

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the PARK HILL CEMETERY ASSOCIATION, a non-profit cemetery association created and existing under the laws of the State of Minnesota, ("Park Hill"), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, ("City").

The parties acknowledge the following:

A. Park Hill owns certain property located on Vermilion Road and known as the Park Hill Cemetery;

B. The City is building a sustainable, multiuse, natural surface trail that traverses the city and connects neighborhoods and parks;

C. The City and Park Hill wish to enter into a twenty-five (25) year license agreement allowing the City to utilize a portion of Park Hill's property, legally described in Exhibit A, to build a public recreational trail that connects with the existing traverse trail system.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. THE LICENSE. Subject to the terms and conditions set forth herein, Park Hill hereby grants to the City a license to access and utilize a portion of Park Hill's property, as shown on Exhibit A (the "Licensed Premises") to build or cause to be built a recreational trail for use by the general public.

2. USE OF THE LICENSED PREMISES. The Licensed Premises shall be used for public recreational trail purposes.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on November 1, 2015, and shall continue through October 31, 2040.

5. LICENSE FEE. There shall be no license fee for use of the Licensed Premises.

6. LICENSES AND PERMITS. The City agrees to procure, at the City's expense, all licenses and permits necessary for carrying out the provisions of this Agreement.

7. WAIVER. The waiver by Park Hill or the City of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

8. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person 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.

9. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to Park Hill Cemetery Association, 2500 Vermillion Road, Duluth, MN 55803, and addressed to City of Duluth, 402 City Hall, 411 West First Street, Duluth, MN 55802, ATTN: Chief Administrative Officer or to such other persons or addresses as the parties may designate to each other in writing from time to time.

10. APPLICABLE LAW. This Agreement, together with all of its paragraphs, terms, and provisions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

12. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

13. ENTIRE AGREEMENT. This Agreement, including Exhibit A, 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.

[Remainder of this page intentionally left blank.]

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

PARK HILL CEMETERY ASSOCIATION

CITY OF DULUTH

By:   
Its President

By: \_\_\_\_\_  
Its Mayor

Date: 10-22-15

Attest: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Date: \_\_\_\_\_

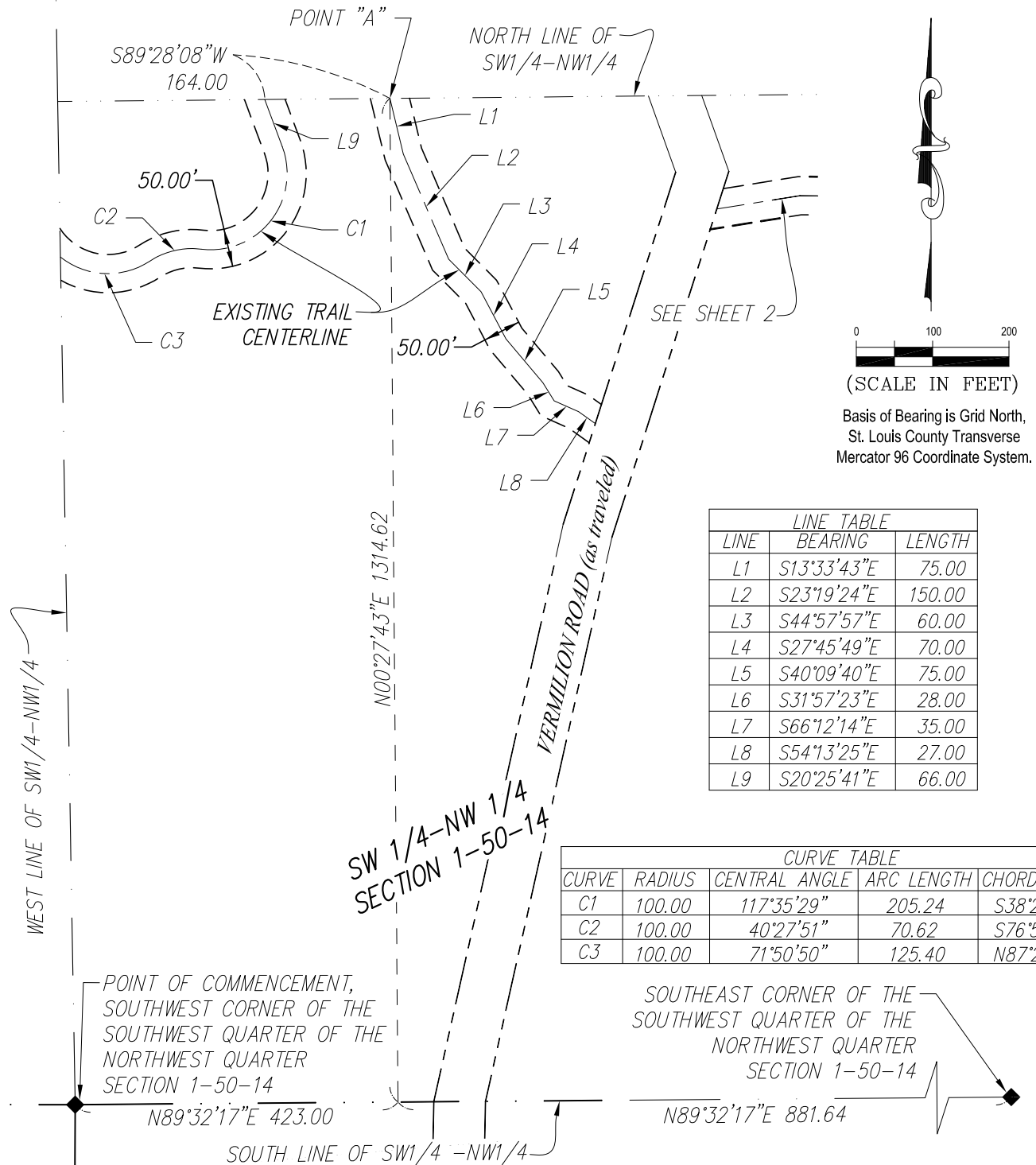
Approved as to form:

\_\_\_\_\_  
City Attorney

# EXHIBIT A

## TRAIL EASEMENT

(Sheet 1 of 2)



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.

Print Name: Paul A. Vogel

License # 44075

Signature:

Date: 10/20/2015

REV: 10/20/15 RD NAME

DATE PREPARED: 10/16/15

PROJ NO: 150608

FILE: 150608vSURV.

SHEET 1 of 1 SHEETS



PERFORMANCE  
DRIVEN DESIGN.

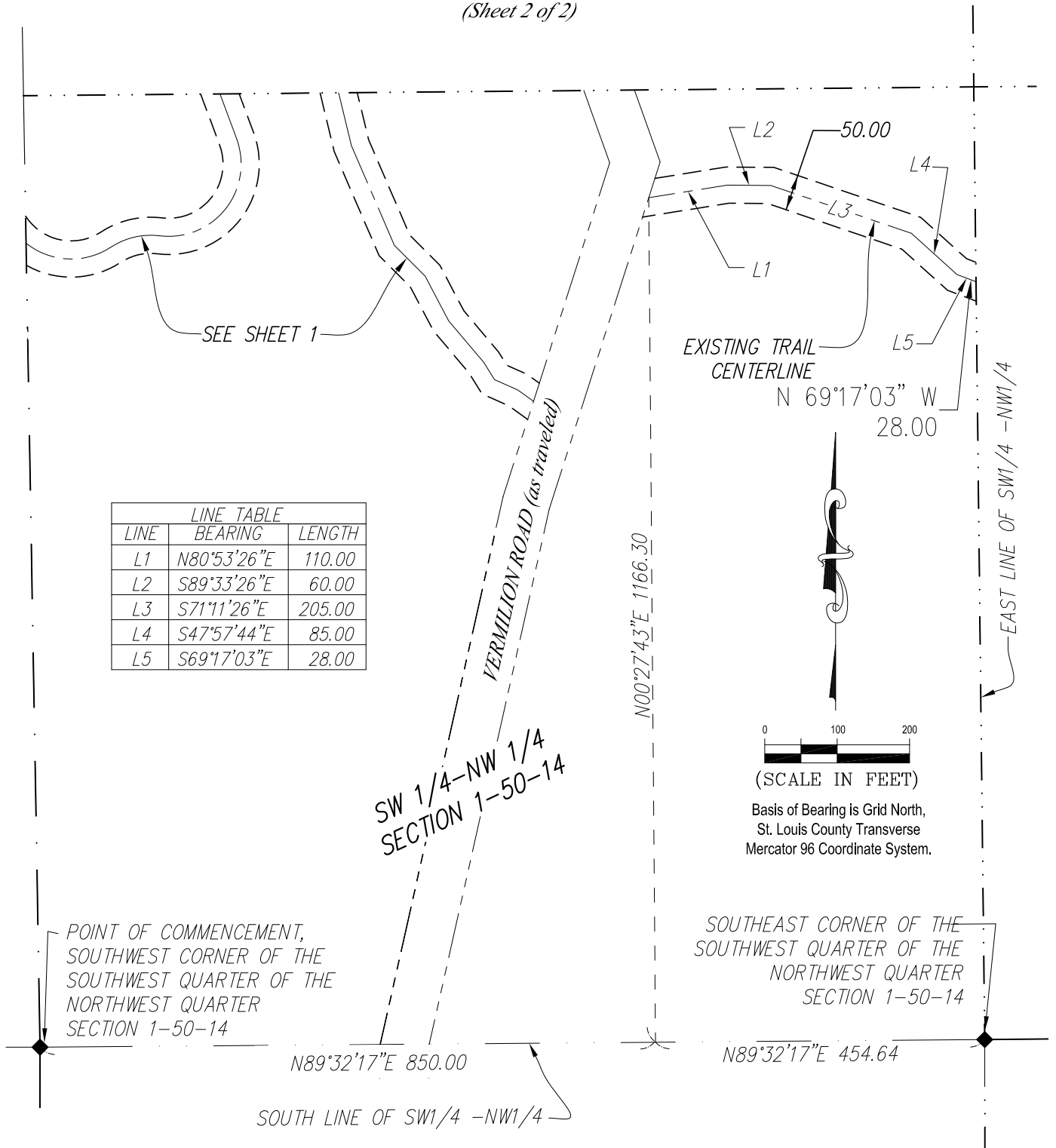
LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

# EXHIBIT A

## TRAIL EASEMENT

(Sheet 2 of 2)



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.

Print Name: Paul A. Vogel

License # 44075

Signature:

Date: 10/20/2015

REV: 10/20/15 RD NAME

DATE PREPARED: 10/16/15

PROJ NO: 150608

FILE: 150608vSURV.

SHEET 1 of 1 SHEETS



PERFORMANCE  
DRIVEN DESIGN.

LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446