

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
NEW BURNHAM, LLC
HISTORIC ST. LOUIS COUNTY JAIL PROJECT**

THIS AGREEMENT entered into this _____ day of _____, 2021, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and NEW BURNHAM, LLC, a Minnesota limited liability company, hereinafter referred to as "Developer".

WHEREAS, Developer has acquired the historic St, Louis County Jail property, hereinafter described, and the buildings located thereon, which is located at 521 West Second Street in downtown Duluth and has proposed to develop the Project as hereinafter described which includes the demolition of the so-called Annex Building and the redevelopment of the existing jail building into no less than 31 apartment units, 10% of which will be affordable, all as further hereinafter described; and

WHEREAS, Developer has requested assistance from DEDA for demolition of the so-called Annex building, redevelopment of the existing building, site preparation and infrastructure costs and other costs eligible for public financing related to the Project as is hereinafter set forth since, without such assistance, the Project would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the wellbeing and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the development of the Project; and

WHEREAS, after careful analysis of the projected costs of the Project and of the financial resources available and economic feasibility of such funding to pay for the costs of the Project described herein, DEDA has determined that:

- A. a "gap" exists between the cost to Developer of the Project and the funds presently available to or known to Developer and DEDA to be available to

finance those costs at rates that would make the Project economically feasible as hereafter described, which gap, based on the best currently-available estimates, is at least Two Million, One Hundred Fifty-five Dollars (\$2,155,000);

- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of developing the Project would be more than can be supported by the amounts that are affordable to be charged for the rental and the available resources would be inadequate to fund the development of said Project on a financially feasible basis and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- C. the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the Project after subtracting the present value of the projected tax increment for the duration of this Agreement.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses to encourage the development of residential rental housing, especially low and moderate income housing, in an area of the city that is in dire need of such housing, to achieve development on property which would not be redeveloped without assistance, and to enhance and diversify the tax base of the City of Duluth; and

WHEREAS, the Property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No.34).

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, 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. Available Tax Increment means 90% of the Captured Tax Increment in the six (6) month period preceding each Scheduled Payment Date, as defined in the TIF Note.
- B. Building: means the Historic St Louis County Jail building located on the Property.
- C. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed.
- C. Captured Tax Increment: means all real estate taxes resulting solely from the payment of real estate taxes on the Captured Net Tax Capacity, as defined in Minnesota Statutes Section 469.174, Subd. 4, of the Property resulting from the Project remitted to DEDA by the St. Louis County Auditor and received by DEDA.
- D. City means the City of Duluth.
- E. Director means the Executive Director of DEDA or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- F. Eligible Project Costs means those Project Costs set forth in Exhibit A which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and case law. Eligible Project Costs are estimated to be at least Two Million, One Hundred Ninety Two Thousand, Eight Hundred Seventy-two Dollars (\$2,192,872).
- G. Plans: means the plans, specifications and elevations for the Project together with detailed utility and landscaping plans and elevations for the Project as approved pursuant to Article IV below.
- H. Project means the demolition of the so-called Annex structure and the redevelopment in the Building on the Property by Developer of not less than

Thirty-one (31) residential apartment units consisting of studio apartments, one-bedroom apartments and two-bedroom apartments, ten (10%) percent of which will be held for rent to persons having an income at or below 60% of the area median income at rental rates determined by the United States Department of Housing and Urban Development to be affordable to such persons, and common area space adequate to serve the needs of the building occupants, all at a cost of not less than Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000), all according to the plans approved by the Director pursuant to Article V and pursuant to required City approvals. . In the event that the application of the percentage calculation above results in a fractional unit, the number of units to be held for rent to persons having an income at or below 60% of the area median income shall be rounded up to the next higher number of units.

- I. Project Costs: shall mean the sum of the Eligible Project Costs and in addition those costs of the Project described in Exhibit B attached hereto and made a part hereof.
- J. Property means that real property located in St. Louis County, Minnesota, described on Exhibit C attached hereto and made a part hereof and the Building located thereof.
- K. TIF Act means Minnesota Statutes, Sections 469.174 through 469.179, as the same may be amended from time to time.
- L. TIF District No. 35 means DEDA's Tax Increment Financing District No.35.
- M. TIF Note means a limited revenue tax increment financing note ("pay-as-you-go" note) to be issued by DEDA to the Developer pursuant to Article IX of this Agreement in substantially the form of that attached hereto as Exhibit D.
- N. TIF Plan means the Tax Increment Financing Plan for TIF District No. 35 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Director.

ARTICLE II

Application Fee and Reimbursement of Consultant Costs

In consideration of the financial assistance provided by DEDA to Developer

pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA within thirty (30) days of transmission of an invoice by DEDA to Developer for services of Ehlers & Associates, Inc. to perform a “but for compliance test” for the Project and to draft and assemble a TIF Plan.

ARTICLE III

Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to the Director the following items:

- A. Title. Proof reasonably satisfactory to the Director that Developer owns the Property in fee simple.
- B. Construction Costs. Developer’s certified estimate of the total cost of the construction of the Project.
- C. Construction Contract. A copy of the executed contract or contracts between Developer and one or more contractors necessary to complete the renovation and the construction of the Project in accordance with Plans approved pursuant to Article V. Such contract(s) shall provide that payments for the work thereunder are the sole obligation of Developer. Such contract(s) shall include the requirement that said contractor(s) agree to enter into a Project Labor Agreement conforming to the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended and to conform to the Community Benefits Requirements as set forth in Exhibit E, attached hereto and made a part hereof and that the laborers, mechanics or apprentice-trainees employed in the construction of the Project to be paid at wage rates equal to or greater than those prevailing wage rate as defined in Section 2-25 of the Duluth City Code, 1959, as amended and regulations related thereto. All payrolls for the construction trades performing work on the Project must be submitted to the Director on a monthly basis. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but

not limited to the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).

- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and any equity contribution commitment by Developer totaling an amount not less than the total contract prices between Developer and the contractor(s) as described in Paragraph C above.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE IV

Project Plans

- A. Plans, Specifications and Elevations. No less than thirty (30) days prior to the commencement of construction of the Project, or such lesser time as approved by the Director, Developer shall submit the Plans for the Project to the Director for approval. Developer shall be solely responsible for the cost of developing and producing all plans and specifications for the Project and for any modifications thereto. All such Plans shall be in conformance with this Agreement, with the schematic design previously submitted to the Director which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Director shall review the Plans within fifteen (15) days of submission of the Plans by Developer. The Director's approval or rejection shall be provided to the Developer in writing. If the Director rejects the Plans in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected Plans meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected Plans herein provided for with respect to the originally submitted Plans shall

continue to apply until said Plans have been approved in writing by the Director. The Director's approval of Developer's Plans shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances or constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.

- B. Changes after Initial Approval. Any material or substantial changes made to Plans by Developer after initial review of the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

ARTICLE V

Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles III and IV above, but in no event later than December 1, 2021, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article IV. Said construction work shall be completed not later than September 30, 2023. Notwithstanding the above, the construction period may be extended for up to ninety (90) days upon the prior written approval of the Director.
- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article VI, Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.
- C. Progress Reports. Until construction of the entire Project is complete, Developer shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project and said remediation. Additionally, upon reasonable notice, the Developer also agrees that it will, subject to standard construction industry site safety protocols, permit DEDA access to the Property and will allow representatives of the Director to inspect the progress of the work.
- D. Project Costs/Certificate of Completion. Promptly upon completion by Developer

of the construction of the Project, Developer shall submit to the Director written evidence in a form satisfactory to the Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices, receipts, canceled checks, mechanic lien waivers or comparable evidence of payment of at least the amount of the Construction Contract and any other eligible Project costs claimed by Developer. DEDA and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6) years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence satisfactory to the Director of such costs and of completion by Developer of the construction of the Project in accordance with this Agreement, and upon written request from Developer, the Director will furnish to Developer a Certificate of Completion in the form of that attached hereto as Exhibit G so certifying. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be recorded against the Property.

ARTICLE VI

TIF Payment Obligations

- A. Issuance of TIF Note Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article V and the submission of the audit provided for in Paragraph B below, DEDA shall execute and deliver to Developer a Note in substantially the form of Exhibit D. The principal amount of the TIF Note shall be \$1,360,000 or the amount of documented Eligible Project Costs, whichever is less; provided that in the event that the Project Costs is less than Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) the amount of the TIF Note will be further reduced by an amount equal to one-half (1/2) of the difference between Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) and the

amount of the Project Costs determined in the manner set forth in Paragraph B below.

- B. Project Costs Audit Upon completion of the construction of the Project, Developer shall cause an audit of the Project Costs to be prepared by a certified public accountant and submitted to DEDA. The results of the audit shall be subject to review and approval of the Director for conformance to the requirements of this Agreement. The Developer may select the certified public accountant to perform the audit but that person or entity shall be subject to the prior approval of the Director in writing.
- C. First Payment of TIF Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in 2023. Interest payable on the TIF Note(s) in the amount of 4.25% per annum shall start to accrue on the date of execution of the TIF Note. There shall be no accrual of interest on unpaid interest. As required by statute, the amount of Available Tax Increment shall not exceed the amount of Eligible Project Costs incurred and paid by the Developer.
- D. TIF Note Payments Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note shall be bi-annual payments in the amount of the Available Tax Increment attributed to Property received by DEDA in the six months preceding each Scheduled Payment Date as defined in the TIF Note. There shall be no interest on unpaid interest as it accrues. DEDA shall not be obligated to make any payments except as provided in the TIF Note.
- E. TIF Note Not "Security" The TIF Note will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note may not be assigned, transferred or pledged, in whole or in part, except as specifically set forth herein. Notwithstanding the foregoing, the Director shall at all times maintain a register setting forth the current holder of the Note which shall be determinative of the identity holder and to whom payments on the Note(s) are to be made.
- F. Revenue Only Obligation DEDA's financial commitment for payment of the TIF Note under this Agreement is a revenue obligation only and will be paid by DEDA only out of Available Tax Increment actually received by DEDA. Developer

acknowledges that DEDA makes no representations or warranties that the Available Tax Increment will be sufficient to pay Developer all amounts due and payable pursuant to TIF Note. Developer acknowledges that Available Tax Increment is subject to calculation by St. Louis County and changes in state statute and that some or all of the amount of the TIF Note may not be paid and in such event, the amount of payments otherwise due to Developer under Paragraph A above shall be deemed, upon termination of this Agreement, to have been paid in full and DEDA shall have no further obligations for payments of said amounts.

- G. Available TIF Estimate Developer acknowledges that the estimates of Available Tax Increment and tax projections, which may have been made by DEDA or its agents, officers or employees are estimates only, are made for the sole use and benefit of DEDA and are not intended for Developer's reliance. DEDA does not warrant that it will have throughout the term of this Agreement the continuing legal ability under State law to apply Available Tax Increment to the payment of the TIF Note.
- H. TIF Note Assignable Notwithstanding anything to the contrary in this Agreement, the TIF Note may be assigned, transferred or pledged without the approval of DEDA; provided that any assignment, transfer or pledge of the Note(s) shall be made in accordance with the requirements set forth in the Note(s) and with Paragraph E above.

ARTICLE VII

Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with industry standards, Developer shall:

- A. Maintenance. At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Project and the Property shall include

but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems as well as outside maintenance including snow removal, grass cutting and landscape maintenance, parking ramp and area cleaning if applicable, repair and striping and all other exterior maintenance to said Property and the Project.

- B. Rental Restriction; Reporting: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XV below, the units in the Project that are to be rent restricted as described in the definition of the Project will be rented to persons having an income at or below 60% of the area median income at rental rates determined by the United States Department of Housing and Urban Development to be affordable to such persons. No later than January 30th of each year, the Developer shall provide such reports and documentation as the Director shall reasonably request demonstrating that said rent restricted units had been so rented to such persons during the entirety of the prior calendar year.
- C. Utilities. Unless currently and validly disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.
- D. Licenses and Permits. Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and the Property and to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. Conduct its affairs and carry on its business and operations with respect to the Project and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity

thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Project and the Property.

- F. Payment of Taxes. Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Project or the Property, subject to the right to contest in good faith in accordance with Minnesota law.
- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Project and the Property and all other charges lawfully made by any governmental body for public improvements.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.
- I. Living Wage. Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") and to require those construction workers directly employed in the construction of the Project to be paid Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code.

ARTICLE VIII

Provision against Liens, Assignments and Transfers

- A. Provision against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its

intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

- B. Transfers prior to Issuance of a Certificate of Completion. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the issuance of a Certificate of Completion, Developer represents and agrees 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, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder. Prior to the issuance of a Certificate of Completion, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of DEDA.
- C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property to provide security for the construction and permanent financing. In addition, Developer is authorized to lease the apartment units to tenants at all times without the approval of DEDA.
- D. Transfers after Issuance of a Certificate of Completion. Following the issuance of a Certificate of Completion, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of DEDA, which consent shall not be unreasonably withheld, provided the following has been satisfied:

1. Thirty days' prior written notice of the transfer is provided to the Director.
2. The transferee shall agree by written commitment to DEDA to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and Certification of Construction of the Project. The commitment shall comply with the terms of this Paragraph 2 and shall be approved to the Director.
3. Notwithstanding the above transfer, the payment of the tax increment pursuant to Article VIII shall be made to the registered owner of the Note(s) as provided for in Paragraph E of Article VII above.

Failure to comply with the requirement of subsection 1 and 2 above shall render such purported transfer null and void.

E. Modification; Subordination. In the event any portion of the Developer's funds is provided through mortgage financing, subject to the following, DEDA agrees to subordinate its rights under this Agreement to the holder of any mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to DEDA. Provided, however, that the form of any such subordination shall specifically require that in the event that the holder of any such mortgage and/or any successor in interest thereto becomes the owner of the Property, such holder or successor in interest shall continue to operate the Project in a manner required by Paragraph B of Article VIII above.

ARTICLE IX

Indemnification

A. Generally. Developer shall, to the fullest extent permitted by law, protect, indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA 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:

1. Any injury to or death of any person or damage to property in or upon the

Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. 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 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 the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and the City and their officers, agents, servants and employees and any person who controls DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons

or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.

- C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA or the City under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA or the City with respect to which indemnity may be sought against Developer, DEDA and the 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 Developer.
- D. Exceptions to Indemnification. In no event shall Developer be required to indemnify DEDA or the City under this Article for liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising solely from the negligent or intentional misconduct of DEDA or the City or their officers, agents, servants, employees.

ARTICLE X

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the

Project 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 improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

- A. Insurance during Construction. Developer, prior to entering on the Property 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. Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, 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 Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) 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. DEDA and 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. Developer 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 Developer's ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer and DEDA hereby mutually waive any and all claims or causes of action against the other party for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss.
2. 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, Developer 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. DEDA and 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.

3. 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 DEDA. 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 DEDA 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 DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA 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. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification 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.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, or construct improvements in a manner which is approved by DEDA, such approval which shall not be unreasonably withheld, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.
- G. Reconstruction Obligation Contingency Nothing to the contrary in Paragraph F above, in the event that the Project is substantially or totally destroyed and the parties agree in good faith that under present economic or social conditions the Project is no longer economically viable or does not constitute the highest and best use of the Property, the parties hereby commit to meet and confer in good faith to determine the use of the Property which will be of greatest economic, social and practical use to the Developer, to the City, and to DEDA and use their best efforts to negotiate an amendment of this Agreement to implement that use

and to apply the proceeds of any insurance to implementation of that use.

ARTICLE XI

Defaults and Remedies Therefor

- A. Developer's Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable.
1. Developer shall fail to pay real estate taxes as and when due and payable.
 2. Developer 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 DEDA 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 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.
 3. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property or Developer loses title to the Project or the Property or both.
 4. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a

material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer or any trustee, receiver or liquidator of any material part of Developer's properties.

B. DEDA's Remedies for Developer's Defaults. DEDA shall have the following remedies in the event of a default:

1. Terminate this Agreement or the TIF Note or both.
2. Withhold the performance of any obligation owed by DEDA under this Agreement or the TIF Note or both.
3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.
4. Cease or suspend making payments under this Agreement and the TIF Note of Available Tax Increment as defined in the TIF Note.
5. 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 Developer's performance of its obligations hereunder.
6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

C. Non-Waiver. The waiver by DEDA of any default on the part of Developer or the failure of DEDA 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 Developer of the same or of any other obligation of Developer under this Agreement. To be effective, any waiver of any default by Developer hereunder must be in writing by the Director.

D. Default by DEDA. The failure of DEDA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an event of default by DEDA. Whenever an event of default occurs by DEDA, Developer shall be entitled to all remedies available at law or equity, and Developer may take whatever action, including legal, equitable, or administrative action, which may

appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

- E. 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 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, the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XII

Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA will perform all of its obligations under this Agreement.
- D. Based on reasonable knowledge and belief, DEDA believes that the Project contemplated by this Agreement is in conformance with the development

objectives set forth in the TIF Plan.

- E. As of the execution of this Agreement, the City and DEDA have approved the TIF Plan in accordance with the requirements of the TIF Act.

ARTICLE XIII

Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is a Minnesota limited liability company duly organized and authorized to transact business in the State, it is fully competent to acquire the Property and to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State, it has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.
- B. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- C. As of the date hereof, no actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.
- D. Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations

(including, but not limited to, environmental, zoning, building code and public health laws and regulations, and payment of prevailing wages). The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

- E. As of the date hereof, Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to DEDA or any third party under this Agreement to be true, correct, and complete in all material respects.
- I. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the DEDA assistance to be provided for hereunder, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

ARTICLE XIV

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of 26 years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment or when the TIF Note has been paid off unless this Agreement is otherwise terminated as provided for herein. Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default

which occurred prior to such termination.

ARTICLE XV

Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

ARTICLE XVI

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 DEDA: DEDA
 Room 402 City Hall
 411 West First Street
 Duluth, MN 55802
 Attn: Executive Director

In the case of Developer: Donjek, Inc.
 501 W Lynnhurst Ave Suite 200
 St. Paul, MN 55104
 Attn: Jon Commers

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section.

ARTICLE XVII

Recordation

Immediately upon their execution, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA executed original copies of the Agreement showing the date and document numbers of record, or certified copies of the filed original documents. Upon termination of this

Agreement at decertification of TIF District No. 35, DEDA agrees to record such termination in the office of the St. Louis County Recorder and/or Registrar of Tiles and to pay all costs associated therewith

ARTICLE XVIII

Disclaimer of Relationships

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

ARTICLE XIX

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.

ARTICLE XX

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XXI

Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

ARTICLE XXII

Title of Articles

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XXIII

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.

ARTICLE XXIV

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, pandemics or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXV

Estoppel Certificate

Each party, respectively, agrees that at any time and from time to time within 10 business days after receipt of a written request by the other party, to execute, acknowledge and deliver to such party a statement in writing and in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments certifying that, to the best of its knowledge: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same are in full force and effect as modified and identifying the modifications; (b) no party is in default under any provisions of this Agreement or, if there has been a default, the nature of such default; (c) all work to be performed, under this Agreement or any related agreement has been performed or, if not so performed, specifying the work to be performed; and (d) as to any other matter that the requesting party, a prospective purchaser or assignee or a prospective mortgagee or other lender shall reasonably request. It is intended that any such statement may be relied upon by any person, prospective mortgagee of, or assignee of any mortgage, upon such interest. Any such statement on behalf of DEDA may be executed by the Director without DEDA Board approval. Provided that the party from whom the aforesaid certification is requested shall be obligated to make said certification only if all of the representations required to be made therein are, to the best of the knowledge of requested party true and correct.

ARTICLE XXVI

Minimum Assessment Agreement

The parties agree to enter into an Assessment Agreement in the form of that attached hereto as Exhibit F and to use their best efforts to cause the St. Louis County Assessor to execute the same. Promptly upon execution of the Assessment Agreement, Developer agrees to record the Assessment Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Assessment Agreement showing the date and document numbers of record, or a certified copy of the filed original.

XXVII

Entire Agreement

It is understood and agreed that the entire agreement of the parties 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.

ARTICLE XXVIII

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 the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

Its President

By: _____

Its Secretary

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Matt Cartier and Zack Filipovich, the President and Secretary, respectively, of the Duluth Economic Development Authority of Duluth, an economic development authority created and existing under Minnesota Statutes, on behalf of the Authority.

Notary Public

NEW BURNHAM, LLC,
A Minnesota limited liability company

By: _____
Name: _____
Its: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of New Burnham, LLC, a Minnesota limited liability company, for and on behalf of the company.

Notary Public

This instrument was drafted by:

Robert Asleson
Attorney for the Duluth Economic
Development Authority
410 City Hall
Duluth, MN 55802
(218) 730-5490

Historic Jail Redevelopment Project

Exhibit A- Eligible Costs

Project Element		Cost
Site Package	\$	105,400
Lead Based Paint Stabilization	\$	166,340
Pigeon Cleanup	\$	13,600
Bar/Lead paint removal	\$	585,035
JW Demo and Landing Const.	\$	107,116
Steel Materials - Fabrication	\$	285,106
Steel Erection	\$	440,000
Windows	\$	291,905
Historical Plaster Work	\$	32,800
Elevator	\$	140,570
Elevator Removal/Demo	\$	25,000
Total Itemized Eligible Costs	\$	2,192,872

Historic Jail Redevelopment Project

Exhibit B- Project Costs

SOURCES AND USES

USES	Dollars
Acquisition	235,000
Hard Costs	
Hard Cost	6,450,220
Construction-Related	443,093
Owner Contingency (5%)	322,511
Contractor Contingency (6%)	387,013
Less: Estimated V/E Savings	(821,035)
Total Hard Costs	6,781,802
Soft Costs	
A&E	651,000
HTC Consulting and Application Fees	114,000
Legal and Accounting	89,000
Marketing and Leasing	125,000
Other Professional Fees	19,500
Carrying Costs during Construction	138,250
Financing Costs	109,000
Developer Fees	400,000
Deferred Developer Fees	-
Less: Estimated V/E Savings	(245,000)
Total Soft Costs	1,400,750
Total Uses	8,417,552

Historic Jail Redevelopment Project

Exhibit C- Property Description

That real property legally described as follows:

THAT PART OF ODD NUMBERED LOTS 85 THRU 95 BLK 28 LYING NLY OF R/W OF W 2ND STREET & ELY OF R/W OF MESABA AVE BEG AT MOST SLY COR OF LOT 95 THENCE ALONG SWLY LINE OF LOT 95 ON AN ASSIGNED BEARING OF N48DEG20'33"W 14.76 FT TO ELY R/W LINE OF MESABA AVE THENCE N01DEG40'39"W ALONG SAID ELY R/W 103.03 FT THENCE N48DEG20'42"W ALONG SAID ELY R/W 9.51 FT THENCE N41DEG38'24"E ALONG SAID ELY R/W 55 FT THENCE N19DEG19'42"W ALONG SAID ELY R/W 51.47 FT TO SELY R/W LINE OF ALLEY IN BLK 28 THENCE N41DEG38'24"E ALONG SAID SELY R/W 79 FT THENCE S48DEG21'01"E 41.38 FT THENCE N47DEG40'58"E 59.25 FT THENCE S48DEG 21'07"E 12.62 FT TO NLY R/W OF W 2ND STREET THENCE 30.96 FT ALONG SAID NLY R/W ALONG A NON-TANGENTIAL CURVE CONCAVE E HAVING A RADIUS OF 259.73 FT A CENTRAL ANGLE OF 06DEG 49'41" THE CHORD OF WHICH BEARS S04DEG18'34"W THENCE S00DEG53'43"W ALONG SAID NLY R/W 43.58 FT THENCE 63.82 FT ALONG SAID NLY R/W ALONG A NON-TANGENTIAL CURVE CONCAVE W HAVING A RADIUS OF 183.62 FT A CENTRAL ANGLE OF 19DEG54'54" THE CHORD OF WHICH BEARS S10DEG51'10"W THENCE S41DEG38'13"W 180.69 FT TO PT OF BEG, DULUTH PROPER THIRD DIVISION, property tax parcel number 010-1250-00330

Exhibit D- TIF Note

Principal Amount	Annual Rate
\$1,360,000	4.25%

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE
(HISTORIC FORMER COUNTY JAIL REDEVELOPMENT)

The Duluth Economic Development Authority, an economic development authority created and existing pursuant to Minnesota Statutes Chapter 469 (“DEDA”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay NEW BURNHAM, LLC, a Minnesota limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of One Million Three Hundred Sixty Thousand and 0/100th Dollars (\$1,360,000), which is the amount determined in Paragraph A of Article VIII of that certain Development Agreement between DEDA and the Developer dated _____, 2021, and bearing DEDA Contract No. _____, as may be amended from time to time (the “Agreement”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This TIF Note is issued pursuant to the Agreement. Terms are defined in this TIF Note or in the Agreement. The principal amount of this TIF Note, as adjusted above, shall bear interest at the annual rate specified above and interest shall start to accrue as of the date of execution of this TIF Note. There shall be no accrual of interest on unpaid interest. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Note is issued and payable solely from Available Tax Increment, as defined in the Agreement, actually received and retained by DEDA. DEDA shall pay to the Registered Owner of the TIF Note bi-annual payments in the amount of the Available Tax Increment payable on August 1 and February 1 of each year, commencing on August 1, 2023, to and including February 1, 2049, or, if the 1st should not be a business day the next succeeding business day (the "Scheduled Payment Dates"). Available Tax Increment shall first be applied to accrued interest and then to principal.

This Note shall terminate and be of no further force and effect following (a) February 1, 2049; (b) any date upon which the Agreement or this TIF Note has terminated under said Agreement; or (c) on the date that all principal and interest payable hereunder shall have been paid in full; whichever occurs earliest. This TIF Note may be prepaid in whole or in part at any time without penalty.

DEDA makes no representation or covenant, express or implied, that the Available Tax Increment will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

DEDA's payment obligations hereunder shall be further conditioned on the fact that no Event of Default by Developer under the Agreement shall have occurred and be continuing, but such unpaid amounts shall become payable, without interest accruing thereon in the meantime, if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Agreement DEDA elects to terminate the Agreement or this TIF Note, DEDA shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Agreement for a fuller statement of the rights and obligations of DEDA to pay the principal of this TIF Note and the interest thereon, and said provisions are hereby incorporated into this TIF Note as though set out in full herein.

THIS TIF NOTE IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF DEDA OR THE CITY OF DULUTH (THE "CITY") AND IS PAYABLE BY DEDA ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS TIF NOTE IS NOT A GENERAL OBLIGATION OF DEDA OR THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF DEDA OR THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS TIF NOTE AND NO PROPERTY OR OTHER ASSET OF DEDA OR THE CITY, SAVE AND EXCEPT THE ABOVE REFERENCED PLEDGED AVAILABLE RELATED TAX INCREMENTS, IS OR SHALL BE A SOURCE OF PAYMENT OF DEDA'S OBLIGATIONS HEREUNDER.

The Registered Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of DEDA, the City or of any other public body, and neither DEDA, the City nor any person executing or registering this TIF Note shall be liable personally hereon by reason of the issuance or registration thereof or otherwise.

This TIF Note is issued by DEDA in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes §§469.174 to 469.1799, the Minnesota Tax Increment Act.

THIS TIF NOTE HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF OR TRANSFERRED EXCEPT AS PROVIDED FOR IN THE AGREEMENT.

This TIF Note may be assigned only as provided in the Agreement and, upon such assignment, the assignor shall promptly notify DEDA at the office of the Executive Director by registered mail, and the assignee shall surrender the same to the Executive Director either in exchange for a new fully registered note or for transfer of this Note on the registration records for the TIF Note maintained by DEDA. Each permitted assignee shall take this TIF Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this TIF Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this TIF Note, together with all other indebtedness of DEDA outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of DEDA to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Duluth Economic Development Authority, by its Board of Commissioners, has caused this TIF Note to be executed by the manual signatures of the President and the Secretary of DEDA and has caused this Note to be issued on and dated _____, 20____.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

Its President

By: _____

Its Secretary

Approved as to form

Assistant City Attorney

Historic Jail Redevelopment
Exhibit E- Community Benefits Requirements

**Memorandum of Understanding
Regarding The
COMMUNITY BENEFITS PROGRAM**

As it applies to the _____ Project

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this ____ day of _____, 20__ between the City of Duluth through its Workforce Development Department, (the “City”), _____, (the “Developer”), and _____, (the “Contractor”) for the purpose of memorializing the commitments between the parties to implement the City’s Community Benefits Program (the “Program”) as hereinafter set forth in conjunction with the construction of the _____ Project. The Developer is the developer of the Project and the Contractor is a contractor under contract with the Developer to perform work on the Project. The [(City)(Duluth Economic Development Authority (“DEDA”))] is providing financial assistance to the Project.

The City has determined that it is critical to the economic vitality of the City and its citizens that construction projects receiving City or DEDA support commit to assisting in developing a diverse, trained and skilled workforce. In acknowledgement of this goal, the City, the Developer, and the Contractor agree to use their best efforts to implement the Program as hereinafter set forth in this MOU and to cooperate fully with the City’s Workforce Development Department to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Project covered by this MOU to so use their best efforts to implement the Program.

I. Definitions

For the purposes of this MOU, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor's ability and the means at its disposal.
- B. Best Efforts Plan: shall mean a plan developed and approved between the Contractor and the Workforce Development Department to implement the Contractor's Best Efforts obligations under this MOU.
- C. Contractor: shall mean the Contractor named above performing work on the Project, and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on the Project shall count toward the Community Benefits Goal outlined in this MOU. An individual who falls within one or more of the following federally protected classes or who has one or more of the following characteristics shall be considered an Eligible Worker:

Federally protected classes:

- Woman;
- Person of color;
- Has a disability;
- Veteran.

Other Eligible Worker Characteristics:

- Is currently homeless;
- Has received public assistance of any kind within the last 12 months;
- Has a criminal record of conviction;
- Is currently in, or has been emancipated from, the public foster care system;
- Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
- Has a disability, including disabled veterans;
- Has a household income below 200% of Federal Poverty Level.

- E. Program: shall mean the Community Benefits Program as set forth in this MOU.

- F. Project: shall mean the construction of the _____ Project as approved by the [(City)(Duluth Economic Development Authority)] by its Resolution No. _____ on _____, 20__.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by this Agreement.
- H. Work Hours: shall mean the total number of hours of construction trade work performed on the Project by Eligible Workers, which work is of a type or character commonly performed by members of labor unions which are affiliated with the Duluth Building and Construction Trades Council or similar regional Councils within Minnesota.

II PROGRAM GOALS

All Contractors entering into contracts for the Project will use their best efforts, as described below, in the performance of those contracts to attain the following Program goals:

A. Eligible Worker - General:

For the Project, the Contractor shall use its best efforts to cause fifteen percent (15%) of total hours of work performed with respect to the Project to be Work Hours performed by Eligible Workers.

B. Women

One-half of Work Hours as defined herein shall be performed by Eligible Workers who are women.

III DEVELOPER AND CONTRACTOR—BEST EFFORT

A. Plan

Within Thirty (30) days of the date the Contractor executes a contract for the Project or prior to commencement of work on the Project by the Contractor, whichever is earlier, Contractor shall have agreed with the Workforce Development Department to a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. The Contractor shall not commence construction of the Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan shall include ongoing

effect lasting beyond Project completion. The Best Efforts Plan may include but shall not be limited to the following commitments by the Contractor:

1. To participate in local job fairs and hiring events, including those at high schools, those organized by CareerForce and other partner organizations, , and those organized by community and technical colleges.
2. To proactively work with the Workforce Development Department and partner organizations it has identified, as well as with unions with which the Contractor has agreements, to sponsor new Eligible Workers into such union's apprenticeship programs.
3. To proactively work with CareerForce, Native American tribes and appropriate community organizations to recruit and retain Eligible Workers.
4. To support and actively participate in local apprenticeship exploration programs and other construction career training opportunities.
5. To actively participate in the Duluth Workforce Development Board's Construction Working Group, and in its various initiatives to expand the involvement of Eligible Workers in our region's construction workforce.
6. To develop and implement efforts to retain and support advancement of Eligible Workers in the Contractor's company.
7. To develop and implement company policies and processes to facilitate reporting and resolution of discrimination, harassment, or bias complaints.
8. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.
9. To take such other actions as is reasonably agreed between Contactor and the Workforce Development Department that will encourage participation of Eligible Workers in the construction of Project, while not adding cost to the Project.
10. To take, and to require its Subcontractors to take, appropriate corrective action when notified by the Workforce Development Department that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting

No later than Thirty (30) days following the end of the month in which Work Hours are performed on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.

2. Completion Report

No later than Sixty (60) days following the end of completion of construction on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the Completion Report establishes that the Program Goals have not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any

explanations or extenuating circumstances for not having met the Program Goals.

IV. CITY-PROGRAM OBLIGATIONS

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for the Project covered by this Agreement.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and apprenticeship programs to build accessible pathways into employment in the building and construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.
- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances provided by Contractor or any Subcontractor for not having met the Program Goals.

CITY OF DULUTH, by its Workforce Development Department

By: _____

Its Director

_____ (Insert Developer Name)

By: _____

Its: _____

_____ (Insert Contractor Name)

By: _____

Its: _____

CITY OF DULUTH PROJECT LABOR AGREEMENT

ARTICLE I PURPOSE

This Agreement is entered into as of the date of attestation by the City Clerk, by and between Click or tap here to enter text., its successors or assigns (hereinafter “Project Contractor”), and the City of Duluth, (hereinafter “Owner”¹) and the Duluth Building and Construction Trade Council, on behalf of its affiliated local unions, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement (hereinafter collectively called the “Union or Unions”), with respect to the construction of the Click or tap here to enter text. (hereinafter “Project”).

The term “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to Click or tap here to enter text. alone is intended, the term “Project Contractor” is used.

The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to establish a framework for labor-management cooperation and stability. The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

¹ Where the work is performed under Contract with the City of Duluth, the “Owner” is the City of Duluth. Where the Owner receives financial assistance or payment from the City, the Owner is the corporation, firm or other entity that is receiving the assistance or payment.

ARTICLE II
SCOPE OF AGREEMENT

Section 1. This Project Labor Agreement shall apply and is limited to all construction work included in all bid categories for the Project under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: [Click or tap here to enter text.](#)

Section 2. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Labor Agreement by executing the "Agreement to be Bound" form attached as Exhibit 1 prior to commencing work. This Project Labor Agreement is a material term of the bid specifications for the Project and therefore, regardless of whether a contractor executes this Agreement, by virtue of the owner and/or Project Contractor accepting the bid offer of the Contractor, a Contractor who performs work on this project is bound to this PLA regardless of their execution of this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, The National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI and VII of this Project Labor Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area or national agreement.

Section 3. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 5. The Owner and/or Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 6. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Labor Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are

directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

Section 9. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisor employees as defined by the National Labor Relations Act. No Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. However, any Contractor performing work on the Project which is not party to a Local Area Labor Agreement for a craft employed by the Contractor, agrees to install hourly wage rates, hours, fringe benefit contributions, referral procedures and all other terms and conditions of employment as fully set forth in the applicable Local Area Agreement as described in Schedule A for work on the Project for each craft employed by the Contractor. But in no event shall the wages be less than the wages that are applicable to this project under the Minnesota Prevailing Wage Act, Minn. Stat. § 177.43. All employees covered by this Agreement shall be classified in accordance with the work performed. Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the covered project. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing covered work.

Section 10. The Contractors agree to timely pay contributions to the established employee benefit funds in the amounts designated in the Local Area Labor Agreements attached as Schedule A.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 11. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, ready mix, asphalt or other similar material and all workers removing any materials from the construction site shall receive a total package of wages and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated General Contractors of America, or the Highway Heavy Prevailing Wage Schedule, whichever is greater.

ARTICLE III
UNION RECOGNITION AND UNION SECURITY

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives comply fully with the posted visitor and security and safety rules of the Project.

ARTICLE IV
REFERRAL OF EMPLOYEES

Applicants for the various classifications covered by this Agreement required by the Employer or Contractors on the Project shall be referred to the Contractors by the Unions. The Unions represent that its local unions administer and control their referrals and it is agreed that these referrals will be made in a non-discriminatory manner and in full compliance with Federal and State laws.

ARTICLE V
MANAGEMENT'S RIGHTS

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement or the applicable local area agreements, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause.

ARTICLE VI
WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site or any site of a contractor or supplier necessary for the performance of work at the project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than thirty (30) days.

Section 3. The Unions shall not be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and

use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. Any party alleging a breach of this Article shall have the right to petition a court for temporary and permanent injunctive relief. The parties agree that the moving party, upon proving a breach of this Agreement, shall be entitled to temporary and permanent injunctive relief.

ARTICLE VII **SAFETY**

The parties are mutually committed to promoting a safe working environment for all personnel at the job site. It shall be the responsibility of each employer to which this PLA applies to provide and maintain safe working conditions for its employees, and to comply with all applicable federal, state and local health and safety laws and regulations.

ARTICLE VIII **UNION-MANAGEMENT COOPERATION COMMITTEE**

The parties to this Agreement agree to form a Union-Management Committee, consisting of signatory unions, contractors, and representatives of the City of Duluth. The purpose of the Committee is to ensure cooperation on matters of mutual concern, including productivity, quality of work, safety and health.

ARTICLE IX **DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually realize the importance to all parties to maintain continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Labor Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, or knowledge of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated. The

business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven (7) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or his or her designee of a Local Union and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) neutral arbitrators from which the Arbitrator shall be selected. The parties shall alternatively strike arbitrators from the list until one remains, who shall preside at the hearing. The party striking first shall be determined by the flip of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE X **JURISDICTIONAL DISPUTES**

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE XI **SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE XII **HELMETS TO HARDHATS**

Section 1. The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIII **LABOR HARMONY CLAUSE**

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on the Project and shall submit a labor harmony plan to demonstrate how this will be done. "Harmony" shall include the provision of labor that will not, either directly or indirectly, cause or

give rise to any work disruptions, slowdowns, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the Project. The labor harmony plan should include the company's labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower-tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the Owner or Project Contractor may have, including without limitation the right to terminate the contract.

ARTICLE XIV
NO DISCRIMINATION

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or non-membership in a Union or based upon race, color, religion, sexual preference, gender identification, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1, should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including all gender identification.

ARTICLE XV
SAVINGS AND SEPARABILITY

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE XVI
DURATION OF THE AGREEMENT

The Project Labor Agreement shall continue in effect for the duration of the Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

[The remainder of this page intentionally left blank. Signature page to follow].

TEMPLATE

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

DULUTH BUILDING AND
CONSTRUCTION TRADES COUNCIL

Click or tap here to enter text.

By: _____

By: _____

Its: _____
(Printed Name/Title)

Its: _____
(Printed Name/Title)

Date: _____

Date: _____

Phone No.: _____

CITY OF DULUTH

By: _____
Mayor

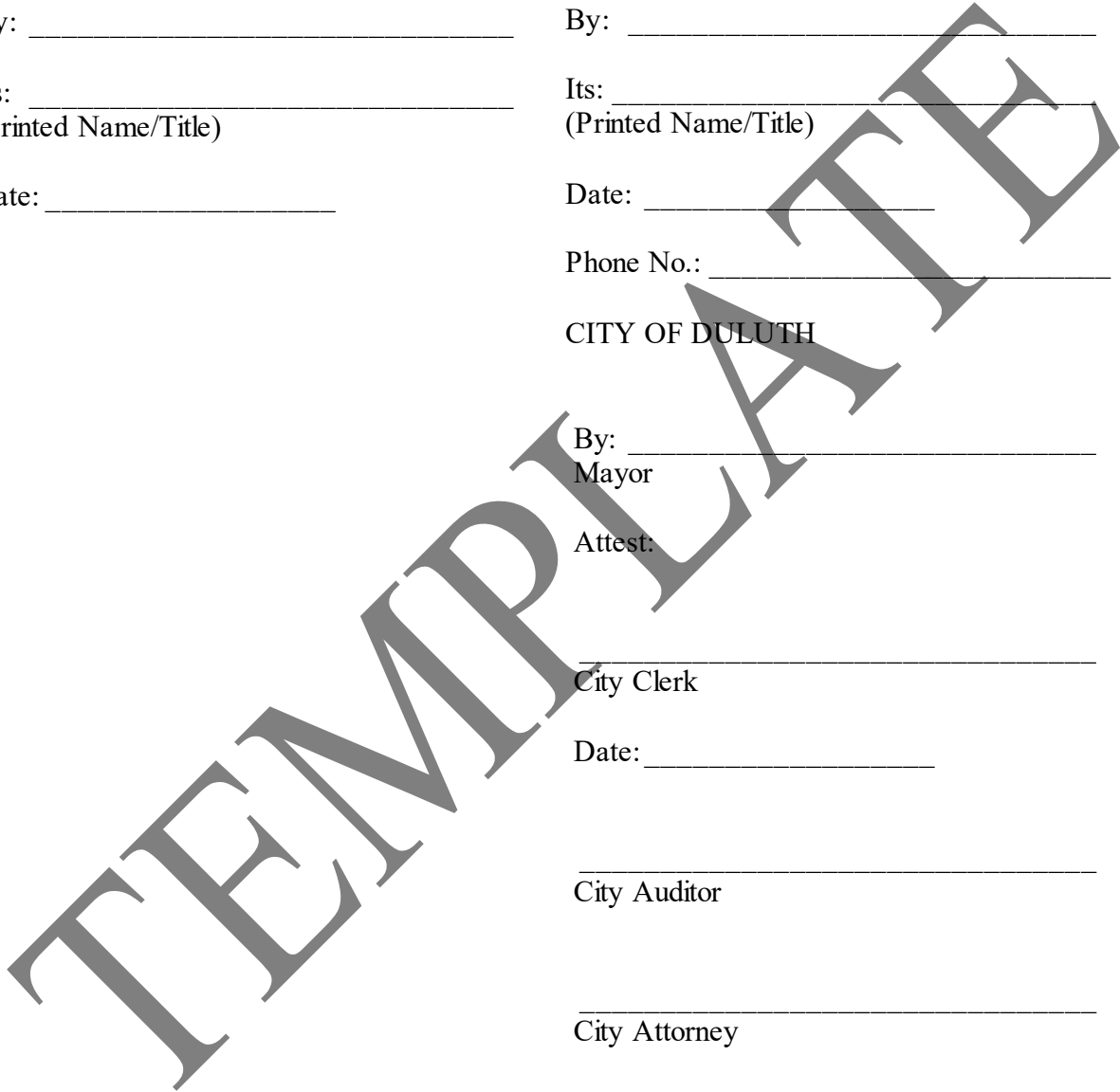
Attest:

City Clerk

Date: _____

City Auditor

City Attorney



**SUBCONTRACTOR'S
AGREEMENT TO BE BOUND
PROJECT LABOR AGREEMENT**

The undersigned EMPLOYER (subcontractor) agrees that it has reviewed a copy of the Project Labor Agreement for the _____ Project located in Duluth, Minnesota, with the Duluth Building & Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

This form is to be completed by subcontractor and submitted to the Project Contractor. Project Contractor shall retain and submit to City of Duluth or Duluth Building & Construction Trades Council upon request.

Attest:

SIGNED FOR THE EMPLOYER:

Dated: _____

Signature

Company Name

Company Address

Phone No., Job Site and/or Office

Fax No.

Signer's Name

Signer's Title

SCHEDULE "A"

For a copy of the current Local Area Collective Bargaining Agreement referenced in Article II, Section 9 of the PLA please contact directly the Local Union representing the craft for the work to be performed (see attached contact list) or contact the Duluth Building & Construction Trades Council.

- A-1 Asbestos Workers Local 49
- A-2 Boilermakers Local 647
- A-3 BAC Local 1 Chapter 3 Duluth and Iron Range
- A-4 Carpenters Local 361
- A-5 Cement Masons/Plasters Local 633
- A-6 Elevator Constructors Local 9
- A-7 IBEW Local 242
- A-8 Iron Workers Local 512
- A-9 Laborers Local 1091
- A-10 Millwrights Local 1348
- A-11 Operating Engineers Local 49
- A-12 Painters & Allied Trades Local 106
- A-13 Plumbers & Fitters Local 11
- A-14 Roofers Local 96
- A-15 Sheet Metal Workers Local 10
- A-16 Sprinkler Fitters Local 669
- A-17 Teamsters Local 346

Affiliated AFL-CIO

DULUTH BUILDING AND CONSTRUCTION TRADES COUNCIL

2002 LONDON ROAD

LABOR CENTER

DULUTH, MINN. 55812



Officers

Craig Olson
President
Darrell Godbout
Vice President
Dan Olson
Secretary
Jeff Daveau
Treasurer

Boilermakers #647

Bricklayers #1

Carpenters #361

Cement Masons #633

Elevator #9

IBEW #242

Insulators #49

Ironworkers #512

Laborers #1091

Millrights #1348

Operators #49

Painters #106

Pipelitters #11

Roofers #96

Sheetmetal #10

Sprinklerfitters #669

Teamsters #346

ASBESTOS WORKERS LOCAL 49

Dave Cartwright
2002 London Road #210
Duluth, MN 55812
(218) 724-3223 / Fax# 724-1870
dave@insulatorslocal49.org

CARPENTERS LOCAL 361

Chris Hill
5238 Miller Trunk Hwy
Hermantown, MN 55811
(218) 724-3297 / Fax# 724-8536
chill@ncsrcc.org

IBEW LOCAL 242

Don Smith
2002 London Road #111
Duluth, MN 55812
(218) 728-6895 / Fax# 728-1965
dsmithc1242@unions-america.com

MILLRIGHTS & MACHINERY ERECTORS LOCAL 1348

Wayne Nordin
726 4th Street N
Virginia, MN 55792
(218) 741-6314 / Fax# 741-6017
wnordin@ncsrcc.org

PLUMBERS & FITTERS LOCAL 11

Jeff Daveau, *Treasurer*
4402 Airpark Boulevard
Duluth, MN 55811
(218) 727-2199 / Fax# 727-2298
jeff@ualocal11.com

SPRINKLER FITTERS LOCAL 669

James Westby
PO Box 398
Mabel, MN 55954
(507) 493-5671 / Fax# 493-5481
westby@mabeltel.com

BOILERMAKERS LOCAL 647

Bill Polchow
1007 NW 4th Street, Ste C
Grand Rapids, MN 55744
(218) 326-2522 / Fax# SAME
bpolchow647@outlook.com

CEMENT MASONS LOCAL 633

Michael Syversrud
2002 London Road #112
Duluth, MN 55812
(218) 724-2323 / Fax# 724-2472
mikes@local633.org

IRON WORKERS LOCAL 512

Darrell Godbout, *Vice President*
3752 Midway Road
Hermantown, MN 55810
(218) 724-5073 / Fax# 724-1525
darrell@iron512.com

OPERATING ENGINEERS LOCAL 49

Eric Gulland & Mike Parrott
2002 London Road #116
Duluth, MN 55812
(218) 724-3840 / Fax# 728-1441
egulland@local49.org
mwparrotta@local49.org

ROOFERS LOCAL 96

Vance Anderson
1145 Villa Vista Circle
Cromwell MN 55726
(218) 644-1096 / Fax# SAME
valocal96@yahoo.com

TEAMSTERS LOCAL 346

Rod Ainstead
2802 West 1st Street
Duluth, MN 55806
(218) 628-1034 / Fax# 628-0246
local@teamsters346.com

BAC LOCAL #1 CHAPTER 3 DULUTH & IRON RANGE

Stan (Ogie) Paczynski
2002 London Road #100
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(218) 724-8374 / Fax# 724-8341
spaczynski@bac1mn-nd.org

ELEVATOR CONSTRUCTORS LOCAL 9

Dave Aaserud
433 Little Canada Rd E
Little Canada, MN 55117
(651) 287-0817 / Fax# 287-0820
d.aaserud@local9.com

LABORERS LOCAL 1091

Dan Olson, *Secretary*
2002 London Road #119
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(218) 728-5151 / Fax# 728-2431
laborers@local1091.com

PAINTERS LOCAL 106

Craig Olson, *President*
2002 London Road #106
Duluth, MN 55812
(218) 724-6466 / Fax# 724-7359
president@duluthbuildingtrades.com

SHEET METAL WORKERS LOCAL 10

Doug Christy
6279 Industrial Road
Saginaw, MN 55779
(218) 724-6873 / Fax# SAME
dchristy@smw10.org

EXHIBIT G

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2021, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and NEW BURNHAM, LLC, a Minnesota limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on _____, 2021, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article VII of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

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

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, the Executive Director of the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 469, on behalf of the authority.

Notary Public

This instrument drafted by:

CERTIFICATE OF COMPLETION

EXHIBIT A

Legal Description of Property

That real property legally described as follows:

THAT PART OF ODD NUMBERED LOTS 85 THRU 95 BLK 28 LYING NLY OF R/W OF W 2ND STREET & ELY OF R/W OF MESABA AVE BEG AT MOST SLY COR OF LOT 95 THENCE ALONG SWLY LINE OF LOT 95 ON AN ASSIGNED BEARING OF N48DEG20'33"W 14.76 FT TO ELY R/W LINE OF MESABA AVE THENCE N01DEG40'39"W ALONG SAID ELY R/W 103.03 FT THENCE N48DEG20'42"W ALONG SAID ELY R/W 9.51 FT THENCE N41DEG38'24"E ALONG SAID ELY R/W 55 FT THENCE N19DEG19'42"W ALONG SAID ELY R/W 51.47 FT TO SELY R/W LINE OF ALLEY IN BLK 28 THENCE N41DEG38'24"E ALONG SAID SELY R/W 79 FT THENCE S48DEG21'01"E 41.38 FT THENCE N47DEG40'58"E 59.25 FT THENCE S48DEG 21'07"E 12.62 FT TO NLY R/W OF W 2ND STREET THENCE 30.96 FT ALONG SAID NLY R/W ALONG A NON-TANGENTIAL CURVE CONCAVE E HAVING A RADIUS OF 259.73 FT A CENTRAL ANGLE OF 06DEG 49'41" THE CHORD OF WHICH BEARS S04DEG18'34"W THENCE S00DEG53'43"W ALONG SAID NLY R/W 43.58 FT THENCE 63.82 FT ALONG SAID NLY R/W ALONG A NON-TANGENTIAL CURVE CONCAVE W HAVING A RADIUS OF 183.62 FT A CENTRAL ANGLE OF 19DEG54'54" THE CHORD OF WHICH BEARS S10DEG51'10"W THENCE S41DEG38'13"W 180.69 FT TO PT OF BEG, DULUTH PROPER THIRD DIVISION, property tax parcel number 010-1250-00330