

CITY OF DULUTH/MINNESOTA POWER  
2025 JUNCTION AVENUE RECONDITIONING PROJECT AGREEMENT

THIS AGREEMENT is between the CITY OF DULUTH ("City"), a Minnesota municipal corporation and MINNESOTA POWER ("MP"), a division of ALLETE, Inc., a Minnesota corporation, and is effective upon the date the Agreement is attested to by the City Clerk.

WHEREAS, the City retains a public street easement for the right-of-way of Junction Avenue, and as a component of the easement, owns, maintains and operates in and below the surface of Junction Avenue storm sewers up to 24 inches (the "City Utilities"); and

WHEREAS, the City intends to replace some of the City Utilities in Junction Avenue and reconstruct the road surface; and

WHEREAS, MP owns and operates electrical distribution mains located in the Junction Avenue right-of-way and desires to install a new duct bank including vaults as needed in the right-of-way; and

WHEREAS, it is efficient for the City and MP to work together to design, construct, and fund the desired activities as a single project;

NOW THEREFORE, the parties agree:

1. Project Area and Activities.

- a. Project Area. The Project Area is Junction Avenue from West College Street to East Buffalo Street.
- b. The Project. The Project includes the following activities within the Project Area.
  - i. The City Project. The City Project is reconditioning Junction Avenue from West College Street to East Buffalo Street, East Buffalo Street from Junction Avenue to West St. Marie Street, and West St. Marie Street from East Buffalo Street to Carver Avenue, reconstruction of a 400-foot section of Junction Avenue and a 500-foot section of West St. Marie Street, sidewalk replacements throughout the project limits, and gravity storm main replacements.
  - ii. The MP Project. The MP Project is design and installation of a new concrete electrical duct encasing up to eight (8) four-inch and six-inch conduits and two (2) two-inch electrical conduits, as shown in the MP Project plans.
  - iii. Excavation. The Project includes all necessary excavation of the subsurface in the Project Area. Excavation shall be done in a manner that protects existing City and private utilities and infrastructure including, gas, storm, and sanitary infrastructure, the existing electrical distribution lines, and the new storm utilities. Backfilling and compacting of the excavation shall be done in

conformance with standard City specifications, and shall be accomplished in a manner as to facilitate the installation of MP's duct bank work and vaults.

2. Plans.

- a. Initial Plans. MP shall contract for the design services of LHB Engineers and Architects, Inc. ("LHB") to design the MP Project. The City has also contracted with LHB to prepare plans and specifications for the entire Project including bid documents for the construction of the Project as a unitary project by a single contractor (the "Initial Plans"). LHB has provided plans and specifications for the construction of the MP Project, which plans and specifications have been incorporated into the Initial Plans, and are on file in the Office of the Duluth City Engineer bearing City Job No. 1464 and dated February 7, 2025. The City and MP stipulate each has reviewed the Initial Plans and have accepted and approved the same for bidding and construction of the Project. The Initial Plans shall require that construction of the Project be completed no later than October 15, 2025.
- b. Changes to Initial Plans. If the City or MP determines a need to modify the Initial Plans including change-orders and field modifications, the party making such determination shall cause its design engineer to prepare, as expeditiously as possible, modified plans and specifications showing such proposed modification (the "Modified Plans"). The party proposing modifications shall present the Modified Plans to the other party's representative, designated in Paragraph 12 below (City Representative and MP Representative), for review and approval. The Modified Plans shall thereafter be deemed to be the "Plans" for the purposes of this Agreement.
  - i. Allocation of Costs for Modifications. If approved by the other party, allocation of any costs for modifications shall follow the process in Paragraph 3 below. However, if a compelling need of construction make it impractical to use the process in Paragraph 3, and the party responsible for the portion of the Project affected by the modification determines there is compelling need to do the proposed modification and determines the proposed modification will not have a deleterious effect on the other party's portion of the Project, said party may direct the contractor to construct the Project in accordance with the Modified Plans. Provided further, however, that in the event of such a unilaterally-authorized modification of the Initial Plans, the non-approving party shall not be required to pay any of the costs associated with such modification without the subsequent approval of that party's designated representative.
3. Basis for Cost Allocation. The Bid Tabulation attached as Exhibit B shall be the basis for the allocation of the costs of the Project to the City Project and to the MP Project.
4. Bidding and Award of Project Contract. The City shall request bids for construction of the Project in accordance with the Initial Plans and shall award the contract for the construction of the Project to the lowest responsible bidder, all in conformance with City of Duluth

competitive bidding procedures and the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended. Bid documents for the Project shall require bidders to provide bids for all quantities and elements of the work such that City and MP can determine the relative costs associated with the City Project and the MP Project. The City is authorized to proceed to bid the construction of the Project and proceed with the construction in accordance with the Initial Plans and with the terms and conditions of this Agreement.

5. Control of Work.

- a. LHB Design. Management, supervision, and acceptance of the LHB design and of contractor's performance and work under the contract contemplated in Paragraph 4 are solely within the discretion of the City.
- b. Inspection. LHB shall provide construction inspection services for the MP Project. MP shall provide a scope of inspection services to LHB for the MP Project. The City shall provide construction inspection for the City Project
- c. Construction. The City shall control construction of the Project and shall be responsible for the administration of construction. MP may observe the construction of the Project and shall have access to the Project site needed therefore. MP may bring to the attention of the City any deviations from the Plans that it may observe or otherwise determine to exist. If MP brings a deviation to the City's attention, the City shall use best efforts to investigate any allegations to determine validity and, in the event of any such deviation, shall use best efforts to cause the deviation to be corrected.

6. MP Payment to City.

- a. Apportionment of Contractor Request for Payment. Upon receipt of a request for payment from the contractor for work performed on the Project, the City shall provide a copy of such request to the MP Representative for review as to work performed on the MP Project.
- b. Dispute Process. If MP disputes any portion of the payment request as it relates to the MP Project, MP shall notify the City in writing within five (5) business days of transmission of the request. The notice shall specify the disputed amount and include a statement of basis for the disputed amount. Upon receipt by the City of such notice of disputed amount, the City and MP shall promptly meet and negotiate in good faith to resolve the dispute.
- c. Invoice. If the City does not receive a notice of dispute from the MP Representative or if the dispute is resolved, the City may issue an invoice to MP for the MP amount contained in the request for payment.

7. MP Status as Independent Contractor.

- a. Independent Contractor. MP is an independent contractor and, as such, its officers, agents, contractors, and employees are not partners, agents, representatives, or employees of the City.

- b. Workers' Compensation Insurance Required. MP shall carry Workers' Compensation Insurance as required by state law throughout the duration of the Project.
  - c. City Not Responsible for Claims Against MP. Any claim under the Minnesota Workers' Compensation Act related to the Project on behalf of an MP officer, agent, contractor, or employee shall in no way be the responsibility of the City. Any claim against MP arising out of employment or alleged employment, including claims of discrimination against MP, its officers, agents, contractors, or employees shall in no way be the responsibility of the City. MP and its officers, agents, contractors, and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay from the City. Furthermore, the City shall not, in any way, be responsible to defend, indemnify, or save harmless MP from liability or judgments arising out of the intentional or negligent acts or omissions of MP while performing the work specified by this Agreement.
  - d. MP Not Responsible for Claims Against the City. Any officer, employee, or agent of the City shall not be considered an employee of MP. Any claim under the Minnesota Workers' Compensation Act related to the Project on behalf of a City officer, employee, or agent shall in no way be the responsibility of MP. Any claim against the City arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents, contractors or employees shall in no way be the responsibility of MP. The City's officers, agents, contractors, and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from MP. Furthermore, MP shall not, in any way, be responsible to defend, indemnify or save harmless the City from liability or judgments arising out of the intentional or negligent acts or omissions of the City while performing the work specified by this Agreement.
8. Contractor Insurance and Indemnity. All contracts for design and construction of the Project shall include a requirement that the contractor agree to defend, indemnify, and insure the contracting party in the same manner and to the same extent that such contract requires the contractor to defend, indemnify, and insure the contracting party and that the minimum insurance requirements shall be those set forth in Exhibit A.
9. Cross Indemnity. The City and MP shall indemnify each other for liability arising out of their own acts or omissions and those of those of their officers, agents, representatives, and employees, provided that nothing herein shall create any additional liability for either party not otherwise existing under law. Provided further, that each party's liability to the other party shall be governed and limited by the provisions of Minnesota Statutes Chapter 466 (even though these statutory limitations would not normally apply to MP). For the avoidance of doubt, this indemnity does not apply to the acts or omissions of a party's third-party contractors for design, engineering or construction services, as contemplated by Paragraphs 2, 4 and 5. Each party agrees that any claims for indemnity, insurance, or warranty against such third-party contractors shall be against the applicable third-party

contractor. Each party agrees to provide reasonable cooperation with the other party in the event of any such claim against a third-party contractor.

10. Warranties. Any contract entered into by either the City or MP for the design or construction of any portion of the Project shall specifically provide that the other party shall be deemed to be an intended third-party beneficiary of any warranties arising out of work performed pursuant to such contract to the extent of such party's interests.
11. Default and Remedies. Failure to perform an obligation under this Agreement shall be considered a default. The City or MP may give notice in writing to the other party of an alleged default. Such notice shall describe the circumstances of the alleged default and cite the applicable provision of this Agreement. After receiving a notice of alleged default, the receiving party shall immediately commence to cure the default or, if cure cannot reasonably be commenced immediately, shall commence and complete such cure as soon as reasonably practical. If cure of an alleged default is not commenced and completed or if the alleged default is disputed, the party alleging a default may seek damages or injunctive relief to compel performance of the alleged default.
12. Notices. Notices required under this Agreement shall be deemed 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 has previously sent written notice to the other party directing that notices shall be sent to a different address or email:

For the City:	Director of Public Works and Utilities City of Duluth 411 West First Street, Room 274 Duluth, MN 55802 <a href="mailto:JBenning@duluthmn.gov">JBenning@duluthmn.gov</a>
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For MP:	Purchasing and Contracts Minnesota Power, a division of ALLETE, Inc. 30 West Superior Street Duluth, MN 55802 <a href="mailto:lholden@allete.com">lholden@allete.com</a>
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13. 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

MINNESOTA POWER,  
a division of ALLETE, Inc., a Minnesota  
corporation

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

Mayor

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

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

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

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

Attest:

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

City Clerk

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

Countersigned:

\_\_\_\_\_

City Auditor

Approved as to form:

\_\_\_\_\_

City Attorney

## Exhibit A

### MP and Contractor Insurance Requirements

MP and any contractor working on the Project shall purchase and maintain insurance to protect the contractor and MP from claims which may arise out of performance of the Agreement, whether such claims arise from an act or failure to act by the contractor, MP, or any direct or indirect delegee, agent, appointee, or employee of either. Required insurance shall be in place until completion of the Project. MP and each contractor shall provide evidence of required insurance to the City prior to any work on the Project.

All insurance policies required of a contractor shall name each of the City and MP as an additional insured. All insurance policies required of MP shall name the City as an additional insured. All required insurance policies shall be issued by insurance companies that are (a) authorized to do business under the laws of Minnesota, and (b) be rated A- or better by A.M. Best rating service.

Required insurance shall be of the coverage types listed below and not less than the amounts listed below.

1. Worker's Compensation Insurance
  - a. Statutory limit amount
2. Employer's Liability Insurance
  - a. Limit coverage in the amount of not less than one million dollars (\$1,000,000) per occurrence and in the aggregate
3. Commercial General Liability Insurance
  - a. Occurrence form providing bodily injury, personal injury, and property damage liability coverage
  - b. Including, but not limited to Broad Form Property Damage with no explosion, collapse and underground (XCU) exclusions, and contractual liability coverage for the indemnity promise contained in this Agreement
  - c. Limit coverages of not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) aggregate
4. Comprehensive Automobile Liability Insurance
  - a. Combined single limit coverage of not less than two million dollars (\$2,000,000) per occurrence and in the aggregate
5. Professional Liability Insurance
  - a. Covering contractor or MP and any architect or engineer of contractor or MP
  - b. Covering errors, omissions, or negligent acts arising out of the performance of or failure to perform professional services as an architect or engineer

- c. Liability limit coverage of not less one million dollars (\$1,000,000) for each claim, and not less than five million dollars (\$5,000,000) in the aggregate
- d. Required coverage shall remain in effect for a period of two (2) years after the date on which the Project is complete.

All coverage set forth above shall include a cross liability and severability of interest clause.

All policies required of a contractor and MP shall (i) be endorsed to show that the insurers waive subrogation against the City.

All dollar amounts of coverage set forth above shall be per occurrence and in the aggregate and include a cross liability and severability of interest clause.

The policies described herein shall (i) be endorsed to show that the insurers waive subrogation against MP, its affiliates, directors, officers and employees, (ii) the insurance is primary and non-contributory, and (iii) not expire, terminate or otherwise discontinue coverage except upon not less than thirty (30) days prior written notice to the City.

Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the work. These certificates shall contain a provision that should coverages afforded under the policies be canceled before the expiration date thereof, notice will be delivered to the City. Notwithstanding the foregoing, contractors and MP have a continuing obligation to provide the insurance coverage described in this Exhibit A and none of the insurance required herein shall be canceled, changed or allowed to lapse until the period of Contractor's obligations under the Agreement has been completed. Such notices shall be sent to the City.

Insurance specified herein shall be minimum requirements and contractors and MP are responsible for providing any additional insurance deemed necessary to protect the interests of both contractors, MP, and the City from other hazards or claims in excess of the minimum coverage. The liability of contractors or MP under any warranty or indemnity provision contained in the Agreement is not limited to available insurance coverage.



Exhibit B  
Bid Tabulation