



Exhibit 1

INDIAN POINT PUBLIC FISHING PIER
LAND USE, OPERATIONS AND MAINTENANCE COOPERATIVE AGREEMENT
BETWEEN
THE STATE OF MINNESOTA AND CITY OF DULUTH

This agreement (this “Agreement”), is between the State of Minnesota, acting by and through the Commissioner of the Department of Natural Resources, hereinafter referred to as the “State”, and the City of Duluth, hereinafter referred to as the “City.”

WITNESSETH:

WHEREAS, the Commissioner of Natural Resources has the authority, duty, and responsibility under Minnesota Statutes Section 97A.141 to provide public water access on lakes and rivers, where access is inadequate; and

WHEREAS, the State and the City are authorized under Minnesota Statutes Section 471.59, to enter into agreements to jointly or cooperatively exercise common power; and

WHEREAS, the State and the City have determined that a fishing pier on the St. Louis River Indian Point Campgrounds and Waahizheshikana (“The Marten Trail”) is of high priority under the state public water access program; and

WHEREAS, the City owns land on the St. Louis River near the Indian Point Campgrounds and Waahizheshikana (“The Marten Trail”) as shown on the map attached and incorporated into this Agreement as Exhibit A (the “City Property”); and

WHEREAS, the State and the City desire to cooperate in the construction of a new fishing pier (the “Fishing Pier”) at the City Property and future maintenance and operation of the Fishing Pier on the St. Louis River; and

WHEREAS, a resolution or copy of the City council meeting minutes authorizing the City to enter into this Agreement is attached and incorporated into this Agreement as Exhibit B; and

NOW, THEREFORE, in consideration of the mutual benefit to be derived by the public bodies hereto and for the benefit of the public, the parties agree as follows:

I. STATE’S DUTIES AND RESPONSIBILITIES

- a. The State will encumber funds for the cost of construction of the Fishing Pier through the standard internal purchasing process including, but not limited to, a separate requisition request.
- b. The State shall provide, at its expense, the structure, floats, lumber and hardware to construct and install the Fishing Pier.
- c. The State will review and approve any signs before they are placed at the facility by the City.

- d. The State shall retain ownership of the Fishing Pier through the Expiration Date (defined below) and retains the authority to relocate and/or remove the Fishing Pier if the City Property is determined to be inadequate or if the City fails to comply with the terms of this Agreement. Before such removal or relocation, the State shall consult with the City. Removal or relocation of the Fishing Pier shall be at the State's sole expense.
- e. The State shall assist the City with major structural repairs and rehabilitation of the Fishing Pier, which include float replacement, frame repair, and replacement of sections if required.
- f. The State reserves the right to inspect the Fishing Pier at all times to ensure that the City is complying with the terms of this Agreement.

II. CITY'S DUTIES AND RESPONSIBILITIES

- a. The City shall comply with all local, state and federal laws, regulations, rules and ordinances which may apply to the management, operation, and maintenance of the Fishing Pier. The City shall obtain any permit or license which may be required to install the Fishing Pier.
- b. The City shall assist the State with personnel and equipment with future rehabilitation of the Fishing Pier using the State provided floats.
- c. The Fishing Pier will replace the former fishing pier and reside in the same location as shown on Exhibit A. If the city decides to relocate the pier to a new location, the City will complete construction, at its expense, of an accessible route which meets ADA requirements of less than a 5% gradient, 2% cross slope connecting the Fishing Pier to an accessible parking space.
- d. The City shall comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and all applicable regulations and guidelines.
- e. The City shall provide personnel and equipment when feasible to assist with the construction and installation of the Fishing Pier.
- f. The Fishing Pier (parking area) shall be free and remain open to the public every day during open water season in conjunction with the City's established operational months and hours for a facility of this type. The City may close the Fishing Pier for emergencies, or for other reasons, without prior written consent of the State. The City shall notify the State representative within 48 hours of the closing of the Fishing Pier if the Fishing Pier will remain closed longer than 48 hours.
- g. Free and adequate parking in the vicinity will be provided for the Fishing Pier including at least one (1) designated van accessible space for persons with disabilities.
- h. The City shall provide police protection and patrols for the Fishing Pier in accordance with the City's established police department policies for a facility of this type.
- i. Any signage at the Fishing Pier shall comply with the City's Gate, Signage and Wayfinding Design Plan, as it may be amended from time to time.
- j. The City shall maintain the Fishing Pier and keep it in good and sanitary order in accordance with the City's established practices for maintenance of the City's facilities. The City shall provide all necessary routine maintenance and minor repairs to the Fishing Pier including, but not limited to, the repair or replacement of decking and railings.

- k. The City shall take necessary action no earlier than October 15th of each year to protect the Fishing Pier from damage caused by ice action. Additionally, if necessary, the City shall return the Fishing Pier to a useable condition no later than May 5th of each year.
- l. With respect to its activities constructing, installing and maintaining the Fishing Pier, the City must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR-administered lands. Operational Order 113 is incorporated into this Agreement by reference and can be found at http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder_113.pdf. Duties listed are in Op Order 113 under Sections II and III (p. 5-8).
 - i. The City shall prevent invasive species from entering into or spreading within a project site by cleaning equipment and clothing prior to arriving at the project site.
 - ii. If the equipment or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned with tools or equipment furnished by the City (such as brush/broom, compressed air or pressure washer) at the staging area.
 - iii. The City shall dispose of material and debris cleaned from equipment and clothing at an appropriate location. If the material cannot be disposed of onsite, then the material must be secured prior to transport (such as a sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.
 - iv. The City shall ensure that all equipment and clothing used for work in public waters has been adequately decontaminated for aquatic invasive species. All equipment and clothing, including but not limited to waders, vehicles and boats that are exposed to any public water of the State must be thoroughly cleaned and drained of all water before transport to another location.

III. FUNDING

The State shall provide funding for its responsibilities under Article I through the standard internal purchasing process including, but not limited to a separate requisition in which funds will be encumbered. The total obligation of the State for its responsibilities under Article I shall be limited to the amount of funds legislatively appropriated and administratively allocated to this Agreement. No additional funding will be provided, unless agreed upon by all parties and an amendment to this Agreement is completed and executed.

IV. TERM

- a. *Effective Date:* **April 5, 2022** or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, Subdivision 2, whichever is later. The City shall not begin work under this Agreement until this Agreement is fully executed, and the City has been notified by the State's Authorized Representative (defined below) to begin the work.
- b. *Expiration Date:* **December 31, 2047**, except as otherwise provided herein or agreed to in writing by both parties. This Agreement can be extended with a written amendment as agreed upon and signed by both parties per Article XI.

V. LIABILITY

Each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, and other applicable law. The City's liability shall be governed by Minnesota Statutes Sections 466.01 - 466.15, and other applicable law.

VI. AUDIT

Under Minnesota Statutes Section 16C.05, sub. 5, the books, records, documents and accounting procedures and practices of the City relevant to this Agreement shall be subject to examination by the Commissioner of Natural Resources, the Legislative Auditor and the State Auditor for a minimum of six (6) years from the end of this Agreement.

VII. ANTITRUST

The City hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations that arise under antitrust laws of the United States and antitrust laws of the State of Minnesota.

VIII. FORCE MAJEURE

Neither party shall be responsible to the other or considered in default of its obligations within this Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of inability to perform and take all necessary steps to bring about performance as soon as practicable.

IX. CANCELLATION

This Agreement may be cancelled by the State at any time with cause or as necessary as provided in Article II, upon thirty (30) days written notice to the City. This Agreement may be cancelled by the City at any time with cause, upon thirty (30) days written notice to the State. This Agreement may also be cancelled by the State if it does not obtain funding from the Minnesota Legislature, or other funding sources, or if funding cannot be continued at a level sufficient to allow for the payment of services covered under this Agreement. The State will notify the City by written or fax notice. The State will not be obligated to pay for services provided after the notice is given and the effective date of cancellation. However, the City shall be entitled to payment, determined on a pro-rated basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate the necessary funds. The State shall provide the City notice of lack of funding within a reasonable time of the State's receiving that notice.

X. GOVERNMENT DATA PRACTICES

The City and the State must comply with the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under

this Agreement. The civil remedies of Minn. Stat. 13.08 apply to the release of the data referred to in this clause by either the City or the State.

XI. COMPLETE AGREEMENT

This Agreement contains all negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

XII AUTHORIZED REPRESENTATIVES

Any notice, demand or communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, or by email to:

The State's Authorized Representative is Kevin Johnson, Area Supervisor, 1568 Hwy 2, Two Harbors, MN 55616, 218-834-1431, kevin.g.johnson@state.mn.us or his successor.

The City's Authorized Representative is Erik Birkeland, Property and Facilities Manager, 1532 W. Michigan St., Duluth, MN 55806, 218-730-4435, ebirkeland@duluthmn.gov or his successor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

DEPARTMENT OF NATURAL RESOURCES
Division of Parks and Trails

By: _____

Title: _____

Date: _____

DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife

By: _____

Title: _____

Date: _____

DEPARTMENT OF ADMINISTRATION
Delegated to Materials Management Division

By: _____

Title: _____

Date: _____
(Effective Date)

STATE ENCUMBERANCE VERIFICATION
Individual certifies that funds have been
encumbered as req. by Minn. Stat. 16A.15 and 16C.05.

Signed: _____

Date: _____

Contract: _____

CITY OF DULUTH

By: _____

Title: Mayor

Date: _____

ATTEST:

By: _____

Title: City Clerk

Date Attested: _____

COUNTERSIGNED:

By: _____

Title: City Auditor

Date: _____

Approved as to Form

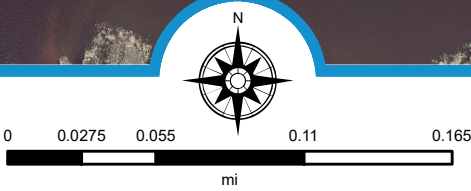
By: _____
City Attorney



EXHIBIT A



 City Property



County Land Explorer
St. Louis County www.stlouiscountymn.gov/explorer Minnesota

Disclaimer
This is a compilation of records as they appear in the Saint Louis County
Offices affecting the area shown. This drawing is to be used only for reference
purposes and the County is not responsible for any inaccuracies herein

Map created using County Land Explorer
www.stlouiscountymn.gov/explorer

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