

STATE OF MINNESOTA JOINT POWERS AGREEMENT

This Agreement is between the State of Minnesota, acting through its Commissioner of the **Minnesota Pollution Control Agency**, 520 Lafayette Road North, St. Paul, MN 55155 ("State" or "MPCA") and **City of Duluth** 411 West 1st Street, Duluth, MN 55802 ("Local Governmental Unit" (LGU) or "City").

Recitals

1. Under Minn. Stat. §§ 15.061 and 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of the **Minnesota Slip Dock Wall Reconstruction and SS William Irvin Removal Project** as described in the plans and specifications to City of Duluth Bid nos. 17-0594 – Steel Supply, 17-11AA – Steel Coating, and 17-0596 – General Construction ("Project"), in order to complete the remediation of the contaminated sediment in the Minnesota Slip.
3. The sediment cleanup will be performed as part of a Great Lakes Legacy Act Project Agreement between the MPCA and the United States Environmental Protection Agency (U.S. EPA) through funding sponsored by the Great Lakes Restoration Initiative. The funding is dependent on the State providing 35% of the costs of the Minnesota Slip cleanup project. The funding to meet this 35% cost sharing obligation is provided for through state bonding.
4. The MPCA, the City and the Duluth Entertainment and Convention Center Authority (the "DECC") have proposed to work cooperatively on completing three stages of work that will result in sediment cleanup of the Minnesota Slip. Each stage is needed to complete the cleanup. The three stages consist of (i) the City repairing the dock wall on the west and north sides of Minnesota Slip and a portion of the harbor dock wall; (ii) the DECC temporarily relocating the U.S. Steamship William A. Irvin outside of the slip to allow cleanup of the sediment; and (iii) the MPCA performing the sediment cleanup in Minnesota Slip. The estimated costs for repairing the dock wall is \$6,687,385. As hereinafter set forth, the MPCA has agreed to provide the City with \$2,155,660 to go towards the costs of repairing the dock wall, and the City will need to provide a match of an estimated amount equal to \$4,531,725.
5. The State's portion of the costs is funded through state bonding for cleanup projects performed pursuant to Great Lakes Legacy Act Agreements.
6. The City represents that it is duly qualified and agrees to perform all services described in this Agreement to the satisfaction of the State.

Agreement

1 Term of Agreement

- 1.1 **Effective date: November 27, 2017**, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later. The State will execute this Joint Powers Agreement after it executes the Great Lakes Legacy Act Project Agreement between the MPCA and the U.S. EPA for cleanup of the Minnesota Slip.
- 1.2 **Expiration date: September 30, 2018**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 Agreement between the Parties

The LGU, who is not a state employee, will conduct the Project and follow the Budget for the said Project as specified in **Attachment A – Project Workplan**, which is attached and incorporated into this Agreement. No terms or conditions of the LGU's proposal will be construed to modify, diminish, or derogate the terms and conditions of this Agreement.

3 Payment

The LGU will be paid for the materials, labor, construction, and administrative costs as set forth in **Attachment B – Project Budget**, which is attached and incorporated into this Agreement.

The total obligation of the State for all compensation and reimbursements to the LGU under this Agreement will not exceed **\$2,155,660 (Two million, one hundred fifty five thousand, six hundred sixty dollars and zero cents)**.

The LGU will only be paid for costs incurred after the effective date of this agreement. Costs incurred prior to the effective date of this agreement are not eligible for payment by the State.

The State will promptly pay the LGU after the LGU presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely as services listed in **Attachment A – Project Workplan** are performed. Invoices must reference the SWIFT Contract number, Purchase Order number, and the name of the State's Authorized Representative and will be submitted electronically to: mPCA.ap@state.mn.us

If there is a problem with submitting an invoice electronically, please contact the MPCA's Accounts Payable Unit at 651-757-2491.

The LGU shall submit an invoice for the final payment upon submittal of the final progress and financial report within 30 (thirty) days of the original or amended expiration date of this Agreement. The State reserves the right to review submitted invoices after 30 (thirty) days and make a determination as to payment.

4 Authorized Representatives

The State's Authorized Representative/Project Manager is **Heidi Bauman**, 525 Lake Ave. S, Suite 400, Duluth, MN 55802, 218-302-6607, Heidi.bauman@state.mn.us, or her successor, and has the responsibility to monitor the LGU's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, the State's Authorized Representative/Project Manager will certify acceptance on each invoice submitted for payment.

The LGU's Authorized Representative is **Wayne Parson**, West 1st Street, Duluth, MN 55802, 218-730-5028 (phone), 218-730-5919 (fax), wparson@duluthmn.gov, or his successor. If the LGU's Authorized Representative changes at any time during this Agreement, the LGU must immediately notify the State.

5 Assignment, Change Orders Amendments, Waiver, and Contract Complete

5.1 **Assignment.** The LGU may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

5.2 **Change Orders.** If the State's Project Manager or the LGU's Authorized Representative identifies a minor change needed in the workplan and/or budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. Change Orders may not delay or jeopardize the success of the Project, alter the overall scope of the Project, increase or decrease the overall amount of the Agreement, or cause an extension of the term of this Agreement. Major changes require an Amendment rather than a Change Order. The Change Order Form must be approved and signed by the State's Project Manager and the LGU's Authorized Representative in advance of doing the work. Documented changes will then become an integral and enforceable part of the Agreement. The MPCA has the sole discretion on the determination of whether a requested change is a Change Order or an Amendment. The state reserves the right to refuse any Change Order requests.

5.3 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

5.4 **Waiver.** If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

5.5 **Contract Complete.** This Agreement contains all negotiations and agreements between the State and the LGU. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Indemnification

In the performance of this contract by the LGU, or the LGU's agents or employees, the LGU must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by the LGU's:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the LGU may have for the State's failure to fulfill its obligation under this contract.

7 State Audits

Under Minnesota Statute § 16C.05, subdivision 5, the LGU's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement.

8 Government Data Practices

The LGU and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the LGU under this Agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either the LGU or the State.

If the LGU receives a request to release the data referred to in this Clause, the LGU must immediately notify the State. The State will give the LGU instructions concerning the release of the data to the requesting party before the data is released.

9 Venue

Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

10 Termination

10.1 **Termination.** The State or the LGU may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

10.2 **Termination for Insufficient Funding.** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the LGU's Authorized Representative. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the LGU will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must notify the LGU's Authorized Representative of the lack of funding within a reasonable time of the State's receiving that notice.

11 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, the LGU certifies that as of the date of services performed on behalf of the State, the LGU, its contractors and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. The LGU is responsible for collecting all contractor and subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EveryfySubCertForm.doc>. All contractor and subcontractor certifications must be kept on file with the LGU and made available to the State upon request.

12 Prevailing Wage

Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. Prevailing wage rates are specified in **Attachment D**, which is attached and incorporated herein and made a part of this Contract. The current date on the printed rates sets the rates for the life of this Agreement.

13 Jobs Reporting

The LGU is hereby advised that this Project is funded all or in part by state bond funds or general fund-financed projects included in capital investment bills and subject to the reporting requirements of Minnesota Statute 16A.633, Subdivision 4 (MN Laws of 2012 Chapter 293, Section 28). Jobs Reporting form and requirements/instructions are located at: <http://mn.gov/admin/government/construction-projects/manuals-guidelines-forms/forms/> (scroll to “Construction Contract Forms”, click on “Jobs Reporting Form and Instructions”). The LGU should use the most current form available at this location when submitting completed Jobs Reporting forms at time of project completion. The LGU must incorporate these reporting requirements into its contracts with its subcontractors, and should impose deadlines on reporting by subcontractors so that contractors can meet the deadlines for reporting to MPCA set forth in the Jobs Reporting Instructions.