

**MEETING OF THE
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
WEDNESDAY, JUNE 24, 2020 - 5:15 P.M.
VIA ELECTRONIC MEANS PURSUANT TO MINNESOTA STATUTES
SECTION 13D.021
AGENDA (Updated)**

Please take notice that the Duluth Economic Development Authority will hold a public hearing by other electronic means pursuant to Minnesota Statutes Section 13D.021 on Wednesday, June 24, 2020, at 5:15 p.m. All persons interested may monitor and participate in the hearing by visiting: <http://dulutheda.org/live-meeting> promptly at 5:15 p.m. on Wednesday, June 24, 2020, and written comments may be submitted to DEDA in advance of the meeting via the DEDA's web site at <http://dulutheda.org/contact-us/> or via email at cfleege@duluthmn.gov, and DEDA will decide if the conveyance is advisable.

The regular meeting place of DEDA is the Duluth City Council Chambers at City Hall, 411 West First Street, in Duluth, Minnesota. At this time board members of DEDA do not intend to attend the meeting in person; due to continually evolving restrictions and guidance from state and federal officials and agencies, the board members of DEDA will attend the meeting remotely via telephone or other electronic means pursuant to Minnesota Statutes Section 13D.021.

CALL TO ORDER

PUBLIC TO ADDRESS THE COMMISSION

PUBLIC HEARINGS

APPROVAL OF MINUTES: MEETING MINUTES FROM APRIL 22, 2020

APPROVAL OF MINUTES: MEETING MINUTES FROM MAY 27, 2020

APPROVAL OF CASH TRANSACTIONS – MAY 1, 2020 TO MAY 31, 2020

NEW BUSINESS

RESOLUTIONS FOR APPROVAL

1. **RESOLUTION 20D-49: RESOLUTION AUTHORIZING AN AGREEMENT WITH ELECTRIC SCIENTIFIC COMPANY TO REPAIR AND INSTALL FIRE SUPPRESSION FACILITIES IN THE MRO IN THE AMOUNT OF \$115,500**

2. **RESOLUTION 20D-50: RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE DULUTH SEAWAY PORT AUTHORITY FOR THE USE OF DEDA LOT D**

DISCUSSION

1. DIRECTOR'S REPORT

- Rebuild Duluth Update
- Budget/Financials Update

Duluth Economic Development Authority

May 2020 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 05/01/20 - 05/31/20 (as of 6/16/2020)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<u>FUND 860 - OPERATING FUND</u>				Beginning Balance	\$ 2,733,979.50 TB
05/01/20	2020-00000359	GL	Cost Allocation - DEDA	(33,333.33)	Cost Allocation - DEDA
05/04/20	2020-00003330	RA	Pay Group O'Reilly LLC	437.09	rent
05/04/20	2020-00003330	RA	Housing & Redevelopment Authority of Duluth - HRA	282.69	Invoice #2020-00000108
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.60)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.20)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(22.40)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.20)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.20)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.20)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.20)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.60)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.60)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.20)	DEDA Advertising 4/8/20
05/11/20	2020-00003428	AP	Duluth News Tribune	(21.60)	DEDA Advertising 4/8/20
05/13/20	2020-00003573	AP	Duluth Public Utilities - Comfort Systems	(822.15)	3/31-4/29/20 335 W Superior St
05/13/20	2020-00003573	AP	Minnesota State Auditor	(2,921.50)	DEDA Audit Service 10/2/19-4/14/20
05/13/20	2020-00003573	AP	St Louis County Auditor	(68,248.00)	DEDA Property Taxes 2020
05/13/20	2020-00003573	AP	Fryberger Buchanan Smith & Frederick	(2,712.50)	DEDA Parking Ramp Conveyance
05/13/20	2020-00003581	RA	St Louis County Auditor	80,000.00	DEDA reimbursement for Hazmat abatement at the Pastorate Terrace Building (a/k/a Kozy Bar)
05/18/20	2020-00003666	RA	Essentia Health	162,500.00	2020D DEDA Bond IDB Fees
05/20/20	2020-00003744	RA	Marsh & McLennan Agency LLC	491.00	Endorsement - Policy 41UFJZX0050 Deleted Temple Buildings
05/26/20	2020-00003761	AP	APEX - AGA	(1,000.00)	2020 Annual Dues
05/28/20	2020-00003940	RA	Interstate Parking	7,629.46	5/15 ACH March-April Parking Ramp Revenue
05/31/20	2020-00003992	GL	Investment Earnings for May	2,959.00	Investment Earnings for May
<u>FUND 860 - OPERATING FUND</u>				Ending Balance - 5-31-2020	2,879,026.46 TB
<u>FUND 861 - DEBT SERVICE</u>				Beginning Balance	3,836.00 TB
05/31/20	2020-00003992	GL	Investment Earnings for May	4.00	Investment Earnings for May
<u>FUND 861 - DEBT SERVICE</u>				Ending Balance - 5-31-2020	3,840.00 TB
<u>FUND 865 - CAPITAL PROJECTS</u>				Beginning Balance	3,238,048.26 TB
05/31/20	2020-00003992	GL	Investment Earnings for May	3,440.00	Investment Earnings for May
<u>FUND 865 - CAPITAL PROJECTS</u>				Ending Balance - 5-31-2020	3,241,488.26 TB

FUND 866 - MRO FACILITY**Beginning Balance 838,180.89 TB**

05/11/20	2020-00003428	AP	Leo A Daly Company	(8,717.49)	D20-860-949 MRO Fire Suppression System
05/13/20	2020-00003573	AP	Burns & McDonnell Engineering Company, Inc	(29,968.00)	19 860 938 Fire Protection System Assessment MRO
05/31/20	2020-00003992	GL	Investment Earnings for May	865.00	Investment Earnings for May

FUND 866 - MRO FACILITY Ending Balance - 5-31-2020 800,360.40 TB**FUND 867 - STOREFRONT LOANS****Beginning Balance 234,674.07 TB**

05/19/20	2020-00003705	RA	Alerus Financial	1,037.10	Incoming WT for DEDA Loan Payment
05/31/20	2020-00003992	GL	Investment Earnings for May	250.00	Investment Earnings for May

FUND 867 - STOREFRONT LOANS Ending Balance - 5-31-2020 235,961.17 TB

RESOLUTION 20D-49

**RESOLUTION AUTHORIZING AN AGREEMENT
WITH ELECTRIC SCIENTIFIC COMPANY
TO REPAIR AND INSTALL FIRE SUPPRESSION FACILITIES
IN THE MRO IN THE AMOUNT OF \$115,500**

RESOLVED by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to enter into an agreement (DEDA Contract No. 20-0866-_____) with Electric Scientific Company to repair and install replacement fire suppression facilities in DEDA's MRO building at the Duluth International Airport in the amount of \$115,500, payable from fund 866-800-5400.

Approved by the Duluth Economic Development Authority this 24th day of June, 2020.

ATTEST:

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with Electric Scientific Company to replace and upgrade various elements of the fire suppression system in the MRO in the amount of \$115,500.

Because of the designed use of the MRO to perform heavy maintenance on up to four full-sized commercial passenger aircraft, the building needed to be equipped with a complex fire suppression system that includes both foam suppression and deluge water suppression along with a sophisticated control system. The existing system has recently experienced several failures. On at least two occasions, the system was erroneously activated, causing substantial costs. The system continues to send false alarms, requiring human monitoring on a 24/7 basis.

Earlier this year DEDA engaged the firm of Burns & McDonnell Engineering to analyze the existing system. As a result of the analysis, Burns & McDonnell recommend that DEDA replace the existing fire alarm panel, the existing flame detectors in the aircraft maintenance area, and the existing manual foam release stations and the foam release solenoids. DEDA then contracted with Leo M. Daly to design necessary repairs, replacements and upgrades, in accordance with the recommendations of the analysis.

Based on Daly's designs, DEDA put a contract out for bids to implement the recommendations. One bid was received, of which the lowest was the bid of Electric Scientific Company in the amount of \$115,500. Staff recommends awarding the contract to Electric Scientific Company.

CONSTRUCTION CONTRACT

ELECTRIC SCIENTIFIC COMPANY

&

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered this ____ day of July 2020, is by and between the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, a municipal corporation, hereinafter referred to as “**DEDA**” party of the first part, and **ELECTRIC SCIENTIFIC COMPANY**, 7505 Highway 7, Minneapolis, MN 55426, hereinafter referred to as the “**Contractor**,” party of the second part;

WITNESSETH: That the Contractor and DEDA agree as follows:

1. The following shall be deemed to be part of this contract:
 - a. The annexed resolution and legal advertisement of DEDA.
 - b. The bid request and specifications, including all required forms, as modified by irreconcilable language in this written contract.
 - c. The bid by Contractor, as modified by irreconcilable language in this written contract.
 - d. The performance bond and payment bond certification.
 - e. All provisions of law applicable to a contract of this nature.
2. The Contractor agrees to furnish and deliver to DEDA all labor, supervision, material, equipment, supplies, insurance, performance bond, payment bond and everything else necessary for the replacement of the fire control panel and components at the Maintenance Repair and Overhaul (MRO) Facility, located at 4600 Stebner Road, Duluth, MN 55803, all in strict accordance with plans and specifications prepared by Leo A. Daly, and your bid of \$116,000.00. Contractor shall not commence any work under this contract until Contractor receives written authorization from the duly authorized DEDA Representative.
3. DEDA agrees to make progress payments and final payments to the Contractor as stated in the contract specifications. The total amount payable under this contract shall not exceed One Hundred Sixteen Thousand and no/100ths Dollars (\$116,000.00) unless the contract is modified by formal amendment or change order. Payments under this Agreement shall be made from fund 866-860-5400. Due to the dollar amount of this contract, a Project Labor is not included as part of this contract (City Code Section 2-29).
4. The Contractor shall furnish and maintain in full force and effect, until this contract is completely performed by the Contractor, a performance bond and payment bond if and when required by law, or if and when required by DEDA.

5. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this contract.

6. Indemnity

- a. The Contractor will defend, indemnify and save the City of Duluth and DEDA harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this contract. Said obligation does not include indemnification of the City of Duluth and DEDA for claims of liability arising out of the sole negligent or intentional acts or omissions of the City of Duluth and DEDA but shall include but not be limited to the obligation to defend, indemnify and save harmless the City and DEDA in all cases where claims of liability against the City of Duluth and DEDA arise out of acts or omissions of the City of Duluth and DEDA which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability.
- b. The Contractor shall hold and save the City and DEDA, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City or DEDA, unless otherwise specifically stipulated in the Technical Specifications.

7. Insurance

- a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City of Duluth and DEDA from all liability described in Paragraph 6 above, subject to provisions below.
 - (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by DEDA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

- (3) The City of Duluth and DEDA shall be named as **Additional Insureds** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth and DEDA. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth and DEDA as additional insureds.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City of Duluth and DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City of Duluth and DEDA will render any such change or changes in said policy or coverages ineffective as against the City of Duluth and DEDA.
- (5) In addition to the insurance requirements above, the Contractor shall provide proof of Builders Risk Insurance on a "Multi-Peril-All-Risk" basis, which includes theft of material not installed and glass breakage. Contractor(s) is (are) liable for losses within deductible coverage.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City of Duluth and DEDA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City of Duluth and DEDA during the term of this Contract. In the event any work contemplated by the Contract is sublet, the Contractor shall have the duty to assure that the Subcontractors provide insurance in

accord with the minimum requirements herein imposed on the Contractor prior to commencement of any work on a subcontract.

- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph 7 unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City of Duluth and DEDA which is reasonably available.
8. No claim whatsoever shall be made by the Contractor against any officer, agent or employee of DEDA for, or on account of, anything done, or omitted to be done, in connection with this contract. If this contract is not made in conformity with mandatory provisions of any statute, or of the ordinances and charter of the City of Duluth, the Contractor agrees to raise no defense and make no claim against DEDA or the City of Duluth on the basis of ratification, laches, estoppel, or implied contract.
9. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or its right to execute it, or its rights, duties, benefits, obligations, liabilities, or title or interest in or to it, or any part thereof, without the written consent of DEDA, evidenced by a resolution duly adopted by the DEDA. The prohibition contained in this paragraph shall not be deemed to prevent the Contractor from subcontracting or making assignments to banks, trust companies, or other financial institutions. Contractor shall remain primarily responsible for all work performed by any Subcontractor.
10. The Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, Contractor will not, by reason of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age, discriminate against any person or persons who are citizens of the United States who are qualified and available to perform the work to which such employment relates.
11. The Contractor agrees that Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any person or persons, or on being hired, prevent or conspire to prevent any person or persons from the performance or work under this contract on account of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.

12. The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by DEDA or the state auditor for six years from the date of final payment under this contract.
13. In accordance with the requirements of Minnesota Statutes §471.425 Subd. 4a, or its successor, the Contractor shall pay any Subcontractor within ten days of the Contractor's receipt of payment from the City or DEDA for undisputed services provided by the Subcontractor. The Contractor shall pay interest of 1-1/2 percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for any unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the Subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Contractor must be awarded its costs and disbursement, including attorney's fees, incurred in bringing the action.
14. Contractor shall comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.
15. This contract may be cancelled or terminated by DEDA, and all moneys due or to become due hereunder may be forfeited for any failure to perform any terms or conditions of this contract including but not limited to any violation of the terms or conditions of Section 10 or 11 of this contract.
16. Any waiver by any party of any provision of this contract shall not imply a subsequent waiver of that or any other provision.
17. This contract is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis, County, Minnesota, and the parties to this Agreement waive objection to the jurisdiction of this court, whether based on convenience or otherwise.
18. This Agreement constitutes the entire agreement between DEDA and the Contractor on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed on behalf of DEDA and the Contractor. The Contractor agrees that no representations or warranties made by DEDA shall be binding upon DEDA unless expressed in writing herein.
19. This Agreement shall not be in force and effect, or in any way binding upon DEDA until the same shall have been approved by DEDA, and signed by its President and Secretary.

- 20. The Contractor unconditionally guarantees to perform all work pursuant to this contract in a good and workmanlike manner, in strict compliance with the specifications and instructions hereto attached, and to the satisfaction of DEDA.
- 21. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This 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.

AUTHORIZATIONS:

**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**

**CONTRACTOR - ELECTRIC
SCIENTIFIC CORPORATION**

President

Contractor's Representative

President's Printed Name

Representative's Printed Name/Title

Secretary

Date: _____

Secretary's Printed Name
Date _____

RESOLUTION 20D-50

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE DULUTH SEAWAY PORT AUTHORITY FOR THE USE OF DEDA LOT D

RESOLVED, by the Duluth Economic Development Authority (“DEDA”) that the proper DEDA officials are hereby authorized to execute a License Agreement (DEDA Contract No. _____), substantially in the form of that attached hereto, with the Duluth Seaway Port Authority for storage of vehicles and equipment belonging to Altec Industries, Inc., with amounts to be paid to DEDA as provided for therein, said sums to be paid into Fund 860-860-8640-4623 (Rent of Land).

Approved by the Duluth Economic Development Authority this 24th day of June, 2020.

Executive Director

STATEMENT OF PURPOSE:

Altec Industries, Inc., a tenant of the Duluth Seaway Port Authority’s (DSPA) Clure Public Marine Terminal, requires additional space to park truck chassis in various stages of completion. Those chassis are currently stored on a DSPA dock, but that dock is needed to store incoming wind turbine parts. To ensure shipping and storage at the terminal proceeds as planned, the DSPA has requested to use Lot D to temporarily store Altec chassis.

The purpose of this resolution is to authorize a License Agreement between DEDA and the DSPA, and Altec Industries, Inc. as the DSPA sub-licensee, for approximately 3.5 acres of the Lot D property. The Agreement will go into effect immediately upon approval by DEDA, and will terminate October 31, 2020. DSPA will pay the DEDA \$2,500 per month for the use of the property.

LICENSE AGREEMENT

THIS AGREEMENT is made by and between the Duluth Economic Development Authority (DEDA) and the Duluth Seaway Port Authority (DSPA).

ARTICLE I LICENSE AND TERM

DEDA hereby grants to DSPA an exclusive license upon the terms and provisions stated herein, to enter onto certain property on DEDA "Lot D" as shown on Exhibit "A" attached hereto (the Licensed Premises) for the sole purpose of storing vehicle chassis, work-in-progress vehicles, and finished vehicles to which all modifications have been completed and related equipment belonging to Altec Industries, Inc. (Altec) in the area denoted as "Storage Area". The term of this License Agreement shall commence on June 25, 2020, and shall continue until October 31, 2020.

ARTICLE II COMPLIANCE WITH LAWS, PROTECTION OF OTHER PROPERTIES

During the term of this Agreement, DSPA, its officers, agents, employees, invitees and sub-licensee shall fully comply with all applicable laws. Neither DSPA, its officers, agents, employees, invitees, or sub-licensee, nor anyone accompanying DSPA, its officers, agents, employees, invitees or sub-licensee 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 unlawful act or thing to take place, other than storing and removing vehicles and equipment on and from the Licensed Premises.

ARTICLE III DEDA WARRANTY

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

ARTICLE IV ACCESS

DEDA expressly reserves the right to the unlimited access to the Licensed Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection, in the event emergency or necessity, and to ensure that the provisions of this Agreement are complied with by DSPA and its sublicensee. DEDA will provide reasonable notice of such access to the DSPA.

ARTICLE V INDEMNIFICATION

As lawful consideration for using the Licensed Premises, DSPA agrees to defend, indemnify, and hold harmless DEDA and the City of Duluth (the "City") and their officers, agents, servants and

employees from and against any and all losses, liens, claims, actions, demands, liabilities, judgments, penalties, injunctive relief, injury to person(s) or damage to the Licensed Premises, costs, damages and expenses by reason of any actual or alleged act or omission of DSPA or its officers, agents, employees, invitees or sub-licensee in connection with or relating to DSPA's use or occupancy of the Licensed Premises occurring during the term of this License Agreement, including spills or leaks. Upon ten (10) days' written notice, DSPA shall appear and defend all claims and lawsuits against DEDA and/or the City growing out of any such injuries or damages. DSPA, DEDA and the City do not waive their immunities under state or federal law. DEDA shall have all rights available pursuant to the terms of this Article III against DSPA under the provisions of Chapter 466, Tort Liability, Political Subdivisions, of the Minnesota Statutes, but subject to the limitations set forth in the provisions of Chapter 466, Tort Liability, Political Subdivisions, of the Minnesota Statutes.

ARTICLE VI ASSIGNMENT AND SUBLICENSING

The rights and obligations of DSPA hereunder may not be assigned, subleased, sublicensed or in any other way transferred without the prior written approval of the DEDA's Executive Director (the "Executive Director"). Notwithstanding the above, the rights and obligations of DSPA hereunder may be sublicensed to Altec Industries, Inc. in the form of the Sublicense attached as Exhibit B ("Sublicense").

ARTICLE VII INSURANCE REQUIREMENTS

Insurance Requirements.

DSPA shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below.

1. Comprehensive General Liability with limits no less than one million five hundred thousand dollars (\$1,500,000) combined single limit per occurrence and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance, including but not limited to, bodily injury and property damage, premises, products/completed operations liability, contractual liability, and independent contractor's liability.
 2. Business Automobile Liability with limits no less than one million five hundred thousand dollars (\$1,500,000) each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.
 3. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employees Liability Insurance in limits of \$1,000,000 per employee.
- B. Requirements for All Insurance. All insurance required in this Section shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota and with companies or underwriters satisfactory to the City Attorney.

- C. Additional Insureds. DEDA and the City shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.
- D. Insurance Primary. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by DEDA or the City.
- E. Insurance Certificate. Certificates showing that DSPA is carrying the above-described insurance in the specified amounts shall be furnished to DEDA prior to the execution of this Agreement. Failure of DSPA to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve DSPA from any responsibility to carry the required types and amounts of insurance.
- F. Notice of Change or Cancellation. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least thirty (30) days' advanced notice being given to DEDA. Failure to give such notice to DEDA shall render any such change or changes in said policy or coverages ineffective as against DEDA.
- G. Disclaimer. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the DSPA's interests and liabilities. It shall be the obligation and responsibility of DSPA to insure, as it deems prudent, its own personal property against damage. DEDA does not have insurance coverage for DSPA property and DEDA expressly disclaims any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of DSPA.

ARTICE VIII
LICENSE FEE

DSPA will pay a License fee of \$2,500 per month for use of the Licensed Premises for a total fee of \$10,000 for the duration of this License Agreement. The first payment of \$2,500 shall be remitted in advance to DEDA on or before June 25, 2020 and on or before the 25th of each month thereafter until this License Agreement terminates.

ARTICLE IX
USE AND MAINTENANCE

DSPA agrees to exercise care in the use and maintenance of the Licensed Premises during the term of this License Agreement. DSPA agrees to pay for or repair upon demand any damage done to the Licensed Premises during the term of this License, including but not limited to damage to fencing. DSPA shall not make any alterations or improvements to the Licensed Premises without the prior written approval of the Executive Director. DSPA shall surrender the Premises at the termination of this Agreement in the condition found at commencement of this Agreement at no expense to DEDA.

ARTICLE X
ENTRY TO AND CLEANING OF LICENSED PREMISES

In the event that DEDA determines that oil or other fluids have leaked from DSPA or its sub-licensee's vehicles or equipment during the term of this License Agreement or if other debris or waste is left on the Licensed Premises and an agency having proper jurisdiction requires clean up action, DSPA shall properly clean up any such oil, fluids or other debris that contaminate the Licensed Premises or adjoining properties released during the term of this License Agreement in accordance with the agency's standards. In the event that DSPA fails to clean-up the oil, fluids, or other debris which it or its sub-licensee Altec released or left on the Licensed Premises, DEDA may cause such clean-up and DSPA shall be responsible for all costs of clean-up. Payment shall be made upon invoice. Neither DSPA or its sub-licensee Altec shall be responsible for the environmental condition of the Licensed Premises pre-dating this License Agreement.

ARTICLE XI
CONSENTS

DSPA shall contact and obtain consent of any regulatory agency having proper jurisdiction if such consent is required.

ARTICLE XII
NOTICES

Notices hereunder shall be deemed sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency, DEDA may give oral notice which shall be effective immediately.

If to DEDA: Executive Director
 Duluth Economic Development Authority
 411 West First Street
 402 City Hall
 Duluth, MN 55802

If to DSPA: Executive Director
 Duluth Seaway Port Authority
 2305 W. Superior Street
 Duluth, MN 55806-1931

ARTICLE XIII
APPLICABLE LAW

This Agreement, together with all of its sections, terms and provision, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall

be in the appropriate federal court within the State of Minnesota. The parties to this Agreement waive any objections to the jurisdiction of these courts, whether based on convenience or otherwise.

ARTICLE XIV
SEVERABILITY

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

ARTICLE XV
NONWAIVER OF LIABILITY

Nothing in this Agreement constitutes a waiver by DEDA of any statutory or common law defenses, immunities, or limits on liability. The liability of DEDA shall be governed by the provisions of the Minnesota Municipal Liability Tort Act, Minn. Stat. 466.04.

ARTICLE XV
WAIVER

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

ARTICLE XVII
AMENDMENTS

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

ARTICLE XVIII
NO THIRD PARTY RIGHTS

Except for the rights granted Altec in the Sublicense, nothing in this Agreement confers or purports to confer a third party any benefit or any right to enforce any term of this Agreement.

ARTICLE XIX
LAWS, RULES AND REGULATIONS

The DSPA agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

ARTICLE XX
COUNTERPARTS/FACSIMILE/E-MAIL SIGNATURES

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be

deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. Facsimile and E-mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.

ARTICLE XXI
ENTIRE AGREEMENT

This Agreement, including Exhibit A, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto. There are no representations, warranties, or stipulations either oral or written not herein contained.

[The remainder of this page is intentionally left blank.]

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

DULUTH SEAWAY PORT
AUTHORITY

President

Executive Director

Secretary

Date

Date

EXHIBIT A



EXHIBIT B

SUBLICENSE

THIS SUBLICENSE is made as of the ____ day of _____, 2020, between **Altec Industries, Inc.**, 730 Center Ave, Ste 202, Moorhead, MN 56560 (“Sublicensee”) and **Duluth Seaway Port Authority**, 2305 W Superior St, Duluth, MN 55806 (“Sublicensor”)

WHEREAS, Sublicensor, by License Agreement (“2020 License”) dated _____, 2020 between Sublicensor as DSPA and Duluth Economic Development Authority as DEDA (“DEDA”), a copy of which is attached hereto as Exhibit A, has been granted the license described therein (“Licensed Premises”); and

WHEREAS, Sublicensee and Sublicensor, desire to enter into this Sublicense.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Sublicensee agrees to assume and be bound by the same responsibilities, rights, privileges, and duties that Sublicensor has from and to the DEDA, under the 2020 License, except as modified by this Sublicense, and Sublicensee shall fully indemnify Sublicensor and hold Sublicensor harmless against any responsibility or liability that Sublicensor may incur by virtue of this Sublicense or the occupancy by Sublicensee of the Licensed Premises. Sublicensee shall keep Sublicensor indemnified against all actions, claims and demands whatsoever in respect to the covenants, conditions and stipulations in the 2020 License.

2. Sublicensor makes no representation, either expressed or implied, as to merchantability or fitness for any particular uses or other representations or warranties with respect to the condition of the Licensed Premises. Sublicensor has provided the Bayfront Lot D Existing Foundation Report (“Foundation Report”) dated February 25, 2016 prepared by AMI Consulting Engineers P.A. to Sublicensee. Sublicensee acknowledges receipt of the Foundation Report and has been provided full opportunity to inspect the Licensed Premises. Sublicensee accepts the Licensed Premises in an “as is” condition.

3. Sublicensee shall not make any alterations or improvements to the Licensed Premises without the prior written approval of the Executive Director of DEDA and Sublicensor. Sublicensee shall surrender the Premises at the termination of this Sublicense in the condition found at commencement of this Sublicense at no expense to DEDA or Sublicensor.

4. During the term, Sublicensee, at its sole cost and expense, shall maintain liability insurance and insurance on all equipment, property and interests of Sublicensee on the Licensed Premises. Sublicensee shall, at its sole cost and expense, maintain in effect at all times during the term a “Commercial General Liability Insurance” policy on an “occurrence” rather than on a “claims made” basis, with a total policy limit of at least Three Million and No/100 Dollars (\$3,000,000.00)

(each occurrence/aggregate). which policy shall insure, but not be limited to, coverages for property damage, personal injury and contractual liability. The Sublicensee shall furnish the Sublicensor with a certificate showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall contain substantially the following statement: “The insurance covered by this certificate will not be canceled, or not renewed, except after thirty (30) days written notice has been received by the Sublicensor.” Sublicensor is to be named as an additional insured on such Certificate and not merely as a Certificate holder. Sublicensee must provide Sublicensor with appropriate endorsements to its policy(ies) of insurance reflecting the status of Sublicensor as an additional insured and requiring that the foregoing notice of cancellation or non-renewal be provided to Sublicensor by the insurance company providing such insurance policy(ies) to Sublicensee. In addition, all policies shall contain a waiver of subrogation in favor of Sublicensor.

5. Sublicensee agrees to pay to Sublicensor for the Licensed Premises, in advance, \$2,500.00 per month (“Sublicense Fee”) beginning June 25, 2020 and continuing thereafter on the 25th day of each month thereafter during the Term of the 2020 License. Sublicensor shall have the responsibility to collect the Sublicense Fee from Sublicensee. Sublicensor acknowledges that it will continue to be obligated to pay a total of \$2,500.00 per month to DEDA under the 2020 License whether or not Sublicensee pays any Sublicense Fee to Sublicensor.

6. Nothing in this Sublicense shall release Sublicensor from its obligations to DEDA under the 2020 License.

7. This Sublicense may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Sublicense. Facsimile and E-mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.

8. Historic environmental contamination exists on and under the Licensed Premises, and Sublicensor and Sublicensee shall be the beneficiaries of a no-association letter from the Minnesota Pollution Control Agency with respect to responsibility or liability for or arising from the condition of the Licensed Premises pre-dating this Sub- License Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Sublicense the day and year first above written.

SUBLICENSEE:

Altec Industries, Inc.

SUBLICENSOR:

Duluth Seaway Port Authority

By _____
Its _____

By _____
Its Executive Director

CONSENT

Duluth Economic Development Authority (“DEDA”) hereby consents to the foregoing and attached Sublicense on the condition that nothing in this Consent shall release Sublicensor from any obligations to DEDA under the 2020 License.

Duluth Economic Development Authority

By _____
Its _____

EXHIBIT A

