

**AGREEMENT FOR
DESIGN AND CONSTRUCTION OF
BUS SHELTERS
SUPERIOR STREET & 2ND STREET
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, a Minnesota nonprofit corporation, on behalf of itself and its subsidiaries ("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, in order to encourage the use of public transit to serve the RED, the construction of new bus shelters on Superior Street and 2nd Street has been determined to be beneficial and necessary to serve the new hospital and consistent with the public purposes set forth in Section 3 of the Act; and

WHEREAS, pursuant to the Act, various funds have been appropriated by the State to the City to defray portions of the cost of various elements of the RED, which funds can be used by City to reimburse SMDC for elements of the RED as provided for in the Act; and

WHEREAS, City has determined that it is in the best interests of the City to contract with SMDC to design and construct the hereinafter-defined "Project" which shall consist of the design and construction of hereinafter-defined bus shelter work necessary to the RED under the terms and conditions of this Agreement; and

WHEREAS, SMDC is willing to undertake such design and construction work and to accept reimbursement, all in accordance with the terms and conditions of this Agreement.

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, 1st Special Session Chapter 6, Article 10, as amended by Section 1 of Laws of Minnesota 2021, 1st Special Session Chapter 9. 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 them to perform various functions of the Director as hereinafter set forth.

1.1.4. City Construction Representatives: shall mean the Director and any person authorized by the Director in writing. The names and e-mail addresses of the persons as of the date of this Agreement shall be those set forth on Exhibit A attached hereto and made a part hereof; provided that the Director may, from time to time, modify the names or e-mail addresses of the persons designated by giving notice thereof to Essentia as provided for in Section 14.8 of this Agreement below.

1.1.5. 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 the Project.

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

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

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

1.1.9. Grant Agreement: shall mean that certain Master Grant Agreement Construction Grant for the Duluth Regional Exchange District effective as of June 24, 2019 and such other agreements between the City and the State of Minnesota, either directly or through one or more of its Departments establishing the terms, 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, and as said Agreement may be amended.

1.1.10. Plans: shall mean all plans and specifications prepared by the A & E for any elements of 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 IV below.

1.1.11. Project: shall mean the design and construction of bus shelters adjacent to the rights-of-way for Superior Street and 2nd Street respectively on the Property, as described in the plans and specifications approved by the City Engineer on _____2023 for City of Duluth Project No. _____ as the same are on file in the office of the City Engineer and made a part hereof, subject to the State Funds for the Project authorized therefore pursuant to the Act.

1.1.12. Property: shall mean that real property legally described on Exhibit B attached hereto and made a part hereof

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

1.1.14. Reimbursable Costs: shall mean all costs of the design, construction, and related 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.

1.1.15. State: shall mean the State of Minnesota.

1.1.16. State Funds: shall mean all funds to be provided by State for the RED pursuant to the Act.

ARTICLE II Grant Agreement: Property

2.1 Generally

In order for the City to access and expend funds to be provided for the RED pursuant to the Act, the City has entered into the Grant Agreement which places certain requirements, conditions and limitations on the City and its ability to access said funds for the RED.

2.2 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.

2.3 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.

2.4 Restrictive Covenant

Upon the signing of this Agreement, SMDC agrees to impose restrictive covenants on the Property in the form of that attached hereto as Exhibit C.

2.5 Maintenance

It is acknowledged by the parties that SMDC shall enter into an agreement with the Duluth Transit Authority, or its successor, (“DTA”) for the DTA to keep and maintain (or cause to be kept and maintained) the Project in good condition and repair.

ARTICLE III A & E and CM

3.1 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 agreement for A & E services shall be solely between SMDC and the selected 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.

3.2 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 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.

3.3 Initial A & E and CM

As of the date of the signing of this Agreement, SMDC has selected LHB, Inc. to provide A & E services to the Project and has selected McGough Construction to provide CM services to the Project. Subject to the terms and conditions of this Agreement, City hereby agrees to the contracting with LHB, Inc. as A & E and McGough Construction as CM for the Project.

ARTICLE IV Plans

4.1 In General

The design of all public improvements included in the Project and covered by this Agreement shall conform to the most current edition of the Engineering Guidelines for Professional Engineering

Services and Developments as approved by the Director and shall be filed in the office of the City Engineer. The Plans shall conform to all applicable laws, codes and design requirements applicable to said improvements. 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.

4.2 Current Plans Approved

Subject to the provisions of Section 4.1 above, the Plans for the Project dated _____, 2023 on file in the office of the City Engineer as City Project No. _____ shall be deemed to have been approved as provided for in Section 4.1.

4.3 Changes to the Plans

Any changes made to Plans proposed by any party other than the City from the Plans referenced in Section 4.2 above shall be deemed to be material or substantial and shall be submitted by e-mail to all of the persons defined herein as City Construction Representatives at the e-mail addresses provided for herein for approval by any one of them in writing before any construction of the Project is commenced in conformance with the proposed changes. Unless one of the City Construction Representatives shall so approve any such change, no construction of the Project not conforming to the approved Plans shall be constructed; provided, however, that if no City Construction Representative shall have responded 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 V Bid Documents & Bidding

5.1 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 to secure competitively priced bids from contractors who are competent to construct the Project to ensure that both the public and SMDC receive a well-constructed project at the best available price. In addition, Section 5 (c) 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.

5.2 Checklist and Cost Allocation

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 D. If SMDC conforms to the procedures set forth in Exhibit D, the City will agree that SMDC has complied with the requirements of Minnesota Statutes Section 469.53 (c). All bids shall include a “not to exceed” bid amount for the entire Project. For the avoidance of doubt, the parties agree that the Project is not subject to the B3 Guidelines of the State.

5.3 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.

5.4 Warranty Requirement

SMDC agrees to cause the Contractor to warranty the Project for a period of one (1) year after acceptance by the Director as provided for in Section 7.1 below. Such warranty shall include, but not be limited to, repairs or corrective action due to improper construction or compaction.

5.5 Bid Process

SMDC agrees that it shall be able to reasonably satisfy the Director that the price for construction of the Project secured by SMDC is a “competitive price” for the work by a contractor competent to construct the Project at the time of contracting in the Duluth construction market 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.

5.6 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.

5.7 Approval of Contractor

Upon receipt of bids for the construction of the Project, SMDC shall present copies of the 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 VI Construction

6.1 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. Provide 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.

6.2 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.

6.3 Construction Engineering

The construction of all public improvements covered by this Agreement shall conform to the most current edition of the Engineering Guidelines for Professional Engineering Services and Developments and to the 2019 City of Duluth Construction Standards as approved by the Director and on file in the office of the City Engineer. All construction of the public improvements will be inspected on a full time basis by the A & E or the CM or both.

6.4 City Involvement in Construction

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; provided that the fact that the City having 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. 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.

6.5 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 by the Director. Any pavement repairs shall be completed prior to the issuance of the Certificate of Completion.

ARTICLE VII- Certificate of Completion

7.1 Completion Inspection

Upon completion of construction of the entire Project, including but not limited to the final, finished pavement lifts, 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 VIII below, the Director will inspect the public improvements. If the public improvements are in conformance with the applicable requirements, the Director will issue a Certificate of Completion certifying that the Project is complete. If the public improvements are not in conformance with the applicable requirements, the Director will provide formal notice to the SMDC of the need for repair or replacement in conformance with the requirements of this Agreement.

ARTICLE VIII Record Drawings

8.1 Engineering Documentation

Prior to the issuance the Certificate of Completion referred to in Article VII above, SMDC's engineer shall furnish record drawings prepared in accordance with City of Duluth Engineering Guidelines. These drawings shall indicate all changes made during construction. In addition to the record drawings, the SMDC's engineer shall furnish digital comma delineated file (CSV) files to provide location data for the following features:

- Sanitary manholes, sanitary wye connections, sanitary service bend fittings, sanitary service end caps and extensions, sanitary sewer couplings, the sanitary sewer pipe alignment, and tracer wire boxes.
- Storm manholes, catch basins, storm aprons, storm culvert ends, storm water treatment BMP boundaries, private service connections, and storm pipe alignments.
- Water main valves, water hydrant valves, water hydrants, water end caps, water pipe fittings, water service connections, water service valves, electrofusion couplings and the water main pipe alignment.
- Gas main valves, gas service valves, gas tees, excess flow valves and the gas main/service alignment (include elevation).
- Infiltration and inflow pipes, private service connections, service bend fittings, service end caps, and service extensions.
- Alignment points including centerline, control points, sawed X's, and monuments.
- Other private infrastructure located within the City right-of-way as included in the Plans.
- At this time, elevation data within the CSV file is only required on natural gas related items.

The CSV files will provide field names along the top row that include Feature Name, Northing, Easting, Elevation or Depth, and Date coordinates captured. The dataset shall be in the following coordinate system:

Projected Coordinate System: St Louis County Transverse Mercator System 96
Projection: Transverse_Mercator
False_Easting: 4757208.33333333
False_Northing: 3280833.33333333
Central_Meridian: -92.45000000
Scale_Factor: 0.99998529
Latitude_Of_Origin: 46.61666667
Linear Unit: Foot_US
Geoid: (Current)

All coordinates within the CSV files shall be collected during and following construction and reflect the actual installed conditions. Survey data shall adhere to the following standards:

- The horizontal accuracy of coordinates for buried items shall be within 1.0 foot.
- The horizontal accuracy of coordinates for exposed or above grade items that may be collected as part of the record drawing survey shall be within 0.1 foot.
- Vertical elevations items other than storm or sanitary sewer related objects shall be within 0.2 feet.
- Storm and sanitary sewer invert elevations shall be within 0.05 feet.

ARTICLE IX Reimbursement of Reimbursable Costs

9.1 Partial Payment Requests

Subject to the receipt by the City of State Funds, made available pursuant to the Act, to reimburse SMDC for Reimbursable Costs incurred by SMDC in the construction of the Project, SMDC may submit a request for reimbursement of such Reimbursable Costs to the Chief Financial Officer be in the form of that attached hereto and made a part hereof as Exhibit E 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.

9.1.1 Partial Payment

Upon receipt of the Request for Partial Payment with supporting documentation approved by the Chief Financial Officer as provided for in Section 9.1 above, and subject to the provisions of that Section, the City will reimburse SMDC for the Reimbursable Costs documented in said Request for Partial Payment.

9.2 Final Payment Request

Upon issuance of the Certificate of Completion as provided for in Article VII above and the provision of the Engineering Documentation required pursuant Article VIII above, SMDC may request that the City reimburse it for Reimbursable Costs incurred by it in the Construction of the Project. Such request shall be in the form of that attached hereto and made a part hereof as Exhibit E 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.

9.2.1 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 eligible costs incurred by it in the construction of the Project upon the later for the following dates and occurrences:

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

9.2.1.2. The delivery of the Engineering Documentation required by Article VIII above.

9.2.1.3. The receipt by City of Appropriation Support Payments or Appropriation Bond funds as defined in and provided for in the Act, up to the maximum amounts set forth therein.

9.3 Maximum Amounts

Notwithstanding anything in foregoing to the contrary, the maximum amounts which the City shall be obligated to pay to SMDC to reimburse if for Reimbursable Costs incurred by it in designing and construction the Project shall not exceed Six Hundred Twenty-seven Thousand, Four Hundred Forty-four and 51/100s dollars (\$627,444.51).

9.4 Payment Source

All payments from City to SMDC shall be payable from Fund 455 Regional Exchange District.

ARTICLE X Provisions Against Liens, Assignments and Transfers

10.1 Provision Against Liens

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 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.

10.2 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, 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 VII above; and except for mortgaging approved in writing by the Chief Financial Officer, 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 XI Indemnification

11.1 Generally

SMDC will to the fullest extent permitted by law, protect, indemnify and save the 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:

11.1.1 Any injury to or death of any person or damage to property in or upon the Project or the Property 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. 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 the SMDC, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

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

11.1.3 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.

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

11.2 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 their 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 existing 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.

11.3 Exception for Acts or Omissions of City

The indemnification obligations contained in Sections 11.1 and 11.2 above shall not apply to liability to the extent caused by the acts or omissions of the City and its officers, agents, servants or employees.

11.4 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 XII Insurance

12.1 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:

12.1.1 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 Project at the date of completion (excluding footings, 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;

12.1.2 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).

12.1.3 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, City shall be provided 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.

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

12.2 Requirements of All Insurance

All insurance required under this Article shall be taken out and maintained in responsible insurance companies selected 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 for the duration of the Project. 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 Project.

12.3 Self-Insurance

Alternatively, and in lieu of the forgoing subsections 12.1.2, 12.1.3, and 12.1.4, SMDC shall provide reasonable proof of equivalent self-insurance to the City upon request.

12.4 Damage to Project

SMDC agrees to notify the City with reasonable promptness in the case of damage exceeding \$5,000 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 to or destruction of any portion of the Project, SMDC will, within a reasonable time and with due diligence repair, reconstruct and restore, or cause the repair, reconstruct 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 XIII Default

13.1 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 graced period set forth in Section 13.2 below or elsewhere herein:

13.1.1 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 payable by SMDC hereunder) with respect to the Property.

13.1.2 Failure by SMDC to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

13.1.3 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.

13.1.4 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.

13.1.5 If SMDC shall:

13.1.5.1 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

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

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

13.1.5.4 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.

13.1.5.5 Make any representation or warranty under this Agreement that proves to have been incorrect in any material respect when made.

13.1.6 If City shall:

13.1.6.1 Makes any representation or warranty under this Agreement that proves to have been incorrect in any material respect when made.

13.1.6.2 Fails to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

13.2 Remedies on Default.

Whenever any Event of Default referred to in Section 13.1 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.

13.2.1 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.

13.2.2 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 required in Section 13.2.1 above, 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.

13.2.3 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.

13.2.4 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, or applicable laws or in equity.

13.3 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.

13.4 No Implied Waiver. In the event any provision 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.

13.5 Previous Acts Deemed Approved or Waived. All actions requiring approval by the Director as set forth in Sections 5.5, 5.6, 5.7, and 6.1, occurring prior to the Effective Date of this Amendment are acknowledged by the City to be approved or waived.

ARTICLE XIV Additional Provisions

14.1 Titles of Articles and Sections.

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

14.2 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.

14.3 Modifications.

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

14.4 Counterparts.

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

14.5 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.

14.6 Termination of Agreement.

Unless terminated earlier pursuant to specific provision of this Agreement, this Agreement and the obligations of SMDC and the City shall terminate upon the completion thereof; provided, however, that any claims or causes of actions 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.

14.7 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.

14.8 Notices and Demands.

Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, nationally recognized overnight carrier, or delivered personally and delivered to:

14.8.1 In the case of SMDC:

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

14.8.2 In the case of City:
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 XV Governing Law and Venue.

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

15.2 Venue. In the event either of the parties shall resort to legal proceedings in order to enforce any of the terms of this Agreement, such proceedings shall be venued in the State of Minnesota District Court for the Sixth Judicial District in Duluth, Minnesota.

[Remainder of page left intentionally blank. Signature page to follow]

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, on behalf of itself and its subsidiaries

By: _____
Emily Larson
Its Mayor

By: _____
Its: _____

Attest:

By: _____
Ian B. Johnson
Its City Clerk

Date: _____

Approved:

Assistant City Attorney

Countersigned:

City Auditor

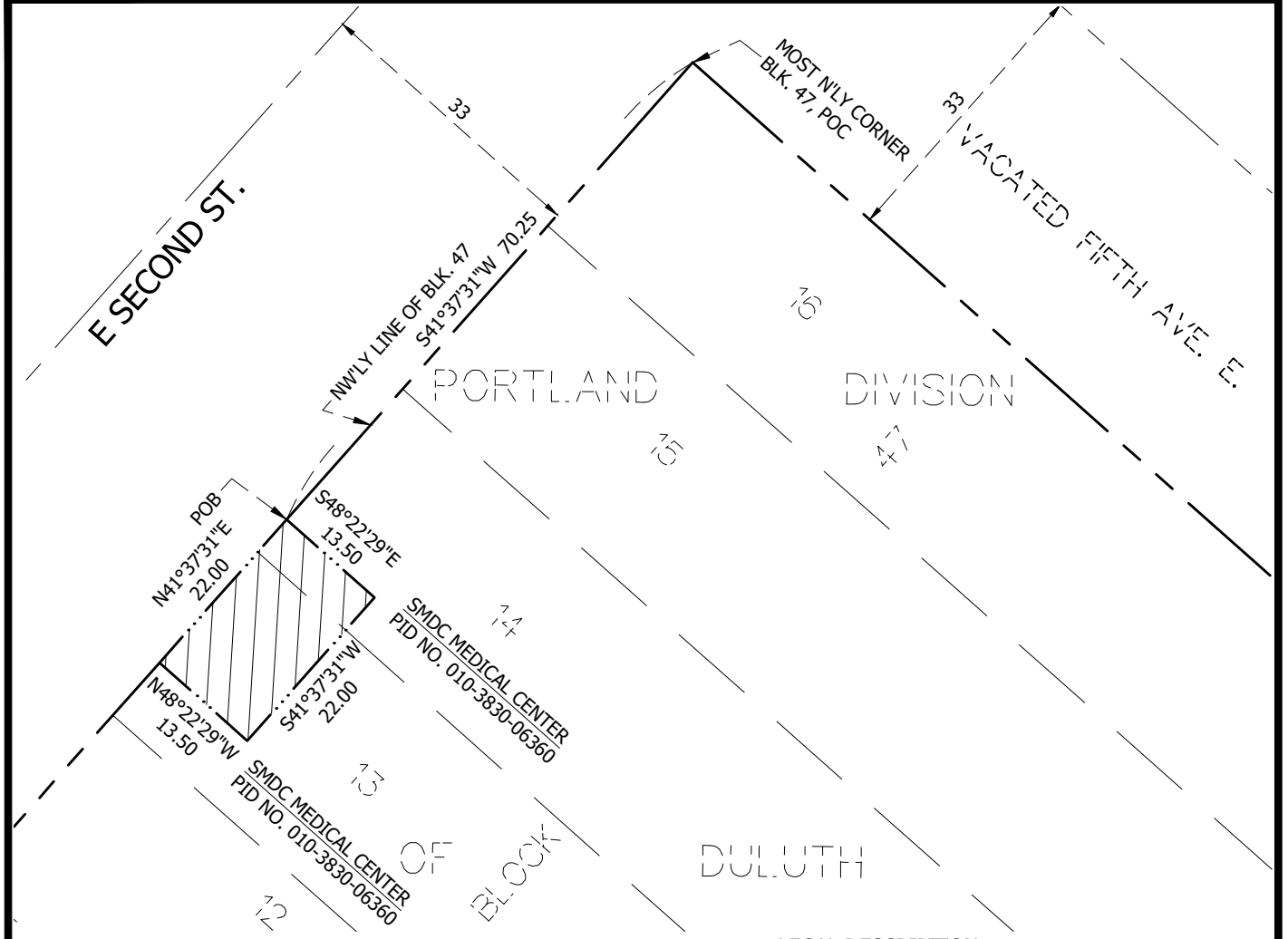
EXHIBIT A

City Construction Representatives

Title	Name	Email
Director, Public Works and Utilities	Jim Benning	jbenning@duluthmn.gov
City Engineer	Cindy Voigt	cvoigt@duluthmn.gov
Chief Engineer of Transportation	Cari Pedersen	cpedersen@duluthmn.gov
Chief Engineer of Utilities	Eric Shaffer	eshaffer@duluthmn.gov

EXHIBIT B

Real Property Legal Description and Depiction



LEGAL DESCRIPTION

A parcel of land lying over, under and across that part of Lots 13 and 14, Block 47, PORTLAND DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota described as follows:
 Commencing at the most Northerly corner of said Block 47; thence on an assumed bearing of South 41 degrees 37 minutes 31 seconds West, along the Northwesternly line of said Block 47 for a distance of 70.25 feet to the point of beginning of the easement herein described; thence South 48 degrees 22 minutes 29 seconds East 13.50 feet; thence South 41 degrees 37 minutes 31 seconds West 22.00 feet; thence North 48 degrees 22 minutes 29 seconds West 13.50 feet to said Northwesternly line of said Block 47; thence North 41 degrees 37 minutes 31 seconds East, along said Northwesternly line 22.00 feet to the point of beginning.
 Said parcel contains 297 Sq. Feet.

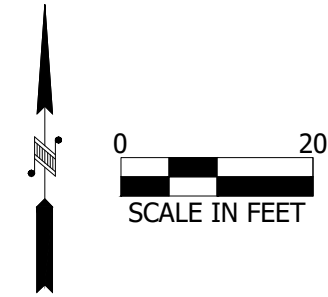
LEGEND



PROPOSED PARCEL AREA

POC-POINT OF COMMENCEMENT
 POB-POINT OF BEGINNING

— — — — — CENTER LINE
 — — — — — RIGHT OF WAY LINE
 — ··· — ··· — PROPOSED PARCEL LINE
 — — — — — EXISTING PLAT LINE



Approved by the City Engineer of the City of Duluth, MN this _____ day of _____ 20__

By _____

SURVEYOR'S NOTES

1. BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
2. THIS IS NOT A BOUNDARY SURVEY.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

David R. Evanson
 David R. Evanson
 MN License #49505

DATE:02-01-2023

RESTRICTIVE COVENANT EXHIBIT

CLIENT:JOHNSON, KILLEN & SIELER

REVISIONS:

ADDRESS:502 E 2ND ST,
 DULUTH, MN 55805

DATE:02-01-2023

JOB NO:23-005

SHEET 1 OF 1

ALTA
 LAND SURVEY COMPANY

PHONE: 218-727-5211
 LICENSED IN MN & WI
 WWW. ALTALANDSURVEYDULUTH.COM

LEGEND



PROPOSED
PARCEL
AREA

POC-POINT OF COMMENCEMENT
POB-POINT OF BEGINNING

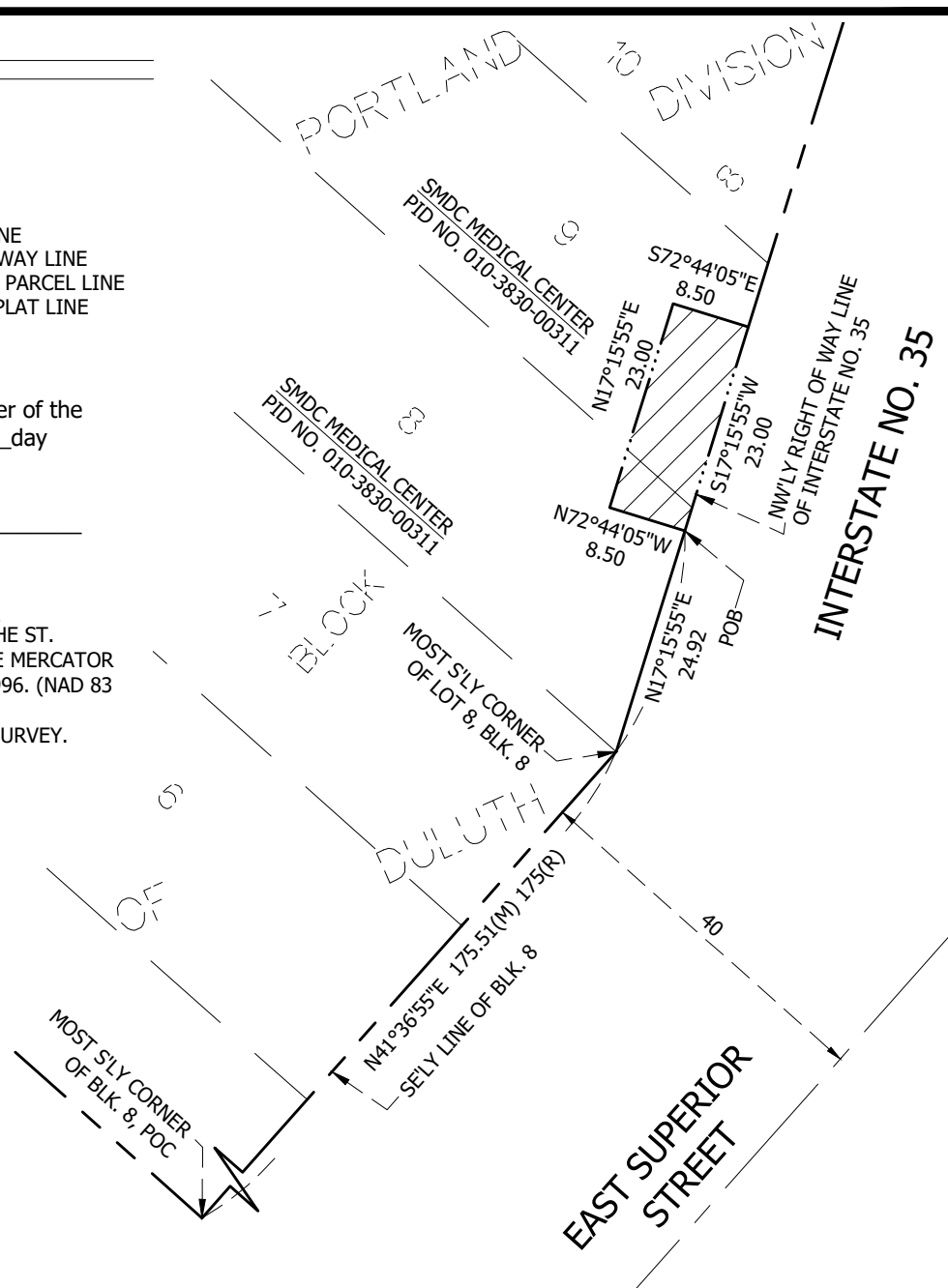
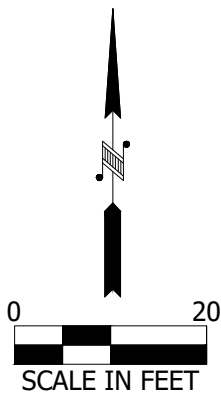
- — — — — CENTER LINE
- — — — — RIGHT OF WAY LINE
- ······ — ······ PROPOSED PARCEL LINE
- — — — — EXISTING PLAT LINE

Approved by the City Engineer of the
City of Duluth, MN this _____ day
of _____ 20__

By _____

SURVEYOR'S NOTES

1. BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
2. THIS IS NOT A BOUNDARY SURVEY.



LEGAL DESCRIPTION

A parcel of land lying over, under and across that part of Lots 8 and 9, Block 8, PORTLAND DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota described as follows:
Commencing at the most Southerly corner of said Block 8; thence on an assumed bearing of North 41 degrees 36 minutes 55 seconds East, along the Southeasterly line of said Block 8 for a distance of 175.51 feet to the most Southerly corner of Lot 8, said Block 8, said point being on the Northwesterly right of way line of Interstate No. 35; thence North 17 degrees 15 minutes 55 seconds East, along the Northwesterly right of way line of Interstate No. 35 for a distance of 24.92 feet to the point of beginning of the easement herein described; thence North 72 degrees 44 minutes 05 seconds West 8.50 feet; thence North 17 degrees 15 minutes 55 seconds East 23.00 feet; thence South 72 degrees 44 minutes 05 seconds East 8.50 feet to said Northwesterly right of way line of Interstate No. 35; thence South 17 degrees 15 minutes 55 seconds West, along said Northwesterly right of way line 23.00 feet to the point of beginning.
Said parcel contains 195 Sq. Feet.

RESTRICTIVE COVENANT EXHIBIT

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

David R. Evanson
David R. Evanson
MN License #49505

DATE:02-01-2023

CLIENT:JOHNSON, KILLEN & SIELER

REVISIONS:

ADDRESS:502 E 2ND ST,
DULUTH, MN 55805

DATE:02-01-2023

JOB NO:23-005

SHEET 1 OF 1



PHONE: 218-727-5211
LICENSED IN MN & WI
WWW. ALTALANDSURVEYDULUTH.COM

EXHIBIT C

Form Restrictive Covenant

RESTRICTIVE COVENANT

The undersigned has a fee simple interest in the real property legally described in **Exhibit A** attached hereto and all facilities situated thereon (the “Restricted Property”). As owner of such Restricted Property the undersigned does hereby declare, for the benefit of the City of Duluth and the State of Minnesota, that such interest in the Restricted Property is subject to those provisions, requirements, restrictions, and encumbrances contained in the “General Fund Appropriation Bond Proceeds Master Grant Agreement Construction Grant for the Duluth Regional Exchange District Project” dated June 14, 2019, as amended from time to time, between the City of Duluth and the Minnesota Department of Employment and Economic Development. The Restricted Property shall remain subject to such provisions, requirements, restrictions, and encumbrances until it is released therefrom by a written release in recordable form signed by the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. Upon termination of the Grant Agreement by its terms, the Commissioner of Minnesota Management and Budget shall provide a release of the Restrictive Covenant in a recordable form upon a written request for such release by an owner of the property restricted by the Restrictive Covenant.

The legal description attached hereto was prepared based upon plans and specifications for the Restricted Property. Upon completion of the structural elements of the Restricted Property, the undersigned will cause a revised legal description to be prepared in accordance with an as-built survey of the Restricted Property. Following preparation of the revised legal description of the Restricted Property, the undersigned shall amend this Restrictive Covenant to reflect the revised legal description and cause such amendment to be recorded with the appropriate recording offices in St. Louis County, Minnesota.

(SIGNATURE BLOCK AND ACKNOWLEDGMENT)

This Restrictive Covenant was drafted by:

(Name and address of individual

who drafted the Restrictive Covenant)

Exhibit A to Restrictive Covenant
**LEGAL DESCRIPTION
OF RESTRICTED PROPERTY**

EXHIBIT D

Procurement and Contracting Requirements Checklist

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 communitybenefits@duluthmn.gov	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 https://mn.gov/mdhr/certificates/apply-renew/workforce-certificate/	Recommended.
Steel products must be made from iron ore mined from the taconite assistance area.	Yes.
B3 Requirements must be met. See https://www.b3mn.org/wp-content/uploads/2017/05/B3Version30_All_20170822.pdf for guidelines.	Yes.
Ensure that all pay applications identify public improvements seperately 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, veterean-owned and other targeted group businesses. Directly solicit businesses by contacting potential bidders listed on the MN UCP website.	Yes.
City Bidding Requirements	
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.

¹ 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

Pipefitters #11

Roofers #96

Sheetmetal #10

Sprinklerfitters #668

Teamsters #346

ASBESTOS WORKERS LOCAL 49

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

CARPENTERS LOCAL 361

Chris Hill
5238 Miller Trunk Hwy
Hermantown, MN 55811
(218) 724-3297 / Fax# 724-8536
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

MILLRIGHTS & MACHINERY ERECTORS LOCAL 1348

Wayne Nordin
726 4th Street N
Virginia, MN 55792
(218) 741-6314 / Fax# 741-6017
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

SPRINKLER FITTERS LOCAL 669

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

BOILERMAKERS LOCAL 647

Bill Polchow
1007 NW 4th Street, Ste C
Grand Rapids, MN 55744
(218) 326-2522 / Fax# SAME
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

IRON WORKERS LOCAL 512

Darrell Godbout, *Vice President*
3752 Midway Road
Hermantown, MN 55810
(218) 724-5073 / Fax# 724-1525
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
mwparrotta@local49.org

ROOFERS LOCAL 96

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

TEAMSTERS LOCAL 346

Rod Ainstead
2802 West 1st Street
Duluth, MN 55806
(218) 628-1034 / Fax# 628-0246
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@baclmn-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

LABORERS LOCAL 1091

Dan Olson, *Secretary*
2002 London Road #119
Duluth, MN 55812
(218) 728-5151 / Fax# 728-2431
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

SHEET METAL WORKERS LOCAL 10

Doug Christy
6279 Industrial Road
Saginaw, MN 55779
(218) 724-6873 / Fax# SAME
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

We look forward to working together to achieve our goals.

Thank you!

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Ashbach".

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. IMPLEMENTATION. ... 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. RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA. "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>	
(1)	<p>The Contractor:</p> <ul style="list-style-type: none">(i) is in compliance with workers' compensation and unemployment insurance requirements;(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative.
(2)	<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">(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;(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;(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;(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;(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(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;*(vii) has been convicted of a violation of section 609.52, subd 2 (19).

(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.

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

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

SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-1	
<p>By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:</p> <p>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.</p>	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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. ...

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

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

SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-2	
<p>By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:</p> <p>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.</p>	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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/>

EXHIBIT E

Form Reimbursable Payment Request


FORM REQUEST FOR REIMBURSEMENT

<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Check #</u>	<u>Lien Waiver (Y/N)</u>	<u>Medical District Ramp</u>	<u>New Parking Ramp</u>	<u>6th Ave. E Construction</u>	<u>Hospital Demolition</u>	<u>Road, Utility Site Improve.</u>	<u>Steam Improve.</u>	<u>Non-Grant Eligible</u>	<u>Invoice Total</u>
ABC Construction	9/1/2019	Pay Application #1	123456	Y	-	80,000.00	55,000.00	-	14,000.00	-	50,000.00	199,000.00
123 Engineering	9/2/2019	10000	23456	N	25,000.00	-	-	-	10,000.00	-	-	35,000.00
Draw Request #1 Total					<u>25,000.00</u>	<u>80,000.00</u>	<u>55,000.00</u>	<u>-</u>	<u>24,000.00</u>	<u>-</u>	<u>50,000.00</u>	<u>234,000.00</u>
								}				
								184,000.00		To draw request		

REIMBURSEMENT PAYMENT REQUEST

Submit completed form via email to your DEED Program Contact



SECTION 1:					
* VENDOR ID + REMIT TO LOCATION CODE (SWIFT):			* GRANT NAME: Regional Exchange District		
* VENDOR/GRANTEE NAME: City of Duluth			* GRANT NUMBER:		SWIFT CONTRACT ID
REMIT TO ADDRESS: 411 West 1st Street Room 120 Duluth , MN 55802			GRANT PERIOD FROM:		GRANT PERIOD TO:
			REIMBURSEMENT PERIOD FROM:		REIMBURSEMENT PERIOD TO:
FORM PREPARED BY: Wayne Parson		PHONE: 218-730-5028	GRANT NUMBER:	PAY REQUEST #: 1	FINAL: YES [] NO [x]
EMAIL: wparson@duluthmn.gov			DEED PROGRAM CONTACT NAME: Erin Welle		DEED PROGRAM CONTACT EMAIL: erin.welle@state.mn.us

SECTION 2: * DEED PROGRAM USE ONLY									DEED Original Grant Amount	\$0.00	
SWIFT PO ID	PO LINE/DISTRIBUTION	AMOUNT	FUND	FIN DEPT ID	APPROP ID	ACCOUNT	AGENCY COST	PROJECT ID	Amount Disbursed	\$0.00	
	1										
	2								Balance AFTER this request	\$0.00	
TOTAL			NOTES:								\$0.00

SECTION 3:										
	Column 1	Column 2	Column 3	Column 4	Column 5					
APPROVED ELIGIBLE ACTIVITIES FROM GRANT AGREEMENT (GA)	APPROVED COSTS FROM GRANT AGREEMENT	TOTAL ELIGIBLE INVOICES THIS DRAW	PREVIOUS DEED PAYMENTS TO DATE	DEED REQUESTS: PREVIOUS AND CURRENT	REMAINING UNSPENT BALANCE OF APPROVED COSTS					
Medical District Ramp										
New Parking Ramp										
6th Ave E. Extension										
Hospital Demolition										
Road, Utility, & Site Improvements										
Steam Improvements										
TOTAL	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00					
SWIFT ACTIVITY #884			\$0.00		TOTAL SWIFT ACTIVITY #884			\$0.00		

SECTION 4: AGREEMENT & AUTHORIZED APPROVAL
 By submitting this form, I certify that the request is in accordance with DEED cash management requirements and appropriate contract terms; and the costs are eligible for this project; the data reported is correct and the amount of the DEED Authorized signature certifies that this request has been reviewed and meets eligibility under the grant and payment is therefore recommended.

Grantee Authorized Signature _____ Date _____
 Grantee Typed Name and Title _____

DEED Staff Authorized Approval _____ Date _____
 Staff Typed Name _____

DEED Authorized Approval _____ Date _____
 Typed Name _____