



**CITY OF DULUTH**

**REQUEST FOR PROPOSALS FOR**

**CONSTRUCTION MANAGER AT RISK SERVICES FOR THE AIRCRAFT  
COMPLETION CENTER**

**RFP NUMBER 2015-02AA**

**ISSUED JULY 16, 2015**

**PROPOSALS DUE THURSDAY, AUGUST 6, 2015**

**SUBMIT TO**

**CITY OF DULUTH  
ATTN : PURCHASING DIVISION  
CITY HALL, ROOM 100  
411 WEST 1<sup>ST</sup> STREET  
DULUTH, MN 55802**

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## PART I

### GENERAL INFORMATION

**I-1. Purpose.** This request for proposals (RFP) provides sufficient information to those interested in submitting proposals for the subject procurement (Project). It includes instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Proposers must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

**I-2. Problem Statement.** The City of Duluth (“City”) is in need of a Construction Manager at Risk (“CMAR”) to provide preconstruction and construction management services for the construction of a City of Duluth-owned manufacturing facility. The new facility is envisioned to be a “precast concrete” building of approximately 60,000 square feet on property located near Cirrus Design and the Duluth International Airport. A map of the site is attached as **Exhibit A**.

Cirrus Designs (“Cirrus”) will lease and occupy the facility, which will serve as Cirrus’ Aircraft Completion Center. The facility will be constructed on City property and will be leased to Cirrus. The project is funded through a combination of public and private financing by Cirrus, the State of Minnesota and the City of Duluth. The facility will be managed by the Duluth Airport Authority. Additional detail is provided in **Part IV** of this RFP.

**I-3. Calendar of Events.** The City will make every effort to adhere to the following schedule:

Activity	Date
Deadline to submit Questions via email to purchasing@duluthmn.gov	7/24/15
Answers to questions will be posted to the City website no later than this date.	7/29/15
Proposals must be received in the Purchasing Office by 2:00 PM on this date.	8/6/15
Interviews with finalists	Week of 8/10/15

**I-4. Type of Contract.** It is proposed that if the City enters into a contract as a result of this RFP, it will be a Construction Manager at Risk contract. It is our intent that a draft of the proposed contract will be issued prior to the deadline for proposal submission. Proposers should check the City website at <http://www.duluthmn.gov/purchasing/bids-request-for-proposals> for any updates.

The City, in its sole discretion, may undertake negotiations with Proposers whose proposals, in the judgment of the City, show them to be qualified, responsible and capable of performing the Project.

**I-5. Rejection of Proposals.** The City reserves the right, in its sole and complete discretion, to reject any and all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed, when it is in its best interests. The City is not liable for any costs the Proposer incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-6. Questions & Answers.** Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at [purchasing@duluthmn.gov](mailto:purchasing@duluthmn.gov) **no later than** the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

**I-7. Addenda to the RFP.** If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <http://www.duluthmn.gov/purchasing/bids-request-for-proposals>. Although an e-mail notification will be sent, it is the Proposer's responsibility to periodically check the website for any new information.

**I-8. Response Date.** To be considered for selection, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP Calendar of Events. The City will **not** accept proposals via email or facsimile transmission. The City will reject, unopened, any late proposals.

**I-9. Proposals.** To be considered, Proposers should submit a complete response to this RFP to the City, using the format provided in **Part II**, providing **four (4)** paper copies of the Technical Submittal and one (1) paper copy of the Cost Submittal. In addition to the paper copies of the proposal, Proposers shall submit one **complete and exact** copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. Each proposal page should be numbered for ease of reference.

All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is completed and an award decision made.

**I-10. Signatures.** The proposal must be signed by an official authorized to bind the Proposer to its provisions. If the official signs the Proposal Cover Sheet (Exhibit B to this RFP) and the Proposal Cover Sheet is attached to the proposal, this requirement will be met. For this RFP, the proposal must remain valid for **120** days or until a contract is fully executed.

**I-11. Small Diverse Business Information.** The City encourages participation by minority, women, and veteran-owned businesses as prime contractors, and encourages

all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers.

A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnuccp.metc.state.mn.us/> .

**I-12. Economy of Preparation.** Proposers should prepare proposals simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP.

**I-13. Term of Contract.** The City will fix the Effective Date of the contract after City Council approval and after the contract has been fully executed by the selected Proposer and by the City and all approvals required by City contracting procedures have been obtained. The selected Proposer shall not start the performance of any work prior to the Effective Date of the contract and the City shall not be liable to pay the selected Proposer for any service or work performed or expenses incurred before the Effective Date of the contract.

**I-14. Acknowledgements.** By submitting its proposal, each Proposer understands, represents, and acknowledges that:

- A.** The attached proposal has been developed by the Proposer independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition.
- B.** The contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer.
- C.** No conflict of interest exists between the Proposer, its employees or agents, and the City, its employees or agents.
- D.** The Proposer is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government, and if the Proposer cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

**I-15. Notification of Selection.** Proposers not selected for continued consideration will be notified once a proposal has been selected for award. Official notice will be provided to all proposers when contract negotiations have been successfully completed, City Council approval has been obtained, and the City has received the final negotiated contract signed by the selected Proposer.

## PART II

### PROPOSAL REQUIREMENTS

Each Proposal shall consist of a Technical Submittal, which shall be a response to RFP **Part II, Sections II-1 through II-7**; and a Cost Submittal, in response to RFP **Part II, Section II-9**.

**II-1. Statement of the Problem.** State in succinct terms your understanding of the services required by this RFP. Describe your approach to the CMAR process.

**II-2. Management Summary.** Include a narrative description of the proposed effort and a list of the services to be provided.

**II-3. Work Plan.** Describe your technical plan for accomplishing the work. Use the specification in **Part IV** of this RFP as your reference point. If more than one approach is apparent, comment on why you chose this approach.

**II-4. References.** Include experience in providing CMAR services related to the construction of aircraft production facilities or other manufacturing facilities. The City is particularly interested in contractors who can verify experience in the following areas:

- High performance and energy efficient building envelope and mechanical systems.
- Low maintenance and long life cycle design and construction.
- State, local or federal governmental project experience.
- Previous experience and/or understanding of integrative design and project implementation principles.
- Respondent's understanding of, capability and willingness to participate in an Integrative Design Process.

Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Include the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

**II-5. Personnel.** Include the number of personnel who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel (Project Director/Manager/Supervisor), include the employee's name and, through a resume or similar document, the Project personnel's education and experience in utilizing the CMAR project delivery method. Include experience providing guidance and advice on site use, selection of materials, and construction feasibility/constructability, preparing project schedules and phasing, developing project budgets and construction estimates, providing project management and control, inspecting the construction for compliance with the contract documents and conducting construction administration and project closeout. Indicate the responsibilities

each individual will have in this Project and how long each has been with your company. Identify by name any subcontractors you intend to use and the services they will perform.

**II-6. Financial Capability.** As part of your proposal, please submit a letter verifying your company's ability to obtain performance and payment bonds for a project valued at eleven million dollars (\$11,000,000.00). Proposers who do not provide proof of bondability may be disqualified from further consideration.

**II-7. Standard Contract.** As stated in Part I-4, it is anticipated that this will be a Construction Manager at Risk contract. A draft of the contract will be issued prior to the deadline for submission of proposals. Proposers should review this document carefully, and include its provisions in their proposal.

The following provisions regarding indemnification and insurance requirements will be included in the standard contract. Proposers must identify any objections or requests for modification to the provisions regarding indemnification and insurance requirements as part of its proposal. Failure to make a submission under this paragraph will result in the Proposer waiving its right to do so later. The Proposer shall not request changes to the other provisions of the RFP. The City will not accept references to the Proposer's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections, the Proposer must submit its proposal, including the cost proposal, on the basis of these provisions. The City will reject any proposal that is conditioned on the negotiation of these provisions.

**A. Indemnification.** The Proposer will defend, indemnify and save the City harmless from all costs, charges, damages, and loss of any kind that may grow out of the matters covered by this contract. Said obligation does not include indemnification of the City for claims of liability arising out of the sole negligent or intentional acts or omissions of City but shall include but not be limited to the obligation to defend, indemnify and save harmless the City in all cases where claims of liability against the City arise out of acts or omissions of City which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability. In addition Contractor will 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.

**B. Insurance.** Prior to contract execution, the selected Proposer will be required to provide proof of 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 Section A above, subject to provisions below.

(1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.

(2) Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; 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.

(3) City of Duluth shall be named as Additional Insured under the Public Liability, Excess/Umbrella Liability\* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. 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.

\*An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.

(4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification 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.

(5) The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

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.

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.

Contractor shall be required to provide insurance meeting the requirements of this Section B unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City which is reasonably available.

**II-8. Project Labor Agreement.** The City requires a Project Labor Agreement (PLA) for any project over one hundred and fifty thousand dollars (\$150,000.00). A copy of the City's standard PLA is attached as **Exhibit C**.

**II-9. Cost Submittal.** The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. The total proposed cost shall be broken down into the following components:

**A. Standard Rates.** Please provide an itemized rate sheet showing standard hourly or unit rates for staff and equipment.

**B. Fee.** Please provide your proposed fee for providing CMAR services.

Note – The awarded contractor will be expected to provide an open-book, Guaranteed Maximum Price (GMP) at the completion of final bidding documents.

**The City will reimburse the selected Proposer for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the City has issued a notice to proceed.**

**PART III**

**CRITERIA FOR SELECTION**

**III-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must be received prior to the deadline for submission and properly signed by the Proposer. The City reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Proposer’s proposal, (2) allow the Proposer to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Proposer’s proposal.

**III-2. Evaluation.** The City has selected a committee of qualified personnel to review and evaluate timely submitted proposals. The Proposer whose proposal is determined to be the most advantageous to the City will be selected for negotiations.

**III-3. Evaluation Criteria.** The following criteria will be used in evaluating each proposal:

**A. Technical:** The City has established the weight for the Technical criterion for this RFP as 80 % of the total points. Evaluation will be based upon the following in order of importance:

Qualifications of the Proposer and Personnel	25%
Work Plan	15%
Understanding of the Project	10%
Understanding/approach to the CMAR Process	10%
References	10%
Completeness of the Proposal/Interview	10%

The City reserves the right to eliminate from the selection process any proposal that scores below to 70% of the total available technical points.

**B. Cost:** The City has established the weight for the Cost portion for this RFP as 20% of the total points.

## PART IV

### WORK STATEMENT

**IV-1. Objectives.** Construction of a “precast” concrete building, approximately 60,000 SF, near the Duluth International Airport.

This project is currently in the design development phase of pre-construction, and the current budget for the project is estimated at ten million, five hundred thousand dollars (\$10,500,000.00). The City has engaged the services of Burns & McDonnell for all architectural and engineering design and management services. It is expected that the successful Proposer will become an integral member of the “Project Team” as the City seeks to maintain an integrative approach throughout the project life cycle. More information about Integrative Design concepts can be found by at this web address: [http://www.rmi.org/built\\_environment\\_methods](http://www.rmi.org/built_environment_methods) .

**IV-2. Nature and Scope of the Project.** This project includes all services necessary to manage and oversee construction of a City-owned facility that will accommodate the production requirements of the intended tenant, as well as any future occupants for the life of the building. Cirrus will be responsible for the internal build out of the facility.

The City expects an energy-efficient facility that will incur minimal maintenance costs over the life of the structure.

**IV-3. Requirements.** Construction must conform to the 2015 City of Duluth Minnesota Construction Standards. This document is available online at <http://www.duluthmn.gov/engineering/standard-construction-specifications> . Hard copies are available by request. The project is expected to be completed by August 2016.

**IV-4. Tasks.** The selected firm shall be qualified or prepared to provide the following range of services:

#### A. Pre-Construction Phase

1. Assist the Project Team in review of design proposals and make recommendations as necessary.
2. Work with the project architects (Burns & McDonnell) to develop and coordinate a master schedule and update as necessary.
3. Attend Project Team meetings.
4. Prepare cost estimates to confirm owner and architect’s budget.
  - i. End of schematic design drawings
  - ii. End of design development drawings

iii. Construction documents

5. Provide technical review of the design documents prior to issuance for bidding.
6. Review all subcontractor and vendor bids with the City and make recommendations for award in compliance with State of Minnesota and City of Duluth purchasing rules and policies.
7. Provide an open-book, Guaranteed Maximum Price (GMP) at the completion of final bidding documents.
8. Provide other services as proposed or required.

**B. Construction Phase**

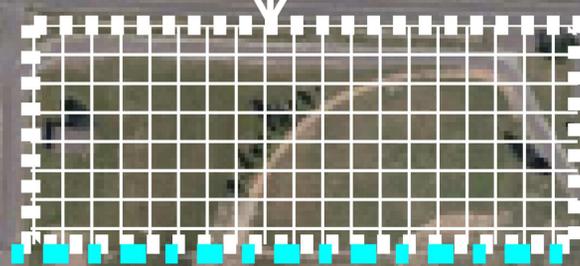
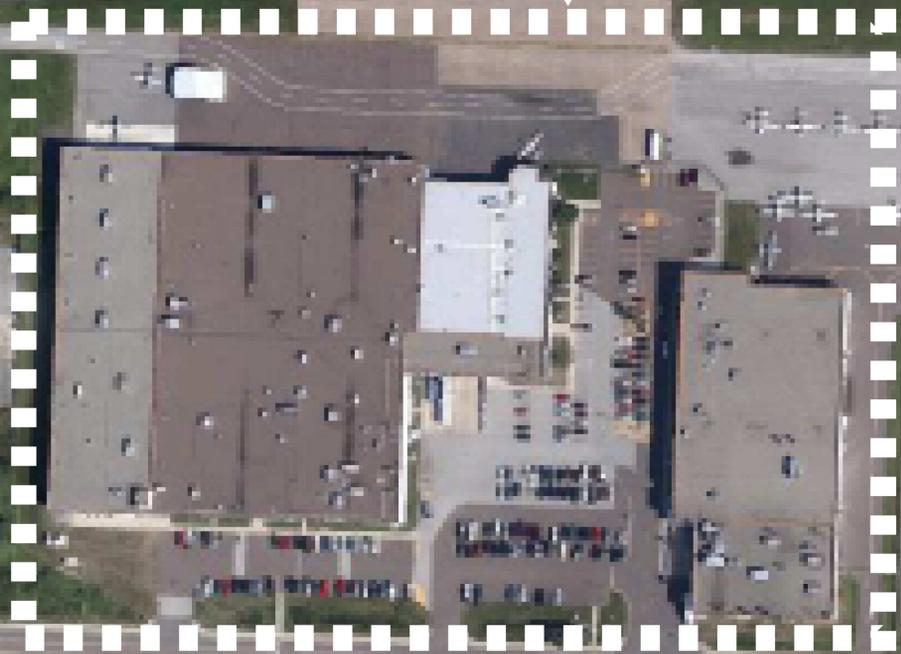
1. Provide a full-time project superintendent for the duration of the project.
2. Coordinate with the Project Team to facilitate weekly construction meetings at the site and to furnish meeting minutes.
3. Provide regular contract and budget updates throughout construction.
4. Coordinate, maintain and update the schedule during the project.
5. Assist in all aspects of construction project management
6. Provide other services as proposed or required.

**C. Post-Construction Phase**

1. Work with Project Team to completely close out the project.
2. Provide other services as proposed or required.

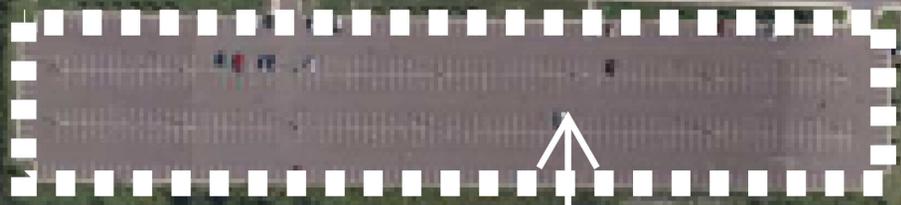
Cirrus Aircraft  
Facility

Cirrus Aircraft Proposed  
Completion Center



Cirrus Aircraft  
Parking Lot

Duluth-Hermantown  
City Limits



# CIRRUS AIRCRAFT

## Duluth Operations



**EXHIBIT B - PROPOSAL COVER SHEET  
CITY OF DULUTH  
RFP# 15-02AA**

<b>Proposer Information:</b>	
Proposer Name	
Mailing Address	
Website	
Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-Mail Address	
Federal ID Number	

<b>Submittals Enclosed and Separately Sealed:</b>	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Cost Submittal

<b><i>Signature</i></b>	
Signature of an official authorized to bind the Proposer to the provisions contained in the proposal:	
Printed Name	
Title	

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM MAY RESULT IN THE REJECTION OF THE PROPOSAL**

PROJECT LABOR AGREEMENT

NO STRIKE, NO LOCKOUT

**PUBLIC SECTOR**

**CITY OF DULUTH**

**&**

**(Name of Contractor)**

**Project Name:**

**City Project #:**

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## **AGREEMENT**

This Project Labor Agreement (hereinafter, the “Agreement”), is entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the various contractors engaged in the construction of facilities to be known as the (Project). The parties to this Agreement are the Building and Construction Trades Council, on behalf of its affiliated Local Unions (hereinafter “Union” or “Unions”), the City of Duluth (hereinafter “Owner”) and Contractor (hereinafter “Construction Manager/General Manager,” “Contractor,” and “Contractors”).

It is understood by the parties to this Agreement that it is the policy of the Owner that the construction work covered by this Agreement shall be contracted to Contractors who agree to be bound by the terms of this Agreement. Therefore, the Union agrees that other Contractors may execute the Agreement for the purpose of covering that work. The Construction Manager/General Contractor shall monitor compliance with this Agreement by all Contractors who through their execution of this Agreement, together with their subcontractors, have become bound hereto.

The term “Contractor” shall include all Contractors and subcontractors of whatever tier engaged in on-site construction work within the scope of this Agreement.

The Union and all signatory Contractors agree to abide by the terms and conditions contained in this Agreement with respect to the administration of the Agreement by the Owner and the performance of the construction by the Contractor of the Project. This Agreement represents the complete understanding of the parties, and it is further understood that no Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. No practice, understanding or agreement between a Contractor and a Union party which is not explicitly set forth in this Agreement shall be binding on any other party unless endorsed in writing by the Project Contractor.

## **ARTICLE I - PURPOSE**

The (Project), an undertaking of the Owner, is a public project which will employ numbers of skilled and unskilled workers. Construction of the Project will entail utilization of the construction industry in an area having multiple labor contracts and employer associations. Consequently, conflicts within labor-management relations could cause delay or disruption of the efficient completion of the .project unless maximum cooperation of all segments of the construction industry is obtained. This Agreement is to establish as the minimum standards on the Project the hours and working conditions as those prevailing for the largest number of workers engaged in the same classes of work within the area.

It is in the public interest that the Project progress and be completed in an expeditious and efficient manner, free of disruption or delay of any kind. Therefore, it is essential to secure optimum productivity and to eliminate any delays in the work. In recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace and stability during the term of this Project Labor Agreement, the parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Therefore, the Unions agree not to engage in any strike, slowdown or interruption of work and the Contractor agrees not to engage in any lockout.

## **ARTICLE II - SCOPE OF THE AGREEMENT**

Section 1. This Agreement, hereinafter designated as the “Project Labor Agreement” or “Agreement,” shall apply and is limited to all construction work included in all Bid Categories for the (Project), under the direction of the signatory Contractors and performed by those Contractor(s) of whatever tier which have contracts awarded for such work on and after the effective date of this Agreement with regard to the Project.

Such Project is generally described as the construction of:  
(Project)

Section 2. It is agreed that all direct subcontractors of a Contractor, of whatever tier, who have been awarded contracts for work covered by this Agreement on or after the effective date of this Agreement shall be required to accept and be bound by the terms and conditions of the Project Labor Agreement.

Section 3. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisory employees as defined by the National Labor Relations Act.

Section 4. All employees covered by this Agreement shall be classified in accordance with work performed and paid the base hourly wage rates for those classifications as specified in the attached Schedule A.

Section 5. The Contractors agree to pay contributions to the established employee benefit funds in the amounts designated in the appropriate Schedule A.

Contractors that are not signatory to a collective bargaining agreement beyond the scope of this Agreement (“PLA contractor”) may select to participate in the legally established industry health reimbursement arrangement (“HRA”) plan, in lieu of contributing to the respective bona fide benefit funds as designated in Schedule A. The amount of the contribution is based on the difference between the contribution amount of the bona fide Schedule A benefit funds and the cost of the PLA contractor's bona fide non-discretionary plans. Contributions must be made on behalf of named employees. Participating contractors will submit to the Trustees of the HRA trust and plan a copy of their plan, summary plan description, and the premium structure for workers covered under the PLA contractor's bona fide, non-discretionary plans. The value of the PLA contractor's benefit plans are subject to confirmation by the Trustees of the HRA trust and plan. This may include an independent audit according to a policy as established by the Trustees. Contractors are required to submit certified payroll reports to the Trustees or authorized administrator in order to confirm compliance with the terms of the HRA. trust and plan.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements (or in lieu thereof, the aforementioned HRA plan and trust including any policies) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 6. In the event of any conflict between any provisions of this Agreement and in the Local Area Agreements, the terms of this Agreement will be applied. In other words, where a subject covered by the provisions of this Project Labor Agreement is also covered by the Local Area Agreement the provisions of this Project Labor Agreement shall prevail. Where a subject is covered by the Local Area Agreement and not covered by this Project Labor Agreement, the Local Area Agreement provisions shall prevail.

Section 7. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

Section 8. This Agreement shall be limited to work historically recognized as construction work. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work or function which may occur in or around the Project site or be associated with the development of the Project, or with the ongoing operations of the Owner.

Section 9. It is understood that the liability of any Contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Union agrees that this Agreement does not have the effect of creating any joint employment status between or among Owner and any Contractor.

Section 10. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of the Minnesota state

prevailing wage law and are entitled to the appropriate area standard wage. For purposes of this contract, such materials are for specified future use and per Minnesota state prevailing wage law delivery and pickup of the above-listed materials constitutes incorporation.

### **ARTICLE III - UNION RECOGNITION AND REPRESENTATION**

Section 1. The Contractor recognizes the Union as the sole and exclusive bargaining representative of all craft employees working on facilities within the scope of this Agreement.

Section 2. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives fully comply with the posted visitor and security and safety rules of the Project.

### **ARTICLE IV - LABOR HARMONY CLAUSE**

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on that (Project) and shall submit a labor harmony plan to demonstrate how this will be done. "Harmony" shall include the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the (project). The labor harmony plan should include the company's labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the city of Duluth may have, including without limitation the right to terminate the contract.

## **ARTICLE V - WORK STOPPAGES AND LOCKOUTS**

Section 1. There shall be no strike, picketing, work stoppages, slowdowns or other disruptive, activity for any reason by the Union or employees against any Contractor covered under this Agreement, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established by any union, signatory or non-signatory, or any other organization, at or in proximity to the Project site is a violation of this Article.

Section 2. Any party alleging a breach of Section 1, of Article IV shall have the right to petition a court for temporary and permanent injunctive relief. The moving party need not show the existence of irreparable harm, and shall be required to post bond only to secure payment of court costs and attorney fees as may be awarded by the court.

## **ARTICLE VI - DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between management and labor. The Construction Manager/General Contractor and the Building and Construction Trades Council shall each assign a representative to this Project for the purpose of assisting the Local Unions, together with the Contractor, to complete the construction of the Project economically, efficiently, continuously and without interruption, delays or work stoppages.

Each Contractor shall hold a pre-job conference with the Union and Construction Manager/General Contractor to clear up any project question and work assignments in which there is thought to be a difference in opinion. Every effort will be made to hold such conference well in advance of actual work performance.

Section 2. The Contractor, Union, and employees collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes over grievances in accordance with the arbitration provisions set forth in the Local Area Agreements in effect with the Unions listed in Schedule A attached hereto.

## **ARTICLE VII - JURISDICTIONAL DISPUTES**

Section 1. There will be no strikes, work stoppages, slowdowns, or other disruptive activity arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted as assigned by the Contractor.

Section 2. Building construction work shall be assigned by the Contractor in accordance with the procedural rules of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (hereinafter the "Plan"). Any jurisdictional dispute over the Contractor's assignment of work shall be settled in accordance with the provisions of the Plan.

Section 3. Where a jurisdictional dispute involves the International Brotherhood of Teamsters, it shall be referred for resolution to that International Union and the disputing International Union. The resolution of the dispute shall be reduced to writing, signed by the authorized representative of the International Unions and the Contractor. The assignments made by the Contractor shall be followed until such time as the dispute is resolved in accordance with this Section.

## **ARTICLE VIII - NO DISCRIMINATION**

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or nonmembership in a Union or based upon race, color, religion, sex, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1, should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

#### **ARTICLE IX - SAVINGS AND SEPARABILITY**

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

#### **ARTICLE X DURATION OF THE AGREEMENT**

The Project Labor Agreement shall be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and shall continue in effect for the duration of the Project construction work described in Article II hereof Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project

commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

IN WITNESS WHEREOF the parties have entered into this Agreement to be effective as of the day and year above written.

DULUTH BUILDING AND  
CONSTRUCTION TRADES COUNCIL

CONTRACTOR

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

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

Its \_\_\_\_\_  
(Printed Name/Title)

Its \_\_\_\_\_  
(Printed Name/Title)

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

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

CITY OF DULUTH

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

Attest:  
\_\_\_\_\_  
City Clerk

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

\_\_\_\_\_  
City Auditor

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

\_\_\_\_\_  
Assistant City Attorney

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

## SCHEDULE "A"

- A1 Asbestos Workers Local 49
- A-2 Boilermakers Local 647
- A-3 BAC Local 1 Chapter 3 Duluth & Iron Range
- A-4 Carpenters Local 361
- A-5 Cements Masons/Plasterers Local 633
- A-6 Elevator Constructors Local 9
- A-7 IBEW Local 242
- A-8 Iron Workers Local 512
- A-9 Laborers Local 1091
- A-10 Millrights & Machinery Erectors Local 1348
- A-11 Operating Engineers Local 49
- A-12 Painters & Allied Trades Local 106
- A-13 Plumbers & Fitters Local 11
- A-14 Roofers Local 96
- A-15 Sheet Metal Workers Local 10
- A-16 Sprinkler Fitters Local 669
- A-17 Teamsters Local 346