

AGREEMENT

THIS AGREEMENT (the “Agreement”) is between the CITY OF DULUTH, a municipal corporation of St. Louis County, Minnesota, hereinafter referred to as the “City”, and the COUNTY OF ST. LOUIS, a duly organized county within the State of Minnesota, hereafter referred to as the “County”.

WITNESSETH:

WHEREAS, the County has applied for and secured Minnesota Department of Natural Resources (“DNR”) State Park Road Account (“SPRA”) funding for the construction of Kayak Bay Road located between the intersection of Trunk Highway #23 (Grand Avenue) and a planned non-motorized water access to the St. Louis River, a length of approximately 1000 feet, a planned City of Duluth street and park, hereafter referred to as the “Project”; and

WHEREAS, the County is required to act as the funding agent and contract administrator for the State of Minnesota in administering DNR SPRA funds or may delegate these responsibilities to a state aid city by stating so in a letter to the State Aid Operations Engineer; and

WHEREAS, the County desires to delegate the SPRA project management authority to the City; and

WHEREAS, the St. Louis County Board passed Resolution No. 14-666 on December 2, 2014 requiring County Administration and the St. Louis County Public Works Department to engage with all municipalities and townships for discussion on mutually beneficial projects that may be incorporated into future plans for the revenues collected by the Transportation Sales and Use Tax; and

WHEREAS, the County collects Greater MN Transportation Sales and Use Tax, has discussed the mutual benefits of the Kayak Bay Road Project with the City and has designated the Project as part of its “St. Louis County Greater MN Transportation Sales and Use Tax Transportation Improvement Plan” which makes the Project eligible for said funding; and

WHEREAS, the City desires to construct, own and operate Kayak Bay Road as a city street and the non-motorized public access to the St. Louis River as a city park, which will spur adjacent commercial and residential development, thereby generating new property and sales tax; and

WHEREAS, the City shall prepare a contract for the construction of the Project as provided for below hereinafter referred to as the “Contract”; and

WHEREAS, the County and City have agreed to participate in the costs and responsibilities of the Project as hereinafter set forth.

THEREFORE, IT IS MUTUALLY AGREED AND UNDERSTOOD, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, with regard to the aforementioned improvements on Kayak Bay Road and the adjacent access to the St. Louis River, the parties agree to the following:

1. The City shall prepare plans and specifications for the Project in accordance with the 2016 Edition of the Minnesota Department of Transportation (MnDOT) “Standard Specifications for Construction” unless bid opening for the project occurs after September 30, 2018; if bid opening is to occur after said date, the 2018 Edition of said Standard Specifications shall be used.
2. The Plan shall meet the Minimum Geometric Design Standards for SPRA projects per applicable state statutes and rules.
3. The City shall obtain all necessary permits and environmental statements as required by law for completion of the Project, including, but not limited to permits required by the Minnesota Pollution Control Agency, U.S. Army Corp. of Engineers, and the DNR. The City shall make actual payment to the permitting agencies for all permits and fees. The costs thereof shall be eligible to be reimbursed from funds identified as “Engineering, Upper road and Utilities” and “Engineering—Lower Road” as shown under “SLC” on Exhibit A attached hereto and made a part hereof. All permits shall be obtained prior to advertising of the Project.
4. The City shall acquire and pay for all permanent and temporary right of way required for the Project. The costs thereof shall be eligible to be reimbursed from funds shown under “DNR Road” on Exhibit A, subject to meeting all applicable DNR SPRA requirements for such reimbursement.
5. The City shall take all actions necessary to prepare the Project for construction, including, but not limited to, coordination with utilities, including relocation of existing facilities.
6. The City shall prepare the plan, specifications and all necessary information

- required for the proposal, which shall constitute "Design Engineering". The City shall perform all necessary construction engineering and staking, material testing, record keeping and construction inspection, which shall constitute "Construction Engineering and Inspection". The City shall report any observed deficiencies to the County. Construction record keeping shall follow the MnDOT Contract Administration Manual.
7. Prior to advertising for bids on the Project, the City shall submit plans and specifications for the Project and the form of the bid to the County for its 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) business days after submission of the same to the County by the City. If the County rejects the plans and specifications presented by the City, such rejection shall be accompanied by a written statement of reasons for such rejection. The City, at its option, may revise the plans and specifications to address the reasons for such rejection, or terminate this agreement by written notice to the County and continue the Project without cost participation by the County from both the SPRA and Greater MN Transportation Sales and Use Tax funding sources. The agreement shall be terminated with neither party having any further rights or responsibilities, except that any Design Engineering costs and Wetland Mitigation costs, discussed in paragraphs 10 and 11 below, incurred by the County through the date of termination shall be reimbursed by the City within 30 days after the date of termination. If the City chooses to revise the plans and specifications, such revised plans and specifications shall be subject to the same approval or rejection process as set forth above. The County's approval shall be indicated by the signature of the St. Louis County Public Works Director in the appropriate signature block on the plan sheet(s).
 8. The City shall be responsible for any project costs in excess of (1) \$450,000.00 in SPRA eligible expenses authorized to St. Louis County by the Minnesota Department of Natural Resources; and (2) a maximum of \$900,000 in St. Louis County Greater MN Transportation Sales and Use Tax. The County's obligations under this agreement shall not in any event exceed the amount of \$1,350,000.00. The City expressly acknowledges that the County shall not be responsible for any costs in excess of these amounts associated with the Project including cost overruns, changes in contract quantities, changes in site conditions, or any other reason not stated here that would cause a change in project cost.
 9. The County agrees to pay for the items listed under the column labeled "SLC" in Exhibit "A", which are estimated prices, with St. Louis County Greater MN

Transportation Sales and Use Tax. City shall be entitled to reallocate funds from one pay item to another within the “SLC” column as long as costs so reallocated continue to be eligible for participation for the use of SLC funds and such reallocation is approved by the St. Louis County Public Works Director. The County’s obligations under this agreement for these items shall not in any event exceed the amount of \$900,000.00. The County shall pay to the City 95% of the successful contractor’s bid for these items within 30 days after the award of the contract with the exception of Design Engineering costs and Wetland Mitigation costs, which are discussed in paragraphs 10 and 11 below.

10. The County agrees to pay for Design Engineering costs attributable to the road portion of the Project as described in Exhibit “A” as “Engineering, Upper Road and Utilities” and “Engineering—Lower Road”. The County shall pay to the City actual expenses within 30 days of an invoice from the City with proper documentation of actual payments made to the City’s design consultant.
11. The County agrees to pay for Wetland Mitigation costs attributable to the road portion of the Project as listed in Exhibit “A”. The County shall pay to the City actual expenses within 30 days of an invoice from the City with proper documentation of actual payments made to achieve wetland mitigation for the Project.
12. In the plans, pay items eligible for SPRA funds shall be shown as “participating” and those pay items not eligible shall be shown as “non-participating”. Items contemplated to be SPRA eligible expenses are listed under the column labeled “DNR Road” in Exhibit “A”. City shall be entitled to reallocate funds from one pay item to another within the “DNR Road” column as long as costs so reallocated continue to be eligible for participation for the use of “SPRA” funds.
13. The County agrees to delegate the SPRA project management authority to the City, whereby the City will receive the SPRA funds in the amount of \$450,000.00 directly from the State of Minnesota. The City shall be responsible for meeting all design, administrative and fiscal management responsibilities of the SPRA program. In the event the City fails to meet any of these obligations, which result in the total or partial loss of the SPRA funds, the City shall be responsible for the replacement of these funds from city sources. This shall include the obligation outlined in the award letter from the DNR requiring that the St. Louis River water access park be constructed within two years of award of contract of the Kayak Bay Road SPRA Project. The DNR award letter is attached hereto and incorporated herein as Exhibit “B”.

14. The County may and shall be allowed to conduct periodic on-site inspections during the construction operation on the Project, review materials and construction techniques being used in the work, and report any observed deficiencies to the City immediately.
15. The County Public Works Director or designee shall review and approve the lowest responsible bid.
16. The City shall advertise, receive bids, confer with the County, and, once approved by the County Public Works Director or designee, award the contract to the lowest responsible bidder, make payments to the contractor, and process the final payment documentation in accordance with MnDOT standards, hereinafter referred to as “Contract Administration”.
17. In the event that the City rejects all bids and decides to terminate the Project, the City shall provide written notice to the County of its decision to terminate and shall reimburse the County within 30 days of the date of termination for any Wetland Mitigation costs and Design Engineering costs incurred by the County through the date of termination.
18. The City may let the Project for bids as a single, unitary project, as a phased project to be completed over multiple construction seasons, as a single project phased by means of add-alternates or deduct-alternates, under two separate projects or under a similar variant process. In any event, all requirements and processes contemplated in this agreement shall apply to the Project in its entirety, no matter in what form the City chooses to bid it.
19. The County shall make final payment to the City after final acceptance of the Project. Final payment shall include all required funds for non-participating items as outlined in paragraph 9 above, up to the \$900,000 cap on the St. Louis County Greater MN Transportation Sales and Use Tax funds. Payment shall be due within 30 days of receipt of a valid statement of final contract quantities. In the event that the amount of funds advanced by the County is in excess of the required funds, the excess funds shall be returned to the County without interest.
20. The City shall indemnify, hold harmless and defend the County, its officers, employees and agents, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorneys’ fees, which the County, its officers, employees

or agents, may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the City, its officers, employees or agents, in the execution, performance, or failure to adequately perform the City's obligations pursuant to this Agreement.

21. Any and all claims against the County, its agents, servants or employees that arise or may arise from or in relation to the improvements to Kayak Bay Road as set forth herein shall in no way be the responsibility of the County. The City shall indemnify, hold harmless and defend the County, its officers and employees against any and all such liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the County, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of the improvements to Kayak Bay Road as set forth herein.
22. The County shall indemnify, hold harmless and defend the City, its officers, employees and agents, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorneys' fees, which the City, its officers, employees or agents, may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the County, its officers, employees or agents, in the execution, performance, or failure to adequately perform the County's obligations pursuant to this Agreement.
23. To the fullest 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.

IT IS FURTHER AGREED, that 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 only and not of 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 and all claims made by any third parties as a consequence of any act of said employees, shall be the sole obligation of the County.

IT IS FURTHER AGREED, that 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 only and not of 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 and all claims made by any third parties as a consequence of any act, of said employees, shall be the sole obligation of the City.

CITY OF DULUTH

By: _____
Mayor

Date: _____

By: _____
City Clerk

Date: _____

By: _____
City Auditor

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

COUNTY OF ST. LOUIS

By: _____
Chair, County Board

Date: _____

By: _____
Public Works Director/Highway Engineer

Date: _____

By: _____
County Auditor

Date: _____

APPROVED AS TO FORM AND EXECUTION:

By: _____
Assistant County Attorney

Date: _____

Damion No. 2018-11950

Kayak Bay Road, Trailhead, and Water Access Sources and Uses

	Estimates -	Source								
		City of Duluth								
Item	Westwood, LHB, Other	City 1/2-Cent	City Light Fund	Other City TBD (GAP)	SLC	SVLC	NOAA Coastal	DNR Road	MN DOT TED	Total
<u>Upper Road Project</u>										
1 Grading	\$174,350				\$ 41,561	\$0		\$132,789		\$174,350
2 Erosion Control	\$44,211					\$0		\$44,211		\$44,211
3 ROW Acquisition (incl appraisal)	\$80,000							\$80,000		\$80,000
4 Sanitary Sewer	\$277,283					\$277,283				\$277,283
5 Water Main	\$239,217					\$239,217				\$239,217
6 Storm Water Management	\$147,983				\$147,983					\$147,983
7 Wetland Mitigation	\$71,874				\$71,874					\$71,874
8 Signal	\$357,500		\$110,500						\$247,000	\$357,500
9 Street from Grand to Below Tracks (includes rail crossing)	\$361,548				\$193,548			\$168,000		\$361,548
10 Water stub at Grand	\$13,279					\$13,279				\$13,279
11 Subtotal, Upper Hard Costs	\$1,767,245		\$110,500	\$0	\$ 454,966	\$529,779	\$0	\$425,000	\$247,000	\$1,767,245
12 Engineering, Upper Road and Utilities *	\$168,366				\$100,787	\$42,579		\$25,000		\$168,366
13 Oversight, Upper Road and Utilities	\$179,208				\$125,988	\$53,220				\$179,208
Subtotal, Upper Road Project	\$2,114,819	\$0	\$110,500	\$0	\$681,741	\$625,578	\$0	\$450,000	\$247,000	\$2,114,819
<u>Lower Road Project</u>										
15 Park Road and "Loop" (includes grading)	\$123,762				\$123,762					\$123,762
16 New bike/pedestrian parking lot; loop parking; all other Phase 1 water access infrastructure.	\$202,000	\$140,797			\$61,203					\$202,000
17 Subtotal, Lower Hard Costs	\$325,762	\$140,797	\$0	\$0	\$184,965	\$0	\$0	\$0	\$0	\$325,762
18 Engineering--Lower Road *	\$26,061	\$11,264			\$14,797					\$26,061
19 Oversight, Lower Road	\$32,576	\$14,080			\$18,497					\$32,577
20 BN Land Purchase, Expenses, and Fees	\$175,000	\$75,000		\$100,000						\$175,000
21 BN-Mandated WWFT Reroute	\$320,000	\$320,000								\$320,000
22 Water Access Phase II	\$295,000	\$120,000		\$75,000			\$100,000			\$295,000
Subtotal, Lower Road Project	\$1,174,399	\$681,141	\$0	\$175,000	\$218,259	\$0	\$100,000	\$0	\$0	\$1,174,400
<u>Other--Related</u>										
23 DNR-mandated crossing improvements - Waseca/Rside	\$50,000			\$50,000						\$50,000
TOTAL	\$3,339,218	\$681,141	\$110,500	\$225,000	\$900,000	\$625,578	\$100,000	\$450,000	\$247,000	\$3,339,219

3/19/2018

* Includes project permits and fees