

**DEVELOPMENT AGREEMENT
CITY OF DULUTH
FATHERS RISE TOGETHER
319 N 28TH Ave W**

THIS AGREEMENT entered into as of the date of attestation hereto by the City Clerk, by and between the CITY OF DULUTH, hereinafter referred to as "City", and FATHERS RISE TOGETHER, a 501(c)(3) non-profit corporation, created and existing under Minnesota Statute (1989) Chapter 317A, hereinafter referred to as "Developer".

WHEREAS, Developer owns certain Property in St. Louis County, Minnesota legally described as South 40 feet of Lot 450 and 452 AND that part of lot 454 lying within 40 feet of the North line of the alley, Block 117, DULUTH PROPER SECOND DIVISION and the buildings thereon and has proposed to develop the Project as hereinafter described which includes the demolition of the existing buildings and the construction on said Property of one single family structure, not to be less than 2,500 square feet, and a minimum of three (3) bedrooms, long-term housing unit.

WHEREAS, the buildings on the Property are deteriorated beyond repair due to a lack of utilities and general disrepair and said buildings have been condemned for human habitation, increasing the cost of the Project or any development at the property; and

WHEREAS, City established a program to mitigate blight and encourage redevelopment of blighted property under its local Community Development program using federal Community Development Block Grant funding, with said blight mitigation program providing an amount not to exceed \$35,000 to cause the razing of blighted buildings consistent with blight mitigation program parameters, contingent on redevelopment projects proceeding; and

WHEREAS, Developer has requested assistance from City for the demolition of the existing building(s) in conjunction with the redevelopment of said Property and the City has determined that the development of said Project on the Property as is hereinafter set forth, would not be economically viable without assistance; and

WHEREAS, the City 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;

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. City: means the City of Duluth.
- B. Director: means the Director of Planning and Economic Development 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.
- C. Long Term Housing: means housing occupied specifically by men who are previously involved in the criminal justice system and who are looking to reintegrate back into the community. All occupants must qualify for and meet the Minnesota Department of Human Services Housing Stabilization Services requirements.
- D. Plans: means the plans, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations for the Project approved pursuant to Paragraph A of Article III below.
- E. Project: means the development on the Property by Developer of a three-bedroom residential structure at least 2,500 square feet in size to be used by Developer exclusively for Long Term Housing.
- F. Property: means that Property located in St. Louis County, Minnesota, legally described as:

South 40 feet of Lot 450 and 452 AND that part of lot 454 lying within 40 feet of the North line of the alley, Block 117, DULUTH PROPER SECOND DIVISION
- G. Demolition: means the demolition and removal of all buildings from the Property to ground level and the filling of foundations.

ARTICLE II

Structure Demolition

- A. Hazardous Material Remediation: City agrees to contract for the services of a contractor that will test for the existence of hazardous material such as asbestos, lead, and other hazardous materials in the buildings on the Property prior to the demolition of said buildings at its cost. If hazardous materials are found to be present, City will contract, at its expense, for the services of a contractor which will remediate and/or dispose of such material prior to demolition.
- B. Demolition work: Following completion of the mitigation work described in Paragraph A above, City will contract for the services of a contractor to complete demolition of the buildings on the Property. The scope of demolition shall be limited to demolition of buildings on the Property and backfill of the foundation. City shall work with Developer to ensure backfill to have less than 7% passing #200 sieve. Developer will be responsible for backfill compaction to 95% Standard proctor density and hiring a testing agency to confirm proper compaction has been achieved for future residential home construction on this site. City will not include in the demolition contract the cost of any extra grading or soil work or any work below the surface of the ground on the Property, utility connection including utility disconnects, or any work that will be considered more than demolition and backfill.
- C. Access to Property: Developer hereby grants an unrestricted and unlimited license to City and its contractors to enter onto the Property to perform the work required of the City under this Paragraph from the time effective date hereof until the work required of the City by the Paragraph has been successfully and totally completed.

ARTICLE III

Project Plans and Construction

- A. Project Plans: Plans including site plans for the Project shall be submitted for approval by the Director no later than December 31st, 2023. The Plans shall include the requirements that the Developer place compacted engineered granular backfill in 12" maximum lifts up to existing site grade elevations. The Director may, in the exercise of his or her discretion in writing, extend the date for Plan submittal for up to ninety (90) days from the aforementioned date. Plans must conform to all applicable building, zoning, or other codes or ordinances.

The Director shall approve or disapprove the Plans in writing no later than fifteen (15) days of receiving the Plans. Any disapproval shall be accompanied by written reasons for such disapproval. Upon disapproval by the Director, the Developer shall submit revised Plans responding to the reasons for disapproval within thirty (30) days of such disapproval. The process of submission and approval or disapproval shall continue until the Plans are approved.

- B. Construction: No later than ninety (90) days after receiving written comments from the Director, Developer shall apply for a building permit for the Project from the City's Construction Services and Inspection Division ("CSI") along with the payment of all required permit fees and shall commence construction of the Project no later than sixty (60) days after issuance of the building permit for the Project.
- C. Project Completion: Project must be completed and the Developer must have obtained a certificate of occupancy for the Project before May 31, 2025. The Director may, in the exercise of his or her discretion extend the date for completion of the Project for up to ninety (90) days from the aforementioned date. The request must be submitted to the Director in writing no later than April 1, 2025.
- D. Maintenance and Operation: The Project shall be continuously used for the provision of Long Term Housing as defined herein for not less than ten (10) years from the date of the issuance of the Certificate of Occupancy by the CSI. In addition, the Project shall remain in compliance with local building and maintenance codes throughout the duration of this agreement and any and all rental licenses shall not be allowed to lapse.

ARTICLE IV

Developer Defaults and Remedies Therefor

- A. Events of 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. Any Notice of Default shall be submitted to the Developer in writing, by registered mail, and developer shall be allowed thirty (30) days to cure.
 - 1. Developer fails to submit to the Director, after demolition, Project Plans by the date stated in Article III, Paragraph A.
 - 2. Developer shall fail to have completed construction of the Project and to receive a certificate of occupancy for the units by the date provided for in Article III

Paragraph C above.

3. Developer shall fail to pay real estate taxes as and when due and payable.
4. Developer shall fail to maintain and operate the units in a safe, clean, and habitable condition that adheres to all maintenance codes as set forth in Chapter 29A of the City of Duluth Municipal Code.
5. Failure to use the Project for the provision of Long Term Housing as defined herein for at least ten (10) years as required by Article III Paragraph D above.
6. 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 City 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.
7. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property in the amount of the cost of demolition

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

1. Terminate this Agreement.
2. Demand and be entitled to recover from Developer all costs to the City of mitigating environmental conditions on the Property and all costs of demolition incurred by City under Article II above.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Non-Waiver. The waiver by City of any default on the part of Developer or the failure of City to declare default on the part of Developer of any of its obligations pursuant to this

Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of 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. 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.
- E. Attorneys' Fees. In the event that Developer is in default of any of the terms and conditions of this Agreement and City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE V

Representations by the City

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

- A. It is a lawfully incorporated City 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 City, threatened against City or any property of City in any court or before any federal, state, municipal or governmental agency which, if decided adversely to City, would have a material adverse effect upon City or any business or property of City and City is not in default with respect to any order of any court or government agency.
- C. City will perform all of its obligations under this Agreement.

ARTICLE VI

Developer's Representations and Warranties

Developer represents and warrants that:

- A. 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 Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- B. 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.
- C. 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 federal Davis-Bacon). 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.
- D. 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.
- E. 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 City or any third party under this Agreement to be true, correct, and complete in all material respects.

ARTICLE VII

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 VIII

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City: City of Duluth
 Attn: Brett Crecelius
 Room 160 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of Developer: Fathers Rise Together
 201 East 1st Street
 Suite 3-4
 Duluth, MN 55802

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 IX

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by City or 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 City, Developer and/or any third party.

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

ARTICLE XII

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 XIII

Authorization to Execute Agreement

Developer represents to City 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 XIV

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 XV

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 XVI

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, 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 XVII

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 XVIII

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.

[Remainder of this page is intentionally left blank.]

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

CITY OF DULUTH:

a municipal corporation organized and existing under the laws of the State of Minnesota

By: _____
Its Mayor

Attest: _____
Its: City Clerk

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
City Attorney

DEVELOPER:

FATHERS RISE TOGETHER, a 501(c)(3) non-profit corporation

By: _____

Name: _____

Its: _____

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

This instrument was acknowledged before me on _____, 20____
by _____, the _____ of Fathers Rise Together, a
Minnesota 501(c)(3) non-profit corporation, on behalf of the corporation.

Notary Public

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

This instrument was acknowledged before me on _____, 2022, by Emily Larson, Mayor of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

[illegible]

This instrument was acknowledged before me on _____, 2022, by Ian Johnson, City Clerk of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

[illegible]

This instrument was acknowledged before me on _____, 2022, by Rebecca St. George, City Attorney of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

[illegible]

This instrument was acknowledged before me on _____, 2022, by Josh Bailey, Auditor of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

This instrument was drafted by:

Office of the City Attorney
Room 440 City Hall
411 West 1st Street
Duluth, MN 55802-1198