

**DEVELOPMENT AND
ASSESSMENT AGREEMENT**

between

CITY OF DULUTH

and

ONE ROOF COMMUNITY HOUSING

FOR

**SHERBURNE STREET/64TH AVE WEST
ROAD IMPROVEMENTS**

DEVELOPMENT AND ASSESSMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and One Roof Community Housing, a non-profit corporation created and existing under the laws of the State of Minnesota ("Developer").

RECITALS

WHEREAS, Developer is the owner and developer of certain property in the City of Duluth, St. Louis County, Minnesota, which property is hereinafter referred to as the "Property;" and

WHEREAS, the Property is located along Sherburne Street and 64th Avenue West, Duluth, Minnesota (the "Road"), which does not meet City of Duluth standards; and

WHEREAS, Developer does not intend at this time to make road improvements to the Road in connection with the development of the Property for residential purposes; and

WHEREAS, Developer and City seek to clarify the arrangements for road improvements including future assessments.

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 terms and phrases, as used in the Agreement 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 certain public improvements, including utility and street improvements by collecting the same from the owners of benefited properties as provided for in Chapter IX of the Duluth City Charter.
- B. City Engineer: shall mean the City of Duluth City Engineer or their designee.

- C. City Standards: shall mean the standards for streets, sidewalks, trails, and utilities adopted by the City Engineer and on file in the office of the City Engineer.
- D. Director: shall mean the City's Director of Public Works and Utilities.
- E. Property: shall mean that lots owned by One Roof Community Housing, in St. Louis County, Minnesota legally described as follows:

Lots 11-22, Block 11, Hunters Grassy Point Addition to Duluth.

- F. Road Improvements: shall mean the future construction of Sherburne Street and/or 64th Avenue West to City Standards within the existing right-of-way, the costs of which shall include, as needed, the property interest acquisition, design, construction, financing costs and any other costs related to or incidental to such costs.

2. Road Improvements: Assessments.

- A. Construction of Road Improvements: Developer, its successors, and assigns, agree in the event that the City determines to implement or construct the Road Improvements or either element thereof, Developer, its successors, and assigns, shall grant any and all approvals that should be needed for such implementation or construction, including the granting of easements needed for such work at no cost to City, and further agrees that the costs thereof may be Assessed against the entirety of the Property as hereinafter set forth.
- B. Benefits of and Payment for the Road Improvements: Developer, its successors and assigns, agrees that the construction of the Road Improvements will constitute public improvements which confer special benefits accruing to the Property which equals or exceeds the cost thereof to be Assessed against the Property. It is hereby stipulated and agreed that the value of the benefits conferred upon the Property are equal to or exceed the amounts to be Assessed against the Property, without reference to any benefits conferred upon other benefited properties.
- C. Owner Agrees to Assessment: Because the Owner agrees that the value of the benefits to the Property arising out of the construction of the Road Improvements equals or exceeds Developer's anticipated costs thereof, Developer, its successors and assigns, agrees at any time to accept and to pay an Assessment levied against the Property by City to defray the cost to the City of the Road Improvements. Said Assessment or Assessments shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect.

D. Waiver of Defenses: Developer, for itself and its successors and assigns, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the Assessments to be levied pursuant to this Article and agrees that Developer and its successors and assigns, if any, shall be bound thereby.

3. General Indemnity: Developer, its successors and assigns, 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. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

4. INTENTIONALLY OMITTED.

5. Developer Representations: Developer hereby represents to City, with full knowledge that City is relying on these representations, that Developer is a legally and validly organized and existing non-profit corporation under the laws of the State of Minnesota and that Developer is legally authorized to enter into this Agreement. Developer further represents that it is the owner of the Property in fee simple absolute, and it has full legal authority to enter into this Agreement and to legally bind the Property to the terms and conditions thereof and to bind any successors and assigns of itself to all of the terms and conditions hereof.

6. 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
 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of the Developer: One Roof Community Housing
 Attn: _____
 12 East Fourth Street
 Duluth, MN 55805

7. Binding Effect and Recording: 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. Developer consents to the recording of this Agreement in the Office of the St. Louis County Recorder and/or Registrar of Titles against the Property and to pay all costs associated therewith.

8. Force Majeure: Under the terms of this Agreement, neither the City nor Developer shall be considered in default or 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 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 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. General Defaults by Developer and Remedies Therefore.

A. General Events of Default: The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph B below shall be applicable as otherwise set forth in this Agreement:

Failure to Make Payments: Developer, its successors and assigns, shall fail to make any payment on any Assessment levied against the Property pursuant to Paragraph 2 above, or any installment thereof in a timely manner and in full; provided however, that to the extent only an installment or a portion of said Assessment(s) is due, then "in full" shall only mean such installment or portion then due.

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

i. Seek and be entitled to monetary damages, including consequential damages from Developer for any damages, including consequential damages incurred by City as a result of Developer's default.

ii. 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.

iii. Enforce the Assessment against the benefitted property and collect any sums due and owing thereunder.

iv. 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 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 Developer of the same or of any other obligation of the Developer. To be effective, any waiver of any default by Developer hereunder shall be in writing by the City.
- D. Remedies Cumulative: Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- E. Attorneys' Fees: In the event either party is in default of any of the terms and conditions of this Agreement and the other 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 attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights thereunder.

10. 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 the Road Improvements have been constructed in accordance with all City Standards for design and construction and Developer, its successor and assigns, has dedicated the easements required under this Agreement. At Developer's request, City will issue a written certificate of completion in recordable form acknowledging that the Road 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.

11. Assignment: Developer may not assign this Agreement without the written approval of the City.

12. Governing Law, Jurisdiction, and Venue: This Agreement shall be governed by and performed in accordance with the laws of the State of Minnesota, without giving effect to its conflicts of law provisions. Each party irrevocably consents to the exclusive jurisdiction of the federal and state courts sitting in or for St. Louis County for the resolution of any conflicts arising hereunder, agrees that such courts are the proper and convenient venue, and waives any claim that such venue is inconvenient.

13. 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.

14. 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.

15. Entire Agreement: This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. No modification, amendment or waiver may be made to the terms of this Agreement without the written consent of both parties.

13. 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.

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

ONE ROOF COMMUNITY HOUSING, a non-profit corporation

By: _____
Roger J. Reinert
Its Mayor

By: _____
Its: _____

Attest: _____
Its City Clerk

Date: _____

Countersigned:

Its City Auditor

Approved as to form:

Its City Attorney

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Roger J. Reiner, the Mayor of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Alyssa Denham, the City Clerk of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Josh Bailey, the Auditor of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Terri Lehr, the City Attorney 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 _____, 2025, by _____, the _____ of ONE ROOF COMMUNITY HOUSING, a Minnesota nonprofit corporation, on behalf of the corporation.

Notary Public

Drafted by:
Amanda M. Mangan
Assistant City Attorney
City of Duluth Attorney's Office
411 West First Street, Room 410
Duluth, MN 55802