

LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND STATE OF MINNESOTA

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between the STATE OF MINNESOTA, by and through its Commissioner of Transportation (the "State"), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of Minnesota ("City").

The parties acknowledge the following:

A. City owns real property located in the Fond du Lac neighborhood of Duluth, St. Louis County, Minnesota that is legally described on the attached Exhibit A and used for park and/or open space purposes (the "City Property"). The City Property is depicted on the attached Exhibit B.

B. On January 19, 1966, the City granted a permanent easement to the State for the construction and maintenance of a debris barrier on a portion of the City Property (the "Easement Property"), which easement was recorded with the St. Louis County Recorder on April 19, 1967 as Document No. 78248.

C. The 2012 flood washed out the public road that allowed the State to access the Easement Property and the State does not currently have access to the Easement Property.

D. The State and City desire to enter into this Agreement to allow the State to cross a portion of the City Property for access to the Easement Property.

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 in this Agreement, City grants to the State a non-exclusive license to enter onto that portion of the City Property depicted in red on the attached Exhibit B (the "License Property"), for the purpose of accessing the Easement Property (the "License").

B. The State agrees to exercise reasonable care and best practices in utilizing the License Property to minimize any negative impacts to the City Property. Within the License Property, the State may clear brush, vegetation, and trees to a maximum width of fifty feet (50') in order to provide an access route to the Easement Property. Brush and trees shall be mulched on site and spread on the License Property to minimize erosion and allow for regrowth of vegetation. The State shall not excavate the ground

within the License Property and may not pave or add gravel or other fill to the License Property.

C. The State shall not make any alterations or improvements to the City Property that are not herein described without the prior written consent of City and then only upon the terms and conditions which may be imposed by City.

2. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on January 1, 2018, and shall continue through December 31, 2021, unless earlier terminated (the "Term").

3. LICENSE FEE.

A. The State shall have the use of the City Property at no cost. The State shall be responsible to pay for all costs associated with its use of the City Property.

B. City, as the fee owner of the City Property, understands that it is not required to surrender possession of the City Property without just compensation and is not required to surrender lawfully occupied City-owned property without at least 90 days notice. By signing this License, City waives these rights.

C. To the extent this Agreement imposes obligations on the State that require the expenditure of funds by the State, such obligations are contingent upon and subject to the Minnesota Legislature appropriating funds for such obligations. If there is no appropriation of funding for all or part of any such obligation, the State shall make a good faith effort to secure funding to cover the obligation.

4. LIMITED USE. The State may use the City Property as expressly permitted by this Agreement and for no other purpose. Any activities not approved by City's Property and Facilities Manager may be grounds for termination of this Agreement.

5. TERMINATION OR EXPIRATION.

A. For Cause. City may terminate this Agreement for the material breach by the State of any provision of this Agreement if such breach is not cured to the satisfaction of City within thirty (30) days of delivery of a written notice by City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach.

B. Immediately. City may terminate this Agreement immediately on notice to the State if City believes in good faith that the health, welfare, or safety of occupants or neighbors of the City Property would be placed in immediate jeopardy by the continuation of this Agreement or the Study.

C. Surrender Possession. Upon termination or expiration of this Agreement for any reason, the State will surrender possession of the City Property to City and shall

restore the City Property to substantially the same condition as at the time the State took possession of the City Property. The State agrees to reimburse City upon demand the reasonable costs incurred by City to repair any damage done to the City Property by the State, its employees, servants, agents, contractors, invitees, and licensees.

6. CITY WARRANTY. City makes no representation that the City Property is suitable for any particular purpose or specific use and the State accepts the City Property in “as is” condition without representations or warranties of any kind.

7. HOLD HARMLESS. City and the State shall each be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other party. The State’s liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Chapter §3.736 and other applicable law. The City’s liability shall be governed by the provisions of Minnesota Statutes Chapter 466 and other applicable law.

8. INSURANCE. During the Term, the State shall either have (i) such insurance coverage as will protect the State and City against risk of loss or damage to the City Property used by the state and any other property of City located or used at the City Property by the State and against claims which may arise or result from the use of the City Property by the State during the Term or (ii) retain the risk of loss through self-insurance. Automobile and Public Liability Insurance policies shall be written on an “occurrence” basis with limits of not less than \$500,000 per person and \$1,500,000 per occurrence for personal bodily injury and death and for property damage liability. Insurance policies shall be taken out and maintained in responsible insurance companies organized under the laws of the state of Minnesota and licensed to do business in Minnesota (or through a program of self-insurance). 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. The State shall provide City with Certificate(s) of Insurance or self-insurance letter(s) evidencing the required insurance coverage. City does not represent or guarantee that the types or limits of coverage required by this Agreement are adequate to protect the State’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 the State 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, unless the municipal liability limits exceed the limits set forth in Minn. Stat. § 3.736, subdv. 4.

9. INDEPENDENT CONTRACTOR. It is agreed that nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting the State or the State’s personnel as an agent, representative, or employee of City for any purpose or in any manner whatsoever. The State 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 the State's employees or agents while so engaged, shall in no way be the responsibility of City.

10. ASSIGNMENT. The State shall not in any way assign or transfer its rights or interests under this Agreement.

11. LAWS, RULES AND REGULATIONS.

A. The State shall conduct its activities related to the City Property in strict compliance with the United States Constitution and with all applicable laws, rules, and regulations. The State shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

B. The State agrees to procure, at the State's expense, all licenses and permits necessary for carrying out its obligations under this Agreement and completing the Study.

12. RECORDS RETENTION. The State agrees to maintain all books, records, documents, and other evidence pertaining to this Agreement for six (6) years after termination or expiration of this Agreement for any reason.

13. DATA PRACTICES. City and the State shall comply with the Minnesota Data Practices Act, Minn. Stat. Chapter 13, as it applies to all data relating to this Agreement.

14. WAIVER. The waiver by City or the State of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition in this Agreement.

15. 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 this Agreement did not contain the particular term or provision held to be invalid.

16. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the State and City 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 a claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which may be waived at any time by mutual agreement between the parties.

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

Minnesota Department of Transportation
Attn: Roberta P. Dwyer, PE, PTOE
1123 Mesaba Avenue
Duluth, MN 55811
(218) 725-2781

City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, Minnesota, 55806
(218) 730-4430

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

19. COMPLIANCE WITH AGREEMENT. The right of the State to use the City Property is subject to the State's compliance with the undertakings, provisions, covenants, and conditions set forth in this Agreement.

20. 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.

21. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

22. 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 of this Agreement.

23. 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 and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

24. RECORDING. Neither party shall record this Agreement in the St. Louis County real estate records without the prior written permission of the other party.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have set their hands the day and date as indicated below.

CITY OF DULUTH, MINNESOTA

THE STATE OF MINNESOTA, acting
through its Commissioner of Transportation

By: _____
Mayor

By: _____

ATTEST:

Its: _____

City Clerk

Printed Name: _____

Dated: _____

Dated: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney

EXHIBIT A CITY PROPERTY

Northwest Quarter of Southwest Quarter (NW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Five (5), Township Forty-eight (48) North, Range Fifteen (15) West of the Fourth Principal Meridian.

AND

Northeast Quarter of Southwest Quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$), Section Five (5), Township Forty-eight (48) North, Range Fifteen (15) West of the Fourth Principal Meridian, EXCEPT the Easterly Six Hundred Feet (E'ly 600') lying south of a line commencing at a point of the west line of said Northeast Quarter of Southwest Quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$) of said Section 5, nine feet (9') north of the southwest corner thereof, and extending easterly to a point on the east line of said Northeast Quarter of Southwest Quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$) of said Section 5, one hundred seventy-seven feet (177') north of southeast corner thereof.

AND

That part of the Southeast Quarter of Southwest Quarter (SE $\frac{1}{4}$ of SW $\frac{1}{4}$), Section Five (5), Township Forty-eight (48) North, Range Fifteen (15) West of the Fourth Principal Meridian, lying North of the Plat of Fond du Lac, EXCEPT the Easterly Six Hundred Feet (E'ly 600').

EXHIBIT B

