

Memorandum of Understanding

This Memorandum of Understanding (the “**Memorandum**”) is entered into effective as of June 15, 2023 by and among the **City of Vadnais Heights, Minnesota**, a municipal corporation and home rule charter city (the “**City**”), and The Luther Company LLLP, a Minnesota limited liability limited corporation (“**Developer**”).

RECITALS

A. Developer owns that certain land located in Vadnais Heights, Minnesota, adjacent to the Trunk Highway (TH) 61 from 870 feet south of Hoffman Road to Hoffman Road, including State Project 6222-187 (TH 61=001) (“**Project**”).

B. The City has entered into, or contemporaneous with this Memorandum plans to enter into, a certain Cooperative Construction Agreement with the Minnesota Department of Transportation, MnDOT (“**MnDOT**”), MnDOT Contract No. 1035921 (“**Coop Construction Agreement**”).

C. Under the terms of the Coop Construction Agreement, the City has agreed to pay MnDOT for certain services related to the operation and maintenance of the Signal System and Emergency Vehicle Preemption System at the Project, as further described under the Coop Construction Agreement (“**Improvements**”). Any terms not defined under this Memorandum shall be as defined under the Coop Construction Agreement.

D. The City and Developer desire to provide for funding of the Improvements, under certain understandings and agreements, as set forth in this Memorandum.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing factual statements and other good and valuable consideration, the parties hereto hereby set forth below their mutual understanding and agree as follows:

1. **Developer Financial Contribution.** The Developer shall make a **\$72,538.30** cash contribution for the Improvements (the “**Improvements Cash Contribution**”) upon Developer’s receipt of a written request from City for the advancement of funds, which shall include a signed copy of the finalized Coop Construction Agreement.

2. **City Acceptance of Developer Contribution.** The City acknowledges and agrees that the Improvement Cash Contribution satisfies all Developer funding requirements for the Improvements under the Coop Construction Agreement.

3. **Additional Documents.** When reasonably requested to do so by another party, each party shall execute or cause to be executed any further documents as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Memorandum.

4. **Authority.** The parties represent to each other that this Memorandum has been fully authorized, that all persons signing for each party below have authority to bind the respective party, and that no further approvals are required.

5. **Entire Agreement and Amendment.** This Memorandum represents the entire agreement between the parties with respect to its subject matter. This Memorandum may not be amended or modified except in writing properly subscribed by each party hereto.

6. **Assignment.** This Memorandum may not be assigned by any party hereto without the prior written consent of the other parties.

7. **Binding Effect.** The terms and conditions of this Memorandum shall be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties hereto.

8. **Counterparts and Electronic Signatures.** This Memorandum may be executed in any number of counterparts, all of which are considered one and the same Memorandum notwithstanding that all parties hereto have not signed the same counterpart. Signatures of this Memorandum which are transmitted by either or both electronic or telephonic means (including, without limitation, facsimile and email) are valid for all purposes. This Memorandum may be executed using electronic signatures, including DocuSign and Adobe Sign, and such similar electronic signature capabilities.

9. **Notices and Demands.** Any notice, demand or other communication under this Memorandum by any party to any other shall be in writing and shall be sufficiently given or delivered if it is dispatched by reputable overnight courier, sent registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and addressed to:

If to City: Kevin Watson, City Administrator (or successor)
800 East County Road E, Vadnais Heights, MN 55127
(651) 204-6010
kevin.watson@cityvadnaisheights.com

If to Developer: Linda McGinty, VP Real Estate
The Luther Company LLLP
3701 Alabama Avenue, St. Louis Park, MN 55416
(952) 258-8814
Linda.McGinty@lutherauto.com

With a copy to: Kate Uding, General Counsel
The Luther Company LLLP
3701 Alabama Avenue, St. Louis Park, MN 55416
(952) 258-8821
Legal@lutherauto.com

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

10. **City Regulatory Authority.** Nothing in this Memorandum shall be construed to limit or modify the City's regulatory authority.

[Remainder of page intentionally left blank; signatures on following page(s)]

[Signature Page to Memorandum of Understanding]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first written above.

City of Vadnais Heights

By: _____
Its: Mayor

By: _____
Its: City Administrator

The Luther Company LLLP

By: _____
Linda McGinty, VP Real Estate