

# Exhibit A

## REIMBURSEMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, between ST. LOUIS AND LAKE COUNTIES REGIONAL RAILROAD AUTHORITY, a statutory Regional Railroad Authority created pursuant to Minn. Stat. Chapter. 398A and political subdivision of the State of Minnesota, whose address is 111 Station 44 Road, Eveleth, MN 55734, hereinafter referred to as "Railroad", and CITY OF DULUTH, a municipal corporation and governmental subdivision of the State of Minnesota, whose address is City of Duluth, City Hall, 411 West First Street, Duluth, MN 55802, hereinafter referred to as "City".

WHEREAS, the City is the entity which holds and controls, on behalf of the general public, all public street rights-of-way within the corporate limits of the City of Duluth including the street rights-of-way for 32<sup>nd</sup> and 36<sup>th</sup> Avenues East; and

WHEREAS, Railroad is the owner and operator of railroad facilities in the City of Duluth including railroad trestles which cross over the rights-of-way for 32<sup>nd</sup> and 36<sup>th</sup> Avenues East between London Road and Greysolon Road, hereinafter referred to as the "Trestles"; and

WHEREAS, Railroad is desirous of placing warning signs and devices on both sides of the Trestles and within the rights-of-way for 32<sup>nd</sup> and 36<sup>th</sup> Avenues East to warn the operators of vehicles approaching the Trestles from either of their sides of the clearances between the Trestles and the Avenues; and

WHEREAS, Railroad has request that the City assist it in defraying the costs of installing such warning signs and devices, which the City is willing to do 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. Railroad to Install Warning Signs and Devices

Railroad hereby agrees that it has designed the warning sign and devices as are described on Exhibit A, attached hereto and made a part hereof. Railroad

acknowledges that it is solely responsible for the design and placement of such warning signs and devices within the 32<sup>nd</sup> and 36<sup>th</sup> Avenues East street rights-of-way. Railroad further agrees that it shall have sole responsibility for the installation of said warning signs and devices, that such installation shall conform to that shown on Exhibit A and that the City shall bear no responsibility therefore. Nothing herein shall be deemed to constitute the approval by City of the design, fabrication or installation of any such warning signs or devices.

2. Maintenance

Railroad agrees that it shall be solely responsible for the maintenance of any warning signs and devices placed by it as provided for in this Agreement and that City shall bear no responsibility therefore.

3. Reimbursement:

Upon certification by the City's Director of Public Works and Utilities that Railroad has installed warning signs and devices conforming to Exhibits A and B as provided for in Exhibit A, the City Treasurer is authorized to reimburse Railroad in the amount of not to exceed Twenty thousand Dollars (\$20,000), payable from Fund 291-500-5441 (Street Improvement Sales Tax) 500 (Public Works and Utilities) 5441 (Services and Other Charges), to reimburse Railroad for a portion of the costs of designing, fabricating and installing warning signs and devices in conformance with Exhibit A.

4. Liability

Railroad and City agree that each will be responsible for their own acts and omissions and the results thereof to the extent authorized by law and shall not be responsible for the acts and omissions of the other party and the results thereof.

5. Independent Contractor

A. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Railroad as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third-party

beneficiary of this Agreement. Railroad and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Railroad's employees while so engaged, and any and all claims whatsoever on behalf of Railroad's employees arising out of employment shall in no way be the responsibility of City. Railroad's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Railroad from liability or judgments arising out of Railroad's intentional or negligent acts or omissions of Railroad or its employees while performing the work specified by this Agreement.

B. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

6. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

<b>City:</b>	City of Duluth
	411 W First Street
	City Hall 274
	Duluth MN 55802
	Attn: Director of Public Works and Utilities

**Railroad:**

St. Louis and Lake Counties Regional  
Railroad Authority  
111 Station 44 Road  
Eveleth, MN 55734  
Attn: Executive Director

7. Civil Rights Assurances

Railroad, as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

8. Laws, Rules and Regulations

Railroad agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

9. Applicable Law

This Agreement, together with all of its 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.

10. 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.

10. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

11. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

**CITY OF DULUTH**

**ST. LOUIS AND LAKE COUNTIES REGIONAL  
RAILROAD AUTHORITY**

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

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

Mayor

Attest:

\_\_\_\_\_

City Clerk

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

Countersigned:

\_\_\_\_\_

City Auditor

Date

Approved as to form:

\_\_\_\_\_

Assistant City Attorney