

**MAXWELL STREET WATER MAIN
DEVELOPMENT AND ASSESSMENT AGREEMENT
CITY PROJECT NO. 1571**

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as “City” and THERESA CATHERINE SEVERANCE and DARRIN LEE SEVERANCE, husband and wife, hereinafter referred to as “Owner”.

WHEREAS, Owner is the owner of certain property having a street address of 3520 Maxwell Avenue in the City of Duluth, County of St. Louis, State of Minnesota, which property is hereinafter referred to as the “Property” and is legally described as follows:

Lots 13 to 22, inclusive, Block 1, COMAN’S SECOND
ADDITION TO DULUTH;

and

WHEREAS, Owner has petitioned the City to construct and install a new water main, 210 in length, within the right-of-way of platted Maxwell Avenue as hereinafter described as the “Project” and to have all costs thereof assessed against the Property as benefitted property as hereinafter set forth; and

WHEREAS, City had estimated the cost of the Project to be no more than \$20,000, on which basis the City Council approved Resolution No. 16- Ordering in the Project; and

WHEREAS, on September 28, 2016 the City received bids for the construction of the Project, the lowest of which was \$38,875, which would result in a total Project cost to the City of 38,875; and

WHEREAS, Owner is willing to agree to be assessed for the entire cost to the City of the Project as hereinafter set forth and agrees to the terms and conditions of this Agreement as hereinafter set forth; and

WHEREAS, City is willing to construct and install such improvements under the terms and conditions hereinafter set forth.

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

Article I.

Definitions

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

- A. Assess or Assessment Procedure: shall mean the act or process of collecting all or a portion of the cost of certain public improvements, street improvements by collecting the same from the owners of benefitted properties as provided for in Chapter IX of the Duluth City Charter.
- B. Engineer: shall mean the Duluth City Engineer or such other person as he may have designated from time to time in writing.
- C. Plans: shall mean the plans and specifications on file in the office of the Engineer bearing City Project No.1571.
- E. Project: shall mean the construction of a six (6) inch diameter water main extension plus or minus 210 feet in length in Maxwell Avenue including street and site restoration, all as shown on the Plans.
- F. Property: shall mean the property in St. Louis County, Minnesota described above.

ARTICLE II

Plans

- A. Plans
Owner hereby acknowledges that it has reviewed the Plans as herein defined, that Owner has consulted with and received any necessary advice from design professions they deem necessary for review of the Plans and hereby approves the Plans and agrees to be assessed, as hereinafter provided, for Owner's share of the costs of constructing the Project in substantial conformance therewith, subject to Paragraph B below.
- B. Changes After Initial Approval
At any time, he or she shall determine it reasonably necessary or advantageous to the City to do so, the Engineer may change or cause to have changed the Plans without the prior consent or approval of the Owner as long as such changes do not have a material deleterious effect on the ability of the Project to serve the needs of the Owner.

ARTICLE III

City Construction Obligations

City hereby agrees that, upon the signing of this Agreement, it will construct or cause to be

constructed the Project City agrees to use its best efforts to cause construction of the Project to be completed prior to July 1, 2017 but City shall have no liability to Owner or any other person or entity if, despite such best efforts, City is unable to complete said construction by said date. In such event City will proceed to cause construction of the Project to be completed as soon as it can reasonably do so, subject to reasonable legal and practical constraints.

ARTICLE IV

Costs of Project

A. Benefits of and Payment for the Project

Owner agrees that the construction of the Project constitute public improvements which confer special benefits accruing to the Property which equals or exceeds the amount of Thirty-eight Thousand Eight Hundred Seventy-Five Dollars (\$38,875). It is hereby stipulated and agreed that value of the benefits conferred upon the Property are equal to or exceed the amounts to be assess against Property, without reference to any benefits conferred upon other benefitted properties.

B. Owner Agrees to Assessment

Because the Owner agrees that the value of the benefits to the Property arising out of the construction of Project equals or exceeds the anticipated costs thereof, Owner agrees to accept and to pay an Assessment in the amount of up to Thirty-eight Thousand Eight Hundred Seventy-Five Dollars (\$38,875) levied against the Property by City to defray the costs of said improvements. Said Assessment shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect which rate is currently estimated to be Three and 5/10th (3.5 %) percent per annum.

C. Waiver of Defenses

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

ARTICLE V

General Defaults by Owner and Remedies Therefore

A. General Events of Default

The following shall be deemed to be general events of default by Owner under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement: Owner shall fail to make any payment on any Assessment levied against the Property pursuant to Article VII above, or any installment thereof in a

timely manner and in full; provided, however, that to the extent only an installment or a portion of said Assessment(s) is due, then "in full" shall only mean such installment or portion then due.

B. General Remedies

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

1. Seek and be entitled to monetary damages, including consequential damages from Owner for any damages, including consequential damages incurred by City as a result of Owner's default.
2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Owner's violation of the terms and conditions of this Agreement or to compel Owner's performance of its obligations hereunder.
3. Enforce the assessment against the benefitted property and collect any sums due and owing thereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Non-Waiver

The waiver by City of any default on the part of Owner or the failure of City to declare default on the part of Owner of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

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

ARTICLE VI

Force Majeure

Under the terms of this Agreement, neither the City nor Owner shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not

limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE VII

Term

Except as provided for below, the term of this Agreement shall run from the date first above shown until July 1, 2017 or the completion of construction of the Project, whichever occurs first unless this Agreement is otherwise terminated as hereinbefore provided for. Nothing to the contrary in the foregoing withstanding the terms and conditions of Articles III, IV and V shall survive the term or termination or both of this Agreement for so long as is necessary to give effect to their provisions.

Article VIII

Runs With the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE IX

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 or deposited with a nationally recognized overnight courier service for next business day delivery to:

In the case of City:

City of Duluth
Office of the City Clerk
Room 326, City Hall
Duluth, MN 55802

In the case of Owner:

Theresa & Darrin Severance
114 West Mankato Street
Duluth, MN 55803-1932 .

ARTICLE X

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.

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

CITY OF DULUTH, a Minnesota
Municipal Corporation

By _____
Its Mayor

Theresa Catherine Severance

Attest:

By _____
Its City Clerk

Darrin Lee Severance

Date

“Owner”

Approved:

Countersigned:

Assistant City Attorney

City Auditor

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

The foregoing instrument was acknowledged before me this ____th day of_____, 2016 by THERESA CATHERINE SEVERANCE and DARRIN LEE SEVERANCE, husband and wife, Owner.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____th day of _____, 2016, by Emily Larson and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a municipal corporation, on behalf of the City.

Notary Public

Drafted by:
Robert E. Asleson
Assistant City Attorney
Room 410 City Hall
Duluth, MN 55802
(218) 730-5490