

Exhibit A

**KAYAK BAY ROAD
PROJECT AGREEMENT**

City of Duluth

Spirit Valley Land Company LLC.

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, is entered into between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City”, and SPIRIT VALLEY LAND COMPANY, LLC., a limited liability company under the laws of the State of Minnesota, hereinafter referred to as “Owner”.

WHEREAS, City intends to cause to be constructed the hereinafter defined and described Spirit Landing Park (the “Landing”) adjacent to the St. Louis River Estuary and of constructing the hereinafter defined and described Kayak Bay Road and related utilities (the “Road”) connecting the Landing to Grand Avenue; and

WHEREAS, Owner is the owner of the hereinafter-described property (the “Property”) which Owner is desirous of developing and are committed to finding a developer who will develop the Property, which development could include single family housing, residential condominium development, apartment development, and commercial and retail development; and

WHEREAS, Owner has requested that City include design and construction of the Utilities in the Road project in order to facilitate that development and has offered to pay the cost thereof as hereinafter provided for and to convey necessary easements for the Road across the Property to the City; and

WHEREAS, certain steps including those set forth in Paragraph 2 below need to be accomplished before City can make an unconditional commitment to construct the Road; and

WHEREAS, the parties hereto desire to memorialize those steps involving each other which are necessary to proceeding with the development of the Road and the Property.

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

1. Definitions

For the purposes of this Agreement, the following words 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 the Utility improvements by collecting the same from the Owner of benefitted properties as provided for in Chapter IX of the Duluth City Charter and Article VII of Chapter 45 of the Duluth City Code, 1959, as amended.
- B. Assessment Amount: shall mean the unpaid Eighty (80%) Percent of the Cost.
- C. Consultant: shall mean Westwood Professional Services, Inc.
- D. Contract: shall mean the construction contract for construction of the Road.
- E. Cost: shall mean the cost of designing and constructing the Utilities.
- F. Easement: shall mean a Sixty-six (66') foot wide easement for street and utility purposes over the Property, determined by the City Engineer in the exercise of her discretion to be sufficient for the City's needs related to the Road and related grading, which Easement is legally described on Exhibit A attached hereto and made a part hereof.
- G. Mortgage: shall mean that mortgage in the form of that attached hereto as Exhibit B and made a part hereof securing the payment of the Note to City.
- H. Note: shall mean that Note in the entire amount of the cost of Assessment as provided for in Section 2.E. below in the form of that attached hereto and made a part hereof as Exhibit CD from Owner to City evidencing Owner's debt to City for the Assessment Amount.
- I. Ordering In Resolution: shall mean that resolution approved by the City's City Council ordering construction of the Road in accordance with the requirements of Section 45-81 of the Duluth City Code, 1959, as amended.
- J. Plans and Specifications: shall mean the construction plans and specifications for the construction of the Road as defined herein to be prepared by the Consultant.

K. Plat: shall mean the Plat of Kayak Bay platting the Property in accordance with the requirements of the City and of Statute.

L. Property: shall mean that property in St. Louis County, Minnesota legally described on Exhibit D attached hereto and made a part hereof.

M. Road: shall mean a Twenty-eight (28') foot wide bituminous roadway located on the Easement and on other property owned or controlled by City from Grand Avenue to the St. Louis River, constructed to Minimum Geometric Design Standards for Minnesota State Park Roads, and shall include the Utilities.

N. Utilities: shall mean an eight (8") inch waterline and an eight (8") inch sanitary sewer line constructed to standard City Specification therefore within the Easement and adjacent to the Road for its entire length

2. Pre-conditions to Road Construction-Owner

Prior to the commencement of construction of the Road by City, Owner shall have performed the following obligations:

A. Plans and Specifications

Owner shall have the right to review and comment on the Plans and Specifications and to request changes thereto but the final approval of all such portions of the Plans and Specifications shall be solely that of the City's City Engineer.

B. Grant of Easement

Owner shall have granted the Easement to the City.

C. Payment of 20% of Cost

Prior to the approval of the Ordering In Resolution, Owner shall have paid to City an amount equal to Twenty (20%) Percent of the Cost plus the the amount of \$13,278.70 for prior utility work done for the benefit of Owner, subject to the off-set provisions of Paragraph 3.B below.

D. Assessment Agreement

At the time the Ordering In Resolution is approved Owner shall enter into an Assessment Agreement in the form of that attached hereto and made a part hereof as Exhibit E agreeing to allow the Assessment Amount to be assessed against the Property.

E. Note and Mortgage

At the time the Ordering In Resolution is approved Owner shall execute and deliver to City a Note and Mortgage in the amount of the Assessment Amount.

F. Plat

No later than the Ordering In Resolution, Owner shall have completed all things necessary to secure approval of the Plat by the City's Planning Commission and shall have duly recorded the Plat in the Office of the St. Louis County Recorder's Office.

G. Excess Soils

In the event that the construction of the Road results in the generation of soils materials which would otherwise need to be removed from project site by the City's contractor, Owner hereby grants permission to City to have its contractor dispose of such materials on the Property at a location designated and staked by the Consultant at no cost to City and grants City and its contractor access across the Property to such location by earth hauling equipment. City's only obligation with regard to placement of the materials on the Property will be to deposit them at the designated location. Owner will be solely responsible for securing any permits or other authorization required by law to have the materials deposited on the Property, to design and perform any relocation of the materials on the Property and to design and implement all necessary erosion controls related to the placement of the materials.

3. Pre-conditions to Road Construction-City

Prior to the commencement of construction of the Road, the following shall have occurred:

A. Property Rights, Permits and Consents

City shall have received the Easement at acceptable site grade and property rights, consents and permits deemed necessary by the City from all other property owners owning or controlling property that will be affected by the construction of the Road and from governmental agencies having jurisdiction of any property affected by the construction of the Road or having any authority or jurisdiction over necessary permitting or other authorization related to the construction of the Road to construct the Road.

B. Payment to Owner

City shall have paid Owner an amount to be agreed upon between the parties prior to the commencement of construction of the Road, payable from Fund 411-035-5530-PI 2018-1403. in full compensation of for the grant of the Easement as provided for in Paragraph 2. B above and for costs incurred related to the development of the Road for the benefit of the public, provided that the amount owed to Owner by City pursuant to this Subparagraph and the amount owed to City pursuant to Paragraph 2. C above may be off-set against one another and only the net amount shall be payable by the owing party to the other party.

4. Construction

Upon completion of the Pre-conditions to Road Construction-Owner and the Pre-conditions to road Construction-City as provided for above, City shall bid out, award and enter into the Contract. In addition, upon completion of the construction covered by the Contract, the City will complete the Assessment process provided for herein.

5. Owner Search

Upon the effective date of this Agreement, Owner agrees to use its best efforts to locate and enter into a development agreement with a developer or developers desirous and capable of developing the Property in a manner contemplated by this Agreement as described above. The parties agree to work together cooperatively to insure that the development of the Property will be in substantial conformance with the Lower Spirit Mountain Riverside Park Site Plan, the City's Comprehensive Land Use Plan, the Riverside Small Area Plan and the principals of the St. Louis River Corridor Initiative. The development shall also reasonably accommodate safety consideration related to intersection of the development of the Property and the Munger trail. Provided that said development shall be required to conform to the requirements of all statutes, ordinances, laws, rules and regulations applicable to all elements of said development.

6. Time

Subject to the occurrence of Force Majeure event or events, it is the intention of the parties that construction of the Road shall have been completed as

soon as practical but in any case it shall be completed prior to the end of the 2020 construction season.

7. Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

The Owner shall not create or permit any mortgage, encumbrance or allow any Property or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if Owner shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Owner may, in good faith, contest any such mechanic's or other liens filed or established as long as City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

B. Provision Against Assignments, Transfers or Change in Identity of Owner

The parties hereto acknowledge that City is relying upon the qualifications and identify of Owner to develop the Property and is relying on its position as a first secured party to insure that the objectives of this Agreement are met. Therefore, Owner represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Owner, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder during the term of this Agreement that would jeopardize the City's first secured position in the Mortgage; and except for subordinate mortgaging approved in writing by the City's Chief Administrative Officer, Owner will not make or create or suffer to be made any such transfer of Owner's rights hereunder without the prior approval of City, not to be unreasonably withheld with respect to a specific development.

8. 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.

9. Obey All Laws

Owner will conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Owner in good faith through proper legal action provided that such protest shall in no way affect Owner's title to the Property.

10. 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 City:

City of Duluth
Room 402 City Hall
411 West First Street
Duluth, MN 55802

In the case of Owner:

Spirit Valley Land Company LLC
P.O. Box 235
Chanhassan, MN 55317

With a copy to:

William M. Burns
Hanft Fride, A Professional Assn.
1000 U.S. Bank Place
130 west Superior Street
Duluth, MN 55802-2094

11. 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.

CITY OF DULUTH, a Minnesota
Municipal Corporation

SPIRIT VALLEY LAND
COMPANY LLC, a Minnesota
Limited Liability Company

By: _____
Emily Larson
Its: Mayor

By: _____
Its'' _____

Attest:

By: _____
Its: City Clerk
Date: _____

Approved:

Countersigned:

Asst. City Attorney

Auditor