

**SHORT-FORM  
DEVELOPMENT AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
MOLINE MACHINERY, LLC**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and MOLINE MACHINERY, LLC, a limited liability company under the laws of the State of Minnesota, hereinafter referred to as "Developer".

WHEREAS, Developer is the owner and operator of an approximately 30,000 square foot manufacturing facility located at 114 South Central Avenue in Duluth, Minnesota in which it manufactures equipment for the bakery and food processing industries; and

WHEREAS, Developer has significant real estate investments in its West Duluth complex, and in its name, or its affiliates, are facilities which will pay more than \$135,000 in real estate taxes during 2019;

WHEREAS, in order to remain competitive in the industry and to retain its existing workforce in the Duluth market, Developer is in need of constructing and developing a major addition to said manufacturing facilities to augment its manufacturing capacity on property adjacent to the above facility, which expansion will require the construction of a new sanitary sewer main through challenging terrain to serve both facilities; and

WHEREAS, Developer is constructing and developing a major expansion of its manufacturing facilities and capacity on property adjacent to an existing facility, which requires a new sanitary sewer main to avoid pollution (the current system may be failing) and to deal with challenging terrain, or an intermediate, perhaps temporary fix that would potentially need further investment in the future; and

WHEREAS, Developer has requested the assistance of DEDA in financing the costs of the sewer project; and

WHEREAS, DEDA has determined that there is significant public interest in upgrading the sewer to avoid impact on Keene Creek and to better serve and provide stability to the operations of Developer; and

WHEREAS, Developer has agreed to cause the sanitary sewer main to be constructed, doing a full repair/replacement, if it receives the grant described herein;

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

## ARTICLE I

### Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Approved by the Executive Director: shall mean the written approval of the Executive Director, or such person or persons to whom he or she may delegate such approval authority in writing, in the exercise of his or her sole discretion, provided that such approval shall not be unreasonably withheld.
- B. City: shall mean the City of Duluth, Minnesota.
- C. Eligible Costs: shall mean those costs of designing and constructing the Sewer Project, including the amount of the deposit as set forth in Paragraph 5 of the MOU.
- D. Developer Property: shall mean that property in St. Louis County, Minnesota, legally described as:

Lots 1 through 16 inclusive, Block 50 and Lots 1 through 16 inclusive, Block 51, WEST DULUTH First Division, including vacated alley except highway right-of-way.

- E. Full-time Equivalent or FTE shall mean employment positions within the State providing 2,080 hours of employment per year
- F. MOU: shall mean that Memorandum of Understanding between Developer and the City of Duluth's City Engineer for the construction of the Sewer Project and the acceptance of the resulting sewer utility by the City.
- G. Project: shall mean the construction of the Sewer Project.
- H. Plans: shall mean the plans and specifications, as prepared by Krech Ojard and submitted to the City of Duluth.

## ARTICLE II

### Ownership, Title and Control of Property

Developer hereby represents and warrants to DEDA that it owns the Property in fee simple absolute and that the Property is subject to no liens or encumbrances of any kind which would prevent or interfere in any way with Developer performing its obligations under this Agreement.

## ARTICLE III

### Conditions Precedent to Construction of the Project

Prior to the commencement of the construction of the Project, Developer shall have presented the following documentation to DEDA with regard to the Project and shall have received the Executive Director's prior approval thereof in writing as hereinafter required:

- A. Construction Plans  
Approved Plans for the Project are attached to the MOU..
- B. Construction Contract  
A copy of an executed contract between Developer and a contractor for the construction of the Project, certified by Developer to be a true and correct copy thereof.

C. Financial Assurance

Evidence of Developer's ability to complete the Project.

ARTICLE IV

Project Plans

A. Plans and Specifications

Plans are attached to the MOU and approved.

B. Changes After Initial Approval

Any changes made to plans by Developer after initial approval of the Executive Director deemed to be material or substantial shall be submitted to him or her for acceptance in the same manner provided for in Paragraph A above.

ARTICLE V

Construction

A. Construction of Developer Projects

Upon the fulfillment of the Preconditions to Construction provided for in Article III above and subject to the provisions of Article IV above but in no event later than November 1, 2019, Developer shall promptly commence construction of the Project in conformance with the plans developed pursuant to Article IV above. Construction of the Project as herein defined shall be completed no later than December 31, 2020 except as hereinafter set forth in this Agreement. Provided, that the Executive Director may, in the exercise of his or her discretion, extend the time for completion of the Project for up to nine (9) months, which extension shall be in writing.

B. Developer to Bear All Costs of Project

Subject to the terms and conditions of this Agreement, Developer specifically guarantees and agrees to bear all costs related to the development, completion and operation of the Project and any modifications thereto.

C. Progress Reports

Until construction of the Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by DEDA as to the actual progress of construction with respect to each such Project.

D. Certificate of Completion

Promptly upon completion by Developer, in accordance with this Agreement, of the construction of the Project, DEDA shall furnish to Developer an appropriate certificate so certifying. No such certification shall be issued until the Project has been completed. Such certification by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

## ARTICLE VI

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In consideration of Developer's performance of its obligations under this Agreement, DEDA hereby agrees to reimburse Developer for the cost of the Sewer Project in the amount of up to One Hundred Twenty-five Thousand, Dollars (\$125,000). One-half of that amount shall be payable upon the signing of this Agreement. Up to the entirety of the remaining amount shall be payable upon i) the issuance of the Certificate of Completion provided for in Paragraph D of Article V above; ii) the issuance of a certificate of occupancy by the City of Duluth Building Official for the addition described in the Whereas clauses above, which addition shall be approximately 25,000 square feet in size; iii) lien waivers from all contractors constructing the Project and said addition; and Developer submitting a written request for reimbursement of such costs incurred by Developer in constructing the Project, accompanied by evidence that such work has been performed and that the costs therefore have been paid by Developer, together with such other documentation as the Executive Director shall reasonably request.

## ARTICLE VII

### Developer's Operating Covenant

Developer further covenants and agrees that in its operations and use of the Project and the Property it will:

A. Job Retention

Developer currently employs 83 FTEs in Duluth. As a condition of the payment to Developer as provided for in Article VI above, Developer agrees to employ at least 83 FTEs at similar jobs in Duluth for a term of at least two (2) Years from the date of the issuance of the Certificate of Completion as described in Paragraph D of Article V above, subject to the provisions of Paragraph B. of Article XII below. On the first and second anniversary dates of the issuance of the Certificate of Completion as provided for in Paragraph D of Article V above, Developer shall provide to DEDA written certification of the number of FTEs actually employed in Duluth, attested to as true by the President or a Vice President of Developer. Additionally, the certification coinciding with said second anniversary shall be accompanied by payroll records or such other supporting documentation as shall be reasonably requested by the Executive Director necessary to support said certification. In the event that, at the end of the second year, the total number of employees is less than 83 FTEs, a pro rata portion of the DEDA grant above described will be returned to DEDA. For example, if there are 81 employees on the second anniversary date,  $2/83 \times$  (amount of the grant received) will be returned.

B. Maintenance

The Project shall be maintained until accepted by the City of Duluth pursuant to the terms of this Agreement and the MOU.

## ARTICLE VIII

### Indemnification By Developer

A. Generally

Developer will to the fullest extent permitted by law, protect, indemnify and save DEDA and the City of Duluth and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and the construction or installation of the Project on any portion of the Project and the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the Developer.
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and

judgments arising out of any condition created in the Project or the Property after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or the Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.

C. Indemnification Procedures

Promptly after receipt by DEDA or the City of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate



in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

## ARTICLE IX

### Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall be consistent with those carried by commercial enterprises in the City of Duluth and shall name the City of Duluth as an additional insured or named insured, where requested by the Executive Director.

## ARTICLE X

### Defaults and Remedies Therefore

#### A. Developer General Defaults and Remedies

##### 1. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. Failure to pay Ad Valorem Real Estate Taxes as and when due and payable.
- b. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed

or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.

- c. Developer fails to complete its obligations under Articles IV or V as set forth above on or before December 31, 2020.

2. General Remedies

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

- a. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
- b. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. DEDA Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by DEDA under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. DEDA shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after

Developer has, pursuant to the provisions of this Agreement, given written notice to DEDA of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

- b. The failure of DEDA to abide by any of the terms and conditions of the Lease which, when taken together pursuant to those documents, constitute obligations of DEDA.

2. General Remedies

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

- a. Seek such legal or equitable relief as a court of competent jurisdiction may determine is available to Developer.

C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party 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 non-defaulting 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 attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

## ARTICLE XI

### Force Majeure

Under the terms of this Agreement, neither the DEDA nor Developer 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 XII

### Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not a material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if

decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA or the DEDA Portion and DEDA is not in default with respect to any order of any court or government agency.

- C. DEDA has investigated and has no knowledge that the DEDA Executive Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

### ARTICLE XIII

#### Developer's Representations and Warranties

Developer represents and warrants that as of the date hereof:

- A. It is a lawfully constituted limited liability company under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. It is fully competent to acquire the Property and to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental

agency which, if decided adversely to Developer could have a material adverse effect upon Developer or the Property and the Project, and that Developer is not in default of any order of any court or governmental agency.

- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. That Developer has investigated and has no knowledge that any officer, director, agent or employee of Developer is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

#### ARTICLE XIV

##### Term

The term of this Agreement shall run from the date first above shown until the Issuance of the Certificate of Completion as provided for in Paragraph D of Article V unless this Agreement is otherwise terminated as herein before provided for.

#### ARTICLE XV

##### Runs With the Land

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

#### ARTICLE XVI

##### 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 to:

In the case of DEDA:

Duluth Economic Development Authority  
Room 402 City Hall  
411 West First Street  
Duluth, MN 55802

In the case of Developer:

Gary Moline  
Moline Machinery, LLC  
114 South Central Avenue  
Duluth, MN 55807

With copies to:

William M. Burns  
Hanft Fride, A Professional Association  
130 W. Superior Street #1000  
Duluth, MN 55802

ARTICLE XVII

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 of Minnesota.

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY, an economic development  
authority under MinnStat. (1989)  
Chapter 469.

MOLINE MACHINERY, LLC,  
a Minnesota Limited  
Liability Company

\_\_\_\_\_  
Its President

\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Its Secretary