

EXHIBIT A

St. Louis County
Arlington Avenue and Mulberry Street Sidewalk Construction
St. Louis County Proj. No. CP 0090-257713

COOPERATIVE
AGREEMENT
BETWEEN
THE COUNTY OF ST. LOUIS
AND
THE CITY OF DULUTH
TO

Perform concrete sidewalk construction on Arlington Avenue between Central Entrance and Willow Street and on Mulberry Street between the Duluth Heights Recreation Center and Arlington Avenue, in the City of Duluth, St. Louis County, Minnesota.

CP 0090-257713

Prepared by the St. Louis County Highway Engineering Division

THIS AGREEMENT is made and entered into 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 in St. Louis County, Minnesota.

WHEREAS the County intends to undertake a concrete sidewalk construction project on a portion of Arlington Avenue (CSAH 90) from Central Entrance to Willow Street, hereinafter referred to as the “County Project”; and

WHEREAS, the City intends to undertake a concrete sidewalk construction project on a portion of Mulberry Street from the Duluth Heights Recreation Center to Arlington Avenue, hereinafter referred to as “City Project”; and

WHEREAS, the County Project and the City Project shall be hereinafter referred to together as the “Project”; and

WHEREAS, the County shall prepare a contract for the construction of the County Project and City Project as provided for below intended for letting and construction as a single, unitary construction project in 2017 (the “Contract”), and it is justified and mutually beneficial for the City and the County to combine these projects to mutually benefit from economies of scale, mobilization, and contract administration; and

WHEREAS, the County will advertise, bid, and enter into a contract with the low bidder for construction of the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The County shall prepare plans and specifications for the construction of the Project. The County shall include the plans and specifications in the proposed bid

package, from which the costs for the proposed City Project will be determined by the bid prices in accordance with the terms of the proposal.

2. Prior to advertising for bids on the Project, the County shall submit the plans and specifications for the Project and the form of the bid to the City for their review and approval, which approval shall not be unreasonably withheld. Rejection or approval of the plans and specifications for the Project and the form of the bid shall be made within Five (5) working days after submission of the same to the City by the County. If City rejects the plans and specifications presented by County, such rejection shall be accompanied by a written statement of reasons for such rejection. County at its option shall either revise such plans and specifications to address the reasons for the City's rejection or shall delete the City Project from the Project. If County deletes the City Project from the Project, this agreement shall terminate and neither party shall have any further rights or responsibilities with regard thereto. If County chooses to revise such plan and specifications for the City Project, such revised plans and specification shall be subject to same approval or rejection process as set forth above.
3. The County shall perform all construction engineering, staking, inspection, material certification and acceptance, and measurement of all items in accordance with State Aid standards. The County shall perform contract administration at no cost to the City.
4. The construction costs of the City Project shall be covered by the City. The County shall prepare bid documents by compiling pay items from the County Project and City 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 provide the City with an abstract of all bids received and upon written approval of such costs by Duluth City Engineer, the County may award the bid to the low bidder and enter into a construction contract for the construction of the Project. The County must obtain the concurrence of Duluth prior to awarding the Contract. Such concurrence or rejection shall be provided to the County by the City within Five (5) working days. If the City does not concur with such award of the Contract, the County shall delete the City Project from the Project. If County deletes the City Project from the Project, this agreement shall terminate and neither party shall have any further rights or responsibilities with regard thereto.

5. All further costs for change orders, work orders and supplemental agreements related to the County Project shall be allocated to and paid for by the County. All further costs for change orders, work orders and supplemental agreements related to the City Project shall be allocated to and paid for by the City.
6. Any field changes related to City Project shall be authorized by the Duluth City Engineer prior to the work occurring.
7. The County shall take all actions necessary to prepare the Project for construction, including, but not limited to obtaining any and all applicable environmental permits as required by law, temporary storage sites, temporary or permanent easements, and site restoration at its cost and expense.
8. In the event that the City takes any action, except as authorized by this Contract, that results in lost time or efficiency, or a delay of completion of the County's

construction of the County Project, the City shall bear the full financial responsibility for any claims or causes of action arising therefrom.

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 of Duluth:

Cindy Voigt
City Engineer
411 W 1st Street, Room 211
Duluth, MN 55802
218-730-5071
cvoigt@duluthmn.gov

10. The County will submit invoices to the City concurrently with the County receiving Pay Requests from the Contractor for the City Project 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 by the County from the City within 35

days of the date that the statement of final contract quantities is approved by the Contractor. Provided, however nothing to the contrary herein withstanding, the City's payment obligations under this Agreement shall not in any event exceed the amount of \$40,000 payable from Permanent Improvement Fund 411-035-5530 PI 2017 1618 (PI Fund, Capital Projects, Improvements Other than Buildings).

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 performed up to the effective date of such termination.
11. Each of the parties hereto hereby agrees that it shall defend, indemnify and save harmless the other parties 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.
12. 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.

13. 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.

14. 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.

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. 2017-10963

CITY OF DULUTH

COUNTERSIGNED:

Mayor

By _____
City Clerk

(City Seal)
APPROVED AS TO FORM:

City Auditor

By _____
City Attorney