

EXHIBIT 1

St. Louis County
City of Duluth (Proj. No.0940)
SAP 069-609-043 (CP 0009-275996)

COOPERATIVE
AGREEMENT
BETWEEN
THE COUNTY OF ST. LOUIS
AND
THE CITY OF DULUTH
RELATED TO
WOODLAND AVENUE AND CALVARY ROAD RECONSTRUCTION PROJECT

Reconstruction of the roadway along with portions of the Storm Sewer, Sanitary Sewer, Water Systems and related landscaping on County State Aid Highway 9, Woodland Avenue from the intersection of Anoka Street to Calvary Road and Calvary Road from Arnold Road to Woodland Avenue in Duluth, St. Louis County, Minnesota.

SAP 069-609-043 (CP 0009-275996)

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 construction of a portion of County State Aid Highway 9, Woodland Avenue from the intersection of Anoka Street to Calvary Road and Calvary Road from Arnold Road to Woodland Avenue (hereinafter "CSAH 9") during the 2019 and 2020 construction seasons, which construction 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 for said work and the reconstruction of the street, sidewalks, curb and gutter, storm sewer and landscaping 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 certain utilities including sanitary sewer and sanitary sewer services & water main and water services (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 SAP 069-609-043 (CP 0009-275996); 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 area of CSAH 9 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 and water services. 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 d. below.
- b. Sanitary Sewer Portion—Installation of new sanitary sewer and sanitary sewer services in certain areas of the project limits. The City will cause the Sanitary Sewer Portion to be designed and provide plans and specifications therefore 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 Sanitary Sewer Portion as provided for in subparagraph d. below.

- c. 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.
- d. Utility Project Construction Inspection/Control— The 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 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.

- e. 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 therefor will reflect the replacement of storm sewer piping with piping of approximately the same size as that currently existing in the Project area. County will have primary supervisory authority over the construction of the Storm Sewer Work.

The City shall be responsible for the portion of storm sewer construction costs that are not eligible for State Aid reimbursement. For this project, the MnDOT Hydrologist has determined that 55% of storm sewer costs are eligible for State Aid reimbursement. Therefore, the City shall be responsible for 45% of the costs of all Storm Sewer Work.

- f. Trees—The tree planting shall be included in the Project and shall be paid for by the County. Tree planting shall be in accordance with MnDOT

construction standards, with a minimum 2-year plant establishment period.

Tree species selection and location shall be in accordance with current City street tree standards. Upon completion of the plant establishment period and final acceptance of trees by the County, the City shall be responsible for tree care and maintenance at the same level of care as other street trees in the City.

- g. Street Lighting—In addition to the Project as herein defined, the County will be responsible for constructing and installing the elements of the work described in the Street Lighting Agreement, which agreement is to be approved and executed contemporaneously with this 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 for combining and incorporating 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 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 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, except for the construction costs determined to be “non-eligible State Aid storm sewer costs” by the MnDOT Hydrologist, covered by the County, and the construction costs of the Utility Project, together with the “non-eligible State Aid storm sewer costs,” 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 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 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. A map of the designated streets and roadways is attached to this Agreement as Exhibit A and incorporated herein. The County shall include a 2-inch bituminous overlay in the County Project on Kolstad Avenue between Austin Street and Calvary Road that will be placed after hauling on Kolstad is substantially complete.

10. The respective maintenance obligations of the parties relative to the roadway after construction are set forth 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:

Tom Pfeffer
Senior Engineer
411 W 1st Street- Room 211
Duluth, MN 55802
(218) 730-5104

12. The County will submit invoices to the City concurrently with copies of the payments made to the Contractor for the Utility Project and the non-eligible State Aid storm sewer costs. 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 and the non-eligible State Aid storm sewer costs. The County will not reduce the retainage for the Utility Project until approved by the City.


13. The County will invoice the City for completed/accepted work up to a maximum of \$600,000 for water in 2019 for work in the Utility Project, plus the costs for sanitary work and the non-eligible State Aid storm sewer costs. Any remaining Utility Project costs will be invoiced in 2020.

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 City shall reimburse the County for any amounts expended by the County to the Contractor for the Utility Project and the non-eligible State Aid storm sewer costs 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 and the non-eligible State Aid storm sewer costs.
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.

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.
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.
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 _____
Assistant County Attorney
Damion No. 2018-12541

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: September 11, 2018 Resolution No. 18-528
Offered by Commissioner: Jewell*

Agreement with the City of Duluth for Construction on CSAH 9

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 County State Aid Highway (CSAH) 9, SAP 69-609-043/CP 0009-275996, 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 SAP 069-609-043/CP 0009-275996 will be received into Fund 220, Agency 220451, Object 551501.

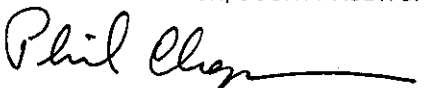
Commissioner Jewell moved the adoption of the Resolution and it was declared adopted upon the following vote:
Yeas – Commissioners Jewell, Boyle, Olson, Rukavina, Stauber, Jugovich and Chair Nelson – 7
Nays – None

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

I, DONALD DICKLICH, 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 11th day of September, A.D. 2018, and that this is a true and correct copy.

WITNESS MY HAND AND SEAL OF OFFICE at Duluth, Minnesota, this 11th day of September, A.D., 2018.

DONALD DICKLICH, COUNTY AUDITOR

By 
Clerk of the County Board/Deputy Auditor