

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

COOPERATIVE  
AGREEMENT  
BETWEEN  
THE COUNTY OF ST. LOUIS  
AND  
THE CITY OF PROCTOR  
AND  
THE CITY OF DULUTH  
TO

Perform Bituminous Reclamation and Bituminous Paving on Boundary Avenue from 5<sup>th</sup> Street to 9<sup>th</sup> Street and on 3<sup>rd</sup> Avenue from 175' south of 5<sup>th</sup> Street to 5<sup>th</sup> Street, in the City of Proctor and City of Duluth, St. Louis County, Minnesota.

CP 0014-278072/CP 0000-279948

Prepared by the St. Louis County Highway Engineering Division

---

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

THIS AGREEMENT is made and entered into by and between the County of St. Louis, a duly organized county within the State of Minnesota, hereinafter referred to as the “County”, and the City of Proctor and City of Duluth, hereinafter referred to as “Proctor” and “Duluth”, both municipal corporations in St. Louis County, Minnesota.

WHEREAS the County intends to undertake a surface rehabilitation project on a portion of Boundary Avenue (CSAH 14) from Trunk Highway 2 to the northerly radius of the 5<sup>th</sup> Street intersection, hereinafter referred to as “CP 0014-278072”; and

WHEREAS, Duluth and Proctor jointly intend to undertake a Full-depth Reclamation project, as the same is hereinafter defined, on that portion of Boundary Avenue from the northerly radius of the 5<sup>th</sup> Street intersection to the southerly radius of the 9<sup>th</sup> Street intersection, said road to be 28 feet wide with a 1 foot gravel shoulder on the east side thereof, hereinafter referred to as “Duluth / Proctor Project 1502”; and

WHEREAS, for the purpose of this Agreement, a “Full-depth Reclamation Project” is defined as a project which pulverizes the entire depth of the existing pavement structure and blends it with a portion of the base/sub-base material, blending the material to a homogeneous state with a typical particle size of 2 inches and which is then paved over with at least 3 ½ inches of hot mix asphalt, all in accordance with standard road engineering practices; and

WHEREAS, Proctor intends to undertake a surface rehabilitation on 3<sup>rd</sup> Avenue from 175’ south of 5<sup>th</sup> Street to the southerly radius of the 5<sup>th</sup> Street intersection, hereinafter referred to as “Proctor Project”; and

WHEREAS, CP 0014-278072, the Duluth/Proctor Project 1502 and the Proctor

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

Project, subject to its not being constructed hereunder pursuant to Paragraph 6 below, shall hereinafter be collectively referred to as the "Project"; and

WHEREAS, the County shall prepare a contract for the construction of the Project as provided for below intended for letting and construction as a single, unitary construction project in 2017 (the "Contract"), and it is justified and mutually beneficial for Duluth, Proctor, and the County to combine these projects to mutually benefit from economies of scale, mobilization, and contract administration; and

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

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The County shall prepare plans and specifications for the construction of the Project. The County shall include the plans and specifications in the proposed bid package, from which the costs for the proposed Duluth / Proctor Project 1502 and Proctor Project will be determined by the bid prices in accordance with the terms of the proposal.
2. Prior to advertising for bids on the Project, the County shall submit the plans and specifications for the Project and the form of the bid to Duluth and Proctor for their review and approval, which approval shall not be unreasonably withheld. Rejection or approval of the plans and specifications for the Project and the form of the bid shall be made within Five (5) working days after submission of the same to Duluth and Proctor by the County.

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

3. The County shall perform all construction engineering, staking, inspection, material certification and acceptance, and measurement of all items in accordance with State Aid standards. The County shall perform contract administration at no cost to Duluth or Proctor.
4. The construction costs of Duluth / Proctor Project 1502 shall be covered equally by Proctor and Duluth, and the construction costs of the Proctor Project shall be covered by Proctor. The County shall prepare bid documents by compiling pay items from the CP 0014-278072, Duluth / Proctor Project 1502, and Proctor Project, and shall award the Contract for said projects to the lowest responsible bidder in accordance with current specifications. After contract letting and prior to contract award, the County will provide Proctor and Duluth with an abstract of all bids received and upon written approval of such costs by Duluth City Engineer and Proctor City Administrator for the work for Duluth/ Proctor Project 1502 and Proctor Project, County may award the bid to the low bidder and enter into a construction contract for the construction of the Project . The County must obtain the concurrence of Proctor and Duluth prior to awarding the Contract. Such concurrence or rejection shall be provided to the County by Proctor and Duluth within Five (5) working days.
5. If the bid abstract for the Proctor Project is equal to or less than \$50,000.00, Proctor shall accept the bid. If Proctor does not accept a bid equal to or less than \$50,000.00, Proctor shall reimburse the County \$5,000.00 for design and project administration costs related to the Proctor Project. The \$5,000.00 reimbursement

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

for design and project administration costs will not be required if the bid abstract for the Proctor Project is greater than \$50,000.00.

6. All further costs for change orders, work orders and supplemental agreements shall be allocated and paid as provided for in Paragraph 5 above.
7. Any field changes related to Duluth / Proctor Project 1502 shall be authorized by both the Duluth City Engineer and the Proctor City Administrator prior to the work occurring. Any field changes related to Proctor Project shall be authorized by the Proctor City Administrator prior to the work occurring.
8. The County shall take all actions necessary to prepare the project for construction, including, but not limited to obtaining any and all applicable environmental permits as required by law, temporary storage sites, temporary or permanent easements, and site restoration at its cost and expense.
9. In the event that Proctor or Duluth takes any action that results in lost time or efficiency, or a delay of completion of the County's construction of the County roads, Proctor or Duluth shall bear the full financial responsibility for any claims or causes of action arising therefrom.
10. Each party designates an Authorized Representative for the purpose of administering this Agreement. A party's authorized representative has the authority to give and receive notices, and to make any other decision required or permitted by this Agreement.

- a. For the County:

Steve Krasaway, P.E.

Public Works Department / Resident Engineer

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

4787 Midway Road  
Duluth, MN 55811  
(218) 625-3841

b. For the City of Proctor:

Mark Casey  
City Administrator  
100 Pionk Drive  
Proctor, MN 55810  
218-628-6261  
mcasey@proctormn.gov

c. For the City of Duluth:

Cindy Voigt  
City Engineer  
411 W 1<sup>st</sup> Street, Room 211  
Duluth, MN 55802  
218-730-5071  
cvoigt@duluthmn.gov

11. The County will submit invoices to Duluth and Proctor concurrently with Pay Requests made to the Contractor for the Duluth and Proctor non-participating items included in the Pay Request. Duluth and Proctor shall pay the County invoices within 35 days upon receipt.
- Duluth and Proctor shall make final payment to the County after substantial completion of the project. Payment shall be received by the County from Duluth and Proctor within 35 days of the date that the statement of final contract

quantities is approved by the Contractor. In the event that the amount of funds advanced by Duluth or Proctor is in excess of the final cost of its share of improvements, the excess shall be returned to Duluth or Proctor without interest. The County reserves the right to request additional funds for project overruns up to 95 percent of the work certified until the time of final billing or at such time the retainage may be reduced. Provided, however nothing to the contrary herein withstanding, Duluth's payment obligations und this Agreement shall not in any event exceed the amount of \$100,000 payable from Permanent Improvement Fund 411-035-5530 (PI Fund, Capital Projects, Improvements Other than Buildings).

12. This Agreement may be terminated only as follows:

- a. At any time by mutual agreement of the parties;
- b. By any party at any time upon 30 days' notice in the event of default by a party, provided however that such termination shall not be effective if the defaulting party cures such default by end of the 30-day notice period. In the event of such termination, the County, Duluth and Proctor shall be entitled to pro-rata payment for work and services performed up to the effective date of such termination.

13. Each of the parties hereto hereby agrees that it shall defend, indemnify and save harmless the other parties and all of their employees and agents from any and all claims, demands actions or causes of action of whatever nature or character arising out of or by reason of their negligent or intentional acts or omissions in the

execution or performance of the work provided herein.

14. Any and all employees of the County, while engaged in the performance of any work or service which the County is specifically required to perform under this Agreement, shall be considered employees of the County, and not Duluth or Proctor, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the County.
15. Any and all employees of Duluth, while engaged in the performance of any work or service which Duluth is specifically required to perform under this Agreement, shall be considered employees of Duluth, and not the County or Proctor, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of Duluth.
16. Any and all employees of Proctor, while engaged in the performance of any work or service that Proctor is specifically required to perform under this Agreement, shall be considered employees of Proctor, and not the County or Duluth, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees,



St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

shall be the sole obligation of Proctor.

17. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, Subd. 1a.

COUNTY OF ST. LOUIS

\_\_\_\_\_  
Chair of the County Board

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

Dated \_\_\_\_\_

APPROVED AS TO FORM AND EXECUTION:

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

By \_\_\_\_\_  
County Attorney  
Damion No. 2016-10843

CITY OF PROCTOR

COUNTERSIGNED:

\_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Administrator

(City Seal)

CITY OF DULUTH

COUNTERSIGNED:

\_\_\_\_\_  
Mayor

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

St. Louis County  
Boundary Avenue and 3<sup>rd</sup> Avenue Pavement Rehabilitation  
City of Proctor and City of Duluth (City Project Number 1502)  
St. Louis County Proj. No. CP 0014-278072/CP 0000-279948

(City Seal)

APPROVED AS TO FORM:

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

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