

PUBLIC WORK & UTILITIES COMMITTEE

11-0658R

RESOLUTION AUTHORIZING AGREEMENTS WITH KURTIS AND YONHUI MARTIN AND SCOTT SOLEM FOR THE CONSTRUCTION AND ASSESSMENT OF A SANITARY SEWER MAIN IN COLUMBIA STREET AND ACCEPTANCE OF THE DEDICATION OF NECESSARY EASEMENTS.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into agreements, substantially in the form of those agreements on file in the office of the city clerk as Public Document Nos. \_\_\_\_\_ and \_\_\_\_\_, with Kurtis and Yonhui Martin and Scott Solem respectively pursuant to which said parties will convey the existing private sewer line serving their properties and easements necessary thereto to the city at no cost and in addition, pay to the city the amounts set forth below which shall be payable to Fund No. 410-038-5530 (Special Assessment Fund, Special Assessment Contracts, Improvements other than Buildings) and the city will cause said private main to be replaced with a public sewer main serving said properties:

Kurtis & Yonhui Martin            \$17,500.00  
Scott Solem                                \$12,500.00

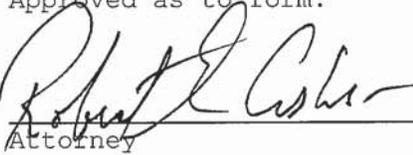
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PW&U/ATTY    REA:dma    12/02/2011

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize agreements with Kurtis and Yonhui Martin and with Scott Solem to accept the conveyance and dedication of their defective, private sewer line and related easements and to provide for its replacement with a public main, the estimated cost of which will be paid through assessments on the served property.

The Martins own and live in property located at 5612 Columbia Street; Mr. Solem owns and lives in property located at 5618 Columbia Street. Both properties are served by a private sanitary sewer line which connects to the City sanitary sewer system at the junction of Columbia Avenue and Central Avenue. For some time it has been known that this private line was defective, contributing substantial inflow and infiltration to the City's sewer system and that this condition needed to be mitigated. City staff has been working with both parties to reach a practical, affordable solution and such a solution has finally been developed.

The solution involves the Martins and Mr. Solem conveying their interest in existing private line and all easements which would be necessary for the City to do construction and maintenance on the line to the City at no cost. The City will then proceed to install a sleeved line into the existing, defective private line to serve the properties which will connect to the City sewer system. The owners will be required to install and maintain grinder pumps of a design and configuration which will allow the new sleeved line to carry their sewage to the juncture of the sleeved line with the Central Avenue sewer. The owners will pay the cost of this work through an agreed-upon assessment.

The agreements which are approved by this resolution authorize the commitments outlined above.



**5618 Columbia Street  
DEVELOPMENT AND ASSESSMENT AGREEMENT  
CITY PROJECT NO. 1001SN**

THIS AGREEMENT, entered into this \_\_\_\_ day of May, 2011 by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City" and SCOTT SOLEM, hereinafter referred to as "Owner".

WHEREAS, Owner is the owner of certain property having a street address of 5618 Columbia Street in the City of Duluth, County of St. Louis, State of Minnesota, which property is hereinafter referred to as the "Property" and is legally described as follows:

Lots 1 and 2 and the Westerly One-Half (W ½) of Lot 3, Block 5,  
SHARPS ADDITION TO DULUTH;

and

WHEREAS, the Property, along with private property located at 5612 Columbia Street, is jointly served by a private sanitary service line connected to a City sanitary sewer main located at North Central Avenue and Columbia Street; and

WHEREAS, the aforesaid private sanitary service line is illegal under current-effective provisions of the Duluth City Code and the Minnesota State Plumbing Code and is subject to the requirement that it be replaced with sewer connections which comply with said Codes; and

WHEREAS, the aforesaid private sanitary sewer service line is in badly deteriorated and defective condition and is thereby contributing substantial amounts of inflow and infiltration water to the City's sanitary sewer system which is in violation of the Consent Decree between the City and the U.S. E.P.A. and the M.P.U.C. and said condition is required by said Decree to be rectified; and

WHEREAS, City is willing to assume ownership of the aforesaid private sanitary sewer service line and install in said line a new two inch (2") diameter low pressure force main to serve the Property and the property at 5612 Columbia Avenue subject to Owner and the owners of 5612 Columbia Avenue agreeing to install and maintain grinder pumps, as hereinafter described, to process the sanitary waste from their property as hereinafter described and to agreeing to be assessed for the City's costs of constructing and installing said low pressure force main as hereinafter described; and

WHEREAS, Owner is willing to agree to said installation and said assessment.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

#### Article I.

##### Definitions

The following terms and phrases shall have the meanings hereinafter ascribed to them:

- A. Assess or Assessment Procedure: shall mean the act or process of collecting all or a portion of the cost of certain public improvements, including water service utility improvements and street improvements by collecting the same from the owners of benefitted properties as provided for in Chapter IX of the Duluth City Charter.
- B. Effluent Pump: shall mean a sanitary sewage waste pump capable of forcing all sanitary sewage waste generated on the Property through the Project to the point of connection between the Project and the City's gravity sanitary sewer facilities as they exist as of the date of this Agreement; the brand, size and technical specifications of the Effluent Pump shall be subject to the prior written approval of the City Engineer.
- C. Engineer: shall mean the Duluth City Engineer or such other person as he may have designated from time to time in writing.
- D. Plans: shall mean the plans and specifications on file in the office of the Engineer bearing City Project No.1001SN.
- E. Project: shall mean the construction of a two (2") inch low pressure sanitary sewer force main to serve the Property as shown on the Plans.
- F. Property: shall mean the property in St. Louis County, Minnesota described above.

#### ARTICLE II

##### Plans

- A. Plans  
Owner hereby acknowledges that it has reviewed the Plans as herein defined, that Owner has consulted with and received any necessary advice from design professions he or she deems necessary for review of the Plans and hereby

approves the Plans and agrees to be assessed, as hereinafter provided, for Owner's share of the costs of constructing the Project in substantial conformance therewith, subject to Paragraph B below.

B. Changes After Initial Approval

At any time he or she shall determine it reasonably necessary or advantageous to the City to do so, the Engineer may change or cause to have changed the Plans without the prior consent or approval of the Owner as long as such changes do not have a material deleterious affect on the ability of the Project to serve the needs of the Development.

### ARTICLE III

#### Construction Obligations

A. City construction Obligations

City hereby agrees that, upon the signing of this Agreement, it will construct or cause to be constructed the Project. City agrees to use its best efforts to cause construction of the Project to be completed prior to December 31, 2012 but City shall have no liability to Owner or any other person or entity if, despite such best efforts, City is unable to complete said construction by said date. In such event City will proceed to cause construction of the Project to be completed as soon as it can reasonably do so, subject to reasonable legal and practical constraints.

B. Owner's Construction Obligations

Owner agrees that no later than thirty (30) days of the date the City opens bids for the construction of the Project, Owner will cause a Effluent Pump as herein defined to be purchased and installed at or adjacent to the Owner's home on the Property and connected to the Owners private sanitary sewer service that will be connected to the Project.

### ARTICLE IV

#### Costs of Project

A. Benefits of and Payment for the Project

Owner agrees that the construction of the Project constitute public improvements which confer special benefits accruing to each of the Property which equals or exceeds the amount of Twelve Thousand Five Hundred Twenty (\$12,520) Dollars. It is hereby stipulated and agreed that value of the benefits conferred upon the Property are equal to or exceed the amounts to be assess against Property, without reference to any benefits conferred upon other benefitted properties.

B. Owner Agrees to Assessment

Because the Owner agrees that the value of the benefits to the Property arising out of the construction of Project equals or exceeds the anticipated costs thereof, Owner agrees to accept and to pay an Assessment in the amount of up to Twelve Thousand Five Hundred Twenty (\$12,520) Dollars levied against the Property by

City to defray the costs of said improvements. Said Assessment shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect which rate is currently estimated to be Five and 71/100s (5.71%) percent per annum.

C. Waiver of Defenses

Owner, for itself and its successors and assigns and for any other affected party, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the Assessments to be levied pursuant to this Article and agrees that Owner and its successors and assigns, if any, shall be bound thereby.

## ARTICLE V

### General Defaults by Owner and Remedies Therefore

A. General Events of Default

The following shall be deemed to be general events of default by Owner under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph B. below shall be applicable as otherwise set forth in this Agreement:

1. Failure to Make Payments

Owner shall fail to make any payment on any Assessment levied against the Property pursuant to Article IV above, or any installment thereof in a timely manner and in full; provided, however, that to the extent only an installment or a portion of said Assessment(s) is due, then "in full" shall only mean such installment or portion then due.

2. Failure to install and Maintain Pump

Owner shall fail to purchase and install or to maintain the Effluent Pump.

B. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Owner:

1. Seek and be entitled to monetary damages, including consequential damages from Owner for any damages, including consequential damages incurred by City as a result of Owner's default.

2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Owner's violation of the terms and conditions of this Agreement or to compel Owner's performance of its obligations hereunder.

3. Enforce the assessment against the benefitted property and collect any sums due and owing thereunder.

4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Non-Waiver

The waiver by City of any default on the part of Owner or the failure of City to declare default on the part of Owner of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on

the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in default of any of the terms and conditions of this Agreement and the other party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

F. Agreement Effective

Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall only be effective and binding on City if the owners of the property located at 5612 Columbia Street enter into an agreement to construct and pay for the Project in a form substantially similar to this Agreement no later than June 1, 2012. If said owners shall have failed to so enter into such an agreement by that date, this Agreement and all obligation of City hereunder shall be terminated and of no further force and effect.

## ARTICLE VI

### Force Majeure

Under the terms of this Agreement, neither the City nor Owner shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

## ARTICLE VII

### Term

Except as provided for below, the term of this Agreement shall run from the date first above shown until December 31, 2012 or the completion of construction of the Project, whichever occurs first unless this Agreement is otherwise terminated as hereinbefore provided for. Nothing to the contrary in the foregoing withstanding the terms and conditions of Articles III, IV and V shall survive the term or termination or both of this Agreement for so long as is necessary to give effect to their provisions.

Article VIII

Runs With the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE IX

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid or deposited with a nationally recognized overnight courier service for next business day delivery to:

In the case of City:

City of Duluth  
Office of the City Clerk  
Room 326, City Hall  
Duluth, MN 55802

In the case of Owner:

Scott Solem  
5618 Columbia Street  
Duluth, MN 55807.

ARTICLE X

Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

By \_\_\_\_\_  
Its Mayor

\_\_\_\_\_  
Scott Solem



**5612 Columbia Street  
DEVELOPMENT AND ASSESSMENT AGREEMENT  
CITY PROJECT NO. 1001SN**

THIS AGREEMENT, entered into this \_\_\_\_ day of May, 2011 by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as “City” and KURTIS MARTIN AND YONHUI MARTIN, husband and wife as joint tenants, hereinafter referred to as “Owner”.

WHEREAS, Owner is the owner of certain property having a street address of 5612 Columbia Street in the City of Duluth, County of St. Louis, State of Minnesota, which property is hereinafter referred to as the “Property” and is legally described as follows:

Lots 4, 5 and 6 and the Easterly One-Half (E ½) of Lot 3, Block 5,  
SHARPS ADDITION TO DULUTH;

and

WHEREAS, the Property, along with private property located at 5618 Columbia Street, is jointly served by a private sanitary service line connected to a City sanitary sewer main located at North Central Avenue and Columbia Street; and

WHEREAS, the aforesaid private sanitary service line is illegal under current-effective provisions of the Duluth City Code and the Minnesota State Plumbing Code and is subject to the requirement that it be replaced with sewer connections which comply with said Codes; and

WHEREAS, the aforesaid private sanitary sewer service line is in badly deteriorated and defective condition and is thereby contributing substantial amounts of inflow and infiltration water to the City’s sanitary sewer system which is in violation of the Consent Decree between the City and the U.S. E.P.A. and the M.P.U.C. and said condition is required by said Decree to be rectified; and

WHEREAS, City is willing to assume ownership of the aforesaid private sanitary sewer

service line and install in said line a new two inch (2") diameter low pressure force main to serve the Property and the property at 5618 Columbia Avenue subject to Owner and the owners of 5618 Columbia Avenue agreeing to install and maintain grinder pumps, as hereinafter described, to process the sanitary waste from their property as hereinafter described and to agreeing to be assessed for the City's costs of constructing and installing said low pressure force main as hereinafter described; and

WHEREAS, Owner is willing to agree to said installation and said assessment.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

#### Article I.

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- B. Effluent Pump: shall mean a sanitary sewage waste pump capable of forcing all sanitary sewage waste generated on the Property through the Project to the point of connection between the Project and the City's gravity sanitary sewer facilities as they exist as of the date of this Agreement; the brand, size and technical specifications of the Effluent Pump shall be subject to the prior written approval of the City Engineer.
- C. Engineer: shall mean the Duluth City Engineer or such other person as he may have designated from time to time in writing.
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- F. Property: shall mean the property in St. Louis County, Minnesota described above.

#### ARTICLE II

##### Plans

- A. Plans  
Owner hereby acknowledges that it has reviewed the Plans as herein defined, that Owner has consulted with and received any necessary advice from design professions he or she deems necessary for review of the Plans and hereby approves the Plans and agrees to be assessed, as hereinafter provided, for Owner's share of the costs of constructing the Project in substantial conformance therewith, subject to Paragraph B below.

B. Changes After Initial Approval

At any time he or she shall determine it reasonably necessary or advantageous to the City to do so, the Engineer may change or cause to have changed the Plans without the prior consent or approval of the Owner as long as such changes do not have a material deleterious affect on the ability of the Project to serve the needs of the Development.

ARTICLE III

Construction Obligations

A. City construction Obligations

City hereby agrees that, upon the signing of this Agreement, it will construct or cause to be constructed the Project City agrees to use its best efforts to cause construction of the Project to be completed prior to December 31, 2012 but City shall have no liability to Owner or any other person or entity if, despite such best efforts, City is unable to complete said construction by said date. In such event City will proceed to cause construction of the Project to be completed as soon as it can reasonably do so, subject to reasonable legal and practical constraints.

B. Owner's Construction Obligations

Owner agrees that no later than thirty (30) days of the date the City opens bids for the construction of the Project, Owner will cause a Effluent Pump as herein defined to be purchased and installed at or adjacent to the Owner's home on the Property and connected to the Owners private sanitary sewer service that will be connected to the Project.

ARTICLE IV

Costs of Project

A. Benefits of and Payment for the Project

Owner agrees that the construction of the Project constitute public improvements which confer special benefits accruing to each of the Property which equals or exceeds the amount of Seventeen Thousand Four Hundred Eighty (\$17,480) Dollars. It is hereby stipulated and agreed that value of the benefits conferred upon the Property are equal to or exceed the amounts to be assess against Property, without reference to any benefits conferred upon other benefitted properties.

B. Owner Agrees to Assessment

Because the Owner agrees that the value of the benefits to the Property arising out of the construction of Project equals or exceeds the anticipated costs thereof, Owner agrees to accept and to pay an Assessment in the amount of up to Seventeen Thousand Four Hundred Eighty (\$17,480) Dollars levied against the Property by City to defray the costs of said improvements. Said Assessment shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect which rate is currently estimated to be Five and 71/100s (5.71%) percent per annum.

C. Waiver of Defenses

Owner, for itself and its successors and assigns and for any other affected party, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the Assessments to be levied pursuant to this Article and agrees that Owner and its successors and assigns, if any, shall be bound thereby.

## ARTICLE V

### General Defaults by Owner and Remedies Therefore

#### A. General Events of Default

The following shall be deemed to be general events of default by Owner under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph B. below shall be applicable as otherwise set forth in this Agreement:

##### 1. Failure to Make Payments

Owner shall fail to make any payment on any Assessment levied against the Property pursuant to Article IV above, or any installment thereof in a timely manner and in full; provided, however, that to the extent only an installment or a portion of said Assessment(s) is due, then "in full" shall only mean such installment or portion then due.

##### 2. Failure to install and Maintain Pump

Owner shall fail to purchase and install or to maintain the Effluent Pump.

#### B. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Owner:

1. Seek and be entitled to monetary damages, including consequential damages from Owner for any damages, including consequential damages incurred by City as a result of Owner's default.
2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Owner's violation of the terms and conditions of this Agreement or to compel Owner's performance of its obligations hereunder.
3. Enforce the assessment against the benefitted property and collect any sums due and owing thereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

#### C. Non-Waiver

The waiver by City of any default on the part of Owner or the failure of City to declare default on the part of Owner of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

#### D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any

occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in default of any of the terms and conditions of this Agreement and the other party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

F. Agreement Effective

Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall only be effective and binding on City if the owners of the property located at 5618 Columbia Street enter into an agreement to construct and pay for the Project in a form substantially similar to this Agreement no later than June 1, 2012. If said owners shall have failed to so enter into such an agreement by that date, this Agreement and all obligation of City hereunder shall be terminated and of no further force and effect.

## ARTICLE VI

### Force Majeure

Under the terms of this Agreement, neither the City nor Owner shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

## ARTICLE VII

### Term

Except as provided for below, the term of this Agreement shall run from the date first above shown until December 31, 2012 or the completion of construction of the Project, whichever occurs first unless this Agreement is otherwise terminated as hereinbefore provided for. Nothing to the contrary in the foregoing withstanding the terms and conditions of Articles III, IV and V shall survive the term or termination or both of this Agreement for so long as is necessary to give effect to their provisions.

## Article VIII

### Runs With the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

## ARTICLE IX

### Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid or deposited with a nationally recognized overnight courier service for next business day delivery to:

In the case of City:

City of Duluth  
Office of the City Clerk  
Room 326, City Hall  
Duluth, MN 55802

In the case of Owner:

Kurtis & Yonhue Martin  
5612 Columbia Street  
Duluth, MN 55807.

#### ARTICLE X

##### Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

By \_\_\_\_\_  
Its Mayor

\_\_\_\_\_  
Kurtis Martin

Attest:

By \_\_\_\_\_  
Its City Clerk

\_\_\_\_\_  
Yonhui Martin

Approved:

Countersigned:

\_\_\_\_\_

\_\_\_\_\_

Assistant City Attorney

City Auditor

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_th day of\_\_\_\_\_, 2011 by Kurtis Martin and Yonhui Martin, husband and wife.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_th day of\_\_\_\_\_, 2012, by Don Ness and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

Drafted by:

Robert E. Asleson  
Assistant City Attorney  
Room 410 City Hall  
Duluth, MN 55802  
(218) 730-5490