

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), effective as of the date of attestation thereto by the Duluth City Clerk (the "Effective Date"), 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 LAMETTI & SONS, INC., a Minnesota corporation, hereinafter referred to as "Owner".

WHEREAS, Owner is the owner of that real property hereinafter referred to as the "Property" located at 2385 Becks Road in Duluth, Minnesota (Tax Id Parcel No. 450-10-05040); and

WHEREAS, City, through its contractor, desires to repair the Sargent Creek railroad trestle footing adjacent to the Property (the "Project"), and

WHEREAS, in order to conduct the Project, City desires a license over the Property for purposes of access and for laydown/staging of materials and equipment; and

WHEREAS, Owner desires to assist City by allowing access and laydown/staging of materials and equipment over the Property.

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

1. The License

Owner grants to City an approximately fifteen (15) foot wide non-exclusive License over those portions of the Property labeled as "Site Access Route" and an approximately 100 foot by 100 foot wide non-exclusive License over those portions of the Property labeled as "Laydown/Staging Area" on the attached Exhibit A (the "Premises").

2. Use of the Premises

The Premises shall be used solely for purposes of access to and from the Project site and laydown/staging of equipment and materials for the Project, and for no other purpose.

3. Term

The term of this Agreement shall begin on the Effective Date, and continue through November 1, 2019, or until the Project is completed, whichever is later.

4. License Fee

City shall have the use of the Premises at no cost.

5. Assignment/subcontracting

It is agreed to and understood between the parties that City will hire a contractor to perform the work on the Project, and that the rights granted to City under this Agreement extend to City's contractor.

6. Insurance

As part of City's process of contracting for the Project work and prior to entering onto the Premises, City will require that City's contractor agrees to indemnify Owner and that Owner be named as an additional insured. Such indemnification and insurance shall be the same indemnification and insurance required by City for its protection.

7. Maintenance

City agrees to exercise reasonable care in the maintenance of the Premises during the term of this Agreement. If any action of City's contractor in the exercise of this Agreement results in damage to the Premises, City will require its contractor to repair such damage done to the Premises during the term of this Agreement.

8. Tools and Equipment

All tools, equipment and other property taken upon or placed upon the Premises by City or its contractors shall remain the property of City or its contractors and shall be removed by City or its contractors within fifteen days (15) of termination of this Agreement.

9. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Owner or City as an agent, representative or employee of the other for any purpose or in any manner whatsoever.

10. Notices

Notices to be given hereunder shall be deemed to be sufficient if emailed and deposited in the U.S. Mail, postage prepaid to the address set forth below or if sent by overnight mail to the address set forth below unless a party shall send notice to the other party as herein provided directing that such notices shall be sent to a different address:



In the case of City: City of Duluth  
Attn: Jim Shoberg  
411 West First Street, Room 17  
Duluth, MN 55802  
Email: [jshoberg@duluthmn.gov](mailto:jshoberg@duluthmn.gov)

In the case of Owner: Lametti & Sons, Inc.  
Attention: Mark Jay  
2385 Becks Road  
Duluth, MN 55810  
Email: [markj@lametti.com](mailto:markj@lametti.com)

11. Waiver

Any waiver by either party of any provision of this Agreement must be in writing and shall not imply a subsequent waiver of that or any other provision.

12. 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. All proceedings related to this Agreement shall be venued in St. Louis County, Minnesota.

13. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

14. 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.

15. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

16. Entire Agreement

This Agreement, including Exhibit A, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

LAMETTI & SONS, INC.,  
a Minnesota corporation

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

By: \_\_\_\_\_  
Title

Attest:

By: \_\_\_\_\_  
Its City Clerk

\_\_\_\_\_, 2019  
Date

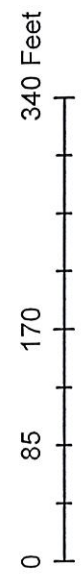
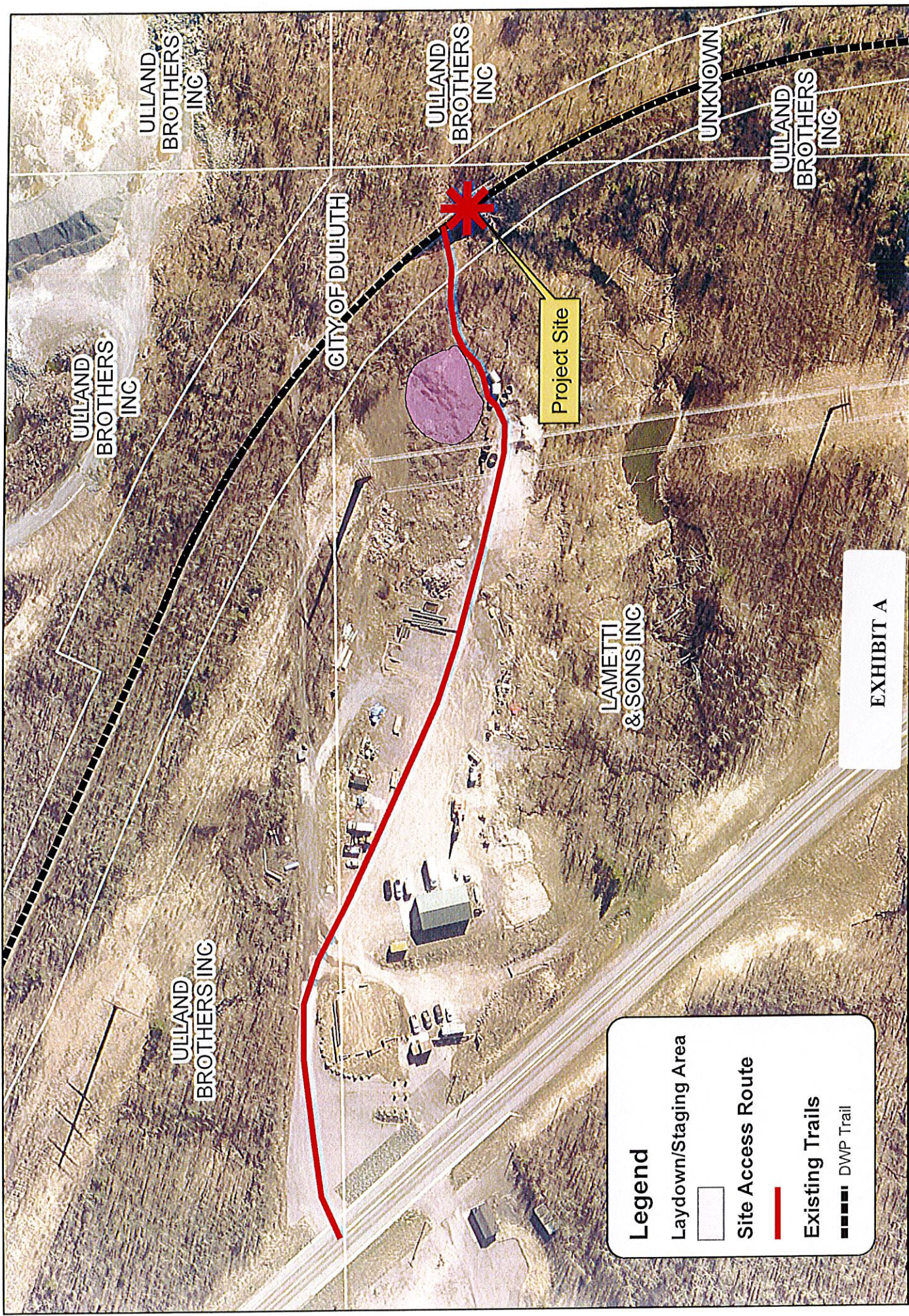
Countersigned:

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

Approved:

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





# Sargent Creek Bridge & Creek Restoration

