

RESOLUTION 14D-44

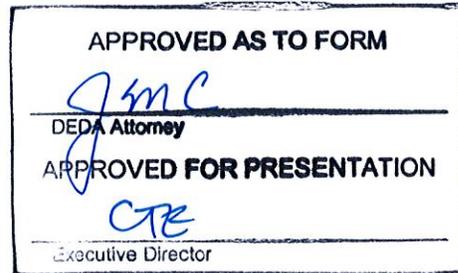
**RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH BENTLEYVILLE
TOUR OF LIGHTS FOR STORAGE OF A TREE ON DEDA LOT D**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into an agreement, substantially in the form of that attached hereto (Contract No. _____), with Bentleyville Tour of Lights, Inc. (Bentleyville), providing for the storage of the Bentleyville Tree on Lot D in Bayfront.

Approved by the Duluth Economic Development Authority this 19th day of November, 2014.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to allow Bentleyville to store their Christmas tree on DEDA lot D from December 27, 2014 to December 1, 2015.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT entered into this ____ day of _____, 2014, by and between the Duluth Economic Development Authority (“DEDA”) and Bentleyville Tour of Lights, Inc. (“Licensee”).

WHEREAS, Licensee desires to use certain DEDA-owned property in Bayfront for the purpose of storing the steel armature assembly of the Bentleyville Tree (“Bentleyville Tree”); and

WHEREAS, DEDA desires to assist the Licensee by allowing use of DEDA property for such purposes.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The License

Subject to the terms and conditions set forth herein, DEDA grants to Licensee a non-exclusive License in that portion of DEDA Lot D as shown bordered by red and labeled “Premises” on the attached Exhibit A (the “Premises”). Additionally, during delivery and removal of the Bentleyville Tree, and at such other times with the prior written approval of DEDA’s Executive Director (the “Executive Director”), DEDA grants to Licensee a non-exclusive License over that portion of DEDA Lot D as shown bordered in red and labeled “Access” on the attached Exhibit A. The parties agree that the area labeled “Access” shall be deemed to be part of the Premises any time when used by Licensee.

2. Use of the Premises

The Premises shall be used solely for purposes of storing the Bentleyville Tree, for storing sand pallets, and with the prior written consent of the Executive Director, for storage of additional personal property, and for no other purpose.

3. Term

Notwithstanding the date of execution of this Agreement, the term of this License shall begin on December 27, 2014, through December 1, 2015. Notwithstanding the above, this agreement may be terminated by either party upon sixty (60) days prior written notice.

4. Rent

No rent shall be charged for use of the Premises.

5. Permits and Approvals

Licensee shall be responsible for securing all necessary permits and approvals required by the City of Duluth (the City), St. Louis County, the State of Minnesota and all other regulatory agencies having jurisdictional authority over said use.

6. Site Safety

Licensee shall forbid access by the general public on the Premises.

7. No Warranty

DEDA makes no representation, either express or implied, as to merchantability or fitness for any particular uses or other representations or warranties with respect to the condition of the Premises. Licensee accepts the Premises in an "as is" condition.

8. Maintenance

Licensee agrees to exercise reasonable care in the maintenance of the Premises during the term of this License. Except as provided herein, Licensee shall not make any alterations or improvements to the Premises without the prior written approval of the Executive Director. Licensee shall surrender the Premises at the termination of this License in the condition found prior to the commencement of this License at no expense to DEDA. Licensee agrees to pay upon demand any damage done to the Premises during the term of this License.

9. Access

The parties understand that during the term of this Agreement, the City of Duluth may be dumping snow on a portion of Lot D. Licensee shall not deter the ingress or egress of the City or any other licensee over the portion of Exhibit A labeled "Access" at any time. DEDA reserves the right to unlimited access at all times to the Premises for purposes of inspection and of ensuring that the provisions of this Agreement are complied with by Licensee. All on-duty law enforcement personnel, acting in their official capacity, shall be authorized to enter the Premises without regard to this paragraph.

10. Refuse and Garbage

Licensee assumes all responsibility for the disposal of refuse and garbage at the Premises and agrees to pay all costs related thereto.

11. Indemnification

DEDA and/or the City shall in no way be liable or responsible for any accident or damage that may occur in the use of the Premises during the term of this License. The Licensee agrees that it shall defend, indemnify and save harmless, DEDA and the City, their officers, agents, servants and employees from and against any and all claims of any type including claims for

contribution or indemnity, all demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of DEDA, the City, the Licensee, the Licensee's contractor, invitees, or any other person or entity whether or not they are there by invitation or with consent of Licensee by reason of the death of or injury to person or persons or the loss of or damage to property or any cause of action arising out of the use of the Premises. On ten (10) days' written notice from DEDA, the Licensee will appear and defend all lawsuits against DEDA or the City growing out of such injuries or damages.

12. Insurance

Licensee shall provide for purchase and maintenance of such insurance as will protect Licensee, DEDA and the City against risk of loss or damage to the Premises and any other property permanently located or exclusively used at the Premises and against claims which may arise or result from the maintenance and use of the Premises during the term of the License. Licensee shall procure and continuously maintain insurance covering all risks of injury to or death of any person(s) or entity(ies) or damage to property arising in any way out of or as a result of Licensee's occupancy of or use of the Premises, carried in the name of Licensee. During the term of this License, Licensee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance whether on or off the Premises. If person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds thereon. All insurance shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in the State of Minnesota. Certificates showing that Licensee is carrying such insurance in the specified amounts shall be furnished to DEDA prior to the execution of this Agreement. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors--protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles, where applicable;
- e. Contractual liability covering the indemnity obligations set forth herein;
- f. Products--completed operations.

Additionally, Licensee shall maintain Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law.

Licensee shall require its contractor to maintain the coverages set forth above and DEDA and the City shall be named as additional insureds thereon.

DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect Licensee's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal, or modification of the policy or coverages evidenced by such certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA and the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL-7002) - or equivalent, as approved by DEDA's Attorney.

13. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Licensee or any of its officers, agents, servants and employees as an officer, agent, servant, representative or employee of DEDA or the City for any purpose or in any manner whatsoever. The Licensee's officers, agents, servants, contractors and employees shall not be considered employees of DEDA or the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said officers, agents, servants, contractors and employees while engaged in performing any work under this Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants, contractors and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of DEDA or the City. The Licensee's officers, agents, servants, contractors and employees shall not be entitled to any compensation or right or benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay.

14. Assignment

Licensee shall not assign its interest under this License Agreement or any part hereof.

15. Notices

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage

prepaid, addressed to DEDA as follows: Duluth Economic Development Authority, Attn: Executive Director, 411 West First Street, Room 402, Duluth, MN 55802; and to Licensee as follows: Nathan Bentley, Bentleyville Tour of Lights, Inc., 4313 Haines Road, Duluth, MN 55811.

16. Compliance with Laws, Rules and Regulations

Licensee agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City and their respective agencies which are applicable to its activities under this License Agreement. Licensee shall procure at its own expense all licenses, permits or other rights required for the activity contemplated by this License Agreement.

17. Choice of Law/ Venue

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. All proceedings related to this Agreement shall be venued in the State of Minnesota.

18. Civil Rights Assurances

Licensee, for itself and its officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree to comply with all laws relating to unlawful discrimination.

19. Obey All Laws

Licensee shall conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the City of Duluth, the County of St. Louis, State of Minnesota and the United States of America and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the lease of the Premises.

20. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

21. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

22. Amendments

Any amendments to this License Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

23. Authority to Execute Agreement

Licensee represents to DEDA that the execution of this License Agreement has been duly and fully authorized by its governing body or board, that the officers of Licensee who executed this License Agreement on its behalf are fully authorized to do so, and that this License Agreement when thus executed by said officers of Licensee on its behalf will constitute and be the binding obligation and agreement of License in accordance with the terms and conditions hereof.

24. Counterparts

This License Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This License 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.

25. Entire Agreement

This License Agreement, including Exhibit A, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

IN WITNESS WHEREOF, the parties have set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

BENTLEYVILLE TOUR OF LIGHTS, INC.

President

Nathan Bentley, Its _____

Secretary

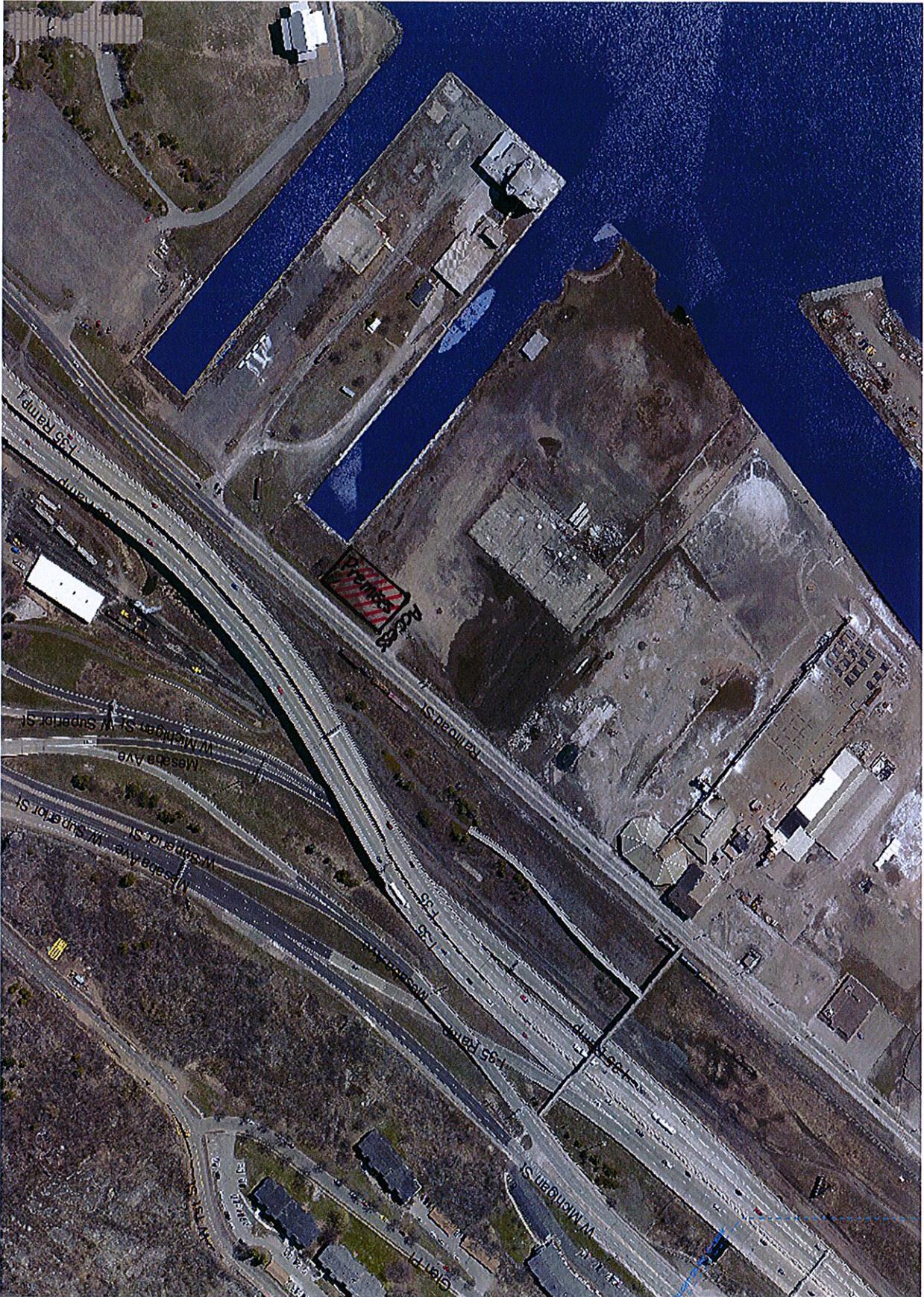


Exhibit A