

# Exhibit A

## USE AGREEMENT BETWEEN CITY OF DULUTH AND DULUTH LIBRARY FOUNDATION

THIS USE AGREEMENT is entered into by and between the CITY OF DULUTH, a Minnesota municipal corporation, through its public library ("Library") and the Duluth Library Foundation, a Minnesota non-profit corporation ("Foundation").

The parties acknowledge the following:

A. The Foundation was established in 1990 to support the Library by building private financial support, deepening public commitment to the Library, and enlarging the visibility of the Library and its positive presence in the community; and

B. The Library maintains office space in room 14B on the Michigan St. level of the main library located at 520 W. Superior St., Duluth, MN, all of which is currently used by the Foundation ("Premises"); and

C. The Foundation currently uses telecommunication services, including phone and internet services, provided by the Library; and

D. The Library and the Foundation desire to enter into a Use Agreement to formalize the current arrangement and allow the Foundation to utilize the Premises and address matters related to the expense of telecommunication services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. USE OF PREMISES. The Foundation may have non-exclusive use of the Premises for conducting Foundation business on behalf of the Library at no cost.

2. TELECOMMUNICATION SERVICES. The Library will provide the Foundation with the following telecommunications services, including normal telephone services, internet connectivity and wire and wireless communication (voice and data) equipment and related network connection and access services with bandwidth up to OC-12 described in detail as follows:

<b>Service</b>	<b>Fee paid by Foundation</b>
Internet access	\$15.00/month
Phone service including dial tone/non-analog/voicemail	\$20.00/month
Phone device maintenance	\$2.50 per phone/month

Phone programming and reasonable technical phone support	At no charge to Foundation
--	----------------------------

The Foundation agrees to utilize the telecommunication services provided by the library solely for conducting Foundation business on behalf of the Library.

All fees are subject to change on the anniversary date of this Agreement. The Library will provide the Foundation with written notice of any increases at least thirty (30) days prior to the end of the then current year. The telecommunication services provided by the Library do not include PC/Laptop/Printer equipment or technical PC/Laptop/Printer support.

3. COPY SERVICES. The Library will allow the Foundation reasonable use of the Library's copy services at no charge.

4. DATA SECURITY. The Library will not be liable for any claims or damages resulting from the Foundation's failure to meet data security standard best practices or any other regulatory security compliance standards required. The Foundation acknowledges and agrees that it is responsible for all costs associated in meeting its network security requirements including having up to date virus protection with live monitoring and monthly full scans scheduled on each PC. The Library will not be liable for internet hacks or infections to Foundation owned equipment.

5. EXCLUSION OF WARRANTIES.

a. All services are provided "as is" without warranty or representation of any kind. Without limiting the generality of the foregoing, the Library hereby disclaims all other representations, warranties and conditions, express or implied, whether arising under statute, from a course of dealing, usage, custom or the trade or otherwise, regarding the services provided or failed to be provided under this agreement.

b. The Library does not warrant that the services provided hereunder will be unaffected by bugs, viruses, errors or other program limitations, nor does Library warrant that the Foundations use thereof will be uninterrupted, error free or will meet all of the Foundation's requirements. In addition, the wireless data services are not guaranteed against eavesdroppers, hackers, denial of service attacks or interceptors and the Library does not guarantee the privacy or security of wireless transmission.

6. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2023, and shall continue through December 31, 2028, unless terminated in accordance with Section 7 of this agreement.

7. TERMINATION.

a. Either party may terminate this Agreement with or without cause with at least sixty (60) days' written notice to the other party.

b. All personal property remaining on the Premises upon expiration of Agreement Term or after thirty (30) days of termination, whichever occurs first, shall become exclusive property of Library.

8. ACCESS. The Library expressly reserves the right to the unlimited access to the Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection and ensuring that the provisions of this Agreement are complied with by the Foundation.

9. HOLD HARMLESS. The Library shall not in any way be liable or responsible for any accident or damage that may occur in the Foundation's use of the Premises during the term of this Agreement. The Foundation agrees to defend, indemnify, and save harmless the Library, and its officers, agents, servants, and employees from any and all liens, judgments, or claims.

10. INSURANCE. The Foundation shall procure and maintain continuously in force a policy of insurance covering all of its activities on the Premises. A Comprehensive General Liability Insurance policy shall be maintained in force by the Foundation throughout the life of this Agreement in an amount not less than \$1,000,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,000,000 single limit coverage per occurrence. Such coverage shall include all Foundation activities occurring on or within the Premises whether said activities are performed by employees or agents under contract to Foundation. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days' written notice to the Library. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph.

The Foundation shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

11. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Foundation as an agent, representative, or employee of the Library for any purpose or in any manner whatsoever.

12. ASSIGNMENT. The Foundation shall not in any way assign or transfer its rights or interests under this Agreement or subcontract with any other party without the prior written consent of the Library Manager.

13. WAIVER. The waiver by the Library or the Foundation of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

14. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to The Duluth Public Library, 520 W. Superior St. Duluth, MN 55802, ATTN: Library Manager; and addressed to Duluth Library Foundation, 520 W. Superior Street, Duluth, MN 55802, ATTN: Executive Director or to such other persons or addresses as the parties may designate to each other in writing from time to time.

15. APPLICABLE LAW. This Agreement, together with all of its paragraphs, terms, and provisions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

16. AMENDMENTS. Any amendments 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.

17. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

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

CITY OF DULUTH

DULUTH LIBRARY FOUNDATION

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its President

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

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

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Its Executive Director

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

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

Countersigned:

\_\_\_\_\_  
City Auditor

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

Approved as to form:

\_\_\_\_\_  
City Attorney