

EXHIBIT A

WLSSD/CITY DECKER ROAD RECONSTRUCTION PROJECT

THIS AGREEMENT entered into as of the date of attestation thereto by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as “City”, and the SANITARY BOARD OF THE WESTERN LAKE SUPERIOR SANITARY DISTRICT, a public corporation and a political subdivision of the State of Minnesota created pursuant to Laws of Minnesota, 1971, Chapter 478, codified at Minn. Stat. Chapter 458D, hereinafter referred to as “WLSSD”.

WHEREAS, City, in its capacity as a municipal entity holds and control the public street easements in the City, including the easement for Decker Road between platted Mall Drive and Piedmont Avenue (the “Project area”), is therefore responsible for the maintenance of said portion of Decker Road including reconstruction thereof as it deems necessary; and

WHEREAS, City has determined that there is a need to reconstruct that portion of said road within the Project Area, which work is hereinafter defined as the “City Project”; and

WHEREAS, WLSSD is desirous of having the City replace for it the hereinafter described sewer facilities owned by it and of reimbursing City for the cost of various hereinafter-defined related costs and shared costs, which, taken together, shall constitute the hereinafter-defined “WLSSD Project”; and

WHEREAS, City and WLSSD have determined that it is in the best interests of both parties to have the WLSSD Project and the City Project, hereinafter referred to as the “Project”, designed, constructed and funded as a single project with a single contractor, all as hereinafter provided for.

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

1. Definitions

The following terms and phrases shall have the meanings hereinafter ascribed to them:

- A. City Project: shall mean the reconstruction of Decker Road within the Project Area which will include removal of the existing bituminous surface, reconstruction of the granular street base, new A.D.A. compliant sidewalk approaches, new MDPE gas main, new HDPE water main, new storm utility structures as determined necessary by the City Engineer and a new driving surface.
- B. Project: shall mean the City Project and the WLSSD Project.
- C. Project Area: shall mean that portion of Decker Road lying between a point 225 feet northerly of Mall Drive and Piedmont Avenue.
- D. Related Project: shall mean that portion of the WLSSD Project consisting of work not part of the Sewer Project but of work necessitated by the Sewer Project which would not have been part of the Project if not for the Sewer Project such as concrete curb work, turf restoration, temporary relocation of facilities for other utilities, bituminous street section work, all of which are described in general terms on the “Statement of Estimated Quantities” as part of the Plans and Specifications for the Project
- E. SEH: shall mean the engineering firm of Short Elliott Hendrickson, Inc.
- F. Sewer Project: shall mean the removal and replacement of various sewer infrastructure owned by WLSSD and related work within the Project Area including the Hermantown Sanitary Sewer Interceptor, new sanitary manhole structures including castings and water proofing systems, connections to existing sanitary interceptors, Trench excavation including shoring as needed, embedment backfill and bypass pumping as needed.
- G. Shared Cost Project: shall mean WLSSD’s allocated share of the general costs of construction administration such as project mobilization and traffic control.
- H. WLSSD Project: shall mean the combination of the Sewer Project, the Related Project and the Shared Costs Project.

2. Design

A. The WLSSD Project

WLSSD has contracted with SEH to design and to perform construction administration and inspection services on its behalf related to the design and construction of the Sewer Project. WLSSD agrees that it will require SEH to consult regularly on all design issues pertaining to the WLSSD Project in general and to the Sewer Project in particular and that it will require SEH to provide to the City completed plans and specifications for the Sewer Project in a form acceptable to the City Engineer and suitable for direct incorporation into the City's plans and specifications for the Project no later than February 12, 2019.

B. The Project

City shall be responsible to design the City Project and the Related Project and to develop plans and specifications for the Project which incorporate therein the plans and specifications for the Sewer Project provided by WLSSD pursuant to Subparagraph A above. Said specifications shall include a "Statement of Estimated Quantities" setting forth the quantities of the various cost items attributable to the WLSSD and to the City. City shall also develop the bid documents to be used for the competitive bidding of the Project. The bid documents shall require bidder to provide bids for all quantities and elements of the work such that City and WLSSD can determine the relative costs associated with the City Project and the WLSSD Project. City shall have provided plans, specifications and bid documents to WLSSD no later than April 1, 2019. WLSSD shall have right to review and request any changes it deems necessary prior to March 1, 2019. Unless WLSSD shall object to any element of such plans, specifications or bid documents prior to that date, including but not limited to the Statement of Estimated Quantities, said plans, specifications and bid documents shall be deemed to be approved by WLSSD, City shall be authorized to proceed to bid the construction of Project and proceed with the construction thereof in accordance the plans and specifications so approved (the "Plans and Specifications") and with the terms and conditions of this Agreement. The Plans and Specifications shall require that construction of the Sewer Project be completed no later than November 1, 2019.

3. Pre-bid Cost Allocation

Prior to City issuing a formal request for bids for the construction of the Project, the City's Director of Public Works and Utilities or his or her designee (the "Director") shall meet with the WLSSD staff person designated by WLSSD in writing to the Director as WLSSD's representative (the "WLSSD Representative") and, using the quantities and elements specified in the bid forms, shall agree in writing on the allocation of the costs of all quantities and elements of the Project to the City Project and to the WLSSD Project (the "Allocation").

4. Bidding and Award of Project Contract

Upon of the processes set forth in Paragraphs 2 and 3 above, City shall request bids for construction of the Project in accordance with the Plans and Specifications and shall award the contract for the construction of the Project to the lowest responsible bidder, all in conformance with standard City of Duluth competitive bidding procedures. Said procedure shall include conformance with the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended.

5. Control of Work

The contract for the construction of the Project shall include provision that, subject to the Plans and Specifications, WLSSD shall direct control and supervision of the Sewer Project and shall provide construction engineering services with regard thereto including any construction inspection the Director shall deem appropriate. Said contract shall further provide that, subject to the Plans and Specifications, City shall direct control and supervision of the Project except for the Sewer Project and shall provide construction engineering services with regard thereto including any construction inspection the Director shall deem appropriate.

6. WLSSD Payment to City

Upon receipt of a request for partial payment or final payment from the contractor for work performed on the Project and approval thereof by the Director, the Director shall cause an invoice to be sent to the WLSSD Representative setting forth the portion of said payment request requesting payment for work performed on the WLSSD Project in accordance with the Allocation provide for in Paragraph

3. above. Within Thirty (30) days of the Director sending said invoice to WLSSD, WLSSD shall cause the amount of the invoice to be remitted to City. Provided that if the WLSSD Representative disputes that any portion of invoice as not representing costs of the WLSSD Project as agreed to in said Allocation, the WLSSD Representative shall inform the Director of the particulars of such dispute and the Director and the WLSSD Representative shall meet and negotiate in good faith to resolve the dispute.

7. Independent Contractor

Except as herein specifically provided for, it is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting WLSSD as an agent, representative or of City for any purpose or in any manner whatsoever. WLSSD and any officers or thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Workers Act of the State of Minnesota on behalf of WLSSD while so engaged and any and all claims whatsoever on behalf of WLSSD arising out of or alleged, including without limitation, claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility of City. WLSSD and its officers, agents, contractors and employees shall not be entitled to any or rights or benefits of any hospital care, sick leave and vacation pay, Workers Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless WLSSD from liability or judgments arising out of the intentional or negligent acts or omissions of WLSSD while performing the work specified by this Agreement.

8. Contractor-Insurance and Indemnity

City agrees that the contract for construction of the Project shall include a requirement that the contractor agree to defend, indemnify and insure WLSSD in the same manner and to the same extent that such contract requires the contractor to defend, indemnify and insure the City.

9. Cross Indemnity

City and WLSSD hereby agree to indemnify each other for liability arising out of their own acts or omissions and those of those of their officers, agents,

servants and employees, provided that nothing herein shall create any additional liability for either party not otherwise existing under law. Provided further, that the City's and WLSSD's liability shall be governed and limited by the provisions of Minnesota Statutes Chapter 466.

10. Default and Remedies

In the event that either party shall fail to perform any obligation of said party owed to the other party hereunder, the non-defaulting party may give notice in writing to the defaulting party setting forth the obligation or obligations which the defaulting party shall have failed to perform in conformance with the requirements of this Agreement and upon receipt thereof the defaulting party shall immediately commence to cure any such default or, if cure cannot be reasonably commenced immediately, shall commence such cure as soon as reasonably practical and shall complete such cure as soon as is reasonably practical. If cure of such default shall not be so commenced and completed, the non-defaulting party shall be entitled to seek damages for any damages resulting from such failure to cure, injunctive relief to compel performance of any obligation under the Agreement with regard to which the defaulting party is in default or both.

11. Notices

Notices to be given hereunder shall be deemed to be sufficient if deposited in the U.S. Mail, postage prepaid to the address set forth below or if sent by e-mail to the e-mail address set forth below unless a party shall send notice to the other party as herein provided directing that such notices shall be sent to a different address:

In the case of City:

Director of Public Works and Utilities
City of Duluth
411 West First Street, Room 211B
Duluth, MN 55802
JBenning@duluthmn.gov

In the case of WLSSD:

Executive Director
Western Lake Sanitary District.
2626 Courtland Street
Duluth, MN 55806

12. Applicable Law


This Agreement is made in the State of Minnesota and shall be interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

CITY OF DULUTH, a Minnesota
municipal corporation

SANITARY BOARD OF THE
WESTERN LAKE SUPERIOR
SANITARY DISTRICT, a public
corporation and a political subdivision
of the State of Minnesota, Created
pursuant to Laws of Minnesota, 1971,
Chapter 478

By: _____
Mayor

By:  _____
Marianne Bohren
Its: Executive Director

Attest:

By: _____
City Clerk

Date: _____

Approved:

Countersigned:

Assistant City Attorney

City Auditor

