

CITY/WLSSD
SUPERIOR STREET CIPP SEWER LINING PROJECT

THIS AGREEMENT entered into as of the date of attestation thereto by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as “City”, and the SANITARY BOARD OF THE WESTERN LAKE SUPERIOR SANITARY DISTRICT, a public corporation and a political subdivision of the State of Minnesota created pursuant to Laws of Minnesota, 1971, Chapter 478, codified at Minn. Stat. Chapter 458D, hereinafter referred to as “WLSSD”.

WHEREAS, City in its capacity as a municipal entity holds and controls the public street easements in the City, including the easement for Superior Street, and as a component thereof, owns, maintains and operates the sanitary sewer system and facilities within the City, hereinafter referred to as the “City Sewers”; except for the below-described WLSSD Facilities: and

WHEREAS, City has determined that certain of the City Sewers are in need of being lined as hereinafter described in order to protect their integrity for the safe and sanitary transport of sewage, which lining project is hereinafter referred to as the “City Project”; and

WHEREAS, WLSSD, as an entity created by State law for the purpose of collecting and treating sanitary sewage from within the City of Duluth and surrounding environs, owns and operates various sanitary sewer interceptors to provide such collection services in the City including those located in the Superior Street right-of-way which are the subject of this Agreement and is similarly in need of having that portion of its collection facilities which are described as part of the WLSSD Project so lined, which project is hereinafter referred to as the “WLSSD Project”; and

WHEREAS, City and WLSSD have determined that it is in the best interests of both parties to have the WLSSD Project and the City Project, hereinafter referred to as the “Project”, designed, constructed and funded as a single project with a single designer and a single contractor, all as hereinafter provided for; and

WHEREAS, City has already obtained bids and selected a contractor in accordance with the requirements of Chapter 41 of the Duluth City Code, 1959, as amended and the City Charter.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby agree as follows:

1. Definitions:

The following terms shall have the meanings hereinafter ascribed to them:

A. City Project:

The City Project shall consist of the construction and installation of the Project in accordance with the Plans in and on those sewers described in the Plans, except those sewers described in the WLSSD Project.

B. Plans:

The Plans shall consist of the plans, specifications, including the bid documents, the City Standard Specifications as modified by Project Special Provisions, and all other documents on file in the office of the City Engineer related to City Project No 1529.

C. Project:

The installation of Cured-In-Place Pipe (CIPP) lining utilizing resin-impregnated flexible felt tubing on those sewers as described in the Plans in accordance with the requirements of the Plans, including both the City Project and the WLSSD Project.

D. The WLSSD Project:

The WLSSD Project shall consist of the construction and installation of the Project in accordance with the Plans in and on approximately 1136 lineal feet of those 24" and 36" sewers described on Sheets 2, 12 and 13 of the Plans as being owned by WLSSD. It is agreed between the parties that the estimated cost of constructing the WLSSD Project is One Hundred Seventy-two Thousand, Two Hundred Seventy-three and 60/100s Dollars (\$172, 273.60).

2. Design

WLSSD agrees that its staff has thoroughly reviewed the Plans including conducting or having had conducted any independent engineering review thereof deemed necessary by WLSSD and hereby approves of the Plans.

3. Prosecution of Work

City agrees that upon the signing of this Agreement City will proceed expeditiously to commence implementation of the Project, that the City will cause the Project to be constructed and installed in accordance with the Plans and that City will use its best efforts to complete the Project by December 31, 2016. As part of its payment process for the Project, City will require its contractor to break out from its overall payment request or requests, the portion of such request or requests representing the cost of the WLSSD Project including the share of contractors general costs such as mobilization, bonds, insurance, contract administration and other such general costs attributable to the WLSSD Project; all such costs shall be deemed to be "WLSSD Costs".

4. WLSSD Payment to City

Upon completion of the Project, City shall transmit to WLSSD a request for reimbursement in the amount of the WLSSD Costs along with supporting documentation supplied by City's Contractor. At its discretion, WLSSD may request clarification of such documentation and City agrees to cooperate with and assist WLSSD in securing such clarification. WLSSD agrees to reimburse City for the WLSSD Costs within Thirty (30) days of the transmission of the request for reimbursement from City to WLSSD; provided that the City's Finance Director may extend the time for payment in the event that the Finance Director determines that WLSSD has reasonable objection to nature or quality of such documentation.

5. Independent Contractor

A. Except as herein specifically provided for, it is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting one party as an agent, representative or employee of the other party for any purpose or in any manner whatsoever.

B. WLSSD and any officers or employees thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of WLSSD while so engaged and any and all claims whatsoever on behalf of WLSSD arising out of employment or alleged employment, including without limitation, claims of discrimination against WLSSD, its officers, agents, contractors or employees shall in no way be the responsibility of City. WLSSD and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from the City. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless WLSSD from liability or judgments arising out of the intentional or negligent acts or omissions of WLSSD while performing the work specified by this Agreement.

C. Any officers, employees or agents of the City shall not be considered an employee of WLSSD, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of such City officer, employee or agent while so engaged and any and all claims whatsoever on behalf of the City arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents, contractors or employees shall in no way be the responsibility of WLSSD. The City's officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from WLSSD. Furthermore, WLSSD shall not, in any way, be responsible to defend, indemnify or save harmless the City from liability or judgments arising out of the intentional or negligent acts or omissions of the City while performing the work specified by this Agreement.

6. Contractor-Insurance and Indemnity

City agrees that all contracts for construction of the Project shall include a requirement that the contractor agree to defend, indemnify and insure WLSSD in the same manner and to the same extent that such contract requires the contractor to defend, indemnify and insure the City.

7. Warranties

City agrees that any contract entered into by City for construction of the Project shall specifically provide that WLSSD shall be deemed to be an intended third party beneficiary of any warranties arising out of the work related to the WLSSD Project.

10. Default and Remedies

In the event that either party shall fail to perform any obligation of said party owed to the other party hereunder, the non-defaulting party may give notice in writing to the defaulting party setting forth the obligation or obligations which the defaulting party shall have failed to perform

in conformance with the requirements of this Agreement and upon receipt thereof the defaulting party shall immediately commence to cure any such default or, if cure cannot be reasonably commenced immediately, shall commence such cure as soon as reasonably practical and shall complete such cure as soon as is reasonably practical. If cure of such default shall not be so commenced and completed, the non-defaulting party shall be entitled to seek damages for any damages resulting from such failure to cure, injunctive relief to compel performance of any obligation under the Agreement with regard to which the defaulting party is in default or both.

11. Notices

Notices to be given hereunder shall be deemed to be sufficient if deposited in the U.S. Mail, postage prepaid to the address set forth below or if sent by e-mail to the e-mail address set forth below unless a party shall send notice to the other party as herein provided directing that such notices shall be sent to a different address:

In the case of City:	Director of Public Works and Utilities City of Duluth 411 West First Street, Room 211B Duluth, MN 55802 JBenning@duluthmn.gov
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In the case of WLSSD:	Office of the Director Western Lake Sanitary District. 2626 Courtland Street Duluth, MN 55806
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12. Applicable Law

This Agreement is made in the State of Minnesota and shall be interpreted in accordance with the laws of the State of Minnesota.

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IN WITNESS WHEREOF, the parties have hereunto set their hands.

CITY OF DULUTH, a Minnesota
municipal corporation

SANITARY BOARD OF THE WESTERN
LAKE SUPERIOR
SANITARY DISTRICT, a public
corporation and a political subdivision of the
State of Minnesota, Created pursuant to
Laws of Minnesota, 1971, Chapter 478

By: _____
Mayor

By: _____
Marianne Bohren
Its: Executive Director

Attest:

By: _____
City Clerk

Date: _____

Approved:

Countersigned:

Assistant City Attorney

City Auditor