

St. Louis County
City of Duluth (Proj. No. 1360)
SP 069-609-040 (CP 0009-147349)

COOPERATIVE
AGREEMENT
BETWEEN
THE COUNTY OF ST. LOUIS
AND
THE CITY OF DULUTH
RELATED TO
THE 4TH STREET RECONSTRUCTION PROJECT

Reconstruction of the roadway along with portions of the Natural Gas, Storm Sewer, Sanitary Sewer, Storm Sewer and Water Systems and related landscaping on County State Aid Highway 9 (East 4th Street) from the intersection 6th Avenue East to Wallace Avenue in Duluth, St. Louis County, Minnesota.

SP 069-609-040 (CP 0009-147349)

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 intends to undertake the reconstruction of a portion of County State Aid Highway 9 from 6th Avenue East to Wallace Avenue (hereinafter “CSAH 9”) during the 2016 and 2017 construction seasons, which reconstruction shall include the removal of the existing driving surface, existing street lighting, sidewalks, curb and gutter and removal of soil, landscaping and vegetation within the street right-of-way as necessary to said work and the reconstruction of the street, sidewalks, curb and gutter, the Storm Sewer work described in subparagraph f. of Paragraph 1 below and landscaping as necessary within the right-of-way, all as shown on the plans and specifications for the work and the 4th Street Tree Planting Plan dated June 25, 2015, a copy of which is attached hereto and made a part hereof and shall be substantially adhered to (which plans and specifications and Tree Planting Plan are collectively hereinafter the “County Project”); and

WHEREAS, it is justified and considered mutually desirable for the City to have installed certain utilities including a natural gas main, certain sanitary sewer service lines as directed by the City and a new water main as described in Subparagraph a. of Paragraph 1. below (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 SP 069-689-004 (CP 0089-176509); 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; and

WHEREAS, City has agreed that it will cause to be performed the work described pursuant to the aforesaid 4th Street Tree Planting Plan (the “Tree Project”) under the terms and conditions of this Agreement. County has reviewed the above-referenced Plan and hereby approves it for implementation upon completion of the Project and agrees to pay for the cost thereof as hereinafter provided for.

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 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 from 6th Avenue East to 12th Avenue East and from 16th Avenue East to Wallace Avenue. City

will cause the Water Portion to be designed and provide plans and specifications therefore to County for inclusion in the plans and specifications for the Project. City will have primary supervisory authority over the construction of the Water Portion as provided for in Subparagraph e. below. A new water main connecting the above segments from 12th Avenue East to 16th Avenue East will be constructed by City pursuant to a separate contract and will not be included in work covered by this Project or by this Agreement.

- b. Sanitary Sewer Portion—The existing sanitary sewer through the Project area will remain in place. The City, as part of the Utility plans and specifications, will designate specified sanitary sewer lateral lines for replacement as the City deems necessary. City will cause the Sanitary Sewer Portion to be designed and provide plans and specifications therefore to County for inclusion in the plans and specifications for the Project. City will have primary supervisory authority over the construction of the Sanitary Sewer Portion as provided for in Subparagraph e. below.
- c. Natural Gas Portion—Installation of a new 12 inch natural gas main from 6th Avenue East to 18th Avenue East and a new 8 inch natural gas main from 18th Avenue East to Wallace Avenue. City will cause the Natural Gas Portion to be designed and provide plans and specifications therefore to County for inclusion in the plans and specifications for the Project. City will have primary supervisory authority over the construction of the

Natural Gas Portion as provided for in Subparagraph e. below.

- d. Earthwork—Plans and specifications for the Utility Project shall include all work to be performed in connection with the reconstruction of CSAH 9 within the “encasement zone”, as such term is defined by standard civil engineering practice, for each element of the Utility Project to be installed in connection therewith, which shall include the initial backfill above and around said element.
- e. Utility Project Construction Inspection/Control—City shall be primarily responsible for the construction of the Utility Project including the installation of the utility mains and services 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 from said representative. Provided, however, that County shall have a County representative examining and reviewing the earthwork performed by the Contractor for any deviations from the Project plans and specifications and 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 and if the County representative and the City representative cannot agree on a resolution of the dispute they shall bring the dispute to 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.

- f. Storm Sewer Work—Existing Storm Sewer elements will be removed and replaced. The Storm Sewer Work shall not be part of the Utility Project. County will design Storm Sewer Work in conformance to MnDOT State Aid design standards and, except as may be required by such standards, the plans and specifications therefore will reflect the replacement of storm sewer piping with piping of approximately the same size as that currently existing in the Project area. Provided that if City desires that the project plans and specifications provide for any pipe of a greater size than that currently existing on the Project site, the City's City Engineer shall request in writing that the plans and specifications be modified to reflect the requested increased size of pipe and the exact locations where such pipe shall be installed and the plans and specifications shall be modified as requested. Plans and specifications for the Storm Sewer Work shall be subject to the approval of the City's City Engineer. County will have primary supervisory authority over the construction of the Storm Sewer Work as provided for in Subparagraph e. above. If City requests any

increase in the size of the storm sewer pipe replaced in the Project, the incremental cost thereof shall be deemed to be a “non-participating storm sewer cost and shall be paid by City.

- g. Tree Project—Upon substantial completion of the construction of the Project, City agrees that it will cause to be performed the Tree Project. City agrees that it will acquire all materials required to implement the Tree Project including the required tree tubes, mulch, bedding soil, stakes and trees as are provided for in the Tree Project plans and specifications and shall supply all labor and equipment required to plant the trees and restore those areas in the Project site disturbed by the Tree Project in accordance with the plans and specifications therefore. County agrees to reimburse City for the material cost of the Tree Project plus an additional 10 percent of that total invoiced cost to cover any replacements that are required; such reimbursement shall be handled in the same manner as the City’s obligation to pay County its share of the costs of the other elements of the Project. Upon completion of the Tree Project, City shall be responsible for tree care and maintenance and for any required replacement of Project trees that die, become damaged or require replacement based on poor health.
- h. Street Lighting and Signalization—In addition to the Project as herein defined, County will be responsible for constructing and installing the elements of the work described in the Street Lighting and Signalization Agreement which agreement is to be approved contemporaneously with

this Agreement. City agrees to reimburse County for said work as is provided for in that agreement.

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 and the Utility Project into the Project plans and specifications and the bid documents. The County shall include the Utility Plans provided by City into the Project plans and specifications which shall be part of the proposed bid package for the Project. The City shall provide municipal consent upon reviewing the plans. The plans and specifications shall specifically designate what streets and roadways may be used by Project contractors to bring heavy equipment and construction materials to and from the Project area. The bid package shall be subject to the approval of the City Engineer before the Project is bid out. The form of the bid package shall provide that the bid prices for the bid items for the proposed Utility Project will be separately determined on the bid form. Prior to the award of the Contract by County, County shall have secured any and all easements 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. 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 provided for in the Plan, with the construction costs of the County Project, except for the construction costs determined to be “non-participating storm sewer costs” by the MnDOT Hydrologist, covered by the County and the construction costs of the Utility Project, together with the “non-participating storm sewer costs”, covered by the City. The County, shall prepare bid documents by compiling pay items from the County Project, and Utility Project including with the “non-participating storm sewer costs”, 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 “non-participating storm sewer costs and City will promptly review bid information. The County must obtain the concurrence of the City 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 encountered during the Utility Project installation which require disposal or replacement with acceptable embankment shall be paid for by the City.

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 County shall require and pay for concrete encased castings on all manholes and water valves in the bituminous surface. Concrete encased castings and valves will be utilized. The Contractor shall be responsible for the repair of any deficiencies created by the concrete encased castings. The City will pay for the utility adjustments not in the bituminous surface.

9. The County shall include Contract language to insure that all Contractors performing work on the Project use only those streets and roadways designated in the Project plans and specifications to transport heavy equipment and construction materials to and from the Project area in accordance with the 2016 City of Duluth, Minnesota Construction Standards, Section 2051 Maintenance and Restoration of Haul Roads.

10. All maintenance of the roadway after construction is included in a separate Agreement.

11. 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:

Eric Shaffer

Chief Engineer of Utilities

411 W 1st Street- Room 211

Duluth, MN 55802

(218) 730-5071

12. The County will submit invoices to the City concurrently with Pay Requests made to the Contractor for the City non-participating items included in the Pay Request. The City shall pay the County invoices within 35 days upon receipt. The City shall make final payment to the County after substantial completion of the project. Payment shall be received within 35 days of receipt of a statement of final contract quantities and an invoice for the County's cost for improvements as described herein. In the event that the amount of funds advanced by the City is in excess of the final cost of its share of improvements, the excess shall be returned to the City without interest. The County reserves the right to request additional funds for project overruns up to 95 percent of the work certified until the time of final billing or at such time the retainage may be reduced. The County will not reduce the retainage for the Utility Project until approved by the City.

13. The City shall make final payment to the County after final completion of the Project. Payment shall be made within 30 days of receipt of a statement of final contract quantities and an invoice for the costs of constructing the Utility Project together with the non-participating storm sewer costs.

~~13.~~14. 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 County and City shall be entitled to pro-rata payment for work and services satisfactorily performed up to the effective date of such termination.
- c. By any party immediately at any time if the funding provided is not sufficient to pay for the work provided herein. In the event of such termination, the parties shall meet to determine how to conclude the Project, and each party shall pay its pro-rata share to the other party for work and services satisfactorily performed.

~~14.15.~~ 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.

~~15.16.~~ 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.

~~16.~~17. 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.

~~17.~~18. 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.

COUNTY OF ST. LOUIS

Chair of the County Board

By _____
Public Works Director/Highway Engineer

Dated _____

APPROVED AS TO FORM AND EXECUTION:

County Auditor

By _____
County Attorney
Damion No.

CITY OF DULUTH

COUNTERSIGNED:

Mayor

By _____
City Clerk

(City Seal)

APPROVED AS TO FORM:

City Auditor

By _____
City Attorney