

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF DULUTH, THE MINNESOTA DEPARTMENT OF
NATURAL RESOURCES, THE NATIONAL PARK SERVICE, AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE LINCOLN PARK IMPROVEMENTS PROJECT,
DULUTH, SAINT LOUIS COUNTY, MINNESOTA**

DRAFT 9/3/2021

WHEREAS, the National Park Service (NPS) administers the Outdoor Recreation Legacy Partnership (ORLP) Program of the Land and Water Conservation Fund (LWCF); and

WHEREAS, under the authority of the LWCF Act (Public Law 88-578, as amended), the NPS may make grants available to States as the grantee, and through States to local jurisdictions as subgrantees, and whereupon accepting LWCF grant assistance, the grantee and subgrantee forever agree to encumber the parkland under Section 6(f)(3) of the L&WCF Act; and

WHEREAS, The LWCF Act requires the Governor of each state to delegate a state agency to accept and administer the LWCF Act; and

WHEREAS, Governor Tim Walz has delegated this responsibility to the Minnesota Department of Natural Resources (MnDNR); and

WHEREAS, the City of Duluth (City) is a subgrantee of an ORLP LWCF grant to make improvements to Lincoln Park, including modifications to Lincoln Park Drive (Project); and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) may fund the Project through a Community Development Block Grant, and HUD has designated NPS to be the lead federal agency for the Project for compliance with Section 106 pursuant to 36 CFR 800.2(a)(2); and

WHEREAS, the Project is needed to rehabilitate the fire-damaged pavilion, provide ADA accessibility to the pavilion and the park, increase safety in the pavilion and the park, and address groundwater and other ecological issues; and

WHEREAS, NPS and MnDNR have determined the approval of grant assistance for the proposed Project is an undertaking as defined in 36 CFR 800.16(y), and thus is subject to review under Section 106 of the National Historic Preservation Act of 1966 as amended (54 U.S.C. § 306108); and

WHEREAS, NPS and MnDNR have defined the Area of Potential Effect (APE) for indirect and direct effects for the undertaking as shown on Attachment A; and

WHEREAS, NPS and MnDNR have identified the following historic properties in the APE that have been determined eligible for the National Register of Historic Places: Lincoln Park, Lincoln

Park Bridge, Lincoln Park Drive, Lincoln Park Pavilion, and Zion Lutheran Church; and

WHEREAS, NPS and MnDNR have consulted with the Minnesota State Historic Preservation Office (MnSHPO) regarding the determination and documentation of the APE and the identification of historic properties pursuant to 36 CFR 800.4; and

WHEREAS, NPS and MnDNR have found, and the MnSHPO has concurred, that the Project will have an adverse effect by removing sections of a historic wall; and

WHEREAS, NPS and MnDNR, in consultation with MnSHPO and consulting parties, have determined that there is no practicable alternative that will avoid the adverse effect to historic properties and have developed this Agreement to resolve the adverse effects; and

WHEREAS, requirements for public involvement were completed pursuant to 36 CFR 800.2(d) including presentations at public meetings, posting on the City's website, meetings of the Duluth Heritage Preservation Commission, which has approved the rehabilitation plans for the Lincoln Park Pavilion, a locally designated landmark, and expressed support for the Project as a whole; and

WHEREAS, federally recognized Native American tribes have been invited to consult on the undertaking, as summarized in Attachment B, and the Fond du Lac Band of Lake Superior Chippewa has requested to participate in consultation; and

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa, Duluth Heritage Preservation Commission, Scott A. Marek, and Equilibrium 3 have been invited to participate in the consultation and to concur with Agreement; and

WHEREAS, the City has responsibilities under this Agreement and is an Invited Signatory to this Agreement; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect and have provided the documentation specified in 36 CFR 800.11(e), and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

NOW, THEREFORE, NPS, MnDNR, and MnSHPO agree the undertaking shall be carried out in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties, and that these stipulations will govern the undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

NPS and MnDNR shall ensure that the following stipulations are carried out.

I. MITIGATION MEASURES

A. Plan for Interpretation

- 76 i. The City shall prepare and implement a plan for incorporating interpretation of
77 Lincoln Park (Plan). The Plan shall be informed by the National Association for
78 Interpretation's Standards and Practices for Interpretive Planning. The team
79 preparing the content and location of the Plan shall include a qualified historian
80 who meets the Secretary of the Interior's Professional Qualifications Standards
81 (36 CFR 61).
- 82 a. Within six (6) months of the execution of this Agreement, the City shall
83 prepare a draft Plan including themes for interpretation, planned modes for
84 delivering the interpretation, and draft text and graphics for each mode.
85 Modes may include, but not be limited to webpages; interpretive signage;
86 walking tours; and integration of interpretive elements into the Project.
- 87 b. Prior to issuance of a draft Plan, the City shall invite the parties to this
88 Agreement to a consultation meeting to discuss the proposed Plan and
89 gain input.
- 90 c. The City shall distribute the draft Plan to the parties to this Agreement for
91 a thirty (30) calendar day review and comment period.
- 92 d. Following receipt of, and in response to, comments from the parties to this
93 Agreement, the City shall consider, incorporate as appropriate, and revise
94 the draft Plan. If the City chooses not to accept a comment by the parties
95 to this Agreement, then the City shall provide a written explanation to the
96 parties to this Agreement and consult, as appropriate, to seek resolution.
97
- 98 e. The City shall submit the final Plan to NPS, MnDNR, and MnSHPO for
99 review and concurrence. If NPS, MnDNR, or MnSHPO do not concur,
100 that party shall explain the grounds for its disagreement with the plan in a
101 letter to the City. Upon receiving such comments, the City shall consult
102 with NPS, MnDNR, and MnSHPO to resolve the dispute in accordance
103 with Stipulation III of this Agreement.
- 104 f. Upon NPS, MnDNR, and MnSHPO's concurrence or resolution of the
105 dispute, the City shall distribute the final Plan to all parties to this
106 Agreement.
- 107 g. Within two (2) years after approval of the final Plan, the City shall
108 complete its implementation.

109 B. Documentation

- 110 i. The City shall complete Level I documentation of Lincoln Park for the Minnesota
111 Historic Property Record (MHPR) according to the provisions outlined below.
112 All documentation shall be completed by an architectural historian meeting the
113 Professional Qualification Standards in the Secretary of the Interior's Standards
114 and Guidelines for Archaeology and Historic Preservation (36 CFR 61).
115

- a. The City will complete recordation of Lincoln Park before construction work begins. Recordation will be completed in accordance with the “Minnesota Historic Property Record Guidelines (updated June 2009)” Level I Documentation standards.
- b. The City shall provide the MnSHPO with a draft version of the Level I Documentation for review and comment. The MnSHPO will have thirty (30) calendar days to review the Level I Documentation. The City will take the comments of the MnSHPO into account in developing the final document.
- c. The City will provide a final archival copy and a digital (PDF) copy of the Level I Documentation to the MnSHPO. The City will provide a digital (PDF) copy to NPS, MnDNR, Duluth Heritage Preservation Commission, Duluth Collection at the Duluth Public Library, and Northeastern Minnesota Historical Collections at the Kathryn A. Martin Library, University of Minnesota-Duluth. Submission of these final documentation copies will constitute fulfillment of this stipulation.

II. PROJECT DESIGN MODIFICATIONS

- A. If the City makes substantive modifications to the Project design after the execution of this Agreement that would result in new and/or additional potential adverse effects on historic properties or a revision of the Project’s APE, NPS and MnDNR shall issue an effect finding, with documentation appropriate to the finding, to the parties to this Agreement for review and comment.
- B. If NPS and MnDNR find that the modifications will not expand the APE or cause additional adverse effects to historic properties within the APE, NPS and MnDNR shall issue this finding, along with an appropriate level of documentation, to the parties to this Agreement for review and comment. If there are no objections to the NPS and MnDNR finding of effect, then the City shall proceed accordingly. If there are objections to the NPS and MnDNR finding of effect, then NPS and MnDNR will continue consultation pursuant to Stipulation III of this Agreement.
- C. If NPS and MnDNR find that the modifications will result in additional adverse effects to historic properties, NPS and MnDNR shall first consult with the parties to this Agreement in accordance with 36 CFR 800.6 to seek ways to avoid and/or minimize the adverse effect. The parties to this agreement shall have thirty (30) days to review and provide comments on this effect finding. If it is determined that the adverse effect cannot be avoided, NPS and MnDNR will consult with the parties to this Agreement, and the public, as appropriate, to develop a Mitigation Plan (Mitigation Plan) for the adverse effect, taking into account the character and significance of the historic property and the nature and scale of the adverse effect. Any newly identified consulting parties under this stipulation will be invited to sign this Agreement as concurring parties pursuant to Stipulation IV.

- 158 i. The Mitigation Plan shall be developed within forty-five (45) calendar days of
159 any adverse effect finding made under this stipulation. NPS and MnDNR shall
160 provide a copy of the draft Mitigation Plan to parties to this Agreement who shall
161 have thirty (30) calendar days to provide comments on the Mitigation Plan prior
162 to the initiation of Project construction, or fifteen (15) calendar days to provide
163 comments on any Mitigation Plan prepared during Project construction.
- 164 a. If the parties to this Agreement do not provide comments during the
165 review periods specified in Subparagraph C.i of this Stipulation, NPS and
166 MnDNR shall consider it final and the City will move forward with the
167 Mitigation Plan as provided.
- 168 b. NPS and MnDNR shall take into account any comments provided by the
169 parties to this Agreement during the review period specified in
170 Subparagraph C.i of this Stipulation in the development of a final
171 mitigation plan. The Mitigation Plan will be final upon acceptance by the
172 MnSHPO and written notice by NPS and MnDNR. NPS and MnDNR
173 shall provide copies of all final Mitigation Plans to the parties to this
174 Agreement.
- 175 c. Upon completion of consultation under this stipulation, the City shall
176 ensure that the terms and conditions of the final Mitigation Plan are fully
177 implemented.

178 **III. DISPUTE RESOLUTION**

- 179 A. Should any party to this Agreement object to or be unable to complete the execution of
180 any provisions of this Agreement, NPS and MnDNR shall take the objection into account
181 and consult as needed with the objecting party to resolve the objection.
- 182 B. If NPS and MnDNR determine that the objection cannot be resolved, NPS and MnDNR
183 shall request the further comments of the ACHP pursuant to 36 CFR 800.7.
- 184 C. Any ACHP comment provided in response to such a request will be taken into account by
185 NPS and MnDNR in accordance with 36 CFR 800.7(c)(4) with reference only to the
186 subject of the dispute; the responsibility of the parties to this Agreement to carry out all
187 actions under this Agreement that are not the subjects of the dispute will remain
188 unchanged.

189 **IV. DURATION, AMENDMENTS, AND TERMINATION**

- 190 A. This Agreement will expire if its terms are not carried out within five (5) years from the
191 date of its execution. Prior to such time, NPS and MnDNR may consult with MnSHPO
192 and the City to amend it in accordance with Subparagraph IV.B below.
- 193 B. This Agreement may be amended when such an amendment is agreed to in writing by all
194 signatories. The amendment will be effective on the date a copy signed by all of the
195 signatories is filed with the ACHP.

196 C. If any signatory to this Agreement determines that its terms will not or cannot be carried
197 out, that party shall immediately consult with the other signatories and concurring parties
198 to attempt to develop an amendment per Subparagraph B above. If within sixty (60)
199 calendar days an amendment cannot be reached, any signatory may terminate the
200 Agreement upon written notification to the other signatories and concurring parties.

201 i. Once the Agreement is terminated, and prior to work continuing on the
202 undertaking, NPS and MnDNR must either (a) execute an Agreement pursuant to
203 36 CFR 800.6 or (b) request, take into account, and respond to the comments of
204 the ACHP under 36 CFR 800.7. NPS and MnDNR shall notify the parties to this
205 Agreement as to the course of action they will pursue.

206 V. IMPLEMENTATION

207 A. This Agreement may be implemented in counterparts, with a separate page for each
208 signatory or party. This Agreement shall become effective on the date of the final
209 signature by the signatories. NPS and MnDNR shall ensure each party is provided with a
210 complete copy of the final Agreement, updates to appendices, and any amendments filed
211 with NPS and MnDNR.

212 B. Execution of this Agreement by NPS, MnDNR, MnSHPO, and the City and
213 implementation of its terms is evidence that NPS and MnDNR have taken into account
214 the effects of its undertaking on historic properties and has afforded the ACHP
215 opportunity to comment pursuant to Section 106 of the National Historic Preservation
216 Act.

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SIGNATORY

NATIONAL PARK SERVICE

By: _____ Date _____
Name, Title

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SIGNATORY

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

By: _____ Date _____
Erika Rivers, Director, Parks and Trails Division

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SIGNATORY

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date _____
Amy Spong, Deputy State Historic Preservation Officer

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INVITED SIGNATORY

CITY OF DULUTH

By: _____ Date _____
Name, Title

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CONCURRING

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

By: _____ Date _____
Name, Title

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CONCURRING

DULUTH HERITAGE PRESERVATION COMMISSION

By: _____ Date _____
Name, Title

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CONCURRING

SCOTT A. MAREK

By: _____ Date _____
Scott A. Marek

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CONCURRING

EQUILIBRIUM 3

By: _____ Date _____
Jodi Slick, Executive Director

The APE illustrated above and below include areas that will be physically affected by the project or might be subject to indirect visual effects. The project will not physically affect or be visible from most of Lincoln Park. If the project makes Lincoln Park ineligible for the National Register, however, it would have an effect on the entire park, so the park as a whole (left) is also in the APE.

**ATTACHMENT B: FEDERALLY RECOGNIZED NATIVE AMERICAN TRIBES
INVITED TO CONSULT ON THE UNDERTAKING**

1. Apache Tribe of Oklahoma
2. Fort Peck Assiniboine and Sioux Tribes
3. Bad River Band of Lake Superior Tribe of Chippewa
4. Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe
5. Cheyenne and Arapaho Tribes, Oklahoma
6. Fond du Lac Band of Lake Superior Chippewa
7. Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
8. Grand Portage Band of the Minnesota Chippewa Tribe
9. Keweenaw Bay Indian Community
10. Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
11. Lac Vieux Desert Band of the Lake Superior Chippewa Indians
12. Menominee Indian Tribe of Wisconsin
13. Mille Lacs Band of the Minnesota Chippewa Tribe
14. Upper Sioux Community, Minnesota
15. White Earth Band of the Minnesota Chippewa Tribe
16. Fond du Lac Band of Lake Superior Chippewa