

DEDA MD-31
CONTRACT # 05 865 827(1)

**FIRST AMENDMENT TO
EASEMENT AGREEMENT
CITY OF DULUTH
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
PRAXAIR, INC.**

THIS FIRST AMENDMENT TO EASEMENT AGREEMENT (“First Amendment”), effective as of the date of attestation hereto by the City Clerk, 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”, THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing pursuant to Minnesota Statutes (1989), Chapter 469, hereinafter referred to as “DEDA” and PRAXAIR, INC., a corporation created and existing under the laws of the State of Delaware, hereinafter referred to as “Praxair”.

WHEREAS, as of October 17, 2005, City, DEDA and Praxair entered into an agreement bearing City of Duluth Contract No. 22407, hereinafter referred to as the “Agreement”, for the dedication of certain temporary and permanent easements and the construction of certain road facilities in the vicinity of certain property adjacent to 38th Avenue West between West Michigan Street and West Superior Street for the purpose of facilitating the development of the adjacent properties; and

WHEREAS, because of the passage of time and the changing vies of the parties as to the most advantageous way of development the adjacent properties, the parties have agreed that the Agreement should be amended to provide that what was described as the temporary easement should be dedicated as a permanent easement for road and utility purposes, that what was described as the permanent easement should be eliminated, that a road should not be constructed in what was described as the permanent easement and that the obligation of the City to construct the road in what was described as the permanent easement should be terminated.

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

1. That pursuant to Paragraph 1. of the Agreement, Praxair granted to the City the Temporary Easement as described on Amendment Exhibits A and A-1 which temporary Easement has, by its terms, expired and is now null and void and of no legal force and effect.
2. That all of the parties to this First Amendment do hereby acknowledge and agree that the notice of completion of the removal of the Lime Deposit from the Property as described in Paragraph 4 of the Agreement was never given by Praxair as provided for in said Paragraph 4 and that therefore the grant of Permanent Easement as described in Paragraphs 5 and 6 of the Agreement was never effective. Therefore, the parties agree that said grant of Permanent Easement is null and void and of no legal force and effect.

3. That for the sum of One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Praxair hereby grants to City a permanent easement for road, highway and utility purposes (the "New Permanent Easement") over the Property described in Amendment Exhibit B attached hereto and made a part hereof and as shown on Amendment Exhibit C attached hereto and made a part hereof.

4. That for the sum of One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, DEDA hereby grants to City the New Permanent Easement for road, highway and utility purposes over the Property described in Amendment Exhibit B and as shown on Amendment Exhibit C.

5. That the parties hereto hereby agree that Praxair has fulfilled its obligation to remove the Lime Deposit as described in Paragraph 4 of the Agreement and further that the language rendering the Permanent Easement effective contained therein is revoked and of no further force and effect.

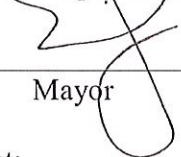
6. That Paragraph 7 of the Agreement is hereby deleted and the City's obligation to construct the Permanent Road as described in Paragraph 7 of the Agreement is hereby terminated.

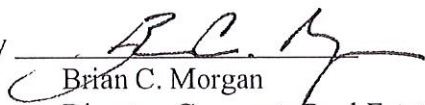
7. The Agreement and First Amendment may be assigned in whole or in part, and shall be binding upon, and inure to the benefit of the parties hereto, their successors, assigns, heirs and personal representatives.

8. That in all other respects, the Agreement with all of its terms, covenants and conditions, is hereby confirmed in its entirety.

CITY OF DULUTH, a Municipal Corporation

PRAXAIR, INC., a Delaware Corporation

By  _____
Mayor

By  _____
Brian C. Morgan
Director, Corporate Real Estate

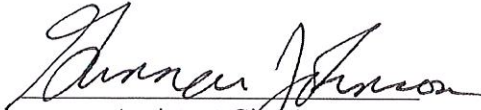
Attest:

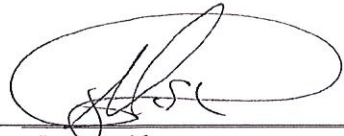
 _____
City Clerk

12/5/17
Date

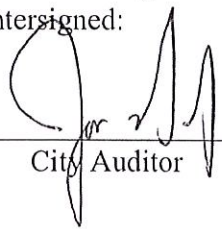
DULUTH ECONOMIC DEVELOPMENT
AUTHORITY, an economic
development authority under
Minn. Stat. (1989) Chapter 469

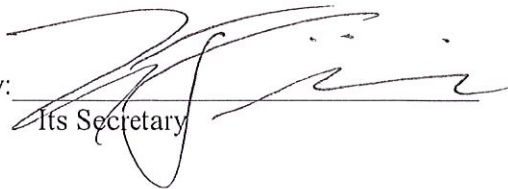
Approved:


Assistant City Attorney

By: 
Its President

Countersigned:


City Auditor

By: 
Its Secretary

AMENDMENT EXHIBIT A

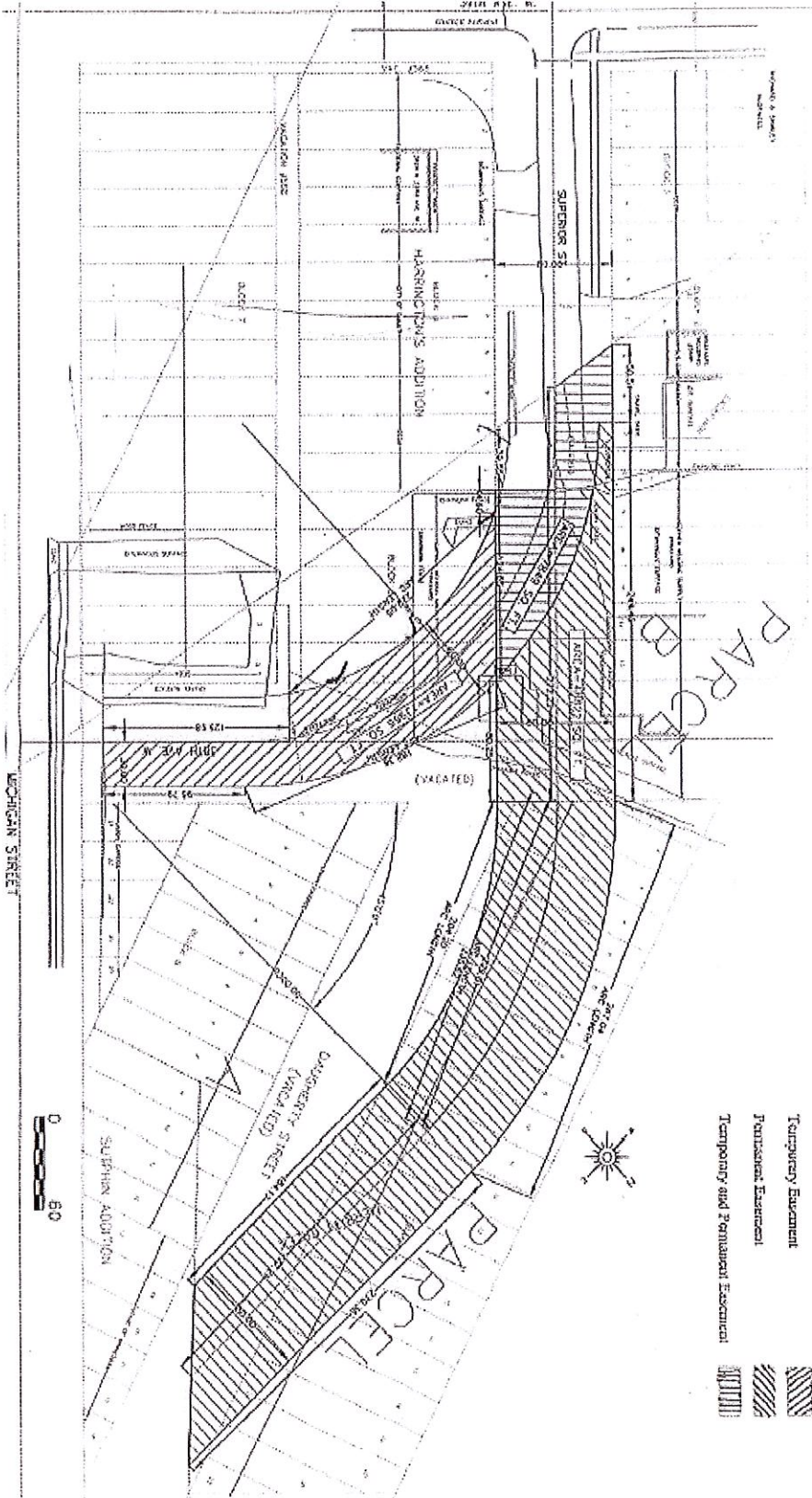
PERMANENT EASEMENT

All those parts of Parcels A and B lying within 40.00 feet of the following described line: beginning at the intersection of the centerline of Superior Street and the south line of Sutphin's Addition; thence N01^{ih} 45 degrees 33 minutes 00 seconds East, assumed bearing along the platted centerline of Superior Street, a distance of 272.22 feet; thence northerly and easterly a distance of 235.62 feet along a tangential curve concave to the southeast, having a radius of 300.00 feet and a central angle of 45 degrees 00 minutes 00 seconds and a chord that bears North 68 degrees 03 minutes 00 seconds East; thence South 89 degrees 27 minutes 00 seconds East a distance of 227.21 feet, more or less, to a point on the northwesterly line of Interstate 35 right of way and said centerline there terminating.

TEMPORARY EASEMENT

All those parts of Parcels A and B lying within 30.00 feet of the following described line: beginning at the intersection of the centerline of Superior Street and the south line of Sutphin's Addition; thence North 45 degrees 33 minutes 00 seconds East, assumed bearing, along the platted centerline of Superior Street, a distance of 22.65 feet; thence northerly and easterly a distance of 329.38 feet along a tangential curve concave to the southeast, having a radius of 210.00 feet and a central angle of 89 degrees 52 minutes 06 seconds and a chord that bears South 89 degrees 27 minutes 00 seconds East; thence South 44 degrees 35 minutes 00 seconds East a distance of 96.32 feet, more or less, to a point on the centerline of 38th Avenue West and also on the northwesterly line of Interstate 35 right of way and said centerline there terminating. and,
that part of Parcel B beginning at the intersection of the southeasterly line of Block 2 and the south line of Sutphin's Addition; thence northeasterly along said southeasterly line of Block 2 a distance of 50.51 feet; thence deflect 90 degrees 00 minutes 00 seconds to the right 10.00 feet; thence deflect 90 degrees 00 minutes 00 seconds to the right and parallel to the southeasterly line of said Block 2 to a point on the south line of Sutphin's Addition; thence westerly along the south line of Sutphin's Addition to the point of beginning and there terminating.

AMENDMENT EXHIBIT A-1



22407-01

AMENDMENT EXHIBIT B

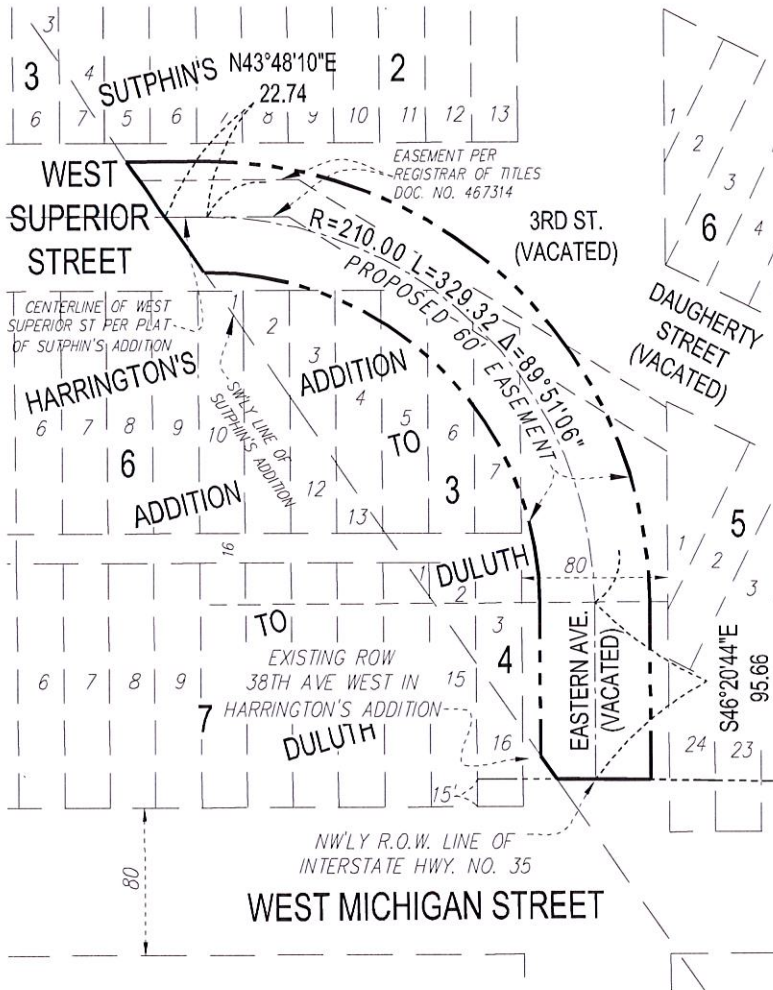
A 60 foot wide easement over, under, and across that part of vacated platted 3rd St. now known as West Superior Street, that part of vacated platted Eastern Ave. now known as South 38th Avenue West, and that part of Lots 3, 4, 5, 6, and 7, Block 3, as dedicated and shown on the plat of SUTPHIN'S ADDITION TO DULUTH, City of Duluth, St. Louis County, Minnesota, centered on the following described line:

Beginning at the intersection of the southwesterly line of said SUTPHIN'S ADDITION TO DULUTH with the centerline of vacated platted 3rd St. now known as West Superior Street; thence North 43 degrees 48 minutes 10 seconds East, bearings referenced to the St. Louis County Transverse Mercator 1996 (SLCTM_96) coordinate system, along the centerline of said vacated West Superior Street, a distance of 22.74 feet; thence easterly 329.32 feet along a tangential curve, concave to the south, having a radius of 210.00 feet and a central angle of 89 degrees 51 minutes 06 seconds; thence South 46 degrees 20 minutes 44 seconds East, tangent to the last described curve, a distance of 95.66 feet to the northwesterly right of way line of Interstate Highway No. 35 described in condemnation of certain lands for trunk highway purposes recorded in the Office of the Registrar of Titles, St Louis County, Minnesota as Document No. 345826 and in the St. Louis County Recorder's Office as Document No. 123079; and said centerline there terminating.

The sidelines of said easement shall be prolonged or shortened to terminate on the southwesterly line of said plat of SUTPHIN'S ADDITION TO DULUTH and said northwesterly right of way line of said Interstate Highway No. 35.

EXHIBIT

CITY OF DULUTH



PROPOSED EASEMENT DESCRIPTION

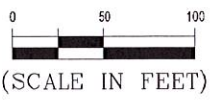
A 60 foot wide easement over, under, and across that part of vacated platted 3rd St. now known as West Superior Street, that part of vacated platted Eastern Ave. now known as South 38th Avenue West, and that part of Lots 3, 4, 5, 6, and 7, Block 3, as dedicated and shown on the plat of SUTPHIN'S ADDITION TO DULUTH, City of Duluth, St. Louis County, Minnesota, centered on the following described line:

Beginning at the intersection of the southwesterly line of said SUTPHIN'S ADDITION TO DULUTH with the centerline of vacated platted 3rd St. now known as West Superior Street; thence North 43 degrees 48 minutes 10 seconds East, bearings referenced to the St. Louis County Transverse Mercator 1996 (SLCTM_96) coordinate system, along the centerline of said vacated West Superior Street, a distance of 22.74 feet; thence easterly 329.32 feet along a tangential curve, concave to the south, having a radius of 210.00 feet and a central angle of 89 degrees 51 minutes 06 seconds; thence South 46 degrees 20 minutes 44 seconds East, tangent to the last described curve, a distance of 95.66 feet to the northwesterly right of way line of Interstate Highway No. 35 described in condemnation of certain lands for trunk highway purposes recorded in the Office of the Registrar of Titles, St. Louis County, Minnesota as Document No. 345826 and in the St. Louis County, Minnesota Recorder's Office as Document No. 123079; and said centerline there terminating.


The sidelines of said easement shall be prolonged or shortened to terminate on the southwesterly line of said plat of SUTPHIN'S ADDITION TO DULUTH and said northwesterly right of way line of said Interstate Highway No. 35.



APPROVED BY: _____
CITY ENGINEER



Basis of Bearing is Grid North,
St. Louis County Transverse
Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota. Print Name: <u>Paul A. Vogel</u> License # <u>44075</u> Signature: <u>[Signature]</u> Date: <u>3/13/2018</u>	DATE REVISED: 3/13/18	 PERFORMANCE DRIVEN DESIGN. LHBcorp.com
	DATE PREPARED: 9/13/16	
	PROJ NO: 160131	
	FILE: 160131vSURV-	
	SHEET 1 of 1 SHEETS	21 W. Superior St., Ste. 500 Duluth, MN 55802 218.727.8446