

Prepared by the  
Utility Agreements and Permits Unit  
(Payable)  
(\$55,514.00)

**S.P. 6981-26 (T.H. 535)**  
Location: Blatnik Bridge replacement - I535  
between Duluth, MN and Superior, WI  
**Utility Owner: City of Duluth (Gas)**  
**MnDOT Agreement Number 1061300**

**S.P. 6981-26 (T.H. 535)**  
**DESIGN-BUILD PROJECT**  
**MASTER UTILITY AGREEMENT WITH**  
**THE CITY OF DULUTH**

**THIS MASTER UTILITY AGREEMENT (MUA)** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2026 among the State of Minnesota, acting through its Commissioner of Transportation, (MnDOT); the City of Duluth, acting through its City Council, and including all of its agents, contractors, and subcontractors (Utility Owner); and Ames Kramer Joint Venture II, including all of its agents, contractors, and subcontractors (Contractor).

**RECITALS**

MnDOT has entered into a design-build contract (DB Contract) with the Contractor to design and construct State Project Number 6981-26 on Trunk Highway Number 535 (Project). The Project is located on I535 between Duluth, MN and Superior, WI. The Project includes replacement of Blatnik Bridge 9030 with new bridge 69913, ramps and roundabouts, local streets, retaining walls, ADA improvements, lighting, permanent intelligent transportation systems, roadway and weather information systems, fiber optics, dynamic message signs, utilities, permanent signing and striping, stormwater treatment facilities, and storm sewer and other associated construction.

The Utility Owner owns and operates gas mains, their fixtures, and related equipment (Facilities) inside the limits of the Project. The Project may cause changes to the Facilities. These changes may include relocation work, protection in place, removal, replacement, reinstallation, and/or modification of the Facilities.

MnDOT will reimburse the Utility Owner for the costs of relocation work that is necessitated by the Project and located in interstate Right of Way.

The Utility Owner will be responsible for all other costs, including Betterments. The Utility Owner will either perform this work or reimburse the Contractor for performing it.

State law requires a written agreement among the parties to set forth the terms and conditions for the design, construction, and payment of the relocation work.

## I. Master Agreement

This MUA establishes a general framework for processing the Project Utility Work, whether the Contractor or the Utility Owner performs that work. The actual performance of the Utility Work will be pursuant to Work Orders issued under this MUA, as described in Section VII.

- A. *Definitions:* The definitions of the terms in Exhibit A apply when they are used in the MUA.
- B. *Legal Authority:* The Utility Owner and the Contractor possess the legal authority to enter into this MUA and have taken all actions required by their procedures, by-laws, and/or applicable law to exercise that authority, lawfully authorize their undersigned signatories to execute this MUA, and bind the Utility Owner and the Contractor to its terms. Minnesota Statutes, sections 161.45 and 161.46 authorize MnDOT to enter into this MUA. The persons executing this MUA on behalf of the Utility Owner, MnDOT, and the Contractor have full authorization to do so.
- C. *Delegation to the Contractor:* MnDOT will perform the design and construction of the Project by means of a DB Contract with the Contractor that MnDOT has procured in compliance with Minnesota Statutes, sections 161.3410-.3428. MnDOT's entry into this DB Contract may have an impact on the Project Utility Work, including, without limitation, matters relating to scheduling and coordination. MnDOT may delegate to the Contractor the duty to perform certain MnDOT obligations in lieu of MnDOT performing them. MnDOT will retain its obligations to pay the Utility Owner or the Contractor, and/or collect payment from the Utility Owner or Contractor, as applicable, for performing the required Utility Work.
- D. *Term:* This MUA is effective on the date MnDOT obtains all signatures required by Minnesota Statutes, section 16C.05, subdivision 2. In no event will the term of this MUA exceed a duration of five years. No Work Order will survive the expiration of this MUA. This MUA will continue until the earlier of five years or when:
1. All of the Project Utility Work has been completed;
  2. MnDOT makes the final payment owed to the Utility Owner, if any; and
  3. The Utility Owner repays MnDOT for the Contractor's performance of any Utility Work for which the Utility Owner was responsible for the cost.

- E. *Cancellation*: MnDOT may terminate this MUA at any time, with or without cause, on 30 Calendar Days written notice to the Contractor and the Utility Owner. The termination of this MUA does not relieve the Utility Owner of any obligations under the Notice and Order.
1. *Cancellation Without Cause*: MnDOT may cancel this MUA at any time if it determines that doing so is in MnDOT's or the public's best interest. Upon termination, all finished and unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports, and other material that the Utility Owner and the Contractor prepared under this MUA will become MnDOT's property at MnDOT's discretion. The Contractor and Utility Owner will be entitled to payment, on a pro rata basis, for satisfactorily performed services.
  2. *Cancellation or Suspension for Insufficient Funding*: MnDOT may cancel or suspend this MUA if the Minnesota Legislature, or another funding source, does not provide all of the funds or sufficient funds to pay for the Utility Work. In the event of this termination or suspension, the Contractor and Utility Owner will be entitled to payment, on a pro rata basis, for satisfactorily performed services to the extent funds are available.
  3. *Cancellation for Cause or Default*: If the Utility Owner or the Contractor fail to fulfill their obligations under this MUA in a timely and proper manner, or if either party otherwise breaches this MUA, MnDOT has the right to terminate this MUA for cause upon giving the Utility Owner and the Contractor written notice and a 30-Calendar-Day opportunity for the defaulting party to cure the default or show cause why the termination is inappropriate. Such termination will be at MnDOT's sole discretion and will not limit any other available remedy. Upon termination, all finished and unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports, and other material that the Utility Owner and the Contractor prepared under this MUA will become MnDOT's property at MnDOT's discretion. The Contractor and Utility Owner will be entitled to payment, on a pro rata basis, for satisfactorily performed services.
    - a. Notwithstanding the above, the Utility Owner and the Contractor will not be relieved of liability to MnDOT for any damages MnDOT sustains due to any breach of this MUA. MnDOT may withhold any payment to the Utility Owner or the Contractor to mitigate its damages until the exact amount of damages due to MnDOT from the Utility Owner or the Contractor is determined.
    - b. If it is determined for any reason after cancellation that the Contractor or Utility Owner was not in default, or that the Utility Owner's or the Contractor's action or inaction was excusable, the cancellation will be treated as a cancellation without cause, and the rights and obligations of MnDOT and the Utility Owner or Contractor (whichever is applicable) will

be the same as if MnDOT had canceled the MUA without cause, as described in Article I.E.1.

- F. *Data Practices:* All parties must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13), as it applies to any data received, collected, stored, or disseminated by a party to this MUA or the work performed under it. The Act provides for civil liability for failure to comply with its requirements.
- G. *Conflict:* In the event of a conflict between this MUA, its incorporated material, or its exhibits and attachments, the parties will resolve that conflict or inconsistency in favor of the most restrictive provision, as MnDOT determines at its discretion.

## II. **Technical Criteria/Standards/Requirements**

- A. *Federal and State Requirements:* The Contractor and Utility Owner must comply with all applicable federal and State laws, rules, and regulations, including all environmental laws and regulations on the Project. The Contractor and the Utility Owner must require compliance with these laws and regulations in all subcontracts entered into under this MUA.
- B. *Standard Conditions:* The standards, procedures, and terms in this MUA, any subsequent Work Orders, and all MnDOT Utility Permits will govern the performance of the Utility Work and any related payment (if applicable). The following provisions are incorporated herein as terms and conditions of this MUA:
  - 1. Title 23, Code of Federal Regulations, Part 645, and the edition of the FHWA Program Guide: Utility Adjustments and Accommodation on Federal Aid Highway Projects (Federal Regulation), in effect at the execution of this MUA, and any subsequent amendments and replacements;
  - 2. MnDOT's Policy for Accommodation of Utilities on Highway Right of Way;
  - 3. The Notice and Order; and
  - 4. All exhibits and policies referenced herein.
- C. *General Criteria and Standards:* All Utility Work must be consistent with this MUA and the Utility Owner's current, reasonable, written specifications; standards of practice; construction methods; and any applicable Utility Permit requirements.
  - 1. If the Contractor is performing the design, the Utility Owner must provide the necessary written specifications, standards of practice, and construction methods to MnDOT and the Contractor no later than the beginning of the design. If the

Utility Owner does not provide these documents, the Contractor will be under no obligation to follow them.

2. If the Utility Owner is performing the design, it must provide all current written specifications, standards of practice, and construction methods to MnDOT and the Contractor no later than the date the Work Order for the Utility Work is signed.
- D. *Plans:* The plans for the design of the Utility Work must show at least the existing topography, Right of Way, lanes of travel, the x and y coordinates of the Facilities' location, and the z coordinate of the Facilities' location, if applicable.
1. The most recent plans and specifications will govern the scope of the Utility Work. When the final plans are completed they will supplement or replace any previous plans or specifications, as applicable.

### III. **Quality Management**

The Utility Owner will be responsible for the quality control of all Utility Work, regardless of which party performs it. Any quality control that the Contractor elects to provide for the Utility Work will be in addition to, not in lieu of, the Utility Owner's quality control. The Utility Owner will operate all valves and supervise all shut-offs and disconnections for the construction of the Utility Work. The Utility Owner must notify MnDOT in writing of all cases of a performing party's noncompliance no more than fourteen Calendar Days after the Utility Owner knew or should have known of the noncompliance.

### IV. **Coordination**

The Utility Owner, MnDOT, and the Contractor will coordinate their efforts and cooperate with each other to ensure that the party performing any work does so promptly and without disturbance to other Project work, minimizes delay and uncertainty, and eliminates excess cost. Coordination will include the following tasks.

- A. *Initial Coordination Meeting:* When the party preparing the plans achieves a level of design where utility conflicts can be determined, the Contractor and the Utility Owner will conduct an initial coordination meeting before beginning the Work Order process. At this meeting, the Contractor and the Utility Owner will address pertinent information for the Utility Design Sheets (UDSs) and discuss potential conflicts. Once the Contractor has the UDS information, a preliminary level of design, and estimated costs, it will schedule a meeting with MnDOT and the Utility Owner to:
1. Review the Final Design and construction schedules for the work at each UDS location;

2. Review proposed conflict resolutions;
  3. Coordinate the performance of the Project work with the Utility Work at each UDS location; and
  4. Negotiate the Work Orders.
- B. *Coordination of Relocations:* The Contractor will avoid relocating the Utility Owner's Facilities to the extent practicable. If the Contractor and the Utility Owner cannot agree whether a relocation can be avoided, MnDOT will determine the appropriate course of action at its discretion. When practicable, the Facilities will be left in-place and protected. When physical relocation of the Facilities is not reasonably avoidable, the Utility Owner will relocate (or allow the Contractor to relocate) those Facilities. The Utility Owner must use its best efforts to cooperate with MnDOT and the Contractor to identify any joint users of the Facilities and to assist in the Utility Work.
- C. *Change in Contractor's Design:* If the Contractor changes the design of a relocation to which the Utility Owner has agreed, and one of the parties has commenced the design or physical construction of that relocation, the Contractor and the Utility Owner must coordinate to change the design and/or relocation of those Facilities. Article VIII.B of this MUA describes the payment process for additional design and/or relocation changes.
- D. *Ongoing Coordination*
1. MnDOT, the Utility Owner, and the Contractor will meet as each party reasonably requests to review and coordinate time schedules and track Utility Work progress.
  2. The Utility Owner will not Interfere with the Project work.

## V. The Utility Design Sheet

The Contractor will prepare a UDS, in substantially the same form as Exhibit B, to describe the Project Utility Work at each specific location.

## VI. Work Orders

A party to this MUA will commence Utility Work only after all the parties to this MUA have executed a Work Order and MnDOT has issued any necessary Utility Permits.

- A. *Form:* The Work Orders will be in substantially the same form as Exhibits C(1) and C(2).
- B. *Contents/Amendment:* The Work Order, and any agreements or documents executed or prepared pursuant to it:

1. Will include:
    - a. The design plans;
    - b. Any available, applicable design details;
    - c. Any Right of Way/easement documents at the UDS location;
    - d. The scope of the Utility Work;
    - e. The party responsible for performing the Utility Work;
    - f. The lump sum or estimated amount of the Utility Work, as applicable;
    - g. The Utility Work schedule;
    - h. The Utility Owner's special scheduling considerations (e.g., winter gas loads and summer electric loads);
    - i. The Utility Owner's Inspection fees; and
    - j. Any other conditions applicable to the Work Order that this MUA does not already address.
  2. May also amend the terms and conditions of this MUA upon inclusion of appropriate language describing the change.
- C. *Negotiation:* MnDOT, the Utility Owner, and the Contractor must promptly meet and confer to resolve any comments or disagreements regarding the Work Order through good faith negotiation. The Contractor will prepare the Work Order after the parties resolve the comments or disagreements.
- D. *Submission/Response/Execution:* The Contractor will provide notice of the Utility Work and its schedule in a Work Order to the Utility Owner. The Utility Owner will respond (by executing or commenting on problems) to all Work Orders no more than 14 Calendar Days after receiving them. The Contractor shall submit four originals of each Work Order (including any exhibits) to Mn/DOT for Approval upon execution by the Utility and Contractor. Mn/DOT will respond with comments no later than 10 Working Days after receipt. Failure to execute a Work Order will not excuse any party's failure to perform any legal obligation.
- E. *Standards:* All standards, procedures, terms, and conditions set forth in this MUA, and in all MnDOT Utility Permits issued subsequent to the execution of the Work Orders, will be incorporated into each Work Order. Failure to execute a Work Order will not excuse any party's failure to perform any legal obligation.
- F. *Reimbursement/Payment*
1. Payment for Utility Work under a Work Order will follow the reimbursement process in Article IX of this MUA. The Utility Owner will deal directly with MnDOT when making or receiving payment. Unless a Work Order expressly obligates

MnDOT to pay for certain tasks, MnDOT has no financial obligation to pay for any work described in it. MnDOT's financial obligation, if any, will be limited to the amount expressly stated in the Work Order.

2. The amount MnDOT pays the Utility Owner for its relocation costs will not exceed the amount on which the federal government bases its reimbursement for Federal-Aid Highway Projects.
- G. *Work Order Effective Date:* A Work Order and the obligations therein will be effective on the date MnDOT obtains all required signatures under Minnesota Statutes, section 16C.05, subdivision 2.
- H. *Notice of Completion:* Upon completion of the Utility Work, the party who performed it will provide a notice of completion to the other party.

## VII. Performance of the Utility Work

All Utility Work must follow the terms of the Notice and Order and the Work Order. The Contractor and the Utility Owner may split the responsibilities for the design and construction elements of the Utility Work at any particular UDS location, or perform one or both of the elements itself, according to this section.

- A. *Responsible Party:* The Work Orders (Exhibits C(1) and C(2)) indicate which party will be responsible for designing and constructing the Utility Work at a particular UDS location. That party must complete all Utility Work pursuant to the Notice and Order.
- B. *Time of Essence:* Time is of the essence in the performance of any Utility Work.
- C. *Design*
1. *Contractor Design:* The Contractor may design the Utility Work along with the Project Work if the Utility Owner so authorizes in a Work Order. The Contractor must complete the design according to the schedule in the Work Order. The design will be subject to the Utility Owner's Approval by execution of a Design Approval Letter (Exhibit D(1)). The Utility Owner will not unreasonably withhold this Approval.
  2. *Utility Owner Design:* The Utility Owner may design the Utility Work according to a Work Order. The Utility Owner must complete the design according to the schedule in the Work Order. The design will be subject to the Contractor's Approval by execution of a Design Approval Letter (Exhibit (D(2))). The Contractor will not unreasonably withhold this Approval.

D. *Construction*

1. *Contractor Construction:* The Contractor may construct the Utility Work along with the Project Work if the Utility Owner so authorizes in a Work Order. The Contractor must complete the construction according to the schedule in the Work Order. The construction will be subject to the Utility Owner's Inspection and Approval by execution of a Construction Inspection Acceptance Letter (Exhibit E(1)). The Contractor must provide as-built plans of the Facilities to MnDOT and the Utility Owner no more than 90 Calendar Days after receiving the Construction Approval Letter (Exhibit E(3)). Notwithstanding anything in this MUA or Minnesota Rules, part 8810.330 to the contrary, the Utility Owner will not be liable for damages that result from the Contractor's failure to perform the Utility Work.
2. *Utility Owner Construction:* The Utility Owner may construct the Utility Work according to a Work Order. The Utility Owner must complete the construction according to the schedule in the Work Order. Construction will be subject to the Contractor's Inspection and Approval by execution of a Construction Inspection Approval Letter (Exhibit E(2)). The Utility Owner must provide as-built plans of the Facilities to MnDOT no more than 90 Calendar Days after receiving the Construction Approval Letter (Exhibit E(2)).
3. *Traffic Control:* The Contractor will, at its own cost, provide traffic control for any Utility Work, regardless of which party performs that Utility Work.
4. *Utility Owner to Perform Inspection:* The Utility Owner will Inspect any Utility Work that the Contractor constructs. The Utility Owner will coordinate Inspections with the Contractor.
  - a. The Utility Owner will Inspect the Contractor's construction Utility Work no more than 7 Calendar Days after the Contractor has completed it. If the Utility Owner determines that the completed Utility Work is consistent with the Technical Criteria/Standards/Requirements in Article II, it will provide the Contractor with a signed Construction Inspection Acceptance Letter (Exhibit E(1)) for the work no more than 14 Calendar Days after its completion. The Utility Owner will have the right to reject Utility Work that does not meet the Technical Criteria/Standards/Requirements. If the Utility Owner rejects any of the Utility Work, it must notify the Contractor, in writing, of its grounds for rejection and provide suggestions for correcting any problems. The Utility Owner will review the revised Utility Work no more than 7 Calendar Days after receiving notice of its completion, unless the Work Order requires a different time period. As part of the Inspection, the Contractor must provide the Utility Owner with a certification by a

- Minnesota-licensed Professional Engineer indicating that the Utility Work was constructed according to the Approved design and the Work Order requirements.
- b. The Utility Owner's Inspection, Acceptance, and Approval of the Utility Work will not be construed as the Utility Owner's waiver of any Claim it may have under applicable law.
- E. *Permits*: The party responsible for constructing the Utility Work at a particular UDS location will be responsible for obtaining all necessary permits. These permits include the MnDOT Utility Permits and those from local authorities with jurisdiction over the Right of Way used for Utility Work outside the Project limits. All parties must cooperate in that process as needed. When the Contractor is responsible for the Utility Work, the Utility Owner and the Contractor agree to coordinate to prepare and submit the MnDOT Application for Utility Accommodation on Trunk Highway Right of Way, Form 2525 (Permit), as necessary. To the extent practicable, all utility Permits will be issued subsequent to the Final Design of the Utility Work for the respective Work Order.
- F. *Incidental Utility Work*: Regardless of which party is responsible for performing the Utility Work, the Contractor will be solely responsible for performing any Incidental Utility Work. Incidental Utility Work includes all In-Place/Out-of-Service Work and Protection In-Place of Facilities.
- G. *Prequalified Subcontractors/Subconsultants*: If the Contractor is responsible for designing and/or constructing the Utility Work, it must use a subcontractor or subconsultant that the Utility Owner has pre-qualified to perform that work or become prequalified itself. The Utility Owner will prepare and provide the Pre-Qualified Consultants and Contractors List to MnDOT and the Contractor no more than seven Calendar Days after this MUA's execution. The Utility Owner will provide updates to the list as needed to MnDOT and the Contractor. If the Utility Owner does not provide a list, the Contractor may use other subcontractors or subconsultants. If the subcontractors or subconsultants on the list are not reasonably available, the Contractor may use other subcontractors or subconsultants upon receiving the Utility Owner's Approval.

## **VIII. Responsibility for Cost**

- A. *General*: Applicable Laws of the State of Minnesota, including Minnesota Statutes, section 161.45 and 161.46, and Minnesota Rules, part 8810.3300, subpart 3 will determine cost responsibility between MnDOT and the Utility Owner.
- B. *Change in Contractor's Design*: Regardless of the initial cost responsibility, if the Contractor changes the design of a relocation to which the Utility Owner has agreed, and one of the parties has commenced that relocation, the Contractor will be responsible for paying the resulting cost. Where MnDOT is responsible, the Contractor agrees to assume

MnDOT's statutory responsibility for the payment of such design or additional relocation. This provision does not alter MnDOT's statutory requirements for reimbursement to the Utility Owner, or the Utility Owner's ability to file a Claim for reimbursement for such costs with MnDOT.

- C. *Dispute Resolution*: If there is a Dispute concerning cost responsibility, the parties will attempt to resolve that Dispute according to the provisions of Article XIX below. If a good faith Dispute continues after that attempt, and if MnDOT consents in writing, the parties will proceed with the Utility Work at MnDOT's cost, subject to MnDOT reserving all applicable legal and equitable rights to later pursue reimbursement, plus interest and costs, expenses, and damages, from the Utility Owner or the Contractor.
- D. *Depreciation*: Depreciation credit will only be allowed to MnDOT or the Contractor to the extent authorized by 23 CFR 645.117 (h)(2) for the depreciation or deterioration of replaced or altered Facilities.
- E. *Salvage*
  - 1. When the Utility Owner is responsible for performing the Utility Work under a Work Order and MnDOT is responsible for its cost, the Utility Owner must give credit to MnDOT for the salvage value of that work, as explained in 23 CFR 645.117 (h), and in the applicable Work Order.
  - 2. If the Contractor recovers materials when performing the Utility Work that no party will reuse, those materials will become the Contractor's property.
- F. *Betterments*: The Utility Owner is responsible for the cost of any Betterments to its Facilities.

## IX. Payment

- A. *Maximum MUA Amount*: MnDOT has encumbered \$55,514.00 under this MUA (Maximum MUA Amount). A Work Order will provide the cost of the Utility Work at each location. The total cumulative costs of all Utility Work performed pursuant to this MUA and its subsequent Work Orders must not exceed this Maximum MUA Amount unless the Utility Owner, the Contractor, and MnDOT officials have fully executed an amendment to the MUA as Minnesota Statutes, section 16C.05 requires.
- B. *Reimbursement Requirements*: This MUA governs the payment for all reimbursable Utility Work performed under it to the fullest extent consistent with applicable law.
  - 1. If the party responsible for performing the Utility Work at a UDS location is not the party responsible for the cost, the performing party must provide a notice of

completion and either a final lump sum statement or an itemized invoice of actual incurred costs to the other party upon completion.

2. All plans, specifications, estimates, and billings that the Contractor or Utility Owner submit to MnDOT to receive reimbursement must comply with:
    - a. All applicable federal and MnDOT requirements, including its special provisions, technical memoranda, Policy for Accommodation of Utilities on Highway Right of Way, and basic clearances for the installation of electric supply and communication lines;
    - b. State statutes and rules;
    - c. Federal statutes and regulations;
    - d. The Notice and Order; and
    - e. Any other requirements set forth in the Work Order.
  3. To receive reimbursement, the responsible party must submit the following documents to MnDOT under each Work Order:
    - a. Any necessary conveyance documents executed by authorized officials of the Utility Owner, if applicable;
    - b. The signed Design Approval Letter (Exhibit D(1) or D(2)) or the signed Construction Inspection Approval Letter (Exhibit E(1) or E(2)); whichever is applicable; and
    - c. One original invoice signed by an authorized representative of the Utility Owner. The responsible party must submit this invoice no more than 120 Calendar Days after formal Approval of the Utility Work. If the Utility Work was performed on an actual cost basis, the invoice must include supporting documentation of approved costs.
  4. Payment will be contingent upon the non-performing party's final Inspection of the Utility Work. All invoices will be subject to post-audit adjustment.
- C. *Lump Sum Basis:* If the parties can agree on a lump sum amount, the costs of the Utility Work may be reimbursed on a lump sum basis according to the Work Order. Pursuant to Minnesota Statutes, section 161.46, subdivision 3, if MnDOT is responsible for the cost of the Utility Work and the parties agree to a lump sum payment for the Utility Work covered by a particular Work Order, then the total cost under that particular Work Order must not exceed \$100,000.00.
- D. *Actual Cost Basis:* Subject to the standards in 23 CFR 645.117 and any other applicable regulations, the costs of the Utility Work may be reimbursed on an actual cost basis for the costs actually incurred performing the Utility Work. If the parties use an actual cost basis, the party responsible for performing the Utility Work must develop and record the

costs of the Utility Work according to 23 CFR 645.117 and any other applicable regulations or procedures. The performing party will provide the other party with all information and reports that State and federal statutes or regulations require.

1. If the Utility Owner wishes to subcontract any Utility Work, it must first obtain prior written Approval from the Utilities Engineer before awarding the contract for that work. MnDOT will not unreasonably withhold this Approval. All bidding and contracting must be conducted according to all federal and State laws and regulations applicable to the Utility Owner and the Project. If the subcontracted work costs \$10,000 or more, the Utility Owner must:
  2. For each UDS location where the parties agree to base reimbursement on an actual cost basis, the party responsible for performing the Utility Work at that location will prepare an itemized estimate of the relocation cost according to its standard practice. The responsible party must submit the estimate to the other party for Approval with the preliminary plans according to all scheduling requirements.
  3. Limitation on Payment
    - a. If the responsible party deems it necessary to perform additional Utility Work not covered in a Work Order, or anticipates that costs will exceed the amount in Article IX.A, then the performing party must promptly notify the Utilities Engineer, in writing, of the nature and cause of the additional work or costs prior to performing or incurring them. Notification must include the amount of additional funds requested and reason(s) to support the request. The Utilities Engineer may approve the request subject to the availability and encumbrance of necessary funds. If the responsible party incurs additional costs for which the State has not previously encumbered funds, MnDOT will not be obligated to pay those additional costs.
    - b. If the total amount of the Utility Work will exceed the Maximum MUA Amount, the performing party must get Approval to do so from the Utilities Engineer. Subsequent to the Utilities Engineer's Approval of the request to incur additional costs, the parties must amend this MUA to reflect the new Maximum MUA Amount before MnDOT will not be responsible for paying the additional cost.
- E. *Payments:* The Utility Owner will deal directly with MnDOT when making or receiving payment(s) for the performance of Utility Work, or making payments for Betterments. If the Utility Owner performs the reimbursable Utility Work, MnDOT will make payments pursuant to the Work Order.

1. An actual cost or lump sum payment constitutes payment in full for all Utility Work performed under a particular Work Order and for any and all damages, claims, or causes of action of any kind the party performing the work accrues because of the relocation. This payment also constitutes payment in full for the Quitclaim Deed (if applicable).
  2. The actual cost or lump sum payment will not include Betterment, salvage, and/or retirement value or any combination thereof.
- F. *No Offsets*: The Utility Work performed under each Work Order will be treated as a separate job with separate billing. There will be no offsets between the amounts one party owes the other, whether for the same Work Order or for different Work Orders, except for the Betterment, salvage, and/or retirement value credits, or any combination thereof described in this MUA.

**X. Betterment**

- A. As MnDOT determines at its discretion, Betterment work may be eligible to be performed if:
1. It is compatible with the Project Work;
  2. It would not Interfere with the Project Schedule; or
  3. Separating the Betterment work from any related Utility Work that the Contractor is responsible for performing is feasible.
- B. The Utility Owner will be responsible for the cost of any Betterments. If the Utility Owner wishes to include eligible Betterment work at a location where the Contractor is responsible for performing the Utility Work, the Utility Owner will negotiate the cost (on a lump sum or actual cost basis) for that Betterment work directly with the Contractor. The Utility Owner must provide a copy of that lump sum amount or actual cost estimate to MnDOT.
1. If the Utility Owner authorizes the Contractor to do the Betterment work, MnDOT, the Utility Owner, and the Contractor must execute a Work Order describing the terms and conditions of that work. Upon the execution of the Work Order, the Utility Owner will pay the negotiated price of the Betterment work to MnDOT. MnDOT will then add the Betterment work to the DB Contract with the Contractor.
  2. If the parties cannot agree to a lump sum cost for the Betterment work, the Contractor will perform the work on a time and materials basis pursuant to the DB

Contract. The Utility Owner will pay MnDOT the total, actually incurred cost on that basis.

- a. If the Contractor performs the work on an estimated time and materials basis, and the actual costs for the work exceed the estimated amount, the Utility Owner will pay those excess costs to MnDOT.
  - b. If the Contractor performs the work on an estimated time and materials basis, and the actual costs for the work are less than the estimated amount, MnDOT will promptly refund the remaining amount to the Utility Owner. MnDOT will make that refund no more than 30 Calendar Days after receiving an invoice and supporting documentation for that work.
3. If the Utility Owner does not accept the Contractor's offered price for the Betterment work, the Utility Owner may reject that price. The Utility Owner may then select a different contractor to perform the Betterment work, provided that the performance complies with the Contractor's Project schedule. MnDOT, the Utility Owner, and the Contractor will execute a Work Order to describe the terms and conditions of that Betterment work. The Utility Owner will, according to Minnesota Rules part 8810.3300, be responsible for claims and damages arising from the Utility Owner's failure to meet the deadline established in an applicable Notice and Order.

## **XI. Scheduling**

- A. The performing party will complete any design, construction, and/or Inspection of Utility Work according to a schedule described in the Work Order. The parties agree to negotiate the use of acceleration methods (e.g., imposing overtime work or importing contractors from outside the local area) in good faith if necessary to meet the Contractor's scheduling requirements. This clause will not be construed as giving a party unilateral authority to order acceleration, except that this clause will not remove MnDOT's authority (if any) under the Design-Build Contract to direct acceleration by the Contractor.
- B. Where the Utility Owner designs the Utility Work, the Contractor will review that design and respond no more than 14 Calendar Days after receiving it, unless the Work Order requires a different time period. If the design is consistent with the performance standards described herein, the Contractor must Approve it and notify MnDOT and the Utility Owner of the Approval within this time period. If the design does not meet performance standards, the Contractor must submit its comments to the Utility Owner and notify MnDOT within this time period.
- C. The Utility Owner will have the right to reject any design work that does not meet the Technical Criteria/ Standards/Requirements described in Section II. If it rejects any design work, the Utility Owner must immediately notify MnDOT and the Contractor, in

writing, of its grounds for rejection and suggestions for correcting the problem. The Utility Owner will review the revised design work no more than 7 Calendar Days after receiving it, unless the Work Order requires a different time period.

- D. If the Utility Owner is constructing the Utility Work, it may not begin until it receives the executed Work Order. The Utility Owner must notify the Contractor when it will begin construction according to the time period in the Work Order.
- E. Where the Contractor performs the design for the Utility Work, the Utility Owner will review the Contractor's design no more than 14 Calendar Days after receiving it, unless the Work Order requires a different time period. If the design is consistent with the performance standards described herein, the Utility Owner must Approve it and notify MnDOT and the Contractor of the Approval within this time period. If the design does not meet performance standards, the Utility Owner must submit its comments to the Contractor and notify MnDOT within this time period. The Contractor may not begin construction of the Utility Work until it receives an executed Work Order.

## **XII. Deadlines and Delays**

- A. No party will be liable for any delay or failure to meet any obligation in this MUA if that delay or failure is caused by "Force Majeure." Any delay or failure due to a Force Majeure will not constitute default.
- B. If the Utility Owner fails to meet a deadline, and that failure is not due to Force Majeure, the Utility Owner must pay MnDOT the actual documented costs and damages MnDOT incurs. The Utility Owner must also pay the Contractor the actual documented costs and damages the Contractor incurs because of the Utility Owner's delay. If the following conditions are satisfied, the Contractor will bear 100 percent of the risk of utility delays, up to an aggregate amount of 4 Calendar Days for the Project (regardless of how many of the Utility Owner's Facilities the Project affects):
  - 1. The Utility Owner has provided satisfactory evidence to MnDOT that it has fulfilled its obligation to coordinate with the Contractor to prevent such delays;
  - 2. The Utility Owner has attempted to negotiate a reasonable solution to the utility delay pursuant to Paragraph XI.A., if applicable; and
  - 3. The Utility Owner has obtained, or is in a position to timely obtain, all applicable Approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or required rulings that are its responsibility to obtain.

- C. If any party fails to meet deadlines set in a Work Order, then any affected time deadlines for any other party's design, construction, and/or Inspection of the Utility Work will be revised accordingly.

### **XIII. Approvals and Acceptances**

Any Acceptance, Approval, or other similar action (Approval) pursuant to the MUA:

- A. Must be in writing to be effective (unless deemed granted pursuant to Article XIII.C.).
- B. Will not be unreasonably withheld, conditioned, or delayed. If Approval is withheld, the approving party must, in writing, specifically state the reason for withholding or delaying Approval, and must identify, with as much detail as possible, what changes are required to the request for Acceptance or Approval.
- C. Approval between the Contractor and the Utility Owner will be deemed granted if the requesting party does not receive a response 14 Calendar Days after submitting the request, except where the DB Contract documents provide otherwise. The requesting party must send out requests for Approval according to Section XIV.

### **XIV. Authorized Agents and Notices**

- A. *Authorized Agents:* The individuals below are authorized agents of MnDOT, the Utility Owner, and the Contractor. If a party wishes to designate a new or substitute Representative, it may do so in writing at any time.

#### **For MnDOT:**

##### Number 1

Name: John Krysiak  
Title: Project Manager  
Address: 1123 Mesaba Ave  
Duluth, MN 55811  
Email: john.krysiak@state.mn.us  
Phone: 218-341-7595

##### Number 2

Name: Pete Marthaler  
Title: Resident Engineer  
Address: 1123 Mesaba Ave  
Duluth, MN 55811

Email: peter.marthaler@state.mn.us  
Phone: 218-393-4074

**For the Utility Owner:**

Number 1

Name:   
Title:   
Address:   
  
Email:   
Phone:   
Fax:

Number 2

Name:   
Title:   
Address:   
  
Email:   
Phone:   
Fax:

**For the Contractor:**

Number 1

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Number 2

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

- B. *Authority:* The individuals listed above will have the authority to sign/Approve Work Orders, inspect and reject services, Approve invoices for payment, and act otherwise for MnDOT, the Utility Owner, and the Contractor.
- C. *Notices:* Any notices that MnDOT, the Utility Owner, and the Contractor provide under this MUA may be e-mailed, faxed, hand delivered, or given by certified or registered mail to the individuals at the addresses set forth above. Paper copies must promptly follow up any e-mailed notices. The sender will have the burden of confirmation of delivery of any faxed notices.

**XV. Utility Ownership, Operation, and Maintenance**

- A. The Utility Owner will be the owner of the Utility Work once construction has been completed and Approved.
- B. The Utility Owner will be solely responsible for operating and maintaining its Facilities.
- C. Once the Utility Work is complete, the Utility Owner must maintain the Facilities at its own expense. The Utility Owner must follow the terms of the Utility Permit when it performs any service or maintenance work. The Utility Owner may only open and disturb the trunk highway Right of Way without a Utility Permit in the case of an emergency that is dangerous to the public and requires immediate attention. Upon learning of an emergency, the Utility Owner must immediately notify the State Patrol. The Utility Owner must take all necessary and reasonable safety measures to protect the public and must cooperate fully with the State Patrol. In this event, the Utility Owner must request a permit from the proper authority no later than the following Working Day.
- D. All terms and conditions in the Utility Permits that MnDOT has already issued for the Facilities will continue to apply unless subsequent MnDOT Utility Permits supersede them. If the Utility Owner has Facilities located in the Right of Way of the Project without a current Utility Permit, it must promptly apply for that Utility Permit. MnDOT may, in its reasonable discretion, issue a Utility Permit to the Utility Owner or require the Utility Owner to relocate the Facilities off of MnDOT Right of Way, unless the Facilities pre-existed MnDOT's construction of the highway. If the Utility Owner must relocate off the Right of Way, it will do so at its own cost.

## **XVI. Continuity of Service**

- A. All Facilities must remain fully operational during all phases of construction, except as the Utility Owner specifically allows or Approves in writing.
  
- B. To the greatest extent practicable, the Contractor must take measures to ensure that all of the Facilities remain operational at all times. The Work Order must describe any necessary interruptions of service, including shut downs and temporary diversions that the Utility Owner has Approved. If the Contractor is responsible for performing the Utility Work, the Contractor, at its own cost, must do the following to maintain continuity:
  - 1. Coordinate the schedule, design, construction, and Inspection of the Utility Work with the Utility Owner;
  - 2. Keep the Utility Owner fully informed about changes that may affect the Facilities;
  - 3. Include the Utility Owner when making decisions that affect the Facilities so that the Utility Owner can make arrangements to provide uninterrupted or minimally interrupted service to its customers; and
  - 4. Comply with any additional, reasonable service continuity conditions described in the applicable Work Orders.

## **XVII. Damage to Facilities and Other Property**

The Contractor and the Utility Owner must exercise due caution and care to avoid causing damage to the Facilities or the Project. The Contractor will be responsible for any damages it causes to the Utility Owner's property, Facilities, structures, or persons. The Utility Owner will be responsible for any damages it causes to the Contractor's property, facilities, structures, or persons. The damaging party must immediately notify the other party if any damage occurs and will be responsible for the repair or cost of that damage, at its own expense, to the other party's reasonable satisfaction.

## **XVIII. Partnering**

The DB Contract includes a section establishing a "partnering" process. That section is attached hereto as Exhibit G. Except where the terms of this MUA expressly exempt it, every disagreement between the Utility Owner and the Contractor, and/or between the Utility Owner and MnDOT (Dispute) arising under this MUA, is a Dispute subject to the terms of this section. When a Dispute arises, the Utility Owner and the other party(ies) to the Dispute must first attempt to informally resolve it.

- A. If the Dispute is between the Utility Owner and the Contractor, and the parties are unable to reach a mutually satisfactory resolution, either party may escalate the Dispute to the MnDOT project manager. If the MnDOT project manager is unable to resolve the Dispute to the parties' mutual satisfaction, the Utility Owner and the Contractor will attempt to resolve the matter through the partnering process.
- B. If the Dispute is between the Utility Owner and MnDOT, the Utility Owner and the MnDOT project manager must first attempt to informally resolve the Dispute. If the Utility Owner and the MnDOT project manager are unable to reach a mutually satisfactory resolution, the parties will attempt to resolve the matter through the partnering process.

## **XIX. Indemnification**

- A. *Indemnification:* In its performance under this MUA or any subsequent Work Orders, the Utility Owner, its agent, and employees must indemnify, save, and hold MnDOT, its agents, and employees harmless from any claims or causes of action, including MnDOT's attorney's fees to the extent caused by the Utility Owner's:
  - 1. Intentional, willful, or negligent acts or omissions;
  - 2. Actions that give rise to strict liability; or
  - 3. Breach of contract or warranty.

The indemnification obligations of this section do not apply if the claim or cause of action is the result of MnDOT's sole negligence. This clause will not be construed to bar any legal remedies the Utility Owner may have for MnDOT's failure to fulfill its obligation under this MUA.

## **XX. Audits and Retention of Records**

Pursuant to Minnesota Statutes, section 16C.05, subdivision 5, all parties must keep and maintain all books, papers, records, accounting records, documents, procedures, practices, and other material relevant to the Utility Work, including detailed records to support all bills it submits, for six years after the date of Acceptance of the completed Utility Work. These items are subject to a legislative or State audit. Each party, the Federal Highway Administration (FHWA), and any other agency that provides funding to MnDOT (including each agency's respective auditors) will have access and be entitled to audit all of these items during normal business hours upon reasonable notice to the party maintaining the records. MnDOT, the Contractor, and the Utility Owner must insert these requirements into any contracts they enter into for the Utility Work. Such contracts must also include a clause requiring their contractors to include these requirements in any subcontracts or purchase orders. MnDOT, the Contractor, and the Utility Owner must mutually agree upon any financial adjustments any audit finds necessary. If

MnDOT, the Contractor, and the Utility Owner are unable to agree upon an adjustment, the parties must follow the process in Article XIX of this MUA to resolve that adjustment.

## **XXI. Nondiscrimination**

- A. The Utility Owner will comply with the United States Department of Transportation's nondiscrimination regulations. These regulations are in the current version of the Code of Federal Regulations, title 49, part 21. The Utility Owner must incorporate these regulations by reference in all contracts.
- B. Minnesota Statutes, section 181.59 and any applicable local ordinances pertaining to civil rights and nondiscrimination are considered part of this MUA.

## **XXII. Buy America Requirements**

- A. **Buy America.** The provisions of the Build America, Buy America (BABA) Act, Public Law No. 117-58 §§ 70901-70952, the Buy America law, 23 U.S.C. § 313, 2 CFR 184, and 23 CFR § 635.410 are applicable to this Agreement. The Company must furnish iron and steel materials (including miscellaneous items such as fasteners, nuts, bolts, and washers), construction materials, and manufactured products which will be permanently incorporated on projects, funded at least partly with federal funds to be produced in the United States.
- B. **Iron and Steel.** In the case of iron and steel materials, produced in the United States means that all manufactured processes from the initial melting stage through the application of coatings, occur in the United States. Foreign source materials are any domestic products taken out of the United States for any process (e.g., change of chemical content, permanent shape or size, or final finish of product).
  - 1. Raw materials such as iron ore, pig iron, processed, pelletized, and reduced iron ore, waste products (including scrap, iron or steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, and steel trimmings from mills or product manufacturing) and other raw materials used in the production of iron or steel products may be imported from outside of the United States. Extracting, handling, or crushing the raw materials which are inherent to the transporting of these Materials for later use in the manufacturing process are exempt from the BABA Act.
- C. **Construction Materials.** In the case of construction materials, produced in the United States means that the final two manufacturing processes for the construction materials occurred in the United States.

1. Construction materials include any article, material, or supply that is or consists primarily of: Non-ferrous metals, Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), Glass (including fiber optic glass), Fiber optic cable, Optical fiber, Lumber, Engineered wood, or Drywall.
2. The BABA Act does not apply to cement, cementitious materials, aggregates such as stone, sand, or gravel, aggregate binding agents or additives, or asphalt; also referred to as Section 70917(c) excluded materials.

D. **Manufactured Products.** In the case of manufactured products, produced in the United States means that articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. Mixtures of Section 70917(c) excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

Components that are wholly or predominantly steel, iron, or both must satisfy FHWA's existing requirement for domestic iron and steel. This includes precast concrete products and cabinets or other enclosures of intelligent transportation systems that incorporate steel or iron components.

For projects obligated on or after October 1, 2025: final assembly for all manufactured products incorporated into the project must take place in the United States.

E. **Certificate of Compliance.** The Company is required to submit a Certificate of Compliance prior to incorporating any materials into the Project containing iron or steel, construction materials, or manufactured products. This shall be accomplished by the Company submitting the appropriate Certificate of Compliance, Exhibit H, to the State when the materials are delivered to the project site. The Certifications of Compliance will certify that the materials are produced in the United States. The Certificates of Compliance must be signed and dated by the Company's authorized representative, include a BABA Act submittal number, and a statement: The materials herein referenced are produced in the United States and comply with the requirements of 23 CFR § 635.410, 2 CFR 184, Public Law No.117-58 §§ 70901-70952, and 23 U.S.C. § 31.

F. **Documentation.** Supporting documentation to demonstrate compliance with BABA Act provisions (such as mill test reports, manufacturer/supplier certifications, etc.) shall be organized and maintained by the Company from the date of delivery until six years after substantial completion of the Project.

1. The State may review the Company's supporting documentation to verify compliance with the BABA Act provisions at any time upon request. The burden of

proof to meet the BABA Act provisions rest with the Company. If the supporting documentation does not demonstrate to the State that the iron or steel, construction materials, or manufactured products identified in the Certificates of Compliance were produced in the United States, then the iron or steel, construction materials, or manufactured products will be considered unauthorized work and must be removed and replaced.

### **XXIII. Governing Terms**

- A. *Third-Party Beneficiary:* There are no third-party beneficiaries to this MUA.
- B. *Waiver:* A party's failure to enforce a provision of this MUA does not waive the provision, or the party's right to subsequently enforce it.
- C. *Merger:* This MUA contains all negotiations and agreements between MnDOT, the Utility Owner, and the Contractor. No prior oral or written communications, understandings, or agreements may be used to bind either party.
- D. *Amendments:* Any amendment to this Agreement or any subsequent Work Orders must be in writing. An amendment will not be effective until the same parties who signed and Approved this MUA, or their successors in office, sign and approve the amendment.
- E. *No Liens:* The Contractor will keep the relocated Facilities free from any statutory or common law lien arising out of any utility work it performs, materials it furnishes, or obligations it incurs. The Utility Owner will keep the relocated Facilities, the Project, and the Right of Way free from any statutory or common law lien arising out of any Utility Work it performs, materials it furnishes, or obligations it incurs.
- F. *Governing Law, Jurisdiction, and Venue:* Minnesota Law, without regard to its choice-of-law provisions, governs the validity, interpretation, and enforcement of this MUA. Venue for legal proceedings arising out of this MUA, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.
- G. *Incorporation of Exhibits:* Exhibits A through H, which are attached to this MUA, are incorporated into this MUA.
- H. *Survival of Terms:* All clauses that impose obligations that are continuing in nature and that must survive in order to give effect to their meaning will survive the expiration or termination of this MUA. These clauses requiring survival include, but are not limited to: (I.F.) Data Practices; (XV) Utility Ownership, Operation, and Maintenance; (XIX) Indemnification; (XX) Audits and Retention of Records; and (XXIII.F) Governing Law, Jurisdiction, and Venue.

**The remainder of this page was left blank intentionally.**

IN TESTIMONY WHEREOF, the parties have duly executed this Agreement by their duly authorized officers and caused their respective seals to be hereunto affixed.

**CITY OF DULUTH**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

Utility Owner: City of Duluth

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION**

**State Encumbrance Verification**

*Individual certifies that funds have been encumbered as  
Required by Minnesota Statutes §§ 16A.15 and 16C.05.*

By: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Date: \_\_\_\_\_

Order Number: \_\_\_\_\_

**Department of Transportation**

Recommended for Approval:

Approved:

By: \_\_\_\_\_  
District Engineer

By: \_\_\_\_\_  
Director, Office of Land Management

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Department of Administration**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**S.P. 6981-26 (T.H. 535)**  
**Design-Build Project**  
**Master Utility Agreement Number 1061300**  
**With the 1061300**  
**Exhibits**

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## EXHIBIT A

### MUA Definitions

The following definitions apply to terms used in the MUA.

<b>Accept:</b>	To formally and conditionally determine, in writing, that a particular matter appears to conform to the requirements of the MUA.
<b>Acceptance:</b>	The written document that states that a party has accepted a specific matter.
<b>Approval:</b>	The written documentation that states that a party has approved a specific matter.
<b>Approve:</b>	To formally and conditionally determine, in writing, that a particular matter or item is good or satisfactory for the Project. This determination may be based on requirements beyond those in the MUA and may reflect specific preferences.
<b>Applicable Laws:</b>	All applicable federal and State laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, and orders of any Governmental Person having jurisdiction over the Project or the Site, the practices involved in the Project or the Site, or any work or Utility Work a Utility Owner performs.
<b>Betterment:</b>	Any upgrade of a Utility Facility (e.g., increase in capacity) that is not attributable to the Project construction, and that the Utility Owner elects to perform for its sole benefit. Such an upgrade does not include a technological improvement if its cost is equal to or less than the cost of a "like for like" replacement or relocation. Using new materials in order to comply with current standards when performing Utility Work is not considered a betterment.
<b>Calendar Day(s):</b>	Every day shown on the calendar, beginning and ending at midnight.
<b>Claim:</b>	A separate demand by a Contractor or Utility Owner for either a time extension that MnDOT disputes, or a payment for damages arising from work that the Contractor or the Utility Owner performed under the Contract or MUA that MnDOT disputes. Upon its resolution, including a resolution by delivery of a Change Order or Contract amendment that all parties have signed, the claim will cease to be a Claim.
<b>Contractor:</b>	The Design-Build Contractor MnDOT engaged under the DB Contract to perform work, render services, and/or provide materials, equipment, or other property with respect to the design and construction of the Project.
<b>DB Contract:</b>	The Design-Build Contract between MnDOT and the Contractor for the Design-Build Project.
<b>Dispute:</b>	A disagreement between the Utility Owner and the Contractor, and/or the Utility Owner and MnDOT that arises under the MUA.
<b>Facilities/Facility:</b>	A privately, publicly, or cooperatively owned line, system, and or other utility item that produces, transmits, or distributes communications,

power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, signal systems, and other products or services that serve the public, and/or a privately owned irrigation system. Any necessary appurtenances to each facility are considered part of it. This term excludes storm water facilities used for drainage of the roadway.

- Final Design:** The final design for all or a portion of the Utility Work.
- Force Majeure:** An event that is beyond MnDOT's, the Contractor's, or the Utility Owner's control, that due diligence and use of reasonable efforts could not have avoided or prevented, that materially and adversely affects a party's ability to meet its obligations under the Contract. It does not include events due to a party's acts or omissions. This term does not include normal weather, differing site conditions, MnDOT-directed changes, or any other matter for which the Contract Documents specify how liability or risk will be allocated between the parties, regardless of whether that matter is beyond a party's control.
- Governmental Person:** Any federal, State, local, or foreign government; political subdivision; governmental, quasi-governmental, judicial, public, or statutory instrumentality; administrative agency; authority; body; or entity. The term includes other State agencies and subdivisions in addition to MnDOT.
- In-Place/Out-of-Service Work:** The work necessary for a Utility Owner to decommission a Facility and its appurtenances that will not be removed. The Facility must be taken out of use using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand) or other procedures that MnDOT approves.
- Inspect:** View or carefully observe the Utility Work.
- Inspection:** The act of viewing or looking carefully at the Utility Work to verify whether it complies with the Technical Criteria and quality requirements in the MUA.
- Interfere:** To perform any action or inaction that interrupts, delays, or damages the Project work.
- Incidental Utility Work:** All work associated with the protection of existing Utility Facilities and In-Place/Out-of-Service Work that the Contractor deems necessary to accommodate the Project.
- Master Utility Agreement:** An agreement among MnDOT, the Contractor, and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project.
- MnDOT:** Minnesota Department of Transportation
- MUA:** *See Master Utility Agreement*
- Notice & Order:** A document that is sent by the Utility Agreements and Permits Unit to all utility owners that are required to relocate, adjust, or remove their facilities as a result of proposed construction in accordance with Minnesota Statutes, sections 161.45 and 161.46.
- Private Utility Owner:** Any owner or operator of a Utility that is not a governmental agency.
- Project:** The Project Work under State Project Number 6981-26 in the Trunk Highway Number 535 right of way, as defined in Book1 of the Design-Build Contract.

<b>Project Work:</b>	All duties and services that the Contractor must provide pursuant to the Design-Build Contract, to achieve MnDOT's Final Acceptance. In certain cases, the term is also used to mean the products of the work performed under the Project.
<b>Protection of Existing Utilities:</b>	Any activity undertaken to avoid damaging a Facility that does not involve removing or relocating that Facility, (i.e., temporarily lifting power lines without cutting them is Protection of Existing Utilities, whereas temporarily moving power lines to another location after cutting them is a temporary Utility Relocation.
<b>Public Utility Owner:</b>	A municipality, county, or other political subdivision in the State of Minnesota that owns and operates a Utility Facility.
<b>Representative:</b>	An authorized individual who is responsible for administrative supervision of the Utility Work for the Project.
<b>Right of Way:</b>	The real property (including all estates and interests in real property) that is necessary to construct, operate, and maintain the highway. This term specifically excludes utility easements and Construction Easements.
<b>Service Line:</b>	A Utility Facility that connects an individual service location (e.g., a single family residence or an industrial warehouse) to another Utility Facility that connects one or more lines to a larger system. This term also includes any Utility Facility on public or private property that services structures located on that property.
<b>State:</b>	(1) The State of Minnesota acting through its elected officials and their authorized representatives; or (2) The State of Minnesota in the geographic sense.
<b>Technical Criteria:</b>	The criteria that the MUA establishes the minimum acceptable standards of quality, materials, and performance of the Utility Work. These criteria will be the basis for reviews, Final Acceptance, and Final Approval.
<b>UDS:</b>	<i>See Utility Design Sheet</i>
<b>Utility Design Sheet:</b>	A form the Contractor prepares to document the existing Utility Facility conditions and the final relocation recommendation to mitigate any potential conflict. After MnDOT, the Utility Owner, and the Contractor sign the form, the Contractor will attach it to the respective Work Order.
<b>Utility Owner:</b>	The public or private owner or operator of a Utility Facility.
<b>Utility Permit:</b>	The State's Utility Accommodation on Trunk Highway Right of Way, Form 2525, that any Governmental Person or Utility Owner must obtain for a Utility Relocation.
<b>Utility Relocation:</b>	The removal, relocation, and/or protection of an existing Utility Facility that is necessary for the Project. Relocation includes temporary service work.
<b>Utility Work:</b>	All work associated with utility relocations required by a MUA and/or a Work Order issued under it. The Utility Owner, the Contractor, or a subcontractor may perform this work.
<b>Work Order:</b>	An ordering agreement that authorizes a specific utility relocation and provides information and terms for that relocation. MnDOT, the Utility Owner, and the Contractor must enter into and execute a Work Order pursuant to a MUA.
<b>Working Day(s):</b>	Any Calendar Day, excluding Saturdays, Sundays, and holidays.



## EXHIBIT C(1)

### Design Work Order for a Master Utility Agreement (MUA)

Utility Owner: City of Duluth	
MUA 1061300	UDS Number _____
Work Order Number _____	Date: _____
Work Order Revision Number _____	Date: _____
<b><u>Location/Description of Work</u></b>	
The UDS (Attachment A) describes the location of the Utility Design Work for this Work Order.	
General description of the Utility Design Work for this Work Order:	
_____	
_____	
_____	
<b><u>Allocation of Responsibility for Utility Design Work</u></b>	
<u>Responsible Party:</u> by Contractor: _____	
by Utility Owner: _____	
by Other (explain): _____	
<b><u>Cost Responsibility for the Design for UDS Number</u></b>	
MnDOT pays \$ _____ to Utility Owner/Contractor	
Utility Owner pays \$ _____ to MnDOT/Contractor	
<input type="checkbox"/> Lump Sum \$ _____ OR	
<input type="checkbox"/> Actual Cost not to exceed \$ _____	



This Work Order is entered into and among MnDOT, the Utility Owner, and the Contractor to implement part of Master Utility Agreement Number 1061300 (MUA). All MUA provisions and attachments are incorporated into this Work Order by this reference. All Utility Work must conform to the MUA and this Work Order. In the event of an inconsistency, this Work Order will prevail. This Work Order, including the information on the face page(s) attached to it, authorizes the Utility Work described herein.

**I. The Utility Design Work**

- A. The Responsible Party will:
  - 1. Perform the design work described on the face page of this Work Order; and
  - 2. Complete the design work according to the schedule on the face page of this Work Order.
- B. The Responsible Party's design:
  - 1. Must be substantially consistent with the Preliminary Plan and the standards and specifications attached as Exhibit A. **[USER NOTE: Label the plan pages as Exhibit A];**
  - 2. Be compatible with the Project plans; and
  - 3. Is subject to the review and Approval of the Utility Owner and the Contractor according to the timeframes herein.

**II. Quitclaim Deed for Property Rights**

- A. The Utility Owner must convey, by Quitclaim Deed, its right, title, and interest in property located in \_\_\_\_\_ County, Minnesota to MnDOT. This property is legally described as:
- B. The Utility Owner grants MnDOT and the Contractor the right of immediate entry upon the land described above to construct the Project, as long as the entry does not interfere with the Utility Owner's Facilities.
- C. The Utility Owner must sign the Quitclaim Deed and submit it to MnDOT for recording before MnDOT makes final payment under this Work Order.

**III. Cost**

- A. *Estimate:* The Responsible Party prepared a cost estimate for the Utility Design Work on a lump sum or actual cost basis attached to this work order as Exhibit B. **[USER NOTE: Label the cost estimate plan pages as Exhibit B].**
- B. *Billing and Payment:* If the Contractor performs the Utility Design Work, and the Utility Owner approves it, MnDOT will reimburse the Contractor according to the procedure in the DB Contract. If the Utility Owner performs the Utility Design Work, MnDOT will make reimbursement according to the terms of the MUA.
- C. *MnDOT's Cost Responsibility*
  - 1. **[USER NOTE: Choose one of the following three options:]** The State may pay the costs of the Utility Design Work that pertains to Facilities that are located where the Utility Owner has a real property interest. */or/* The State may pay the costs of the Utility Design Work that takes place because the Project is on interstate Right of Way. */or/* The State may pay the costs of the Utility Design Work that qualifies as a First Move.
  - 2. **[USER NOTE: Choose one of the following three options:]** The cost of the Utility Design Work (excluding Betterments) was included in the DB Contract price. */or/* MnDOT will pay a lump sum amount of \$ \_\_\_\_\_ to the **[USER NOTE: Choose one of two options:]** Utility Owner */or/*



IN WITNESS WHEREOF, MnDOT, the Utility Owner, and the Contractor have executed this Work Order as of the date set forth on the face page of this Work Order.

**Utility Owner:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Contractor:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MnDOT:**

Recommended for Approval:

Approved:

By: \_\_\_\_\_  
Design-Build Project Manager

By: \_\_\_\_\_  
Director, Office of Land Management

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Department of Administration**  
(with delegated authority)

By: \_\_\_\_\_

Date: \_\_\_\_\_

**State Encumbrance Verification**

Not applicable; funds encumbered under the MUA

**EXHIBIT C(2)**

**Construction Work Order for a  
Master Utility Agreement (MUA)**

Utility Owner: City of Duluth	
MUA 1061300	UDS Number _____
Work Order Number _____	Date: _____
Work Order Revision Number _____	Date: _____
<b><u>Location/Description of Work</u></b>	
The UDS (Attachment A) describes the location of the Utility Construction Work for this Work Order.	
General description of the Utility Construction Work for this Work Order:	
_____	
_____	
_____	
<b><u>Allocation of Responsibility for Utility Construction Work</u></b>	
<u>Responsible Party:</u> by Contractor: _____	
by Utility Owner: _____	
by Other (explain): _____	
<b><u>Cost Responsibility for the Construction for UDS Number _____</u></b>	
MnDOT pays \$ _____ to Utility Owner/Contractor	
Utility Owner pays \$ _____ to MnDOT/Contractor	
<input type="checkbox"/> Lump Sum \$ _____ OR	
<input type="checkbox"/> Actual Cost not to exceed \$ _____	

**Schedule for the Construction for UDS Number \_\_\_\_\_**

Start Date: \_\_\_\_\_

Completion Date (CD): \_\_\_\_\_

Review: No more than \_\_\_\_\_ days after the CD

**MnDOT Contacts**

Primary Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Backup Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**For MnDOT Internal Accounting Purposes Only**

MUA Encumbrance: \$ \_\_\_\_\_

MnDOT Costs incurred under: MUA \$ \_\_\_\_\_ and/or

DB Contract \$ \_\_\_\_\_

Total Costs to Date: MUA \$ \_\_\_\_\_ and/or

DB Contract \$ \_\_\_\_\_

Remaining MUA Balance: \$ \_\_\_\_\_

This Work Order is entered into and among MnDOT, the Utility Owner, and the Contractor to implement part of Master Utility Agreement Number 1061300 (MUA). All MUA provisions and attachments are incorporated into this Work Order by this reference. All Utility Work must conform to the MUA and this Work Order. In the event of an inconsistency, this Work Order will prevail. This Work Order, including the information on the face page(s) attached to it, authorizes the Utility Work described herein.

**I. The Utility Construction Work**

- A. The Responsible Party's construction must substantially conform to the final Approved design plan attached to this work order as Exhibit A. **[USER NOTE: Label the plan pages as Exhibit A]**
- B. The Responsible Party will:
  - 1. Notify MnDOT at least 48 hours before beginning work to allow MnDOT to perform its construction oversight responsibilities pursuant to the MUA;
  - 2. Perform the construction work described on the face page of this Work Order; and
  - 3. Complete the construction work according to the schedule on the face page of this Work Order.
  - 4. Obtain a "Construction Inspection Approval Letter" from the other party no more than 7 Calendar Days after completing the construction work.

**II. Quitclaim Deed for Property Rights**

- A. The Utility Owner must convey, by Quitclaim Deed, its right, title, and interest in property located in \_\_\_\_\_ County, Minnesota to MnDOT. This property is legally described as:
- B. The Utility Owner grants MnDOT and the Contractor the right of immediate entry upon the land described above to construct the Project, as long as the entry does not interfere with the Utility Owner's Facilities.
- C. The Utility Owner must sign the Quitclaim Deed and submit it to MnDOT for recording before MnDOT makes final payment under this Work Order.

**III. Cost**

- A. *Estimate:* The Responsible Party prepared a cost estimate for the Utility Construction Work on a lump sum **or** actual cost basis attached to this work order as Exhibit B. **[USER NOTE: Label the cost estimate plan pages as Exhibit B]**
- B. *Billing and Payment:* If the Contractor performs the Utility Construction Work, and the Utility Owner approves it, MnDOT will reimburse the Contractor according to the procedure in the DB Contract. If the Utility Owner performs the Utility Construction Work, MnDOT will make reimbursement according to the terms of the MUA.
- C. *MnDOT's Cost Responsibility*
  - 1. **[USER NOTE: Choose one of the following three options:]** The State may pay the costs of the Utility Construction Work that pertains to Facilities that are located where the Utility Owner has a real property interest. */or/* The State may pay the costs of the Utility Construction Work that takes place because the Project is on interstate Right of Way. */or/* The State may pay the costs of the Utility Construction Work that qualifies as a First Move.

2. [USER NOTE: Choose one of the following three options:] The cost of the Utility Construction Work (excluding Betterments) was included in the DB Contract price. /or/ MnDOT will pay a lump sum amount of \$ \_\_\_\_\_ to the [USER NOTE: Choose one of two options:] Utility Owner /or/ Contractor for the Utility Construction Work. /or/ MnDOT will pay the [USER NOTE: Choose one of two options:] Utility Owner /or/ Contractor the actual costs it incurs, in an amount not to exceed \$ \_\_\_\_\_.
  3. MnDOT's total obligation under this Work Order must not exceed \$ \_\_\_\_\_.
- D. *Utility Owner's Cost Responsibility*
1. The Utility Owner will reimburse [USER NOTE: Choose one of the following two options:] MnDOT /or/ the Contractor for the costs of the Utility Construction Work.
  2. [USER NOTE: Choose one of the following three options:] The cost of the Utility Construction Work (excluding Betterments) was included in the DB Contract price. /or/ The Utility Owner will pay [USER NOTE: Choose one of the following two options:] MnDOT /or/ the Contractor a lump sum amount of \$ \_\_\_\_\_ for the Utility Construction Work. /or/ The Utility Owner will pay [USER NOTE: Choose one of the following two options:] MnDOT /or/ the Contractor the actual costs it incurs, in an amount not to exceed \$ \_\_\_\_\_.

**IV. Betterments**

- A. [USER NOTE: Choose one of the following two options:] The Utility Construction Work does not include any Betterment. /or/ The Utility Construction Work includes Betterment due to \_\_\_\_\_ with an estimated cost of \$ \_\_\_\_\_. /or/ MnDOT and the Utility Owner have not determined if the Utility Construction Work will include Betterment or have not determined the amount of the Betterment. MnDOT and the Utility Owner will revise this Work Order as necessary.
- B. The Utility Owner will be responsible for 100 percent of the cost of any Betterment. The Utility Owner will credit MnDOT for the actual costs of any Betterment and any salvage value or retirement value from the Facilities.

**V. Contractor-Noted Requirements**

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IN WITNESS WHEREOF, MnDOT, the Utility Owner, and the Contractor have executed this Work Order as of the date set forth on the face page of this Work Order.

**Utility Owner:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Contractor:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MnDOT:**

Recommended for Approval: \_\_\_\_\_ Approved: \_\_\_\_\_  
By: \_\_\_\_\_ By: \_\_\_\_\_  
Design-Build Project Manager Director, Office of Land Management  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Department of Administration**  
(with delegated authority)

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**State Encumbrance Verification**

Not applicable; funds encumbered under the MUA

**EXHIBIT D(1)**

**Utility Owner’s Design Approval Letter**

THIS DESIGN APPROVAL LETTER (Letter) is for the City of Duluth’s (Utility Owner’s) execution. By executing this Letter, the Utility Owner indicates its Approval of the Utility Design Work that the Contractor performed. The table below specifically describes the Utility Design Work to be Approved.

The Contractor performed this Utility Design Work as part of MUA 1061300, which was entered into among MnDOT, the Utility Owner, and the Contractor.

<b>Utility Owner: City of Duluth</b>	
<b>MUA 1061300</b>	<b>UDS Number</b> _____
<b>Work Order Number</b> _____	<b>Date:</b> _____
<b>Work Order Revision Number</b> _____	<b>Date:</b> _____

**UTILITY OWNER’S APPROVAL SIGNATURE**

By signing below, the Utility Owner’s authorized Representative indicates that the Contractor performed the Utility Design Work according to all applicable MUA standards and Work Order requirements. The Utility Owner hereby Approves the Contractor’s completed Utility Design Work.

Utility Owner: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

If the Utility Owner will be performing the Construction Utility Work, then the Contractor will issue a notice to proceed to the Utility Owner for that Construction Utility Work once the Utility Owner signs this letter.

If the Utility Owner will not sign this letter, it must state its basis for not approving the Utility Design Work: \_\_\_\_\_

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cc: MnDOT  
Contractor

**EXHIBIT D(2)**

**Contractor’s Design Approval Letter**

THIS DESIGN APPROVAL LETTER (Letter) is for the Contractor’s execution. By executing this Letter, the Contractor indicates its Approval of the Utility Design Work that the City of Duluth (Utility Owner) performed. The table below specifically describes the Utility Design Work to be Approved.

The Utility Owner performed this Utility Design Work as part of MUA 1061300, which was entered into among MnDOT, the Utility Owner, and the Contractor.

<b>Utility Owner: City of Duluth</b>	
<b>MUA 1061300</b>	<b>UDS Number</b> _____
<b>Work Order Number</b> _____	<b>Date:</b> _____
<b>Work Order Revision Number</b> _____	<b>Date:</b> _____

**CONTRACTOR’S APPROVAL SIGNATURE**

By signing below, the Contractor’s authorized Representative indicates that the Utility Owner performed the Utility Design Work according to all applicable MUA standards and Work Order requirements. The Contractor hereby Approves the Utility Owner’s completed Utility Design Work.

Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

If the Utility Owner will be performing the Construction Utility Work, then the Contractor will issue a notice to proceed to the Utility Owner for that Construction Utility Work once he signs this letter.



## EXHIBIT E(1)

### Utility Owner's Construction Inspection Acceptance Letter

THIS CONSTRUCTION INSPECTION ACCEPTANCE LETTER (Letter) is for the City of Duluth's (Utility Owner's) execution. By executing this Letter, the Utility Owner indicates its Acceptance of the Utility Construction Work that the Contractor performed. The table below specifically describes the Utility Construction Work to be Accepted.

The Contractor performed this Utility Construction Work as part of MUA 1061300, which was entered into among MnDOT, the Utility Owner, and the Contractor.

<b>Utility Owner: City of Duluth</b>	
<b>MUA 1061300</b>	<b>UDS Number</b> _____
<b>Work Order Number</b> _____	<b>Date:</b> _____
<b>Work Order Revision Number</b> _____	<b>Date:</b> _____

#### **UTILITY OWNER'S APPROVAL SIGNATURE**

By signing below, the Utility Owner's authorized Representative indicates that the Contractor performed the Utility Construction Work according to all applicable MUA standards and Work Order requirements. The Utility Owner hereby Accepts the Contractor's completed Utility Construction Work.

Utility Owner: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT E(2)**

**Contractor's Construction Inspection Approval Letter**

THIS CONSTRUCTION INSPECTION APPROVAL LETTER (Letter) is for the Contractor's execution. By executing this Letter, the Contractor indicates its Approval of the Utility Construction Work that the Utility Owner performed. The table below specifically describes the Utility Construction Work to be Approved.

The Utility Owner performed this Utility Construction Work as part of MUA 1061300, which was entered into among MnDOT, the Utility Owner, and the Contractor.

<b>Utility Owner: City of Duluth</b>	
<b>MUA 1061300</b>	<b>UDS Number</b> _____
<b>Work Order Number</b> _____	<b>Date:</b> _____
<b>Work Order Revision Number</b> _____	<b>Date:</b> _____

**CONTRACTOR'S APPROVAL SIGNATURE**

By signing below, the Contractor's authorized Representative indicates that the Utility Owner performed the Utility Construction Work according to all applicable MUA standards and Work Order requirements. The Contractor hereby Approves the Utility Owner's completed Utility Construction Work.

Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT E(3)**

**Utility Owner’s Construction Inspection Approval Letter**

THIS CONSTRUCTION INSPECTION APPROVAL LETTER (Letter) is for the City of Duluth’s (Utility Owner’s) execution. By executing this Letter, the Utility Owner indicates its Approval of the Utility Construction Work that the Contractor performed. The table below specifically describes the Utility Construction Work to be Approved.

The Contractor performed this Utility Construction Work as part of MUA 1061300, which was entered into among MnDOT, the Utility Owner, and the Contractor.

<b>Utility Owner: City of Duluth</b>	
<b>MUA 1061300</b>	<b>UDS Number</b> _____
<b>Work Order Number</b> _____	<b>Date:</b> _____
<b>Work Order Revision Number</b> _____	<b>Date:</b> _____

**UTILITY OWNER’S APPROVAL SIGNATURE**

By signing below, the Utility Owner’s authorized Representative indicates that the Contractor performed the Utility Construction Work according to all applicable MUA standards and Work Order requirements. The Utility Owner hereby Approves the Contractor’s completed Utility Construction Work.

Utility Owner: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT F**

**City of Duluth Resolution**

IT IS RESOLVED that the City of Duluth is authorized to enter into the Master Utility Agreement (MUA), MnDOT Agreement Number 1061300, applicable to the State Project Number 6981-26 on Trunk Highway Number 535, with the State of Minnesota, Department of Transportation for the following purposes:

To cooperate with the Contractor to coordinate all utility relocation issues for State Project Number 6981-26 on Trunk Highway Number 535.

IT IS FURTHER RESOLVED that the following individuals are certified to execute the MUA and any amendments to it:

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

I certify that the above Resolution is an accurate copy of the Resolution that the Council of the City of Duluth adopted at an authorized meeting held on the

\_\_\_\_\_ day of \_\_\_\_\_, Year, as shown by the minutes of the meeting in my possession.

<p>Subscribed and sworn to before me this</p> <p>_____ day of _____, Year</p> <p>Notary Public _____</p> <p>My Commission Expires _____</p> <p style="text-align: center; transform: rotate(-45deg); opacity: 0.5;">NOTARY STAMP</p>
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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)

### City of Duluth Resolution

IT IS RESOLVED that the City of Duluth enter into MnDOT Agreement Number 1061300 with the State of Minnesota, Department of Transportation for the following purposes:

To provide payment by the \_\_\_\_\_ to the State of Minnesota, Department of Transportation for the Betterment the City has requested. This Betterment work consists of

\_\_\_\_\_, along and adjacent to Trunk Highway Number 535 from \_\_\_\_\_ to \_\_\_\_\_.

IT IS FURTHER RESOLVED that the City agrees  
[to provide the total negotiated lump sum cost of the Betterment work to MnDOT no more than 30 calendar days after certifying this Resolution, and that]  
[to provide the total estimated cost of the Betterment work to MnDOT no more than 30 calendar days after certifying this resolution. The City also agrees to pay MnDOT any actual costs that exceed the estimate, and that the following individuals are certified to execute the Agreement and any amendments to it.

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

### CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution that the Council of the City of Duluth adopted at an authorized meeting held on the

\_\_\_\_\_ day of \_\_\_\_\_, Year, as shown by the minutes of the meeting in my possession.

<p>Subscribed and sworn to before me this _____ day of _____, Year</p> <p>Notary Public _____</p> <p>My Commission Expires _____</p> <p style="text-align: center; transform: rotate(-45deg); opacity: 0.5;">NOTARY STAMP</p>	<p>_____ (Signature)</p> <p>_____ (Type or Print Name)</p> <p>_____ (Title)</p>
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## EXHIBIT G

### Design-Build Contract Section 19

## 19 PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES

### 19.1 Partnering *{Use if applicable}*

The Contractor, MnDOT, and stakeholders shall enter into a procedure for Partnering as identified within this Section 19. The use of a third party facilitator is not required.

Within seven Days after NTP1, the Contractor shall arrange a Partnering meeting between the Contractor, MnDOT, and key stakeholders. This meeting will establish:

- Communication procedures
- A dispute resolution process, including the development of a dispute resolution ladder
- A partnering checklist to be reviewed at project meetings (if applicable). The checklist should contain items such as quality, communication, issue resolution, team and work relationships, and schedule

The partnering process will continue as part of the regularly scheduled project meetings or at events that require additional partnering sessions. These meetings should include primarily Project-level personnel with frequent visits from both MnDOT and Contractor middle management. The meetings should review the partnering checklist and identify actions that need to be escalated up the dispute resolution ladder. All costs associated with partnering shall be incidental.

If the Contractor and MnDOT determine that a third party facilitator would enhance the Partnering process, the Contractor shall make all arrangements to hire a Partnering facilitator and provide a suitable meeting location for the workshops. The length of time devoted to the workshop, along with the content for the workshop, will be determined by a cooperative effort between the Contractor and MnDOT. MnDOT and the Contractor will mutually select the Partnering facilitator. All costs associated with the Partnering workshops using a Partnering facilitator will be shared equally between MnDOT and the Contractor. No additional allowance will be provided to the Contractor for the cost associated with paying these bills and submitting the bills to MnDOT for later partial reimbursement.

#### **19.1.1. Partnering Participants**

This Contract will require a full-time partnering effort involving Executive Management, Project Management, Project Task Force and others. Participation is required by the agencies involved. Partnering between MnDOT and Contractor has proven to improve the probability of meeting each party's Project goals. The parties shall attempt to resolve disputes through partnering between appropriate representatives of MnDOT and Contractor (including, where appropriate, any Subcontractor) at the following levels:

- (a) Project Task Force Teams
  1. MnDOT chief inspectors and project engineers/supervisors
  2. Contractor's and subcontractors' project supervisors and technical area supervisors
  3. Utilities and other third parties
  4. Permitting and government agencies
- (b) Project Management Team
  1. MnDOT's Project Manager, deputy project managers
  2. Project manager, deputy project managers and design manager
  3. Utilities and other third parties
  4. Permitting and government agencies
- (c) Executive Management Team
  1. MnDOT's Project Manager, Assistant District Engineer, and other MnDOT staff as needed.
  2. Contractor and major subcontractor management
  3. FHWA Division Administration

Team members at each level will be established at the Initial Partnering Meeting. The levels listed above are meant to be broad descriptions of the required levels needed for effective issue resolution. Additional levels or specific task force teams can be added, as appropriate.

To resolve issues in a timely and effective manner, representatives of the parties shall meet regularly and explore resolution for each issue at the lowest level possible (i.e., Project Task Force Team first, Project Management Team next, and Executive Management Team last). If both parties determine, in good faith, that effective resolution is not possible at the current level, then the issue will be elevated to the next level in the partnering process. If both parties make such a determination during partnering at the Executive Management Team level, then the dispute will be elevated in accordance with Section 19.2.

### **19.1.2 Partnering Workshops**

#### **19.1.2.1. Initial Partnership Meeting**

The initial partnering meeting will occur within 30 Calendar Days of NTP1. This meeting will be facilitated by the Partnering Facilitator. At this session, all representatives from each party at each level shall attend. The participants will develop the teams at each level, develop the list of goals for the Project, establish a dispute resolution ladder and process, and develop project goals evaluation tools.

#### **19.1.2.2. Project Goals Evaluation**

The Project Goals determined at the initial partnering meeting will be evaluated on a monthly basis. This evaluation will be sent to participants at all levels in the Partnering Process. The evaluation will ask each participant to rate how effective the teams are in meeting each of the project goals. The rating system will be determined by the parties in conjunction with the Partnering Facilitator. Space will be provided on the evaluation form to allow participants to include additional written comments and details about the effectiveness of meeting the project goals. The evaluations will be submitted, compiled and the results distributed by the Partnering Facilitator. The participants will determine whether the evaluations will be anonymous at the initial partnering meeting.

#### **19.1.2.3. Project Task Force Team Meetings**

Informal partnering sessions without the facilitator will be required frequently during the duration of the Project at the Project Task Force level. These sessions will involve members of the Project Task Force teams and/or members of the Project Management teams. These sessions can be in the form of weekly Project update meetings or field reviews by team members. The goal of these meetings should not only provide an update on the Project, but include discussions on Quality, Communication, Issue Resolution, Team and Work Relationships, and Schedule. Each meeting should review outstanding issues discussed at previous partnering sessions.

#### **19.1.2.4. Executive Management Team Meetings**

Formal partnering sessions at the Executive Management level without the facilitator will be held monthly during the duration of the Project. These sessions will involve members of the Executive Management teams. The Agenda for these will be agreed upon by both parties prior to each meeting. The Agenda for each meeting shall include discussion of issues that have been agreed to be raised from the Project Management Team level. The goal of these meetings should not only provide an update on the Project, but include discussions on Safety, Quality, Communication, Issue Resolution, Team and Work Relationships, and Schedule. Each meeting will review outstanding issues discussed at previous partnering sessions. Each meeting will also include a review and discussion of the monthly project goals evaluations.

#### **19.1.2.5. Quarterly Partnership Meetings**

Formal facilitated partnering workshops will be conducted at quarterly intervals throughout the Project and at the times of critical events (as agreed upon by each party). The workshops will include all Project Task Force, Project Management and Executive Management Teams. The partnering workshops will include the Partnering Facilitator to guide the partnering process.

Each partnering session will review the major topics related to the Project. Topics should include: Quality, Communication, Issue Resolution, Team and Work Relationships, Schedule and any other topics that the teams feel are important to the success of the Project. Each meeting will also include a review and discussion of the monthly project goals evaluations. The Partnering Facilitator will prepare minutes of the meetings and circulate for comments, revisions, and/or approval of all parties.

Both MnDOT and the Contractor will submit agenda items to the facilitator in advance of each quarterly partnering workshop. The agenda shall generally include the following:

- (a) Opening remarks by MnDOT, FHWA and Contractor Executive Management.
- (b) A description by Contractor of Work accomplished since the last meeting, current status of the current Monthly Progress Update, schedule for future Work, potential issues and status of past issues.
- (c) Discussion by MnDOT of the Work schedule as MnDOT views it, potential issues, and status of past issues.
- (d) Review of monthly project goals evaluations.
- (e) Discussion regarding the major topics on the Agenda or raised at the meeting.
- (f) Setting date for next meeting.

All issues discussed during the Partnering Workshop shall be documented in the minutes. Any issue not resolved at the Workshop shall have an agreed-upon issue resolution timeline. For each of these issues identified for resolution, the participants from each affected party required to resolve the issue and the schedule to resolve the issue will be determined and recorded to ensure the issue is resolved in an effective and timely manner. These participants will report on the issue resolution at the next quarterly partnering workshop.

### **19.2 Disputes**

This Section 19 shall not preclude the Contractor from notifying MnDOT in writing, of issues or potential issues as those issues come up.

### **19.3 Costs**

See Section 19.1.

### **19.4 Claims for Compensation Adjustment and Disputes**

If issue resolution efforts through Partnering are not successful, disputes shall be resolved through DBS-1517 and Standard Specification 1517.

# EXHIBIT H

## BUY AMERICA CERTIFICATE OF COMPLIANCE

**Utility Owner:** City of Duluth

**SP 6981-26 (TH 535)**

**Agreement Number 1061300**

The provisions of the Build America, Buy America (BABA) Act, Public Law No.117-58 §§ 70901-70952, the Buy America law, 23 U.S.C. § 313 and 23 CFR § 635.410 are applicable to this Agreement. The Company must furnish iron and steel materials, manufactured products, and construction materials which will be permanently incorporated on projects, funded at least partly with federal funds to be produced in the United States.

### **Iron and Steel Products**

- All iron and steel components (including miscellaneous items such as fasteners, nuts, bolts, and washers) that we, City of Duluth, used in our utility work for SP 6981-26 are in compliance with the “Buy America” requirements of Federal law including Title 23 U.S.C. § 313 and C.F.R. § 635.410.
- The total value of foreign steel we, City of Duluth, used in our utility work on SP 6981-26 does not exceed 0.1% of the total agreement cost or \$2,500, whichever is greater.
- We, City of Duluth, received approval for the “Stipulation of Use of Foreign Steel” for the steel and/or iron products we used in our utility work for SP 6981-26. We have attached a copy of that approval.

### **Manufactured Products**

- All manufactured products that we, City of Duluth, used in our utility work for SP 6981-26 are in compliance with the Build America, Buy America (BABA) Act, Public Law No.117-58 §§ 70901-70952. Final assembly must have taken place in the United States.
- No products used buy City of Duluth fell under the requirements of the BABA Act.

### **Construction Materials**

- All construction materials that we, City of Duluth, used in our utility work for SP 6981-26 are in compliance with the Build America, Buy America (BABA) Act, Public Law No.117-58 §§ 70901-70952.
- No material used buy City of Duluth fell under the requirements of the BABA Act.

We will provide documents and records pertinent to Buy America and Build America, Buy America to the State of Minnesota (State) with our final invoice.

We will also retain copies of these documents for the State and/or FHWA’s inspection and verification for up to 6 years after we receive final payment.

By signing this document, I certify that its contents are true correct. I understand that if these contents are later proven false, City of Duluth will defend, indemnify, and hold the State harmless from any and all claims, damages, or other consequences that may result. I also understand that if I provide false information, City of Duluth may be liable under Minnesota Statutes Chapter 15C (False Claims Against the State).

**City of Duluth**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_