

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY, a Minnesota non-profit corporation ("LSMR"), and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the "City").

The parties acknowledge the following:

A. The City owns or otherwise has an interest in property containing railroad trackage that is more commonly known as the former Burlington Northern, Inc. Spirit Lake to West Duluth Branch Line, lying between Commonwealth Avenue in New Duluth and Spring Street in the plat of Riverside (the "Property").

B. LSMR has, under previous agreements that are now expired, used the Property for excursion train purposes during the summer and fall seasons.

C. LSMR and the City desire to enter into this Agreement to allow LSMR to continue to use the Property in the summer and fall seasons for excursion train purposes.

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

I. THE LICENSE.

A. Subject to the terms and conditions set forth in this Agreement, the City grants to LSMR an exclusive license to use that portion of the Property lying within nine feet of both sides of the centerline of the railroad trackage, as depicted on the attached Exhibit A (the "Licensed Premises") for excursion train purposes. LSMR may use the Licensed Premises for: (i) operation of excursion trains having a capacity of up to 200 passengers and required crew complement on the railroad trackage; (ii) performance of necessary maintenance and use of safety equipment; and (iii) testing and inspection of LSMR's safety equipment and trackage. LSMR may charge a fee to passengers boarding the excursion trains, with all net receipts used for the restoration, maintenance and operation of the trackage and the advancement of LSMR's programs and events.

B. In the event the planned U.S. Steel environmental remediation proceeds during the Term (defined below), the City may unilaterally reduce the Licensed Premises upon written notice to LSMR (the "Notice"). In that case, the "Licensed Premises" as defined in this Agreement shall automatically be reduced to the area shown in the Notice, with no need for a written amendment to this Agreement. In the event the Licensed Premises is reduced pursuant to this paragraph, LSMR will be permitted to continue to use that portion of the Licensed Premises lying to the east of the U.S. Steel environmental remediation project.

C. LSMR shall operate its excursion trains in accordance with the following regulations:

1. All operating crew members shall (i) have passed a book of rules test; (ii) be qualified and under the direct supervision of a person who is qualified per Federal regulations and has experience in a railroad environment and who has experience in the duties in which he or she will qualify other individuals to perform.

2. The maximum operating speed of all equipment shall be 10 miles per hour.

3. All equipment and excursion trains shall be operated utilizing best practices as determined by the guidelines of the U.S. Department of Transportation Federal Railroad Administration. All maintenance, safety, testing and inspection shall utilize best practices as determined by the guidelines of the U.S. Department of Transportation Federal Railroad Administration.

LSMR represents and warrants that it shall perform its operations in a professional and diligent manner and in compliance with all applicable laws and regulations.

D. LSMR acknowledges and understands that the Property is public property, and the cooperation of all users and coordination of activities is required. This cooperation includes ingress and egress and use of amenities and related improvements. LSMR agrees that the City's Property and Facilities Manager shall ultimately determine the appropriate use of the Property and shall decide any disputes between LSMR and any other users of the Property.

E. LSMR's use of the Property shall in no way limit or restrict the City's or the public's use of the Property. The City shall continue to enjoy unlimited access to the Property during the Term (defined below).

F. LSMR shall be responsible for all of its employee compensation in connection with the operation of excursion trains or use of the Licensed Property, including but not limited to payroll and all other expenses. LSMR's staff members shall be employees or agents solely of LSMR and not employees or agents of the City.

G. LSMR may use the Licensed Premises only for the express purpose permitted by this Agreement and for no other purpose. The only rail cars that may access the Licensed Premises are rail cars that are used for excursion train purposes or for maintenance purposes.

H. The City reserves the right to access the Licensed Premises upon 24 hours prior notice to LSMR during the Term for the purposes of inspection and ensuring that the provisions of this Agreement are complied with by LSMR.

I. LSMR acknowledges that this Agreement only pertains to the Licensed Property and agrees to obtain the proper permissions from other property owners, if necessary.

II. MAINTENANCE OF TRACKAGE.

A. LSMR shall be responsible for the upkeep and maintenance of all trackage, ballast, trestles, bridges, switches, and other rail facilities and infrastructure on the Licensed Property or otherwise covered by this Agreement (collectively, the "Equipment"). In the performance of the upkeep and maintenance, LSMR shall comply with all local, state, and federal legislation and regulations and shall obtain all necessary permits and licenses required before any work is performed.

B. LSMR's upkeep and maintenance of the Equipment shall be completed in a manner that is reasonably necessary to keep the Equipment in a safe condition for LSMR's operations. The upkeep and maintenance shall be completed within the Licensed Premises. Any upkeep or maintenance work on the Property but outside of the Licensed Premises requires prior written approval by the City's Director of Public Administration and will be approved only after all other required permits or licenses are secured.

III. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall commence on or about March 1, 2019, and shall continue through December 31, 2023 (the "Term"). Notwithstanding the Term, LSMR may only use the Licensed Premises between March 1 and November 30 of each calendar year during the Term.

IV. LICENSE FEE. LSMR may use of the Licensed Premises at no cost. The parties agree that public benefit of LSMR's operations and its obligations under this Agreement shall be considered adequate consideration.

V. TERMINATION OR EXPIRATION.

A. Without Cause. Either party may terminate this Agreement without cause by providing at least sixty (60) calendar days' written notice to the other party.

B. For Cause. The City may terminate this Agreement for the material breach by LSMR of any provision of this Agreement if such breach is not cured to the satisfaction of the City within seven (7) days of delivery of a written notice by the City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach.

C. Immediately. The City may terminate this Agreement immediately on notice to LSMR if the City believes in good faith that the health, welfare, or safety of occupants or neighbors of the Property would be placed in immediate jeopardy by the continuation of this Agreement.

D. Surrender Possession. Upon expiration of the Term or termination of this Agreement for any reason, LSMR will surrender possession of the Licensed Property to the City in as good condition and state of repair as the Licensed Property was in on the first date of the Term. Upon expiration of the Term or termination of this Agreement for any reason, LSMR shall restore the Licensed Property to its original condition on the first day of the Term or, upon demand, pay to the City the reasonable costs incurred by the City to repair any damage done to the Licensed Property by LSMR, its employees, servants, agents, contractors, invitees, tenants and licensees.

VI. CITY WARRANTY. The City makes no representation that the Licensed Property is suitable for any particular purpose or specific uses and LSMR accepts the Licensed Property in an "as is" condition without representations or warranties of any kind. The City shall have no duty to maintain or repair the Licensed Property.

VII. ALTERATIONS. LSMR agrees to exercise reasonable care and best practices in utilizing the Licensed Property to minimize any permanent impacts to the Licensed Property. LSMR shall not make any alterations or improvements to the Licensed Property (other than routine maintenance) without the prior written consent of the City and then upon the terms and conditions which may be imposed by the City.

VIII. HOLD HARMLESS. LSMR agrees to defend, indemnify, and save harmless the City, and its officers, agents, servants, and employees from any and all liens, judgments, claims (including those for contribution and indemnity), suits, demands, liability, costs, damages, and expenses asserted by any person or persons including agents or employees of the City by reason of death or injury to person or persons or the loss or damage to property or any cause of action arising out of or in connection with or relating to LSMR' use or occupancy of the Property, except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of the City and its officers, agents, servants or employees or any pre-existing environmental conditions. On ten days' written notice from the City, LSMR will appear and defend all lawsuits against the City growing out of such injuries or damages, using counsel acceptable to the City. This obligation shall survive expiration, cancellation or termination of this Agreement for any reason.

IX. INSURANCE.

A. LSMR shall procure and maintain continuously in force a policy of insurance covering all of its activities on the Licensed Property. A Commercial General Liability Insurance policy shall be maintained in force by LSMR throughout the Term in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injuries and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage or One Million Five Hundred Thousand Dollars (\$1,500,000.00) single limit coverage per occurrence. Such coverage shall include all LSMR activities occurring on or within Licensed Property whether said activities are performed by employees,

agents, or volunteers of LSMR. The City does not represent or guarantee that these types or limits of coverage are adequate to protect LSMR's interests and liabilities.

B. LSMR shall provide the City with Certificates of Insurance evidencing the required insurance coverages. The insurance policies must include a 30-day written notice of cancellation, non-renewal, or material change provision in favor of the City. The required policies of insurance shall be in a form and contain all coverages acceptable to the City Attorney. The City shall be named as an additional insured on the policies of insurance required by this Agreement. When using the "Accord" Certificate form cancellation provisions, the words "endeavor to" on- Line 2 must be deleted. As an additional insured under the insurance contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named Insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage."

C. The City reserves the right to require LSMR to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.

D. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.

E. The City shall not be liable to LSMR for any injury or damage resulting from any defect in the construction or condition of the Property, nor for any damage that may result from the negligence of any other person whatsoever.

F. If at any time LSMR has employees, then it shall provide satisfactory proof of Statutory Minnesota Workers' Compensation Insurance.

X. INDEPENDENT CONTRACTOR. Nothing contained in this Agreement 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 LSMR or LSMR's personnel as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. LSMR and its employees shall not be considered employees of the City and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of LSMR's employees or agents while so engaged, shall in no way be the responsibility of the City.

XI. ASSIGNMENT. LSMR 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 City's Chief Administrative Officer.

XII. LAWS, RULES AND REGULATIONS. LSMR will conduct its activities related to the Licensed Property in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, including, but not limited to, all laws, rules,

and regulations relating to accessibility standards under the Americans with Disabilities Act. LSMR shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. LSMR agrees to procure, at its own expense, all licenses and permits necessary for carrying out its obligations under this Agreement.

XIII. RECORDS RETENTION. LSMR agrees to maintain all books, records, documents, and other evidence pertaining to this Agreement for six (6) years after termination or expiration of this Agreement for any reason.

XIV. DATA PRACTICES. The City and LSMR shall comply with the Minnesota Data Practices Act, Minn. Stat. Chapter 13, as it applies to all data relating to this Agreement. LSMR agrees to hold the City, its officers, and employees harmless from any claims resulting from LSMR's failure to comply with this law.

XV. WAIVER. The waiver by the City or LSMR of any breach of any term, covenant, or condition contained in this Agreement, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

XVI. SEVERABILITY. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

XVII. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which may be waived at any time by mutual agreement between the parties.

XVIII. NOTICES. Notices pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to.

City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, Minnesota 55806
(218) 730-4436

Lake Superior and Mississippi
Railroad Company
Attn: Joel Manns, President
P.O. Box 16211
Duluth, Minnesota 55816
(218) 340-3751

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

XIX. TAXES. LSMR shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of LSMR's use and maintenance of the Licensed Property, including sales taxes, if applicable. The City may pay the same on behalf of LSMR and immediately collect the same from LSMR. LSMR shall further be obligated to collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

XX. COMPLIANCE WITH AGREEMENT. The rights of LSMR to use the Licensed Property are subject to LSMR's compliance with the undertakings, provisions, covenants, and conditions herein.

XXI. 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.

XXII. AMENDMENTS. Except as set forth in paragraph I.B., any amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

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

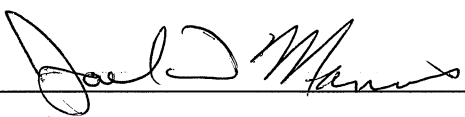
XXIV. ENTIRE AGREEMENT. This Agreement, including any exhibits, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

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

CITY OF DULUTH, MINNESOTA

LAKE SUPERIOR AND MISSISSIPPI
RAILROAD COMPANY

By: _____
Mayor

By:  _____

ATTEST:

Its: PRESIDENT

City Clerk

Date Attested: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney

Printed Name: JOEL D. Manns

Date: 1 May 2019



Printed Date: 4/30/2019

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 18' License - 9' on either side of centerline of track

0 1,500 3,000 6,000 Feet

