



STATE OF MINNESOTA

AGENCY AGREEMENT

for

FEDERAL PARTICIPATION IN PRELIMINARY ENGINEERING

State Project Number: 118-010-030 _____

FAIN: RCP 6926(285) _____

This Agreement is entered into by and between City of Duluth (“Local Government”) and the State of Minnesota acting through its Commissioner of Transportation (“MnDOT”).

RECITALS

1. Pursuant to Minnesota Statutes Section 161.36, the Local Government desires MnDOT to act as the Local Government's agent in accepting federal funds on the Local Government's behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by federal funds, hereinafter referred to as the “Project”; and
2. The Local Government is proposing a federal aid project for preliminary engineering to review and develop a comprehensive transportation and improvement plan for the I-35 corridor in the City of Duluth hereinafter referred to as “Preliminary Engineering;” and
3. The Preliminary Engineering is eligible for the expenditure of federal aid funds, and is identified in MnDOT records as State Project 118-010-030, and in Federal Highway Administration (“FHWA”) records as Minnesota Project RCP 6926(285); and
4. The Assistance Listing Number (ALN) for this project is 20.94 and
5. These funds are not for research and development; and
6. MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

AGREEMENT TERMS

1. Term of Agreement

- 1.1. **Effective Date.** This Agreement will be effective upon execution by the Local Government and by appropriate State officials, pursuant to Minnesota Statutes Section 16C.05, and will remain in effect for five (5) years from the effective date or until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. Local Government’s Duties

- 2.1. **Designation.** The Local Government designates MnDOT to act as its agent in accepting federal funds on its behalf made available for the Preliminary Engineering.

2.2. Staffing.

- 2.2.1. The Local Government will designate a publicly employed and registered engineer, (“Project Engineer”), to be in responsible charge of the Project and to supervise and direct the work performed

under any contract let for the Project. If Local Government elects to use a private consultant for engineering services, the Local Government will provide a qualified, full-time public employee of the Local Government to be in responsible charge of the Project. The services of the Local Government to be performed pursuant to this Agreement may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.

- 2.2.2. During the progress of the work on the Project, the Local Government authorizes its Project Engineer to request in writing specific engineering and/or technical services from MnDOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If MnDOT furnishes the services requested, and if MnDOT requests reimbursement, then the Local Government will promptly pay MnDOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current MnDOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make MnDOT a principal or co-principal with respect to the Project.
- 2.2.3. The Local Government will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.

3. Pre-Award and Award. The Local Government will follow the applicable Procurement Method

- 3.1. Competitive negotiation (qualifications-based selection). Local Government shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract, as specified in 23 U.S.C. 112(b)(2)(A).
- 3.1.1. The Local Government will prepare request for proposals in accordance with Minnesota law and applicable Federal laws and regulations.
- 3.1.2. The Local Government will solicit proposals for Preliminary Engineering after obtaining written notification from MnDOT that the FHWA has authorized the Project. Any Project advertised prior to authorization will not be eligible for federal reimbursement.
- 3.1.3. The Local Government will prepare and publish the request for proposals and any addendums for the Project as required by state and federal laws. The Local Government will include in the solicitation the required language for federal-aid contracts as supplied by MnDOT. The solicitation will state where the Local Government will receive the sealed proposals.
- 3.1.4. The Local Government may not include other work in the contract for the authorized Project without obtaining prior notification from MnDOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project.
- 3.1.5. The Local Government will receive, open, and evaluate proposals in accordance with the requirements of the Brooks Act. After the selecting the highest ranked firm, the Local Government will prepare an independent agency estimate of the Preliminary Engineering and enter into negotiations for a contract that is fair and reasonable to the Federal Government. The negotiation with the highest ranked firm will establish elements of contract costs, accepting indirect cost rate(s) for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with § 172.11. Subconsultant agreements must contain all required contract provisions, assurances, and certifications in accordance with § 172.9.
- 3.1.6. If the Local Government is unable to negotiate a satisfactory contract with the highest ranked firm, the Local Government must undertake negotiations with the next highest ranked firm, continuing the

process until a contract agreement for fair and reasonable compensation is reached. Section 172.7(a)(1)(iv)(E)

- 3.1.7. The Local Government will verify suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CFR part 180; The Local Government will then evaluate interests, qualifications, or proposals and the ranking/selection of each eligible consultant.
 - 3.1.8. If the proposal contains a goal for Disadvantaged Business Enterprises (DBEs), the Local Government will not award the bid until it has received certification of the Disadvantaged Business Enterprise participation from the MnDOT Office of Civil Rights.
 - 3.1.9. This written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.
 - 3.1.10. The Local Government must disclose in writing any potential conflict of interest to the Federal awarding agency or MnDOT in accordance with applicable FHWA policy.
 - 3.1.11. Local Government may not execute a contract in excess of \$50,000 with a third-party consultant or subcontractor for transportation improvement plan and related work, as determined by MnDOT, unless MnDOT has conducted a pre-award audit on the third-party consultant or subcontractor. Local Government may incorporate any recommendations resulting from MnDOT's pre-award audit into Local Government's contract with the third-party consultant or subcontractor. Costs for these services must be reasonable in relation to the services rendered. At any time during the Agreement or during the final audit, MnDOT may audit and adjust the costs charged for such services in accordance with 2 CFR 200.459. If Local Government has questions or is concerned that the costs charged for such services may not be reasonable, Local Government should contact MnDOT's authorized representative for guidance.
- 3.2. Small Purchases. Local Government may use the small purchase procedures that reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as defined in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds.
- 3.2.1. The Local Government will prepare the scope of work, project phases, and contract requirements and shall not break these down into smaller components merely to permit the use of small purchase procedures.
 - 3.2.2. The Local Government will provide a minimum of two consultants to satisfy the adequate number of qualified sources reviewed. In instances where only two qualified consultants respond to the solicitation, the Local Government may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition. Alternatively, a Local Government may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re compete under a new solicitation as specified in § 172.7(a)(3)(iii)(C).
 - 3.2.3. The Local Government will negotiate contract costs in accordance with small purchase procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.
 - 3.2.4. The Local Government will verify the full amount of any contract modification or amendment will not cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.
- 3.3. Non Competitive. The following requirements shall apply to the noncompetitive procurement method:
- 3.3.1. The Local Government may use its own noncompetitive procedures that reflect applicable State and local laws and regulations and conform to applicable Federal requirements.

3.3.2. The Local Government shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from FHWA before using this form of contracting.

3.3.3. The Local Government may award a contract by noncompetitive procedures under the following limited circumstances:

- (a) The service is available only from a single source;
- (b) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
- (c) After solicitation of a number of sources, competition is determined to be inadequate.
- (d) Contract costs may be negotiated in accordance with Local Government noncompetitive procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.

3.4. Contract Administration. The Local Government will monitor the consultant's work and compliance with the terms, conditions, and specifications of the contract.

3.4.1. The Local Government will request approval from MnDOT for all costs in excess of the amount of federal funds previously approved for the Project prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.

3.4.2. The Local Government will prepare reports, keep records, and perform work so as to enable MnDOT to collect the federal aid sought by the Local Government. The Local Government will retain all records and reports in accordance with MnDOT's record retention schedule for federal aid projects.

3.4.3. Upon completion of the Project, the Project Engineer will determine whether the work will be accepted.

3.4.4. The Local Government will determine the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;

3.4.5. The Local Government will assess administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and

3.4.6. The Local Government will resolve disputes in the procurement, management, and administration of engineering and design related consultant services.

3.4.7. The Local Government will prepare a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services.

3.4.8. The Local Government will close out the contract once the evaluation is completed.

3.4.9. The Local Government must comply with all applicable Federal, State, and local laws, ordinances, and regulations.

4. MnDOT's Duties

4.1. **Acceptance.** MnDOT accepts designation as Agent of the Local Government for the receipt and disbursement of federal funds and will act in accordance herewith.

4.2. **Project Activities.**

4.2.1. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project, and for reimbursement of eligible costs pursuant to the terms of this Agreement.

4.2.2. MnDOT will provide to the Local Government copies of the required Federal-aid clauses to be included in the proposal solicitation and will provide the required Federal-aid provisions to be included in the

Proposal.

4.2.3. MnDOT will review and certify the DBE participation and notify the Local Government when certification is complete. If certification of DBE participation cannot be obtained, then the Local Government must decide whether to proceed with awarding the contract. Failure to obtain such certification will result in the project becoming ineligible for federal assistance, and the Local Government must make up any shortfall.

4.3. Authority. MnDOT may withhold federal funds, if MnDOT or the FHWA determines that the Project was not completed in compliance with federal requirements.

4.4. Inspection. MnDOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this Agreement. The Local Government will make all books, records, and documents pertaining to the work hereunder available for a minimum of seven years following the closing of the construction contract.

5. Time

5.1. The Local Government must comply with all time requirements described in this Agreement. In the performance of this Agreement, time is of the essence

5.2. The period of performance is defined as beginning on the date of federal authorization and ending on the date defined in the federal financial system or federal agreement ("end date"). **No work completed** after the **end date** will be eligible for federal funding. Local Government must submit all contract close out paperwork to MnDOT at least twenty-four months prior to the **end date**.

6. Payment

6.1. The estimated cost of the Preliminary Engineering is \$2,250,000.00.

6.1.1. It is anticipated that 80% (up to \$1,800,000.00) of the cost of the Preliminary Engineering is to be paid from federal funds made available by the FHWA, and that the remaining 20% shall be paid by the Local Government. The Local Government will pay any part of the cost or expense of the work that the FHWA does not pay.

6.1.2. Costs incurred as of the federal authorization date of 04/16/2026 will be eligible, if approved, for federal participation. Any costs incurred by the Local Government prior to the federal authorization date will not be eligible for federal participation.

6.1.3. Eligible cost and expense, if approved, may consist of the following:

- a. The cost of conducting the review and development of a comprehensive transportation and improvement plan and associated study work along the I-35 corridor in the City of Duluth.
- b. The direct labor charges for Local Government employees for the time that said employees are performing work pursuant to this Agreement must be documented in a Public Interest Finding and approved by the FHWA. Said labor charges may include the prorata share of "labor additives" applicable to said labor charges. Costs to the Local Government of "labor additives" consisting of holiday pay, vacation, sick leave, retirement, pension, unemployment taxes, compensation and liability insurance, lost time charges and similar costs incidental to labor employment will be reimbursed only when supported by adequate records.
- c. The applicable equipment rental charges for Local Government owned equipment used by the Local Government and mileage charges for employee owned vehicles used by the Local Government on work performed pursuant to this Agreement, at rates reflective of the Local Government actual cost.

- d. Expenditures for materials, supplies, mechanical data processing and equipment rental, limited to the actual expenditures for the purposes of this Agreement.
 - e. The cost incurred by the Local Government to employ outside forces to perform any or all of the work pursuant to this Agreement, subject to the provisions of section I.D. SUBLETTING.
- 6.1.4. Expenditures for general administration, supervision, maintenance and other overhead or incidental expenses of the Local Government are not eligible for federal participation.
- 6.1.5. Acceptability of costs under this Agreement will be determined in accordance with the cost principles and procedures set forth in the applicable Federal Acquisition Regulations, Contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR) 31 which is hereby incorporated by reference and made a part of this Agreement.
- 6.1.6. For costs expected to exceed \$2,250,000.00, the Local Government must request the preparation and execution of a supplement to this Agreement, prior to incurring such costs.
- 6.2. **Cost.** The entire cost of the Project(s) is to be paid from federal funds made available by the FHWA and by other funds provided by the Local Government. The Local Government will pay any part of the cost or expense of the Project(s) that is not paid by federal funds. MnDOT will receive the federal funds to be paid by the FHWA for the Project(s), pursuant to Minnesota Statutes § 161.36, Subdivision 2. MnDOT will review and sign each partial pay request. Following certification of the partial estimate, MnDOT will reimburse the Local Government, from said federal funds made available to the Project, for each partial payment request, subject to the availability and limits of those funds.
- 6.2.1. The Local Government may request partial payments not more than once each thirty (30) days. The Project Engineer will certify each partial payment.
- 6.2.2. The invoice and supplements thereto, will contain all details that may be necessary for a proper audit. Such details will consist of at least the following:
- (a) A breakdown of labor by individual, classification, dates and hours worked times the applicable rate to arrive at a total dollar amount for each individual.
 - (b) The labor additive shall be applied to total labor dollars, not including overtime labor dollars.
 - (c) The equipment charges shall be broken down by type of equipment times the applicable rate and dates used to arrive at total equipment charges.
 - (d) A detailed breakdown of outside services used and supporting invoices and documentation that costs of outside services have been paid.
 - (e) Detail for materials, supplies, and other items with the description, units, and unit prices included in the invoice. If materials or supplies are purchased from an outside source, a copy of that invoice should be included.
 - (f) The invoices will include 100% of eligible charges applicable to the Preliminary Engineering so that the prorata share of federal and Local Government participation can be applied to the total costs.
- 6.2.3. Reimbursement of costs under this Agreement will be based on actual costs.
- 6.3. **Indirect Cost Rate Proposal/Cost Allocation Plan.** If the Local Government seeks reimbursement for indirect costs and has submitted to MnDOT an indirect cost rate proposal or a cost allocation plan, the rate proposed will be used on a provisional basis. At any time during the period of performance or the final audit of a project, MnDOT may audit and adjust the indirect cost rate according to the cost principles in 2 CFR Part 200. MnDOT may adjust associated reimbursements accordingly.

- 6.4. **Reimbursement.** The Local Government will prepare partial estimates in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify each partial estimate. Following certification of the partial estimate, the Local Government will make partial payments to the consultant in accordance with the terms of the construction contract for the Project(s).
- 6.4.1. Following certification of the partial estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified partial estimate. No more than 90% of the reimbursement due under this Agreement will be paid until completion of the final audit and approval by MnDOT's authorized representative.
- 6.4.2. Upon completion of the Project, the Local Government will prepare a final payment request in accordance with the terms of this Agreement. The Project Engineer will certify the final estimate. Following certification of the final estimate, the Local Government will make the final payment to the consultant in accordance with the terms of the construction contract for the Project(s).
- 6.4.3. Following certification of the final estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified final estimate along with the required records. MnDOT will review and certify the final payment request with a final audit.
- 6.4.4. No more than 90% of the reimbursement due under this Agreement will be paid until completion of the final audit and approval by MnDOT's authorized representative.
- 6.4.5. Upon completion of the Project(s), MnDOT will perform a final inspection and verify the federal and state eligibility of all payment requests. If the Project is found to have been completed in accordance with the plans and specifications, MnDOT will promptly release any remaining federal funds due the Local Government for the Project(s). If MnDOT finds that the Local Government has been overpaid, the Local Government must promptly return any excess funds
- 6.4.6. In the event MnDOT does not obtain funding from the Minnesota Legislature or other funding source, If or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the Local Government may continue the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.
- 6.5. **Matching Funds.** Any cost sharing or matching funds required of the Local Government in this Agreement must comply with 2 CFR 200.306.
- 6.6. **Federal Funds.** Payments under this Agreement will be made from federal funds. The Local Government is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for failure to comply with any federal requirements including, but not limited to, 2 CFR Part 200. If, for any reason, the federal government fails to pay part of the cost or expense incurred by the Local Government, or in the event the total amount of federal funds is not available, the Local Government will be responsible for any and all costs or expenses incurred under this Agreement. The Local Government further agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.
- 6.7. **Closeout.** The Local Government must liquidate all obligations incurred under this Agreement for each project and submit all financial, performance, and other reports as required by the terms of this Agreement and the Federal award at least twenty-four months prior to the **end date** of the period of performance for each project. MnDOT will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with funds will continue following project closeout.

7. Conditions of Payment.

- 7.1. All services provided by Local Government under this Agreement must be performed to MnDOT's satisfaction, as determined at the sole discretion of MnDOT's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Local Government will not receive payment for work found by MnDOT to be unsatisfactory or performed in violation of federal, state, or local law.

8. Authorized Representatives

- 8.1. MnDOT's Authorized Representative is:

Name: Christopher Nobach, or their successor.

Title: State Aid, Special Projects

Phone: 651-366-3824

Email: Christopher.nobach@state.mn.us

MnDOT's Authorized Representative has the responsibility to monitor Local Government's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, MnDOT's Authorized Representative will certify acceptance on each invoice submitted for payment.

- 8.2. The Local Government's Authorized Representative is:

Name: Cindy Voigt _____, or their successor.

Title: Duluth City Engineer _____

Phone: 218-730-5071 _____

Email: cvoigt@duluthmn.gov _____

If the Local Government's Authorized Representative changes at any time during this Agreement, the Local Government will immediately notify MnDOT.

9. Assignment Amendments, Waiver, and Agreement Complete

- 9.1. **Assignment.** Neither party will assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- 9.2. **Amendments.** Any amendments/supplements to this Agreement must be in writing and be executed by the same parties who executed the original Agreement, or their successors in office.
- 9.3. **Waiver.** If MnDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or MnDOT's right to subsequently enforce it.
- 9.4. **Agreement Complete.** This Agreement contains all negotiations and agreements between MnDOT and the Local Government. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.
- 9.5. **Severability.** If any provision of this Agreement or the application thereof is found to be invalid or unenforceable to any extent, the remainder of the Agreement, including all material provisions and the application of such provisions, will not be affected and will be enforceable to the greatest extent permitted by the law.
- 9.6. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 9.7. **Certification.** By signing this Agreement, the Local Government certifies that it is not suspended or

debarred from receiving federal or state awards.

10. Liability and Claims

10.1. **Tort Liability.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.

10.2. **Claims.** The Local Government acknowledges that MnDOT is acting only as the Local Government's agent for acceptance and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. The Local Government will pay any and all lawful claims arising out of or incidental to the Project including, without limitation, claims related to contractor selection (including the solicitation, evaluation, and acceptance or rejection of bids or proposals), acts or omissions in performing the Project work, and any *ultra vires* acts. To the extent permitted by law, the Local Government will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold MnDOT harmless from any claims or costs arising out of or incidental to the Project, including reasonable attorney fees incurred by MnDOT. The Local Government's indemnification obligation extends to any actions related to the certification of DBE participation, even if such actions are recommended by MnDOT.

11. Audits

11.1. Under Minn. Stat. § 16C.05, Subd.5, the books, records, documents, and accounting procedures and practices of the Local Government, or any other party relevant to this Agreement or transaction, are subject to examination by MnDOT and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. The Local Government will take timely and appropriate action on all deficiencies identified by an audit.

11.2. The Local Government will comply with the Single Audit Act of 1984(with amendment in 1996) and Office of Management and Budget (OMB)'s 2 CFR 200 Subpart F, including amendments and successors thereto, which are incorporated herein by reference.

11.3. All requests for reimbursement are subject to audit, at MnDOT's discretion. The cost principles outlined in 2 CFR 200.400-.476 will be used to determine whether costs are eligible for reimbursement under this Agreement.

11.4. If Local Government expends \$750,000 or more in Federal Funds during the Local Government's fiscal year, the Local Government must have a single audit or program specific audit conducted in accordance with 2 CFR Part 200.

12. **Government Data Practices.** The Local Government and MnDOT must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by MnDOT under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Local Government under this Agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Local Government or MnDOT.

13. **Workers Compensation.** The Local Government certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Local Government's employees and agents will not be considered MnDOT employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MnDOT's obligation or responsibility.

14. **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. 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.

15. Termination; Suspension

15.1. **Termination by MnDOT or Commissioner of Administration.** MnDOT or Commissioner of Administration may unilaterally terminate this Agreement with or without cause, upon 30 days written notice to the Local Government. Upon termination, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

15.2. **Termination for Cause.** MnDOT may immediately terminate this Agreement if MnDOT finds that there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that the Local Government has been convicted of a criminal offense relating to a state agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. MnDOT may take action to protect the interests of MnDOT of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

15.3. **Termination for Insufficient Funding.** MnDOT may immediately terminate this Agreement if:

15.3.1. MnDOT does not obtain funding from the Minnesota Legislature; or

15.3.2. 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 Local Government. MnDOT is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. MnDOT 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. MnDOT will provide the Local Government notice of the lack of funding within a reasonable time of MnDOT's receiving that notice.

15.4. **Suspension.** MnDOT may immediately suspend this Agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Local Government during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

16. Data Disclosure. Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Local Government consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to MnDOT, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Local Government to file state tax returns and pay delinquent state tax liabilities, if any.

17. Fund Use Prohibited. The Local Government will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Local Government from utilizing these funds to pay any party who might be disqualified or debarred after the Local Government's contract award on this Project.

18. Discrimination Prohibited by Minnesota Statutes §181.59. The Local Government will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the

United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

- 19. Appendix II 2 CFR Part 200.** The Local Government agrees to comply with the following federal requirements as identified in 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and agrees to pass through these requirements to its subcontractors and third party contractors, as applicable. In addition, the Local Government shall have the same meaning as “Contractor” in the federal requirements listed below.
- 19.1.1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - 19.1.2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - 19.1.3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 - 19.1.4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 19.1.5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 19.1.6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 19.1.7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 19.1.8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 19.1.9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 19.1.10. Local Government will comply with 2 CFR § 200.323.
- 19.1.11. Local Government will comply with 2 CFR § 200.216.
- 19.1.12. Local Government will comply with 2 CFR § 200.322.

- 19.2. **Drug-Free Workplace.** The Local Government will comply with the Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.
- 19.3. **Title VI/Non-discrimination Assurances.** The Local Government hereby agrees that, as a condition of receiving any Federal financial assistance under this Agreement, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d), related nondiscrimination statutes (i.e., 23 U.S.C. § 324, Section 504 of the Rehabilitation Act of 1973 as amended, and the Age Discrimination Act of 1975), and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Local Government receives Federal financial assistance.

The Local Government hereby agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. If federal funds are included in any contract, the Local Government will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Local Government's compliance with this provision. The Local Government must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Local Government staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

- 19.4. **Buy America.** The Local Government must comply with the Buy America domestic preferences contained in the Build America, Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58) and as implemented by US DOT operating agencies and the US Office of Management and Budget, as applicable.
- 19.5. **Federal Funding Accountability and Transparency Act (FFATA).**

- 19.5.1. This Agreement requires the Local Government to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Local Government is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Local Government provides information to the MnDOT as required.
- a. Reporting of Total Compensation of the Local Government's Executives.
 - b. The Local Government shall report the names and total compensation of each of its five most highly compensated executives for the Local Government's preceding completed fiscal year, if in the Local Government's preceding fiscal year it received:
 - i. 80 percent or more of the Local Government's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information,

see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.

- c. Total compensation means the cash and noncash dollar value earned by the executive during the Local Government's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
- 19.5.2. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- 19.5.3. The Local Government must report executive total compensation described above to the MnDOT by the end of the month during which this Agreement is awarded.
- 19.5.4. The Local Government will obtain a Unique Entity Identifier (UEI) number and maintain this number for the term of this Agreement. This number shall be provided to MnDOT on the plan review checklist submitted with the plans for each project.
- 19.5.5. The Local Government's failure to comply with the above requirements is a material breach of this Agreement for which the MnDOT may terminate this Agreement for cause. The MnDOT will not be obligated to pay any outstanding invoice received from the Local Government unless and until the Local Government is in full compliance with the above requirements.

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City of Duluth

City of Duluth certifies that the appropriate person(s) have executed the contract on behalf of the Local Government as required by applicable articles, bylaws, resolutions or ordinances

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Title: State Aid Engineer

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Date: _____