

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

14-0198R

RESOLUTION AUTHORIZING A NINETY-NINE YEAR LEASE AGREEMENT WITH MINNESOTA DEPARTMENT OF TRANSPORTATION FOR PROPERTY ON THE 900 BLOCK OF EAST SUPERIOR STREET FOR THE RELOCATION OF THE HISTORIC LEIF ERICKSON VIKING SHIP.

CITY PROPOSAL:

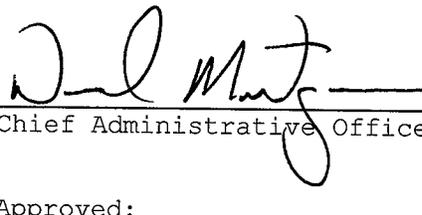
RESOLVED, that the proper city officials are hereby authorized to enter into a ninety-nine year lease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Minnesota department of transportation for the lease of property on the 900 block of east Superior street for the relocation of the historic Leif Erickson Viking Ship and pavilion with rent payments of \$100 per year payable from Fund 110-121-1222-5411 (general, public administration, facilities management, land rental/easements).

Approved:



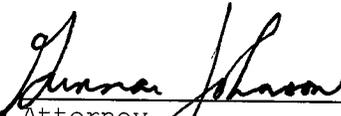
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

FACS FW/SLW:bel 04/16/2014

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a long term lease agreement with Minnesota Department of Transportation (MnDOT) for the lease of a small strip of property at the intersection of 10th Avenue East and Superior Street where London Road joins. The MnDOT property is a small parcel

adjacent to a larger city owned parcel. The MnDOT property along with the city owned parcel will be used for the relocation of the historic Leif Erickson Viking Ship which was moved from its location in Leif Erickson Park last spring. The property will be used to build a pavilion in which to store the Leif Erickson Viking Ship to protect it from the elements and vandalism which was a problem at its prior location. The plans for the pavilion include wood construction with one solid wall on the lakeside for protection and three sides of glazing for visibility and viewing of the ship. Informational plaques describing the history of the Leif Erickson Ship will be incorporated, as well as energy efficient lighting. It is a highly visible location at one of the entrances to Leif Erickson Park and in close proximity to the rose gardens, both are used by citizens and visitors of the city. The agreement may be terminated by either party on 90 days notice. The City will pay MnDOT an annual fee of \$100 to be paid every five years for a total rent of \$9,900 for the 99 year term of the agreement.

Minnesota Department of Transportation
District One
1123 Mesaba Avenue
Duluth, MN 55811
218-725-2784

PARCELS: 6982 (35=390) 907 0098 & 0099

LEASE NO.: 69037

COMMERCIAL LEASE

THIS LEASE is made between the State of Minnesota, Department of Transportation ("Landlord"), and City of Duluth ("Tenant").

Mail lease to: City of Duluth
Property & Facilities Manager
1532 West Michigan Street
Duluth, MN 55806

IT IS AGREED:

1. In consideration of payment of the rent hereinafter specified to be paid by Tenant, and the covenants and agreements herein contained, Landlord hereby leases to Tenant that certain property ("Premises") in the County of St. Louis, State of Minnesota, described as follows:

Address of Premises: 900 Block of East Superior Street, Duluth.

Type of Premises: Land - Commercial

Premises Area: That Premises as shown in red on Exhibit A attached hereto and incorporated herein by this reference, and as further defined as an area from six (6) feet below the landscaped surface to an airspace height of up to twenty-five (25) feet above the landscaped surface.

This Lease includes improvements, if any, and is in effect for the term of 99 Years, commencing on April 1, 2014 and continuing through on March 31, 2113 with the right of termination in both Landlord and Tenant as hereinafter set forth.

Final execution of this Lease is subject to review and concurrence by the Federal Highway Administration (FHWA). Should such concurrence by FHWA be denied or rescinded, this Lease shall be subject to cancellation as set forth in Section 7, CANCELLATION.

2. RENT. Tenant shall pay to Landlord as rent for the Premises the sum of \$9,900.00, in payments of \$500.00 made in advance commencing on April 1, 2014 and on the first day of each five-year period during the term of this Lease), payable from Fund 110-121-1222-5411 (General, Public Administration, Facilities Management, Lease of Land). Rent payments are to be mailed or delivered to Landlord's finance office as follows:

Department of Transportation
Office of Financial Management
Accounting Department
395 John Ireland Boulevard - Mailstop 215
St. Paul, Minnesota 55155

Make checks payable to:

Commissioner of Transportation

3. USE OF PREMISES. Tenant shall use the Premises for the following purpose only: Construct, operate, and maintain a Display Pavilion including signage, lighting, sidewalks and landscape for the Historical Leif Erickson Viking Ship (the "Improvements"), and for no other use whatsoever. The Improvements shall be the property of Tenant.

It shall be the sole responsibility of Tenant to comply with all laws, regulations, or ordinances imposed by any jurisdiction governing the use of the Premises. Failure to comply will not relieve Tenant of the obligation to pay rent. Tenant's use of the Premises must not interfere with the public's use of any adjacent highway.

Signs or displays will be restricted to those indicating proprietorship and type of activities conducted on the Premises, and will be subject to regulation by Landlord and the Federal Highway Administration as to number, size, location, and design.

4. MAINTENANCE AND REPAIRS. Tenant shall keep the Premises in good condition at Tenant's own expense, and shall not call on Landlord to make any improvements or repairs.

5. CHARGES AND EXPENSES. Tenant shall pay when due all utility charges and any other charges or expenses connected with Tenant's use of the Premises.

6. NOTICES. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when served personally on Landlord or Tenant, or when made in writing and deposited in the United States Mail and addressed as follows: To Tenant at the mailing address above stated and to Landlord, Department of Transportation, District One - 1123 Mesaba Avenue, Duluth, MN 55811. The address to which notices are mailed may be changed by written notice given by either party to the other.

7. CANCELLATION. This Lease shall be subject to cancellation by either party at any time during the term hereof by giving the other party notice in writing at least 90 days prior to the date when the cancellation will become effective. Furthermore, this Lease shall be subject to cancellation by Landlord if the Premises become needed for highway purposes (as determined solely by Landlord) by giving Tenant notice in writing at least thirty (30) days prior to the date when the cancellation will become effective. In the event of cancellation any unearned rent paid by Tenant will be returned.

8. INDEMNIFICATION AND RELEASE

Each party will be solely responsible for its own acts or omissions to the extent authorized by law. The Landlord's liability is governed by Minnesota Statutes section 3.736 and other applicable law. The Tenant's liability is governed by Minnesota Statutes Chapter 466 and other applicable law. This Lease creates only a landlord-tenant relationship, and is not intended to, and must not be construed to create a joint venture or joint enterprise between the Landlord and Tenant. If a court of competent jurisdiction finds that the Landlord and Tenant are engaged in a joint venture or joint enterprise, then the parties intend for Minnesota Statutes section 471.59 subd. 1a to apply, and neither party agrees to be responsible for the acts or omissions of the other party. If a claim is asserted against the parties jointly or severally, the parties will meet to confer on whether a single representation to defend the claim is appropriate. Injuries resulting from the Tenant's operation of the improvements, maintenance of the improvements, or failure to maintain the improvements will in no way be the responsibility of the Landlord.

9. INSURANCE. The City represents that it is self-insured with regard to comprehensive liability and property damage claims with a combined single limit of \$1,500,000 which are set forth within Minnesota Statute 466. The City also represents that it is self-insured with regard to Workers' Compensation claims. There are no certificates that are issued for self-insured General Liability insurance.

10. FIRE INSURANCE. None required.

11. RIGHT TO ENTER. Tenant shall allow Landlord and Landlord's contractors and authorized licensees to enter upon the Premises for any of the following purposes: to survey the land, to take soil borings, to perform utility relocation or repair work, or to perform any other work which is preparatory to a highway construction project; also to make emergency repairs required for highway safety. If there is a bridge above or adjacent to any part of the Premises, Tenant shall allow Landlord to enter upon the Premises to inspect, maintain, and repair the bridge and its structural supports. If any of these operations substantially restrict the Tenant's use of the Premises, rent will be reduced proportional to the restricted use of the Premises during the period of the restricted use. The reduction (or abatement) of rent

will be Tenant's only claim against Landlord based on such restriction (or abatement) of use. Tenant shall allow Landlord to inspect the Premises and to show the Premises by appointment to prospective buyers or renters. Before entering the Premises for any of the purposes under this paragraph, Landlord will make a reasonable effort to notify Tenant, provided, however, that in case of an emergency affecting highway safety (the existence of which will be determined solely by Landlord), if Tenant is not present to permit entry onto the Premises, Landlord or its representatives may enter without notice to Tenant, and for such entry Landlord or its representatives will not be liable to Tenant.

12. **ADJACENT HIGHWAY FACILITY.** Tenant shall not permit the storage of any substance or material on the Premises which may create a fire hazard to the adjacent highway facility (including any overhead bridge and its structural supports). If Landlord determines that Tenant is using the Premises in such a way as to create a danger to the adjacent highway facility or the traveling public thereon, and if, upon receiving notice, Tenant does not immediately remedy the danger to the satisfaction of Landlord, then Landlord may immediately cancel this Lease and take possession of the Premises. Any requirement for giving notice of cancellation set out elsewhere in this Lease will not apply to cancellation under this section. Unearned rent paid by Tenant will be returned.

If a part of the Premises is situated under or adjacent to a highway bridge, Tenant acknowledges that Landlord's plowing and sweeping of the bridge may cause snow, ice, sand, or road sweepings to be pushed off the sides of the bridge or otherwise expelled off the bridge, falling onto the Premises. Tenant agrees that this risk is specifically included in the Tenant's indemnification and release of Landlord appearing elsewhere in this Lease.

13. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublet the Premises.

14. **CIVIL RIGHTS ACT.** Tenant shall not discriminate on the ground of race, color, sex, or national origin against any person in access to and use of the facilities and services operated or otherwise maintained on the Premises; and Tenant shall operate and maintain such facilities and services in compliance with Title VI of the Civil Rights Act of 1964, and Title 49, Code of Federal Regulations, Part 21.

15. **DEFAULT BY TENANT - LANDLORD'S REMEDIES.** The following occurrences are "events of default":

- (a) Tenant defaults in the due and punctual payment of rent, and such default continues for five (5) days after notice from Landlord; however, Tenant will not be entitled to more than one notice for default in payment of rent during any twelve month period, and if, within twelve months after any such notice, any rent is not paid when

due, an event of default shall have occurred without further notice.

(b) Tenant breaches any of the other agreements, terms, covenants, or conditions which this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after notice by Landlord to Tenant.

At any time after the occurrence of either of the above events of default, Landlord may terminate this Lease upon giving written notice to Tenant and may then re-enter and take possession of the Premises in such manner as allowed or provided by law. Tenant shall pay Landlord all costs and expenses, including attorney's fees, in any successful action brought by Landlord to recover unpaid rent, or to recover damages for breach of any of the other covenants, agreements, terms, or conditions which this Lease requires Tenant to perform, or to recover possession of the Premises.

16. **HOLDING OVER.** If Tenant remains in possession of the Premises after the end of this Lease with the consent of Landlord, express or implied, Tenant shall occupy the Premises as a Tenant from month to month, subject to all conditions, provisions, and obligations of this Lease in effect on the last day of the term.

17. **MOVING OUT.** At the expiration or sooner termination of this Lease, Tenant shall leave the Premises in as good condition as when delivered to Tenant (except for ordinary wear and any loss covered by insurance payment to Landlord). Except for situations of natural disasters or other emergency situations, Tenant shall be given ninety (90) days to remove the Improvements from the Premises.

18. **SALE OR TRANSFER OF PREMISES.** If Landlord sells or transfers the Premises, Landlord's liability for the performance of its covenants under this Lease shall end on the date of the sale or transfer, and Tenant shall look solely to the purchaser or transferee for the performance of those covenants.

19. **RELOCATION ASSISTANCE:** Persons, businesses, farms, non-profit organizations, and other entities (hereinafter collectively referred to as Tenant) displaced by cancellation or termination of this Lease, or by moving out prior to cancellation or termination of this Lease, are not classified as "displaced persons" and are not eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its amendments. By signing this Lease, TENANT affirms that they are not a displaced person.

20. **HAZARDOUS SUBSTANCES OR POLLUTANTS OR CONTAMINANTS.** Tenant shall not knowingly cause or permit any hazardous substance or pollutant or contaminant to be used, generated, stored or disposed of on or in the Premises by Tenant, Tenant's agents, employees, contractors or invitees. If the Tenant causes or allows the Premises to become

contaminated in any manner by hazardous substances or pollutants or contaminants, during the term of this Lease, Tenant shall indemnify and hold harmless the Landlord in accordance with Section 8 of this Lease. This indemnification is intended to, and shall, survive the termination of this Lease. Without limitation of the foregoing, if Tenant causes or permits the presence of any hazardous substance or pollutant or contaminant on the Premises, and that presence results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions approved by the Landlord to return the Premises to a condition that is in accordance with all applicable Federal, State and Local regulations.

21. EMERGENCY MANAGEMENT. General Provisions: (Lessee has a EAP in place)

21.01 On or before the Commencement Date of this Lease, Tenant will develop and maintain a current Emergency Action Plan (EAP). The EAP must remain current and must comply with Federal and State EAP guidelines/requirements. The basic requirements may be located at the below-listed government web address:

<http://www.fema.gov/business/guide/index.shtm>

- (a) The EAP will address emergency management considerations and hazard specific information.
- (b) The EAP will document a coordinated response with all jurisdictional authorities (fire, rescue, law enforcement, transportation, etc) that have area and key resource specific response responsibilities in the event of a natural or terrorist disaster that would necessitate a coordinated multi-agency response.
- (c) The coordination and maintenance of the EAP will be conducted with the county government emergency preparedness office to ensure adherence to the latest Federal Homeland Security Emergency Management guidance.

22. ADDITIONAL AGREEMENTS. None.

23. ENTIRE AGREEMENT. This Lease contains the entire agreement between Landlord and Tenant with respect to its subject matter and may be amended only by subsequent written agreement between them. Except for those which are set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease.

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TENANT

CITY OF DULUTH-

By _____

Mayor

Attest:

City Clerk

Date Attested: _____

Countersigned:

City Auditor

Approved as to Form

City Attorney

**LANDLORD, STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
COMMISSIONER OF TRANSPORTATION**

By _____

Date _____

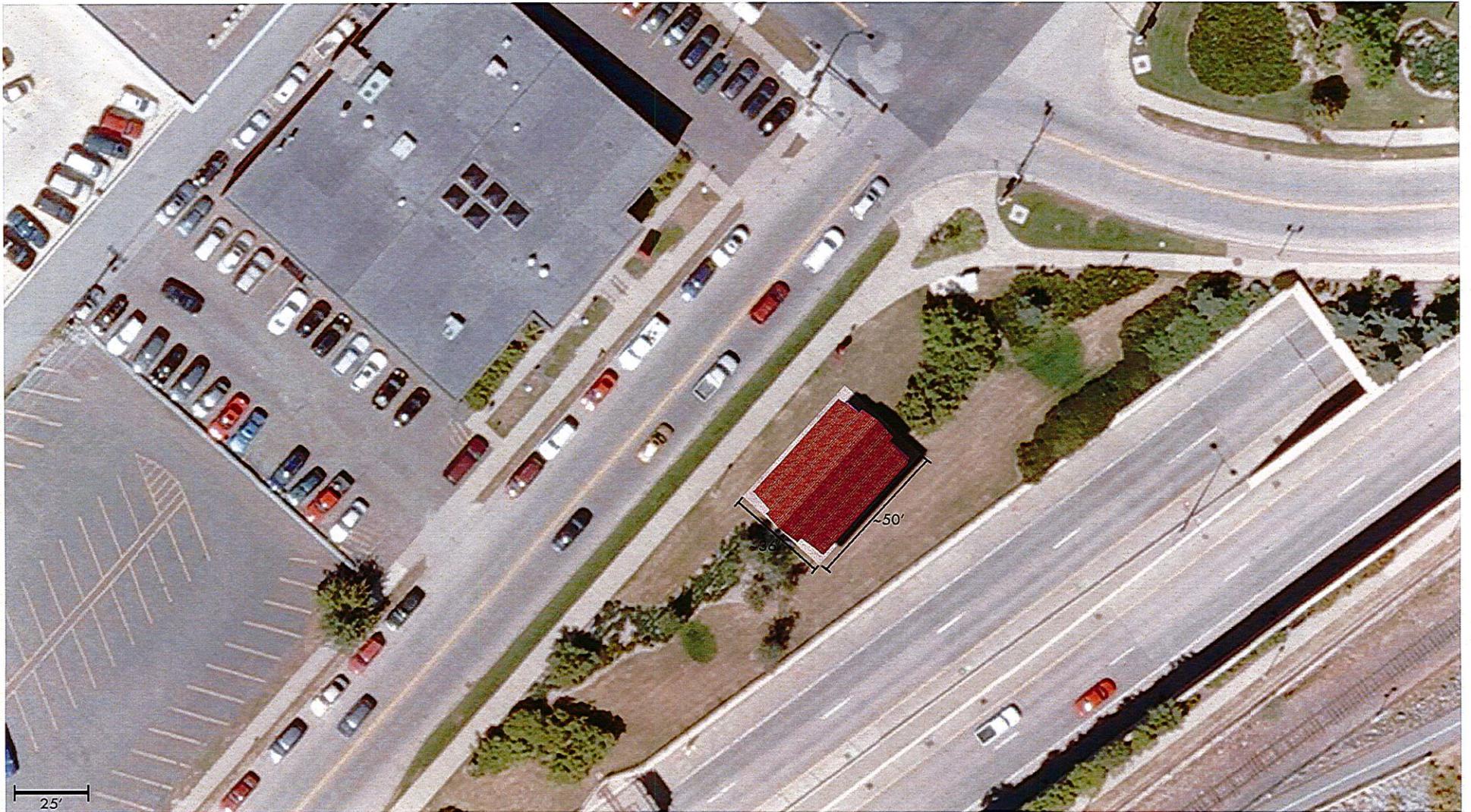
Approved as to form and execution

OFFICE OF CONTRACT MANAGEMENT

By _____

Title _____

Date _____



LEIF ERICKSON VIKING SHIP RELOCATION SUPERIOR STREET & 10TH AVE EAST LOCATION

Duluth, Minnesota





VIKING SHIP ATTRACTION