

CONTRACT

Between

CITY OF DULUTH

and the

NORTH EAST EMERGENCY COMMUNICATIONS BOARD

and the

STATE OF MINNESOTA THROUGH ITS COMMISSIONER OF TRANSPORTATION

for the

DESIGN, PROCUREMENT, CONSTRUCTION AND OPERATION

of an

800 MHz COUNTY/REGIONAL INTEGRATED PUBLIC SAFETY
RADIO COMMUNICATION SUBSYSTEM

City of Duluth Contract No. _____

Minnesota Department of Transportation Contract No. __ 1028696__

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**COOPERATIVE AGREEMENT
FOR THE DESIGN, PROCUREMENT, CONSTRUCTION AND OPERATION OF
AN 800 MHz COUNTY/REGIONAL INTEGRATED SUBSYSTEM**

THIS AGREEMENT, made and entered into by and between the City of Duluth, a body politic and corporate, under the laws of the State of Minnesota, hereinafter referred to as the “CITY,” 411 W. First Street, Duluth, Minnesota, 55802, and the North East Emergency Communications Board, a political subdivision (“REGIONAL RADIO BOARD”) St. Louis County Sheriff's Office, 100 North Fifth Avenue West, Duluth, MN 55802, and the STATE OF MINNESOTA through its Commissioner of Transportation, MS-100, Transportation Building, 395 John Ireland Boulevard, St. Paul, MN 55155, hereinafter referred to as “Mn/DOT.”

W I T N E S S E T H:

WHEREAS, a Statewide Public Safety Radio and Communication plan, hereinafter referred to as “the Plan” has been developed and adopted in accordance with Minnesota Statutes §403.36, Subdivision 2, and it provides for the construction, ownership and operation of a statewide public safety radio and communication system; and

WHEREAS, Minnesota Statutes section 403.36 provides that the Statewide Radio Board, hereinafter referred to as “Board” has overall responsibility for the Plan, and for assuring that generally accepted project management techniques are utilized for each phase of the Plan implementation; and

WHEREAS, Minnesota Statutes section 403.37 provides that the Board is responsible for oversight of Plan implementation, and for establishing and enforcing performance and operational standards for the statewide public safety radio and communication system; and

WHEREAS, the Commissioner of Public Safety is directed by Minnesota Statutes Section 403.36 (Subdivision 1e), to implement the Plan and to contract with the Commissioner of Transportation to construct, own, operate, maintain, and enhance the elements of the backbone defined in the Plan; and

WHEREAS, the Commissioner of Transportation is directed by Minnesota Statute, Section 403.36 (subdivision 1e), to contract for, or procure by purchase or lease (including joint purchase and lease agreements), construction, installation of materials, supplies and equipment, and other services as may be needed to build, operate, and maintain the backbone of the statewide public safety radio and communication system; and

Mn/DOT is authorized to enter into this Agreement by Minnesota Statutes §174.02 and §174.70.

WHEREAS, Minnesota Statutes Chapter 403 authorizes the City of Duluth and Mn/DOT to enter into this agreement;

WHEREAS, the Board has approved the St. Louis County Local Plan for integration with the statewide public safety radio and communication system and the City of Duluth is included within the St. Louis County Local Plan as a full participant (“Local Plan”); and

WHEREAS, the parties wish to enter into an agreement setting forth their respective roles and responsibilities regarding the operation of the City of Duluth’s enhancements to the backbone of the statewide public safety radio and communication system;

NOW, THEREFORE, in consideration of the mutual undertaking and agreements hereinafter set forth, the City of Duluth, the REGIONAL RADIO BOARD and Mn/DOT agree as follows:

ARTICLE I. PURPOSE

- 1.01 The purpose of this Agreement is to define the rights and obligations of the CITY, REGIONAL RADIO BOARD and Mn/DOT with respect to the cooperative and coordinated design, procurement, construction, ownership, operation, communication facility sharing, funding and maintenance of a County/Regional Integrated Subsystem to be integrated with the ARMER public safety radio communications system.

ARTICLE II. COOPERATION

- 2.01 The CITY, REGIONAL RADIO BOARD and Mn/DOT will cooperate and use their best efforts to ensure that the various provisions of this Agreement are fulfilled. The parties agree in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner in accordance with the provisions of this Agreement.

ARTICLE III. DEFINITION OF TERMS

- 3.01 **AUTHORIZED USERS.** "Authorized Users" means those Eligible Users, as described in 3.06 below, who are authorized to operate upon the System.
- 3.02 **BACKBONE.** "System backbone" or "backbone" means a public safety radio communication system that consists of a shared, trunked, communication, and interoperability infrastructure network, including, but not limited to, radio towers and associated structures and equipment.
- 3.03 **BACKBONE ANTENNA SITE.** “Backbone Antenna Site” is comprised of the following: tower, shelter, LP tank, fence and radio equipment components. Land as defined in this agreement may or may not be included in the Backbone Antenna Site.
- 3.04 **BOARD.** "Board" or "radio board" means the Statewide Radio Board.

- 3.05 SUBSYSTEM. "Subsystems" or "public safety radio subsystems" means systems identified in the plan or a plan developed under section [403.36](#) as subsystems interconnected by the system backbone and operated by a regional radio board or local government units for their own internal operations.
- 3.06 ELIGIBLE USERS. "Eligible Users" means those public and private entities and individuals eligible to hold FCC licenses in the Public Safety and Special Emergency Radio Services as defined by 47 C.F.R. Part 90, Subparts B and C, and those entities and individuals eligible to operate radios in the Public Safety and Special Emergency Radio services under the provisions of 47 C.F.R. §90.421.
- 3.07 ITINERANT USE. "Itinerant Use" means limited temporary use of elements of the System by an Authorized User that are not Subsystem Users.
- 3.08 LAND. "Land" for the purpose of this agreement refers to the parcel of land that the Backbone and Subsystem Antenna Site is located on. Ownership of the land will be defined in this Agreement as either City, County or Mn/DOT.
- 3.09 LOCAL PLAN. "Local Plan" means the plan for a Subsystem by the Political Subdivision which has been adopted by the Political Subdivision's governing body and approved by the Board and any amendments thereto.
- 3.10 MUTUAL AID USE. "Mutual Aid Use" means limited temporary use of the elements of the System by Authorized Users that are not Subsystem Users in response to a specific incident or call for assistance.
- 3.11 PLAN. "Plan" means the plan adopted by the Board for a statewide public safety communication system in accordance with Minnesota Statutes §403.36, Subdivision 2, including subsequent amendments to the Plan adopted by the Board.
- 3.12 PROJECT DIRECTOR. "Project Director" means the person(s) designated by each party to this Agreement to represent that party's interest on all technical and contractual matters.
- 3.13 REGIONAL RADIO BOARD. "Regional Radio Board" has the meaning provided for in Minnesota Statutes §403.21, subdivision 13.
- 3.14 SUBSYSTEM ANTENNA SITE. "Subsystem Antenna Site" can be comprised of the following: tower, shelter, LP tank, fence and radio equipment components, which are added to the Backbone configuration by the CITY as part of a Local Plan enhancing the Backbone coverage. Land as defined in this Agreement may or may not be part of the Subsystem Antenna Site.

- 3.15 SUBSYSTEM USERS. “Subsystem Users” means Authorized Users who are associated with the Political Subdivision and authorized by the Political Subdivision as regular users of the Political Subdivision’s Subsystem.
- 3.16 SYSTEM. “System” collectively means the Backbone and Subsystems maintained by a Political Subdivision. For purposes of this Agreement, reference to System refers to that portion of the backbone where elements of the Political Subdivision’s Subsystem provide enhanced coverage or capacity to Authorized Users.

ARTICLE IV. TERM

- 4.01 This Agreement shall take effect upon execution by all parties hereto and appropriate state officials and shall remain in effect until such time as either the ARMER backbone or the County/Regional Integrated Subsystem is either removed from service, or is substantially replaced, at the end of its useful life, or this Agreement is terminated or canceled pursuant to Article V of this Agreement, whichever occurs first.

ARTICLE V. CANCELLATION

- 5.01 In the event the CITY does not award vendor purchase agreements for its County/Regional Integrated Subsystem pursuant to Article XV of this Agreement, this Agreement may be canceled by the CITY or Mn/DOT upon serving 30 (thirty) calendar day’s written notice of intent to cancel to the other party or parties.
- 5.02 Any material violation of the terms and conditions of this Agreement shall constitute a default. In the event of a default, the non-defaulting party or parties shall give the defaulting party or parties notice of said default. Upon notice, the defaulting party or parties shall have a period of 30 (thirty) calendar days to cure said default. If the default is not cured to the satisfaction of the non-defaulting party or parties, said party or parties may terminate this Agreement immediately.
- 5.03 All parties to this Agreement shall provide the remaining parties to this Agreement with written notice within five (5) working days of receipt or transmission of any notice of non-performance or default on the part of the defaulting party or company with which the defaulting party to this Agreement has entered into an agreement.

ARTICLE VI.
CONFORMANCE TO SRB STANDARDS, PLANS, NETWORK INTERCONNECTION
AND AUTHORIZATION FOR USE

- 6.01 The County/Regional Integrated Subsystem shall be constructed and operated in conformance with the CITY's Local Plan and technical design approved by the Regional Radio Board and the Statewide Radio Board.
- 6.02 The County/Regional Integrated Subsystem, including subscriber equipment operated on the County/Regional Integrated Subsystem, shall comply with operational, technical and performance standards established or adopted by the Regional Radio Board and the Statewide Radio Board.
- 6.03 The CITY and Mn/DOT agree to integrate the County/Regional Integrated Subsystem with the ARMER Backbone, utilizing compatible technology.
- 6.04 Any material changes and/or additions to the County/Regional Integrated Subsystem infrastructure shall be based on mutual written agreement between the CITY, and Mn/DOT.
- 6.05 Subject to the terms and conditions of this Cooperative Agreement, the CITY and Mn/DOT shall make the County/Regional Integrated Subsystem available for Itinerant Use by Authorized Users in conformance with the Statewide Radio Board's Plan or policies.
- 6.06 The CITY and Mn/DOT shall allow Authorized Users to have access to the County/Regional Integrated Subsystem. The CITY, consistent with its Local Plan, shall determine whether Local Authorized Users may have access to the County/Regional Integrated Subsystem for Day to Day Use and subject to the terms and conditions of this Cooperative Agreement.
- 6.07 Subject to the terms and conditions of this Cooperative Agreement, the CITY and Mn/DOT shall make the County/Regional Integrated Subsystem available for Day to Day use by those Authorized Users that the SRB or an appropriate agency of the State of Minnesota has approved to use the County/Regional Integrated Subsystems for Day to Day Use.

ARTICLE VII.
USE OF BACKBONE SYSTEM RESOURCES

- 7.01 Mn/DOT, consistent with the Statewide Radio Board Plan and standards, shall provide the CITY with use of the ARMER Backbone for Mutual Aid Use, Itinerant Use, Day to Day Use for emergency medical services, Day to Day Use for wide area operational units routinely operating outside the CITY, network switching functions, microwave transport,

antenna site use, telephone interconnect use, and other services provided to Authorized Users.

- 7.02 Mn/DOT, consistent with the Statewide Radio Board Plan and standards, shall use its best efforts to provide the CITY with access to, and use of, adequate frequencies, talk groups, unit IDs and other system resources, on a shared basis, within the overall capacities available, necessary to provide an equivalent grade of service afforded to any and all other Authorized Users, including provisions for planned growth.

ARTICLE VIII.

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ARTICLE IX.

OWNERSHIP OF FIXED ASSETS

- 9.01 The CITY shall own the County/Regional Integrated Subsystem infrastructure equipment, dispatching equipment and subscriber units purchased by the CITY with the exception of the equipment transferred to Mn/DOT in Article VIII of this agreement and any interface card integrated into an equipment rack owned by Mn/DOT. A table highlighting equipment ownership is shown in exhibit A.
- 9.02 Mn/DOT shall own that equipment necessary to add County/Regional Integrated Subsystem equipment to an ARMER Backbone site that is physically integral to, and constitutes an incremental expansion of, ARMER Backbone equipment. Examples of equipment owned by Mn/DOT includes, but is not limited to, interface cards in master site audio switch, interface cards in Mn/DOT microwave channel bank equipment
- 9.03 Prior to construction of the County/Regional Integrated Subsystem, the final detailed equipment ownership lists, and identification of all ARMER and CITY sites, shall be agreed to by the CITY and Mn/DOT.

ARTICLE X.

COLOCATION ON CITY PROPERTIES, TOWERS & SHELTERS

- 10.01 Mn/DOT shall be permitted to install and maintain ARMER and other Mn/DOT Public Safety communications related equipment, more fully described in Exhibit B of this document, on or in the Subsystem Antenna Site as defined in 3.14 of this Agreement:

N/A

The TERM of use of the above Subsystem Antenna Site(s) shall be in accordance with conditions as described in Article IV of this document.

CANCELLATION for use of the above Subsystem Antenna Site(s) shall be in accordance with conditions as described in Article V of this document.

COST for the use of the above Subsystem Antenna Site(s) shall be in accordance with conditions as described in Articles XII, XIII and XIV of this document.

- 10.02 CITY retains approval authority for, and shall own, any and all improvements made to the Subsystem Antenna Site(s) described in 10.01 above including, but not limited to, structural improvements to towers and shelters and upgraded mechanical and electrical systems.
- 10.03 Except for radio channels (frequencies) covered by ARTICLE XVII of this Agreement, Mn/DOT agrees to obtain and maintain the proper FCC licensing and comply with all FCC Rules and Regulations governing the use of the equipment installed at the facilities noted in paragraph 10.01 above.
- 10.04 Exhibit B of this document describes the Mn/DOT equipment and placement of Mn/DOT equipment at the Subsystem Antenna Site(s) noted in paragraph 10.01 above. Changes to that described in Exhibit B must be submitted to CITY in writing. All changes must be approved by CITY in writing prior to making any changes.
- 10.05 Mn/DOT shall have unlimited access 24/7/365.
- 10.06 CITY and Mn/DOT agree that each party, and all subcontractors, will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. CITY, and subcontractors, agree to maintain self insurance or acquire at its sole expense during the term of this Agreement, commercial general liability insurance.
- 10.07 Mn/DOT shall notify CITY in advance of entry to any of the Subsystem Antenna Site(s) noted in paragraph 10.01 above. In case of an emergency, Mn/DOT shall notify CITY of entry on the next regular business day. NOTIFICATION shall be made to:

John Hyde
Electronic Technician Lead Worker
1532 West Michigan Street
Duluth, MN 55806
218-730-4402

ARTICLE XI.

COLOCATION ON Mn/DOT PROPERTIES, TOWERS & SHELTERS

11.01 CITY shall be permitted to install and maintain ARMER and other CITY Public Safety communications related equipment, more fully described in Exhibit C of this document, on or in the Backbone Antenna Site(s) as defined in Paragraph 3.03 of this Agreement:

1. N/A

The TERM of use of the above Backbone Antenna Site(s) shall be in accordance with conditions as described in Article IV of this document.

CANCELLATION for use of the above Backbone Antenna Site(s) shall be in accordance with conditions as described in Article V of this document.

COST for the use of the above Backbone Antenna Site(s) shall be in accordance with conditions as described in Articles XII, XIII and XIV of this document.

11.02 Mn/DOT retains approval authority for, and shall own, any and all improvements made to the Backbone Antenna Site(s) described in 11.01 above including, but not limited to, structural improvements to towers and shelters and upgraded mechanical and electrical systems.

11.03 Except for radio channels (frequencies) covered by ARTICLE XVII of this Agreement, CITY agrees to obtain and maintain the proper FCC licensing and comply with all FCC Rules and Regulations governing the use of the equipment installed at the Backbone Antenna Site(s) noted in paragraph 10.01 above.

11.04 Exhibit C of this document describes the COUNTY equipment and placement of CITY equipment on the Backbone Antenna Site(s) noted in paragraph 11.01 above. Changes to that described in Exhibit C must be submitted to Mn/DOT in writing. All changes must be approved by Mn/DOT in writing prior to making any changes.

11.05 CITY shall have unlimited access 24/7/365.

11.06 CITY and Mn/DOT agree that each party, and all subcontractors, will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. CITY, and subcontractors, agree to maintain self insurance or acquire at its sole expense during the term of this Agreement, commercial general liability insurance.

11.07 CITY shall notify Mn/DOT in advance of entry to any of the Backbone Antenna Site(s) noted in paragraph 10.01 above. In case of an emergency, CITY shall notify Mn/DOT of entry on the next regular business day. NOTIFICATION shall be made to:

..... Mike Grand
..... Regional Mn/DOT Radio Maintenance Supervisor
..... 101 North Hoover Road

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..... Virginia, MN 55792
..... 218-742-1084

**ARTICLE XII.
ALLOCATIONS OF ARMER BACKBONE OPERATING COSTS**

- 12.01 At the time of this agreement the Statewide Radio Board and Department of Public Safety (DPS) have provided funding to Mn/DOT for the operating costs of the State owned portions of the ARMER Backbone. Therefore, there are no user fees, except for site operating utilities as outlined in Article XIII below, to be collected from the CITY by Mn/DOT for the CITY's attachment to/or operation on the ARMER Backbone. In the event that operating funding directed to Mn/DOT from DPS is discontinued or the Statewide Radio Board assesses user fees, Mn/DOT and the CITY shall work cooperatively to renegotiate this section of this cooperative agreement.

**ARTICLE XIII.
ALLOCATIONS OF COMMUNICATION SITE OPERATING COSTS**

- 13.01 Mn/DOT shall not charge rent to the CITY for CITY equipment collocated at Backbone Antenna Site(s) other than items covered under Article XIV.
- 13.02 The CITY shall not charge rent to Mn/DOT for Mn/DOT equipment collocated at Subsystem Antenna Site(s) other than items covered under Article XIV.
- 13.03 CITY's cost for the operating utilities are based upon the number of base stations owned by the CITY and usage of Mn/DOT'S backup emergency generator as outlined below and completed in a separate lease agreement:

1 to 2 Stations	= \$300.00 per year
3 to 4 Stations	= \$400.00 per year
5 or more Stations	= \$500.00 per year

**ARTICLE XIV.
PAYMENT AND TRANSFER OF FUNDS**

- 14.01 If applicable, Mn/DOT shall invoice the CITY annually for the operating utilities from the Backbone Antenna Site(s) payable by the CITY for the CITY's equipment as outlined in Exhibit C. The CITY shall make full and prompt payment to the Mn/DOT following receipt of an invoice from Mn/DOT for the CITY's share of annual operating utilities for the Backbone Antenna Site(s).

**ARTICLE XV.
SUBSYSTEM DETAILED DESIGN APPROVAL**

City of Duluth, Mn/DOT Cooperative Agreement for ARMER Subsystem

- 15.01 Prior to the construction or addition of a future subsystem to the County/Regional Integrated Subsystem, the CITY shall forward the detailed design of the Subsystem, including the acceptance test plan, to the Statewide Radio Board for its review and approval.

**ARTICLE XVI.
CONSTRUCTION AND SYSTEM ACCEPTANCE**

- 16.01 The CITY and Mn/DOT shall develop a construction plan for the construction of any future subsystem to be added to the County/Regional Integrated Subsystem.
- 16.02 County/Regional Integrated Subsystem design changes during the construction phase that are material and detrimentally impact the ability of an Authorized User to utilize the Backbone System shall be reviewed and approved in accordance with administrative change order procedures mutually agreed to by the CITY and Mn/DOT. Said change order procedures shall not require formal Statewide Radio Board or Operations and Technical Committee approval unless the change order constitutes a material change in the County/Regional Integrated Subsystem that has the potential to adversely affect the Regional Integrated System, as determined by the Statewide Radio Board.
- 16.03 CITY agrees that the acceptance plan adopted by Mn/DOT for approval of the County/Regional Integrated Subsystem is acceptable to the CITY except that the CITY may add additional approval requirements as part of the CITY's Purchase Order or contract for the County/Regional Integrated Subsystem.

**ARTICLE XVII.
FCC LICENSES**

- 17.01 The CITY shall apply to the Federal Communications Commission, hereinafter referred to as "FCC", to become a co-licensee for the additional National Public Safety Planning Advisory Committee (NPSPAC) frequencies added to the County Subsystem and subscriber units. The CITY shall pay all costs, and shall provide all administrative support, associated with its portion of the FCC co-licensing applications, subject to the appropriation and encumbrance of funds for such purpose as required by law.
- 17.02 The CITY reserves the right to retain sufficient currently licensed voice and non-voice frequencies and to license additional frequencies to accommodate departments electing not to use the 800 MHz system, fire paging, mutual aid, and for non-voice such as SCADA, siren control, mobile data, GPS, etc.

**ARTICLE XVIII.
NETWORK OPERATIONS, PRIORITIES AND PROTOCOLS**

- 18.01 The CITY shall provide the services of a designated County/Regional Integrated Subsystem administrator who shall coordinate with the Mn/DOT network administrator regarding County/Regional Integrated Subsystem operations and overall Backbone System network management issues.
- 18.02 The CITY and Mn/DOT shall operate the County/Regional Integrated Subsystem in conformance with the Statewide Radio Boards Plan for mutual aid usage, roaming between Subsystems, scanning between Subsystems, telephone interconnect, SCADA, mobile data, GPS and other uses potentially affecting system wide performance.
- 18.03 The CITY shall have authority and responsibility for the establishment of operating procedures, protocols, priorities, and standards for local government operations including dispatching occurring within the County/Regional Integrated Subsystem.

If conditions occur which affect local system or state/regional operation, Mn/DOT and the CITY agree to mutually resolve the issue in accordance with Article XXI of this Agreement.

- 18.04 The CITY shall determine whether Authorized Users have access to CITY assigned talk groups and encryption code groups subject to terms and conditions determined by the CITY.

ARTICLE XIX. SYSTEM MAINTENANCE AND UPGRADES

- 19.01 Mn/DOT is responsible for the maintenance and the associated maintenance costs for all equipment owned by Mn/DOT.
- 19.02 The CITY is responsible for the maintenance and the associated maintenance costs for all equipment owned by the CITY.
- 19.03 The CITY shall include any CITY owned equipment that is interconnected with the ARMER Backbone in the system Software Subscription Agreement (SSA) with the system vendor. The CITY shall be responsible for the incremental costs associated with the addition of CITY owned equipment to the SSA. This would include any interconnect console equipment, network management equipment or any other interconnected equipment.
- 19.04 The system will require periodic system upgrades and maintenance that may be system impacting. Some of this work may result in reduced communications during the upgrade or maintenance activity. Mn/DOT shall notify the CITY of this work and the CITY and Mn/DOT shall work to find a mutually agreeable time to schedule this work in order to minimize impact to the radio users in the CITY. The CITY shall not reasonably withhold the ability of Mn/DOT to complete upgrades or system maintenance.

- 19.05 System capacity upgrades: It is anticipated that traffic on the system will grow over time, as this occurs the CITY and Mn/DOT will use actual system traffic reports to determine how the growth impacts performance of the system. In the event that the usage growth requires system additions, the CITY and Mn/DOT will work cooperatively to determine how the expansions are to occur and how any costs associated with the expansion will be split between the CITY and Mn/DOT.

ARTICLE XX. LIABILITY AND INSURANCE

- 20.01 Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. The CITY's and Mn/DOT's liability is governed by the provisions of Minn. Stat., Chapter 466 [CITY] and Minn. Stat. Chapter 3 [Mn/DOT].

The CITY and Mn/DOT each warrant that they are able to comply with the aforementioned liability requirements through an insurance or a self-insurance program and have minimum coverage consistent with the liability limits contained in Minn. Stat., Chapter 466 [CITY] and Minn. Stat. Chapter 3 [Mn/DOT].

ARTICLE XXI. CONFLICT RESOLUTION

- 21.01 If a dispute should arise between the parties to this Agreement with respect to this Agreement or any of its provisions, the parties involved agree to attempt to settle such dispute through the use of a mediator mutually acceptable to the disputing parties prior to commencement of any legal action on the part of either party with respect to this Agreement, any of its provisions and/or its enforcement. The costs of such mediation shall be shared in accordance with an Amendment to this agreement entered into prior to mediation that specifically addresses the responsibility of each party for the expenses of such mediation.

ARTICLE XXII. CONTRACT ADMINISTRATION

- 22.01 In order to coordinate the activities of the CITY and Mn/DOT so as to accomplish the purposes of this Agreement, the following individuals, or their designees or successors, shall manage this Agreement on behalf of the CITY and Mn/DOT:

CITY:

Dennis Edwards
Fire Chief

Duluth Fire Department
602 W. 2nd Street
Duluth, MN 55802
218-730-4390

Mn/DOT:

Director of the Office of Statewide Radio Communications
1500 W. County Rd. B2, MS730
Roseville, Minnesota 55113

**ARTICLE XXIII.
NOTICE**

- 23.01 Any notice, report or demand which must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the CITY shall be sent to the CITY Administrator at the addresses contained in Article XXII to this Agreement and to the Duluth CITY Attorney's Office, 411 West 1st Street, Room 410, Duluth, MN, 55802. Notices to Mn/DOT shall be sent to Director of Electronic Communication at the address given in Article XXII.

**ARTICLE XXIV.
MERGER AND MODIFICATION**

- 24.01 It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject hereof. All exhibits attached to this Agreement are incorporated into this Agreement and all items referred to in this Agreement are incorporated by reference and are deemed to be part of this Agreement.

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

**ARTICLE XXV.
AUDITS AND ACCESS TO RECORDS**

- 25.01 The CITY and Mn/DOT agree that each party hereto, the State Auditor, the Legislative Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement.

**ARTICLE XXVI.
DATA PRIVACY**

- 26.01 The CITY and Mn/DOT agree to abide by all applicable State and Federal laws and regulations regarding confidential information concerning individuals and/or data including but not limited to information made non-public by such laws or regulations.

**ARTICLE XXVII.
INDEPENDENT CONTRACTOR**

- 27.01 Each party is, and shall remain, an independent contractor with respect to all services performed under this Agreement. Each party shall select the means, method, and manner of performing their respective services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners or joint ventures between the parties hereto or as constituting either party as the agent, representative, or employee of the other for any purpose or in any manner whatsoever. Each party represents that it has or will secure at its own expense all personnel required in performing their respective services under this Agreement. Any and all personnel of either party or other persons engaged in the performance of any work or services under this Agreement shall have no contractual relationship with the other party, and shall not be considered an employee of any other party. Any and all claims that might arise under the Unemployment Compensation Act, the Workers' Compensation Act of the State of Minnesota, or any other applicable Federal or State law, rule, or regulation on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against either party, its officers, agents, contractors, or employees shall in no way be the responsibility of the other party. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the other party, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-Employment Insurance, disability, severance pay, or PERA.

**ARTICLE XXVIII.
MINNESOTA LAWS GOVERN AND SEVERABILITY**

- 28.01 The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations and performance obligations between the parties herein. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to the parties. One or more waivers by said party of any provision, term, condition or covenant shall not be construed by the other parties as a waiver of a subsequent breach of the same by other parties.

**ARTICLE XXIX.
CONTRACTOR INSURANCE**

- 29.01 The CITY agrees that any construction contracts let by the CITY for the Construction of any subsystem to be added to the COUNTY/REGIONAL Integrated Subsystem as provided in this Agreement shall include clauses that will:

1) require the contractors to defend, indemnify, and save harmless the Regional Radio Board, Mn/DOT, the CITY, and their officers, agents and employees from claims, suits, demands, damages, judgments, costs, interests, expenses (including, without limitation, reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof) arising out of or by reason of the negligent or otherwise wrongful act or omission, including breach of a specific contractual duty, of said contractor, its officers, employees, agents or subcontractors; and

2) require the contractors to provide and maintain insurance as follows:

1. Comprehensive General Liability Insurance Policy with minimum limits in an amount not less than the statutory tort liability limits in Minn. Stat. §§ 3.736 and 466.03, combined single limit (CSL), with coverage pertaining to operation and premises of contractor;
2. Automobile Liability Insurance including owned, non-owned and hired vehicles in an amount not less than the statutory tort liability limits in Minn. Stat. §§ 3.736 and 466.03, combined single limit (CSL) for total bodily injuries and/or damages

arising from any one accident. If automobiles are not used, we must receive a letter from you stating this;

3. Professional Liability Insurance (when required) in an amount not less than the statutory tort liability limits in Minn. Stat. §§ 3.736 and 466.03, combined single limit (CSL);
4. Excess Umbrella Liability Policy in the amount not less than the statutory tort liability limits in Minn. Stat. §§ 3.736 and 466.03 will be additionally required if any of the above policies have lower limits than stated;
5. Workers' Compensation Insurance as required by Minnesota laws;

And to provide Mn/DOT and CITY with Certificates of Insurance naming Mn/DOT and CITY as additional insured's, and

3) Require the contractor to be an independent contractor for the purposes of completing the work provided for in this Agreement.

ARTICLE XXX. APPLICABLE PROVISIONS OF LAW

- 30.01 Applicable provisions of Minnesota State Law, Federal Law and any applicable local ordinance shall be considered a part of this Agreement as though fully set forth herein. Specifically, CITY agrees to comply with all federal, state and local applicable laws and ordinances relating to nondiscrimination, affirmative action, public purchases, contracting, employment including workers' compensation and state labor wage provisions, and surety deposits required for construction contracts. Notwithstanding the foregoing or any other provision of this Agreement, Mn/DOT does not agree to be subject to or bound by local ordinances.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

CITY COUNCIL APPROVAL

The State of Minnesota through its Commissioner of Transportation having signed this contract and the City of Duluth City Council has duly approved this contract on the ____ day of _____, 2017, and pursuant to such approval, the proper CITY officials having signed this contract; the parties hereto agree to be bound by the provisions herein set forth.

CITY OF DULUTH

By: _____
Mayor

Dated: _____

Attest:

City Clerk

Dated: _____

Countersigned:

By: _____
Auditor

Approved as to form:

By: _____
City Attorney

NORTH EAST EMERGENCY COMMUNICATIONS BOARD

By: _____
Chairman of the BOARD

Dated: _____

Approved as to form:

By: _____
Board Attorney

Dated: _____

STATE OF MINNESOTA

Through its Commissioner of Transportation

By: _____
Mukhtar Thakur
Title: _____
Director

Dated: _____

Approved as to form:

By: _____

Dated: _____

Exhibit "A"

ARMER Equipment ownership depiction

Regional Mn/DOT owned equipment(Mn/DOT maintenance responsibility)

City of Duluth Owned equipment - maintenance responsibility

Woodland
Water
Tower
a/k/a
Orphanage
Tower I

Exhibit B
City of Duluth Cooperative Agreement
Mn/DOT Communications Equipment located on CITY Towers & Shelters

This exhibit identifies communications equipment owned by Mn/DOT collocated at CITY antenna sites.

City sites that Mn/DOT has installed communications equipment:

None at this time

See the following pages of this exhibit for the details of Mn/DOT owned equipment installed at each of the above sites.

Exhibit C
City of Duluth Cooperative Agreement
CITY Communications Equipment located on Mn/DOT Towers & Shelters

This exhibit identifies communications equipment owned by the CITY collocated at Mn/DOT antenna sites.

Mn/DOT sites that the CITY has installed communications equipment:

1. Duluth

See the following pages of this exhibit for the details of equipment at each of the above site.

EXHIBIT C
Duluth Site

City of Duluth Equipment installed at site

I. ANTENNAS

AGENCY	ANTENNA MODEL *	ANTENNA HEIGHT (to base)	AZIMUTH (degrees)	QTY	COAX TYPE
Please see following page					

II MICROWAVE ANTENNAS

SITE NAME	RX SITE	HEIGHT (AGL – centerline)	AZIMUTH (degrees)	ANTENNA MODEL	ANTENNA DIAMETER	COAX TYPE

* - Or equivalent model antenna

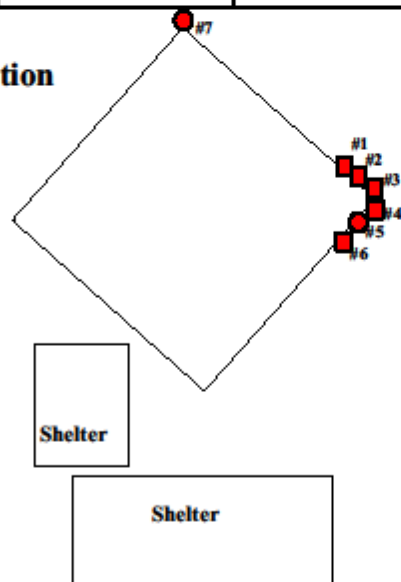
** - System includes one Celwave A-490144 Tower Top Amplifier

III COMMUNICATIONS EQUIPMENT RACKS

SITE NAME	RACK NUMBER	EQUIPMENT IN RACK

ANTENNA KEY -Duluth Police Department Antenna				
#	Model	Ht to Tip	Pipe or Leg	Coax
1	Fluidmesh Integrated	100'	Leg E	Ethernet Cable
2	Fluidmesh Integrated	100'	Leg E	Ethernet Cable
3	Mars MA-WA58-1X-MNT	100'	Leg E	LMR 400
4	Bridgewave	104'	Leg E	Ethernet Cable
5	Exalt	106'	Leg E	Ethernet Cable
6	Mars MA-WA58-1X-MNT	102'	Leg E	Ethernet Cable
7	Andrew PL4-107F 4ft. dish	154'	Leg N	EW 90
Amendment 1				
EQUIPMENT IN SHELTER - Duluth Police Department				
Equip.	Description			
Fluidmesh	MITO3100			
Fluidmesh	MITO3100			
Fluidmesh	E220-Endo			
Bridgewave	BW80			
Exalt	E50E731			
Microwave Networks	Proteus AMT-M11-I-30-178MBPS			
FREQUENCY INFORMATION				
Transmit = 4900 GHz	Receive = 4900 GHz			
Transmit = 5300 GHz	Receive = 5300 GHz			
Transmit = 5745 MHz	Receive = 5745 MHz			
Transmit = 80 GHz	Receive = 80 GHz			
Transmit = 5765 MHz	Receive = 5765 MHz			
Transmit = 5805 MHz	Receive = 5805 MHz			
Transmit = 10915.00 GHz	Receive = 14050.0 GHz			

Tower Orientation

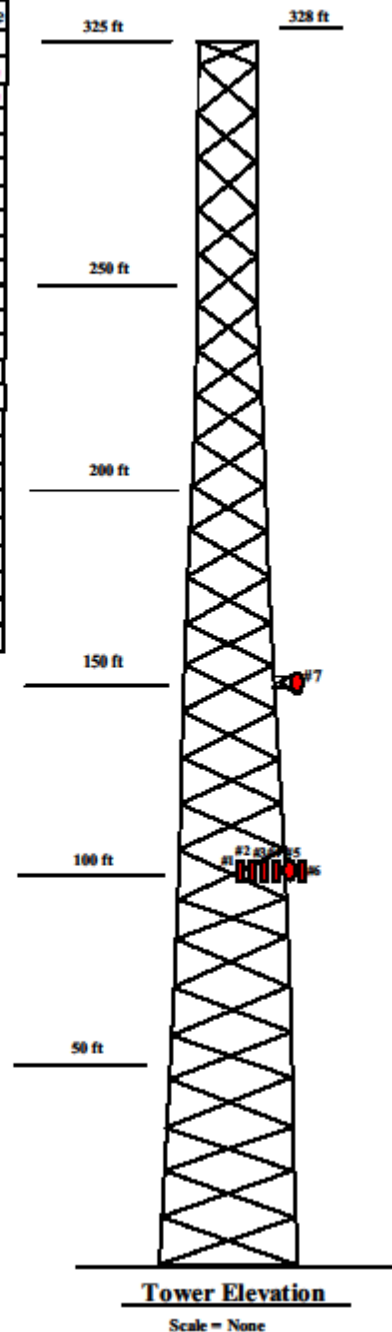


Duluth Tower

Minnesota Department of Transportation

June 25, 2012
Agreement #98282 Amendment 1
Duluth Police Department

Exhibit B1



ANTENNA KEY -Duluth Police Department Antenna				
#	Model	Ht to Tip	Pipe or Leg	Coax
1	Fluidmesh Integrated	100'	Leg E	Ethernet Cable
2	Fluidmesh Integrated	100'	Leg E	Ethernet Cable
3	Mars MA-WA58-1X-MNT	100'	Leg E	LMR 400
4	Bridgewave	104'	Leg E	Ethernet Cable
5	Exalt	106'	Leg E	Ethernet Cable
6	Mars MA-WA58-1X-MNT	102'	Leg E	Ethernet Cable
7	Andrew PL4-107F 4ft. dish	154'	Leg N	EW 90
	Amendment 1			
EQUIPMENT IN SHELTER - Duluth Police Department				
Equip.		Description		
Fluidmesh		MITO3100		
Fluidmesh		MITO3100		
Fluidmesh		E220-Endo		
Bridgewave		BW80		
Exalt		E50E731		
Microwave Networks		Proteus AMT-M11-I-30-178MBPS		
FREQUENCY INFORMATION				
Transmit = 4980 Ghz		Receive = 4980 Ghz		
Transmit = 5300 Ghz		Receive = 5300 Ghz		
Transmit = 5745 MHz		Receive = 5745 MHz		
Transmit = 80 Ghz		Receive = 80 Ghz		
Transmit = 5765 MHz		Receive = 5765 MHz		
Transmit = 5805 MHz		Receive = 5805 MHz		
Transmit = 10915.00 GHz		Receive = 1405.00 GHz		

