

AGREEMENT

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

WITNESSETH:

WHEREAS, the City has applied for and secured Minnesota Department of Natural Resources (DNR) State Park Road Account (SPRA) funding for the reconstruction of Commonwealth Avenue located between the intersection with Prescott Street and the Boy Scout Landing, a length of approximately 600 feet, a City of Duluth street, hereafter referred to as the “Project”; and

WHEREAS, the County is required to act as the funding agent and contract administrator for the State of Minnesota in administering DNR SPRA funds and shall administer the construction contract for the Project, hereafter referred to as the “Contract”; and

WHEREAS, the City shall perform design engineering and construction engineering on the Project; and

THEREFORE, IT IS MUTUALLY AGREED AND UNDERSTOOD, with regard to the aforementioned improvements on Commonwealth Avenue, the parties hereby agree to the following:

1. The City shall prepare plans and specifications for the Project in accordance with the 2016 Edition of the Minnesota Department of Transportation (MnDOT) “Standard Specifications for Construction”.
2. The Plan shall meet the Minimum Geometric Design Standards for SPRA projects per applicable state statutes and laws.
3. The City shall obtain all necessary permits and environmental statements as required by law for completion of the Project, including, but not limited to permits required by the Minnesota Pollution Control Agency, U.S. Army Corp. of Engineers, and the DNR. The City shall bear the cost of all permits and fees. All permits shall be obtained prior to advertising of the Project.

4. The City shall acquire and pay for all permanent and temporary right of way required for the Project.
5. The City shall take all actions necessary to prepare the Project for construction, including, but not limited to, coordination with utilities, including relocation of existing facilities.
6. The City shall be responsible for any project costs in excess of those SPRA funds authorized to St. Louis County by the Minnesota Department of Natural Resources. The County shall not be responsible for any costs associated with the Project including cost overruns, changes in contract quantities, changes in site conditions, or any other reason not stated here that would cause a change in project cost.
7. The City shall prepare the plan, specifications and all necessary information required for the proposal, which shall constitute "Design Engineering". The City shall perform all necessary construction engineering and staking, material testing, record keeping and construction inspection, which shall constitute "Construction Engineering and Inspection". The City shall provide to the County contract items and quantities necessary to make timely payments to the contractor. The City shall report any observed deficiencies to the County immediately. Construction record keeping shall follow the MnDOT Contract Administration Manual.
8. The County shall conduct periodic on-site inspections during the construction operation on the Project, review materials and construction techniques being used in the work, and report any observed deficiencies to the City immediately.
9. The City Public Works Director is authorized to review and approve the lowest responsible bid.
10. The County shall advertise, receive bids, confer with the City, and, once approved by the City public works director, award the contract to the lowest responsible bidder, make payments to the contractor, perform periodic on site inspections, and assist in processing the final payment documentation in accordance with MnDOT standards. For these services, the City shall reimburse the County for all direct and indirect costs incurred to complete the work not to exceed \$2,500.
11. In the event that the City rejects all bids, the City shall reimburse the County for all costs incurred by the County to that date.

12. In the contract, pay items eligible for SPRA funds shall be shown as “participating” and those pay items not eligible shall be shown as “non-participating”. If the successful contractor’s bid for participating items is greater than the SPRA funding(\$432,355: \$375,260.00 original SPRA funds and \$57,095 additional SPRA funds received), the City shall pay the County 95% of the difference of the successful contractor’s bid for participating items and the SPRA funding limit within 30 days after the award of the contract. Additionally, the City shall pay the County 95% of the total cost of non-participating items in the Contract within 30 days after the award of the contract.
13. The City shall make final payment to the County after final acceptance of the Project. Final payment shall include all required funds for participating and non-participating items and reimbursement for County services. Payment shall be due within 30 days of receipt of valid statement of final contract quantities. In the event that the amount of funds advanced by the City is in excess of the required funds, the excess funds shall be returned to the city without interest.
14. The City shall use One Office for all aspects of project management. The City shall coordinate with One Office to set up One Office as a consultant for this Project. The County will create and process Pay Requests from One Office upon request from the City.
15. The City shall continue to enforce applicable traffic and parking restrictions on Commonwealth Avenue during the construction work on this Project.
16. The City shall indemnify, hold harmless and defend the County, its officers, employees and agents, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorneys’ fees, which the County, its officers, employees or agents, may hereafter sustain, incur or be required to pay, arising out of or by reason of any act of omission of the City, its officers, employees or agents, in the execution, performance, or failure to adequately perform the City’s obligations pursuant to this Agreement.
17. Any and all claims against the County, its agents, servants or employees that arise or may arise from or in relation to the improvements to Commonwealth Avenue as set forth herein shall in no way be the responsibility of the County. The City shall indemnify, hold harmless and defend the County, its officers and employees against any and all such liability, loss, costs, damages, expenses, claims or actions, including

attorney's fees which the County, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of the improvements to Commonwealth Avenue as set forth herein.

18. The County shall indemnify, hold harmless and defend the City, its officers, employees and agents, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorneys' fees, which the City, its officers, employees or agents, may hereafter sustain, incur or be required to pay, arising out of or by reason of any act of omission of the County, its officers, employees or agents, in the execution, performance, or failure to adequately perform the County's obligations pursuant to this Agreement.

IT IS FURTHER AGREED, that 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 only and not of the City, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the County.

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CITY OF DULUTH

COUNTY OF ST. LOUIS

By: _____
Mayor

By: _____
Chair, County Board

Date: _____

Date: _____

By: _____
City Clerk

By: _____
Public Works Director/Highway Engineer

Date: _____

Date: _____

By: _____
City Auditor

By: _____
County Auditor

Date: _____

Date: _____

APPROVED AS TO FORM:

**APPROVED AS TO FORM AND
EXECUTION:**

By: _____
City Attorney

By: _____
Assistant County Attorney

Date: _____

Date: _____