

AMENDED AND RESTATED
CONSENT AND AUTHORIZATION OF
THE COMMISSIONER OF
THE MINNESOTA POLLUTION CONTROL AGENCY
PURSUANT TO LANDFILL CLEANUP AGREEMENT

DATE: September 18, 2015.

WHEREAS, on July 17, 2015, the State of Minnesota, acting by and through the Commissioner of the Minnesota Pollution Control Agency, executed a "Consent and Authorization of the Commissioner of the Minnesota Pollution Control Agency Pursuant to Landfill Cleanup Agreement" (the "Consent and Authorization") at the request of the City of Duluth, and

WHEREAS, the purpose of the Consent and Authorization was to provide various consents, with conditions, needed by the City of Duluth for its project to reconstruct Ridgeview Road as required by the terms of the Landfill Cleanup Agreement and its accompanying Easements and Declarations of Restrictions and Covenants for certain land identified therein as the Rice Lake Landfill, Duluth Dump No. 2, and Adjacent Property; and

WHEREAS, the City of Duluth has requested an amendment to the Consent and Authorization in order to address certain additions to the project to reconstruct Ridgeview Road requested by the State of Minnesota, Department of Military Affairs.

NOW, THEREFORE, the State of Minnesota, acting by and through the Commissioner of the Minnesota Pollution Control Agency provides the following:

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THE MINNESOTA POLLUTION CONTROL AGENCY
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WHEREAS, the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota, is the owner of certain real property located in St. Louis County, Minnesota, described as follows:

The Southwest Quarter, and the South one-half of the Northwest Quarter, and the Southwest Quarter of the Northeast Quarter, and the Westerly 440 feet of the Southerly 990 feet of the Southeast Quarter of the Northeast Quarter of Section 31 in Township 51 North, Range 14 West, and the Easterly 300 feet of the Southerly 1780 feet in Section 36, in Township 51 North, Range 15 West

("City Property"); and

WHEREAS, the Sanitary Board of the Western Lake Superior Sanitary District ("WLSSD"), established under the laws of the State of Minnesota as a public corporation and political subdivision of the State, is the owner of certain real property located in St. Louis County, Minnesota, described as follows:

That part of the W1/2 of SE1/4, Section 31, Township 51 North of Range 14 described as follows:

Beginning at the southwest corner of said W 1/2 of SE1/4; thence on an assumed bearing of North 00 degrees 00 minutes 38 seconds West 308.94 feet along the west line of said W1/2 of SE1/4; thence South 73 degrees 57 minutes 55 seconds East 395.40 feet; thence South 00 degrees 00 minutes 38 seconds East 197.59 feet to the south line of said W 1/2 of SE1/4; thence South 89 degrees 40 minutes 45 seconds West along said south line 380.01 feet to the point of beginning

AND

South 33.00 feet of the SE1/4 of said Section 31, Township 51 North of Range 14 lying E'ly of the east line of the above described parcel and W'ly of the west right of way line of St. Louis County Highway #4

("Sanitary District Property," together with the City Property, collectively the "Property"); and

WHEREAS, pursuant to the Landfill Cleanup Act, Minn. Stat. §§ 115B.39-115B.445 (“Act”), the City of Duluth and WLSSD entered into that certain Landfill Cleanup Agreement with the Commissioner of the Minnesota Pollution Control Agency (“Commissioner” or “MPCA”) affecting the Property dated October 19, 2004 and recorded December 11, 2004 as Document No. 00966670 in the Office of the County Recorder, St. Louis County, Minnesota, and recorded December 11, 2004 as Document No. 789342.0 in the Office of the Registrar of Titles, St. Louis County, Minnesota (the “Agreement”); and

WHEREAS, the City of Duluth desires to reconstruct an existing roadway commonly known as “Ridgeview Road” within a 66-foot right of way, and to allow the State of Minnesota, Department of Military Affairs, to construct related improvements on City-owned property, which will require a dedication to the public of a roadway easement affecting certain City-owned lands within the Property described as follows:

A 33.00 foot wide easement for roadway and utility purposes over, under and across the south 33.00 feet of the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of Section Thirty-one (31), Township Fifty-one (51) North, Range Fourteen (14) West of the Fourth (4th) Principal Meridian, St. Louis County, Minnesota

(“City Easement # 1); and which will require an easement from the City of Duluth to the State of Minnesota, Department of Military Affairs, affecting certain City-owned lands within the Property described as follows:

An easement for ingress and egress and an encroachment easement permitting landscaping, structural improvements and fencing over, under and across that part of the Southwest Quarter of the Southwest Quarter (SW1/4 of SW1/4) of Section Thirty-one (31), Township Fifty-one (51) North, Range Fourteen (14) West of the Fourth (4th) Principal Meridian, St. Louis County described as follows:

Beginning at the Southeast Corner of the Southwest Quarter of the Southwest Quarter (SW1/4 of SW1/4) of said Section 31; thence South 89 degrees 51 Minutes 19 seconds West along the south line of said SW1/4 of SW1/4, a distance of 454.00 feet; thence North 78 degrees 33 Minutes 31 seconds East, a distance of 95.00 feet; thence North 88 degrees 42 Minutes 56 seconds East,

a distance of 217.00 feet; thence North 37 degrees 47 Minutes 49 seconds East, a distance of 95.00 feet to the intersection of a line 126.00 feet westerly of, measured at right angles to and parallel with, the east line of said SW1/4 of SW1/4; thence North 00 degrees 58 Minutes 38 seconds West along said line parallel with said east line, a distance of 35.00 feet to the intersection of a line 80.00 feet northerly of, measured at right angles to and parallel with, the south line of said SW1/4 of SW1/4; thence North 89 degrees 51 Minutes 19 seconds East along said line parallel with said south line, a distance of 126.01 feet to the east line of said SW1/4 of SW1/4; thence South 00 degrees 58 Minutes 38 seconds East along said east line, a distance of 80.00 feet to the point of beginning

("City Easement # 2"); and which will require an easement from WLSSD to the City of Duluth affecting certain lands within the Property described as follows:

A 33.00 foot wide easement for roadway and utility purposes over, under and across the South 33.00 feet of the Southeast Quarter (SE1/4) of Section Thirty-one (31), Township Fifty-one (51) North, Range Fourteen (14) West of the Fourth (4th) Principal Meridian, St. Louis County, Minnesota lying Westerly of the West Right of Way Line of St. Louis County Highway No. 4

("WLSSD Easement"), collectively the ("Ridgeview Road Easements"); and

WHEREAS, all of the Property is located within the Facility as defined in the Landfill Cleanup Agreement; and

WHEREAS, the road construction project may also impact certain property defined by the Agreement and Attachment B to the Agreement as "Adjacent Property," depicted on Attachment A.4 to the Agreement, and described as follows:

The North 200 yards of the Northwest Quarter of the Northwest Quarter (NW1/4 of NW1/4) of Section Six (6), Township Fifty (50) North, Range Fourteen (14) West of the Fourth (4th) Principal Meridian

("Adjacent Property"); and

WHEREAS, the Property and Adjacent Property are burdened by restrictive covenants contained in Section H.I of the Agreement, Attachment D to the Agreement (Declaration of Restrictions and Covenants), and Attachment E to the Agreement (Declaration of Restrictions and Covenants) providing that the City of Duluth and WLSSD shall not construct or excavate or allow others to engage in any construction or excavation without the prior written approval of the Commissioner; and

Attachment to 15-0665R

WHEREAS, the City Property and Adjacent Property are subject to covenants and conditions contained in Section G.1 of the Agreement and Attachment B to the Agreement (Easement) providing that the City shall not:

1. Take or allow others to take any action that interferes with MPCA's environmental response actions including any actions that disturb or impede the cover, monitoring systems, or the gas venting or recovery system, and
2. Without the prior written consent of the Commissioner, place or allow others to place any materials, permanent structures, personal property, equipment or any other permanent fixtures either on or in certain of the City Property and the Adjacent Property, as identified in Section G.1 of the Agreement and Attachment B to the Agreement (Easement); and

WHEREAS, the Sanitary District Property is subject to covenants and conditions contained in Section G.1 of the Agreement, Attachment C to the Agreement (Easement), and Attachment E to the Agreement (Declaration of Restrictions and Covenants) providing that WLSSD shall not:

1. Take or allow others to take any action that interferes with MPCA's environmental response actions including any actions that disturb or impede the cover, monitoring systems, or the gas venting or recovery system, and
2. Without the prior written consent of the Commissioner, place or allow others to place any materials, personal property, equipment or any other permanent fixtures either on or in the Sanitary District Property (including a certain portion of the Ridgeview Road right-of-way lying north of the South 33.00 feet of the Southeast Quarter (SE1/4) of Section Thirty-one (31), Township Fifty-one (51) North, Range Fourteen (14) West of the Fourth (4th) Principal Meridian, St. Louis County, Minnesota and extending into certain of the City Property, as more particularly described in Attachment C to

the Agreement (Easement) and Attachment E to the Agreement (Declaration of Restrictions and Covenants)) which may cause environmental damage, and

WHEREAS, the City Property and the Adjacent Property are subject to a condition pursuant to paragraph 6 of Attachment B to the Agreement (Easement) stating that the City shall not convey a road or utility easement in such property without first obtaining written authorization from the Commissioner; and

WHEREAS, the Sanitary District Property is subject to a condition pursuant to paragraph 6 of Attachment C to the Agreement (Easement) stating that WLSSD shall not convey a road or utility easement in certain property included within the Sanitary District Property without first obtaining written authorization from the Commissioner; and

WHEREAS, the City of Duluth has provided the MPCA with final revised approved plans for reconstructing Ridgeview Road dated 6/23/15, which provide for the westernmost work to start within the East Seven Hundred (700) feet of the North One Hundred (100) feet of the Adjacent Property, and the easternmost work to end at the West Right of Way Line of St. Louis County Highway No. 4; and

WHEREAS, the State of Minnesota, Department of Military Affairs, has provided the MPCA with final approved plans for improvements within the property described in City easement #2, including a pivot gate, drop-arm barrier, sidewalk, gravel over-watch drive, and man-gate; and

WHEREAS, the Commissioner does not object to construction or excavation by the City or its agent, or the State of Minnesota, Department of Military Affairs, or its agent, within the areas included within and described by the Ridgeview Road Easements and the Adjacent Property; and

WHEREAS, the Commissioner does not object to the City's dedication to the public of a roadway easement within the area included within and described by the City Easement #1; and

WHEREAS, the Commissioner does not object to the grant of an easement from the City to the State of Minnesota, Department of Military Affairs, within the area included within and described by City Easement # 2; and

WHEREAS, the Commissioner does not object to the grant of an easement from WLSSD to the City within the area included within and described by the WLSSD Easement, and

WHEREAS, the Commissioner does not object to the City's or the State of Minnesota, Department of Military Affairs', temporary placement of materials, personal property, or equipment within the areas included within and described by the Ridgeview Road Easements and the Adjacent Property in order to reconstruct Ridgeview Road.

NOW, THEREFORE, the undersigned hereby consents to the reconstruction of Ridgeview Road and specifically authorizes the following actions related to the road reconstruction:

1. The City of Duluth or its agent, and the State of Minnesota, Department of Military Affairs, or its agent, are authorized to construct and excavate within the areas described above by the Ridgeview Road Easements and the Adjacent Property provided there is no disturbance to the force main owned by the State that is located within the Ridgeview Road Easements and the Adjacent Property;
2. The City of Duluth is authorized to dedicate to the public a roadway easement in the form of City Easement #1 described above;
3. The City of Duluth is authorized to grant to the State of Minnesota, Department of Military Affairs, an easement in the form of the City Easement #2 described above;
4. WLSSD is authorized to grant the City of Duluth an easement in the form of the WLSSD Easement described above; and
5. The City of Duluth or its agent, and the State of Minnesota, Department of Military Affairs, or its agent, are authorized to temporarily place materials, personal property, or equipment within the area described above by the Ridgeview Road Easements and the Adjacent Property.

CONDITIONS OF CONSENT

This Consent is limited to the project as described in the City's final revised approved construction plans, and the State of Minnesota, Department of Military Affairs', final approved construction plans, and is granted on the following conditions:

- A. That the City of Duluth or its agent, or the State of Minnesota, Department of Military Affairs, or its agent, notify the Commissioner within twelve (12) hours of any release or threatened release of any hazardous substance, hazardous waste, pollutant, contaminant, solid waste, or decomposition gases, as these terms are defined in law, encountered in the course of the project to reconstruct Ridgeview Road and bear all responsibility to properly address and dispose of any such release or threatened release or solid waste in consultation with the Commissioner.
- B. That this Consent shall not diminish MPCA's rights under the Agreement and the Act including, but not limited to, its rights to:
 - 1. Access the: a) Facility and b) Adjacent Property for the purpose of taking environmental response actions and related actions that the Commissioner deems necessary to carry out the Agreement and the Commissioner's duties and authorities under the Act, and
 - 2. Install fences, or other equipment or structures to control access to the: a) Facility and b) Adjacent Property.
- C. That any easement that the City of Duluth acquires from the WLSSD is subject to the Agreement and the Act and all of the MPCA's rights under the Agreement and the Act.
- D. That any easement that the State of Minnesota, Department of Military Affairs, acquires from the City of Duluth is subject to the Agreement and the Act and all of the MPCA's rights under the Agreement and the Act.
- E. That any dedication to the public of any part of the Ridgeview Road right-of-way that is subject to the Agreement and the Act is subject to all of MPCA's rights under the Agreement and the Act.
- F. That all property used for solid waste disposal that is adjacent to the property described in Section C.3 of the Agreement as the Facility is part of the Qualified Facility as defined by the Act.
- G. That any authorization in paragraphs 1 and 5 regarding the road reconstruction work in the Adjacent Property is effective only if the City obtains all rights for such work from the owner of that Adjacent Property if not owned by the City.
- H. That, due to the possible presence of landfill gas, any structure for use by personnel must have an impermeable plastic barrier under its concrete slab.

In Witness Whereof, this instrument has been executed on this 18th day of September, 2015.

**STATE OF MINNESOTA ACTING BY AND
THROUGH THE COMMISSIONER OF THE
MINNESOTA POLLUTION CONTROL
AGENCY**

By: Kathryn J. Sather
Printed Name: Kathryn J. Sather
Title: Remediation Division Director
and Delegate of the Commissioner of the
Minnesota Pollution Control Agency

State of Minnesota)
County of Ramsey) ss.

This instrument was acknowledged before me on this 18th day of September, 2015 by
(Name) Kathryn Sather, (Title) Remediation Division Director, and Delegate of
the Commissioner of the Minnesota Pollution Control Agency, on behalf of the Commissioner
and the State of Minnesota.



Lisa M. Kuehn
(signature of notarial officer)
Title (and Rank): Office Administrator
My commission expires: Jan 31, 2020
(month/day/year)

The above Amended and Restated Consent and Authorization of the Commissioner of the Minnesota Pollution Control Agency Pursuant to Landfill Cleanup Agreement with its Conditions of Consent is hereby accepted this _____ day of September, 2015 by the City of Duluth.

CITY OF DULUTH

By: _____
Mayor

Attest: _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

The above Amended and Restated Consent and Authorization of the Commissioner of the Minnesota Pollution Control Agency Pursuant to Landfill Cleanup Agreement with its Conditions of Consent is hereby accepted this _____ day of September, 2015 by the State of Minnesota, Department of Military Affairs.

By: _____

By: _____

THIS INSTRUMENT WAS DRAFTED BY:

Catherine E. Baker
Assistant City Attorney
Office of the City Attorney
411 West First Street, Room 410
Duluth, MN 55802