

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") entered into as of the date of the last signature below ("Effective Date") between St. Louis and Lake Counties Regional Railroad Authority, a regional railroad authority organized pursuant to Minn. Stat. Ch. 398A and a political subdivision of the State of Minnesota, ("Authority"), and City of Duluth, a municipal corporation and governmental subdivision of the State of Minnesota, ("City"), and The Title Team Co., a North Dakota corporation authorized to do business in Minnesota, ("Escrow Agent").

RECITALS

A. The Authority has entered into an agreement with the City for improvements to the City's Lakewalk and the Authority intends to contract with the relevant contractors to perform the improvements and the City will pay for the cost of such improvements (collectively, the "Project"); and

B. The Authority and the City desire to retain the services of the Escrow Agent to hold the funds for the improvements in escrow and disburse periodic payments as instructed and directed by the Authority and the City, pursuant to the terms and conditions contained herein.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Escrow Deposit. The City has agreed to deposit \$ 375,675.00 ("Escrow Deposit") with Escrow Agent to be held and distributed pursuant to the terms and conditions of this Agreement.
2. Escrow Fee. The City and the Authority agree to pay Escrow Agent \$500.00 for its services under this Agreement ("Escrow Fee"). The Escrow Fee shall be immediately payable upon Escrow Agent's receipt of the Escrow Deposit.
3. Release or Disbursement of Escrow Deposit. Escrow Agent shall periodically release and disburse the Escrow Deposit (less any unpaid fees, charges or other amounts owed Escrow Agent under this Agreement) upon receipt of, and pursuant to, written instruction by the Authority and delivered to Escrow Agent in accordance with this Agreement. The City agrees to pay Escrow Agent a disbursement fee of \$150.00 per disbursement request ("Disbursement Fee"). The City shall deposit \$1,500.00 immediately payable upon Escrow Agent's receipt of the Escrow Deposit as payment for the first 10 (ten) disbursements. If more than ten disbursements are needed, the City shall pay such additional Disbursement Fees prior to any subsequent requested

disbursement. Escrow Agent reserves the right to decline to complete any disbursement unless and until the Disbursement Fee is received. In the event of a shortage of funds in the Escrow Deposit, the Escrow Agent shall notify the Authority and the City of the shortage but has no responsibility for the collection of said shortages. Any unused Disbursement Fee shall be returned to the City upon termination of this Agreement, as defined in Paragraph 7 herein.

4. Dispute. If any dispute arises with respect to the delivery, ownership, right of possession, and/or disposition of the Escrow Deposit (as determined by Escrow Agent in its sole discretion), or if any claim is made upon Escrow Agent or the Escrow Deposit by the Authority, the City, or by a third party, Escrow Agent is authorized and shall be entitled (at its sole option and election): (i) to decline to take any action, legal or otherwise, to resolve any dispute; (ii) to retain in its possession without liability to anyone, the Escrow Deposit until such dispute shall have been settled either by the mutual written agreement of the parties involved or by a final order, decree or judgment of a court in the United States of America, the time for perfection of an appeal of such order, decree or judgment having expired; or (iii) initiate an interpleader or similar action seeking to deposit the Escrow Deposit with any state or federal court in Minnesota pending resolution of such dispute and to release and disburse the funds pursuant to any order, decree or judgment entered in such action. The Authority and the City shall, jointly and severally, be responsible for reimbursing Escrow Agent for all costs and expenses (including reasonable attorneys' fees) incurred by Escrow Agent in connection with any dispute, proceeding or action described in this Section. Escrow Agent may, but shall be under no duty whatsoever to, institute or defend any legal proceedings that relate to the Escrow Deposit.
5. Duties of Escrow Agent. The Escrow Agent shall have no responsibility or liability except for holding and distributing the Escrow Funds pursuant to this Agreement. Each of the Authority and the City acknowledges and agrees that Escrow Agent (i) shall not be responsible for any agreement between the Authority and the City or for determining or compelling compliance therewith, and shall not otherwise be bound thereby, (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of Escrow Agent, (iii) shall not be obligated to take any legal or other action hereunder which might in its sole judgment involve or cause it to incur any expense or liability unless it shall have been furnished with reasonably acceptable indemnification, (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions), instrument, statement, certificate, request or other document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for making inquiry as to or determining the genuineness, accuracy or validity thereof, or of the authority of

the person signing or presenting the same, and (v) may consult counsel reasonably satisfactory to it and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. Escrow Agent shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of Escrow Agent's gross negligence or willful misconduct in breach of the terms of this Agreement. In no event shall Escrow Agent be liable for indirect, punitive, special or consequential damage or loss (including, but not limited to, lost profits) whatsoever, even if Escrow Agent has been informed of the likelihood of such loss or damage and regardless of the form of action.


6. Indemnification. The Authority and the City shall, jointly and severally, indemnify and defend Escrow Agent (and its directors, officers and employees) and hold it (and such directors, officers and employees) harmless from and against any loss, liability, damage, cost and expense of any nature incurred by Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including, but not limited to, reasonable attorneys' fees and other reasonable costs and expenses of defending or preparing to defend against any claim of liability or other claim concerning the Escrow Deposit, unless and except to the extent such loss, liability, damage, cost and expense shall be caused by Escrow Agent's gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement.
7. Termination. This Agreement shall terminate upon the earlier of: (i) completion of the Project and final disbursement of the Escrow Deposit; (ii) mutual written agreement of the parties; or (iii) Escrow Agent's written notice to the Authority and the City of its determination to be relieved of any further duties and liabilities hereunder. Upon termination of this Agreement, in the event any of the Escrow Deposit remains, the Authority and the City shall provide joint written instruction to the Escrow Agent for disbursement of the balance of the Escrow Deposit. Escrow Agent shall be relieved of any duties, obligations, and liabilities hereunder upon Termination of this Agreement.
8. Miscellaneous.
 - a. Amendment and Waiver. This Agreement may be amended and any provision of this Agreement may be waived, provided that any such amendment or waiver shall be binding upon a party only if such amendment or waiver is set forth in a writing executed by all of the parties hereto. No course of dealing between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any party under or by reason of this Agreement.
 - b. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if

any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

- c. Notices. All notices, requests, consents, and other communications hereunder shall be in writing and shall be delivered to the notice addresses of the parties set forth in this Agreement by United States registered or certified mail, return receipt requested, or by email.
- d. Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.
- e. Entire Agreement. This Agreement and the documents referred to herein contain the entire agreement between the parties and supersede any prior understandings, agreements, or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.
- f. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.
- g. Governing Law. All questions concerning the construction, validity and interpretation of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Minnesota, without giving effect to any choice of law or conflict of law provision (whether of the State of North Dakota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of North Dakota.
- h. Delivery by PDF and Facsimile. This Agreement and any other documents delivered in connection herewith, and any amendments hereto or thereto, to the extent signed and delivered by means of portable document format ("PDF"), shall be treated in all manner and respects as an original and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.
- i. Successors and Assigns. All covenants, representations, warranties, and agreements of the parties contained herein shall be binding upon and inure to the benefit of their respective successors and assigns.
- j. Jurisdiction/Venue. Each of the parties hereby absolutely and irrevocably consents and submits to the jurisdiction of the courts in the state where the

Property is located and of any federal court located in said state in connection with any actions or proceedings arising out of or relating to this Agreement. In any such action or proceeding, each of the parties hereby absolutely and irrevocably waives any objection to jurisdiction or venue.

**St. Louis and Lake Counties Regional
Railroad Authority:**

By: 
Name: Keith Nelson
Title: Chairman

Address For Notices
111 Station 44 Rd, Eveleth, MN
Attn: 55734

Email: _____

Escrow Agent:

The Title Team Co.

By: _____
Name: _____
Title: _____

Address For Notices

Attn: _____

Email: _____

City of Duluth:

By: _____
Name: _____
Title: _____

Address For Notices

Attn: _____

Email: _____