

Exhibit A

**AGREEMENT  
ENGER GOLF COURSE DRIVING  
RANGE PROPERTY  
CITY OF DULUTH, SELLER  
CONSORTIUM MINNESOTA CONSULTING GROUP, LLC.  
DEVELOPER**

THIS AGREEMENT entered into as of the date of attestation hereto by the City Clerk, 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 CONSORTIUM MINNESOTA CONSULTING GROUP, LLC, a Minnesota limited liability company, hereinafter referred to as "Developer".

WHEREAS, City is the owner of the hereinafter-referenced Redevelopment Property on and adjacent to its Enger Park Golf Course in the City of Duluth; and

WHEREAS, City has determined that the Redevelopment Property is needed for and appropriate for redevelopment for residential and ancillary purposes, specifically for housing for the full spectrum of housing and including "workforce housing"; and

WHEREAS, City disseminated the hereinafter referenced Request for Proposals to seek developers qualified and interested in redeveloping the Redevelopment Property in a manner appropriate to the goals and objectives set forth therein; and

WHEREAS, Developer, in response to a Request for Proposals, has provided to City its hereinafter-referenced Proposal for the purpose of developing, in conjunction with City staff, a Redevelopment Proposal for the redevelopment of the Redevelopment

Property; and

WHEREAS, Developer recognizes that Redevelopment Property represents a unique opportunity for a development which will meet the respective objectives of the parties and be highly beneficial to the City of Duluth and its citizens; and

WHEREAS, both City and Developer need to perform additional analysis of the Redevelopment Property and of the existing and anticipated markets for redevelopment in the area in order to determine whether the Redevelopment Property can be feasibly developed in a manner which will meet the objectives of both City and Developer; and

WHEREAS, substantial work and investment by both Developer and City will be necessary in order to best evaluate the potential development of the Redevelopment Property and the costs of implementing such a development plan; and

WHEREAS, Developer desires to be assure that during the term of this Agreement, the City will negotiate exclusively with it for the redevelopment of the Redevelopment Property in substantial conformance to the terms of the RFP and the Proposal; and

WHEREAS, City is willing to grant such assurance to Developer for the purpose of encouraging Developer to make the investment in time, money and effort to determine whether a development plan can be developed which will meet the objectives of both City and Developer.

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. Designation: shall mean the designation of Developer as the entity with

which City will negotiate a Development Agreement for the Development as the process therefore is hereinafter described in this Agreement.

- B. Development: shall mean a specific description of the project to be constructed and operated on the Redevelopment Property. It is acknowledged by the Parties that the exact scope, character and elements of the Development are in the process of being developed and that there may be changes in the scope, character or elements thereof that are finally agreed to but the parties hereby agree that the Development shall conform substantially to the parameters laid out in the RFP and the Proposal, provided that the Development may include such other development as the parties may agree is appropriate. In the event of any conflict between the terms and conditions of the RFP and of the Proposal, the terms and conditions of the RFP shall be deemed to be controlling.
- C. Development Agreement: shall mean an agreement between City and Developer, in a form approved by the City, which commits City to convey the Redevelopment Property to Developer for the Purchase Price and commits Developer to acquire the Redevelopment Property from City and to cause the Redevelopment Property to be developed in a manner consistent with this Agreement and the Development Agreement, and the terms and conditions therein set forth and within the time frames therein specified.
- D. Director: shall mean City's Director of Planning and Economic Development or the person designated to act on behalf of him/her with regard to this Agreement.
- E. Project Proposal: shall mean a detailed plan for the redevelopment of the Redevelopment Property in conformance with the Proposal including appropriate architectural and engineering plans at a conceptual development level showing number of units of housing to be constructed, their type (ei. single family dwelling, duplex, multifamily, etc) and the

square footages of each, the proposed ownership structure or rental structure, road, trail and bicycle access, utilities, open space plan, the proposed sources and uses of funds necessary to develop the Project Proposal, conditional financing commitments from third-party investors necessary to fund the Project Proposal and proof of available equity necessary to fund the Project Proposal.

- E. Proposal: shall mean the “Proposal Response” submitted by Developer in response to the RFP dated May 6, 2020.
- G. Purchase Price: shall mean the amount to be paid by Developer to CITY for the Redevelopment Property as described in the Development Agreement. The Purchase Price shall be based on the value of the Redevelopment Property as established by an SRA and State of Minnesota-certified appraiser selected by City to perform said appraisal but shall be negotiable based on the financial feasibility of the Project Proposal and the factors referenced in Paragraph B of Article II below.
- H. Redevelopment Property: shall mean the Redevelopment Property in St. Louis County, Minnesota, as generally depicted on Appendix B to the Proposal. The description of the Redevelopment Property may be modified from time to time by the Director at his or her discretion based on the negotiations between the parties provided that any such modifications shall not unreasonably alter the parameters of the Development as described in the RFP. The final description of the Redevelopment Property shall be that set forth in the Development Agreement and shall be subject to survey.
- I. Request for Proposals or RFP: shall mean the “Request for Proposals: Development Partner for Enger Park Area Development Site, Duluth, Minnesota” released by City on January 29, 2020.

## ARTICLE II

### Grant of Designation

#### A. Conditional Designation

In consideration of the terms and conditions of this Agreement, City hereby designates Developer as the developer of the Redevelopment Property under the terms and conditions of this Agreement for the term of this Agreement and agrees that, during the term thereof, City will neither solicit any other developer to develop any portion of the Redevelopment Property or negotiate with any other developer for the development thereof, all subject to the terms and conditions of this Agreement hereinafter set forth. The term of this Agreement shall commence on the effective date of this Agreement and shall continue until 4:30 P.M. on January 20, 2022, unless sooner supplanted by the Development Agreement or terminated as hereinafter provided. As of 4:30 P.M. on January 20, 2022, the Designation herein granted shall terminate and be of no further force and effect unless extended in writing and approved by a resolution of CITY's City Council.

#### B. Designation Conditions

The Designation granted hereunder shall be for the purpose of Developer developing a Project Proposal with the intention that the parties will approve and execute a Development Agreement which shall contain at least the following:

##### 1. Basic Requirements

Provides for the payment of the Purchase Price and otherwise conforms to the terms set forth in the approved Project Proposal and this Conditional Designation Agreement.

##### 2. Plan Conformance

Complies with the terms of the City of Duluth Comprehensive Plan for the Redevelopment Property and other property in the area.

##### 3. Highest and Best Use

In the reasoned judgement of the City, constitutes the highest and best use of the Redevelopment Property reasonably obtainable in the

reasonably foreseeable future.

4. Redevelopment Property Value

In the reasoned judgment of the City, meets City's objectives for maximizing the creation of tax base and new housing meeting the needs of the City for housing, including but not limited to "workforce housing" on the Redevelopment Property.

5. Community Value

In the reasoned judgement of the City the Development is one which will maximize to the greatest extent reasonably possible will constitute an enhancement to the City as a whole.

C. MinnStat. Chapter 13 Data

All documents and data pertaining to this Agreement are governed by the provisions of the Minnesota Statutes Chapter 13, the "Minnesota Government Data Practices Act, as amended.

### ARTICLE III

#### Required Milestone

The Developer acknowledges that City is desirous of proceeding with the redevelopment of the Redevelopment Property in the manner contemplated by the RFP and the Proposal as soon as practically possible and therefore the parties agree that meeting the following Milestones in the development process within the time frames specified therein is part of the consideration for this Designation Agreement.

A. Milestone 1. Concept Plan

No later than 120 days after the date of this Agreement, Developer shall have provided to the Director a Concept Plan for the development of the Redevelopment Property to include a graphical depiction of the site layout and general description of site development elements such as square feet of various uses. Said Concept Plan shall be subject to the approval of the Director based on the criteria set forth in Paragraph B of Article II above, which approval shall not be unreasonably withheld. It is understood that

the Developer may choose to conduct, or partner with the City to conduct, community engagement prior to this concept plan in order to identify the best uses for the site.

B. Milestone 2. Public Review Process

No later than 30 days after the completion of Milestone 1 above, the Developer shall have completed a Public Review Process designed to inform the general public with regard to the proposed redevelopment which shall include coordination with the Director which shall include at least one meeting to which the general public is invited, with special emphasis one community in the vicinity of the Redevelopment Property to gain public input on the above Concept Plan.

C. Milestone 3. Revised Concept Plan

No later than 30 days after completion of Milestone 2, Developer shall provide to the Director a Revised Concept Plan which reasonably incorporates the input received during the Milestone 2 process. The Revised Concept Plan shall be subject to the approval of the Director based on the criteria set forth in Paragraph B of Article II above, which approval shall not be unreasonably withheld.

D. Extensions

Upon a showing of just cause for the need thereof by the Developer, the Director in the exercise of his or her discretion may grant an extension of up to 30 days to Developer to meet the time requirements of this Article.

## Article IV

### Right of Entry; Testing; City Use

During the term of the Designation herein granted, City hereby grants to Developer the right to enter upon the Redevelopment Property upon Ten (10) Days prior notice to the Director for the purposes of performing additional survey work related to the Redevelopment Property or for the purpose of performing geotechnical and environmental testing on the Redevelopment Property subject to Providing to City

evidence of insurance meeting the requirements of Article VIII below covering the entire period of their use. Developer agrees to require its contractors to use their best efforts to not unnecessarily disrupt the Redevelopment Property or City's use thereof by reason of said testing. The costs of such survey and testing work shall be solely the responsibility of Developer. In the event that Developer shall for any reason not purchase the Redevelopment Property from City, Developer shall be responsible for returning the Redevelopment Property to substantially the condition it was in prior to the Developer's entering thereon for the purposes set forth herein or Developer, at its Designation, may reimburse City for the costs of such restoration.

## ARTICLE V

### Development Agreement Execution

Developer agrees that the goal and purpose of the grant of the Designation pursuant to this Agreement is for parties to enter into a Development Agreement for the redevelopment of the Redevelopment Property and, because of the needs of the City to have the objectives set forth above fulfilled as quickly as is reasonably prudent and practical, it is the intention of the parties to have the Development occur as soon as reasonably prudent and practical. Therefore Developer agrees that it will proceed as expeditiously as possible to complete all work necessary to the entering into of the Development Agreement and will expend such resources as are reasonably necessary to reach that goal.

## ARTICLE VI

### PROVISION AGAINST LIENS

#### A. Provision Against Liens

Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Redevelopment Property or any part thereof which would materially or adversely affect the City's interest in the Redevelopment Property or this Agreement during the term of this Agreement, provided that if Developer shall

first notify City of its intention to do so and post such security as City reasonably deems necessary, Developer 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 Developer

The parties hereto acknowledge that City is relying upon the qualifications and identify of Developer to develop the Redevelopment Property. Therefore, except for the purposes of obtaining financing as hereinafter described or otherwise approved by this Agreement, Developer 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, and has not or will not otherwise transfer in any other way all or any portion of its rights under this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of City.

## ARTICLE VII

### Indemnification

A. Generally

Developer will to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls City 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 the Redevelopment Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Redevelopment Property or any part. 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 Developer's use of the Redevelopment Property which shall have existed at the commencement of the Term of this Agreement or shall have been approved by the Developer; and
4. Any violation of any law, ordinance, court order or regulation affecting the Redevelopment Property or the ownership, occupancy or use thereof.

B. Indemnification Procedures

Promptly after receipt by Developer of notice of the commencement of any action with respect to which the Developer is required to indemnify such person under this Article, City shall notify the Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the Developer 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 City with respect to which indemnity may be sought against the Developer, City 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 Developer.

## ARTICLE VIII

### INSURANCE

Developer shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to Redevelopment Property arising in any way out of or as a result of Developer's occupancy of or use of the Redevelopment Property

as provided for in Article IV above, carried in the names of the Developer, any subtenant and the City as their respective interests may appear, as follows:

A. Liability Insurance

The Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Two Million and No/100s (\$2,000,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of \$Two Million and No/100s (\$2,000,000.00) Dollars for Property damage liability. If person limits are specified, they shall be for not less than Two Million and No/100 (\$2,000,000.00) Dollars per person and be for the same coverages. The CITY shall be named as an additional insured therein. Insurance shall cover:

1. Public liability, including premises and operations coverage.
2. Independent contractors--protective contingent liability.
3. Personal injury.
4. Owned, non-owned and hired vehicles.
5. Contractual liability covering the indemnity obligations set forth herein.
6. Property of others.

B. Workers' Compensation

Workers' Compensation Coverage, if required by Minnesota Statutes, in statutory amounts with "all states" endorsement. Employee's liability insurance shall be carried in limits of One Hundred Thousand and No/100 (\$100,000.00) Dollars per employee.

C. Requirements for All Insurance

All insurance required in this Article VIII shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

D. Certifications

Developer shall provide a Certificate of Insurance evidencing such coverage with 10-days' notice of cancellation, non-renewal or material change provisions included. City does not represent or guarantee that these types or limits of coverage are adequate to

protect the Developer's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 10 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) – or equivalent, as approved by the City Attorney's Office.

## ARTICLE IX

### DEFAULTS AND REMEDIES THEREFORE

#### A. Developer Defaults and Remedies

##### 1. General Events of Default

It shall be a default to which the remedies set forth in Subparagraph 2 below shall be applicable if 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 thirty (30) calendar days after City 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 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. Provide, however, that said thirty (30) day grace periods shall not apply to Developer's failure to meet its obligation under Article III above. Provided further that the failure of the parties to reach final agreement on the Revised Concept Plan as referenced in Paragraph C of Article III above shall not be deemed to constitute a default on the part of Developer.

## 2. General Remedies

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

- a. Seek and be entitled to monetary damages from Developer for any damages incurred by City as a result of Developer's default.
- b. 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.
- c. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

### B. Non-Waiver

The waiver by City of any default on the part of Developer or the failure of City to declare default on the part of Developer 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 City hereunder shall be in writing.

### C. 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.

### D. Attorney's 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 X

### Force Majeure

Under the terms of this Agreement, neither the City 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 XI

### CITY'S REPRESENTATIONS AND WARRANTIES

City represents and warrants to Developer as follows and further agrees that these representations and warranties shall survive Closing:

#### A. Authority

That City is a duly created municipal corporation under the laws of the State of Minnesota; that City is duly qualified to transact business in the State of Minnesota; that City has the requisite power and authority to enter into and perform this Agreement and the City's Documents required by this Agreement; that the execution of such documents has been duly authorized by all necessary action on the part of City; that the execution, delivery and performance by City of such documents do not conflict with or result in a violation of City's trust documents, or any judgment, order or decree of any court or arbiter to which City is a party; and that such documents are valid and binding obligations of City, enforceable in accordance with their terms.

#### B. Outstanding Rights in Redevelopment Property

That the Redevelopment Property is free and clear of any lease or lease entitlement, there are no permits applicable to the Redevelopment Property, that City

has not entered into an other contracts for the sale of the Redevelopment Property nor are there any outstanding rights of first refusal or Designations to purchase the Redevelopment Property or any other rights in others that might prevent the consummation of this agreement, that City has received no notice of an actual or threatened reduction or curtailment of any utility service now supplied to the Redevelopment Property, if any, and that there are no actual or threatened special assessments or reassessments with regard to the Redevelopment Property.

C. Foreign Status

That City is not a “foreign person”, “foreign partnership”, “foreign trust” or “Foreign estate” as those terms are defined in §1445 of the Internal Revenue Code.

D. Legal Issues

That there is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against the City as it would relate to the Redevelopment Property or to City’s ability to convey title of the Redevelopment Property to Developer or against any portion of the Redevelopment Property and that the use of the Redevelopment Property for its current uses is in conformance with the requirements of all laws, regulations and codes of those governmental entities having jurisdiction with regard thereto.

## ARTICLE XII

### REPRESENTATIONS BY DEVELOPER

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 Lease Agreement and to perform its obligations hereunder.

B. It is not in material violation of any provisions of State law and that they have full power and authority to enter into this Agreement and to perform its obligations thereunder.

B. It owns the Developer Redevelopment Property in fee simple absolute, subject only to limitations of title which will not materially limit its ability to develop the Developer Redevelopment Property in conjunction with the Redevelopment Property in a manner meeting the objectives of this Agreement under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction.

C. There are not 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, municipal or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon Developer or any business or property of Developer and Developer is not in default with respect to any order of any court or government agency.

D. They 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

### 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:

Director of Economic Development  
City of Duluth  
Room 160 CITY Hall  
Duluth, MN 55802

In the case of Developer:

Consortium Minnesota Consulting  
Group, LLC  
2000 County Road B, Suite 130212  
St. Paul, MN 55113  
Attn: Keith Baker

ARTICLE XIV  
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

CONSORTIUM MINNESOTA  
CONSULTING GROUP, LLC, a  
Minnesota Limited Liability Company

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

Its Mayor

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

Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

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

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney