable thereunder.

#### 3.3. Quality of Title

SMDC agrees that it will convey "insurable title" to the Property to City and that it will provide a Title Commitment insuring title to the Property to City on or before December 31, 2020.

#### 3.4. City's Objections to Title.

Within Thirty (30) days after receiving the Title Commitment, City shall make any written objections (the "Objections") to the content of the Title Commitment. Any matter disclosed by the Title Commitment and not objected to by City shall be a "Permitted Exception." SMDC shall use its best efforts to attempt to cure the Objections within Ninety (90) days after receipt of the Objections. If SMDC fails to cure the Objections within such Ninety (90) day period, City will have the option to (a) terminate this Agreement (without either party being deemed at fault)

or (b) waive the Objections in writing. If City waives any Objections, such waived uncured Objections shall be deemed to be Permitted Exceptions. City may exercise its option to terminate under this Article by delivering written notice to SMDC within the aforesaid Ninety (90) day period as provided for in Section 16.8 below. City agrees that SMDC need not remove liens, mortgages, deeds of trust, trust deeds, security interests or contract interests affecting the Property constituting Objections prior to reimbursing SMDC for the costs of acquisition of the Property, provided that (i) SMDC shall have deposited with Title sufficient funds to liquidate the indebtedness secured or evidenced by such liens, mortgages, deeds of trust, security interests or contract interests; and (ii) the Title Policy shall insure over all liens, mortgages, deeds of trust, security interests and contract interests.

### 3.5. Reimbursement for Property

Subject to the receipt by the City of State Funds, made available pursuant to the Act, to reimburse SMDC for Costs incurred by SMDC in purchase of the Property and no more frequently than monthly, SMDC may submit a request for reimbursement of such Costs to the Chief Financial Officer be in the form approved for payment by the Director. Such request shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

### 3.6. Partial Payment

Upon receipt of a request for reimbursement of Property acquisition costs as provided for in Section 3.5 above with supporting documentation approved by the Chief Financial Officer as provided for in Section 3.5 above, and subject to the provisions of that Section, the City will reimburse SMDC for the Costs documented in said request, subject to the limitations set forth in Section 3.5. The City shall retain Five (5%) Percent of the amount of such reimbursement until conditions for Final Payment as provided for in Article XI below have been met.

## ARTICLE IV A & E, Consultant and CM

### 4.1 Project A & E

SMDC shall contract for the services of the A & E to provide all design and construction administration services required for the design and construction of the Project, subject to the terms and conditions of this Agreement. The identity of the A & E shall be subject to the prior approval of the Director which approval shall not be unreasonably withheld. The agreement for A & E services shall be solely between SMDC and the A & E entity so selected and SMDC shall be solely responsible for paying for the services of said A & E. SMDC agrees that its contract for A & E services shall require that the A & E shall deem the City to be its client along with SMDC and the A & E shall owe the same duties, responsibilities and obligations to City to the same extent that it owes such duties, responsibilities and obligations to SMDC.

### 4.2 Project Consultant

SMDC shall require the A & E to contract for the services of the Consultant to provide specialized design services required for the design of the Project, subject to the terms and conditions of this Agreement. The identity of the Consultant shall be subject to the prior approval in writing of the Director, which approval shall not be unreasonably withheld. The agreement for the Consultant's services shall be between SMDC's A & E and the selected Consultant and SMDC shall be solely responsible for paying for the services of said Consultant. SMDC agrees that the A & E's contract for the Consultant's services shall require that the Consultant shall deem the City to be its client and the Consultant shall owe all professional duties, responsibilities and obligations to City as are owed to a client under direct contract with the Consultant.

### 4.3 Project CM

SMDC shall contract for the services of the CM to provide all construction management services required for the Project, subject to the terms and conditions of this Agreement. The agreement for CM services shall be solely between SMDC and the selected CM entity so selected and SMDC shall be solely responsible for paying for the services of said CM. SMDC agrees that its contract for CM services shall require that the CM shall deem the City to be its client along with SMDC and



the CM shall have same fiduciary duties, responsibilities and obligations to City as it has to SMDC.

## ARTICLE V Plans

### 5.1 In General

The Plans for the Project shall conform to the definition of the Project contained herein and to all applicable laws, codes and design requirements applicable to said improvements. Without limitation to the foregoing, one of the parameters of the design of the Project will be to keep the total Project cost within the \$36.4 Million of the State Funds allocated for it. The review and approval of the Plans shall not constitute the Director's certification or guaranty that the Plans comply with terms and conditions of this Article or otherwise represent the City's opinion of the adequacy of the Plans or the improvements shown therein to meet the requirements of the Project or of the RED. Notwithstanding the foregoing, all said public improvements shall have been approved in writing by the Director prior to the commencement of the construction thereof.

### 5.2 Plans-Meet and Confer

SMDC agrees that, at least weekly, it will extend to the Director an opportunity to meet with the A & E and the CM and with the appropriate representatives of SMDC to review all issues pertaining to the Plans and their development with a view toward maximizing the size, utility, operational functionality, maintainability and overall benefit of the Project to SMDC and the City within the Property and the State Funds appropriate therefore under the Act and will cooperate to maximize the said benefits to both parties.

### 5.3 Changes to the Plans

Any changes made to Plans proposed by any party other than the City from the Plans referenced in Section 5.1 above shall be deemed to be material or substantial and shall be submitted by e-mail to the Director at the e-mail addresses provided for herein for approval by him or her in writing before any construction of the Project is commenced in conformance with the proposed changes. Unless the Director shall so approve any such change, no construction of the Project not conforming to the approved Plans shall be constructed; provided, however, that if Director shall have failed to respond to such request for a change to the Plans

within 24 hours of the date and time of the e-mail requesting such change as set forth in the date and time stamp contained in said e-mail, said request shall be deemed to have been approved by the City.

## ARTICLE VI Bid Documents & Bidding

### 6.1 In General

Pursuant to Section 4, Subdivision 4 of the Act, the construction contract for construction of the Project is not required to be competitively bid within the meaning of Minnesota Statutes Section 471.345 or Chapter 41 of the Duluth City Code, 1959, as amended. Nevertheless, it is in the best interests of both the City and SMDC that enough contractors who are competent to construct the Project are given an opportunity to provide competitive bids to insure that both the public and SMDC receive a well-constructed project at the best available price. In addition, Section 5 (b) of the Act requires that the Project must proceed and comply with state and local contracting requirements that would otherwise be applicable to the City had the City let the contract for construction of the Project.

### 6.2 Checklist

The A & E in cooperation with the CM shall prepare a request for bids and bid specifications which includes a proposed contract for construction of the Project which conforms to the requirements of “Procurement and Contracting Requirements Checklist” attached hereto and made a part hereof as **Exhibit B**. If SMDC conforms to the procedures set forth in **Exhibit B**, the City will agree that SMDC has complied with the requirements of Minnesota Statutes Section 469.53 (b). All bids shall include a “not to exceed” bid amount for the entire Project.

### 6.3 Permits, Licenses, Etc.

SMDC and its contractors shall be responsible for obtaining all permits, plat approvals, licenses and other approvals required pursuant to applicable local, state and federal laws, ordinances and regulations required for the construction of the Project in accordance with the Plans, including those required to be obtained from the City, and for paying the cost thereof.

#### 6.4 Warranty Requirement

SMDC agrees to warranty and to cause the Contractor to warranty the Project for a period of two (2) years after issuance of the Certificate of Completion by the Director as provided for in Article VIII below. Such warranty shall include, but not be limited to, repairs or corrective action due to improper construction.

#### 6.5 Bid Process

SMDC agrees that it shall be able to reasonably satisfy the Director that it has provided the opportunity to submit competitive bids to a sufficient number of contractors competent to construct the Project in accordance with the Plans prior to the award of the contract to the Contractor. Provided that SMDC shall have the right to award the contract to a contractor other than the contractor submitting the lowest bid amount upon reasonable demonstration of the need therefore for the benefit of the Project.

#### 6.6 Timing & Community Impacts

It is acknowledged by the parties that the Project is a part of the RED and, as such, it is important that SMDC should have substantial latitude in the timing of the commencement and completion of the Project. However it is also understood that the construction of the Project will have material impacts on City's Medical District and on the entire City as a whole and therefore the timing of the various elements of the construction of the Project is also critical to the City. Therefore, SMDC agrees that all contracts for construction of all elements of the construction of the Project will include definite and enforceable dates for commencement and completion of construction and that said commencement and completion dates shall be subject to the approval of the Director prior to the awarding of any such contract.

#### 6.7 Approval of Contractor

Upon receipt of bids for the construction of the Project, SMDC shall present copies of all bids along with SMDC's recommendation of the Contractor to whom the contract for construction of the Project should be awarded to the Director for his review and approval. SMDC shall require the A & E and the CM to provide all information and recommendations pertaining to the award of the bid to the Director. The Director and SMDC shall confer as necessary to reach an agreement

as to the award of the bid to the Contractor; provided that the contract for construction of the Project shall not be awarded to any contractor without the written consent of the Director.

## ARTICLE VII Construction

### 7.1 Contract with Contractor

Upon approval of the Director, SMDC shall enter into a construction contract for the construction of the Project with the approved Contractor. Said contract shall be solely between SMDC and the Contractor and payments due the Contractor under the contract shall be solely the responsibility of SMDC. Provided that nothing herein shall prohibit SMDC from entering into multiple contracts with more than one contractor to construct portions of the Project but if SMDC chooses to so contract for the construction of the Project, the requirements of the Act, the Grant Agreement and this Agreement shall apply equally to all such contracts.

### 7.2 City as “Owner”

For the purposes of the duties owed by a contractor to an “Owner” of a construction project, SMDC agrees that it will require the Contractor to deem the City to be an “Owner” for those purposes.

### 7.3 Construction Engineering

SMDC shall require that the A & E or the CM or both shall provide construction inspection of the construction of the Project.

### 7.4 City Involvement in Construction

SMDC shall require the CM to provide to the Director at the weekly progress meetings set forth in Section 5.2 all relevant field inspection and testing reports, digital photos, construction meeting minutes and progress reports. The Director will have access to all executed field change orders and will be provided monthly financial Project reporting information which includes but is not limited to: actual monthly Project expenses listed by the original contractors bidding line items, as well as the cumulative Project expenses totaled to date. The City shall have the right but not the obligation to inspect the construction of any and all elements of the Project and shall have full access, upon the Director’s request, to all reports, test results, written notes and materials and all other information pertaining to the

construction of the Project and its progress. If the City exercises its right to so inspect and if it determines that the Contractor has deviated from the Plans in a material way, City agrees to inform SMDC and the CM of its opinion. Provided, however, that the fact that the City has these rights shall not create any obligation on the part of the City to exercise these rights and the failure of the City to exercise any such rights shall not result in any liability attaching to the City or mitigate the liability of SMDC, the A & E, the CM or the Contractor for failure to fulfill their obligations under this Agreement. Nor shall it constitute a waiver of its right to claim damages or otherwise to seek redress for any violation of any obligation by any other person or entity of their obligations under any contract involved in the design or construction of the Project.

#### 7.5 Contractor to Restore Public Improvements

SMDC agrees that it will require the Contractor to make repairs to public streets that may become damaged due to use of the road for hauling of materials, or due to the contractor's construction practices. The Contractor shall repair such damage in a manner as so that it is acceptable to the Director. Any pavement repairs shall be completed prior to the issuance of the Certificate of Completion.

### ARTICLE VIII Certificate of Completion

#### 8.1 Completion Inspection

Upon completion of construction of the Project, SMDC will give formal notice to the Director thereof via certification by the A & E or the CM that the public improvements have been constructed in complete accordance with this Agreement and the approved plans and specifications. Upon receiving such notice/certification and record drawings as provided for in Article IX below, the Director will inspect the public improvements. If the Director determines that the Project has been completed in conformance with the applicable requirements, the Director will issue a Certificate of Completion certifying that the Project is complete. If the Project is not in conformance with the applicable requirements, the Director will provide formal notice to the SMDC of the need to rebuild, repair or replacement the non-conforming portions of the Project in conformance with the requirements of this Agreement.

## 8.2 Delay in Assumption of Control

Until such time as ownership, operation, and maintenance of the Project is formally accepted in writing by the Director, their operation and maintenance will be solely the responsibility of the SMDC.

## ARTICLE IX Record Drawings

### 9.1 Documentation

Prior to the issuance of the Certificate of Completion as provided for in Article VIII above, SMDC shall have caused the A & E or CM to have provided to City a complete set of “as-built” plans and specifications in a suitable electronic format for the Project.

## ARTICLE X Conveyance of Property and Ramp to City

### 10.1 Conveyance

Upon completion of acquisition of the Property by SMDC in conformance with the requirements of this Agreement and completion of the design and construction of the Project and the issuance of the Certificate of Completion for Project by the City, and final reimbursement to SMDC as provided in Section 11.2 below, SMDC shall convey title to the Property and the Project to the City at no additional cost to the City. Said conveyance shall be in fee simple absolute and in conformance with the procedures hereinafter set forth

## ARTICLE XI Reimbursement of Reimbursable Costs

### 11.1 Partial Payment Requests

Subject to the receipt by the City of State Funds, made available pursuant to the Act, to reimburse SMDC for Costs incurred by SMDC in the construction of the Project and no more frequently than monthly, SMDC may submit a request for reimbursement of such Costs to the Chief Financial Officer be in the form of that attached hereto and made a part hereof as **Exhibit C** approved for payment by the A & E, the CM and the Director and shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

### 11.1.1 Partial Payment

Upon receipt of the Request for Partial Payment with supporting documentation approved by the Chief Financial Officer as provided for in Section 11.1 above, and subject to the provisions of that Section, the City will reimburse SMDC for the Costs documented in said Request for Partial Payment. Provided that the City may retain Five (5%) Percent of the amount of such partial payment until conditions for Final Payment as provided for in this Article have been met.

### 11.2 Final Payment Request

Upon issuance of the Certificate of Completion as provided for in Article VIII above, the conveyance of the Property and the Project to the City as provided for in Article X above and the provision of the Documentation required pursuant Article IX above, SMDC may request that the City reimburse it for all not-previously-reimbursed Costs incurred by it in the Acquisition of the Property and the Construction of the Project. Such request shall be in the form of that attached hereto and made a part hereof as **Exhibit C** and shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

#### 11.2.1 Final Reimbursement Payments

Upon receipt of the Request for Final Reimbursement and supporting documentation, all as approved by the Chief Financial Officer, City hereby agrees that it will reimburse SMDC for Costs incurred by it in the construction of the Project and any amounts retained pursuant to Sections 3.6 and 11.1.1 above upon the later for the following dates and occurrences:

11.2.1.1. The issuance of the Certificate of Completion as provided for in Article VII above.

11.2.1.2. The receipt by City of Appropriation Support Payments as defined in and provided for in the Act or the receipt of proceeds of State bonds issued based on the Appropriation Support Payments, up to the maximum amounts set forth in the Act.

### 11.3 Maximum Amounts

Notwithstanding anything in foregoing to the contrary, the maximum amounts which the City shall be obligated to pay to SMDC to reimburse it for Costs incurred by it for the Project shall be \$36,400,000.

### 11.4 State Reimbursement Determinations

It is understood between the parties that all reimbursement to SMDC provided for under this Agreement shall be solely from State Funds pursuant to the terms of the Act and of the Grant Agreement and that the sole determiner of the eligibility of any costs for reimbursement, including the propriety of any such costs, shall be the State acting through DEED and the Office of Minnesota Management and Budget.

## ARTICLE XII Provisions Against Liens, Assignments and Transfers

### 12.1 Provision Against Liens

Except for encumbrances permitted pursuant to Section 12.2 below, SMDC shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and property upon which it is constructed or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if SMDC shall first notify City of its intention to do so and post such security as City reasonably deems necessary, SMDC may, in good faith, contest any such mechanic's or other liens filed or established as long as City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

### 12.2 Provision Against Assignments, Transfers or Change in Identity of SMDC

The parties hereto acknowledge that City is relying upon the qualifications and identity of SMDC to develop and construct the Project. Therefore, except for the purposes of obtaining financing as hereinafter described and otherwise approved by this Agreement, or except for a conveyance or assignment to any entity entirely controlled by SMDC or an entity entirely controlled by entities in control of SMDC, SMDC represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power



of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Project, SMDC, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder prior to the issuance of the Certificate of Completion described in Article VIII above; and SMDC will not make or create or suffer to be made any such transfer of SMDC's rights hereunder without the prior approval of City.

## ARTICLE XIII Indemnification

### 13.1 Generally

SMDC will to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

13.1.1 Any injury to or death of any person or damage to property in or upon the Project or growing out of or in connection with the use or non-use, condition or occupancy of the Project or any part thereof and the construction or installation of the Project on any portion of the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for SMDC, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

13.1.2 Any violation by SMDC of any provision of this Agreement.

13.1.3 Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the SMDC.

13.1.4 Any violation of any law, ordinance, court order or regulation affecting the Project, or the ownership, occupancy or use thereof.

### 13.2 Environmental Indemnification

In addition to the generality of the foregoing above, SMDC hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created on or after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project.

### 13.3. Special Indemnification

In addition to any other obligation to indemnify City as herein set forth and in not as any limitation thereof, SMDC agrees to indemnify City and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of

any failure on the part of SMDC or any of its officers, agents, servants, employees and contractors to abide by the requirements of Minnesota Statutes 117.50-117.56 in the course of acquiring any interest in the Property.

#### 13.4. Exception for Acts or Omissions of City

The indemnification obligations contained in Sections 13.1, 13.2 and 13.3 above shall not apply to liability arising solely out of the acts or omissions of the City and its officers, agents, servants or employees.

#### 13.5. Indemnification Procedures

Promptly after receipt by City of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

### ARTICLE XIV Insurance

#### 14.1 Insurance and Coverage

SMDC will provide and maintain or cause to be provided and maintained at all times during the process of constructing the Project an All Risk Broad Form Basis Insurance Policy. The City shall be named as an additional insured at all times on all required insurance and SMDC will furnish the City with proof of payment of premiums on policies covering the following:

14.1.1 Builder's risk or hazard insurance, written on the so-called "Builder's Risk Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion (excluding footers, foundations and other subsurface

improvements and also excluding paved areas, sidewalks, curbs, aprons, mass grading and other site work), and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

14.1.2 Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, Broadening Endorsement including contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$5,000,000.00 for each occurrence and shall be endorsed to show the City as an additional insured (to accomplish the above-required limits, an umbrella excess liability policy may be used).

14.1.3 The A & E and the CM shall be required to provide Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made" insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, A & E and/or CM agrees to provide City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the statute of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

14.1.4 Worker's compensation insurance, with statutory coverage and employer's liability protection.

## 14.2 Requirements of All Insurance

All insurance required under this Article shall be taken out and maintained in responsible insurance companies selected/approved by SMDC which are authorized under the laws of the State to assume the risk covered thereby. Upon request, SMDC will deposit annually with the City a certificate or certificates of the respective insurers stating that such insurance is in force and effect. SMDC shall give written notice to the City at least thirty (30) days before the effective date of any cancellation or modification which reduces the

coverage provided below the amounts required herein. In lieu of separate policies, SMDC may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event SMDC shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

#### 14.3 Self-Insurance

Alternatively, and in lieu of the forgoing subsections (a) and (b), SMDC shall annually provide reasonable proof of equivalent self-insurance to the City.

#### 14.4 Damage to Project

SMDC agrees to notify the City with reasonable promptness in the case of damage exceeding \$25,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty that occurs prior to completion of the Project. In the event of any such damage or destruction, SMDC will, within a reasonable time and with due diligence repair, reconstruct and restore, or cause the repair, reconstruction or restoration of the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage.

### ARTICLE XV Default

#### 15.1 Events of Default Defined.

The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events that remains uncured by such party beyond any applicable notice, cure and/or grace period set forth in Section 15.2 below or elsewhere herein:

15.1.1 Failure by SMDC to complete acquisition of the Property, construction of the Project in accordance with the approved Plans and conveyance of the Property and the Project to the City in conformance with the terms and conditions of this Agreement by the Completion Date, subject to extension due to Force Majeure events, or changes as approved by the City as set forth in this Agreement.

15.1.2. Failure by SMDC to complete construction of a state-of-the-art hospital and medical facility on property generally located between 4<sup>th</sup> and 5<sup>th</sup> Avenues East and Superior Street and Second Street in Duluth, Minnesota by June 30, 2024, subject to extension due to Force Majeure events.

15.1.3. Failure by SMDC, as the case may be, to pay timely any ad valorem real property taxes or special assessments (to the extent any are applicable and properly due and payable assessed with respect to the Property.

15.1.4 The holder of any mortgage on the Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

15.1.5 Failure by SMDC to substantially observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

15.1.6 If SMDC shall:

15.1.6.1 file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law, or

15.1.6.2 Make an assignment for the benefit of its creditors; or

15.1.6.3 Admit in writing its inability to pay its debts generally as they become due; or

15.1.6.4 be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of SMDC, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of SMDC, or of the Project, or

part thereof, shall be appointed in any proceeding brought against SMDC, and shall not be discharged within ninety (90) days after such appointment, or if SMDC, shall consent to or acquiesce in such appointment.

15.1.7 Any representation or warranty made by SMDC under this Agreement shall prove to have been incorrect in any material respect when made.

15.1.8 Failure by the City to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

15.1.9 Any representation or warranty made by the City under this Agreement shall prove to have been incorrect in any material respect when made.

## 15.2 Remedies on Default.

Whenever any Event of Default referred to in Section 15.1 occurs and is continuing, the non-defaulting party, as specified below, may take any one or more of the following actions after providing thirty (30) days' written notice to the defaulting party (and any other party to this Agreement), but only if the Event of Default has not been cured within said thirty (30) days, or if said Event of Default cannot reasonably be cured within the time, the defaulting party fails to give assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured within a period of time reasonably acceptable to the non-defaulting party, but in any event not to exceed ninety (90) days.

15.2.1 If an Event of Default is caused by SMDC, the City may suspend its performance under this Agreement until it receives assurances from SMDC, deemed adequate by the City, that SMDC will cure the default and continue its performance under this Agreement.

15.2.2 If an Event of Default is caused by SMDC, the City may terminate this Agreement, except that no termination may be effective at

any time that SMDC is proceeding in good faith to cure the defect and/or gives reasonable assurances to the City as set forth above in this Section, or if there exists a good faith dispute with the City as to an event of default as defined above, and SMDC posts a bond or other security as reasonably adequate to cure the alleged default.

15.2.3 If an Event of Default is caused by SMDC, the City may take any action, including legal or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of SMDC under this Agreement.

15.2.4 If an Event of Default is caused by the City, SMDC may seek specific performance of the City's obligations hereunder and may exercise any and all other rights and remedies that it may be entitled under this Agreement, applicable laws or in equity.

### 15.3 Remedy for Default under Sections 15.1.1 and 15.1.2

Notwithstanding the any other remedy available to City hereunder, in the event of a default by SMDC of its obligations under Section 15.1.1 or 15.1.2 or both, and, as a result of said default, the State requires the City to reimburse the State for any State Funds received by City and disbursed to SMDC pursuant to this Agreement, City shall have the right to terminate this Agreement and to require that SMDC repay to City amounts previously paid to SMDC hereunder exactly equal to the amount that the State requires the City to reimburse the State as set forth above by giving Notice to SMDC as provided for in Section 16.8 below and SMDC shall promptly repay all such sums to City. From and after Thirty Days after the sending any such Notice to SMDC, any unpaid amounts shall bear interest at the rate of Twelve (12%) percent simple annual interest until fully paid.

15.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or SMDC is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be



construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

15.5 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

## ARTICLE XVI Additional Provisions

### 16.1 Titles of Articles and Sections.

Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

### 16.2 Disclaimer of Relationships.

SMDC acknowledges that nothing contained in this Agreement nor any act by the City or SMDC shall be deemed or construed by SMDC or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City, SMDC and/or any third party.

### 16.3 Modifications.

This Agreement may be modified solely through written amendments hereto executed by both SMDC and the City.

### 16.4 Counterparts.

This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

### 16.5 Judicial Interpretation.

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who

itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

#### 16.6 Termination of Agreement.

Unless terminated earlier pursuant to specific provision of this Agreement, this Agreement and the obligations SMDC and the City shall terminate upon the completion thereof; provided, however, that any claims or causes of action, the basis for which arose prior to said time, shall survive such termination and nothing herein shall be deemed as intended to limit the exercise by either party of its remedies in connection therewith, except any relevant statute of limitations.

#### 16.7 Conflicts of Interest.

No member of the governing body or other official of the City shall participate in any decision relating to the Agreement, which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by SMDC or their successors or on any obligations under the terms of this Agreement.

#### 16.8 Notices and Demands.

Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched:

16.8.1 In the case of SMDC, addressed to or delivered personally to SMDC at:

St. Mary's Duluth Clinic Health System, DBA Essentia Health East  
502 East Second Street  
Duluth, MN 55805  
Attention: Office of the General Counsel

16.8.2 In the case of the City, addressed to or delivered personally to the City at:

City of Duluth  
411 West First Street  
Room 120 City Hall  
Duluth, MN 55802  
Attn: Chief Financial Officer

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

ARTICLE XVII Governing Law

17.1 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the City and SMDC have caused this Agreement to be duly executed on or as of the date first above written.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

ST. MARY'S DULUTH CLINIC HEALTH  
SYSTEM DBA ESSENTIA HEALTH  
EAST, a Minnesota nonprofit  
corporation

By: \_\_\_\_\_  
Emily Larson  
Its Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Chelsea Helmer  
Its City Clerk

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

Approved:

\_\_\_\_\_  
Assistant City Attorney

Countersigned:

\_\_\_\_\_  
City Auditor

## **EXHIBIT A**

### **LEGAL DESCRIPTION FOR 1<sup>ST</sup> STREET PARKING RAMP**

Real property in St. Louis County, Minnesota, described as follows:

That part of Lots Four (4) and Five (5), Block Twenty-eight (28), PORTLAND DIVISION OF DULUTH, and the East Half of Lot Fifty-one (51) and the West Half of Lot Fifty-three (53), East First Street, DULUTH PROPER FIRST DIVISION, lying North of a line drawn parallel with and Ninety (90) feet North of North line of First Street, according to the recorded plat thereof on file and of record in the Office of the St. Louis County Recorder, including that portion of the alley abutting thereof, vacated by the City of Duluth by its Resolution dated October 1, 1888, recorded October 12, 1888 in Book C of Miscellaneous, page 590.

#### **Parcel ID 010-3830-03265**

Lot Six (6), Block Twenty-Eight (28) PORTLAND DIVISION OF DULUTH, and East Half of Lot Fifty-Three (53), East First Street, DULUTH PROPER, FIRST DIVISION, according to the recorded plats thereof, St. Louis County MN, including that portion of the alley abutting thereof, vacated by the City of Duluth by its Resolution dated October 1, 1888, recorded October 12, 1888 in Book C of Miscellaneous, page 590.

#### **PARCEL ID 010-3830-03290**

Lot 55, EAST FIRST STREET, DULUTH PROPER FIRST DIVISION; and

Lot 7, Block 28 PORTLAND DIVISION OF DULUTH; and

Lot Numbered Eight (8) in Block Numbered Twenty-Eight (28), in Portland Division of Duluth, St. Louis County, all according to the recorded plats thereof.

#### **PARCEL ID 010-0830-03300**

Lot nine (9), Block twenty-eight (28), PORTLAND DIVISION OF DULUTH, according to the plat thereof, on file and of record in the office of the County Recorder in and for St. Louis County, Minnesota, including that portion of the alley abutting thereof, vacated by the City of Duluth by its Resolution dated October 1, 1888, recorded October 12, 1888 in Book C of Miscellaneous, page 590.

**PARCEL ID 010-3830-03320**

Lots 10 and 11, Block 28, PORTLAND DIVISION OF DULUTH, including that portion of the alley abutting thereof, vacated by the City of Duluth by its Resolution dated October 1, 1888, recorded October 12, 1888 in Book C of Miscellaneous, page 590.

**PARCEL ID 010-3830-03340**

Lot Twelve (12) and the Southerly 90 feet of Westerly 2 1/2 feet of Lot Thirteen (13), Block Twenty-eight (28), PORTLAND DIVISION OF DULUTH, according to the plat thereof on file and of record in the office of the County Recorder of St. Louis County, Minnesota, including that portion of the alley abutting thereof, vacated by the City of Duluth by its Resolution dated October 1, 1888, recorded October 12, 1888 in Book C of Miscellaneous, page 590.

**PARCEL ID 010-3830-03350**

Lot Thirteen (13), Except the Southerly 90 feet of the Westerly 2 1/2 feet thereof, and all of Lots Fourteen (14), Fifteen (15), and Sixteen (16), Block Twenty-eight (28), PORTLAND DIVISION OF DULUTH, according to the recorded plat thereof.

**PARCEL ID 010-3930-03360, 010-3930-03390**

Lots Thirteen (13), Fourteen (14), Fifteen (15) and Sixteen (16), Block Forty-eight (48), PORTLAND DIVISION OF DULUTH, and Lots Sixty-two (62) and Sixty-four (64), East Second Street, DULUTH PROPER, FIRST DIVISION, according to the respective plat hereof, on file and of record in the office of the Register of Deeds, St. Louis County, Minnesota.

**PARCEL ID 010- 0950-01040**

**EXHIBIT B**

**PROCUREMENT AND CONTRACTING  
REQUIREMENTS CHECKLIST**

[COVER PAGE – ATTACHMENT(S) TO FOLLOW]

## **EXHIBIT C**

### **FORM OF REQUEST FOR REIMBURSEMENT**

[COVER PAGE – ATTACHMENT(S) TO FOLLOW]



City Contracting Requirements	Required? Yes or No
State of Minnesota prevailing wage rates are the minimum that must be paid. The applicable wage decisions must be included in the bid solicitation.	Yes.
Contractor must submit payment and performance bonds each in an amount equal to 100% of the contract price.	Yes.
Contractors must provide proof of compliance with worker's compensation insurance requirements.	Yes.
Contractor must provide proof of public or general commercial liability and automobile insurance (minimum \$1.5M) naming the City as an additional insured. Standard City insurance requirements are attached.	Yes.
City Project Labor Agreement required. Attached.	Yes - required for all contracts within the project.
Community Benefits provisions. Sample specification attached. Contact Elena Foshay, Workforce Director at <a href="mailto:communitybenefits@duluthmn.gov">communitybenefits@duluthmn.gov</a>	Yes.
MN DEED Reporting Form. Attached.	Yes.
Responsible Contractor verification required. Sample attached.	Yes.
Non-Collusion Affidavit required.	Recommended.
Contractor must submit certificate of compliance with MN DHR. Info & forms at <a href="https://mn.gov/mdhr/certificates/apply-renew/workforce-certificate/">https://mn.gov/mdhr/certificates/apply-renew/workforce-certificate/</a>	Recommended.
Steel products must be made from iron ore mined from the taconite assistance area.	Yes.
B3 Requirements must be met. See <a href="https://www.b3mn.org/wp-content/uploads/2017/05/B3Version30_All_20170822.pdf">https://www.b3mn.org/wp-content/uploads/2017/05/B3Version30_All_20170822.pdf</a> for guidelines.	Yes.
Ensure that all pay applications identify public improvements separately from all other work.	Yes. Required to obtain state reimbursement.
Targeted Group Business Information. Include language in the bid documents that encourages participation by women, minority, veteran-owned and other targeted group businesses. Directly solicit businesses by contacting potential bidders listed on the MN UCP website.	Yes.
<b>City Bidding Requirements</b>	
Competitive sealed bids required for any purchases over \$150K	Not required for any public improvement constructed in conjunction with, and directly above or below, or adjacent and integrally related to, a private development.
Advertisement for bids must be publicly posted (in the DNT or City website) for a minimum of 10 days - bids opened on the 11th day.	Not required for any public improvement constructed in conjunction with, and directly above or below, or adjacent and integrally related to, a private development.

5% Bid Bond required.	Not required for any public improvement constructed in conjunction with, and directly above or below, or adjacent and integrally related to, a private development.

**City of Duluth**  
**Indemnification & Insurance Requirements**  
**for Construction Contracts**

INDEMNIFICATION CLAUSE

The Contractor will defend, indemnify and save the City harmless from all costs, charges, damages, and loss of any kind that may grow out of the matters covered by this contract. Said obligation does not include indemnification of the City for claims of liability arising out of the sole negligent or intentional acts or omissions of City but shall include but not be limited to the obligation to defend, indemnify and save harmless the City in all cases where claims of liability against the City arise out of acts or omissions of City which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability. In addition Contractor will comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.

INSURANCE

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City from all liability described in Paragraph 6 above, subject to provisions below.

- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) City of Duluth shall be named as **Additional Insured** under the Public Liability, Excess/Umbrella Liability\* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

*\*An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days' prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.

b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act

by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Contract.
- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph 7 unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City which is reasonably available.

# **CITY OF DULUTH PROJECT LABOR AGREEMENT**

## **ARTICLE I PURPOSE**

This Agreement is entered into as of the date of attestation by the City Clerk, by and between , its successors or assigns (hereinafter “Project Contractor”), and the City of Duluth, (hereinafter “Owner”) and the Duluth Building and Construction Trade Council, on behalf of its affiliated local unions, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement (hereinafter collectively called the “Union or Unions”), with respect to the construction of the (hereinafter “Project”).

The term “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to alone is intended, the term “Project Contractor” is used.

The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to establish a framework for labor-management cooperation and stability. The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

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<sup>1</sup> Where the work is performed under Contract with the City of Duluth, the “Owner” is the City of Duluth. Where the Owner receives financial assistance or payment from the City the Owner is the corporation, firm or other entity that is receiving the assistance or payment.

## ARTICLE II

### SCOPE OF AGREEMENT

Section 1. This Project Labor Agreement shall apply and is limited to all construction work included in all bid categories for the Project under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as:

Section 2. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Labor Agreement by executing the “Agreement to be Bound” form attached as Exhibit 1 prior to commencing work. This Project Labor Agreement is a material term of the bid specifications for the Project and therefore, regardless of whether a contractor executes this Agreement, by virtue of the owner and/or Project Contractor accepting the bid offer of the Contractor, a Contractor who performs work on this project is bound to this PLA regardless of their execution of this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, The National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI and VII of this Project Labor Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area or national agreement.

Section 3. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 5. The Owner and/or Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 6. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Labor Agreement will not have

further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

Section 9. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisor employees as defined by the National Labor Relations Act. No Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. However, any Contractor performing work on the Project which is not party to a Local Area Labor Agreement for a craft employed by the Contractor, agrees to install hourly wage rates, hours, fringe benefit contributions, referral procedures and all other terms and conditions of employment as fully set forth in the applicable Local Area Agreement as described in Schedule A for work on the Project for each craft employed by the Contractor. But in no event shall the wages be less than the wages that are applicable to this project under the Minnesota Prevailing Wage Act, Minn. Stat. § 177.43. All employees covered by this Agreement shall be classified in accordance with the work performed.

Section 10. The Contractors agree to timely pay contributions to the established employee benefit funds in the amounts designated in the Local Area Labor Agreements attached as Schedule A.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 11. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, ready mix, asphalt or other similar material and all workers removing any materials from the construction site shall receive a total package of wages and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated General Contractors of America, or the Highway Heavy Prevailing Wage Schedule, whichever is greater.

**ARTICLE III**  
**UNION RECOGNITION AND UNION SECURITY**

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. All employees covered by this Agreement now in the employ of the Contractor shall remain members in good standing in their respective Unions during the term of the Agreement and all employees hereinafter employed by the Contractor will become members of the respective Unions within seven (7) days after the date of their employment and shall remain members of the Unions in good standing during the term of this Agreement.

Section 3. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives comply fully with the posted visitor and security and safety rules of the Project.

**ARTICLE IV**  
**REFERRAL OF EMPLOYEES**

Applicants for the various classifications covered by this Agreement required by the Employer or Contractors on the Project shall be referred to the Contractors by the Unions. The Unions represent that its local unions administer and control their referrals and it is agreed that these referrals will be made in a non-discriminatory manner and in full compliance with Federal and State laws.

**ARTICLE V**  
**MANAGEMENT'S RIGHTS**

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement or the applicable local area agreements, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause.

**ARTICLE VI**  
**WORK STOPPAGES AND LOCKOUTS**

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site or any site of a contractor or supplier necessary for the performance of work at the project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in



activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than thirty (30) days.

Section 3. The Unions shall not be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. Any party alleging a breach of this Article shall have the right to petition a court for temporary and permanent injunctive relief. The parties agree that the moving party, upon proving a breach of this Agreement, shall be entitled to temporary and permanent injunctive relief.

## **ARTICLE VII** **SAFETY**

The parties are mutually committed to promoting a safe working environment for all personnel at the job site. It shall be the responsibility of each employer to which this PLA applies to provide and maintain safe working conditions for its employees, and to comply with all applicable federal, state and local health and safety laws and regulations.

## **ARTICLE VIII** **UNION-MANAGEMENT COOPERATION COMMITTEE**

The parties to this Agreement agree to form a Union-Management Committee, consisting of signatory unions, contractors, and representatives of the City of Duluth. The purpose of the Committee is to ensure cooperation on matters of mutual concern, including productivity, quality of work, safety and health.

## **ARTICLE IX** **DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually realize the importance to all parties to maintain continuous and uninterrupted performance of the work on the

Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Labor Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, or knowledge of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven (7) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or his or her designee of a Local Union and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) neutral arbitrators from which the Arbitrator shall be selected. The parties shall alternatively strike arbitrators from the list until one remains, who shall preside at the hearing. The party striking first shall be determined by the flip of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE X** **JURISDICTIONAL DISPUTES**

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

## **ARTICLE XI** **SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

**ARTICLE XII**  
**HELMETS TO HARDHATS**

Section 1. The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**ARTICLE XIII**  
**LABOR HARMONY CLAUSE**

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on the Project and shall submit a labor harmony plan to demonstrate how this will be done. “Harmony” shall include the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slowdowns, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the Project. The labor harmony plan should include the company’s labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower-tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the Owner or Project Contractor may have, including without limitation the right to terminate the contract.

**ARTICLE XIV**  
**NO DISCRIMINATION**

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or non-membership in a Union or based upon race, color, religion, sexual preference, gender identification, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1, should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including all gender identification.

**ARTICLE XV**  
**SAVINGS AND SEPARABILITY**

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

**ARTICLE XVI**  
**DURATION OF THE AGREEMENT**

The Project Labor Agreement shall continue in effect for the duration of the Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

*[The remainder of this page intentionally left blank. Signature page to follow].*

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

DULUTH BUILDING AND  
CONSTRUCTION TRADES COUNCIL

By: \_\_\_\_\_

Its: \_\_\_\_\_  
(Printed Name/Title)

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

By: \_\_\_\_\_

Its: \_\_\_\_\_  
(Printed Name/Title)

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

Phone No.: \_\_\_\_\_

CITY OF DULUTH

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

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

\_\_\_\_\_  
City Auditor

\_\_\_\_\_  
City Attorney

**SUBCONTRACTOR'S  
AGREEMENT TO BE BOUND  
PROJECT LABOR AGREEMENT**

The undersigned EMPLOYER (subcontractor) agrees that it has reviewed a copy of the Project Labor Agreement for the \_\_\_\_\_ Project located in Duluth, Minnesota, with the Duluth Building and Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

This form is to be completed by subcontractors and submitted to the Project Contractor. Project Contractor shall retain and submit to City of Duluth or Duluth Building and Construction Trades Council upon request.

Attest:

SIGNED FOR THE EMPLOYER:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
Phone No., Job Site and/or Office

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



## **SCHEDULE “A”**

For a copy of the current Local Area Collective Bargaining Agreement referenced in Article II, Section 9 of the PLA please contact directly the Local Union representing the craft for the work to be performed (see attached contact list) or contact the Duluth Building and Construction Trades Council.

- A-1 Asbestos Workers Local 49
- A-2 Boilermakers Local 647
- A-3 BAC Local 1 Chapter 3 Duluth and Iron Range
- A-4 Carpenters Local 361
- A-5 Cement Masons/Plasters Local 633
- A-6 Elevator Constructors Local 9
- A-7 IBEW Local 242
- A-8 Iron Workers Local 512
- A-9 Laborers Local 1091
- A-10 Millwrights Local 1348
- A-11 Operating Engineers Local 49
- A-12 Painters & Allied Trades Local 106
- A-13 Plumbers & Fitters Local 11
- A-14 Roofers Local 96
- A-15 Sheet Metal Workers Local 10
- A-16 Sprinkler Fitters Local 669
- A-17 Teamsters Local 346

Affiliated AFL-CIO

# DULUTH BUILDING AND CONSTRUCTION TRADES COUNCIL

2002 LONDON ROAD

LABOR CENTER

DULUTH, MINN. 55812



## Officers

Craig Olson  
*President*  
Darrell Godbout  
*Vice President*  
Dan Olson  
*Secretary*  
Jeff Daveau  
*Treasurer*

## Boilermakers #647

## Bricklayers #1

## Carpenters #361

## Cement Masons #633

## Elevator #9

## IBEW #242

## Insulators #49

## Ironworkers #512

## Laborers #1091

## Millrights #1348

## Operators #49

## Painters #106

## Pipelitters #11

## Roofers #96

## Sheetmetal #10

## Sprinklerfitters #669

## Teamsters #346

## ASBESTOS WORKERS LOCAL 49

Dave Cartwright  
2002 London Road #210  
Duluth, MN 55812  
(218) 724-3223 / Fax# 724-1870  
[dave@insulatorslocal49.org](mailto:dave@insulatorslocal49.org)

## CARPENTERS LOCAL 361

Chris Hill  
5238 Miller Trunk Hwy  
Hermantown, MN 55811  
(218) 724-3297 / Fax# 724-8536  
[chill@ncsrcc.org](mailto:chill@ncsrcc.org)

## IBEW LOCAL 242

Don Smith  
2002 London Road #111  
Duluth, MN 55812  
(218) 728-6895 / Fax# 728-1965  
[dsmithc1242@unions-america.com](mailto:dsmithc1242@unions-america.com)

## MILLRIGHTS & MACHINERY ERECTORS LOCAL 1348

Wayne Nordin  
726 4<sup>th</sup> Street N  
Virginia, MN 55792  
(218) 741-6314 / Fax# 741-6017  
[wnordin@ncsrcc.org](mailto:wnordin@ncsrcc.org)

## PLUMBERS & FITTERS LOCAL 11

Jeff Daveau, *Treasurer*  
4402 Airpark Boulevard  
Duluth, MN 55811  
(218) 727-2199 / Fax# 727-2298  
[jeff@ualocal11.com](mailto:jeff@ualocal11.com)

## SPRINKLER FITTERS LOCAL 669

James Westby  
PO Box 398  
Mabel, MN 55954  
(507) 493-5671 / Fax# 493-5481  
[westby@mabeltel.com](mailto:westby@mabeltel.com)

## BOILERMAKERS LOCAL 647

Bill Polchow  
1007 NW 4<sup>th</sup> Street, Ste C  
Grand Rapids, MN 55744  
(218) 326-2522 / Fax# SAME  
[bpolchow647@outlook.com](mailto:bpolchow647@outlook.com)

## CEMENT MASONS LOCAL 633

Michael Syversrud  
2002 London Road #112  
Duluth, MN 55812  
(218) 724-2323 / Fax# 724-2472  
[mikes@local633.org](mailto:mikes@local633.org)

## IRON WORKERS LOCAL 512

Darrell Godbout, *Vice President*  
3752 Midway Road  
Hermantown, MN 55810  
(218) 724-5073 / Fax# 724-1525  
[darrell@iron512.com](mailto:darrell@iron512.com)

## OPERATING ENGINEERS LOCAL 49

Eric Gulland & Mike Parrott  
2002 London Road #116  
Duluth, MN 55812  
(218) 724-3840 / Fax# 728-1441  
[egulland@local49.org](mailto:egulland@local49.org)  
[mwparrotta@local49.org](mailto:mwparrotta@local49.org)

## ROOFERS LOCAL 96

Vance Anderson  
1145 Villa Vista Circle  
Cromwell MN 55726  
(218) 644-1096 / Fax# SAME  
[valocal96@yahoo.com](mailto:valocal96@yahoo.com)

## TEAMSTERS LOCAL 346

Rod Ainstead  
2802 West 1<sup>st</sup> Street  
Duluth, MN 55806  
(218) 628-1034 / Fax# 628-0246  
[local@teamsters346.com](mailto:local@teamsters346.com)

## BAC LOCAL #1 CHAPTER 3 DULUTH & IRON RANGE

Stan (Ogie) Paczynski  
2002 London Road #100  
Duluth, MN 55812  
(218) 724-8374 / Fax# 724-8341  
[spaczynski@bac1mn-nd.org](mailto:spaczynski@bac1mn-nd.org)

## ELEVATOR CONSTRUCTORS LOCAL 9

Dave Aaserud  
433 Little Canada Rd E  
Little Canada, MN 55117  
(651) 287-0817 / Fax# 287-0820  
[d.aaserud@local9.com](mailto:d.aaserud@local9.com)

## LABORERS LOCAL 1091

Dan Olson, *Secretary*  
2002 London Road #119  
Duluth, MN 55812  
(218) 728-5151 / Fax# 728-2431  
[laborers@local1091.com](mailto:laborers@local1091.com)

## PAINTERS LOCAL 106

Craig Olson, *President*  
2002 London Road #106  
Duluth, MN 55812  
(218) 724-6466 / Fax# 724-7359  
[president@duluthbuildingtrades.com](mailto:president@duluthbuildingtrades.com)

## SHEET METAL WORKERS LOCAL 10

Doug Christy  
6279 Industrial Road  
Saginaw, MN 55779  
(218) 724-6873 / Fax# SAME  
[dchristy@smw10.org](mailto:dchristy@smw10.org)



May 16, 2019

Dear Vendors,

The City of Duluth is excited to launch our Community Benefits Program this summer. Passed by City Council in July of last year, our community benefits policy ensures that public investments support the economic health and vitality of our whole community. This effort reflects our ongoing commitment to integrating workforce development and career pathways into everything we do.

The City's community benefits policy and business subsidy criteria link public investment in economic development with a commitment to provide women and socially disadvantaged individuals access to high-quality jobs leading to life-long careers in the construction industry. Combined, these policies help address immediate worker shortages, break down persistent barriers to employment, and diversify our workforce. These policies also increase our community's capacity to provide an appropriate workforce for future projects.

Details about the Community Benefits Program are available on the City of Duluth website (<http://www.duluthmn.gov/purchasing/forms/>). Please review and direct any questions to:

Elena Foshay, Director of Workforce Development

218-730-5241

[CommunityBenefits@duluthmn.gov](mailto:CommunityBenefits@duluthmn.gov)

We look forward to working together to achieve our goals.

Thank you!

Sincerely,

Amanda Ashbach  
City Purchasing Agent

## **COMMUNITY BENEFITS PROGRAM CONTRACT SPECIFICATION**

The City of Duluth has determined that it is critical to the economic vitality of the city and its citizens that contractors entering into contracts with the city for Covered Projects as defined in City Code commit to assisting in developing a trained and skilled workforce. Therefore as a condition of the award of this Contract to the Contractor, Contractor hereby agrees to use its best efforts to implement the Community Benefits Program (the “Program”) as hereinafter set forth in this Specification and to cooperate fully with the City’s Workforce Development Division to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Covered Project covered by this Specification to so use their best efforts to implement the Program.

**CONTRACTOR FURTHER AGREES THAT ITS PERFORMANCE OF ITS OBLIGATIONS AS SET FORTH IN THIS SPECIFICATION MAY BE AN ELEMENT IN DETERMINING WHETHER CONTRACTOR IS A “RESPONSIBLE BIDDER” ON FUTURE CONTRACTS FOR COVERED PROJECTS FOR THE CITY.**

### **I. DEFINITIONS**

For the purposes of this Specification, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor’s ability and the means at its disposal.
- B. Best Efforts Plan: shall mean a plan developed and approved between a Contractor and the Workforce Development Division to implement the Contractor’s Best Efforts obligations under this Specification.
- C. Contractor: shall mean the contracting entity entering into the contract of which this Specification is a part and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on a covered project shall count toward the Community Benefits Goal outlined in this document. An individual with one or more of the following characteristics shall be considered an Eligible Worker:
  - Woman;
  - Person of color;
  - Is currently homeless;
  - Has received public assistance of any kind within the last 12 months;
  - Has a criminal record of conviction;
  - Is currently in, or has been emancipated from, the public foster care system;

- Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
  - Has a disability, including disabled veterans;
  - Has a household income below 200% of Federal Poverty Level.
- E. Program: shall mean the Community Benefits Program as set forth in this Specification.
- F. Project: shall mean the Covered Project that is the subject of the contract of which this Specification is a part.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by the contract of which this Specification is a part.
- H. Work Hours: shall mean the total number of hours of work performed on a Project by Eligible Workers.

## II. PROGRAM GOALS

All Contractors entering into contracts for Projects will be required to use their best efforts, as described below, in the performance of those contracts to attain the following Program goals

- A. Eligible Worker - General: For each Project contract entered into in the calendar year set forth below the Contractor shall use its best efforts to cause the following percentage of total hours of work performed with respect to such Project to be Work Hours performed by Eligible Workers:
1. 2019 - 10%
  2. 2020 - 12%
  3. 2021 and thereafter - 15%
- B. Women
- One-half of Work Hours shall be performed by Eligible Workers who are women.

## III. CONTRACTOR - BEST EFFORTS

- A. Plan

Contractor shall submit the Construction Workforce Planning Template within three (3) days of the issuance of the notification of intent to award, and shall work with the Workforce Development Department to develop a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. No Notice to Proceed will be issued by the City for any Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan may include but shall not be limited to the following commitments by the contractor:

1. To participate in local job fairs and hiring events, including those at high schools, the City's Workforce Center and Lake Superior College.
2. To proactively work with the Workforce Development Department and with unions with which they have agreements to sponsor new Eligible Workers into such union's apprenticeship programs.
3. To proactively work with Native American tribes and appropriate community organizations to recruit Eligible Workers.
4. To support and actively participate in apprenticeship exploration programs and other construction career training opportunities.
5. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.
6. To take such other actions as is reasonably agreed between Contractor and the Workforce Development Division that will encourage participation of Eligible Workers in the Construction of Projects, while not adding cost to the Project.
7. To take, and to require its Subcontractors to take appropriate corrective action when notified by the Workforce Development Division that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting: No later than Ten (10) days following the end of the month in which Work Hours are performed on any Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.
2. Completion Report: No later than Sixty (60) days following the end of completion of construction on any Project, the Contractor shall submit a written report(s) to the Workforce Development Division certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by

Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the Completion Report establishes that the Program Goals have not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any explanations or extenuating circumstances for not having met the Program Goals.

#### **IV. CITY-PROGRAM OBLIGATIONS**

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for each Project covered by this Specification.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and apprenticeship programs to build accessible pathways into employment in the building and construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.
- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances were provided by Contractor or any Subcontractor for not having met the Program Goals.





**ATTACHMENT A  
PRIME CONTRACTOR RESPONSE**

**RESPONSIBLE CONTRACTOR VERIFICATION AND CERTIFICATION OF COMPLIANCE**

**PROJECT NUMBER:** \_\_\_\_\_

**This form includes changes by statutory references from the Laws of Minnesota 2015, chapter 64, sections 1-9. This form must be submitted with the response to this solicitation. A response received without this form, will be rejected.**

<p>Minn. Stat. § 16C.285, Subd. 7. <b>IMPLEMENTATION.</b> ... any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project...</p>	
<p>Minn. Stat. § 16C.285, Subd. 3. <b>RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.</b> "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:</p>	
<p>(1)</p>	<p>The Contractor:</p> <ul style="list-style-type: none"> <li>(i) is in compliance with workers' compensation and unemployment insurance requirements;</li> <li>(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;</li> <li>(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and</li> <li>(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative.</li> </ul>
<p>(2)</p>	<p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.03, 181.101, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none"> <li>(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;</li> <li>(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;</li> <li>(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;</li> <li>(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;</li> <li>(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or</li> <li>(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;*</li> <li>(vii) has been convicted of a violation of section 609.52, subd 2 (19).</li> </ul>

(3)	The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*
(4)	The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;*
(5)	The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*
	* Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.
(6)	The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
(7)	All subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Minn. Stat. § 16C.285, Subd. 5. **SUBCONTRACTOR VERIFICATION.**

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Subd. 5a. **Motor carrier verification.** A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

Minn. Stat. § 16C.285, Subd. 4. **VERIFICATION OF COMPLIANCE.**

A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of clause (7), at the time that it responds to the solicitation document.

A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

**CERTIFICATION**

**By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:**

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285, and**
- 2) if my company is awarded a contract, I will submit Attachment A-1 prior to contract execution, and**
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.**

**Authorized Signature of Owner or Officer:**

**Printed Name:**

**Title:**

**Date:**

**Company Name:**

NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

**ATTACHMENT A-1**

**FIRST-TIER SUBCONTRACTORS LIST**

**SUBMIT PRIOR TO EXECUTION OF A CONSTRUCTION CONTRACT**

**PROJECT NUMBER:** \_\_\_\_\_

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

<b>FIRST TIER SUBCONTRACTOR NAMES* (Legal name of company as registered with the Secretary of State)</b>	<b>Name of city where company home office is located</b>

\*Attach additional sheets as needed for submission of all first-tier subcontractors.

<b>SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-1</b>	
<b>By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:</b> <b>All first-tier subcontractors listed on attachment A-1 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.</b>	
<b>Authorized Signature of Owner or Officer:</b>	<b>Printed Name:</b>
<b>Title:</b>	<b>Date:</b>
<b>Company Name:</b>	

**ATTACHMENT A-2**

**ADDITIONAL SUBCONTRACTORS LIST**

**PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT**

**PROJECT NUMBER:** \_\_\_\_\_

This form must be submitted to the Project Manager or individual as identified in the solicitation document.

Minn. Stat. § 16C.285, Subd. 5. ... If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors. ...

<b>ADDITIONAL SUBCONTRACTOR NAMES* (Legal name of company as registered with the Secretary of State)</b>	<b>Name of city where company home office is located</b>

\*Attach additional sheets as needed for submission of all additional subcontractors.

<b>SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-2</b>	
<p><b>By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:</b></p> <p><b>All additional subcontractors listed on Attachment A-2 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.</b></p>	
<b>Authorized Signature of Owner or Officer:</b>	<b>Printed Name:</b>
<b>Title:</b>	<b>Date:</b>
<b>Company Name:</b>	

Targeted Group Business Information. The City encourages participation by minority, women, veteran-owned and other targeted group businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers. A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnucp.metc.state.mn.us/> . The Minnesota Office of Administration maintains a list of Targeted Group Businesses at <http://www.mmd.admin.state.mn.us/process/search/>