

Exhibit A

LAKEWALK TRAIL LICENSE AGREEMENT

THIS AGREEMENT (this “Agreement”), made this ____ day of _____, 2022, by and between ST. LOUIS AND LAKE COUNTIES REGIONAL RAILROAD AUTHORITY, a political subdivision of the State of Minnesota, whose address is 111 Station 44 Road, Eveleth, MN 55734, here referred to as “Authority,” and CITY OF DULUTH, a municipal corporation and governmental subdivision of the State of Minnesota, whose address is City of Duluth, City Hall, 411 West First Street, Duluth, MN 55802, herein referred to as “City.”

RECITALS

WHEREAS, Authority owns or leases (depending on the section) the Lakefront Line Right-of-Way (the “Right-of-Way”) which runs through the City of Duluth and over which various railroads operate trains and related railroad operations; and

WHEREAS, City is the owner and operator of a public recreational trail, including related improvements, known as the “Lakewalk” (the “Trail”); and

WHEREAS, the Trail is located in part on land owned by City, in part on the Right-of-Way, and in part on land owned by third parties; and

WHEREAS, City and Authority have entered into several different written agreements allowing City to use various portions of the Right-of-Way for the construction, operation and maintenance of the Trail, including but not limited to a Lakewalk Permit dated September 11, 1989 (the “1989 Permit”); and

WHEREAS, City has plans to reconstruct certain portions of the Trail for the purpose of moving the Trail further away from the Lake Superior shoreline (and therefore closer to the railroad tracks located on the Right-of-Way), including portions of the Trail located (i) within the Right-of-Way pursuant to the 1989 Permit, and (ii) on land owned by the City, but which in their reconstructed location will be located in whole or in part within the Right-of-Way (the “Project”); and

WHEREAS, in order to complete the Project, City requests that Authority grant to City a license (the “Trail License”) to allow it to relocate portions of the Trail, as further described below, within the Right-of Way and to go upon the Right-of-Way immediately adjacent to the Trail for purposes of periodic inspection, maintenance and repair; and

WHEREAS, in order to consolidate some of the written agreements between City and Authority relating to the portions of the Trail to be reconstructed, City and Authority have agreed to terminate the 1989 Permit and replace it with this Agreement; and

WHEREAS, a portion of the Project includes relocation and/or reconstruction of the existing fence separating the Trail from the railroad track within the Right-of-Way (the “Fence Relocation Project”). The Fence Relocation Project will be constructed strictly in accordance

with the Plans and Specifications dated May 9, 2022 and attached as Exhibit 1 (the “Plans and Specifications”); and

WHEREAS, Authority is willing to grant the Trail License (defined below) to City under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of One and No/100th Dollars (\$1.00) paid to Authority by City, and the other covenants and agreements herein contained on the part of City to be paid, kept and performed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. GRANT OF LICENSES

1.1 Trail License: Subject to the terms and conditions of this Agreement, Authority hereby grants to City a non-perpetual, non-exclusive license over and across those portions of the Right-of-Way described in Section 1.2 below, for the purpose of constructing, maintaining, inspecting, repairing, replacing and removing the Trail and related improvements (the “Trail License”). This Agreement shall commence as of the date of full execution and shall remain in effect until June 30, 2047, unless earlier terminated pursuant to the terms of this Agreement.

1.2 Trail License Premises: The Trail License extends over those portions of the Right-of-Way described as follows (collectively, the “Trail License Premises”):

Segment A: those portions of the Right-of-Way located between the southeasterly extension of the southwest line of Lot 15, Block 14, CENTRAL DIVISION OF DULUTH and RR Crossing #970 689K (near 4th Avenue East), which is on the lake side of a line drawn 9.0 feet southeast of, parallel to and concentric with the centerline of the railroad track, as shown in the attached Exhibit 2.

Segment B: those portions of the Right-of-Way located between the centerline, extended, of 5th Avenue East and approximately 90.0’ west of RR Mile Marker 1, which is on the lake side of a continuous line drawn 18 feet southeast of, parallel to, and concentric with the toe of the existing bluestone retaining wall running along the northwest edge of the Right-of-Way, as shown in Exhibit 2.

Segment C: those portions of the Right-of-Way located between approximately 90.0’ west of RR Mile Marker 1 and the centerline, extended, of 14th Avenue East, which is on the lake side of a line drawn 9.0 feet southeast of, parallel to and concentric with the centerline of the railroad track, as shown in Exhibit 2.

Segment D: those portions of the Right-of-Way located between the centerline, extended, of 14th Avenue East and the southeasterly extension of the southwest line of Lot 6, Block 11, ENDION DIVISION OF DULUTH, which is on the lake side of a line drawn 9.0 feet southeast of, parallel to and concentric with the centerline of the railroad track, as shown in Exhibit 2.

Segment E: those portions of the Right-of-Way located between the centerline, extended, of 19th Avenue East and the centerline, extended, of 20th Avenue East, which is on the lake side of a line drawn 9.0 feet southeast of, parallel to and concentric with the centerline of the railroad track, as shown in Exhibit 2.

Segment F: a 150 feet by 30 feet portion of the Right-of-Way located between the centerline, extended, of vacated Washington Avenue and the east boundary of Lot 18, Block 3, Portland Division as shown in Exhibit 2.

Segment G: a 20 feet by 75 feet portion of the Right-of-Way that lies northeasterly of the west line of Government Lot 3 in Section 23, Township 50 North, Range 14 West as shown in Exhibit 2.

Segment H: a 20 feet by 75 feet portion of the Right-of-Way that lies southwesterly of the centerline, extended, of 12th Avenue East in the plat of BANNING AND RAY'S SUBDIVISION OF DULUTH as shown in Exhibit 2.

SECTION 2. FEE

2.1 City shall pay annually to Authority, payable on the first business day of each calendar year, a fee in the amount of One and No/100th Dollars (\$1.00).

SECTION 3. USE

3.1 The Trail License is solely for the purposes of: (i) constructing, maintaining, inspecting, repairing, replacing and removing a recreational trail for pedestrian and non-motorized vehicle travel in the Right-of-Way, including bridges, culverts, cuts and fills, and, as to Segment F, Segment G and Segment H, pedestrian overpasses; and (ii) constructing, maintaining, inspecting, repairing, replacing and removing an underground electrical service within Segment F. Except as explicitly permitted by this Agreement (such as for the pedestrian overpasses), no permanent aboveground structures will be installed less than 9 feet from the centerline of the railroad track located within the Right-of-Way. The pedestrian overpasses located within Segment F, Segment G and Segment H of the Trail License Premises shall maintain minimum clearance of 22 feet above grade. Except as hereinafter provided for, snowmobiles and other motorized uses are specifically prohibited on the Trail License Premises. Signs placed by City shall be limited to interpretative and directional signs relating to non-motorized public recreational uses and shall be subject to advance approval of Authority. City shall post and maintain such signs and posters on the Trail License Premises as are necessary and suitable to delineate and locate the Trail, to prohibit the use of Authority's adjacent property, and to expressly inform the public that the Trail License Premises is for non-motorized use only. In addition, City shall post at least one sign within the Trail License Premises to recognize the Authority's participation in the Project. In no event shall City permit the placement of any commercial signage upon the Trail License Premises. The Trail License Premises shall be used for no other purpose without Authority's prior written consent.

3.2 Only City's, its contractor's and agent's, motor vehicles shall be allowed to operate on the Trail License Premises and only when necessary to accomplish a specific maintenance or repair project, when pedestrian access is not sufficient.

3.3 At no time shall City, its contractors or agents, interfere with the safe operation of railroad trains and equipment upon the Right-of-Way. City shall assure that City, its contractors and agents, maintain proper clearances on the railroad line and take all actions necessary to assure that railroad operations will not be in any way interfered with, impeded or delayed.

3.4 City shall not use the licenses granted hereunder for any purpose which is forbidden by any applicable law, regulation or rule of any governmental agency, including local, state or federal, or which may invalidate any policy of insurance issued to City or Authority.

3.5 City, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, shall not permit any hazardous materials to be deposited on the Right-of-Way or other lands of Authority through its/their operations or actions. If hazardous material is so deposited as a result of City's (or its agent's, servant's, employee's, director's, officer's, contractor's, subcontractor's and supplier's) action or omission or due to the transportation of hazardous materials, City, its successors and any permitted assigns, shall indemnify, save harmless and defend Authority, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, from and against any claims made against Authority, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, arising therefrom. For the purposes of this Agreement, "Hazardous Material" shall mean any substance (i) defined as "hazardous substance" under Section 1.01(14) of CERCLA, 42 U.S.C. 9601(14) or any successor regulation; (ii) containing petroleum, including any fraction thereof; or (iii) determined to be deleterious to human health or the environment by any federal, state or local environmental, occupational health, or public health agency or authority.

SECTION 4. INGRESS AND EGRESS

4.1 Authority does not undertake to provide a means of ingress and egress for City to the Trail License Premises.

SECTION 5. CONSTRUCTION

5.1 The Fence Relocation Project shall be designed and initially constructed strictly in accordance with the Plans and Specifications. Authority hereby acknowledges (i) it has been provided with a copy of the Plans and Specifications, (ii) City has provided an explanation of the work set forth therein, and (iii) its approval of the Plans and Specifications. Prior to commencing construction of the Fence Relocation Project, City shall stake a line within the Trail License Premises running 9 feet southeast of, parallel to and concentric with the centerline of Authority's railroad track located within the Right-of-Way. The Plans and Specifications reflect a forty-eight inch (48") high wire mesh or chain link fence to be located within the Trail License Premises between the Trail and the railroad tracks along the entire length of the Trail, which fence shall be furnished, installed, maintained and relocated or removed as necessary, by City, and shall be of a design acceptable to Authority. Unless otherwise permitted by Authority in

writing, all fencing installed within the Trail License Premises will consist of panelized construction, such that individual panels can be easily unbolted and moved to facilitate railroad tie replacement or other railroad maintenance needs. The Plans and Specifications, insofar as they pertain to the Trail or to any construction activity, means or methods within the Right-of-Way, or in any way pertaining to or affecting the Right-of-Way, shall not be amended, modified, changed, nor shall anything be added to or deleted from the Plans and Specifications, nor any change orders issued, without the prior written consent of Authority.

5.2 After the Fence Relocation Project is completed, the City intends to implement other components of the Project, which include relocating a portion of the Trail within the Right-of-Way. The design and construction of the relocated portion of the Trail within the Right-of-Way will be solely the responsibility of City, subject to the advance review and written approval by Authority with regard to location and manner of construction and materials. The Trail shall be constructed of durable materials designed for long service life and relatively free from routine servicing and maintenance. Conformance with current applicable material specifications and codes is mandatory. City shall be responsible for determining the location, elevation and extent of all utilities, underground structures and/or obstructions in the vicinity of the installation whether shown on the approved plans and specifications or not.

5.3 Prior to any excavation taking place, City must obtain the advance written approval of Authority as to the location thereof. If it is determined by Authority that shoring is necessary for any excavation, it will be the responsibility of City to submit a shoring design for advance approval by Authority.

5.4 City's use of the Trail License Premises shall be such that it shall do so with a minimum of interference with natural drainage of Authority's lands and Right-of-Way. Any drainage facilities required shall be constructed, maintained, repaired and removed by City, at City's sole cost and expense, and all work associated therewith shall be subject to the advance written approval of the Director of Authority, or their duly authorized representative. City shall avoid disturbing existing drainage facilities except as approved by the Director of the Authority.

5.5 All ground profiles and vegetation cover on Authority's property or affecting drainage from or to Authority's property, disturbed by City while acting under this Agreement or during construction of the Project, must be reestablished as provided for in the Plans and Specifications for the initial installation and all future maintenance work. Areas of Authority's property and/or Right-of- Way disturbed by the installation, maintenance, removal or relocation of the Trail shall be kept to a minimum. Disturbed areas shall be returned by City to normal grade and elevation, with compaction of backfill material and all excess or undesirable material removed by City at its sole expense. Protection against erosion shall be provided by City as provided for in the Plans and Specifications.

5.6 Exceptions to any design, location, construction or methods of installation provisions contained in this Agreement and attachments, must be authorized in writing by the Director of Authority, or their duly authorized representative. All requests for exceptions shall be fully documented by City including design data, cost comparisons and other pertinent information.

5.7 Once the Fence Relocation Project is completed, any improvements to or construction within the Trail License Premises (including the construction and completion of the remaining components of the Project) must be authorized in writing by the Director of Authority, or their duly authorized representative. All requests for improvements or construction within the Right-of-Way shall include design data and other pertinent information related to such request.

SECTION 6. FLAGGING AND MATERIAL STORAGE

6.1 City shall obtain and maintain, at the sole cost and expense of City, any flagmen, watchmen and/or inspectors Authority deems necessary or advisable for the proper protection of traffic moving on Authority's tracks and to ensure the safety of its and other railroad operations during the construction, maintenance, repair, relocation and/or removal of the Trail. Movement of personnel, equipment and materials over, across or on the tracks and Right-of-Way of Authority shall be held to a minimum and such movements shall be made only under the supervision and direction of the Director of Authority or their duly authorized representative.

6.2 Flagging services shall be performed by North Shore Track Services, Inc., or such other entity as Authority may designate, and it shall be the responsibility of City to contract directly with North Shore Track Services, Inc. or other entity designated by Authority for necessary flagging services, the total cost of such services to be borne solely by City.

6.3 Except as otherwise specifically permitted in the Plans and Specifications, other equipment necessary for City's operation of the Trail must be located outside the limits of the Right-of-Way.

SECTION 7. MATERIALS AND WORKMANSHIP

7.1 All materials and workmanship required in the construction, maintenance, repair, replacement, relocation and removal of the Trail shall be furnished by City, but shall be subject at all times to inspection by the Director of Authority, or their duly authorized representative. Any materials or workmanship not meeting the requirements of the Plans and Specifications or declared to be unsatisfactory by Authority shall be replaced by City at its own expense with materials and workmanship satisfactory to Authority. The privilege of inspecting the materials and workmanship involved in the construction, maintenance, repair, relocation and/or removal of the Trail and to notify City to renew, repair or replace materials and workmanship unsatisfactory to Authority shall not be construed as imposing any obligations whatsoever on Authority to inspect such materials and workmanship and to notify City to renew, repair and replace any materials or workmanship, it being the intent of the parties to this Agreement that the sole responsibility for the materials and workmanship used in the construction, maintenance, repair, relocation and/or removal of the Trail shall at all times be that of City alone.

7.2 When, in the sole opinion of Authority, the Trail is in a defective or dangerous condition, City shall, at its own cost and expense, within fourteen (14) calendar days after mailing of written notice from Authority, submit a preliminary, tentative plan to renew, repair or replace the Trail in a manner reasonably satisfactory to the Director of Authority, or their duly

authorized representative. Upon approval of a final plan by the Director of Authority, City shall initiate the renewal, repair or replacement of the Trail within a reasonable time in accordance with the approved plan and shall continue renewal, repair or replacement without interruption to completion. For the purposes of this Section 7.2, a "reasonable time" will be determined by reference to the imminence of harm, damage or destruction to health or property; likely magnitude of the harm, damage or destruction, and the disruption of Authority's activities which may be caused by the defective or dangerous condition. However, the cost or expense involved in remedying the defective or dangerous condition shall not be a factor in determining "reasonable time."

SECTION 8. INSPECTION, MAINTENANCE, SERVICING AND REPLACEMENT OF TRAIL

8.1 Any and all inspection, maintenance, repair or replacement of the Trail shall be the sole responsibility of City and at its sole expense. Except in the event of an emergency, City shall comply with the ADVANCE NOTIFICATION provisions of Section 13 herein before entering upon Authority's property or the Right-of-Way except for that portion covered by the licenses granted pursuant to Section 1 above. Maintenance and repair must be performed by City so as to keep the Trail in a safe, functional condition, and in a good state of repair in accordance with the requirements of applicable Federal, State and Local laws, regulatory standards and utility codes, as well as any requirements of Authority.

8.2 City shall keep and maintain the Trail License Premises in good repair and in safe, neat, clean and respectable condition, and will properly dispose of all refuse therefrom and observe and comply with all statutes, ordinances, government regulations, and policies of Authority applicable thereto. City shall cause or suffer no waste of the Trail License Premises and shall permit thereon no conduct which would be illegal or immoral or constitute a nuisance.

8.3 City shall be responsible at its sole cost and expense to replace and stabilize all earth cover and vegetation if and when it has eroded over the Trail License Premises where such erosion is due to, or caused by, the placement or existence of the Trail. City is also responsible for the repair of any settlement of backfills, fills and embankments which may occur due to the placement or existence of the Trail.

8.4 City shall submit to Authority for its prior approval, all plans and specifications concerning maintenance or repair work to be performed by City in regard to the Trail, other than routine, day-to-day inspection and maintenance.

8.5 City accepts the licenses granted hereunder with the full understanding and awareness that Authority's maintenance or snow removal activities may result in damage to City's improvements and may impede access to the Trail License Premises from time to time. Authority agrees to take reasonable measures to prevent damage to City improvements, but City agrees to assume full responsibility to repair and maintain its improvements even if damaged by Authority's railroad activities, maintenance activities, or snow removal activities, and City shall not in any event claim against Authority for damage to its improvements or damages due to impeded access to the Trail License Premises.

CITY ACKNOWLEDGES THAT THE RIGHT-OF-WAY DESCRIBED HEREIN CONTAINS ACTIVE RAILROAD LINES USED FOR RAILROAD OPERATIONS. RAILROAD OPERATIONS ENTAIL OR CAUSE LOUD NOISES, SMOKE, DUST, STEAM, ODORS, VIBRATIONS, BRIGHT LIGHTS AND OTHER CONDITIONS. RAILROAD OPERATIONS ARE CONDUCTED AT ALL TIMES OF THE DAY AND NIGHT. THE INTENSITY AND DURATION OF RAILROAD OPERATIONS ON THE RAILROAD LINES CAN INCREASE AT ANY TIME WITHOUT WARNING TO CITY, INCLUDING, BUT NOT LIMITED TO, THE INITIATION OR RESUMPTION OF ACTIVE IRON ORE TRANSPORT AND OTHER RAILROAD FREIGHT OPERATIONS. ACCORDINGLY, CITY TAKES THE TRAIL LICENSE WITH THE UNDERSTANDING AND AWARENESS THAT CITY'S USE OF THE TRAIL LICENSE PREMISES MAY BE INTERFERED WITH BY RAILROAD OPERATIONS AND CITY SHALL HAVE NO RIGHT OR RECOURSE TO DEMAND ANY CHANGE OR CESSATION TO THE CHARACTER, CONDUCT OR CONDITIONS OF RAILROAD OPERATIONS DESCRIBED HEREIN OR FUTURE RAILROAD OPERATIONS OF ANY SORT OR NATURE WHATSOEVER.

SECTION 9. RELOCATION CHANGES AND ALTERATIONS

9.1 When and as often as Authority shall require to have the location and/or elevation of the Trail, or any portion thereof, change for the purposes of making improvements to the facilities of Authority, or minimizing any hazards presented by the Trail or the contents thereof, all as determined in Authority's sole discretion, City shall, at its own cost and expense, with due diligence and within a reasonable period of time after receipt of written notice from Authority, change the location and/or elevation of the Trail, or any portion thereof, to such a location and/or elevation as shall be reasonably designated by the Director of Authority or their duly authorized representative.

9.2 In the event City submits in writing a request to Authority to extend the relocation period, Authority shall respond within five (5) calendar days.

9.3 City agrees that upon request from Authority, it will, at its own cost and expense, make changes or alterations to the Trail when, in Authority's sole opinion, Authority's operations require modification to the Trail, or to minimize hazards presented by the Trail.

9.4 In the event City shall fail to change the location or elevation of, renew, repair or replace, alter, maintain, service, or make any changes requested by Authority, to the Trail, or any portion thereof, or to correct any dangerous or defective condition, or fails to perform any other matter required of City hereunder, after mailing of written notice from Authority as hereinbefore provided and within the time stipulated, then Authority may, without further notice to City, perform said work, all at the sole risk, cost and expense of City, or at Authority's option, declare this Agreement terminated and require City to remove the Trail and restore the Trail License Premises to its original condition.

SECTION 10. INSURANCE

10.1 Prior to use of the Right-of-Way and/or exercise of any of the privileges and activities provided by this Agreement, City, at its sole cost and expense, shall procure and maintain, or require the procurement and maintenance during the term of this Agreement, insurance, or State approved self-insured status, adequate to cover all liability hereunder assumed by City and to protect Authority, its officers, directors, employees, agents, contractors, subcontractors and suppliers with respect to losses arising out of the use of the Right-of-Way and/or construction, repair or maintenance of the Trail by City, its officers, employees, agents, contractors, subcontractors and suppliers.

10.2 Such insurance or self-insurance coverage shall be placed with insurance carriers acceptable to Authority and shall include but not be limited to:

1. Statutory Workers' Compensation/Employers Liability with an Employers Liability Limit of not less than \$1,000,000 Each Accident.
2. Commercial General Liability Insurance Coverage, including contractual coverage, with a limit of not less than \$1,000,000 Each Occurrence/\$1,000,000 Aggregate.
3. Commercial Automobile Liability Insurance Coverage with a limit of not less than \$1,000,000 Each Accident.
4. Commercial Umbrella Insurance Coverage with a limit of not less than \$4,000,000 Each Occurrence/\$4,000,000 Aggregate. The coverage provided by this policy shall be at least as broad in scope as the underlying liability coverages specified in (1), (2) and (3) above.
5. Railroad Protective Liability Insurance in the amount of \$2,000,000 for Each Occurrence and \$6,000,000 in the Aggregate. City shall provide Authority with an original of said policy evidencing coverage for the full term of any construction operations provided by this Agreement or taking place or utilizing Authority's Right-of-Way to access a construction site.
6. All Risk Property Insurance including Flood and Earthquake in an amount of \$10,000,000 to provide protection for loss or damage to any property of Authority, or the property of others in the care, custody or control of City, its officers, employees, agents, contractors, subcontractors and suppliers. Such policy is to include Authority as a Loss Payee as applicable.

10.3 Authority and City acknowledge that City is a self-insured political subdivision of the State of Minnesota pursuant to Minn. Stat. §471.981 with respect to public liability; Minn. Stat. §176.181 with respect to workers' compensation; and Minn. Stat. §65B.48 with respect to no-fault auto liability. City represents that under the provisions of Minn. Stat. §466.09, it has the power and a statutory duty to levy taxes sufficient to pay any and all judgments rendered against

it. During the term of this Agreement, City shall maintain all of the above self-insurance programs in strict accordance with the laws and rules of the State of Minnesota and shall at all times be certified by the State of Minnesota to operate said self-insurance program and shall afford Authority the coverages set forth in subsection 10.2 above. In addition, City shall receive and investigate any and all claims related to or arising out of this Agreement. City shall also contract with legal counsel to pursue any negotiations or litigation that may be necessary based upon the circumstances of any claim involving this Agreement. City shall set aside funds for potential claims arising under this Agreement as required by State insurance regulations. City agrees that in case of any judgment in excess of funds so reserved, it will levy taxes to pay such judgment. City agrees that it shall use its State approved self-insurance program to indemnify Authority as provided in Section 11 of this Agreement. If City ceases to maintain any of its self-insurance programs relating to insurance coverage required by this Section 10.3, or if any of said self-insurance programs fail to be approved by the State of Minnesota, or if City shall cease to have the power to levy taxes in an amount to cover any judgment against it, then City shall immediately purchase insurance as set forth in subsection 10.2 of this Section 10, and submit required certificates and policies to Authority as provided in this Section 10.

10.4 All of the above policies shall name Authority, its officers, directors, employees, and agents as additional insured and shall be endorsed to provide coverage to these additional insured on a primary basis without seeking contribution from any other insurance or self-insurance available to Authority. In addition, the policy shall contain Severability of Interest Clauses and Waivers of Subrogation in favor of Authority, its officers, directors, employees and agents.

10.5 City shall furnish to Authority's Director insurance certificates in a form acceptable to Authority, evidencing compliance with the foregoing requirements and stating that the insurers will provide thirty (30) calendar days' advance written notice to Authority of the cancellation or material alteration in any of the required policies of insurance.

10.6 All coverages are to be written on occurrence-based policy forms with insurers acceptable to Authority. Claims made policy forms are subject to prior review and written approval by Authority.

10.7 City shall also require its contractors, suppliers, sublessees, etc., to carry and furnish evidence of the above coverages.

10.8 The providing of the above required insurance coverages shall not be deemed a limitation on the liability of City as provided in this Agreement, but shall be additional security therefore.

10.9 Failure of City to comply with any one of the above described certificate of insurance requirements within thirty (30) calendar days of written notice by Authority to City of any such default may result in delay, and/or, at Authority's option, termination of this Agreement.

10.10 All insurance required to be carried by City shall be with insurance companies subject to Authority's approval.

10.11 Renewal certificates shall be furnished to Authority not less than thirty (30) calendar days prior to the expiration of the coverages required by this Section 10. The insurances required hereunder shall be maintained in full force and effect until Authority finally releases in writing City from all obligations under the terms of this Agreement.

SECTION 11. INDEMNITY AND LIABILITY

11.1 City, its successors and any permitted assigns, shall assume all risk and liability for accidents and damages that may occur to person or properties on account of or in any way related to the construction, maintenance or operation of the Trail, and the City does hereby indemnify and hold harmless Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, employees and agents, from any and all costs, liabilities, expenses, suits, judgments or damages to person or property or claims of any nature whatsoever arising out of or in any way related to the construction, maintenance, or operation of the Trail or performance by City, its agents, servants, employees, officers, directors, contractors, subcontractors or suppliers of any of the obligations or privileges provided under this Agreement. Provided, however, with respect to any claim by or liability to a third party, nothing in this Paragraph 11.1 shall create a liability which would not otherwise exist.

11.2 City, for itself, its successors and any permitted assigns, does agree to indemnify, protect and save harmless Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents and employees from any and all claims, demands, awards and actions made, brought or obtained against Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents or employees, by anyone, including but not limited to claims brought by City, its agents, servants, directors, officers, contractors, subcontractors, suppliers or employees, for any and all it injuries to person, including death arising therefrom, and damages to property due to, caused by or growing out of any accident or occurrence which but for this Agreement or the presence of City's employees, agents, servants, contractors, subcontractors or suppliers pursuant to this Agreement, would not have occurred or been incurred, except when such damages and injuries are attributable to the sole or concurrent fault, failure or negligence of Authority, its officers, directors, agents, servants, employees, contractors, subcontractors or suppliers. City agrees to defend, at its own expense, any suit or action brought against Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents or employees, by reason of any matter referred to herein, and pay any judgment recovered or rendered in any such suit or suits. Notwithstanding anything in this Section 11.2 to the contrary, the foregoing release and waiver shall not apply to damage or injury caused by the intentional unlawful or fraudulent conduct of Authority

11.3 City agrees to protect the property of Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, agents, servants, employees, contractors, subcontractors and suppliers (including rolling stock as well as stationary facilities) from damage on account of any accident or occurrence which but for this Agreement and privileges herein

granted would not have occurred or been incurred except as provided above, and to promptly reimburse Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, agents, servants, employees, contractors, subcontractors and suppliers for any and all such loss or damage.

SECTION 12. TERMINATION, DEFAULT

12.1 Unless cancelled at any time upon mutual agreement of City and Authority, this Agreement and the privileges granted hereunder shall be and continue in full force and effect until June 30, 2047, except for City's continuing obligations to remove the Trail and restore the Right-of-Way and Authority's other property and its other obligations specifically provided in this Agreement.

12.2 This Agreement shall terminate prior to June 30, 2047 in the event that for twelve (12) consecutive months City shall cease to use the Trail or any replacement of the Trail for the purpose herein stated, at which time the rights granted herein shall cease and terminate absolutely and this Agreement shall be null and void, except for City's continuing obligations to remove the Trail and restore the Right-of-Way and Authority's other property and its other obligations specifically provided in this Agreement.

12.3 This Agreement may be terminated prior to June 30, 2047 by Authority upon one (1) year's advance written notice to City in the event that Authority determines that the Trail License Premises are needed by Authority for railroad-related purposes.

12.4 Upon termination of this Agreement, City shall remove the Trail and all of its property, if any, within the time specified in any notice of termination. In effecting such removal, the premises and property of Authority shall be restored by City to a condition satisfactory to Authority's Director, or their duly authorized representative. If City shall fail to make the removal in the manner and time set forth herein, Authority may perform the removal and make said restoration, all at the sole risk, cost and expense of City, and may also dispose of any removed items without the necessity to account for the same or to give further notice to City.

12.5 If City shall fail to make the required removal, Authority shall have the further option to elect and notify City that all right, title and interest of City in any of its property shall be forfeited and shall vest absolutely in Authority as of the date of notice of such election.

12.6 In the event of City's breach of any covenant, condition, payment or other obligation under this Agreement, Authority, its successors and assigns, shall provide City with written notice of breach and thirty (30) calendar days in which to cure such breach, except that, if the nature of the breach is such that it cannot be reasonably cured within said thirty (30) day period, City shall commence cure within said thirty (30) day period and complete said cure as soon as is reasonably possible, subject to legal requirements imposed on the City by law. Any breach by the City which is not cured within the time provided shall entitle Authority to injunctive relief, specific performance and damages, together with such attorney's fees and costs as Authority may incur as a result of such breach or the enforcement of Authority's rights pursuant to this Agreement. Repeated material breaches of this Agreement by City shall

constitute cause for termination of this Agreement by Authority, and City shall immediately discontinue construction and/or operation of the Trail upon such termination. Authority's exercise of its right to terminate this Agreement shall not excuse City from the fulfillment or satisfaction of any obligation under this Agreement which has accrued prior to Authority's termination of the Agreement or of any obligations which this Agreement provides shall survive or be performed upon termination.

12.6.1 In the event of Authority's breach of any covenant, condition, payment or other obligation under this Agreement, City, its successors and assigns, shall provide Authority with written notice of breach and thirty (30) calendar days in which to cure such breach except that, if the nature of the breach is such that it cannot be reasonably cured within said thirty (30) day period, Authority shall commence cure within said thirty (30) day period and complete said cure as soon as is reasonably possible, subject to legal requirements imposed on the Authority by law. Any breach by the Authority which is not cured within the time provided shall entitle City to injunctive relief, specific performance and damages, together with such attorney's fees and costs as City may incur as a result of such breach or the enforcement of City's rights pursuant to this Agreement.

12.7 In the event that City shall be guilty of any act or omission in violation of its obligations under this Agreement and such violation constitutes an imminent hazard to the health or safety of persons or property, or an imminent hazard to Authority's ability to use the railroad facilities located on the Right-of-Way when it has need therefore, such condition shall be deemed an Emergency Default. In such case, Authority shall notify City by telephone at the City's Public Works and Utilities Department's emergency notification number appearing in area telephone directories or at such other number as the City's Director of Public Works and Utilities shall designate to Authority in writing from time to time and shall promptly follow up such telephonic notification with written confirmation thereof at the address provided for in Paragraph 27 below; such notifications shall set forth the nature of the Emergency Default and shall demand that City proceed to cure said Emergency Default condition immediately, subject to limits imposed on it by law. If City fails or refuses to proceed to so immediately cure such Emergency Default condition, Authority shall be entitled to itself proceed to cure such Emergency Default condition and to collect the reasonable costs thereof from City.

12.7.1 In the event that Authority shall be guilty of any act or omission in violation of its obligations under this Agreement and such violation constitutes an imminent hazard to the health or safety of persons or property or to City's ability to use the Trail when it has need therefore, such condition shall be deemed an Emergency Default. In such case, City shall notify Authority at such number as Authority shall designate to City in writing from time to time and shall promptly follow up such telephonic notification with written confirmation thereof at the address provided for in Paragraph 27 below; such notifications shall set forth the nature of the Emergency Default and shall demand that Authority proceed to cure such Emergency Default condition immediately, subject to limits imposed on it by law. If Authority fails or refuses to proceed to so immediately cure such Emergency Default condition, City shall be entitled to itself proceed to cure such Emergency Default condition and to collect the reasonable costs thereof from Authority.

SECTION 13. ADVANCE NOTIFICATION

13.1 City shall notify the Director of Authority, in writing, three (3) business days (Monday-Friday) prior to starting construction within the Right-of-Way and again by telephone at (218) 254-2575 at least twenty-four (24) hours before any work herein provided is to be undertaken.

SECTION 14. ORDINANCES, REGULATIONS, RULES AND APPLICABLE LAWS

14.1 City, at City's sole cost and expense, shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority, federal, state or local, having jurisdiction over the construction of the Trail and/or City's use, maintenance, repair and occupation under this Agreement, including but not limited to zoning, health, safety, building and/or environmental matters.

14.2 City shall further defend, indemnify and hold Authority harmless from any violations of such laws, ordinances, rules, regulations and/or requirements, any penalty, levy, fine or assessments there from, and all costs of defense of or compliance with any citation, order or violation notice(s), including but not limited to any such penalties, levies, fines, assessments, compliance or remedial charge(s) arising after termination of this Agreement. For the purposes of this Section 14.2, the term "Authority" shall include not only the Authority named herein but also any parent companies, subsidiaries, affiliates, successors, or assigns of Authority, or its or their agents, servants, employees, directors, officers, contractors, subcontractors or suppliers.

14.3 It is City's sole duty, responsibility and obligation to determine and obtain any permit, license or other permission required by law in order for City to perform its obligations provided in this Agreement including, but not limited to, the construction, maintenance, repair, relocation or replacement of the Trail. City shall provide Authority with a copy of any required permits, licenses, or other permission or documentation prescribed by law prior to commencing or engaging in the regulated activity.

SECTION 15. CLAIM OF TITLE

15.1 City shall not at any time own or claim any right, title or interest in or to the lands of Authority or the Right-of-Way of Authority, nor shall the continued existence of this Agreement for any length of time give rise to any right, title or interest in and to the lands or Right-of-Way of Authority other than as specifically provided in this Agreement.

SECTION 16. RECORDING

16.1 Upon the request of either party, the other party shall join in the execution of a memorandum or so-called "short form" of this Agreement for the purpose of the recordation. Said memorandum or short form of this Agreement shall described the parties, the termination provisions of this Agreement and shall incorporate this Agreement by reference. The party requesting the recording shall pay the recording costs.

SECTION 17. LIMITATIONS, RESERVATIONS AND RESTRICTIONS

17.1 This Agreement is made on an AS IS BASIS without warranties or representations of any nature or kind by Authority and subject to all of the limitations, reservations and restrictions upon the title of Authority and its right to use the Right-of-Way or other property. Authority does not warrant or represent the extent or duration of its interest, if any, in such property.

17.2 Other Agreements: The rights and privileges granted to City pursuant to this Agreement are subject to and subordinate to the agreements between Authority and Burlington Northern Railroad (BN), Duluth, Missabe & Iron Range Railway Company (DM&IR), Canadian National Railroad (CN), Lake Superior Museum of Transportation, and Minnesota Department of Transportation, relating to the Lakefront Line.

SECTION 18. INSPECTION

18.1 Notwithstanding any other provision of this Agreement, nothing contained herein shall relieve City from its obligation to inspect and at all times maintain in good condition and repair the Trail and facilities located under, along and across the land and Right-of-Way, or impose any obligation upon Authority with respect to such inspection and maintenance.

18.2 Authority shall have no responsibility or liability for any condition of the Trail License Premises or for policing the safe and proper use thereof.

SECTION 19. SUCCESSORS AND ASSIGNS

19.1 The terms, conditions, covenants and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Authority and the successors and assigns of City, provided, however, City may not assign, convey or encumber its rights under this Agreement except as set forth in Section 20 below.

SECTION 20. TRANSFER, ASSIGNMENT OR SUBLICENSE

20.1 City shall not voluntarily transfer, encumber or assign this Agreement or any of its rights and privileges herein granted, except with the prior written consent of Authority, which consent may be granted or withheld in the sole discretion of Authority. In the event of any such unauthorized transfer, encumbrance or assignment of this Agreement, or any of the rights and privileges of City hereunder, Authority, at its option, may immediately terminate this Agreement by giving City or any transferee or assignee written notice of such termination.

20.2 City shall not conduct, promote or permit any races or competitive events within the Trail License Premises without the prior written authorization of Authority.

SECTION 21. TRACKS

21.1 It is understood and agreed that the permission herein granted to City does not include the right to move heavy equipment or vehicles over any unprotected tracks of Authority.

21.2 If, after the initial construction of the Project, in the judgment of the Director of Authority, it shall be necessary to protect the property of Authority, or property in its care and custody by use of crossing flagmen, or other protective measures which are required because of the Trail or City's operations, it is understood and agreed that City shall promptly reimburse Authority for the entire cost and expense thereof if Authority undertakes to provide or obtain such services.

SECTION 22. 1989 PERMIT AND ENTIRE AGREEMENT

22.1 The 1989 Agreement is terminated. This Agreement and the Exhibits, and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Authority and City concerning the subject matter of this Agreement and there are no other covenants, promises, agreements, conditions or understandings, either oral or written between the parties hereto. Except as herein otherwise specifically provided, no alteration, amendment, change or addition to this Agreement shall be binding upon Authority or City unless reduced to writing and signed by both parties. This Agreement does not amend or replace any of the written agreements between City and Authority, EXCEPT that it terminates the 1989 Permit.

SECTION 23. GOVERNMENTAL APPROVAL

23.1 To the extent required by law, this Agreement shall be subject to the approval, if necessary, of any State or Federal Commerce Commission, Board of Public Utility Commissioners, Public Service Commission or any other such Federal, State or local governmental body as may have jurisdiction.

SECTION 24. INTERPRETATION

24.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all terms of this Agreement shall be interpreted in accordance therewith.

SECTION 25. PARTIAL INVALIDITY

25.1 The invalidity, unenforceability or unconstitutionality of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid, unconstitutional or unenforceable provision or provisions were limited in scope and effect to the extent necessary to render such provision or provisions valid, enforceable and constitutional, and if such a limiting construction is not possible, such provision or provisions shall be omitted.

SECTION 26. NON-WAIVER OF COVENANTS

26.1 The failure of either party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provisions in the future nor in any way affect the validity of this Agreement, or any part thereof, nor the right of any party thereafter to enforce each and every such provision.

SECTION 27. NOTICES

27.1 Any notice, other than ADVANCE NOTICE described in Section 13, required or permitted to be given under this Agreement shall be in writing and deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

If to Authority:
St. Louis & Lake Counties Regional Railroad Authority
Mr. Robert Manzoline, Director
111 Station 44 Road
Eveleth, MN 55734

If to City:
City of Duluth
Attn: Property & Facilities Manager
1532 W. Michigan St.
Duluth, MN 55806

SECTION 28. RELATIONSHIP OF THE PARTIES

28.1 The relationship of the parties is that of independent entities and in no way establishes a partnership, agency or joint venture relationship.

SECTION 29. SURVIVAL OF COVENANTS

29.1 Notwithstanding any other provision of this Agreement, the rights and obligations of the parties expressed in this Agreement, including but not limited to, any provisions concerning indemnity and liability, shall remain in effect for any legal proceeding brought against Authority, or its agents, servants, employees, directors, officers, successors or assigns, which was commenced after the termination of this Agreement, for whatever reason, but was caused by, alleged to be caused by, or grew out of any accident or occurrence which but for this Agreement, the Trail or the presence of City's officers, agents, employees, servants, contractors, subcontractors or suppliers pursuant to this Agreement, would not have occurred or been incurred, even when such proceeding is attributable to the sole or concurrent fault, failure or negligence of Authority, its officers, agents, employees, servants, contractors, subcontractors or suppliers.

IN WITNESS WHEREOF, the parties have mutually executed this Agreement, in duplicate, as of the day and year first above written.

CITY OF DULUTH

ST. LOUIS AND LAKE COUNTIES
REGIONAL RAILROAD AUTHORITY

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Dated: _____

Dated: _____

Countersigned:

City Auditor

Approved as to form:


City Attorney

EXHIBIT 1



Property & Facilities Management

1532 West Michigan Street
Duluth, Minnesota 55806

 218-730-4430

May 9, 2022

To: Bob Manzoline, Railroad Authority

Subject: Lakewalk fence relocation details, Exhibit #1 to agreement

The City of Duluth intends to relocate the Railroad fence along the Lakewalk in the areas defined in the revised agreement between the Railroad Authority and the City of Duluth.

This exhibit is intended to provide design details pertaining to the construction of the fence and curb.

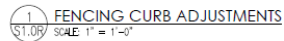
Construction details:

- The fence will be located 9' from the centerline of the Railroad tracks.
- The fence will be installed on top of a concrete curb as detailed in drawings.
- The curb design may include a retaining extension to retain the ballast.
- The curb elevation will be placed to allow the removal of Railroad ties and other maintenance activities.
- The fence type will be sectioned for ease of removal as needed.

Respectfully submitted;

Randy Rosandich
Construction Project Coordinator
218-626-5857
rrosandich@duluthmn.gov

Oct 03, 2019 - 4:08 pm
 T:\2018\181093 ITRC Duluth Shoreline Assessment and Engineering\Civil3_CAD\181093-S1.DR.dwg
 © COPYRIGHT - AM CONSULTING ENGINEERS P.A. - 2016



NOTES: 10'-0"

1. CONTROL JOINTS @ ~~10'~~ OC
2. EXPANSION JOINTS @ 50'-0" O.C.
3. FENCING CURB JOINTS SHALL BE ALIGNED WITH RETAINING CURB JOINTS
4. CONCRETE CURING REQUIRED
5. CHAMFER EXPOSED CORNERS

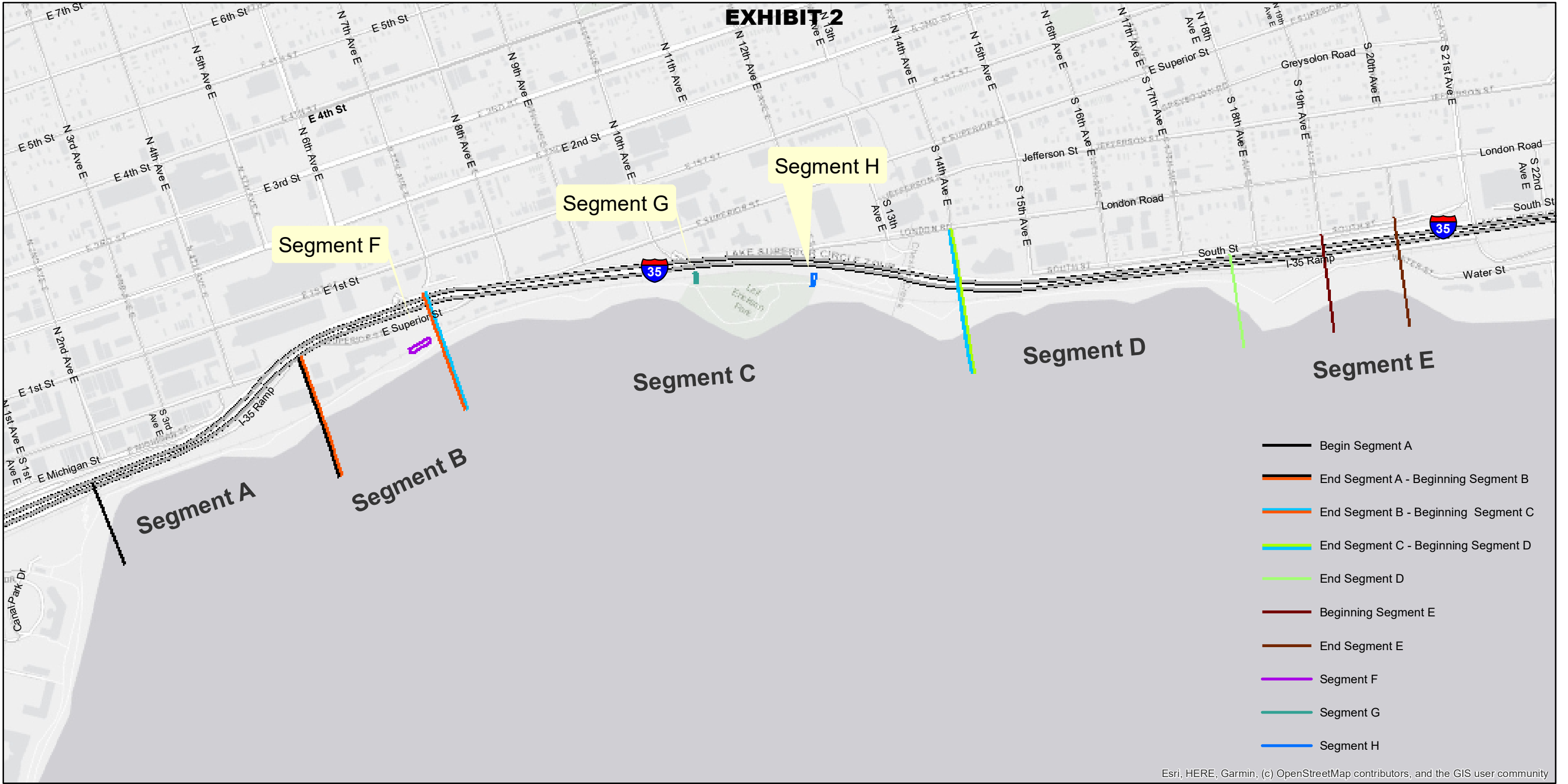
[illegible]Lakewalk Phase II
TRC Duluth Shoreline Assessment

Duluth, Minnesota

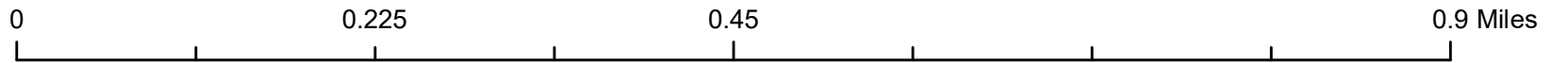
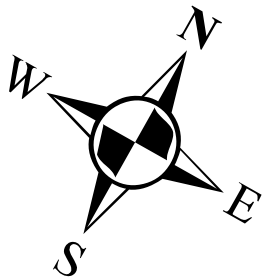
Fencing Curb Adjustments

JOB NO: 181093
DATE: 10/03/2019
DRAWN BY: PJB
DESIGNED BY: ZLM

S1.0R



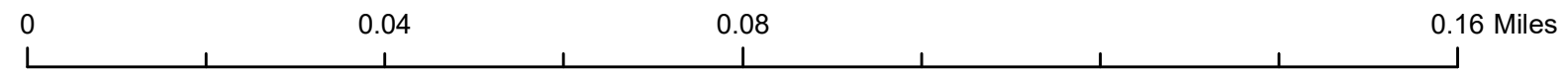
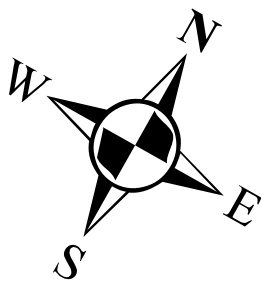
Printed Date: 5/5/2022



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. The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



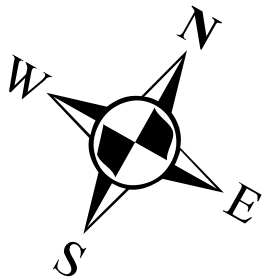
Printed Date: 5/5/2022



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. The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



Printed Date: 5/5/2022



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. The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.