



UNIVERSITY OF MINNESOTA

Temporary Construction Agreement

This Temporary Construction Agreement (“**Agreement**”) is entered into on the date of last signature below (“**Effective Date**”) by and between Regents of the University of Minnesota, a Minnesota constitutional corporation (“**University**”) and the City of Duluth, a Minnesota municipal corporation (“**City**” or “**Licensee**”).

WHEREAS, University is the owner of certain real property in Duluth, Minnesota, as depicted on **Exhibit A** (“**University’s Property**”);

WHEREAS, City is undertaking a project to construct certain improvements in connection with the reconstruction of West College Street (the “**Project**”);

WHEREAS, City desires to obtain from University a temporary construction license over and across portions of University’s Property to facilitate the Project; and

WHEREAS, University agrees to provide to City a temporary construction license according to the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

1. Provision of License.

1.1 University hereby grants to City a temporary license (the “**License**”) over and across those portions of University’s Property described and depicted on **Exhibit B** (the “**License Areas**”) for purposes of access, staging, and other purposes reasonably necessary to complete the Campus Connector Project – Segment 4 in accordance with construction plans, Project No. DULUT 174757 prepared by Short Elliot Hendrickson Inc. as amended from time to time provided the University agrees with any amendments with respect to the License Areas (the “**Plans**”). The License includes the right of City, its contractors, agents, employees (collectively, “**City Parties**”) to enter upon the License Areas at all reasonable times for the purpose of construction, grading, sloping, and restoration purposes, and all purposes ancillary thereto, including but not limited to drainage and stormwater purposes, together with the right to remove trees, shrubs or other vegetation in the License Areas, as well as the right to deposit construction materials within the License Areas and to move, store, and remove equipment and supplies, and to perform any other work necessary and incident to the Project, all in accordance with the Plans.

1.2 City’s rights to use the License Areas and the License provided hereunder are subject to: (a) any and all existing restrictions, covenants, easements, rights of way, and other encumbrances relating to the License Areas that are of record or of which City has knowledge; (b) all applicable federal, state, and local laws, regulations, ordinances, rules, and requirements; and (c) applicable University ordinances, policies, procedures, and rules.

2. Fee. No fee is required to be paid by the City in conjunction with this Agreement. The City agrees not to seek to impose any Project-related assessments or payments-in-lieu of assessments on University's property.

3. Term. The Agreement shall commence on May 15, 2026, and terminate on December 31, 2027, or when the Project is completed, whichever is sooner (the "**Term**").

4. Use of the License Areas.

4.1 City agrees to inform University prior to City's initial entry onto the License Areas and to provide weekly updates to University about the status of the Project throughout the Term. University agrees that its contact person for purposes of this Section 4.1 shall be Erik Larson at 218-726-6915 or elarson@d.umn.edu.

4.2 City shall, and shall cause the other City Parties to, conduct all work on the License Areas under a site-specific safety and health plan as defined and required in OSHA 29 CFR 1910.120 and in compliance with all other applicable local, state and federal health and safety regulations and guidelines for workers.

4.3 City shall, and shall cause the other City Parties to, perform all construction in a good, safe, and workmanlike manner. City shall, and shall cause the other City Parties to, comply with all applicable federal, state, and local laws, regulations, ordinances, rules, and requirements and all applicable University ordinances, policies, procedures, and rules in their use of the License Areas.

4.4 City shall exercise reasonable care and best practices in the License Areas during the Term and shall construct the Project in a safe and lawful manner.

4.5 City shall use its best efforts to minimize interference with or damage to University's Property and the conduct of its business thereon, including but not limited to the following: providing temporary construction access to University facilities and events, protecting in-place existing utilities serving University facilities; and conducting regular field coordination with University staff to ensure protection of trees within and adjacent to the License Areas, and the relocation of University-owned signs, consistent with the Plans.

4.6 City, at its sole cost and expense, shall promptly restore any damage to University's Property arising from or related to City's use of the License Areas pursuant to this Agreement, including but not limited to replacement of damaged University utilities. Upon receiving written notice of unrestored damage to University's Property, City shall have the right to restore the damage, to the reasonable satisfaction of the University, within thirty (30) business days (the "**Cure Period**"), unless extended by mutual written agreement of the parties. If, upon receipt of written notice, City fails to restore the damage to the reasonable satisfaction of the University within the Cure Period, City shall reimburse the University for reasonable costs incurred by University in restoring such damage within 35 days of receipt of an invoice accompanied by supporting data in a form to reasonably evidence the costs in question. However, the University agrees that the City may remove trees as shown in the project plans with the City replacing the

trees as required by the University's Tree Preservation, Protection and Planting procedure. The City shall supply the number and size as agreed upon in the Tree Replacement worksheet and Tree Planting Plan attached on **Exhibit C** (the "**Tree Replacement**"). The City will use its best efforts to remove only the trees that would interfere with the City ROW and shall not remove trees simply because they are within the License Area. Notwithstanding the foregoing, City will supply replacement trees, in coordination with the University and the University shall be responsible for planting.

4.7 Promptly after completion of construction, City shall: (a) remove all equipment and other property placed upon the License Areas by the City Parties; and (b) remove all debris resulting therefrom; and (c) in coordination and consultation with the University, promptly restore the surface of the License Areas to University's reasonable satisfaction. If City's obligations in this Section are not completed within 30 days after the end of the Term, University shall have the right, but not the obligation, to perform them and City agrees to reimburse University for its costs incurred in doing so within 35 days after receipt of an invoice accompanied by supporting data in a form to reasonably evidence the costs in question.

4.8 City shall keep the License Areas free of any and all mechanics', material suppliers', and other liens arising out of any work, labor done, services performed, or materials furnished for the City Parties or claimed to have been furnished for the City Parties.

5. Reservation of Rights. University reserves the right to occupy and use the License Areas to inspect City's use thereof, in any manner that is not inconsistent with the rights granted herein.

6. Condition of the Premises; Environmental.

6.1 University has made no representation whatsoever to City concerning the condition of the License Areas or the extent of the University's ownership interest therein. City accepts all rights granted under this Agreement in an "AS IS, WHERE IS" and "WITH ALL FAULTS" condition, and subject to all limitations on University's rights, interests, and title to the License Areas.

6.2 City represents that it has inspected the License Areas and enters into this Agreement with knowledge of their condition. City will be responsible for determining the suitability of the License Areas for City's intended use, including without limitation geotechnical, structural, environmental, and health or safety conditions. City acknowledges that this Agreement does not contain any implied warranties that the City Parties can successfully use the License Areas to perform the Project.

6.3 Upon request by University, City shall provide to University without charge electronic copies of any test results and reports it or other City Parties obtain pertaining to the License Areas. All test results and reports shall be sent to the University of Minnesota, Real Estate Office, 451 Donhowe Building, 319 15th Avenue Southeast, Minneapolis, MN 55455-0199, prior to submission to any regulatory agency. University may comment separately on said results and reports to any regulatory agency, but shall not alter any submission from City to any regulatory agency.

6.4 Definitions. For purposes of this Agreement:

“**Environmental Laws**” means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substances, environmental protection, or health and safety, as now or may at any time hereafter be in effect and as amended from time to time, as well as the regulations adopted and promulgated thereunder, including without limitation: the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et seq.; the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. Section 6901 et seq.; and the Minnesota Environmental Response and Liability Act, Minnesota Statutes Chapter 115B.

“**Hazardous Substance**” means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any Environmental Laws; (ii) petroleum, petroleum products, and by-products, including crude oil and any fractions thereof; (iii) natural gas, natural gas liquids, liquefied natural gas, synthetic gas, and any mixtures thereof; (iv) asbestos or any material that contains any hydrated magnesium silicate minerals that crystallize as bundles of long, thin fibers that readily separate when broken or crushed; (v) radon; (vi) any other hazardous or radioactive substance, material, contaminant, pollutant, or waste; (viii) any substance with respect to which any federal, state, or local Environmental Law or governmental agency requires environmental investigation, monitoring, or remediation; and (vix) any other substance or material now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant under any Environmental Laws.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching, or migration of a Hazardous Substance into the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers, or other closed receptacles containing any Hazardous Substance), or into or out of any License Areas, including the movement of any Hazardous Substance through the air, soil, surface water, groundwater, or property.

6.5 City shall not—and shall ensure that the other City Parties do not—violate any Environmental Laws, including but not limited to those governing the Release, use, generation, storage, treatment, transportation, discharge, disposal or handling of Hazardous Substances in, upon, under, over or from the License Areas. City shall indemnify, defend and hold harmless University from and against any claim, damage or expense arising out of City’s breach of the foregoing obligations and covenants.

6.6 City, at its sole cost and expense, shall:

- a. Notify University prior to any activity on the License Areas that involves the Release, use, storage, generation, treatment, transportation, disposal, or handling of any Hazardous Substance;
- b. Comply with all Environmental Laws, including but not limited to those governing the Release, use, storage, generation, treatment, transportation, disposal, or handling of Hazardous Substances;
- c. Immediately stop construction or any other activity in an area if any of the City Parties encounters a Hazardous Substance in that area;
- d. Call 911 immediately and ask to be connected to UMD Campus Police (or UMD Environmental Health and Safety at 218-726-7139) (i) if the City Parties encounter a Hazardous Substance; (ii) if a Hazardous Substance is Released on or from the License Areas; (iii) upon becoming aware of a violation of any Environmental Laws; (iv) upon becoming aware of an inspection or inquiry by any governmental agency with respect to the City Parties' use of the License Areas; or (v) if City receives any notice from any governmental agency alleging that any Environmental Laws have been violated by any of the City Parties with respect to their use of the License Areas.
- e. Promptly perform activities necessary to avoid or minimize injury or liability to any person, or to prevent the Release or spread of any Hazardous Substance, or to prevent the spread of any contamination Released by any of the City Parties.
- f. Promptly respond to and comply with any United States Environmental Protection Agency and/or Minnesota Pollution Control Agency notice, order, request, or demand relating to potential or actual contamination on the License Areas resulting from a Release by any of the City Parties.

6.7 If University has reason to believe that a Hazardous Substance has been Released on the License Areas by any of the City Parties, then University has the right, but not the obligation, to require City, at City's sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to University. Such an investigation shall be commenced within ten (10) days after University's request, and thereafter be diligently prosecuted to completion. City shall provide to University without charge an electronic copy of the environmental audit immediately after it is completed. If the environmental audit shows that there has been no release of a Hazardous Substance, then the University shall promptly reimburse the City for such costs.

6.8 If any of the City Parties expose or disturb soils, water, or other materials that appear to be contaminated based on visual and olfactory observation and/or field screening activities, City shall test the soils, water, and other materials at City's cost; testing shall be conducted by a certified laboratory. While the soils, water, and other materials are being tested, all potentially contaminated excavated soils and other materials shall be stored on 10 mil poly and covered appropriately until testing is complete. Water shall be stored and labeled, if necessary, in an approved storage vessel. Stored soils, water, and other materials shall be appropriately secured

on-site, and are the responsibility of the City. In addition, solely at University's discretion and upon the University's request, City will provide to University splits of any samples of materials that City collects so that University may undertake independent testing and analysis of the sample material.

a. If testing confirms—or any agency with jurisdiction thereof determines—that the excavated soils, water, or other materials are contaminated, City shall, at its sole cost, collect, remove and appropriately dispose of all such contaminated soils, water, or other materials at an approved facility. City shall assume full responsibility for impacted soil, water, and all other materials collected, excavated and removed from the License Areas. City shall (a) seek and receive from a State and/or country approved disposal facility written pre-approval for receipt of impacted materials; and (b) provide such pre-approval to University. City shall provide to University without charge copies of all test results and documentation regarding analysis and disposal of impacted soil, water, and materials removed from the License Areas, including, but not be limited to, waste manifests, bills of lading, chain of custody documents and landfill/disposal facility receipt records. City shall also consult with University before preparing any application for participation in the Minnesota Pollution Control Agency (“MPCA”) Voluntary Investigation and Clean-up Program (“VIC”) and/or the Petroleum Brownfields Program (“PB”).

b. If testing determines that the soils, water, or other materials are not contaminated, City may with University's prior written consent dispose of such materials on the License Areas in accordance with existing MPCA Guidelines.

6.9 For the purposes of storm water management from the License Area, City shall serve as the “owner” for purposes of Minnesota Rules 7090 and shall be responsible for obtaining, and complying with, any and all required permits.

6.10 If City fails to perform its obligations under this Section 6, the University shall provide to City written notice thereof. City shall have the right to perform the obligations, to the reasonable satisfaction of the University, within thirty (30) business days (the “**Environmental Cure Period**”), unless extended by mutual written agreement of the parties. If, upon receipt of written notice, City fails to perform the obligations within the Environmental Cure Period and to the reasonable satisfaction of the University, University shall have the right, but not the obligation, to perform City's obligations and charge City for the costs and expenses reasonably incurred by University in doing so. City shall reimburse University for all such costs and expenses within thirty-five (35) days after receipt of an invoice therefor accompanied by supporting data in a form to reasonably evidence the costs in question.

7. Insurance.

7.1 City shall obtain and keep in force the following insurance:

- a. Occurrence based general liability insurance covering claims arising from operations under this Agreement, whether such operations are performed by City or the other City Parties, with limits required in Minnesota Statutes Section 466.
- b. Workers compensation insurance in compliance with the statutory requirements of the State of Minnesota.
- c. City shall provide to University prior to this Agreement's Effective Date fully executed Certificates of Insurance evidencing that it has the required coverage.
- d. City may self-insure with respect to the requirements of this Section.

7.2 The City's contractors ("**Contractors**") shall obtain and keep in force the insurance described in this Section:

- a. Occurrence based general liability insurance covering claims arising from operations under this Agreement, with minimum limits of \$1.5 million per occurrence, \$1.5 million annual general aggregate per project, \$1.5 million annual aggregate for Products/Completed Operations, \$1.5 million Personal and Advertising Injury. Regents of the University of Minnesota shall be named as an Additional Insured for ongoing and completed operations for claims arising out of the acts or omissions of Contractors.
- b. Business Automobile Liability Insurance with a minimum limit of \$1 million each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owned automobiles. Regents of the University of Minnesota shall be named as an Additional Insured for claims arising out of the acts or omissions of Contractors.
- c. Workers' compensation insurance in compliance with all statutory requirements of the State of Minnesota.
- d. Employer's Liability (Part B) Insurance with minimum limits of \$1 million bodily injury by disease per employee; \$1 million bodily injury by disease aggregate; and \$1 million bodily injury by accident.
- e. An Umbrella or Excess Liability insurance policy may be used to supplement City's Contractors' policy limit to satisfy the minimum policy limits required by this Agreement. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies.

7.3 All policies shall provide: (i) that the policy will not be canceled, materially changed, or non-renewed without at least thirty (30) days' prior written notice to University; and (ii) that the policy is primary and any insurance maintained by University is excess and non-contributory. The certificates of insurance must reflect that the insurance requirements of this

Agreement have been met as reasonably determined by University. All policies shall be written by a reputable insurance company acceptable to University or with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota.

7.4 City shall waive and require all contractors and consultants of every tier to waive all subrogation and recovery rights against University. This shall be provided on the commercial general liability policy using a Waiver of Transfer of Rights of Recovery Against Others to Us endorsement and on the workers' compensation policy using a Waiver Of Our Rights To Recover From Others Endorsement in favor of Regents of the University of Minnesota.

7.5 No endorsements, except those expressly stated herein, may be included on any policy limiting coverage without University's approval.

7.6 Upon request by University, City shall require Contractors to provide to University prior to commencing any work on the License Areas fully executed Certificates of Insurance evidencing that the required coverage and endorsements. Upon request by University, City shall require Contractors to provide University with certified copies of insurance policies and all endorsements substantiating maintenance of the insurance required by this Agreement.

8. Indemnification and Release. City agrees to indemnify, defend, and hold harmless University and its officers, employees, agents, and others acting on their behalf from and against any and all loss, damage, liability, cost and expense (specifically including attorneys' fees and other costs and expenses of defense) resulting from (i) the City Parties' use of the License Areas; or (ii) any breach by City of this Agreement. City shall not be required to indemnify University for amounts found by a fact finder to have arisen out of the negligent or intentional acts or omissions of University. City releases University from any liability, damage, loss or injury, either to persons or property, sustained by City or any other party as a result of any damage, harm, injury, interference or reduction in use caused by City to the License Area. Under no circumstances will City be required to pay on behalf of itself and University any amounts in excess of the liability established in Minnesota Statutes Chapter 466 applicable to any one party.

9. Taxes and Fees. City shall pay when due all taxes, assessments or other government charges against the License Areas or University's Property to the extent attributable to Grantee's use thereof.

10. Default. If at any time City or the other City Parties fail to perform their obligations under this Agreement, University, in its sole discretion, may, upon not less than 30 business days written notice to City (or immediately in the event of any danger or potential danger to human health or the environment): (i) seek specific performance of the unperformed obligations; (ii) perform City's obligations and charge City for its costs reasonably incurred in doing so, after providing an opportunity to cure, to the University's satisfaction, within the 30-business-day notice period; or (iii) terminate the Agreement and remove the City Parties and their property and equipment from the License Areas. City shall promptly reimburse University for University's uses incurred in performing City's obligations and/or removing the City Parties from the License Areas within thirty-five (35) days after receiving an invoice therefor, accompanied by supporting data in a form to reasonably evidence the costs in question. University's remedies set forth in this Section shall

be in addition to, and not in limitation of, any other remedies that University may have at law or in equity.

11. Notices. A notice, communication, or demand by either party to the other shall be sufficiently given or delivered upon receipt if personally delivered or sent by email (with confirmation of receipt by recipient) or three (3) days after sent by U.S. registered mail or certified mail, postage prepaid, return receipt requested; and

(i) in the case of University, is addressed or personally delivered to:

Regents of the University of Minnesota
c/o Real Estate Office
319 15th Avenue SE, Suite 451
Minneapolis MN 55455
reo@umn.edu

and

University of Minnesota
Office of the General Counsel
Attn: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
ogccontracts@umn.edu

(ii) in the case of City, is addressed or personally delivered to:

Director of Public Works and Utilities
City of Duluth
411 West First Street, Room 274
Duluth, MN 55802
cpedersen@duluthmn.gov

or at such other address with respect to either such party as that party may, from time to time, designated in writing and forward to the other as provided in this Section.

12. Counterparts. This Agreement may be executed in electronically and in counterparts, each counterpart of which shall be deemed an original, and all of which shall constitute one Agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement.

13. Severability. If any provision of this Agreement is declared invalid, illegal or otherwise unenforceable, that provision shall be deemed to have been severed from this Agreement and the remainder of this Agreement shall otherwise remain in full force and effect.

14. Complete Agreement. This Agreement (including all exhibits) constitutes the complete agreement between the parties with respect to the matters addressed herein. This Agreement shall be amended only in a writing duly executed by the parties to this Agreement.

15. Assignment. City may not transfer or assign its rights under this Agreement without University's prior written consent.

16. Authority. Each of the undersigned parties represents and warrants that it has full authority to enter into this Agreement, and each individual signing this Agreement on behalf of a corporation or other entity hereby represents and warrants that he or she has full authority to sign on behalf of and to bind that party thereby.

17. Exhibits. Attached Exhibits A, B and C are incorporated by reference and hereby made a part of this Agreement.

18. Special Conditions Related to License. City shall be responsible for ensuring that all of the following conditions shall be met:

- i. City shall ensure that University is informed of and invited to the pre-construction meeting and to ongoing meetings during construction of the Project.
- ii. For purposes of accomplishing the restoration required in Section 4.7, City shall be responsible for conducting a video survey of all University property being used for the Project. A copy of the video survey shall be submitted to University at or before the pre-construction meeting.
- iii. City shall obtain permits from the University's Building Code Department as necessary. Such permits shall include, but are not necessarily limited to, grading and utility connection. City is responsible for meeting any conditions or requirements of such permits.
- iv. City will employ tree protection measures to prevent damage to existing trees within and outside of the License Areas consistent with the Plans and in consultation with the University.

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IN WITNESS WHEREOF, the University and City execute this Agreement.

Regents of the University of Minnesota

By: _____

Name: Leslie Krueger

Title: Assistant Vice President for Planning, Space, and Real Estate

Date: _____

City of Duluth

By: _____
Mayor

Attest: _____
City Clerk

Dated: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

University Property



