PUBLIC WORKS & UTILITIES COMMITTEE

13-0509R

RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DULUTH AND THE MINNESOTA DEPARTMENT OF TRANSPORTATIONFOR UPGRADE OF PEDESTRIAN CURB RAMPS, BITUMINOUS RECLAIM AND OVERLAY OF WEST FIRST STREET FROM MESABA AVENUE TO PIEDMONT AVENUE AT AN ESTIMATED COST OF $230,640.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement between the city of Duluth and the Minnesota Department of Transportation (MnDOT), a copy of which is on file in the office of the city clerk as Public Document No. _____, for pedestrian curb ramps, bituminous reclaim and overlay on West First Street from Mesaba Avenue to Piedmont Avenue, at an estimated cost of $230,640.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Purchasing Agent DLS

Approved as to form:

Attorney

Approved:

Auditor

ENG GS:jh 10/3/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement with MnDOT to pay the FHWA portion of the West First Street bituminous reclaim and overlay. West First Street is a State Aid route which suffered extensive flood damage in June 2012. FHWA and flood bond/MnDOT funding was secured to make the repairs to the street. The reconstruction is being done in-house by force account through

Maintenance Operations. The force account estimate for this project is $335,514. FHWA is paying up to $230,640 (this resolution and agreement) and flood bonds up to $104,874 (separate resolution and agreement). The working fund is Disaster Recovery Fund 225, Department 125 (Finance), Division 1803 (Roads and Bridges), Object 5403 (Street Repair and Maintenance), city project no. 1159, flood site number 269.

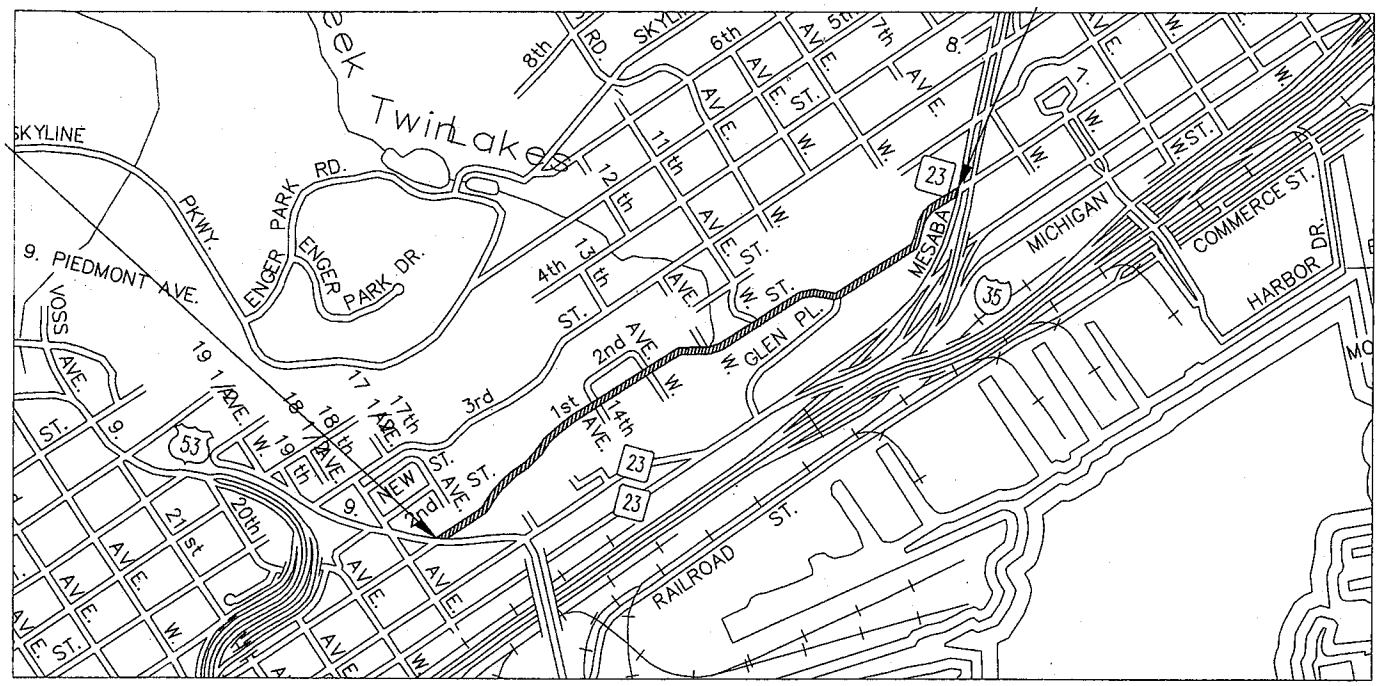
West First Street from Mesaba Avenue to Piedmont Avenue

Bituminous Reclaim and Overlay

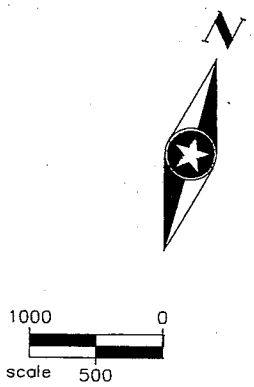
Flood Site 269

City Project 1159

SP 118-173-009



Location Map



STATE OF MINNESOTA AGENCY AGREEMENT BETWEEN DEPARTMENT OF TRANSPORTATION AND CITY OF DULUTH

FOR FEDERAL PARTICIPATION IN FORCE ACCOUNT FOR S.P. 118-173-009; M.P. ER MN12(259)

This agreement is entered into by and between CITY OF DULUTH ("City") and the State of Minnesota acting through its Commissioner of Transportation ("MnDOT"),

Pursuant to Minnesota Statutes Section 161.36, the City desires MnDOT to act as the City's agent to accept and disburse federal funds for the construction, improvement, or enhancement of transportation financed in whole or in part by federal funds, hereinafter referred to as the "Project"; and

The City is proposing a federal aid project to repair damage caused by the June 2012 rain event. This work will be done on Minnesota State Aid Street 173 also known as West First Street. A public interest finding has determined that the project can be completed more economically as a Force Account hereinafter referred to as the "FORCE ACCOUNT"; and

The FORCE ACCOUNT is eligible for the expenditure of federal aid funds, and is identified in MnDOT records as State Project 118-173-009, and in Federal Highway Administration ("FHWA") records as Minnesota Project ER MN12(259); and

The CFDA number for this project is 20.205; and

MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

THE PARTIES AGREE AS FOLLOWS:

I. DUTIES OF THE CITY.

A. DESIGNATION. The City designates MnDOT to act as its agent to accept and disburse federal funds made available for the Project.

B. ELIGIBILITY / COSTS. The estimated cost of the FORCE ACCOUNT is $293,680.

1. It is anticipated that 80% (up to $ 230,640) of the cost of the FORCE ACCOUNT is to be paid from federal funds made available by the FHWA, and that the remaining 20% will be paid by the City. The City will pay any part of the cost or expense of the work that the FHWA does not pay.

2. Any costs incurred by the City prior to authorization, will not be eligible for federal participation.

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

   a) The cost of construction related to the repairs of the damage caused by the June 2012 rain event. This work includes bituminous pavement reclamation, bituminous surfacing, curb and gutter replacement and upgrade of pedestrian curb ramps.

   b) The direct labor charges for City employees for the time that said employees are engaged in the work to be performed by the City pursuant to this agreement. Said labor charges may include the prorata share of "labor additives" applicable to said labor charges. Costs to the City of "labor additives" consisting of holiday pay, vacation, sick leave, retirement, pension, unemployment taxes, compensation and liability insurance, lost time charges and similar costs incidental to labor employment will be reimbursed only when supported by adequate records.

   c) The applicable equipment rental charges for City owned equipment used by the City and mileage charges for employee owned vehicles used by the City on the work to be performed pursuant to this agreement, at rates reflective of the City actual cost.

   d) Expenditures for materials, supplies, mechanical data processing and equipment rental, limited to the actual expenditures for the purposes of this agreement.

4. Expenditures for general administration, supervision, maintenance and other overhead or incidental expenses of the City are not eligible for federal participation.

5. Acceptability of costs under this agreement will be determined in accordance with the cost principles and procedures set forth in the applicable Federal Acquisition Regulations, Contract Cost Principals and Procedures, 48 Code of Federal Regulations (CFR) 31 which is hereby incorporated by reference and made a part of this agreement.

6. For costs expected to exceed $293,680, the City must request the preparation and execution of a supplement to this agreement, prior to incurring such costs.

C. STAFFING.

1. The City will designate a publicly employed registered engineer, ("Project Engineer"), to be in responsible charge of the Project and to supervise and direct the work to be performed under any construction contract let for the Project. If City elects to use a private consultant for engineering services, the City will provide a qualified, full-time public employee of the City, to be in responsible charge of the Project. The services of the City to be performed pursuant to this agreement may not be assigned, sublet, or transferred unless the City is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the City from its primary responsibility for performance of the work.

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

3. The City will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.

D. CONTRACT ADMINISTRATION.

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

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

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

E. PAYMENTS.

1. The entire cost of the Project is to be paid from federal funds made available by the FHWA and by other funds provided by the City. The City will pay any part of the cost or expense of the Project that is not paid by federal funds.

2. The City may request partial payments not more than once each thirty (30) days. The Project Engineer will certify each partial estimate.

3. The invoice and supplements thereto, will contain all details that may be necessary for a proper audit. Such details will consist of at least the following:

   (a) A breakdown of labor by individual, classification, dates and hours worked times the applicable rate to arrive at a total dollar amount for each individual.

   (b) The labor additive may be applied to total labor dollars, not including overtime labor dollars.

   (c) The equipment charges must be broken down by type of equipment times the applicable rate and dates used to arrive at total equipment charges.

(d) A detailed breakdown of outside services used and supporting invoices. Documentation that costs of outside services have been paid.

(e) Detail for materials, supplies, and other items with the description, units, and unit prices included in the invoice. If materials or supplies are purchased from an outside source, a copy of that invoice must be included.

(f) The invoices will include 100% of eligible charges applicable to the Force Account so that the prorata share of federal and City participation can be applied to the total costs.

4. Following certification, by the Project Engineer, of the final estimate, the City may request reimbursement for costs eligible for federal funds. The City's request will be made to MnDOT and will include a copy of the certified final estimate along with the required records.

5. Reimbursement of costs under this agreement will be based on actual costs, but limited to eligible items.

F. LIMITATIONS.

1. The City will comply with all applicable Federal, State, and local laws, ordinances, and regulations.

2. Nondiscrimination. It is the policy of the Federal Highway Administration and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate for nondiscrimination in Title VI and through parallel legislation, the proscribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the City to carry out the above requirements.

3. Workers' Compensation. Any and all employees of the City or other persons while engaged in the performance of any work or services required or permitted by the City under this agreement will not be considered employees of MnDOT, and any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, will in no way be the obligation or responsibility of MnDOT. The City will require proof of Workers' Compensation Insurance from any contractor and sub-contractor.
4. All components purchased for this project must comply with the current Buy America policy based on the statutory provisions in the Surface Transportation

Assistance Act of 1982, as implemented with a November 25, 1983, final rule and clarified by the 1997 memo.

G. AUDIT.

1. The City will comply with the Single Audit Act of 1984 and Office of Management and Budget (OMB) circular A-133 including amendments and successors thereto, which are incorporated herein by reference.

2. As provided under Minnesota Statutes Section 16C.05, subdivision 5, all books, records, documents, and accounting procedures and practices of the City are subject to examination by the United States Government, MnDOT, and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of six years. The City will be responsible for any costs associated with the performance of the audit.

H. MAINTENANCE. The City assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.

I. CLAIMS. The City will pay any and all lawful claims arising out of or incidental to the performance of the Project work. The City acknowledges that MnDOT is acting only as the City's agent for receipt and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. In all events, the City will indemnify MnDOT and hold MnDOT harmless from any claims arising out of the Project.

J. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA). This Agreement requires the City to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The City is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the City provides information to the MnDOT as required.

The City shall comply with the following:

1. Reporting of Total Compensation of the City's Executives.

(a) The City shall report the names and total compensation of each of its five most highly compensated executives for the City's preceding completed fiscal year, if in the City's preceding fiscal year it received:

i. 80 percent or more of the City's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
ii. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange

Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

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

(b) Total compensation means the cash and noncash dollar value earned by the executive during the City's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.
ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
v. Above-market earnings on deferred compensation which is not tax qualified.
vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

2. The City must report executive total compensation described above to the MnDOT by the end of the month during which this agreement is awarded.

3. The City will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this agreement. This number shall be provided to MnDOT on the plan review checklist submitted with the plans for each project. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/.

5. The City's failure to comply with the above requirements is a material breach of this agreement for which the MnDOT may terminate this agreement for cause. The MnDOT will not be obligated to pay any outstanding invoice received from the City unless and until the City is in full compliance with the above requirements.

II. DUTIES OF MnDOT.

A. ACCEPTANCE. MnDOT accepts designation as Agent of the City for the receipt and disbursement of federal funds and will act in accordance herewith.

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

C. PAYMENTS.

1. MnDOT will receive the federal funds to be paid by the FHWA for the Project, pursuant to Minnesota Statutes § 161.36, Subdivision 2.

2. MnDOT will review and certify each partial pay request. Following certification of the partial estimate, MnDOT will reimburse the City, from said federal funds made available to the Project, for each partial payment request, subject to the availability and limits of those funds.

3. Upon completion of the Project, the City will prepare a final payment request in accordance with the terms of this agreement. MnDOT will review and certify the final payment request with a final audit.

4. No more than 90% of the reimbursement due under this agreement will be paid until completion of the final audit and approval by MnDOT's authorized representative.

5. In the event MnDOT does not obtain funding from the FHWA or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the City may continue the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.

D. AUTHORITY. MnDOT may withhold federal funds, where MnDOT or the FHWA determines that the Project was not completed in compliance with federal requirements.

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

III. AUTHORIZED REPRESENTATIVES. Each authorized representative will have responsibility to administer this agreement and to ensure that all payments due to the other party are paid pursuant to the terms of this agreement.

A. The City authorized representative is Cindy Voight, Duluth City Engineer, Room 211 City Hall, 411 West First Street, Duluth, MN 55802, phone 218-730-5200, or his successor.

B. MnDOT's authorized representative is Lynnette Roshell, Minnesota Department of Transportation, State Aid for Local Transportation, 395 John Ireland Boulevard, Mail Stop 500, St Paul, MN 55155, phone 651.366.3822, or her successor.

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

V. ASSIGNMENT. Neither party will assign or transfer any rights or obligations under this agreement without prior written approval of the other party.

VI. AMENDMENTS. Any amendments/supplements to this Agreement must be in writing and be executed by the same parties who executed the original agreement, or their successors in office.

VII. TERM OF AGREEMENT. This agreement will be effective September 25, 2013 upon execution by the City and by appropriate State officials, pursuant to Minnesota Statutes Section 16C.05, and will remain in effect for five (5) years from the effective date or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.

VIII. TERMINATION. This agreement may be terminated by the City or MnDOT at any time, with or without cause, upon ninety (90) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the City as set forth in this Agreement. In the event of such a termination the City will be entitled to reimbursement for MnDOT-approved federally eligible expenses incurred for work satisfactorily performed on the Project to the date of termination subject to the terms of this agreement.

Remainder of this page left intentionally blank

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intend to be bound thereby.

CITY

City certifies that the appropriate person(s) have executed the contract on its behalf as required by applicable resolutions, ordinances, or charter provisions

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Title: Director State Aid for Local Transportation

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Date: _____