

EXHIBIT 1

St. Louis County
Woodland Avenue/Hartley Park Green Infrastructure Project
St. Louis County Proj. No. CP 0009-689681
City of Duluth Project No. _____

COOPERATIVE AGREEMENT BETWEEN

COUNTY OF ST. LOUIS
AND
CITY OF DULUTH
RELATED TO

WOODLAND AVENUE / HARTLEY PARK GREEN INFRASTRUCTURE PROJECT

THIS AGREEMENT (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, a municipal corporation existing under the laws of the State of Minnesota, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, pursuant to Minn. Stat. 160.02, the County is the road authority for County State Aid Highway 9, also known as Woodland Avenue, north of Arrowhead Road in the City including the portion of the road that borders Hartley Park; and

WHEREAS, the County and the City are authorized under Minnesota Statutes Section 471.59 to enter into agreements to jointly or cooperatively exercise common powers; and

WHEREAS, the County is repaving a portion of Woodland Avenue, County State Aid Highway 9, from the intersection of Anoka Road to Snively Road during the 2023 construction season; and

WHEREAS, a storm sewer conveying runoff from Woodland Avenue and certain adjacent City streets currently discharges directly to Tischer Creek via an outlet located in Hartley Park; and

WHEREAS, the County has been awarded a grant by the US Army Corps of Engineers, hereinafter referred to as "Corps", to construct green infrastructure to treat runoff discharging from Woodland Avenue into Tischer Creek; and

WHEREAS, per the Project grant agreement dated March 18, 2022, hereinafter the "Grant Agreement", Corps will reimburse the County for 75% of eligible Project costs up to a maximum of \$600,000; and

WHEREAS, the County, City and Corps have determined the best approach to restoring natural hydrology and treating runoff in a manner consistent with park aesthetics is to construct runoff treatment systems located in part on County right-of-way property and in part on City-owned property; and

WHEREAS, the County and the City have agreed to cooperatively design and construct green infrastructure to treat runoff conveyed by the storm sewer under Woodland Avenue along the east side of Hartley Park, hereinafter “Project”; and

WHEREAS, the County is willing to (i) be the lead agency in the design and construction of the Project; (ii) provide funding for construction of the Project; and (iii) undertake all other responsibilities assigned to the County as set forth in this Agreement, including but not limited to long-term operation and maintenance of the portion of the Project located within the County’s right of way; and

WHEREAS, the City is willing to (i) allow the County to be the lead agency in the design and construction of the Project; (ii) allow the County to construct a portion of the Project on the land outlined in orange on the attached Exhibit A (the “City Property”); and (iii) be responsible for long-term operation and maintenance of the portion of the Project located on the City Property; and

WHEREAS, a resolution of the County Board authorizing the County to enter into this Agreement is attached and incorporated into this Agreement as Exhibit B; and

WHEREAS, a resolution by the City Council of the City authorizing the City to enter into this Agreement is attached and incorporated into this Agreement as Exhibit C.

NOW THEREFORE, in consideration of the mutual benefits to be derived by the public bodies hereto and for the benefit of the general public, the parties agree as follows:

1. County shall be responsible for the cost of preparing Project plans and specifications and Project construction, including construction supervision. City shall not incur any design, construction or construction supervision costs.
2. County shall not reimburse City for costs incurred by City in relation to the design, construction or construction supervision of the Project, including but not limited to City staff time, unless the County has received reimbursement from the Corps for such costs.
3. County shall be solely responsible for grant administration and compliance with the Grant Agreement. This includes communications with the Corps, cost tracking, submittal of invoices for reimbursement, applying for permits, and other work required to ensure compliance with environmental and historical preservation requirements.
4. County shall solicit and select a qualified consultant, hereinafter “Consultant”, to prepare Project plans and specifications. The County shall afford City the opportunity to review and provide input on selection of Consultant, including review of proposals received and Consultant selection interviews. County’s contract with Consultant shall require that, prior to completion of the Project, Consultant develop and provide to County and City a post-construction operations and maintenance plan for the Project, including appropriate

engineering plans and specifications (the "Operations Plan"). The Operations Plan must be acceptable to the County and the City.

5. City shall provide information in its possession to Consultant regarding acceptable design options and treatment facility locations, maintenance limitations, related City plans, site use, public input and other information reasonably requested by Consultant to complete the conceptual and final design process for the Project in a timely manner.
6. County shall ensure that the plans, specifications, proposal and engineer's estimate for the Project are prepared in accordance with the current edition of the Minnesota Department of Transportation "Standard Specifications for Construction". Plans and specifications for the Project shall also follow, as applicable: Management Plan for the Hartley Natural Area of the Duluth Natural Areas Program dated 11/25/19; Minnesota Department of Natural Resources ("MnDNR") Restoration and Enhancement guidelines applicable to projects funded by Conservation Partners Legacy grant; and MnDNR Pollinator Best Management Practices and Habitat Restoration Guidelines.
7. City shall be responsible for coordination of the Project with Hartley Nature Center Corporation.
8. County may access the City Property for construction of the Project. County may construct an access road on the City Property in the location highlighted and identified in green on the attached Exhibit A (the "Access Road"). As a part of the Project, County shall remove the Access Road and restore and revegetate the City Property to its original condition at the time of execution of this Agreement or better. If County fails to restore the City Property, County shall, upon demand, pay to City the reasonable costs incurred by City to repair any damage done to the City Property by County, its employees, servants, agents, contractors, invitees, and licensees. Any erosion control blanket, straw or the like for the purpose of erosion control and soil stabilization used must be "weed free certified." City shall be responsible for obtaining approvals, if required, from Lessard-Sams Outdoor Heritage Council (per Notice of Funding Restriction registered in the Office of the St. Louis County Office of the Registrar of Titles as Document No. 1004924.0) and any approvals from other entities with restrictive covenants on the City Property.
9. City shall allow the Corps to enter, at reasonable times and in a reasonable manner, upon the City Property for the purpose of performing inspections required by the Grant Agreement.
10. City shall provide information in its possession to Consultant, as reasonably requested, relating to the existence of hazardous, toxic and radioactive waste on the City Property. County shall be solely responsible to ensure the Project complies with any environmental requirements.
11. City shall provide information in its possession to County, the Corps and Consultant, as reasonably requested, to ensure compliance with the National Historic Preservation Act

of 1966 ("NHPA"). County shall be solely responsible to ensure the Project complies with the NHPA.

12. County shall solicit and receive construction bids or proposals for the Project. County shall award the contracts for the Project in accordance with bid documents. After contract letting, and prior to contract award, County will provide City with all bids or proposals received. City will promptly review information and provide input to County. County must obtain the concurrence of City prior to awarding construction contracts.
13. County, or a contractor hired by County, shall perform all necessary construction contract administration for the Project, and shall administer the terms of the contract from contract award to the certification of final payment.
14. County, or a contractor hired by County, shall perform all record keeping and construction inspection for the Project in accordance with the plans and specs and construction contract.
15. If the Project is used to meet requirements of the Minnesota Pollution Control Agency's Small Municipal Separate Storm Sewer Systems General Permit, then County and City shall share equally in the associated Project benefits.
16. At the conclusion of construction of the Project, City shall have the opportunity to inspect the condition of the as-built Project to ensure that it complies with the plans and specifications and this Agreement. In the event that the City, in its reasonable discretion, determines that the as-built Project complies with the plans and specifications and this Agreement, the City shall provide the County with written acceptance of the Project. In the event that the City, in its reasonable discretion, determines that the as-built Project does not comply with the plans and specifications and this Agreement, the City shall provide written notice to the County and the County shall promptly remedy any defects in the construction of the Project. Following City's written acceptance of the as-built Project, City shall be responsible for operation and maintenance of that portion of the Project located on the City Property, at no cost to County or Corps. County shall be responsible for operation and maintenance of that portion of the Project not located on the City Property, at no cost to City. City shall have no responsibility to operate or maintain those portions of the Project located in the County's road right-of-way.
17. County shall require all contractors and subcontractors performing work for the Project to (i) name City as an insured party on their insurance policies, in the amounts listed in the insurance requirements contained in the contractor's or subcontractor's contract, which insurance requirements shall meet City's minimum insurance requirements (the "City Insurance Requirements"); and (ii) submit written proof that they meet the City's Insurance Requirements. County shall provide copies of such written proof of insurance to the City prior to allowing each contractor or subcontractor to enter the City Property. County shall not allow any contractor or subcontractor to enter onto the City Property until the contractor or subcontractor has provided written proof, acceptable to the City,

that they have in place insurance coverage that satisfies the City's Insurance Requirements.

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.
19. Each party shall be liable for its own acts to the extent provided by law, and each party hereby agrees to indemnify, hold harmless and defend the others, their officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees, which the others, their officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act of omission of the party, its agents, servants or employees, in the execution, performance, or failure to adequately perform its obligations pursuant to this Agreement.
20. Any and all employees of City, while engaged in the performance of any work or service which City is specifically required to perform under this Agreement, shall be considered employees of City only and not of County. 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.
21. Any and all employees of 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. 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.

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CITY OF DULUTH

COUNTY OF ST. LOUIS

Mayor

County Board Chair

ATTEST:

City Clerk

County Auditor

Dated: _____

COUNTERSIGNED:

Public Works Director/Highway Engineer

City Auditor

APPROVED AS TO FORM

APPROVED AS TO FORM

Assistant County Attorney
No. _____

City Attorney

Woodland Green Infrastructure

01/03/21

EXHIBIT A

Legend

- Created Wetlands
- Existing Creek
- Existing Wetlands
- Gas Main
- New Channel
- Park Boundary
- Service Road
- Water Main
- WLSSD Main
- City Property**

