

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (this “Agreement”) is by and between the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (“City”) and KRAUS-ANDERSON CONSTRUCTION COMPANY, a Minnesota corporation (“Kraus-Anderson”).

WHEREAS, Kraus-Anderson owns the real property outlined in black hashing on the attached Exhibit A (the “Licensed Premises”).

WHEREAS, City desires to access the Licensed Premises in order to demolish and remove that portion of an old railroad bridge located on the Licensed Premises (the “Project”). The definition of the Project includes the LHB Work and the Demolition Work, hereinafter defined.

WHEREAS, City hired LHB, Inc. (“LHB”) to complete the following relating to the Project: (i) a site survey, site plans and demolition details, (ii) project coordination, and (iii) construction administration and inspection (the “LHB Work”).

WHEREAS, City will be hiring a contractor(s) to perform the demolition, removal and remediation portion of the Project (the “Demolition Work”).

WHEREAS, City desires to access the Licensed Premises and complete the Project, at no cost to Kraus-Anderson, and Kraus-Anderson wishes to provide City with written permission to do so.

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:

I. LICENSE

A. Kraus-Anderson grants to City, and its employees, agents, contractors and subcontractors, a non-exclusive license to enter onto the Licensed Premises with all necessary tools, equipment, vehicles, and related materials for the purpose of completing the Project (the “License”), which will include traffic control; removal of existing timber bridge entirely including timber piers, abutments and wingwalls; removal of existing timber piles and steel posts (all removals to 3 feet below grade); regrading of slopes and resurfacing slopes with turf (seed, fertilizer and blankets) and follow up turf maintenance. City shall complete the Project in accordance with the plans and specifications developed through the LHB Work (the “Plans”), which Plans are on file in the office of City’s Engineering Division. An overview sheet of the Plans is attached as Exhibit B. It is anticipated that the Project, with the exception of regrading of slopes and resurfacing slopes with turf (seed, fertilizer and blankets) and follow up turf maintenance, will be completed prior to December 31, 2020.

Exhibit 1

B. City will bid out the Demolition Work in accordance with its standard competitive bidding policies and practices. City shall require the contractor(s) hired for the Demolition Work to indemnify Kraus-Anderson from liability in conformance with Section X below and shall require said contractor(s) to insure Kraus-Anderson in the same manner as City is insured under City's standard construction insurance requirements.

C. City shall keep the Licensed Premises free and clear of any mechanics', materialmen's or similar liens related to City's activities under this Agreement.

D. City's use of the Licensed Premises shall be limited to the activities and purposes stated herein. This Agreement does not permit the public to use the Licensed Premises.

E. City acknowledges that the License only permits City to access the Licensed Premises and complete the Project on the Licensed Premises. City is responsible to obtain permission to complete the Project on property outside of the Licensed Premises.

F. City or its contractor may retain any salvage material from the Project at no cost. All salvage material from the Project must be removed from the Licensed Premises prior to expiration of the Term.

II. TERM

Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on September 1, 2020 and shall expire at the end of the day on June 30, 2020 or upon completion of the Project, whichever is soonest (the "Term"). Notwithstanding the above, the Term may be extended in writing executed by Kraus-Anderson and City's Director of Public Works.

III. LAWS, RULES AND REGULATIONS

City will conduct its activities related to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

IV. NO THIRD PARTY RIGHTS

This Agreement is to be construed and understood solely as an agreement between the parties hereto 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, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

Exhibit 1

V. NOTICES

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

City
City of Duluth
Attn: Director of Public Works
411 W. First Street, Room 274
Duluth, Minnesota 55802

Kraus-Anderson Construction Company
Kraus-Anderson Construction Company
Attn: Dan Markham
3716 Oneota Street
Duluth, Minnesota 55807

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

VI. COMPLIANCE WITH AGREEMENT

The rights of City to occupy and use the Licensed Premises are subject to City's compliance with the undertakings, provisions, covenants, and conditions herein.

VII. APPLICABLE LAW

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those state courts located within St. Louis County, Minnesota.

VIII. AMENDMENTS

Any amendments to this Agreement shall be in writing and shall be executed by the same individuals who executed this Agreement or their successors in office.

IX. 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 the Agreement did not contain the particular term or provision held to be invalid.

X. INDEMNIFICATION

A. Generally

City will to the fullest extent permitted by law, protect, indemnify and save Kraus-Anderson and its officers, agents, servants, employees and any person who controls Kraus-Anderson within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Licensed Premises or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Licensed Premises or any part thereof and

Exhibit 1

the construction or installation of the Project on any portion of the Project and the Licensed Premises. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for City, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by City of any provision of this Agreement.

3. Any violation of any contract, agreement or restriction related to the Licensed Premises which shall have existed at the commencement of the term of this Agreement or shall have been approved by City.

4. Any violation of any law, ordinance, court order or regulation affecting the Licensed Premises, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, City hereby agrees that for itself, its successors and assigns that it will indemnify and save Kraus-Anderson and its officers, agents, servants and employees and any person who controls Kraus-Anderson within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Licensed Premises after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Licensed Premises of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Licensed Premises.

C. Indemnification Procedures

Promptly after receipt of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate

Exhibit 1

counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

XI. ENTIRE AGREEMENT


This Agreement, including its 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. This Agreement may be executed in counterparts, which together shall form one original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

CITY OF DULUTH

By: _____
Mayor

**KRAUS-ANDERSON CONSTRUCTION
COMPANY**

By: 
Its Director of Operations

Attest:

Dated: August 26, 2020

City Clerk
Date Attested: _____

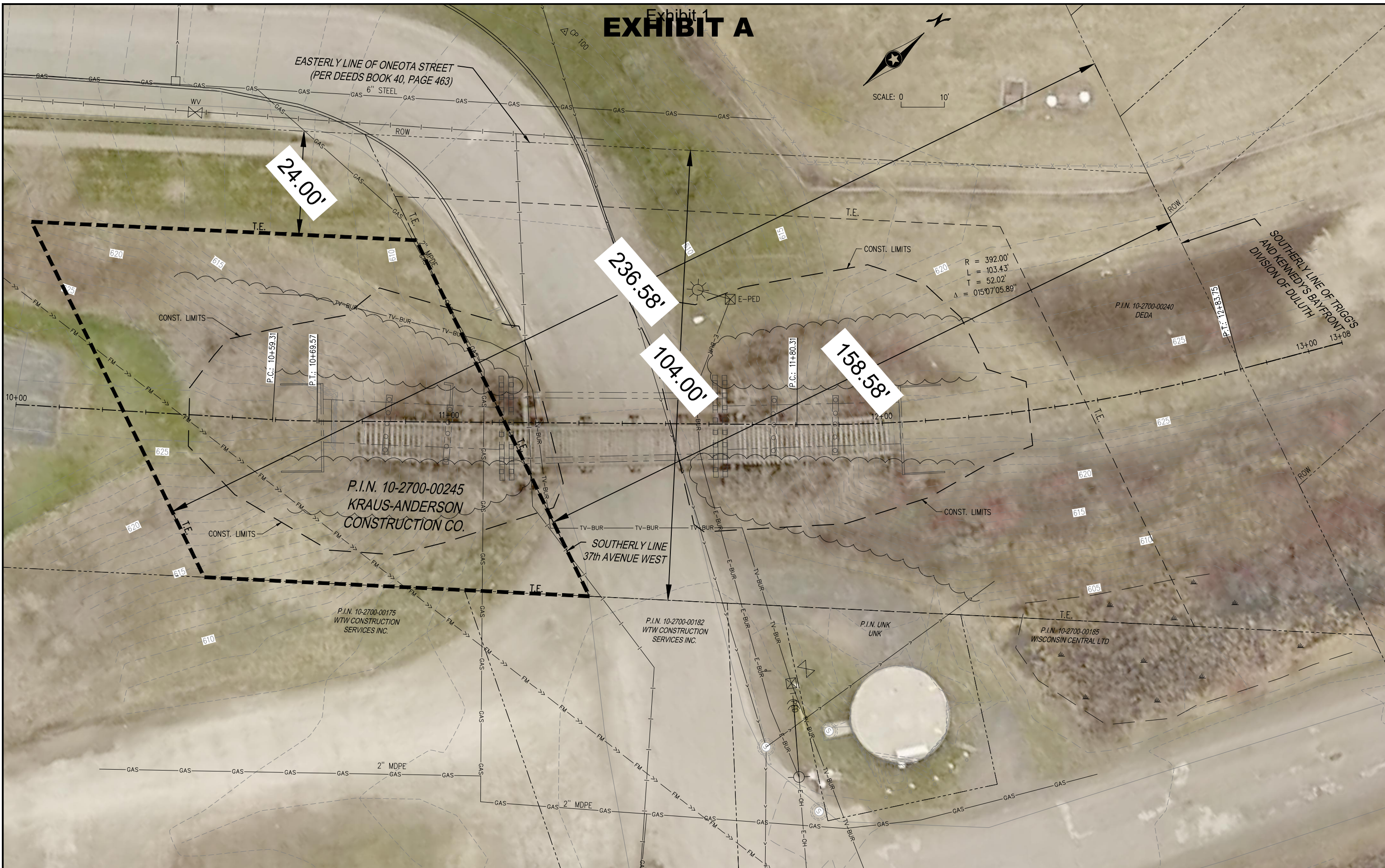
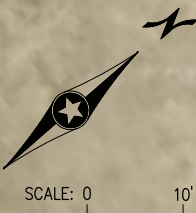
Approved as to form:

City Attorney

Countersigned:

City Auditor

Exhibit 1
EXHIBIT A



I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.
NAME: Paul A. Vogel LIC. NO. 44075 DATE 07/24/2020

CITY OF DULUTH

KRAUS ANDERSON PARCEL 1 OF 1

Sheet No. 1 of 1 Sheets

Exhibit 1

