

AMENDED AND RESTATED LICENSE AGREEMENT

THIS AMENDED AND RESTATED LICENSE AGREEMENT (this "Agreement") is entered into by and between the PARK HILL CEMETERY ASSOCIATION, a non-profit cemetery association created and existing under the laws of the State of Minnesota, ("Park Hill"), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, ("City").

The parties acknowledge the following:

A. The Duluth Traverse is a bike-optimized, multi-use, natural surface trail designed to provide a nationally significant mountain biking experience, connect people to Duluth's beautiful natural places, and exemplify best practices for environmentally sustainable trail design and management (the "DTT").

B. The Superior Hiking Trail is a 310-mile long natural surface footpath that largely follows the rocky ridgeline above Lake Superior from Duluth to the Canadian border (the "SHT"). Thirty-nine miles of the SHT pass through the City of Duluth. The DTT and the SHT are collectively referred to in this Agreement as the "Trails."

C. Park Hill and City entered into a twenty-five-year License Agreement dated November 20, 2015 (the "Original Agreement") permitting City to build certain sections of the Trails over and across Park Hill's property, which property is known as the Park Hill Cemetery and is legally described on the attached Exhibit A (the "Park Hills Property").

D. City has built some of the sections contemplated by the Original Agreement (the "Existing Trails"), but has decided not to build certain sections of the Trails contemplated by the Original Agreement.

E. In addition to the Existing Trails, City would like to build additional sections of the Trails over and across the Park Hill Property.

F. City and Park Hill wish to enter into this Agreement to amend and restate, in its entirety, the Original Agreement, in order to (i) restate the license in favor of City for the Existing Trails; (ii) terminate the license in favor of the City as to the sections of the Trails City has decided not to build; and (ii) create new licenses in favor of City allowing City to utilize additional portions of the Park Hill Property to build new sections of the DTT and the SHT.

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:

1. THE LICENSE. Subject to the terms and conditions set forth in this Agreement, Park Hill grants to City the following licenses (collectively, the "License") to (a) access and utilize those portions of the Park Hill Property shown in green on Exhibit B (existing DTT) and orange (new DTT) for a fifty-foot wide multi-use public recreational trail, which trail will be part of the DTT and used by the general public (the "DTT License Area"); and (b) access and utilize those portions of the Park Hill Property shown in blue (existing SHT) and red (new SHT) on Exhibit B for a fifty-foot wide multi-use public recreational trail, which trail will be part of the SHT and used by the general public (the "SHT License Area"). The DTT License Area and the SHT License Area are referred to collectively as the "License Area." Except as set forth in this Agreement and illustrated in the attached Exhibit B, the Park Hill Property is released from the license granted to City in the Original Agreement.

2. USE OF THE LICENSE AREA. The License includes the right of City, its contractors, agents, and employees to enter the License Area at all reasonable times for the purposes of locating, constructing, operating, installing, maintaining and repairing recreational trails and related improvements and signage within the License Area. City, its contractors, agents and employees may add, remove, cut, trim, or remove from the License Area bark, sand, stones, boards, grass, trees, shrubs, other vegetation, or other landscaping in City's discretion. City, its contractors, agents and employees may construct erosion control structures necessary to maintain a clear, dry passage through the License Area, including the right to install, maintain, repair and replace waterbars, steps, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the License Area. Park Hill shall have no obligation or duty to maintain, repair, or replace any improvements or vegetation in the License Area or to protect the License Area from erosion.

3. TERM. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on November 1, 2015, and shall continue through October 31, 2040.

4. LICENSES AND PERMITS. City agrees to procure, at City expense, all licenses and permits necessary for carrying out the provisions of this Agreement.

5. WAIVER. The waiver by Park Hill or City 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.

6. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. 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, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

7. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to Park Hill Cemetery Association, 2500 Vermilion Road, Duluth, MN 55803, and addressed to City of Duluth, Attn: Property and Facilities Manager, 1532 W. Michigan Street, Duluth, MN 55806, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

8. 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. The appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under the state courts located within St. Louis County, Minnesota.

9. 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.

10. 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.

11. ENTIRE AGREEMENT. This Agreement, including the 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 amends, restates and replaces the Original Agreement in its entirety. 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.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written below.

PARK HILL CEMETERY ASSOCIATION

CITY OF DULUTH

By: Jennifer Rich
Its: Superintendent
Authorized Representative

By: _____
Mayor

Attest:

Printed Name: Jennifer Rich

City Clerk
Date Attested: _____

Dated: 7-17-18

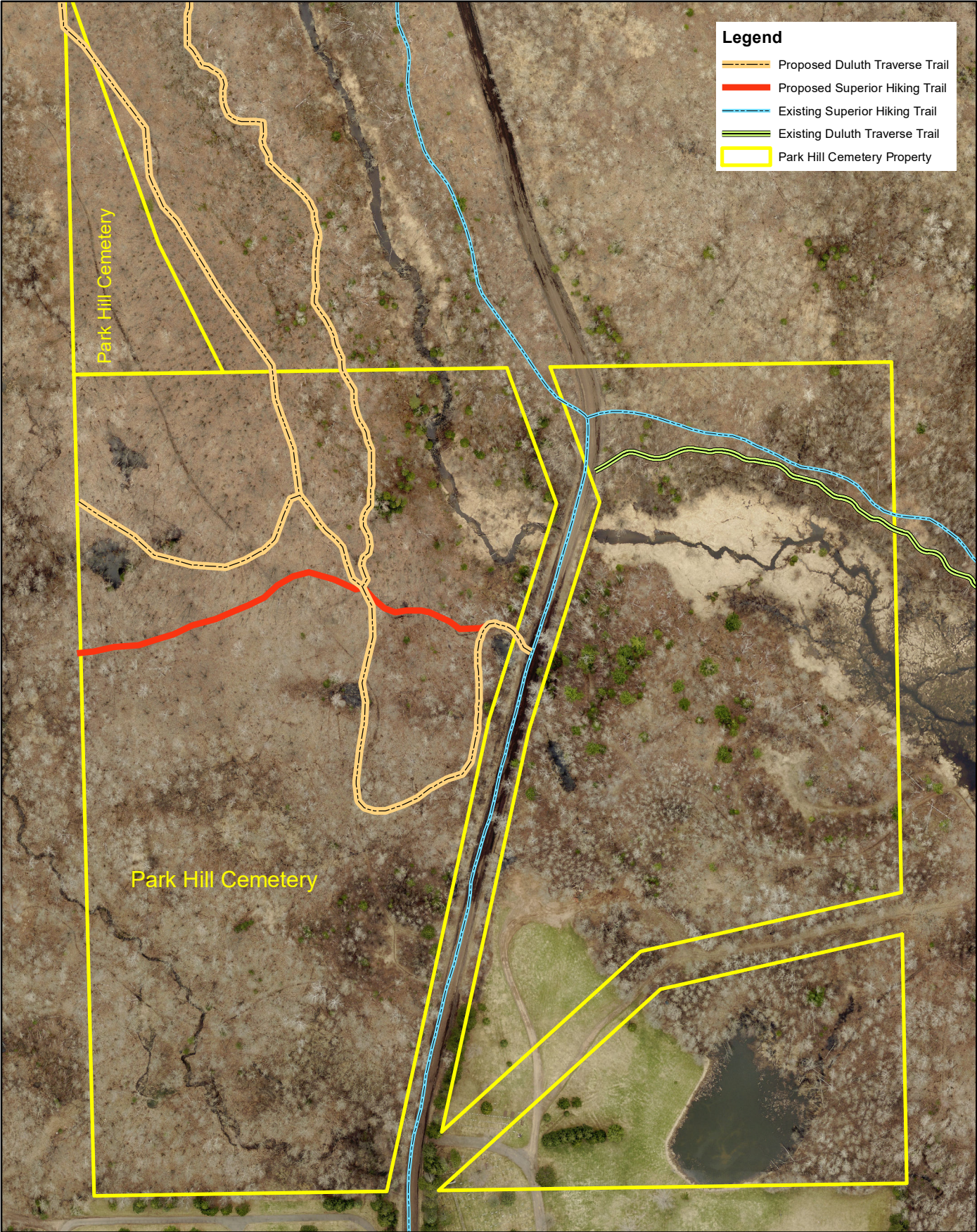
Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A



Printed Date: 6/14/2018

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.
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 Park Hill Cemetery

