

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF DULUTH**

**and**

**CRAWFORD EXCAVATING, LLC**

**Dated as of \_\_\_\_\_, 2022**

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, is by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and Crawford Excavating, LLC, a Minnesota Limited Liability Corporation ("Developer").

### **RECITALS**

WHEREAS, Developer proposed to plat and develop a 67-acre parcel of land located on West Skyline Parkway in Duluth, Minnesota, legally described on the attached Exhibit A (the "Property"); and

WHEREAS, Developer desires to develop thirteen (13) single-family lots with a public street connected to West Skyline Parkway, public stormwater management facilities, and certain other site improvements (the "Project"); and

WHEREAS, in furtherance of the Project, Developer applied to City for approval of a preliminary plat and a final plat to provide for thirteen separate lots identified on the Plat of Skyline View Estates, as hereinafter defined; and

WHEREAS, on January 11, 2022, the City Planning Commission approved the Plat subject to certain conditions, one of which required Developer to enter into a Development Agreement with City; and

WHEREAS, Developer has agreed to dedicate to the public for public use the drainage, utility, and right-of-way easements shown on the Plat, to construct the Required Improvements (hereinafter defined) and the Stormwater Facilities (hereinafter defined) as described in the hereinafter-referenced MOU; and

WHEREAS, Developer has agreed to make certain other improvements to the Property and dedications to the City on behalf of the public as a condition attached to the City's approval of the Plat;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

## **AGREEMENT**

1. **Definitions.** The following term and phrases shall have the meanings hereinafter ascribed to them:

- A. **Code:** shall mean Chapter 50 of the Duluth City Municipal Code, 1959, as amended, also referred to as the Unified Development Chapter (UDC).
- B. **Director:** shall mean the Director of the City of Duluth Planning and Economic Development Division or the person designated by them in writing to act for them.
- C. **Easements:** shall mean those road, utility and drainage easements depicted on the Plat.
- D. **Lots:** shall mean the lots as shown on the Plat.
- E. **Memorandum of Understanding or MOU:** shall mean that Memorandum of Understanding entered into between the City's City Engineer and Developer for the construction and implementation of the Required Improvements.
- F. **Plans:** shall mean the plans and specifications for the construction and installation of all elements of the Required Improvements approved by the City Engineer and incorporated into the MOU.
- G. **Plat:** shall mean the Plat of Skyline View Estates as approved by the City of Duluth Planning Commission on January 11, 2022 pursuant to its File No. PL21-188. Which Developer agrees it shall record in the office of the County Recorder of St. Louis County, Minnesota.
- H. **Project:** shall mean the development on the Property of thirteen (13) single-family residential structures, construction and implementation of the Required Improvements and the dedication of all easements related thereto, all as shown on the Plat and the Plans.
- I. **Property:** shall mean that property legally described on Exhibit A attached hereto and made a part hereof.
- J. **Required Improvements:** shall mean the Road Improvements and Stormwater Improvements.

K. Road Improvements: shall mean the construction of Yellow Birch Trail to City engineering standards, as shown on the Plans.

L. Stormwater Improvements: shall mean those improvements to be constructed to implement the Stormwater Management Plan and the drainage easements as shown on the Plat or the Plans.

M. Stormwater Management Plan: shall mean that stormwater management plan conforming to the requirements of § 50-18.1 E of the Duluth City Code, 1959, as amended, and which conforms to the requirements of the MOU.

N. Yellow Birch Trail: shall mean the 2,350-foot public street, including curb and gutter, that is constructed in the 66-foot wide easement as shown on the Plat.

2. Developer's Duty and Compliance. Development of the Lots must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all approvals and permits of any kind required to implement the Project from any governmental agency having jurisdictions with regard thereto, including but not limited to roadway access permits, wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits.

3. Recording of Plat: Prior to the issuance of any permits needed to implement development of the Property in the Plat as permitted under the Plat and prior to the commencement of any construction work of any kind, including but not limited to site work, having the purpose of implementing the development of said Lots, Developer shall have caused to be recorded with the St. Louis County Recorder the fully-executed Plat and shall have provided to the City's Director of Planning and Economic Development (the "Director") and the City Engineer two copies of Plat along with evidence of recording of the Plat; City agrees that when requested to execute the Plat in the form approved by the Planning Commission, it shall expeditiously so execute it.

4. Recording of Agreement: Developer shall have caused this Agreement to have been recorded against the Property in the Office of the County Recorder and/or Registrar of Titles for St. Louis County, Minnesota and shall have caused evidence of such recording to have been presented to the Director prior to the recording of the Plat.

5. Pre-conditions to Issuance of Building Permits: Developer agrees that prior to the issuance of a building permit for the construction of any structure on the Property, the following shall have been completed:

A. Plans: Developer shall have prepared and filed with the Director Plans which have been approved by the City Engineer.

B. Tree Replacement Plan: Developer shall have provided a tree replacement plan that conform to the requirements of Section 50-25.9 of the Code for Yellow Birch Trail and those portions of the Lots to be cleared by the Developer, which shall have been completed by Developer, filed with the Director and approved by the Director and the City Forester (the "Tree Replacement Plan"). Removal of trees is prohibited until written approval of the Tree Replacement Plan has been provided to the Developer by the proper City officials listed in this paragraph. Additionally, Developer shall provide a copy of the approved Tree Replacement Plan prior to sale, conveyance, transfer, or grant of any form of right to develop individual lots to subsequent owners. Any party to whom such rights are granted must submit the Tree Replacement Plan to the City Forester before receiving permits.

C. MOU: Developer shall have entered into MOU in the form acceptable to the City Engineer committing to the design and construction of the Required Improvements said MOU shall specifically provide that the City will not accept as "public" any of the Required Improvements or unless all such improvements described in the MOU have been completed to the satisfaction of the City Engineer.

D. Improvement Security: Developer shall have provided financial security in the form of an irrevocable Letter of Credit, cash escrow, or such other form as is acceptable to the Director in the amount of not less than \_\_\_\_\_

guaranteeing completion of construction of the Required Improvements in conformance with the requirements of this Agreement and the MOU by December 31, 2022, and authorizing the Director to exercise said security and to use the proceeds to complete construction of the Required Improvements if the Developer has not completed such Required Improvements before that date.

E. Demarcation of Shoreland Setbacks: Developer shall have installed demarcation of shoreland setbacks required in Planning File PL21-144 on Lots 2 and 3, Block 2 in the Plat. Such demarcation shall be accomplished through the installation of permanent metallic markers on rigid metal signposts that are installed so the top of the sign is at an elevation of 4 feet above grade. Signposts shall be located at the intersection of the shoreland setback boundary with all lot boundaries and shall not have a distance between signs greater than 100 linear feet. Marker signs shall not be smaller than 48 square inches, and all signs shall state "SHORELAND SETBACK BOUNDARY – GRADING OF THE LAND AND REMOVAL OF NATURAL VEGETATION BETWEEN THIS BOUNDARY AND THE CREEK IS PROHIBITED BY CITY ORDINANCE". Developer shall require that any subsequent owner of any lot and their successors and assigns maintain, repair, and replace, as needed, demarcation, sign posts, and signage required by this subparagraph.

F. Demarcation of drainage buffer: Developer shall install signs identifying an area 50 feet wide encompassing the drainage and utility easement crossing Lots 3, 4 and 5, Block 1 in the Plat. The signs shall be permanent metallic markers on rigid metal sign posts that are installed so that the top of the sign is at an elevation of 4 feet above grade. Sign posts shall be located at all lot boundaries and shall not have a distance greater than 100 feet between signs. Marker signs shall be no less than 48 square inches, and all signs shall state "DRAINAGE PROTECTION AREA – GRADING OF THE LAND AND REMOVAL OF NATURAL VEGETATION BETWEEN THIS SIGN AND THE DRAINAGE COURSE IS PROHIBITED BY PLAT (APPROVAL FILE NUMBER PL21-188)." Developer shall require that any subsequent owner of any lot and their

successors and assigns maintain, repair, and replace, as needed, demarcation, sign posts, and signage required by this subparagraph.

G. Wetlands Fencing: Provide photographic evidence to the Director documenting that Developer has installed construction fencing around those parts of wetlands which are to be preserved to isolate the preserved portion from the portion permitted to be impacted by any duly issued permit under the Wetland Conservation Act. Developer shall maintain said fencing during the course of all construction that could impact said wetlands.

H. Driveway Covenant: Regarding Lot 5, Block 1 as shown on the Plat, Developer agrees for itself and its successors and assigns that any driveway constructed on said lot will be at the exact location as shown on Exhibit B unless another location has been expressly approved in writing by the Director.

6. Tree Replacement Plans for Individual Lots: Developer covenants and commits that as a pre-condition of the sale, conveyance, transfer or grant of any form of right to develop each Lot within the Plat or to construct thereon any structure or improvements of any kind, Developer will require that any party to whom such rights are granted execute and record with the St. Louis County, MN Recorder a Restrictive Covenant in a form acceptable to the Director guarantying the preservation, replacement and maintenance of trees on said lot as shall be more specifically set forth therein. Said Restrictive Covenant shall implement the requirements of Section 50-25.9 of the Code.

7. Developer's Duty and Compliance. Development of the Lots created as part of the subdivision must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer, or subsequent lot owner, shall be responsible for obtaining all relevant governmental approvals and building permits required.

8. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the design and construction of all roads and utilities, including implementation

of the storm water management plan and other public improvements as shown on the Plat.

9. Inspections. All Required Improvements shall be made in accordance with applicable City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Developer hereby grants City, its agents, employees and contractors a limited license to enter the Property and perform all inspections which the Director in the exercise of his or her reasonable discretion deems appropriate in connection with this Agreement.

10. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, which is not cured following the giving of thirty (30) days' written notice from the City of such default, or such longer period of time as may be reasonably required to cure such default provided Developer is proceeding with diligence to cure such default, the parties hereto agree that no award of damages to City could constitute an adequate remedy for such default, Therefore, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

- A. Institute an action for specific enforcement to compel Developer to perform any or all of its obligations under this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.
- B. At its option, draw on the security described in Section 4D above and perform the work described in Section 8 above, provided the Developer is first given written notice of the default not less than fourteen (14) days in advance. This Agreement is a limited license for the City to enter onto any portion of the Property necessary to perform said work, and it shall not be necessary for the City to seek a Court order for permission to enter the land.



C. Refuse to issue building permits for construction on the Project.

D. Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

11. Insurance. Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,500,000
Auto Liability (owned, hired and non-owned)	\$1,500,000
Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Aggregate	\$4,000,000
Property Insurance	To Replacement Value

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

12. General Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of

or injury to person or persons or the loss of or damage to property arising out of Developer's performance of its obligations under this Agreement, except to the extent caused exclusively by the willful misconduct or negligence of the City, or someone acting under its control, or a breach of this Agreement by the City. On fourteen (14) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

13. Environmental Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any liability, loss, damage, fine, judgment, penalty, fee, cost, interest, or expense arising out of any condition existing on the Property prior to commencement of construction of the Required Improvements or the Project relating in any way to the environment, preservation or reclamation of natural resources, the presence, management, release or threatened release of any Hazardous Material (any and all explosive or radioactive substances or wastes and hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any environmental law) or to health and safety matters.

14. 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 the City:                      City of Duluth  
Attn: Director of Planning and Economic Development  
411 West First Street, Room 160  
Duluth, MN 55802

In the case of Developer:                      Crawford Excavating, LLC  
Attn: Richard H. Crawford  
28 E. Pine Mountain Road  
Grand Marais, MN 55604

15. Binding Effect. 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.

16. Term. The term of this Agreement shall commence upon the date of attestation by the City Clerk and shall continue until the Director and City Engineer have certified in writing that all Public improvements required under this Agreement have been constructed in accordance with the requirements herein contained and Developer has conveyed such property and dedicated the Easements and Pedestrian Easement as are required hereunder. At Developer's request, City will issue a written certificate of completion in recordable form acknowledging that the Required Improvements have been completed. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

17. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

18. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

19. Severability. In 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.

20. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

*[Signature pages follow]*

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

CITY OF DULUTH

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

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

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Emily Larson, Mayor of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

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

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

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by \_\_\_\_\_, City Clerk of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

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

CRAWFORD EXCAVATING, LLC

Notary Public

Robert E. Asleson  
Assistant City Attorney  
411 West First Street  
Room 440 City Hall  
Duluth, MN. 55802  
(218) 730-5490

## **Exhibit A**

### **Legal Description of Property**

NW1/4 of SE1/4 EXCEPT the N'ly 400 feet thereof Section 11 Township 49 North  
Range 15 West of the Fourth Principal Meridian

AND

SW1/4 of SE1/4 Section 11 Township 49 North Range 15 West of the Fourth Principal  
Meridian EXCEPT that part described as follows: Commencing at the SE corner of said  
SW1/4 of SE1/4; thence North along the E'ly line of said SW1/4 of SE1/4 a distance of  
137 feet, more or less, to a point; thence SW'ly in a straight line to a point on the S'ly  
boundary line of said SW1/4 of SE1/4 distant 84.85 feet West of the SE corner of said  
SW1/4 of SE1/4; thence E'ly along the S'ly line of said SW1/4 of SE1/4 a distance of  
84.85 feet to the SE corner of said SW1/4 of SE1/4 which is the point of beginning and  
ending, as set out in Book 625 of Deeds page 273.

EXCEPT all minerals and mineral rights.

St. Louis County, Minnesota

Exhibit B

