

Exhibit A

AGREEMENT

ZVAGO LLC

SEWER/BRIDGE STRUCTURE

THIS AGREEMENT, entered into between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City” and ZVAGO COOPERATIVE AT LAKE SUPERIOR, a Minnesota cooperative, hereinafter referred to as “Zvago” and Lakeshore, Inc., a Minnesota corporation, hereinafter known as “Lakeshore”.

WHEREAS, City is the holder of a sanitary sewer easement, hereinafter described, over certain property, owned in part by Zvago and owned in part by Lakeshore, upon which City has constructed and maintains a sanitary sewer structure which has also been used by Zvago Lakeshore, as a pedestrian bridge over a City stormwater facility draining into Lake Superior; and

WHEREAS, City as determined that the aforesaid structure is in need of repair for use as a pedestrian bridge between the neighboring properties and determined to close it to pedestrian use; and

WHEREAS, Zvago and Lakeshore have requested that the City allow said structure to remain open for use by its residents and by its neighboring property owner for pedestrian access between the properties; and

WHEREAS, City has agreed to allow the above structure to be so used under the terms and conditions hereinafter set forth.

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

1. Definitions:

The following terms shall have the meanings hereinafter ascribed to them:

A. Contract: shall mean a construction contract between Zvago and the Contractor for the construction of the Repairs.

B. Contractor: shall mean the Contractor selected by Zvago pursuant to Subparagraph D of Paragraph 3 below to perform the Repairs.

- C. Design Professional: shall mean the structural engineer selected by Zvago pursuant to Subparagraph B of Paragraph 3 below to design the Repairs.
 - D. Director: shall mean the Director of the City's Public Works and Utility Department or his or her designee in writing.
 - E. Easement: shall mean that sanitary sewer easement, 12 feet in width, located in Tract B, RLS 64, as shown on the Condemnation plat of Blocks 58, 57 and 54, EAST DULUTH, and of Proprietors Reservation, LONDON ADDITION, all as on file in the office of the St. Louis County Recorder.
 - F. Structure: shall mean 3'8" wide by 3'8" deep reinforced concrete girder structure within the Easement encasing a 21" diameter concrete sewer pipe.
 - G. Plans: shall mean the construction level plans and specification for the construction and installation of the Repairs conforming to the recommendations in the Report.
 - H. Report: shall mean the "Structural Analysis and Condition Review of Existing Pedestrian Bridge" designated as NCE Job No. 21-229, dated May 19, 2021 prepared by Northland Consulting Engineers, L.L.P. a copy of which is attached hereto and made a part hereof as Exhibit A.
 - I. Repairs: shall mean the repairs and improvements called for in the Report.
2. Grant of License
- A. License

Subject to the terms and conditions of this Agreement, City hereby grants to Zvago and Lakeshore a license for use by itself and its residents and guests of the Structure for purpose of pedestrian use and passage between its property and that of its neighboring property owner for the term hereof. Said license shall include the right to use the Structure for small, lightweight, pedestrian-propelled vehicles such as carts, strollers, wheelchairs and bicycles while being pushed. Such right shall not include the right to use the Structure for any mechanically-propelled vehicles or devices or for any ridden vehicular uses such as bicycles, roller skates, in-line skates or skate boards. This License shall only be effective upon the certification by the Director that the Repairs have been completed.

B. Limitation

Nothing herein shall constitute a grant by City to Zvago or to Lakeshore of a license to enter into or to use in any way the property of any party not a party to this Agreement or of any third party.

3. Repair of Structure

A. Generally

As part of the consideration to the City for the granting of the license herein, Zvago agrees that it will cause to be made the Repairs to the Structure in a manner as set forth below. The Repairs shall be completed to the reasonable satisfaction of the Director prior to use by Zvago, Lakeshore and its residents and guests of the Structure pursuant to this license Agreement.

B. Design Professional

Prior to the commencement of any construction of the Repairs Zvago shall contract with a Design Professional licensed in the State of Minnesota to prepare Plans for the Repairs. The choice of said Design Professional shall be subject to the prior written approval of the Director, which approval shall not be unreasonably withheld.

C. Plans

Upon the Director's approval of the Design Professional as provided for in Subparagraph A above, Zvago shall cause said Design Professional to prepare Plans for the Repair which shall be submitted to the Director for the Director's review and approval. All such Plans shall be in conformance with the Report, and with all applicable laws, ordinances, rules, regulations and requirements of CITY, the City, the State of Minnesota and the United States of America. If the Director does not approve of the Plans, they shall be returned to Zvago with a written explanation of the reasons for their non-approval. Zvago shall then resubmit revised Plans meeting any deficiencies. The Director's approval of the Plans shall constitute satisfaction of the requirements of this Agreement but shall not constitute an independent engineering design certification of the Plans, shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances and shall not constitute a waiver of

building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Zvago by law. Zvago expressly agrees to be solely responsible for all costs, including professional design fees connected with the Plans and any revisions thereto.

D. Selection of Contractor

Upon approval of the Plans as provided for in Subparagraph C above, Zvago shall select the Contractor with which it will contract to construct the Repairs; the choice of the Contractor shall be subject to the approval of the Director, which approval shall not be unreasonably withheld. The Contractor shall be a licensed contractor in the State of Minnesota, shall be experienced in performing work similar to the Repairs and shall be “bondable”.

E. Construction

Upon approval of the Contractor as provided for in Subparagraph D. above, Zvago shall enter into the Contract with the Contractor to perform the Repairs in conformance with the Plans. Said contract shall require that the Contractor agree to defend and indemnify the City and its officers, agents and employees in conformance with the requirements of Paragraph 6 below, insure the City as an additional insured on insurance conforming to the requirements of Subparagraph A of Paragraph 7 below and to provide payment and performance bonds in an amount equal to the amount of the Contract.

F. Inspection

Zvago and Lakeshore agree that City shall, at all times, have the right to inspect the progress of the Repairs.

G. Certificate of Completion

Upon completion of construction of the Repairs, Zvago shall cause the Design Professional to certify to the Director that all construction of the Repairs has been completed in conformance with the Plans. Upon receipt of such certification, the Director shall cause the Structure to be inspected for conformance to the requirements of this Agreement. If the Repairs to the Structure shall have been completed in conformance therewith and if the requirements of Paragraph 7 below have been met, the Director shall issue a Certificate of Completion to Zvago

evidencing such completion and, upon the provision to the City of proof of insurance as required by Paragraph 7 below, the license referenced in Paragraph 2 above shall be effective.

4. Term

The Term of this Agreement shall be perpetual subject to the following;

A. This Agreement shall be subject to termination in the case of default by Zvago as hereinafter provided for. Provided, however, that in the event of a default by Zvago, prior to termination of this Agreement, City shall send notice of intent to terminate the Agreement to Lakeshore as provided for in Section 10 below. Upon the sending of said notice, Lakeshore shall have Ten (10) days to give notice to City of its assumption of Zvago's rights and obligations under this Agreement. If Lakeshore gives such notice to City, the Agreement shall not be terminated as a result of such Zvago's default and Lakeshore shall thereafter be deemed to stand in the place of Zvago and shall assume all of its rights and responsibilities under this Agreement.

B. Zvago's and Lakeshore's use of the Structure shall be subject to temporary interruption in the event that City determines that it is necessary or advantageous to City to perform repair or maintenance on the Structure or on the sewer pipe within the Structure not covered by Zvago's maintenance requirements as described in Subparagraph A of Paragraph 5 below and the performance of such work would interfere with Zvago's and Lakeshore's use of the Structure.

C. In the event that the Director determines that it is necessary or advantageous to the City to demolish the Structure or to replace it with another structure, the City shall have the right to terminate this Agreement upon Sixty (60) days prior notice to Zvago and Lakeshore in which case Zvago and Lakeshore agree that they shall have no further rights to use the Structure and shall have no right to compensation of any kind arising out of or as a result of such termination. However, in the event of such termination, if City intends to replace the Structure with another structure that could be used by Zvago and Lakeshore to gain access to its neighboring property in a reasonable manner, City agrees to negotiate with Zvago and Lakeshore in good faith for such use of the replacement structure as long as such use would not have a negative impact on the new structure and could be facilitated at no cost to City.

5. Maintenance

A. By Zvago

Zvago agrees that it will at all times cause the Structure to be maintained in a neat, orderly condition and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto except as provided for in Subparagraph C below. The maintenance of the Structure shall specifically include but not be limited to maintenance of elements of the Structure, as Repaired, intended or used to promote safe and secure pedestrian use of the Structure as authorized in Paragraph 2 above. Provided, however, Zvago shall not be required to maintain or preserve the utility or operation of the Sewer piping in the Structure except as the need therefore was caused by or arose in part out of the action or inaction of Zvago and its residents and guests.

B. Failure of Zvago

In addition to other remedies provided for herein, in the event that Zvago fails to perform its maintenance obligations pursuant to Subparagraph A above, the Director shall have the right but not the obligation to cause such repairs and maintenance to be performed and to bill the cost thereof to Zvago and Zvago shall promptly pay the same. In the event that Zvago fails to timely pay the cost thereof, City shall have the right to assess the cost thereof against Zvago's property located on the Southwesterly side of the Structure in the same manner as real property taxes and Zvago hereby consents thereto.

C. City Maintenance

It is agreed between the parties that in the event that the Director shall determine that the sewer within the Structure shall require maintenance not caused by arising out of the acts or omissions of Zvago or that the structure of the Structure shall be in such a condition as to require demolition or replacement, the responsibility therefore shall be solely that of the City.

6. Indemnification

Zvago shall, to the fullest extent permitted by law, protect, indemnify and save the 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 judgments of any nature arising from:

A. Any injury to or death of any person or damage to property in or upon the Structure or the Easement, or growing out of or in connection with the use or non-use or condition of the Structure or the Easement or any part thereof and also, without limitation, the construction or installation of the Repairs or any portion of the Repairs. 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 Zvago, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

B. Any violation by Zvago of any provision of this Agreement.

C. Any violation by Zvago of any law, ordinance, court order or regulation affecting the Structure or the Easement, or the ownership, occupancy or use thereof.

D. Provided, however, that the indemnification obligations of Zvago and Lakeside under this Paragraph shall not apply to such liability arising solely from the City's use, operation or maintenance of the Structure as a sanitary sewer.

7. Insurance

Zvago shall provide for purchase and maintenance of such insurance as will protect Zvago and the City against risk of loss or damage to the Structure and the Easement and any other property permanently located or exclusively used at the Easement 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 the Repairs thereupon. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance during Construction.

Zvago, prior to entering on the Easement for construction work, shall procure or

cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance.

Zvago shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Structure, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Structure and the Easement, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Five Thousand and No/100 Dollars (\$5,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.

2. Public Liability Insurance.

Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors' protective contingent liability;

- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnity provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance.

Zvago shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Zvago's ownership of, occupancy of or use of the Structure and the Easement, carried in the name of Zvago as follows:

1. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Zvago shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City shall be named as additional insureds therein. Insurance shall cover:
 - a. Public liability, including premises and operations coverage;
 - b. Independent contractors--protective contingent liability;
 - c. Personal injury;
 - d. Owned, non-owned and hired vehicles;
 - e. Contractual liability covering the indemnity obligations set forth

herein;

f. Products--completed operations.

2. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to City. Employees' liability insurance shall be carried in limits of \$100,000 per employee.

C. Modification of Insurance Requirements.

It is agreed between the parties that City shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide City with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that City shall desire to so modify said insurance requirements, City shall notify Zvago of the proposed modifications not less than sixty (60) days prior to the date set by City for said modifications to go into effect.

D. Requirements for All Insurance.

All insurance required in this Article 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 Minnesota.

E. Certifications.

Zvago shall be required to supply to City written certifications of insurance requiring the insurer to give City thirty (30) days' written notice prior to cancellation of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.

8. Default and Remedies

A. Zvago's Default.

The following shall be deemed to be events of default by Zvago under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable should Zvago 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 30 calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Zvago of such default or, in the event that such default shall be reasonably incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.

B. City's Remedies for Zvago's Defaults.

City shall have the following remedies in the event of a default:

1. Terminate this Agreement.
2. Seek and be entitled to monetary damages for any damages incurred by City as a result of an event of default.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Zvago's performance of its obligations hereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Non-Waiver.

The waiver by City of any default on the part of Zvago or the failure of CITY to declare default on the part of Zvago 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 Zvago of the same or of any other obligation of Zvago under this Agreement. To be effective, any waiver of any default by Zvago hereunder

must be in writing by the Director.

D. Remedies Cumulative.

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.

F. Attorneys' Fees.

In the event that Zvago is in default of any of the terms and conditions of this Agreement and the City party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

9. Runs with the Land

This Agreement shall be deemed to run with the land and to be binding on the parties hereto and on their successors and assigns if any.

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 the City: City of Duluth
 Attn: Director of Public Works and Utilities
 274 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of Zvago: Zvago Board of Directors
 c/o Cooperative Manager
 3900 London Road
 Duluth, MN 55804

In the case of Lakeshore: Executive Director
Ecumen Lakeshore
4002 London Rd
Duluth, MN 55804

With copy to: Ecumen
Attn: COO
3530 Lexington Avenue N.
Shoreview, MN 55126

11. Disclaimer

Zvago acknowledges that nothing contained in this Agreement nor any act by the City or Zvago shall be deemed or construed by Zvago or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City and Zvago.

12. 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. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

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

CITY OF DULUTH, a Minnesota
municipal corporation

ZVAGO COOPERATIVE AT LAKE
SUPERIOR, a Minnesota
cooperative

By _____
Emily Larson
Its Mayor

By _____
Its President

Attest:

By _____

Its City Clerk

Date: _____

LAKESHORE, INC., a Minnesota
Corporation

Countersigned:

Its Auditor

By: _____

Its: _____

Approved:

Its Assistant City Attorney

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk, respectively, of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Brett Anderson, the President of Zvago Cooperative at Lake Superior, a Minnesota cooperative on behalf of the cooperative.

Notary Public

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Shelley Kendrick, President and the Chief Executive Officer of Lakeshore, Inc, a Minnesota Corporation, on behalf of the corporation.

Notary Public

DRAFTED BY:

Robert Asleson
Assistant City Attorney
City of Duluth
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Duluth, MN 55802
(218) 730-5490