

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic, and political subdivision created and existing under the laws of the State of Minnesota ("DEDA") and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the "City").

The parties acknowledge the following:

A. The City owns certain property located in the Bayfront area of the City of Duluth known as Bayfront Festival Park upon which various festivals and activities occur ("Bayfront Festival Park").

B. DEDA owns certain property located in the Bayfront area of the City of Duluth indicated as DEDA Parking Lot B (the "DEDA Lot") and certain property adjacent to the DEDA Lot (the "Adjoining DEDA Property"), as outlined in yellow and red, respectively, on the attached Exhibit A.

C. DEDA and the City desire to enter into this License Agreement to allow the City to operate the DEDA Lot for vehicular parking only and to allow the City use of the Adjoining DEDA Property for Bayfront Festival Park-related purposes.

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, DEDA grants to the City an exclusive license for use of the DEDA Lot and the Adjoining DEDA Property (collectively, the "Licensed Premises") during the Term (defined below).

2. USE OF THE LICENSED PREMISES. The City may use the DEDA Lot for the purpose of vehicular parking. In addition, at the sole discretion and upon the prior written approval of the Executive Director of DEDA (the "Executive Director"), the City may use the DEDA Lot for other approved uses. The Adjoining DEDA Property may be used by the City solely for purposes consistent with the use of the remainder of Bayfront Festival Park.

3. THIRD PARTY AGREEMENTS. If the City enters into third party agreements for vehicular parking or other approved uses with respect to the DEDA Lot or for purposes consistent with the use of the remainder of Bayfront Festival Park with respect to the Adjoining DEDA Property, such third party agreements shall (i) require that the third party indemnify DEDA and name DEDA as an additional insured on its commercial general liability insurance and, if appropriate, its automobile insurance policies, and, (ii) unless otherwise agreed to in writing by the Executive Director, shall further require insurance limits of not less than \$1.5 million and twice the limits provided

when a claim arises out of the release or threatened release of a hazardous substance, or such increased liability limits as set forth in Minnesota Statutes Section 466.04. Upon request, an executed copy of each third party agreement, along with evidence of insurance, shall be promptly provided to the Executive Director.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on June 1, 2024, and shall continue through May 31, 2026 (the "Term").

5. LICENSE FEE. The City shall have the use of the Licensed Premises at no cost.

6. DEDA WARRANTY. DEDA makes no representation that the Licensed Premises are suitable for any specific uses and the City accepts the Licensed Premises in an "as is" condition without representations or warranties of any kind. The operation of parking and all other activities on the Licensed Premises shall be at the sole risk of the City. DEDA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

7. MAINTENANCE. The City shall exercise reasonable care in its activities on the Licensed Premises. The City shall not make any alterations or improvements to the Licensed Premises without the prior written consent of the Executive Director, and then upon the terms and conditions which may be imposed by the Executive Director in their sole discretion. The City shall plow snow from the Licensed Premises and provide for litter clean up and trash removal on the Licensed Premises, in the quality and quantity as the City performs these duties in Bayfront Festival Park. The City shall surrender the Licensed Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement, reasonable wear and tear excepted. The City shall pay upon demand any damage done to the Licensed Premises by the City, its employees, servants, agents, contractors, invitees and licensees during the Term.

8. UTILITIES. The City shall be responsible for the cost of all utilities to the Licensed Premises.

9. ACCESS. DEDA expressly reserves the right to the unlimited access to the Licensed Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection and ensuring that the provisions of this Agreement are complied with by the City.

10. HOLD HARMLESS. DEDA shall not in any way be liable or responsible for any accident or damage that may occur in the City's use of the Licensed Premises during the Term. The City agrees to defend, indemnify, and save harmless DEDA, 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

DEDA or the 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 the City's use or occupancy of the Licensed Premises, except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of DEDA and its officers, agents, servants or employees. On ten days' written notice from DEDA, the City will appear and defend all lawsuits against DEDA growing out of such injuries or damages.

11. INSURANCE. During the Term, the City, at its own cost and expense, shall self-insure comprehensive liability and property damage insurance applicable to the Licensed Premises and the City's employees, servants, agents, contractors, invitees and licensees, sufficient to protect the interests of DEDA with a combined single limit of at least \$1,500,000; for each occurrence \$500,000; and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. DEDA shall be considered an additional insured.

12. 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 the City as an agent, representative, or employee of DEDA for any purpose or in any manner whatsoever. The City and its employees shall not be considered employees of DEDA and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the City's employees or agents while so engaged, and any and all claims whatsoever on behalf of the City's employees and agents arising out of employment shall in no way be the responsibility of DEDA. The City's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay, and PERA.

13. ASSIGNMENT. The City 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 the Executive Director. Notwithstanding the above, DEDA consents to Winterfell Management LLC undertaking some or all of the City's rights and interests hereunder.

14. LAWS, RULES AND REGULATIONS. The City shall operate the Licensed Premises and all activities conducted on the Licensed Premises in strict compliance with the United States Constitution and with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, and DEDA, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. The City shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. The City agrees to procure, at the City's expense, all licenses and permits necessary for carrying out the provisions of this Agreement.

15. WAIVER. The waiver by DEDA 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.

16. 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 a 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.

17. DEFAULT. If the City fails in keeping and performing any term or condition of this Agreement and such a default continues for thirty (30) days after DEDA has given written notice to the City of said default, or, in the event that such default shall be incapable of cure during said thirty-day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion, DEDA may terminate this Agreement by written notice to the City setting forth the date of termination. In such event, DEDA may seek and be entitled to monetary damages from the City, may seek and be entitled to injunctive and declaratory relief, and may seek other legal or equitable relief.

18. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to DEDA, 418 City Hall, 411 West First Street, Duluth, Minnesota 55802, ATTN: Executive Director; and addressed to City of Duluth, 418 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.

19. CAPITAL IMPROVEMENTS. The City shall not make any capital improvements to the Licensed Premises without the prior written consent of the Executive Director and then upon the terms and conditions which may be imposed by the Executive Director in their sole discretion. The City shall be responsible for securing all necessary permits and approvals required by the City and all other regulatory agencies having jurisdictional authority over any of the work to be performed. Prior to any work being performed on the Licensed Premises, the City must obtain the written approval of the Executive Director of complete contract drawings and specifications for the work. All such work shall conform to all applicable regulations, building codes and health standards and shall be done by competent contractors in the time and manner approved by the Executive Director. The City shall require all contractors to obtain construction bonds as well as public liability and property insurance in such amounts that will protect DEDA's interest in the Licensed Premises, and DEDA shall be named as an additional insured on all such insurance policies. The City shall pay for all costs in connection with improvements to the Licensed Premises including but not limited to permit fees, engineering fees and construction costs.

20. COMPLIANCE WITH AGREEMENT. The rights of the City to use the Licensed Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are complied with promptly by the City.

21. 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.

22. 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.

23. 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.

24. 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.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

CITY OF DULUTH

By: _____
Its President

By: _____
Its Mayor

Date: _____

Date: _____

By: _____
Its Secretary

Attest: _____
City Clerk

Date: _____

Date: _____

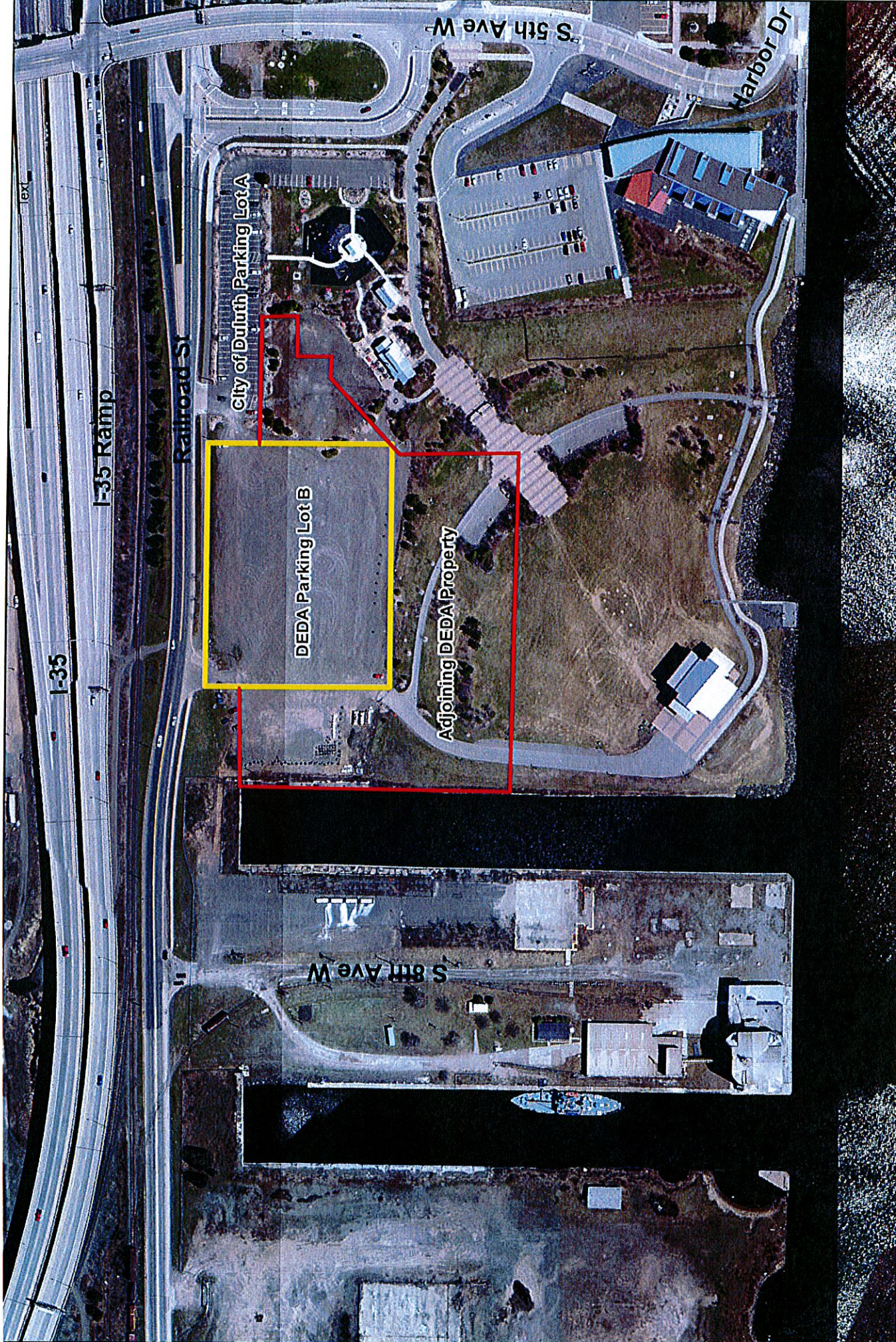
Countersigned:

City Auditor

Date: _____

Approved as to form:

City Attorney



1:2,400
1 inch = 200 feet
0 100 200 300 Feet
Photo Date: May 2013
Print Date: 6/8/2015
Prepared By:
The City of Duluth GIS Office

City of Duluth Bayfront Park Site Map

EXHIBIT A