

# EXHIBIT A

## REIMBURSEMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation thereto, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter "City," and, DULUTH LINCOLN PARK 1, LLC, a Minnesota limited liability company hereby referred to as "Owner.

WHEREAS, City is owner and operator of the street system in the City of Duluth including a trail facility known as the "Cross City Trail" (the "Trail") and

WHEREAS, Owner is the owner of certain property legally described as Lots 338, 340, 342 and 344, Block 38, DULUTH PROPER 2<sup>nd</sup> Division (the "Property"), which Property Owner is in the process of redeveloping; and

WHEREAS, the parties are both desirous of having the Trail pass through the easement for West Superior Street on the north side of the Property but agree that construction of the Trail through said easement needs to be delayed in order to allow Owner to complete development of the Property; and

WHEREAS, for the mutual benefit of Owner's construction and for the safety and convenience of the users of the Trail, City is willing to cause the Trail to be located temporarily in the northerly one-half of the easement for West Superior Street adjacent to the Property until the date set forth below and then cause the Trail to be permanently constructed in the southerly one-half of said easement shown as the permanent trail on the construction plans for City Project No. 1596 (the "Work"); and

WHEREAS, Owner is willing to reimburse City for the cost of all such design and construction as hereinafter set forth.

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

1. Plans and Specifications

City has furnished Owner with plans and specifications for Work including Change Order 1, which plans and specifications are attached hereto and made a part hereof as Exhibit A (the "Plans"). Owner acknowledges that it has reviewed the Plans and has determined that the work (the "Work") as described therein will be compatible with Owner's redevelopment work on the Property.

2. Reimbursable Cost

The parties stipulate and agree that the sum of Twenty-six Thousand, One Hundred Twenty-one Dollars and Thirty-Seven Cents (\$26,121.37) constitutes fair and reasonable reimbursement from Owner to City to reimburse City for the cost of the Work.

3. Reimbursement Payment

Within Ten (10) business days of the Effective date of this Agreement, Owner agrees to pay to City the sum of Twenty-six Thousand, One Hundred Twenty-one Dollars and Thirty-Seven Cents (\$26,121.37) to reimburse City for the cost of committing to perform the Work in accordance with the terms of this Agreement. Said sum shall be deposited in Fund 411-035-4654-02 (Other Reimbursements and Refunds).

4. Work to be Performed

City shall cause construction of the temporary elements of the Work as shown on the construction plans for City Project No. 1596, on file in the office of the City Engineer, to commence after execution of this Agreement and shall cause the permanent elements of the Work as shown on said plans to be completed no later than June 15, 2022. City and its contractors shall be solely responsible for the performance of the Work and Owner shall have no liability therefore.

5. Restoration of ROW Improvement

The parties understand that in the course of redeveloping the Property, it is convenient for Owner to disrupt or demolish certain improvements in the City's right-of-way (the "ROW") adjacent to the Property as hereinafter defined and that Owner is responsible for restoring said improvements to their pre-development condition in a time frame which will allow the City to complete the Work by June 15, 2022. Therefore, Owner hereby agrees that it will restore the improvements to the ROW adjacent to the Property, including the sidewalk, curb and gutter, blacktop surfaces, trees, light poles, utility poles, storm sewer, drainage systems and other improvements to the condition they were in prior to March 29, 2021 to the reasonable satisfaction of the City Engineer by no later than June 1, 2022 and that the City is relying on Owner to complete this work by that date. Prior to the

commencement of Owner's restoration work as described above, Owner shall have submitted full plans and specifications for said restoration work to the City Engineer for her approval, which approval shall not be unreasonably withheld, and shall have obtained and kept in force during the course of the work, including any required renewals thereof, all required permits including an obstruction permit and an excavation permit required for the work. City agrees that the Owner's use of the ROW and the location of the Trail to the north side of Superior street may continue until June 1, 2022 unless Owner's restoration work described above is completed earlier in which case said use shall thereafter cease.

6. Letter of Credit

In order to insure that Owner performs its obligations pursuant to Section 5 above, Owner shall cause to be provided to City a Letter of Credit in the amount of at least Ninety-four Thousand Dollars (\$94,000.00) issued by a financial institution reasonably satisfactory to City in a form reasonably satisfactory to City providing that in the event that Owner fails to perform its obligations pursuant to Section 5 above City shall have the right to draw unconditionally upon said Letter of Credit to pay for City restoration work as provided for in Section 7 below.

7. City Restoration

If Owner fails to complete the restoration of the improvements to the City's ROW adjacent to the Property by June 1, 2022, City shall have the right, but no the obligation, to contract to have all restoration work required by Section 5 above completed by a contractor or contractors hired by the City and the right to draw upon the Letter of Credit provided for in Section 6 above to pay for all such work. Provided, that in the event that the cost to the City of performing such restoration work exceeds the amount of the Letter of Credit, City shall have the right to invoice the Owner for the cost of such work in excess of the amount of the Letter of Credit and the Owner shall immediately pay to City the full amount of such invoice.

8. Indemnification

City agrees for itself and its officers, agents, servants, employees and contractors to indemnify Owner and itself and its officers, agents, servants, employees and contractors from and against any liability arising directly out of the performance of the Work itself. Owner agrees for itself and its officers, agents, servants, employees and contractors that it shall indemnify City and its officers, agents,

servants, employees and contractors from and against any liability arising out of all elements of work arising out of Owner's work on the Property or in the City's ROW.

9. Independent Contractor

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Owner as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Owner and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Owner's employees while so engaged, and any and all claims whatsoever on behalf of Owner's employees arising out of employment shall in no way be the responsibility of City. Owner's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Owner from liability or judgments arising out of Owner's intentional or negligent acts or omissions of Owner or its employees while performing the work specified by this Agreement.

b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

10. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: City of Duluth  
411 West First Street  
Room 240 City Hall  
Duluth, MN 55802  
Attn: City Engineer

Owner: Ryan Nelson  
Duluth Lincoln Park1, LLC  
2306 West Superior Street  
P.O. Box 16958  
Duluth MN 55816

CC: Duluth Lincoln Park 1, LLC  
Dante E. Tomassoni  
Chief Legal Officer  
2306 West Superior Street  
P.O. Box 16958  
Duluth MN 55816

11. Nondiscrimination

Owner, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. Obey all Laws

Owner agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City

with respect to their respective agencies which are applicable to its activities under this Agreement.

13. Applicable Law

This Agreement, together with all of its 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 of Minnesota.

14. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

15. Owner Warranties

Owner hereby warrants and guaranties to City that it is a duly organized limited liability company under the laws of the State of Minnesota and is presently registered to do business in the State of Minnesota, that it is authorized to enter into this Agreement and to be bound thereby and that it is the sole owner of the Property and is authorized to encumber the Property as set forth herein.

16. Owner/Trail Commitment-Limitation

Nothing in this contract contained herein shall bind Owner to any additional payments to be made regarding the Trail over and above those specifically set forth above.

17. SeverabilityIn the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

18. Entire Agreement


It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

DULUTH LINCOLN PARK1, LLC  
a Minnesota limited liability company

By: \_\_\_\_\_  
It's Mayor

  
By: Ryan Nelson  
Its Owner

Attest:

By: \_\_\_\_\_  
It's City Clerk

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
It's City Attorney

Countersigned:

By: \_\_\_\_\_  
It's City Auditor