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&
CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, is made by and between the **CITY OF DULUTH**, a municipal corporation, hereinafter referred to as the "City," party of the first part, and [Click or tap here to enter text.](#), [Click or tap here to enter text.](#), hereinafter referred to as the "Contractor," party of the second part;

WITNESSETH: That the Contractor and the City agree as follows:

1. The following shall be deemed to be part of this contract:
 - a. The annexed resolution and legal advertisement of the City Council.
 - b. The bid request and specifications, including all required forms, as modified by irreconcilable language in this written contract.
 - c. The bid by Contractor, as modified by irreconcilable language in this written contract.
 - d. The performance bond and payment bond certification.
 - e. All provisions of law applicable to a contract of this nature.
2. The Contractor agrees to furnish and deliver to the [Click or tap here to enter text.](#) all labor, supervision, material, equipment, supplies, insurance, performance bond, payment bond and everything else necessary for general construction of [Click or tap here to enter text.](#); Project #[Click or tap here to enter text.](#) at [Click or tap here to enter text.](#), all in strict accordance with plans and specifications prepared by [Click or tap here to enter text.](#), your bid of \$[Click or tap here to enter text.](#) and Resolution No. [Click or tap here to enter text.](#) passed on [Click or tap to enter a date.](#) Contractor shall not commence performance of any work under this contract until Contractor receives written authorization from the City's Purchasing Agent.
3. The City agrees to make progress payments and final payments to the Contractor as stated in the contract specifications. The total amount payable under this contract shall not exceed [Click or tap here to enter text.](#) (\$[Click or tap here to enter text.](#)) unless the contract is modified by formal amendment or City contract change order. Payments under this Agreement shall be made from the following funding [Click or tap here to enter text.](#) Payment terms shall be net 35 per Minnesota Statute 471.425.
4. Per City Code Section 2-26, prevailing wages must be paid under this contract. Due to the dollar amount of this contract, a Project Labor Agreement and Community Benefits Requirements [Choose an item.](#) included as part of this contract (City Code Section 2-29).
5. The Contractor shall furnish and maintain in full force and effect until this contract is completely performed by the Contractor, a performance bond and payment bond if and when required by law, or if and when required by the City.
6. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this contract.
7. Duties to Defend, Indemnify, and Hold Harmless
 - a. To the fullest extent permitted by law, the Contractor agrees that it shall defend, indemnify, and hold harmless the City, its officers, employees, and agents, past or present, from and against any and all claims including but not limited to claims for

contribution or indemnity, demands, suits, judgments, costs, and expenses (including attorneys' fees) asserted by itself or any person or persons including agents or employees of the City of Duluth or the Contractor by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation or work of the Contractor or its employees while engaged in the execution or performance of services under this Agreement. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of the Contractor, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Contractor, its employees, or its agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten days' written notice from the City of Duluth, the Contractor shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Contractor shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the sole negligent or intentional acts or omission of the City unless Contractor should fail to comply with its insurance obligations in this contract to the detriment of City, in which case the Contractor shall indemnify, defend, and hold harmless the City for any and all amounts except amounts attributed to intentional, willful or wanton acts of the City. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Contractor. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

The Contractor understands this provision may affect its rights and may shift liability and specifically agrees to the same.

- b. The Contractor shall defend and hold and save the City, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.
8. Insurance
- a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City from all liability described in the Indemnification paragraphs above, subject to provisions below.
 - (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - (2) Commercial General and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations,

Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a “form following” provision may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.

- (3) City of Duluth shall always be named as **Additional Insured** under the Commercial General, and Automobile Liability Policies. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance.
 - (4) For any new building construction or new building addition for which the value exceeds \$100,000, the Contractor shall provide proof of Builders Risk Insurance on an “All-Risk” basis, which includes theft of material not installed and glass breakage, to the full value of the new building. Contractor(s) is (are) liable for losses within deductible coverage.
 - (5) Contractor to provide Certificate of Insurance evidencing all coverages which shall contain an unconditional requirement that the insurer notify the City without fail not less than 30-days prior to any cancellation, or 10 days prior to any non-renewal of the policy or coverages evidenced by said certificate, and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
 - c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Contract.
 - e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor’s interests and liabilities.
9. The Contractor waives the right to make any claim whatsoever against any officer, agent or employee of the City for, or on account of, anything done, or omitted to be done, in connection with the drafting or ratification of this contract. In addition, if it is determined that this contract was not drafted or ratified in conformity with Minnesota or federal law, or City of Duluth ordinance or charter provisions, or if the contract includes obligations that are void as to Minnesota or federal law or City of Duluth ordinance or charter provisions, the Contractor agrees to raise no defense and make no claim against the City on the basis of ratification, laches, estoppel, or implied contract. **The Contractor understands this provision may affect its rights and may shift liability and specifically agrees to the same.**
 10. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or its right to execute it, or its rights, duties, benefits, obligations, liabilities, or title or interest in or to it, or any part thereof, without the written consent of the City, evidenced by a resolution duly adopted by the City Council. The prohibition contained in this paragraph shall not be deemed to prevent the Contractor from subcontracting or making assignments to banks, trust

companies, or other financial institutions. Contractor shall remain primarily responsible for all work performed by any Subcontractor.

11. The Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, Contractor will not discriminate by reason of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.
12. The Contractor agrees that Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any person or persons, or on being hired, prevent or conspire to prevent any person or persons from the performance or work under this contract on account of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.
13. The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by the City or the state auditor for six years from the date of final payment under this contract.
14. In accordance with the requirements of Minnesota Statutes §471.425 Subd. 4a, or its successor, the Contractor shall pay any Subcontractor within ten days of the Contractor's receipt of payment from the City for undisputed services provided by the Subcontractor. The Contractor shall pay interest of 1-1/2 percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for any unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the Subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Contractor must be awarded its costs and disbursement, including attorney's fees, incurred in bringing the action.
15. Contractor shall comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.
16. This contract may be cancelled or terminated by the City and all moneys due or to become due hereunder may be forfeited for any failure to perform any terms or conditions of this contract including but not limited to any violation of the terms or conditions of Section 10 or 11 of this contract.
17. Any waiver by any party of any provision of this contract shall not imply a subsequent waiver of that or any other provision.
18. This contract is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis, County, Minnesota, and the parties to this Agreement waive objection to the jurisdiction of this court, whether based on convenience or otherwise.
19. This Agreement constitutes the entire agreement between the City and the Contractor on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed on behalf of the City and the Contractor. The Contractor agrees that no representations or warranties made by the City shall be binding upon the City unless expressed in writing herein.

20. This Agreement shall not be in force and effect, or in any way binding upon the City until the same shall have been approved as to form by the City Attorney, signed by the Mayor, attested by the Clerk, and countersigned by the City Auditor.
21. The Contractor unconditionally guarantees to perform all work pursuant to this contract in a good and workmanlike manner, in strict compliance with the specifications and instructions hereto attached, and to the satisfaction of the City of Duluth.
22. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

[The remainder of this page intentionally left blank. Signature page to follow].

CITY OF DULUTH-Client

[Click or tap here to enter text.](#)

Contractor

By:

By:

Mayor

Company Representative

Attest:

Its

City Clerk

Title of Representative

Date _____

Date _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney