

## **LICENSE AGREEMENT**

THIS AGREEMENT is made by and between the Duluth Economic Development Authority (DEDA) and the City of Duluth (CITY).

### **ARTICLE I LICENSE AND USE**

DEDA hereby grants to City an exclusive license upon the terms and provisions stated herein, in the Lighthouse Lot shown on Exhibit A attached hereto and made a part hereof (the "Licensed Premises") solely for the purpose of a temporary park intended to advance the priorities of the Imagine Canal Park process, which include temporary pilot initiatives to activate spaces for high-intensity public use within the Canal Park area of Duluth allowing for higher amenity levels for City residents and visitors. Activities and amenities may include but not be limited to seating, landscaping, recreation and play structures, music and theater acts, and provisions for shade.

### **ARTICLE II TERM**

The term of this Agreement shall commence on August 15, 2018 and shall continue until September 30, 2018, unless terminated earlier as provided for herein. Time is an essential element of this Agreement. In the event that City shall fail to surrender the Licensed Premises at the termination of this Agreement, City hereby agrees to pay DEDA \$1,000 per day until such time as City surrenders the Licensed Premises in the condition found prior to the commencement of this Agreement.

### **ARTICLE III RENT**

City is not required to pay rent for the use of the Licensed Premises during the term of this Agreement.

### **ARTICLE IV CONDITION OF LICENSED PREMISES**

DEDA makes no representation that the Licensed Premises are suitable for specific uses, and City accepts the Licensed Premises in an "as is" condition without representations or warranties of any kind, and DEDA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

### **ARTICLE V**

## USE AND MAINTENANCE

City agrees to exercise reasonable care in the maintenance of the Licensed Premises during the term of this Agreement. City shall provide and maintain trash receptacles as well as litter clean up on the Licensed Premises. City shall be responsible for the cost of all utilities to the Licensed Premises. City shall not make any additional alterations or improvements to the Licensed Premises without the prior written consent of DEDA's Executive Director (the Executive Director). City shall surrender the Licensed Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement, including repair of any holes in the asphalt and removal of any permanent or semi-permanent paint or materials, at no expense to DEDA. In the event City fails to surrender the Licensed Premises in the condition found prior to the commencement of this Agreement, DEDA may require the Licensed Premises to be brought into said condition, and City shall pay for the costs thereof immediately upon request. City agrees to pay upon demand any damage done to the Licensed Premises during the term of this Agreement.

## ARTICLE VI ACCESS

DEDA expressly reserves the right to the unlimited access to the Licensed 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 City.

## ARTICLE VII INDEMNIFICATION

As lawful consideration for using the Licensed Premises, City agrees to defend, indemnify, and hold harmless DEDA and its officers, agents, servants and employees from and against any and all losses, liens, claims, actions, demands, liabilities, judgments, penalties, injunctive relief, injury to person(s) or damage to the Licensed Premises, costs, damages and expenses by reason of any actual or alleged act or omission of City or its employees, members, agents, volunteers, invitees or the general public in connection with or relating to City's use or occupancy of the Licensed Premises. Upon ten (10) days' written notice, City shall appear and defend all claims and lawsuits against DEDA growing out of any such injuries or damages. DEDA does not waive its immunities under state or federal law.

ARTICLE VIII  
INSURANCE REQUIREMENTS

During the term of this Agreement, City, at its own cost and expense, shall self-insure automobile, and comprehensive liability and property damage insurance applicable to the Licensed Premises, and City agents, employees, servants, invitees or licensees, sufficient to protect the interests of DEDA with a combined single limit of at least \$1,500,000, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. DEDA shall be considered an additional insured.

ARTICLE IX  
ASSIGNMENT AND SUBLICENSING

The rights and obligations of City hereunder may not be assigned, subleased, sublicensed or in any other way transferred in whole or in part without the prior written approval of the Executive Director.

ARTICLE X  
DEFAULT

This Agreement may be terminated by DEDA upon breach of any of the terms and conditions of this Agreement by City and the failure to rectify or correct any such breach within ten (10) days of the transmission of written notice to City of said breach.

ARTICLE XI  
CONSENTS

City shall contact and obtain consent of any regulatory agency having proper jurisdiction if such consent is required.

ARTICLE XII  
NOTICES

Notices hereunder shall be deemed sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency, DEDA may give oral notice which shall be effective immediately.

If to DEDA:                      Executive Director

Duluth Economic Development Authority  
411 West First Street  
402 City Hall  
Duluth, MN 55802

If to City: Chief Administrative Officer  
City of Duluth  
411 West First Street  
402 City Hall  
Duluth, MN 55802

ARTICLE XIII  
APPLICABLE LAW

This Agreement, together with all of its sections, terms and provisions, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota. The parties to this Agreement waive any objections to the jurisdiction of these courts, whether based on convenience or otherwise.

ARTICLE XIV  
SEVERABILITY

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

ARTICLE XV  
NONWAIVER OF LIABILITY

Nothing in this Agreement constitutes a waiver by DEDA of any statutory or common law defenses, immunities, or limits on liability. The liability of DEDA shall be governed by the provisions of the Minnesota Municipal Liability Tort Act, Minn. Stat. 466.04.

ARTICLE XVI  
WAIVER

Any waiver by either party of any provision of this Agreement will not imply a subsequent waiver of that or any other provision.

ARTICLE XVII  
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.

ARTICLE XVIII  
NO THIRD PARTY RIGHTS

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement. No person shall have the right to make claim that she or he is a third party beneficiary of this Agreement of any of the terms and conditions hereof, which, as between DEDA and City may be waived at any time by mutual agreement.

ARTICLE XIX  
LAWS, RULES AND REGULATIONS

The City agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement. City shall procure at its own expense all licenses, permits or other rights required for the activities contemplated by this Agreement.

ARTICLE XX  
ENTIRE AGREEMENT

This Agreement, including Exhibit A, 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 hereto. There are no representations, warranties, or stipulations either oral or written not herein contained.

IN WITNESS WHEREOF, DEDA and City have caused this Agreement to be executed by their duly authorized officers as of the date first below written.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

CITY OF DULUTH

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

\_\_\_\_\_, 2018  
Date

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_, 2018  
Date

\_\_\_\_\_  
City Clerk

\_\_\_\_\_, 2018  
Date

Countersigned:

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

Approved as to Form:

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

EXHIBIT A

