

Exhibit A

**LICENSE AGREEMENT  
TO ENTER ON PROPERTY AND PERFORM SNOW DUMPING DULUTH  
SEAWAY PORT AUTHORITY  
AND  
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, by and between CITY OF DULUTH, a municipal corporation (hereinafter referred to as “City”), and the DULUTH SEAWAY PORT AUTHORITY (herein referred to as “Authority”) a body corporate and politic, existing under the laws of the State of Minnesota, having its principal office in Duluth, Minnesota.

**ARTICLE I  
LICENSE AND TERM**

The Authority hereby grants to City a non-exclusive license upon the terms and provisions stated herein, and revocable at any time with or without cause in the sole discretion of the Authority to enter onto, including access, to certain property adjoining the confined disposal facility all as shown on Exhibit A, located at Erie Pier, owned by the Authority (“Licensed Premises”). The term of this license will commence on the Effective Date hereof and run until June 30, 2024, unless earlier terminated as provided for in Article V. Said License is granted for the sole purpose of dumping snow and “related materials” removed from Public Property. For the purposes of this Agreement, “related materials” shall include but not be limited to sand, gravel, salt, other deicing chemicals or chemical compounds and various forms of debris included in the snow removed from Public Property and “Public Property” shall mean City streets, highways, alleys, sidewalks and property owned or controlled by City.

**ARTICLE II  
COMPLIANCE WITH LAWS, PROTECTION OF OTHER PROPERTIES**

During the term of this Agreement City and all persons accompanying their officers, agents, employees and invitees onto the Licensed Premises shall fully comply with all applicable laws. Neither City, their officers, agents, employees, or invitees, nor anyone accompanying City, their officers, agents, employees, or invitees shall deposit solid waste or liquid waste on or commit waste on or damage to the Licensed Premises or allow any public or private nuisance or other act or thing to take place, other than the deposit of snow and related materials on the Licensed Premises.

**ARTICLE III  
RELEASE AND INDEMNIFICATION OF THE AUTHORITY**

In and for good and valuable consideration for the license given herein by the Authority, City hereby fully and forever releases and discharges the Authority and its agents, servants, employees, administrators, executors, successors, or assigns of and from all manner of actions, causes and causes of action, suits, debts, dues, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands whatsoever, in law or in equity, in any way arising solely from any and all injuries, losses, death and/or damages to persons and/or property arising out of the activities of City their employees, agents, representatives, officers, licensees, invitees, or servants using, occupying or visiting the Licensed Premises or who are by, in or on the same.

City agrees to indemnify, defend and hold harmless Authority against and from any such liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing solely out of any work done, labor performed or materials furnished by City at the Licensed Premises including spills, leaks and cross-contamination up to the limits of liability prescribed in Minnesota Statutes Section 466.04.

#### **ARTICLE IV ASSIGNMENT AND SUBLICENSING**

The rights and obligations of City hereunder may not be assigned, subleased, sublicensed or in any other way transferred.

#### **ARTICLE V TERMINATION**

The Authority may, in its sole discretion, revoke the license at any time and for any reason after the giving of notice by the Authority, by its Executive Director or her/his designee to City, as provided for in Article IX hereof Thirty (30) days in advance of such revocation. In the event that Authority reasonably determines that City's continued use of the Licensed Premises pursuant to this license constitutes a threat to the health, safety and welfare of the Authority or of the citizens of the City, it may revoke said license without such prior notice.

#### **ARTICLE VI INSPECTION & CLEANING OF LICENSED PREMISES**

A. Current Condition Established

The parties acknowledge that Barr Engineering Co. has prepared and submitted a Summary Report entitled "Soil Sampling Results—Erie Pier Summer 2019" dated September 12, 2019 which report has been submitted to and received by both City and Authority. City and Authority hereby agree that the conditions described in said Report shall be accepted by the parties as establishing the condition of the Leased Premises as they relate to the conditions reported in said Report as of the commencement of this License term.

B. Post-Season Report & Clean-up

No later than June 1<sup>st</sup> of each year of the Term of this License, City will cause the Licensed Premises to be cleaned of all surface garbage and debris deposited by it in the course of its snow dumping operations for portions of the property used solely by the City. Authority shall provide City with reasonable access to the Licensed Premises for this purpose. The Authority shall have the Licensed Premises assessed and sampled and obtain a report of the condition of the surface soils on the Licensed Premises prior to and following City's use of the Licensed Premises hereunder. City shall be responsible for the costs of such inspections and report and shall reimburse Authority for such costs upon invoicing by Authority for portions of the property used by the City.

C. Contaminant Clean-up

In the event that the Authority determines that oil or other fluid have leaked from the equipment, or if other debris or waste, including salt, is left on the Licensed Premises or if a release of petroleum, hazardous substance, pollutants or contaminants has occurred, and a regulatory agency having proper jurisdiction requires clean up action, City will properly perform and leave the Licensed Premises in a condition complying with the regulatory agency requirements and Authority's satisfaction for portions

of the property used by the City. In the event that City fails to clean the Licensed Premises, the Authority shall cause the Licensed Premises to be cleaned and City shall be responsible for all costs of clean-up for portions of the property used by the City.

**ARTICLE VII  
ACCESS TO LICENSED PREMISES**

City shall have its own gate lock and City will be the only party authorized to plow its own entryway and utilize such during the term of this license, thus City is responsible for controlling and supervising access by others.

**ARTICLE VIII  
NOTICES**

Notices hereunder shall be deemed give if mailed by certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Authority:       Executive Director  
                                  Duluth Seaway Port Authority  
                                  1200 Port Terminal Drive  
                                  Duluth, MN 55803

If to City:                Chief Administrative Officer  
                                  City of Duluth  
                                  411 West First Street.  
                                  Room 418 City Hall  
                                  Duluth, MN 55802

Or at such other address or in such other manner as the parties shall from time to time designate to the other by notice given as herein provided. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency the Authority may give oral notice which shall be effective immediately.

**ARTICLE IX  
MISCELLANEOUS**

9.1     Choice of Law and Venue.

This Agreement is made and shall be governed in all respects by the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be venued in St. Louis County, Minnesota and all parties to this Agreement waive any objection to jurisdiction, whether based on convenience or otherwise.

9.2     Severability.

Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

9.3 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

9.4 Headings.

The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

IN WITNESS WHEREOF, the Authority and City have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF DULUTH

DULUTH SEAWAY PORT AUTHORITY

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

By \_\_\_\_\_  
Its Executive Director

And By \_\_\_\_\_  
Its City Clerk

Dated: \_\_\_\_\_, 2018

Countersigned:

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

Approved:

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

**EXHIBIT A**  
**LICENSED PREMISES**

