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**MEMORANDUM OF AGREEMENT BETWEEN  
THE CITY OF DULUTH AND  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE LINCOLN PARK IMPROVEMENTS PROJECT,  
DULUTH, SAINT LOUIS COUNTY, MINNESOTA**

***DRAFT 11/11/2019***

9   **WHEREAS**, the City of Duluth (City) is proposing to make improvements to Lincoln Park (the  
10 Project), including modifications to Lincoln Park Drive; and

11   **WHEREAS**, the U.S. Department of Housing and Urban Development (HUD) may fund the  
12 Project through a Community Development Block Grant and has determined the Project is an  
13 undertaking subject to the requirements of Section 106 of the National Historic Preservation Act  
14 of 1966 as amended (54 U.S.C. § 306108) and review under the Advisory Council on Historic  
15 Preservation's (Council) implementing regulations found at 36 CFR § 800; and

16   **WHEREAS**, the National Park Service–Midwest Regional Office (NPS) may fund the Project  
17 thorough a Land and Water Conservation Act grant, administered by the Minnesota Department  
18 of Natural Resources; and

19   **WHEREAS**, pursuant to 36 CFR § 800.2(a)(2), NPS has recognized HUD as the lead Federal  
20 agency for the Project to fulfil their collective responsibilities under Section 106 and, therefore,  
21 does not need to be a signatory to this Memorandum of Agreement (Agreement); and

22   **WHEREAS**, pursuant to 36 CFR § 800.14, the City, through administration of the HUD CDBG  
23 program, is the delegated federal agency given the authority to complete Section 106 review for  
24 CDBG-funded undertakings; and

25   **WHEREAS**, the City, in consultation with the Minnesota State Historic Preservation Office  
26 (SHPO), has defined the APE for indirect and direct effects for the undertaking as shown on  
27 Attachment A; and

28   **WHEREAS**, the City, in consultation with the SHPO, has identified the following historic  
29 properties in the APE that have been determined eligible for the National Register of Historic  
30 Places: Lincoln Park, Lincoln Park Bridge, Lincoln Park Drive, Lincoln Park Pavilion, and Zion  
31 Lutheran Church; and

32   **WHEREAS**, the Project is needed to rehabilitate the fire-damaged pavilion, provide ADA  
33 accessibility to the pavilion and the park, increase safety in the pavilion and the park, and address  
34 groundwater and other ecological issues; and

35   **WHEREAS**, the City, with concurrence from the SHPO, has found that the Project will have an  
36 adverse effect on Lincoln Park and Lincoln Park Drive; and

37   **WHEREAS**, the City, in consultation with the SHPO, has determined that there is no practicable  
38 alternative that will avoid the adverse effect to historic properties; and

39 **WHEREAS**, the City has invited fifteen (15) Native American tribes to consult on the  
40 undertaking— Fond du Lac Band of Lake Superior Chippewa [remaining list to be added]—and  
41 the Fond du Lac Band of Lake Superior Chippewa has requested to participate in consultation;  
42 and

43 **WHEREAS**, requirements for public involvement were completed pursuant to 36 CFR §  
44 800.2(d) including presentations at meetings of the Duluth Heritage Preservation Commission,  
45 which has approved the rehabilitation plans for the Lincoln Park Pavilion, a locally designated  
46 landmark, and expressed support for the Project as a whole; and

47 **WHEREAS**, the Fond du Lac Band of Lake Superior Chippewa and the Duluth Heritage  
48 Preservation Commission have been invited to concur with this Memorandum of Agreement  
49 (Agreement); and

50 **WHEREAS**, the City has notified the Council of the adverse effect in accordance with 36 CFR §  
51 800.6(a)(1) and has provided the documentation specified in 36 CFR § 800.11(e), and the  
52 Council has chosen not to participate in the resolution of adverse effect; and

53 **NOW, THEREFORE**, the City and the SHPO agree that the following stipulations are  
54 appropriate mitigation and take into account the adverse effects caused by the undertaking.

55 **STIPULATIONS**

56 The City shall ensure that the following stipulations are completed.

57 **I. PUBLIC INTERPRETATION AND EDUCATION**

58 **A. Plan for Interpretation**

- 59 i. The City shall prepare and implement a plan for interpretation (Plan)  
60 incorporating interpretation of Lincoln Park. The Plan shall be informed by the  
61 National Association for Interpretation’s Standards and Practices for Interpretive  
62 Planning. The team preparing the content and location of the Plan shall include a  
63 qualified historian who meets the Secretary of the Interior’s Professional  
64 Qualifications Standards (36 CFR § 61).
- 65 a. Within six (6) months of the execution of this Agreement, the City shall  
66 prepare a draft Plan including themes for interpretation, planned modes for  
67 delivering the interpretation, and draft text and graphics for each mode.  
68 Modes may include, but not be limited to webpages; interpretive signage;  
69 walking tours; and integration of interpretive elements into the Project.
- 70 b. Prior to issuance of a draft Plan, the City shall invite the SHPO and  
71 Concurring Parties to a consultation meeting to discuss the proposed Plan  
72 and gain input from consulting parties.
- 73 c. The City shall distribute the draft Plan to the SHPO and Concurring  
74 Parties to this Agreement for a thirty (30) calendar day review and

- 75 comment period.
- 76 d. Following receipt of, and in response to, comments from SHPO and  
77 Concurring Parties, the City shall consider, incorporate as appropriate, and  
78 revise the draft Plan. If the City chooses not to accept a comment by the  
79 SHPO or Concurring Party, then the City shall provide a written  
80 explanation to the SHPO and/or Concurring Party and consult, as  
81 appropriate, to seek resolution.  
82
- 83 e. The City shall submit the final Plan to the SHPO for review and  
84 concurrence. If the SHPO does not concur, it shall explain the grounds for  
85 its disagreement with the plan in a letter to the City. Upon receiving such  
86 comments, the City shall consult with the SHPO to resolve the dispute in  
87 accordance with Stipulation IV of this Agreement.
- 88 f. Upon the SHPO’s concurrence or resolution of the dispute, the City shall  
89 distribute the final Plan to Concurring Parties to this Agreement.
- 90 g. Within two (2) years after approval of the final Plan, the City shall  
91 complete its implementation.

92 B. Documentation

- 93 i. The City shall complete Level I documentation of Lincoln Park for the Minnesota  
94 Historic Property Record (MHPR) according to the provisions outlined below.  
95 All documentation shall be completed by an architectural historian meeting the  
96 Professional Qualification Standards in the Secretary of the Interior's Standards  
97 and Guidelines for Archaeology and Historic Preservation (36 CFR Part 61).  
98
- 99 a. The City will complete recordation of Lincoln Park before construction  
100 work begins. Recordation will be completed in accordance with the  
101 “Minnesota Historic Property Record Guidelines (updated June 2009)”  
102 Level I Documentation standards.  
103
- 104 b. The City shall provide the SHPO with a draft version of the Level I  
105 Documentation for review and comment. The SHPO will have thirty (30)  
106 calendar days to review the Level I Documentation. The City will take the  
107 comments of the SHPO into account in developing the final document.  
108
- 109 c. The City will provide a final archival copy and a digital (PDF) copy of the  
110 Level I Documentation to the SHPO. The City will provide a digital (PDF)  
111 copy to the Duluth Heritage Preservation Commission, the Duluth  
112 Collection at the Duluth Public Library, and the Northeastern Minnesota  
113 Historical Collections at the Kathryn A. Martin Library, University of  
114 Minnesota-Duluth. Submission of these final documentation copies will  
115 constitute fulfillment of this stipulation.

116 **II. PROJECT DESIGN MODIFICATIONS**

117 A. If the City makes substantive modifications to the Project design after the execution of  
118 this Agreement that would result in new and/or additional potential adverse effects on  
119 historic properties or a revision of the Project's APE, the City shall issue an effect  
120 finding, with documentation appropriate to the finding, to SHPO and Concurring Parties  
121 for review and comment.

122 B. If the City finds that the modifications will not expand the APE or cause additional  
123 adverse effects to historic properties within the APE, the City shall issue this finding,  
124 along with an appropriate level of documentation, to SHPO and Concurring Parties for  
125 review and comment. If there are no objections to the City finding of effect, then the City  
126 shall proceed accordingly. If there are objections to the City finding of effect, then the  
127 City will continue consultation pursuant to Stipulation IV of this Agreement.

128 C. If the City finds that the modifications will result in additional adverse effects to historic  
129 properties, the City shall first consult with the SHPO and the Concurring Parties to this  
130 Agreement in accordance with 36 CFR § 800.6 to seek ways to avoid and/or minimize  
131 the adverse effect. The SHPO and concurring parties shall have thirty (30) days to review  
132 and provide comments on this effect finding. If it is determined that the adverse effect  
133 cannot be avoided, the City will consult with the SHPO, Concurring Parties to this  
134 Agreement, and the public, as appropriate, to develop a Mitigation Plan (Mitigation Plan)  
135 for the adverse effect, taking into account the character and significance of the historic  
136 property and the nature and scale of the adverse effect. Any newly identified consulting  
137 parties under this stipulation will be invited to sign this Agreement as Concurring Parties  
138 pursuant to Stipulation V.

139 i. The Mitigation Plan shall be developed within forty-five (45) calendar days of  
140 any adverse effect finding made under this stipulation. The City shall provide a  
141 copy of the draft Mitigation Plan to SHPO and Concurring Parties to this  
142 Agreement who shall have thirty (30) calendar days to provide comments on the  
143 Mitigation Plan prior to the initiation of Project construction, or fifteen (15)  
144 calendar days to provide comments on any Mitigation Plan prepared during  
145 Project construction.

146 a. If the SHPO and other Concurring Parties do not provide comments  
147 during the review periods specified in Subparagraph A.i of this  
148 Stipulation, the City shall consider it final and move forward with the  
149 Mitigation Plan as provided.

150 b. The City shall take into account any comments provided by the SHPO and  
151 Concurring Parties during the review period specified in Subparagraph A.i  
152 of this Stipulation in the development of a final mitigation plan. The  
153 Mitigation Plan will be final upon acceptance by the SHPO and written  
154 notice by the City. The City shall provide copies of all final Mitigation  
155 Plans to the Concurring Parties.

156 c. Upon completion of consultation under this stipulation, the City shall  
157 ensure that the terms and conditions of the final Mitigation Plan are fully  
158 implemented.

### 159 III. UNANTICIPATED DISCOVERIES

160 A. If previously unidentified historic properties (including archaeological sites) or  
161 unanticipated effects to previously identified historic properties are discovered during  
162 Project activities, the City shall immediately halt all Project activities within a twenty-  
163 five (25) foot radius of the discovery, notify the SHPO of the discovery, and implement  
164 interim measures to protect the discovery from looting and vandalism.

165 i. The City shall contract with an SOI Qualified Professional to evaluate the newly  
166 discovered property for eligibility for listing in the National Register. In lieu of an  
167 SOI Qualified Professional evaluation, the City may assume the discovery is  
168 eligible for listing in the National Register following consultation, or based upon  
169 input from, the SHPO and Concurring Parties, and proceed to subparagraph A.iii  
170 of this stipulation. If an evaluation is completed by an SOI Qualified Professional,  
171 the City shall provide the documented eligibility determination to SHPO and  
172 Concurring Parties within seventy-two (72) hours of the discovery. The SHPO  
173 and Concurring Parties shall have 72 hours to provide comments on the City's  
174 eligibility determination.

175 ii. If the City determines that the property does not meet National Register criteria,  
176 and the SHPO concurs, the Project construction activities may resume upon  
177 receipt of SHPO written concurrence with the City's documented "not eligible"  
178 determination.

179 iii. If the City determines, and the SHPO concurs, that the historic property is eligible  
180 for listing in the National Register, then the City, in consultation with the SHPO  
181 and Concurring Parties, will design a plan for avoiding, minimizing, or mitigating  
182 any further adverse effects prior to resuming Project construction activities in the  
183 area of the discovery.

184 B. Treatment of Human Remains: If an inadvertent discovery contains human remains, the  
185 City shall immediately notify the Saint Louis County Sheriff and the Office of the State  
186 Archaeologist (OSA) to comply with provisions of Minnesota Statute 307.08. Suspected  
187 human remains shall not be further disturbed or removed until disposition has been  
188 determined by the OSA consistent with the Procedures for Implementing Minnesota's  
189 Private Cemeteries Act (Anfinson 2008). At all times the human remains must be treated  
190 with the utmost dignity and respect, and in a manner consistent with the Council's Policy  
191 Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects  
192 (February 23, 2007).

193 C. The City shall ensure that the requirements established in this stipulation are incorporated  
194 into all appropriate construction contracts for the Project.

195 **IV. DISPUTE RESOLUTION**

196 A. Should any party to this Agreement object to or be unable to complete the execution of  
197 any provisions of this Agreement, the City shall take the objection into account and  
198 consult as needed with the objecting party to resolve the objection.

199 B. If the City determines that the objection cannot be resolved, the City shall request the  
200 further comments of the Council pursuant to 36 CFR § 800.7.

201 C. Any Council comment provided in response to such a request will be taken into account  
202 by the City in accordance with 36 CFR § 800.7(c) (4) with reference only to the subject  
203 of the dispute; the responsibility of the parties to this Agreement to carry out all actions  
204 under this Agreement that are not the subjects of the dispute will remain unchanged.

205 **V. DURATION, AMENDMENTS, AND TERMINATION**

206 A. This Agreement will expire if its terms are not carried out within five (5) years from the  
207 date of its execution. Prior to such time, the City may consult with the SHPO and amend  
208 it in accordance with Subparagraph VIII.B below.

209 B. This Agreement may be amended when such an amendment is agreed to in writing by all  
210 signatories. The amendment will be effective on the date a copy signed by all of the  
211 signatories is filed with the Council.

212 C. If any signatory to this Agreement determines that its terms will not or cannot be carried  
213 out, that party shall immediately consult with the other signatories and concurring parties  
214 to attempt to develop an amendment per Subparagraph B above. If within sixty (60)  
215 calendar days an amendment cannot be reached, any signatory may terminate the  
216 Agreement upon written notification to the other signatories and concurring parties.

217 i. Once the Agreement is terminated, and prior to work continuing on the  
218 undertaking, the City must either (a) execute an Agreement pursuant to 36 CFR §  
219 800.6 or (b) request, take into account, and respond to the comments of the  
220 Council under 36 CFR § 800.7. The City shall notify the SHPO and concurring  
221 parties as to the course of action it will pursue.

222 **VI. IMPLEMENTATION**

223 A. This Agreement may be implemented in counterparts, with a separate page for each  
224 signatory or party. This Agreement shall become effective on the date of the final  
225 signature by the signatories. The City shall ensure each party is provided with a complete  
226 copy of the final Agreement, updates to appendices, and any amendments filed with the  
227 City.

228 B. Execution of this Agreement by the City and the SHPO and implementation of its terms  
229 is evidence that the City has taken into account the effects of its undertaking on historic  
230 properties and has afforded the Council opportunity to comment pursuant to Section 106  
231 of the National Historic Preservation Act.

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**SIGNATORY**

CITY OF DULUTH

By: \_\_\_\_\_ Date \_\_\_\_\_  
Emily Larson, Mayor

By: \_\_\_\_\_ Date \_\_\_\_\_  
Chelsea Helmer, City Clerk

By: \_\_\_\_\_ Date \_\_\_\_\_  
Josh Bailey, City Auditor

By: \_\_\_\_\_ Date \_\_\_\_\_  
Gunnar Johnson, City Attorney

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**SIGNATORY**

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

By: \_\_\_\_\_ Date \_\_\_\_\_  
Amy Spong, Deputy State Historic Preservation Officer



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**CONCURRING**

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name, Title

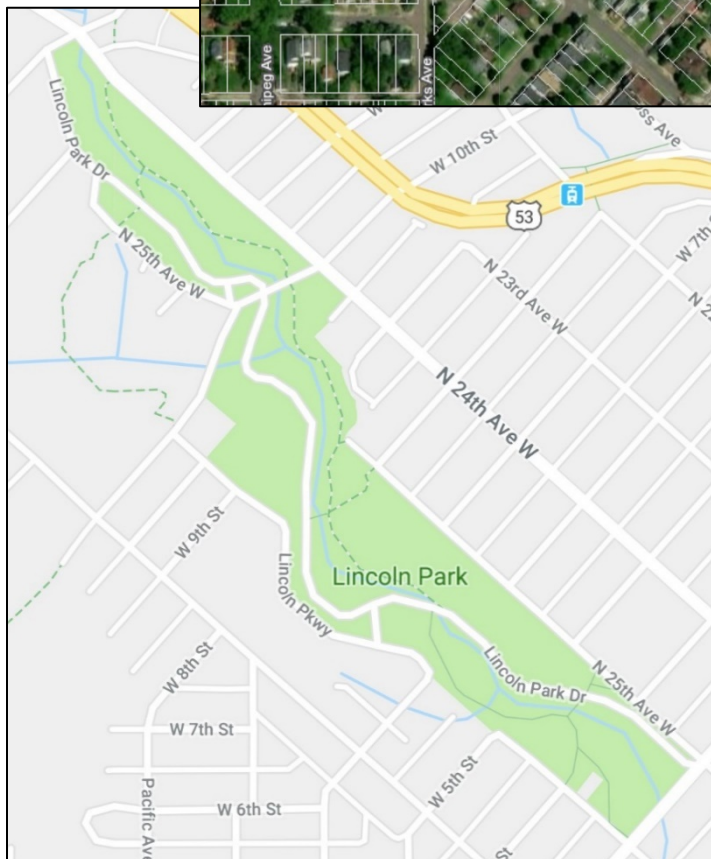
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**CONCURRING**

DULUTH HERITAGE PRESERVATION COMMISSION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name, Title

## APPENDIX A: AREA OF POTENTIAL EFFECT



*The APE illustrated above includes areas that will be physically affected by the project or might be subject to indirect visual effects. The project will not physically affect or be visible from most of Lincoln Park. If the project makes Lincoln Park ineligible for the National Register, however, it would have an effect on the entire park, so the park as a whole (left) is also in the APE. (Above, Saint Louis County Land Explorer app base map; left: Google map)*