

**AGREEMENT**

THIS AGREEMENT is between the CITY OF DULUTH, a duly organized City within the County of St. Louis within the State of Minnesota, hereinafter referred to as “DULUTH”, and the COUNTY OF ST. LOUIS, a duly organized county within the State of Minnesota, hereafter referred to as “ST LOUIS COUNTY”.

WITNESSETH:

WHEREAS, ST LOUIS COUNTY intends to undertake a Scrub Seal and Fog Seal project on various paved roads (CP 0000-424407), hereinafter referred to as the “County Project”; and

WHEREAS, DULUTH intends to undertake a Scrub Seal and Fog Seal project on Ridgeview Road (0.72 miles), Glenwood Street (0.95 miles), Skyline Parkway (0.173miles), W. 1<sup>st</sup> Street (0.56 miles), and Woodland Ave (0.89 miles), hereinafter referred to as the “City Project”; and

WHEREAS, the County Project and City Project shall be hereinafter referred to together as the “Project”; and

WHEREAS, ST LOUIS COUNTY shall prepare a contract for the construction of the County Project and City Project as provided for below intended for letting and construction as a single, unitary construction project in 2019 (the “Contract”), and it is justified and mutually beneficial for DULUTH and ST LOUIS COUNTY to combine these projects to mutually benefit from economies of scale, mobilization, and contract administration; and

WHEREAS, ST LOUIS COUNTY will advertise, bid, and enter into a contract with the low bidder for construction of the Project.

THEREFORE, IT IS MUTUALLY AGREED AND UNDERSTOOD, with regard to the aforementioned scrub seal and fog seal, of ST LOUIS COUNTY’s and DULUTH’s paved streets and highways the parties hereby agree to the following:

1. ST LOUIS COUNTY shall prepare plans and specifications for the construction of the County Project.
2. DULUTH shall prepare plans and specifications for the construction of the City Project and submit them to ST LOUIS COUNTY.
3. ST LOUIS COUNTY shall combine the plans and specifications from the County Project and City Project to create a bid package, from which the costs for the City Project will be determined by the bid prices in accordance with the terms of the proposal.
4. ST LOUIS COUNTY and DULUTH shall perform, by contract, the construction

work provided for in the Plan, with the construction costs of the County Project covered by the County and the construction costs of the City Project covered by the DULUTH. ST LOUIS COUNTY shall award the contract for said projects to the lowest responsible bidder in accordance with current specifications. After contract letting, and prior to contract award, ST LOUIS COUNTY will provide DULUTH with an abstract of all bids received. DULUTH will promptly review bid information. The County must obtain the concurrence of DULUTH prior to awarding the contract.

5. ST LOUIS COUNTY shall perform all construction engineering, staking, inspection, material certification and acceptance, and measurement of all items in accordance with State Aid standards for the County Project.
6. DULUTH shall perform all construction engineering, staking, inspection, material certification and acceptance, and measurement of all items in accordance with State Aid standards for the City Project.
7. All further costs for change orders, work orders and supplemental agreements related to the County Project shall be allocated to and paid for by the County. All further costs for change orders, work orders and supplemental agreements related to the City Project shall be allocated to and paid for by DULUTH.
8. DULUTH will pay ST LOUIS COUNTY \$500 for administration of the Project.
9. ST LOUIS COUNTY shall take all actions necessary to prepare the County Project for construction, including, but not limited to obtaining any and all applicable environmental permits as required by law, temporary storage sites, temporary or permanent easements, and site restoration at its cost and expense.
10. DULUTH shall take all actions necessary to prepare the City Project for construction, including, but not limited to obtaining any and all applicable environmental permits as required by law, temporary storage sites, temporary or permanent easements, and site restoration at its cost and expense.
11. In the event that DULUTH takes any action, except as authorized by this Agreement that results in lost time or efficiency or a delay of completion of the County's construction of the County Project, DULUTH shall bear the full financial responsibility for any claims or causes of action arising therefrom.
12. DULUTH will pay to ST LOUIS COUNTY, within thirty (30) days after award of Contract, an amount equal to ninety-five percent (95%) of the estimated cost of DULUTH's portion of the scrub sealing and fog sealing Contract, based on the contract unit prices as contained in the successful Contractor's bidding documents.
13. DULUTH shall make final payment to ST LOUIS COUNTY after final acceptance of

its portion of the roadway scrub sealing and fog sealing on the project. Payment will be due within thirty (30) days of receipt of a valid statement of final Contract quantities for DULUTH cost for scrub sealing and fog sealing as described herein. If any funds are received by ST LOUIS COUNTY in excess of the project costs, they will be returned to DULUTH without interest.

14. ST LOUIS COUNTY shall require all contractors and subcontractors performing work on the project described in this agreement to name DULUTH as an insured party in the amounts listed in the insurance requirements contained in the Plan.
15. DULUTH shall indemnify, hold harmless and defend ST LOUIS COUNTY, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which ST LOUIS COUNTY, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of DULUTH, its agents, servants or employees, in the execution, performance, or failure to adequately perform DULUTH 's obligations pursuant to this Agreement.
16. ST LOUIS COUNTY shall indemnify, hold harmless and defend DULUTH, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which DULUTH, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of ST LOUIS COUNTY, its agents, servants or employees, in the execution, performance, or failure to adequately perform ST LOUIS COUNTY 's obligations pursuant to this Agreement.
17. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, Subd. 1a; provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

IT IS FURTHER AGREED, that any and all employees of the County of St. Louis, while engaged in the performance of any work or service which ST LOUIS COUNTY is specifically required to perform under this Agreement, shall be considered employees of ST LOUIS COUNTY only and not of DULUTH, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of ST LOUIS COUNTY.

IT IS FURTHER AGREED, that any and all employees of DULUTH, while engaged in the performance of any work or service which DULUTH is specifically required to perform under this Agreement, shall be considered employees of DULUTH only and not of ST LOUIS

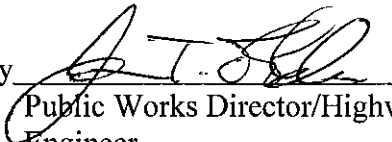
COUNTY, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act, of said employees, shall be the sole obligation of DULUTH.

IN WITNESS WHEREOF, the parties have executed this Agreement this  
day of \_\_\_\_\_, 2018.

COUNTY OF ST LOUIS COUNTY

By \_\_\_\_\_  
County Board Chair

By \_\_\_\_\_  
County Auditor

By  \_\_\_\_\_  
Public Works Director/Highway  
Engineer

APPROVED AS TO FORM:

By \_\_\_\_\_  
County Attorney  
Damion #:

CITY OF DULUTH

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

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

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

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



*Resolution  
of the*

***Board of County Commissioners***

*St. Louis County, Minnesota*

*Adopted on: October 23, 2018 Resolution No. 18-592*

*Offered by Commissioner: Jewell*

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**Agreement with City of Duluth for Scrub Sealing 2019**

RESOLVED, That the St. Louis County Board authorizes an agreement, and any amendments approved by the County Attorney, with the City of Duluth whereby the City of Duluth will pay its local share for items listed in the Schedule of Prices in the Proposal/Plan Package and Plan described as CP 0000-424407, Scrub Sealing 2019, with the funds received into Fund 220, Agency 220497, Object 551501.

Commissioner Jewell moved the adoption of the Resolution and it was declared adopted upon the following vote:  
Yeas – Commissioners Jewell, Boyle, Olson, Rukavina, Jugovich and Chair Nelson – 6  
Nays – None  
Absent – Commissioner Stauber – 1

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STATE OF MINNESOTA  
Office of County Auditor, ss.  
County of St. Louis

I, DONALD DICKLICH, Auditor of the County of St. Louis, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 23<sup>rd</sup> day of October, A.D. 2018, and that this is a true and correct copy.

WITNESS MY HAND AND SEAL OF OFFICE at Duluth, Minnesota, this 23<sup>rd</sup> day of October, A.D., 2018.

DONALD DICKLICH, COUNTY AUDITOR

By

  
Clerk of the County Board/Deputy Auditor