

LICENSE AGREEMENT LOT D STORAGE
BETWEEN CITY OF DULUTH
AND
THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS LICENSE AGREEMENT is entered into this _____ day of _____, , 2023, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY (“DEDA”), and the CITY OF DULUTH (“Licensee”).

WHEREAS, DEDA is the owner of certain property on the waterfront in the Bayfront District of the City of Duluth, County of St. Louis, State of Minnesota legally described below and as shown on Exhibit A attached hereto and made a part hereof and hereinafter referred to as the “Property”:

Lots 5-16, Block 10; and All of Blocks 11 and 12; and Lots 1-13, Block 13; and That portion of Lot 14 Block 13 and Lots 2 thru 30 Block 14 Lying northeasterly of a line beginning at a point on the Northwestern line of lot 14 Block 13 0.70 feet southwesterly of the northerly corner of lot 14 thence southeasterly 861.78 feet to a point on the southeasterly line of lot 2 Block 14 70.01 feet southwesterly of the easterly corner; and

WHEREAS, the City of Duluth has been awarded a grant by the U.S. Economic Development Agency to perform cleanup and shoring of the seawalls alongside the nearby Duluth Entertainment Convention Center; and

WHEREAS, the cleanup and shoring of the seawalls creates fill materials, including steel waste and other bulk materials (the “Materials”) which will need temporary off-site storage for removal; and

WHEREAS, the restoration requires use of rocks and boulders along the shoreline restoration, and require temporary storage at a nearby site; and

WHEREAS, DEDA is willing to store said materials at the Property as hereinafter provided for at no cost to the City of Duluth.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The License

Subject to the terms and conditions set forth herein, DEDA grants to Licensee a non-exclusive license in the Property for the purposes hereinafter set forth. The Property is located on DEDA-owned property commonly referred to as the Lot D site.

2. Use of the Property

The Property shall be used by Licensee solely for purpose of temporarily storing the Materials from the seawall project, the location of which is generally shown on Exhibit A. Materials shall be placed within the Storage Area, and are to be placed in the area closest to Railroad Street, and then placed in stages to approach the lake side of the Storage Area, as demonstrated in Exhibit A. Licensee must restore the Property to substantially the condition existing prior to the storage of materials. All work on the Property shall conform to the requirements of the EPA Grant Agreement signed and issued to Licensee for Licensee's work on the seawall reconstruction at the Duluth Entertainment Convention Center.

3. Access to the Property

Access to the Property by Licensee for the purpose of temporarily storing the Materials shall be from that point on West Railroad Street labeled as "Access Point" on Exhibit A (the "Access Point"). The Access Point shall be the only point at which vehicular traffic access the Property. Provided, that in addition to the above-described access for storage of Materials, Licensee shall have the right to

use the Access Point solely for the purpose of bringing equipment necessary to the storage and subsequent removal of Materials to the Property; such use shall be by wheeled vehicles ordinarily used for highway transportation of such equipment and shall specifically not include any tracked vehicles.

DEDA expressly reserves the right to the unlimited access to the Property for authorized personnel at any time while this Agreement is in force.

4. Term

The term of this License Agreement shall be deemed to have commenced on May 1st, 2023, and shall continue through Thursday, November 30, 2023, unless terminated earlier as provided for herein. Notwithstanding the above, the term of this License Agreement may be extended once for 90 days upon the written consent of DEDA's Executive Director (the "Executive Director"). After that extension, any further extension will require an amendment to this agreement. Time is an essential element of this Agreement, and Licensee shall surrender the Property at the termination of this License.

5. Fees

No fees shall be charged for the use of the Property under this License Agreement.

6. DEDA Warranty

DEDA makes no representation that the property is suitable for specific uses and Licensee accepts the Property in an "as is" condition without representations or warranties of any kind. DEDA shall not be obligated to make any alterations or improvements on or to the Property.

7. Termination

Either party may terminate this Agreement without cause upon two (2) days' written notice to the other party as provided for in Paragraph 13.

8. Maintenance and Restoration

Licensee agrees to exercise reasonable care in the use and maintenance of the Property and Access Point. The Lot D public Access Point on Railroad Street will be swept and any sediment removed at termination of this License Agreement. Any damage to any paved surfaces will be repaired to the reasonable satisfaction of the DEDA. Licensee shall not allow the deposit of solid or liquid waste on or allow the commission of waste on or damage to the Property or allow any public or private nuisance on the Property. Licensee shall not make any alterations or improvements to the Property except as authorized herein without the prior written consent of the Executive Director. Licensee shall surrender the Property at the termination of this License in the condition found prior to the commencement of this License at no expense to DEDA. Licensee shall have repaired any surface damage to the Property and shall have seeded all ground surfaces of the Property where Licensee has performed work with grass seed in a manner conforming to seeding requirements customarily required by the Minnesota State Department of Transportation. Licensee agrees to pay upon demand any damage done to the Property during the term of this License.

9. Liens

In addition, Licensee shall not allow lien claims, third party interests or any other encumbrances to be (1) filed against DEDA or (2) placed upon the Property. Licensee shall defend, indemnify and hold harmless DEDA, its affiliates, employees, officers, or directors from and against all claims, damages or expenses, including liens of contractors, subcontractors, laborers, equipment suppliers, service providers and other persons or entities arising out of, resulting from or in any way connected with this License Agreement.

10. Hazardous Materials

Licensee covenants and agrees for itself and its contractors and subcontractors, that it will not keep, ship to, ship from, store, permit, dispose, or generate any Hazardous Material on the Property or surrounding lands. Hazardous Material shall mean: (i) "Hazardous Substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. §9601 et. seq.; (ii) "Hazardous Wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6902 et. seq.; (iii) "Hazardous Substance", as defined by the Minnesota Environmental Response Liability Act, Minn. Stat. § 115B.01 et. seq.; (iv) "Hazardous Waste" as defined by the Minnesota Waste Management Act, Minn. Stat. §115A.01 et. seq.; (v) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement as amended or hereafter amended; (vi) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (vii) any radioactive material, including any source, special nuclear or by-product material as defined at 42. U.S.C. §2011 et. seq., as amended or hereafter amended; and (viii) asbestos in any form or condition.

11. Cleaning of Licensed Premises

In the event that oil, other fluids, or other Hazardous Material have been deposited on the Property by Licensee or its contractors or subcontractors during the term of this Agreement, or if other debris or waste is left on the Property by Licensee or its contractors or subcontractors, and an agency having proper jurisdiction requires clean up action, Licensee shall properly perform and leave the Property in a condition complying with the agency's requirement. In the event that Licensee fails to so clean up the Property, DEDA may cause such clean up and Licensee shall be responsible for all costs of clean up. Additionally, upon termination of this Licensee Agreement, Licensee shall remove all garbage and debris of whatever nature from the Licensed Premises. In the event that Licensee

fails to remove said garbage and debris, DEDA may cause such removal and Licensee shall be responsible for all said removal costs, paying immediately upon receipt of invoices.

11. Indemnification Clause

The Licensee/City agrees that it shall defend, indemnify and save harmless DEDA from any and all claims for damages, demands, suits, judgments, costs and expenses asserted by any person or persons arising out of any act or omission of the Licensee/City or its employees in the performance of services under this Agreement.

15. Assignment

Licensee shall not assign its interest under this License Agreement or any part hereof without the prior written consent of the Executive Director.

16. Notices

Notices hereunder shall be deemed sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency, DEDA may give oral notice which shall be effective immediately.

If to DEDA:

Duluth Economic Development Authority
Attn: Executive Director
411 West First Street
402 City Hall
Duluth, MN 55802

If to City: City of Duluth
 City Clerk's Office
 411 W. 1st Street
 Duluth, MN 55802

17. Compliance with Laws, Rules and Regulations

Licensee agrees to observe, comply and abide with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City and their respective agencies which are applicable to its activities under this License Agreement. Licensee shall procure at its own expense all applicable licenses, permits or other rights required for the activity contemplated by this License Agreement.

18. Choice of Law

All questions concerning the interpretation or application of provisions of this License shall be decided according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

19. No Third-Party Rights

This Agreement is to be construed and understood solely as an Agreement between DEDA and the Licensee and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this License Agreement or of any of the terms and conditions hereof, which, as between DEDA and the Licensee, may be waived at any time by mutual agreement between DEDA and the Licensee.

20. Authority to Execute Agreement

Licensee represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Licensee who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of Licensee on its behalf will constitute and be the binding obligation and agreement of the Corporation in accordance with the terms and conditions hereof.

21. Amendments

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

22. Entire Agreement

This License Agreement, including Exhibit A, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

23. Counterparts

This License Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This License 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.

IN WITNESS WHEREOF, the parties have set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
DEVELOPMENT AUTHORITY MINNESOTA

CITY OF DULUTH

By: _____
Mayor

By _____
Its President

Attest: _____
City Clerk

By _____
Its Secretary

Countersigned:

City Auditor

Approved as to form:

Assistant City Attorney

This instrument was drafted by:
Jean Coleman
City of Duluth Assistant City Attorney
411 West First Street, Duluth MN 55802
(218) 730-5283