

# EXHIBIT 1

St. Louis County  
CP 0724-369579 & CP 0000-533596

COOPERATIVE  
AGREEMENT  
BETWEEN  
THE COUNTY OF ST. LOUIS  
AND  
THE CITY OF DULUTH  
RELATED TO  
CONSTRUCTION ON SWAN LAKE ROAD

Construction on County State Road 734 (Swan Lake Road) and the City of Hermantown's portion of Swan Lake Road between Airbase Road and Haines Road in Hermantown, St. Louis County, Minnesota.

CP 0724-369579 & CP 0000-533596

Prepared by the St. Louis County Highway Engineering Division

THIS AGREEMENT is made and entered into by and between the County of St. Louis, a duly organized county within the State of Minnesota, hereinafter referred to as the “County”, and the City of Duluth, hereinafter referred to as the “City”, a municipal corporation of St. Louis County, Minnesota.

WHEREAS, the County and the City of Hermantown intends to undertake the construction of a portion of Swan Lake Road from the intersection of Airbase Road to Haines Road (hereinafter “Swan Lake Road”) during the 2021 construction season, which construction shall include the removal of the existing driving surface and the replacement of the bridge located approximately 250’ west of Haines Road within the street right-of-way as necessary for said work and the construction of the street and bridge as necessary within the right-of-way, (which plans and specifications are collectively hereinafter the “County Project”); and

WHEREAS, it is justified and considered mutually desirable for the City to install water main (hereinafter the “Utility Project”) in conjunction with the construction of the County Project by the County; and

WHEREAS, the County Project and the Utility Project are hereinafter, in combination, referred to as the “Project”; and

WHEREAS, the Project has been assigned project number CP 0724-

369579 & CP 0000-533596; and

WHEREAS, the County will advertise, bid, and enter into a contract with the low bidder for the Project (hereinafter the "Contract") which will include the construction of the Utility Project in conformance with the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED AND  
UNDERSTOOD AS FOLLOWS:

1. The City shall prepare or cause to have prepared, and be responsible for the cost of preparing, plans and specifications for the Utility Project within the Swan Lake Road right-of-way and shall cause to be performed any geotechnical investigation necessary thereto, which plans and specifications will be included in the Project plans and specifications. All work to be performed for the Utility Project shall be described in and on separately identified and numbered plan sheets and specifications sheets (hereinafter referred to as the "Utility Plans"). The elements of the design and supervision of construction of the Utility Project shall be performed by and shall be the responsibility of the parties as follows:

a. Water Portion--Installation of a new water main. The City will cause the Water Portion to be designed and provide plans and specifications therefor to the County for inclusion in the plans

and specifications for the Project. The City will have primary supervisory authority over the construction of the Water Portion as provided for in subparagraph c. below.

- b. Earthwork—Plans and specifications for the Utility Project shall include all earthwork to be performed in connection with the construction with the water main on Swan Lake Road below the Aggregate Base Class 5 for the County Project.
- c. Utility Project Construction Inspection/Control— The City shall be primarily responsible for the construction inspection of the Utility Project including the installation of the utility mains as provided for in the Utility Project plans and specifications and for all related earthwork except as provided for in this subparagraph. The Contract shall provide that the Contractor shall be subject to the control and direction of the City Engineer and the City Engineer's duly-authorized representatives, and the Contractor shall take direction therefrom. Provided, however, that the County shall have a County representative examining and reviewing the earthwork performed by the Contractor for any deviations from the Project plans and specifications. In the event the County or City representative determines that any of

the work deviates from the Project plans and specifications, the County or City representative shall immediately bring such deviation to the attention of the City and County representatives and the Contractor and demand that the non-conforming work be corrected. In the event that the County representative and the City representative shall disagree as to the conformity or non-conformity of the subject work, the subject work shall be stopped until the dispute is resolved. If the County representative and the City representative cannot agree on a resolution of the dispute, they shall bring the dispute to both the County Highway Engineer and the City Engineer who shall resolve the dispute as expeditiously as possible. Thereafter corrective work, if needed, shall proceed in accordance with the resolution.

2. The County shall be responsible for preparing plans and specifications necessary for the construction of all work required for the County Project and for combining the plans and specifications for the County Project with the plans and specifications for the Utility Project provided by City pursuant to Paragraph 1 above into the Project plans and specifications and the bid documents. The County shall include the Utility

Plans provided by the City into the Project plans and specifications, which shall be part of the proposed bid package for the Project. The bid package shall be subject to the approval of the City Engineer before the Project is posted for bid solicitations. The bid package shall provide that the bid prices for the bid items for the Utility Project will be separately determined on the bid form. Prior to the award of the Contract by the County, the County shall have secured any and all casements reasonably required to construct the Project, including the Utility Project. The City shall notify the County of any required permanent or temporary easements needed for the Utility Project.

3. The City shall perform all construction engineering, inspection, material certification and acceptance, and measurement of all items and recording of as built information for the Utility Project. The City shall submit approved and accepted quantities to the County for payment to the Contractor. The County shall be responsible for providing staking services for the entire Project, including the Utility Project, and shall perform all other contract administration. The City shall provide all electronic staking files to the County and shall be responsible for field verification of all staking for the Utility Project that is performed by the County.

4. The County, in coordination with the City as provided for in this agreement, shall perform, by contract, the County Project and Utility

Project, with the construction costs of the County Project covered by the County, and the construction costs of the Utility Project covered by the City. The County, shall prepare bid documents by compiling pay items from the County Project and Utility Project and shall award the contract for said projects to the lowest responsible bidder in accordance with current specifications. After contract letting, and prior to contract award, the County will promptly provide the City with an abstract of all bids received with copies of all bids including the costs of the Utility Project, and the City will promptly review the bid information. The County must obtain the concurrence of the City, in the form of an approved City Council resolution to award, prior to awarding the Contract.

5. All further costs for change orders, work orders and supplemental agreements related to the County Project shall be paid by the County, and those related to the Utility Project shall be paid by the City. Any unsuitable materials related to the earthwork portion of the Utility Project installation which require disposal or replacement with acceptable embankment/backfill shall be paid for by the City. Any unsuitable materials related to the earthwork portion of the County Project installation which require disposal or replacement with acceptable embankment/backfill shall be paid for by the County.

6. Any field changes related to the Utility Project shall be authorized by the City prior to the work occurring.

7. The City shall take all actions necessary to obtaining any and all applicable environmental or other permits as required by law for the prosecution of the Utility Project.

8. The respective maintenance obligations of the parties relative to the roadway after construction are set forth in a separate Agreement.

9. Each party designates an Authorized Representative for the purpose of administering this Agreement. A party's authorized representative has the authority to give and receive notices, and to make any other decision required or permitted by this Agreement.

a. For the County:

Steve Krasaway, P.E.  
Public Works Department / Resident Engineer  
4787 Midway Road  
Duluth, MN 55811  
(218) 625-3841

b. For the City:

Tom Pfeffer, P.E.  
Senior Engineer  
411 W 1<sup>st</sup> Street- Room 240  
Duluth, MN 55802

(218) 730-5104

10. The County will submit invoices to the City concurrently with copies of the payments made to the Contractor for the Utility Project. The City shall pay the County invoices within 35 days of receipt. The City shall make final payment within 35 days of receipt of the final contract quantities for the Utility Project. The County will not reduce the retainage for the Utility Project until approved by the City.

11. This Agreement may be terminated only as follows:

- a. At any time by mutual agreement of the parties;
- b. By any party at any time upon 30 days' notice in the event of default by a party, provided, however, that such termination shall not be effective if the defaulting party cures such default by end of the 30 day notice period. In the event of such termination, the City shall reimburse the County for any amounts expended by the County to the Contractor for the Utility Project in excess of any amounts which have been paid by City to County in excess of costs actually incurred by County. If amounts previously paid by City to County by City exceed such costs, County will promptly reimburse City for the amount of such excess payments..

c. By any party immediately at any time if the funding provided is not sufficient to pay for the Project provided herein. In the event of such termination, the parties shall meet to determine how to conclude the Project, and the City shall reimburse the County for any amounts expended by the County to the Contractor for the Utility Project.

12. Each of the parties hereto hereby agrees that it shall defend, indemnify and save harmless the other party and all of their employees and agents from any and all claims, demands actions or causes of action of whatever nature or character arising out of or by reason of their negligent or intentional acts or omissions in the execution or performance of the work provided herein.

13. Any and all employees of the County, while engaged in the performance of any work or service which the County is specifically required to perform under this Agreement, shall be considered employees of the County, and not the City, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the County.

14. Any and all employees of the City, while engaged in the performance of any work or service which the City is specifically required to perform under this Agreement, shall be considered employees of the City, and not the County, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the City.

15. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, Subd. 1a; provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

St. Louis County  
CP 0724-369579 & CP 0000-533596

COUNTY OF ST. LOUIS

Chair of the County Board

Dated \_\_\_\_\_

By   
Public Works Director/Highway Engineer

APPROVED AS TO FORM AND EXECUTION:

County Auditor

By \_\_\_\_\_  
Assistant County Attorney  
Damion No.

CITY OF DULUTH

COUNTERSIGNED:

Mayor

By \_\_\_\_\_  
City Clerk

(City Seal)  
APPROVED AS TO FORM:

City Auditor

By \_\_\_\_\_  
City Attorney



*Resolution  
of the*  
**Board of County Commissioners**  
*St. Louis County, Minnesota*  
*Adopted on: October 27, 2020 Resolution No. 20-493*  
*Offered by Commissioner: Nelson*

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**Agreement with City of Duluth for Construction on Swan Lake Road**

RESOLVED, That the St. Louis County Board authorizes an agreement, and any amendments approved by the County Attorney, with the City of Duluth for the construction on Swan Lake Road, CP 0724-369579 & CP 0000-533596, whereby the City of Duluth will pay the "City of Duluth Non-Participating" local share items listed in the Plan. The funds from the City of Duluth for project CP 0724-369579 & CP 0000-533596 will be received into Fund 220, Agency 220578, Object 551501.

Commissioner Nelson moved the adoption of the Resolution and it was declared adopted upon the following vote:  
Yeas – Commissioners Jewell, Boyle, Olson, McDonald, Musolf, Nelson and Chair Jugovich – 7

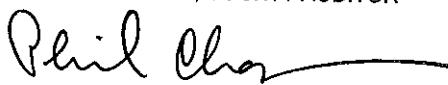
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**STATE OF MINNESOTA**  
Office of County Auditor, ss.  
County of St. Louis

I, NANCY NILSEN, Auditor of the County of St. Louis, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 27<sup>th</sup> day of October, A.D. 2020, and that this is a true and correct copy.

WITNESS MY HAND AND SEAL OF OFFICE at Duluth, Minnesota, this 27<sup>th</sup> day of October, A.D., 2020.

NANCY NILSEN, COUNTY AUDITOR

By   
Deputy Auditor/Clerk of the County Board