

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between the Regents of the University of Minnesota, a Minnesota constitutional corporation, through the Sea Grant Program on the Duluth campus ("UMD") 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. City owns property located near South Lake Avenue and 22nd Street and legally described as Lots 60 and 62, Lower Duluth, Lake Avenue, which property provides public access to Park Point. Located on this property is an unheated building as shown on the map attached as Exhibit A (the "22nd Street Building"), which houses City's communication and radio equipment. The 22nd Street Building also currently houses a camera owned by UMD, which camera collects data used to predict rip currents on Park Point.

B. City also owns property located at 5000 Minnesota Avenue, which property contains, among other amenities, a building that is used by the general public for community purposes (the "Park Point Beach House"). The Park Point Beach House is shown on the map attached as Exhibit B. The Park Point Beach House currently houses a camera owned by UMD, which camera collects data used to predict rip currents on Park Point. The cameras owned by UMD and located in the 22nd Street Building and in the Park Point Beach House are collectively referred to in this Agreement as the "Cameras."

C. Under previous agreements or other permissions, UMD installed computers in the 22nd Street Building and in the Park Point Beach House in order to gain remote access to the data collected by the Cameras, which data is used to develop a model for rip current conditions. The model enables rip current data to be accessed in "real time," which improves public awareness and safety regarding rip current conditions. The computers owned by UMD and located in the 22nd Street Building and in the Park Point Beach House are collectively referred to in this Agreement as the "Computers."

D. City has installed wireless modems in the 22nd Street Building and in the Park Point Beach House, which allow data from the Cameras to be sent to various parties to be analyzed and used to increase public safety relating to rip current conditions on Park Point.

E. UMD and City desire to enter into this Agreement to allow UMD to (i) use and maintain its Computers and Cameras in the 22nd Street Building and in the Park Point Beach House, and (ii) use City's wireless modems to send the data gathered by the Cameras and to ensure City's access to the data provided by the Cameras.

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:

1. THE LICENSE.

A. Subject to the terms and conditions set forth herein, City grants to UMD a non-exclusive license to install and maintain the Computers and the Cameras in the 22nd Street Building and in the Park Point Beach House.

B. Subject to the terms and conditions set forth herein, City grants to UMD a non-exclusive license to use City's wireless modems located in the 22nd Street Building and in the Park Point Beach House in order to send the data collected by the Cameras.

2. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall commence on or about January 1, 2019, and shall continue through December 31, 2021.

3. LICENSE FEE. City shall not charge UMD a license fee for this Agreement. As consideration for the rights granted by this Agreement, UMD shall share all data gathered by UMD with City in a timely manner so that City may use the data to increase public safety relating to rip current conditions on Park Point. The parties acknowledge that the public benefit of the rip current data is adequate consideration.

4. INTERNET ACCESS. UMD may use City's wireless modems to send the data gathered by the Cameras. City shall pay the costs associated with the wireless modems and shall have sole discretion to decide what type of wireless modem is installed from time to time. This provision does not authorize UMD to connect to or in any manner gain access to City's internal computer system(s), network, or infrastructure or to access City data.

5. ACCESS TO BUILDING. UMD shall provide reasonable advance notice to City of the need to access the 22nd Street Building or the Park Point Beach House. UMD shall not enter the 22nd Street Building except when accompanied by an authorized City employee. UMD shall not enter the Park Point Beach House unless (i) it is otherwise open to the general public, or (ii) accompanied by an authorized City employee. UMD shall not be in possession of a key to the 22nd Street Building or the Park Point Beach House.

6. CITY WARRANTY. City makes no representation that the 22nd Street Building or the Park Point Beach House are suitable for any particular purpose or specific uses and UMD accepts the 22nd Street Building and the Park Point Beach House in "as is" condition without representations or warranties of any kind.

7. MAINTENANCE. UMD will exercise reasonable care in the maintenance of its personal property located in the 22nd Street Building and the Park Point Beach

House. City shall not be responsible for any damage, destruction or theft of UMD's personal property. UMD shall not make any alterations or improvements to the 22nd Street Building or the Park Point Beach House without the prior written consent of City and then only upon the terms and conditions which may be imposed by City. UMD shall pay to City upon demand the reasonable costs incurred by City to repair any damage done to the 22nd Street Building or the Park Point Beach House by UMD, its employees, servants, agents, contractors, invitees, and licensees.

8. HOLD HARMLESS. UMD shall defend, indemnify, and save harmless City, and its officers, agents, servants, and employees from any and all liens, judgments, claims (including those for contribution and indemnity), suits, demands, liability, costs, damages, and expenses asserted by any person or persons including agents or employees of City by reason of death or injury to person or persons or the loss or damage to property or any cause of action arising out of or in connection with or relating to UMD's use or occupancy of the 22nd Street Building or the Park Point Beach House, except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of City and its officers, agents, servants or employees. On ten days' written notice from City, UMD will appear and defend all lawsuits against City growing out of such injuries or damages. Notwithstanding anything to the contrary contained herein, City and UMD shall each be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other party. City's liability is governed by Minnesota Statutes Chapter 466 and UMD's liability is governed by Minn. Stat. § 3.736 and other applicable law.

9. INSURANCE. UMD shall maintain such insurance coverage as will protect City against risk of loss or damage to City's property located or used at the 22nd Street Building and the Park Point Beach House and against claims which may arise or result from the use of the 22nd Street Building and the Park Point Beach House during the term of this Agreement. UMD shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of \$1,500,000 for property damage liability. UMD shall procure and maintain continuously in force automobile liability insurance with limits not less than \$1,500,000 single limit. Insurance required in this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of Minnesota and licensed to do business in Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the obligations set forth herein, and products – completed operations. UMD shall provide City with Certificate(s) of Insurance evidencing the required insurance coverage, with 30-day notice of cancellation, non-renewal, or material change provisions included. City does not represent or guarantee that the types or limits of coverage required by this Agreement are adequate to protect UMD's interests and liabilities. The required insurance policies and certificates shall be in form acceptable to the City Attorney and shall name City as an additional insured. City reserves the right to require UMD to increase the coverages set forth above and to provide

evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. § 466.04, as amended from time to time.

10. INDEPENDENT CONTRACTOR. Nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting UMD or UMD personnel as an agent, representative, or employee of City for any purpose or in any manner whatsoever. UMD and its employees shall not be considered employees of City and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of UMD's employees or agents while so engaged, shall in no way be the responsibility of City.

11. ASSIGNMENT. UMD shall not in any way assign or transfer its rights or interests under this Agreement or subcontract with any other party without the prior written consent of City. The performance of this Agreement by another unit, department, college, or school of UMD shall not be considered an assignment under this Agreement.

12. LAWS, RULES AND REGULATIONS. UMD shall 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, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. UMD shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. UMD shall procure, at UMD's expense, all licenses and permits necessary for carrying out its activities and obligations under this Agreement.

13. WAIVER. The waiver by City or UMD 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.

14. 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 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.

15. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to UMD, ATTN: Jesse Schomberg, Program Leader and Coastal Communities Extension Educator, University of Minnesota Sea Grant Program, 145 Chester Park, 31 West College Street, Duluth, Minnesota 55812-1198, and to City of Duluth, ATTN: Property and Facilities Manager, 1532 W. Michigan Street, Duluth, Minnesota 55806, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

16. COMPLIANCE WITH AGREEMENT. The right of UMD to use the 22nd Street Building and the Park Point Beach House is subject to UMD's compliance with the undertakings, provisions, covenants, and conditions herein.

17. 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.

18. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed by the authorized individuals of each party.

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

20. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

21. ENTIRE AGREEMENT. This Agreement, including exhibits, constitutes the entire agreement between the parties and supersedes and completely replaces 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.

CITY OF DULUTH, MINNESOTA

REGENTS OF THE UNIVERSITY OF MINNESOTA, THROUGH SEA GRANT PROGRAM, UNIVERSITY OF MINNESOTA DULUTH

By: _____
Mayor

By: _____
Dr. John Downing

ATTEST:

Title: Director

City Clerk

Dated: _____

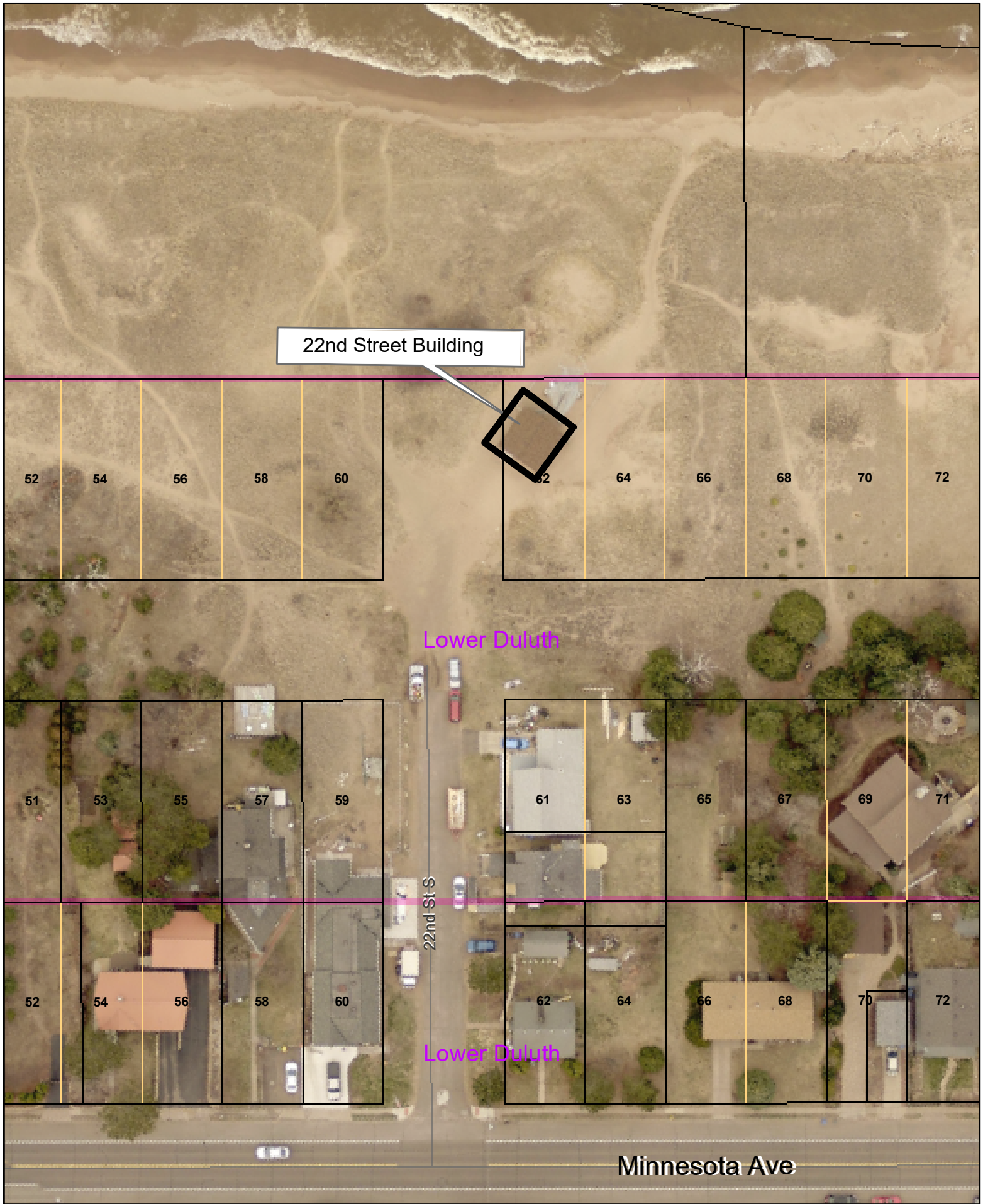
Dated: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney



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.

Exhibit A

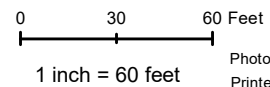


Photo Date: May 2016
Printed: 12/12/2018





Park Point Beach House
5000 Minnesota Avenue

Private Dr

Minnesota Ave

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Exhibit B



0 75 150 Feet
1 inch = 150 feet

Photo Date: May 2016
Printed: 12/12/2018

