

ATTACHMENT 1

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “Agreement”) is by and between GOODWILL INDUSTRIES VOCATIONAL ENTERPRISES, INC., a Minnesota non-profit corporation (“Goodwill Industries”) and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (“City”).

WHEREAS, Goodwill Industries owns the property legally described and depicted on the attached Exhibit A, which is designated on Exhibit A as the “Temporary Construction Easement” (referred to in this Agreement as the “Temporary Construction Easement Area”).

WHEREAS, City, in conjunction with the Minnesota Department of Transportation (“MnDOT”), will be doing construction work on Garfield Avenue to (i) remove the apron for the driveway at the signalized intersection located at vacated Nelson Street and Garfield Avenue and matching the existing grade for the driveway; and (ii) install improvements relating to the Americans with Disabilities Act (the “Project”).

WHEREAS, during the Project, City needs space outside of the right-of-way of Garfield Avenue for staging and workspace.

WHEREAS, City desires to temporarily access the Temporary Construction Easement Area during the Project, and Goodwill Industries wishes to provide City with a temporary easement to do so.

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:

I. PERMISSION AND PROPERTY

A. Goodwill Industries grants and conveys to City, its successors and assigns, a non-exclusive, temporary construction easement to enter onto the Temporary Construction Easement Area with all necessary tools, equipment, vehicles, and related materials for the purpose of completing the Project and related activities (the “Easement”). City, its employees, contractors, agents and subcontractors, including MnDOT, may enter onto the Temporary Construction Easement Area at all times for the purposes described above. Goodwill Industries understands that MnDOT will be constructing the majority of the Project on City’s behalf.

B. City’s use of the Temporary Construction Easement Area shall be limited to the purposes stated above. Access to Goodwill Industries’ adjoining property across the Temporary Construction Easement Area shall remain open during the Term (defined below).

C. The Easement shall extend to and bind the successors and assigns of Goodwill Industries and City and shall run with the land.

II. TERM

Notwithstanding the date of execution of this Agreement, the term of this Agreement shall begin February 1, 2019, and shall expire at the end of the day on December 31, 2020, or on such date that the Project is completed, whichever occurs first (the "Term").

III. LAWS, RULES AND REGULATIONS

During the Term, City will 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.

IV. GOVERNMENT DATA PRACTICES

A. Goodwill Industries shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Goodwill Industries under this Agreement.

B. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this section by Goodwill Industries. If Goodwill Industries receives a request to release the data referred to in this section, Goodwill Industries must immediately notify City and consult with City as to how it should respond to the request. Goodwill Industries will hold City, its officers, and employees harmless from any claims resulting from Goodwill Industries' unlawful disclosure or use of data protected under state and federal laws.

V. 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, organization, or business 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.

VI. NOTICES

Notices sent pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City
City of Duluth
Attn: Property and Facilities
Manager
1532 W. Michigan Street
Duluth, Minnesota 55806

Goodwill Industries
Mike Smart
Facilities, Transportation and Safety Manager
Goodwill Industries Vocational
Enterprises Inc.
700 Garfield Avenue
Duluth, Minnesota 55802

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

VII. COMPLIANCE WITH AGREEMENT

The rights of City to occupy and use the Temporary Construction Easement Area are subject to City's compliance with the undertakings, provisions, covenants, and conditions herein.

VIII. APPLICABLE LAW

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those state courts located within St. Louis County, Minnesota.

IX. AMENDMENTS

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

X. SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent-jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

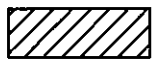
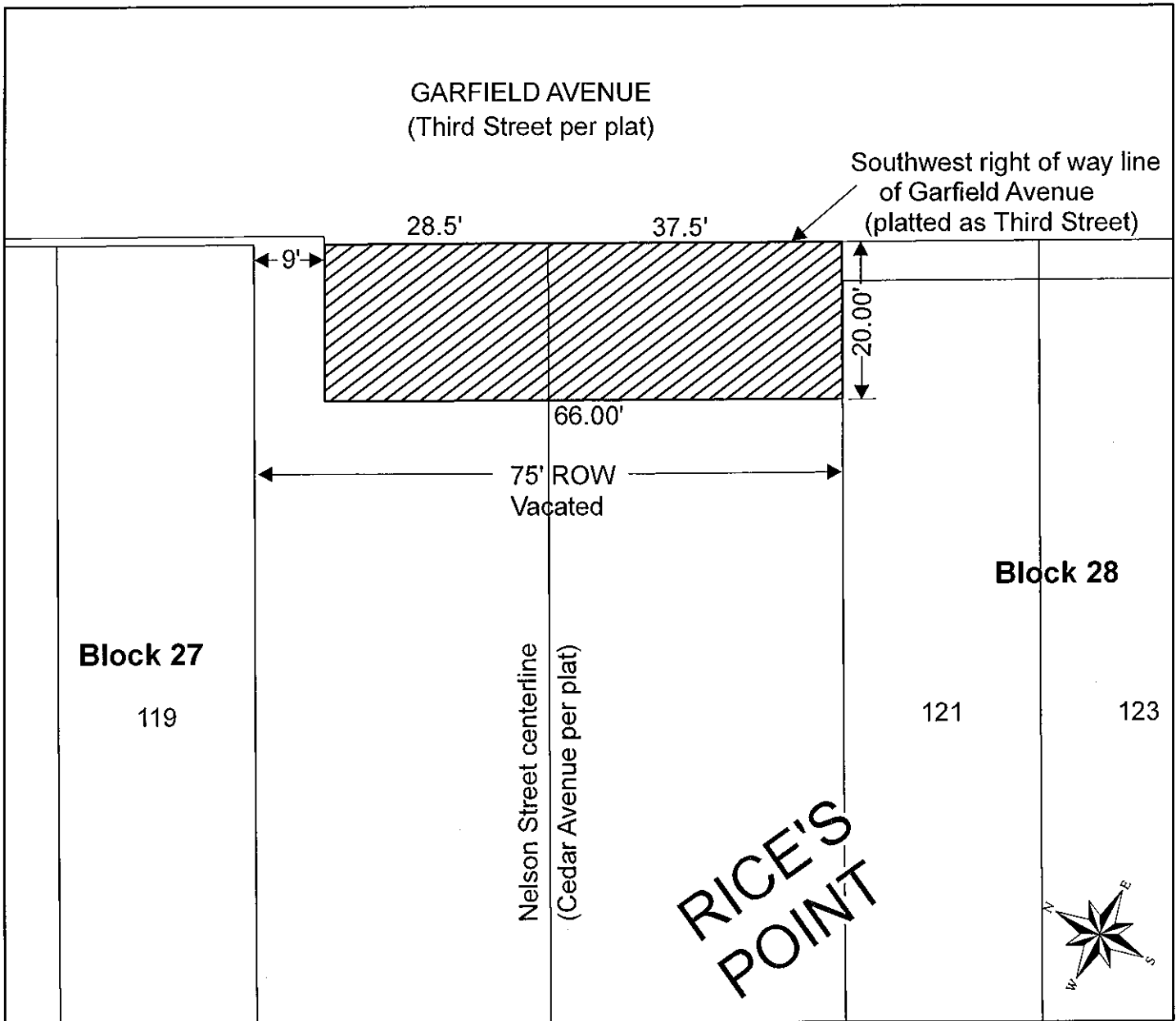
XI. AUTHORITY TO EXECUTE AGREEMENT

Goodwill Industries represents that it is the owner of the Temporary Construction Easement Area and the individuals signing below have the authority to execute this Agreement on behalf of Goodwill Industries.

XII. ENTIRE AGREEMENT

This Agreement, including exhibits, 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. This Agreement may be executed in counterparts, which together shall form one original.

Exhibit A



Temporary Construction Easement



A temporary construction easement across that portion of vacated Nelson Street, platted as Cedar Avenue, in the plat of RICE'S POINT as recorded in St. Louis County, Minnesota, described as follows:

A 20.00 foot by 66.00 foot strip of land lying within said vacated Nelson Street, bounded on the northeast by the southwest right of way line of Garfield Avenue, platted as Third Street in said plat of Rice's Point; bounded on the southeast by the southeast right of way line of said vacated Nelson Street; bounded on the southwest by a line that is parallel with and 20.00 feet southwest of said southwest right of way line of Garfield Avenue; and bounded on the northwest by a line that is parallel with and 66.00 feet northwest of said southeast right of way line of said vacated Nelson Street.

APPROVED BY CITY ENGINEER

DATE