

## **LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND STATE OF MINNESOTA**

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between the STATE OF MINNESOTA, by and through its Commissioner of Transportation (the "State"), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of Minnesota ("City").

The parties acknowledge the following:

A. City owns real property located in the Fond du Lac neighborhood of Duluth, St. Louis County, Minnesota that is legally described on the attached Exhibit A and used for open space purposes (the "City Property"). The City Property is depicted in red on the attached Exhibit B.

B. The State has established and designated the route of Trunk Highway No. 23 in St. Louis County Minnesota, which is near the City Property. The State has or will undertake an archaeological study in relation to a highway construction project for Trunk Highway No. 23 and surrounding property (the "Study"). In connection with the Study, the State needs to store a field trailer, equipment and related items near Trunk Highway No. 23.

C. The State and City desire to enter into this Agreement to allow the State to occupy the City Property for the placement and storage of the field trailer, equipment and related items in connection with the Study.

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.

A. Subject to the terms and conditions set forth in this Agreement, City grants to the State an exclusive license to enter onto and occupy the City Property for the purpose of placing and storing a field trailer, equipment and related items in connection with the Study (the "License").

B. The State shall not make any alterations or improvements to the City Property that are not herein described without the prior written consent of City and then only upon the terms and conditions which may be imposed by City.

C. The State understands and acknowledges that there are deed restrictions encumbering the City Property that restrict the use of the City Property to open space in perpetuity (the "Deed Restrictions"). The Deed Restrictions are contained in those documents recorded in the Office of the St. Louis County Registrar of Titles as Document

Nos. 929231 and 996231, copies of which the State acknowledges having received. The State shall comply with the Deed Restrictions.

2. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on January 1, 2018, and shall continue through December 31, 2021, unless earlier terminated (the "Term").

3. LICENSE FEE.

A. The State shall have the use of the City Property at no cost. The State shall be responsible to pay for all costs associated with its use of the City Property.

B. City, as the fee owner of the City Property, understands that it is not required to surrender possession of the City Property without just compensation and is not required to surrender lawfully occupied City-owned property without at least 90 days notice. By signing this License, City waives these rights.

C. To the extent this Agreement imposes obligations on the State that require the expenditure of funds by the State, such obligations are contingent upon and subject to the Minnesota Legislature appropriating funds for such obligations. If there is no appropriation of funding for all or part of any such obligation, the State shall make a good faith effort to secure funding to cover the obligation.

4. LIMITED USE. The State may use the City Property as expressly permitted by this Agreement and for no other purpose. Any activities not approved by City's Property and Facilities Manager may be grounds for termination of this Agreement.

5. TERMINATION OR EXPIRATION.

A. For Cause. City may terminate this Agreement for the material breach by the State of any provision of this Agreement if such breach is not cured to the satisfaction of City within thirty (30) days of delivery of a written notice by City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach. Violation of the Deed Restrictions shall be deemed a material breach permitting City to terminate this Agreement pursuant to this provision.

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

C. Surrender Possession. Upon termination or expiration of this Agreement for any reason, the State will surrender possession of the City Property to City and shall restore the City Property to substantially the same condition as at the time the State took possession of the City Property. The State agrees to reimburse City upon demand the

reasonable costs incurred by City to repair any damage done to the City Property by the State, its employees, servants, agents, contractors, invitees, and licensees.

6. CITY WARRANTY. City makes no representation that the City Property is suitable for any particular purpose or specific use and the State accepts the City Property in “as is” condition without representations or warranties of any kind.

7. HOLD HARMLESS. City and the State shall each be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other party. The State’s liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Chapter §3.736 and other applicable law. The City’s liability shall be governed by the provisions of Minnesota Statutes Chapter 466 and other applicable law.

8. INSURANCE. During the Term, the State shall either have (i) such insurance coverage as will protect the State and City against risk of loss or damage to the City Property used by the state and any other property of City located or used at the City Property by the State and against claims which may arise or result from the use of the City Property by the State during the Term or (ii) retain the risk of loss through self-insurance. Automobile and Public Liability Insurance policies shall be written on an “occurrence” basis with limits of not less than \$500,000 per person and \$1,500,000 per occurrence for personal bodily injury and death and for property damage liability. Insurance policies shall be taken out and maintained in responsible insurance companies organized under the laws of the state of Minnesota and licensed to do business in Minnesota (or through a program of self-insurance). Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the obligations set forth herein, and products – completed operations. The State shall provide City with Certificate(s) of Insurance or self-insurance letter(s) evidencing the required insurance coverage. City does not represent or guarantee that the types or limits of coverage required by this Agreement are adequate to protect the State’s interests and liabilities. The required insurance policies and certificates shall be in form acceptable to the City Attorney and shall name City as an additional insured. City reserves the right to require the State to increase the coverages set forth above and to provide evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. § 466.04, as amended from time to time, unless the municipal liability limits exceed the limits set forth in Minn. Stat. § 3.736, subdv. 4.

9. INDEPENDENT CONTRACTOR. It is agreed that 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 or as constituting the State or the State’s personnel as an agent, representative, or employee of City for any purpose or in any manner whatsoever. The State and its employees shall not be considered employees of City and any and all claims that may or might arise under the Workers’ Compensation Act of the State of Minnesota on behalf of the State’s employees or agents while so engaged, shall in no way be the responsibility of City.

10. ASSIGNMENT. The State shall not in any way assign or transfer its rights or interests under this Agreement.

11. LAWS, RULES AND REGULATIONS.

A. The State shall conduct its activities related to the City Property in strict compliance with the United States Constitution and with all applicable laws, rules, and regulations. The State shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

B. The State agrees to procure, at the State's expense, all licenses and permits necessary for carrying out its obligations under this Agreement and completing the Study.

12. RECORDS RETENTION. The State 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.

13. DATA PRACTICES. City and the State shall comply with the Minnesota Data Practices Act, Minn. Stat. Chapter 13, as it applies to all data relating to this Agreement.

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

15. 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.

16. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the State and City 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 a 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.

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

Minnesota Department of Transportation  
Attn: Roberta P. Dwyer, PE, PTOE  
1123 Mesaba Avenue  
Duluth, MN 55811  
(218) 725-2781

City of Duluth  
Attn: Property and Facilities Manager  
1532 W. Michigan Street  
Duluth, Minnesota, 55806  
(218) 730-4430

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

19. COMPLIANCE WITH AGREEMENT. The right of the State to use the City Property is subject to the State's compliance with the undertakings, provisions, covenants, and conditions set forth in this Agreement.

20. 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.

21. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

22. 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.

23. ENTIRE AGREEMENT. This Agreement, including 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.

24. RECORDING. Neither party shall record this Agreement in the St. Louis County real estate records without the prior written permission of the other party.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have set their hands the day and date as indicated below.

CITY OF DULUTH, MINNESOTA

THE STATE OF MINNESOTA, acting  
through its Commissioner of Transportation

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

Printed Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

COUNTERSIGNED:

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

APPROVED AS TO FORM:

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

## **EXHIBIT A**

North 52 feet of Lots 41, 43, 45 and 47 on Glass Street (formerly Fourth Street),  
FOND DU LAC

and

Those portions of Lots 49 and 51 on said Glass Street lying North of a straight line extending from a point in the West line of said Lot 49 distant 52 feet South, measured along said West line from the Northwest corner thereof, to a point in the East line of said Lot 51, distant 38.1 feet South measured along the East line of said Lot 51, from the northeast corner thereof, all in FOND DU LAC.

# EXHIBIT B

City Property

13225 W 4th St

13105 W 5th St

13031 W

W 5th St

410 131st Ave W

134th Ave W

13333 W 4th St

W 4th St

DULUTH

13321 Hwy 23

132nd Ave W

131st Ave W

23

W 3rd St

133rd Ave W