

City of Duluth

411 West First Street
Duluth, Minnesota 55802

Official Proceedings

City Council

MISSION STATEMENT: The mission of the Duluth City Council is to develop effective public policy rooted in citizen involvement that results in excellent municipal services and creates a thriving community prepared for the challenges of the future.

TOOLS OF CIVILITY: The Duluth City Council promotes the use and adherence of the tools of civility in conducting the business of the council. The tools of civility provide increased opportunities for civil discourse leading to positive resolutions for the issues that face our city. We know that when we have civility, we get civic engagement, and because we can't make each other civil and we can only work on ourselves, we state that today I will: pay attention, listen, be inclusive, not gossip, show respect, seek common ground, repair damaged relationships, use constructive language, and take responsibility. [Approved by the council on May 14, 2018]

Monday, September 23, 2019

7:00 PM

Council Chamber

ROLL CALL

Present: 8 - Councilor Gary Anderson, Councilor Zack Filipovich, Councilor Arik Forsman,

Councilor Barb Russ, Councilor Joel Sipress, Councilor Renee Van Nett, Councilor

Em Westerlund and President Noah Hobbs

Absent: 1 - Councilor Jay Fosle

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

1. 19-177 Public Hearing - to consider approval of the tax abatement and the

development agreement with Roers Lake and First LLC which includes the

provision of a business subsidy in the form of tax abatement

Indexes:

<u>Attachments:</u> Public Notice for Lake and First project

This Informational Report was received.

APPROVAL OF MINUTES

2. <u>19-176</u> Meeting Minutes of the Duluth City Council

Indexes:

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Attachments: City Council Meeting - September 9, 2019

These Minutes were approved.

REPORTS FROM THE ADMINISTRATION

REPORTS FROM OTHER OFFICERS

REPORTS OF BOARDS AND COMMISSIONS

3. <u>19-173</u> Alcohol, Gambling and Tobacco Commission Meeting Minutes

Indexes:

Attachments: AGT Minutes

This Board or Commission Report was received.

4. 19-174 Duluth Parking Commission Resolutions

Indexes:

Attachments: August 2019 DPC Resolutions

September 2019 DPC Resolutions

This Board or Commission Report was received.

5. 19-175 Library Board Meeting Minutes

Indexes:

Attachments: Minutes Library Board

REPORTS OF COUNCIL COMMITTEES

REPORTS OF COUNCIL OPEN ISSUES

OPPORTUNITY FOR CITIZENS TO BE HEARD

CONSENT AGENDA

BY COUNCILOR ANDERSON (FINANCE)

6. 19-0630R RESOLUTION AUTHORIZING A SECOND AMENDMENT TO THE

PROFESSIONAL SERVICES AGREEMENT WITH HKM, P.A. INCREASING THE CONTRACT AMOUNT BY \$13,925 FOR A

CONTRACT AMOUNT NOT TO EXCEED \$62,211.

Indexes:

Attachments: Exhibit A

This Resolution was adopted unanimously.

Absent: Councilor Fosle

7. 19-0637R RESOLUTION PROPOSING THE SUM TO BE RAISED BY TAXATION

FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY,

FOR THE YEAR 2020.

Indexes:

Attachments: Exhibit A

Exhibit B

This Resolution was adopted unanimously.

Absent: Councilor Fosle

8. 19-0638R RESOLUTION PROPOSING THE SUM TO BE RAISED BY TAXATION

FOR THE SPECIAL PARKS FUND LEVY FOR THE YEAR 2020.

This Resolution was adopted unanimously.

Absent: Councilor Fosle

9. 19-0639R RESOLUTION PROPOSING THE SUM TO BE RAISED BY TAXATION

FOR THE SPECIAL TAXING DISTRICT, HOUSING AND REDEVELOPMENT AUTHORITY, FOR THE YEAR 2020.

Indexes:

Attachments: Exhibit A

Exhibit B

This Resolution was adopted unanimously.

Absent: Councilor Fosle

BY COUNCILOR FOSLE (PURCHASING & LICENSING)

10. 19-0628R RESOLUTION APPROVING ISSUANCE OF AN ON SALE

INTOXICATING LIQUOR LICENSE AND SUNDAY LICENSE TO NOBLE

POUR, LLC (NOBLE POUR), 1907 WEST SUPERIOR STREET

Indexes:

Attachments: Attachment A

This Resolution was adopted unanimously.

Absent: Councilor Fosle

11. 19-0663R RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING

LIQUOR LICENSE OF JOEL'S LLC D/B/A MEXICO LINDO, 600 EAST

SUPERIOR STREET, SUITE 201, DULUTH, MINNESOTA 55802.

Indexes:

Attachments: Notice of September 4, 2019 Hearing -Mexico Lindo

Exhibit B - Report to City Council - Mexico Lindo

This Resolution was adopted unanimously.

Absent: Councilor Fosle

BY COUNCILOR FORSMAN (PERSONNEL)

TEGERAL TREATMENT OF THE TAXABLE TO	12.	<u>19-0653R</u>	RESOLUTION CONFIRMING THE APPOINTMENT OF TAMMY WALKER
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TO THE DULUTH CITIZEN REVIEW BOARD.

This Resolution was adopted unanimously.

Absent: Councilor Fosle

13. 19-0654R RESOLUTION CONFIRMING THE REAPPOINTMENT OF MICHELLE

MCDONALD TO THE COMMISSION ON DISABILITIES.

This Resolution was adopted unanimously.

Absent: Councilor Fosle

14. 19-0655R RESOLUTION CONFIRMING THE APPOINTMENT OF MARK HAKES TO

THE DULUTH HUMAN RIGHTS COMMISSION

This Resolution was adopted unanimously.

Absent: Councilor Fosle

15. 19-0672R RESOLUTION APPROVING PROPOSED SPECIFICATIONS FOR THE

NEW CIVIL SERVICE CLASSIFICATION OF FIRE SYSTEMS PLANS EXAMINER, AND SPECIFYING CONTRACT BENEFITS FOR SAME.

Indexes:

Attachments: Exhibit A

This Resolution was adopted unanimously.

Absent: Councilor Fosle

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

16. <u>19-0629R</u> RESOLUTION GRANTING A TAX ABATEMENT FOR THE FIRST

STREET LOFTS PROJECT, AUTHORIZING A TAX ABATEMENT

AGREEMENT WITH ST. LOUIS COUNTY, AND FURTHER AUTHORIZING

A DEVELOPMENT AGREEMENT WITH ROERS LAKE & FIRST LLC.

Indexes:

Attachments: Business Subsidy Agreement Pre-Approval

Exhibit A
Exhibit B

This Resolution was adopted unanimously.

Absent: Councilor Fosle

17. 19-0651R RESOLUTION VACATING PARTS OF PLATTED SELLWOOD AVENUE

IN THE PLAT OF IRONTON FIRST AVENUE, ALSO KNOWN AS 84TH AVENUE WEST, COMMONWEALTH AVENUE ALSO KNOWN AS 85TH AVENUE AND BESSEMER STREET, AND RETAINING A UTILITY EASEMENT AND PUBLIC RECREATIONAL WALKWAY AND UTILITY EASEMENT OVER A PORTION OF THE VACATION AREA OF 85TH AVENUE WEST, AND ALLEY BETWEEN 84TH AND 85TH AVENUE

WEST.

Indexes:

Attachments: Attachment 1

Attachment 2

This Resolution was returned to Administration.

18. 19-0652R RESOLUTION AUTHORIZING PROPER CITY OFFICIALS TO ACCEPT A

GRANT FROM THE MINNEAPOLIS FOUNDATION IN THE AMOUNT OF

\$750 IN SUPPORT OF CENSUS 2020

This Resolution was adopted unanimously.

Absent: Councilor Fosle

19. 19-0657R RESOLUTION GRANTING AN INTERIM USE PERMIT FOR A VACATION

DWELLING UNIT AT 1004 MINNESOTA AVENUE (PETRA

PROPERTIES).

Indexes:

Attachments: Attachment 1

This Resolution was adopted unanimously.

Absent: Councilor Fosle

20. 19-0662R RESOLUTION GRANTING AN INTERIM USE PERMIT FOR A VACATION

DWELLING UNIT IN THE F-8 DOWNTOWN MIX ZONING DISTRICT AT 30

NORTH FIRST AVENUE WEST (JASON TALY AND RACHEL

WAGNER).

Indexes:

Attachments: Attachment 1

This Resolution was adopted unanimously.

Absent: Councilor Fosle

BY COUNCILOR FILIPOVICH (PUBLIC WORKS & UTILITIES)

21. 19-0643R RESOLUTION DEDICATING EASEMENTS FOR UTILITY AND ACCESS

PURPOSES OVER, UNDER, AND ACROSS PROPERTY IN THE PLAT

OF WILLARD AND PIPER'S DIVISION.

Indexes:

Attachments: Exhibit A and B

This Resolution was adopted unanimously.

Absent: Councilor Fosle

22. 19-0646R RESOLUTION DEDICATING AN EASEMENT FOR STREET AND UTILITY

PURPOSES OVER, UNDER, AND ACROSS PROPERTY ADJACENT TO THE PLATTED RIGHT-OF-WAY OF SIXTH AVE. E IN THE PLAT OF

NORTON'S DIVISION OF DULUTH.

Indexes:

Attachments: Exhibit A.pdf

This Resolution was adopted unanimously.

Absent: Councilor Fosle

23. 19-0647R RESOLUTION TO RESCIND THE DESIGNATION AND

ESTABLISHMENT AS A ONE-WAY STREET FOR THAT PART OF THE SEGMENT OF WEST FIRST STREET BETWEEN 22nd AVENUE WEST

AND 30th AVENUE WEST.

Indexes:

Attachments: 19-0674R Map

This Resolution was adopted unanimously.

Absent: Councilor Fosle

24. 19-0650R RESOLUTION AUTHORIZING MNDOT AGREEMENT NO. 1035319 FOR

THE BRIGHTON BEACH TRAIL EXTENSION PROJECT UNDER STATE

PROJECT NO. 118-090-024 WITH THE CITY MATCHING

CONTRIBUTION LIMITED TO \$2,829.20.

Indexes:

Attachments: 19-0650R Attachment 1

19-0650R Map

This Resolution was adopted unanimously.

Absent: Councilor Fosle

BY COUNCILOR VAN NETT (PUBLIC SAFETY)

25. 19-0601R RESOLUTION AUTHORIZING A FIRST AMENDMENT TO THE

PROFESSIONAL SERVICES AGREEMENT WITH MADDEN, GALANTER, HANSEN, LLP EXTENDING THE TERM OF THE AGREEMENT TO DECEMBER 31, 2021, AND INCREASING THE CONTRACT AMOUNT BY \$20,000 FOR A CONTRACT AMOUNT NOT

TO EXCEED \$60,000.

Indexes:

Attachments: Exhibit A

This Resolution was adopted unanimously.

Absent: Councilor Fosle

26. 19-0649R RESOLUTION AUTHORIZING A FIRST AMENDMENT TO THE PARTNER

AGREEMENT BETWEEN THE CITY OF DULUTH AND PROGRAM FOR AID TO VICTIMS OF SEXUAL ASSAULT, INC., REGARDING THE FY 2016 NATIONAL SEXUAL ASSAULT KIT INITIATIVE TO VICTIMS OF SEXUAL ASSAULT, TO EXTEND THE TERM OF THE AGREEMENT

FROM SEPTEMBER 30, 2019 TO SEPTEMBER 30, 2020.

Indexes:

Attachments: Amendment to Partner Agreement

Councilor Westerlund abstained stating that PAVSA is her current employer.

This Resolution was adopted by the following vote:

Yea: 7 - Councilor Anderson, Councilor Filipovich, Councilor Forsman, Councilor Russ,

Councilor Sipress, Councilor Van Nett and President Hobbs

Absent: 1 - Councilor Fosle

Abstain: 1 - Councilor Westerlund

27. 19-0659R RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN

AGREEMENT AMENDMENT WITH MINNESOTA DEPARTMENT OF TRANSPORTATION FOR LEASE OF ADDITIONAL SPACE ON

ANTENNA TOWER

Indexes:

Attachments: Exhibit A - Agreement 98282 Amendment # 2

Agreement 98282 Amendment # 2 Exhibit B1

Agreement 98282 City and MnDOT

This Resolution was adopted unanimously.

Absent: Councilor Fosle

28. 19-0661R RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT FROM

THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY IN THE AMOUNT OF \$264,750 FOR THE 2020 TOWARDS ZERO DEATHS PROJECT.

Indexes:

Attachments: Document A

This Resolution was adopted unanimously.

Absent: Councilor Fosle

BY COUNCILOR WESTERLUND (RECREATION, LIBRARIES & AUTHORITIES)

29. 19-0642R RESOLUTION AUTHORIZING A ONE-YEAR AGREEMENT WITH

DULUTH AMATEUR HOCKEY ASSOCIATION FOR LEASE OF THE CITY'S FRYBERGER ARENA FOR NOMINAL CONSIDERATION.

Indexes:

Attachments: Exhibit 1.pdf

This Resolution was adopted unanimously.

Absent: Councilor Fosle

30. 19-0644R RESOLUTION AUTHORIZING AN AMENDMENT TO A LICENSE

AGREEMENT WITH COMMUNITY ACTION DULUTH FOR THE

CONTROL AND REMOVAL OF INVASIVE SPECIES WITHIN MULTIPLE

CITY PARKS AND RECREATIONAL AREAS.

Indexes:

Attachments: Exhibit 1.pdf

This Resolution was adopted unanimously.

Absent: Councilor Fosle

31. 19-0645R RESOLUTION ACCEPTING PERMANENT EASEMENT FOR PUBLIC

MULTI-USE TRAIL PURPOSES FROM THE MARSHALL SCHOOL OVER PROPERTY NEAR CENTRAL ENTRANCE AND PECAN

AVENUE AT NO COST TO THE CITY.

Indexes:

Attachments: Exhibit 1.pdf

This Resolution was adopted unanimously.

Absent: Councilor Fosle

32. 19-0648R RESOLUTION ACCEPTING PERMANENT EASEMENT FOR PUBLIC

MULTI-USE TRAIL PURPOSES FROM THE REGENTS OF THE

UNIVERSITY OF MINNESOTA OVER THE UNIVERSITY OF MINNESOTA

DULUTH CAMPUS AND BAGLEY NATURE AREA.

Indexes:

Attachments: Exhibit 1.pdf

This Resolution was adopted unanimously.

Absent: Councilor Fosle

END OF CONSENT AGENDA

The following entitled resolutions are also to be considered:

BY COUNCILOR ANDERSON (FINANCE)

33. 19-0640R RESOLUTION PROPOSING THE SUM TO BE RAISED BY TAXATION

FOR GENERAL PURPOSES FOR THE YEAR 2020.

Indexes:

Attachments: Exhibit A

Motion to Amend: Filipovich/Sipress - Passed (6-2-1: Nay: Hobbs and

<u>Forsman)</u>

This Resolution was adopted as amended.

BY COUNCILOR WESTERLUND (RECREATION, LIBRARIES & AUTHORITIES)

34. 19-0669R RESOLUTION SUPPORTING A LEADERSHIP ROLE FOR THE CITY OF

DULUTH IN REDUCING WASTE GOING INTO THE ENVIRONMENT AND AREA LANDFILLS BY DECREASING OR ELIMINATING THE USE OF SINGLE USE PLASTIC PRODUCTS AND EXPANDED POLYSTYRENE

CONTAINERS IN THE CITY.

Sponsors: Westerlund

A motion was made to withdraw this Resolution. The motion passed unanimously with Councilor Fosle absent.

The following entitled ordinances are to be read for the first time:

BY COUNCILOR WESTERLUND (RECREATION, LIBRARIES & AUTHORITIES)

35. <u>19-046-O</u> AN ORDINANCE AMENDING CHAPTER 24 OF THE DULUTH CITY

CODE BY ADDING A NEW ARTICLE VII REQUIRING A FIVE CENTS

CHARGE FOR CARRYOUT BAGS.

Sponsors: Westerlund

This Ordinance was read for the first time.

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

36. 19-042-O AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY

OF DULUTH TO RECLASSIFY PROPERTY AT 4250 HAINES ROAD FROM RURAL-RESIDENTIAL (RR-1) TO MIXED USE COMMERCIAL

(MU-C).

Indexes:

Attachments: Attachment 1

Attachment 2

This Ordinance was read for the first time.

37. 19-043-O AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT

USE PERMIT FOR PRIVATE ELECTRICAL CONDUITS IN THE PLATTED STREET RIGHT OF WAY OF NORTH FOURTH AVENUE

EAST AND EAST FIRST STREET.

Indexes:

Attachments: Attachment 1

Attachment 2

This Ordinance was read for the first time.

38. 19-044-O AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR

PARKING IN THE PLATTED STREET RIGHT OF WAY OF 54TH

AVENUE EAST.

Indexes:

Attachments: Attachment 1

Attachment 2

This Ordinance was read for the first time.

39. 19-045-O AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY

OF DULUTH TO RECLASSIFY APPROXIMATELY TEN ACRES OF

PROPERTY ON THE NORTH SIDE OF MARBLE STREET NEAR ROBIN

AVENUE FROM RESIDENTIAL-TRADITIONAL (R-1) TO

RESIDENTIAL-PLANNED (R-P).

Indexes:

Attachments: Attachment 1

Attachment 2

This Ordinance was read for the first time.

40. 19-047-O AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT

USE PERMIT FOR A PRIVATE ELECTRICAL DUCT BANK IN THE PLATTED STREET RIGHT OF WAY OF NORTH FIFTH AVENUE EAST.

Indexes:

Attachments: Attachment 1

Attachment 2
Attachment 3

This Ordinance was read for the first time.

The following entitled ordinances are to be read for the second time:

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

41. 19-038-O AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY

OF DULUTH TO RECLASSIFY PROPERTY SOUTH OF THE

INTERSECTION OF WEST GARY STREET AND BECKS ROAD FROM RURAL RESIDENTIAL 1 (RR-1) TO MIXED USE BUSINESS PARK

(MU-B).

Indexes:

Attachments: Attachment 1

Attachment 2

Attachment 3

This Ordinance was adopted uanimously.

Absent: Councilor Fosle

42. 19-039-O AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY

OF DULUTH TO RECLASSIFY PROPERTIES NEAR THE

INTERSECTION OF COMMONWEALTH AVENUE AND BECKS ROAD

FROM RURAL RESIDENTIAL 1 (RR-1) AND

RESIDENTIAL-TRADITIONAL (R-1) TO MIXED USE BUSINESS PARK

(MU-B).

Indexes:

Attachments: Attachment 1

Attachment 2

Attachment 3

This Ordinance was adopted unanimously.

Absent: Councilor Fosle.

COUNCILOR QUESTIONS AND COMMENTS

COUNCILOR PREVIEW OF UPCOMING BUSINESS

ATTEST: CHELSEA J. HELMER, City Clerk

Passed September 23, 2019 Approved September 9, 2019 EMILY LARSON, Mayor

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Notice of Public Hearing

The City of Duluth will consider entering into a development agreement with Roers Lake and First LLC (Developer) for the development of approximately 47 apartment units, 10% of which will be made available for rent at 80% of the area median income, on property legally described as Lots 1 and 3, Duluth Proper 1st Division East 1st Street; Parcel numbers 010-0930-00010 and 010-0930-00020.

The City will consider providing tax abatement assistance to the Developer in an amount up to \$400,000 which will be payable from the development on the above-described property over a 20-year period. Tax abatement assistance would be provided in accordance with City Council Resolution No. 19-0629R, to be considered on September 23, 2019. The project will require the City to waive certain abatement policy requirements, including the current maximum term limitation and the required percentage of housing units that will be made available at affordable rents as determined by HUD.

The provision of tax abatement assistance is a business subsidy pursuant to the Business Subsidy Act, Minnesota Statute §§ 116J.993 to 116J.995. After the public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero in accordance with the Business Subsidy Act. Any person with residence in the City, or the owner of taxable property in the City, may file a written complaint with the City if the City fails to comply with the Business Subsidy Act, and no action may be filed against the City for the failure to comply unless a written complaint is filed.

A public hearing will be held by the City Council at 7:00 p.m. on Monday, September 23, 2019, in Council Chambers on the 3rd Floor of City Hall, 411 West First Street, Duluth, Minnesota, to consider approval of the tax abatement and the development agreement which includes the provision of a business subsidy in the form of tax abatement.

A draft copy of the proposed development agreement is available for public inspection at the Planning and Development Division Office in Room 160 City Hall. At the public hearing, all interested parties may express their comments for consideration by the City Council or prior to the meeting in writing. Written comments may be addressed to the City of Duluth, Room 318 City Hall, 411 West First Street, Duluth, MN 55802: Attn: City Clerk.

If you have special needs, such as an interpreter, please contact the Planning and Development Division at 730-5580 so that your needs can be accommodated.

For hearing impaired persons please call the City's TTY/Information Assistance at 730-5000 or the Minnesota Relay Service at 1-800-627-3529.

MINUTES OF THE REGULAR MEETING OF THE ALCOHOL, GAMBLING & TOBACCO COMMISSION

August 07, 2019

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, August 07, 2019, at 4:45 p.m., in the City Council Chambers, 3rd Floor City Hall.

ROLL CALL: President Patricia Stolee, Mark Osthus, Paul Tynjala, Jeff Rosenthal

Absent: Bjorn Braaten, Lon Hanson, Adam Wisocki

Approval of the July 10 2019, Alcohol, Gambling & Tobacco Commission Minutes. A motion to approve was made and seconded. Motion carried unanimously.

LAWFUL GAMBLING:

NEW BUSINESS:

BERGEY'S LLC (BERGEY'S), 2232 W. SUPERIOR STREET – APPLICATION FOR PERMANENT EXPANSION OF DESIGNATED SERVING AREA OF THEIR ON SALE INTOXICATING LIQUOR LICENSE, WILLIAM BERG, MANAGER. William (Bill) Berg appeared on behalf of Bergey's. Commissioner Rosenthal moved to approve, Commissioner Tynjala seconded. The motion carried unanimously.

THE BOREAL HOUSE (THE BOREAL HOUSE), 330 N. 57TH AVENUE WEST – APPLICATION FOR ON SALE INTOXICATING LIQUOR LICENSE, KATIE FAST, MANAGER. Katie Fast and Julie Latourelle appeared on behalf of the Boreal House. Commissioner Osthus moved to approve and was seconded by Commissioner Rosenthal. The motion carried unanimously.

DULUTH HILLSIDE INVESTMENT, LLC (UNIVERSITY LIQUORS), 1603 WOODLAND AVENUE - APPLICATION FOR THE TRANSFER OF THE OFF SALE INTOXICATING LIQUOR LICENSE TO NEW OWNERS DULUTH HILLSIDE INVESTMENT, LLC, DANIEL J KAMP, MANAGER. Daniel Kamp appeared on behalf of Duluth Hillside Investment, LLC. Officer Vang noted that the criminal history check had not yet been received but that approval could be granted contingent upon receipt of a check with no disqualifying information. Commissioner Osthus moved to approved contingent upon receipt of an acceptable criminal background check and was seconded. Motion carried unanimously.

KINSETH HOSPITALITY COMPANY, INC (TRU BY HILTON), 503 CLEARWOOD DRIVE - APPLICATION FOR THE TRANSFER OF THE ON SALE LIQUOR LICENSE TO NEW OWNERS KINSETH HOSPITALITY COMPANY, INC, BRUCE KINSETH,

MANAGER. The general manager of Tru by Hilton appeared on behalf of Kinseth Hospitality Company. Officer Vang noted that since middle names were not on Kinseth's affidavits a criminal history check could not be run. The general manager indicated that this would be corrected. Commissioner Tynjala moved to approve contingent upon receipt of a clean criminal history check and was seconded by Commissioner Osthus. Motion carried unanimously.

SHOTZ BAR, INC (SHOTZ BAR INC), 1321 COMMONWEALTH AVENUE – APPLICATION FOR TEMPORARY EXPANSION OF THE DESIGNATED SERVING AREA OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR AUGUST 24, 2019, FAR WEST FEST, KATHLEEN M. ROSE, MANAGER. Kathleen Rose appeared on behalf of Shotz Bar, Inc. Commissioner Rosenthal moved to approve was seconded by Commissioner Tynjala. Motion carried unanimously.

Adjourned: 5:00 p.m.

DULUTH PARKING COMMISSION RESOLUTION 2019-29

August 2, 2019

To install an ADA parking space at 927 East 3rd Street.

IT IS RESOLVED by the Duluth Parking Commission to install on-street ADA parking signage to serve the resident(s) at 927 East 3rd Street.

STATEMENT OF PURPOSE:

This action serves to meet the accessibility needs of resident(s) at the above-referenced address, as well as those of any parker with current ADA parking credentials.

Approved 7-0.

Andy Goldfine, President

DULUTH PARKING COMMISSION RESOLUTION 2019-30

August 2, 2019

To install an ADA parking space at 426 North 22nd Avenue West.

IT IS RESOLVED by the Duluth Parking Commission to install on-street ADA parking signage to serve the resident(s) at 426 North 22nd Avenue West.

STATEMENT OF PURPOSE:

This action serves to meet the accessibility needs of resident(s) at the above-referenced address, as well as those of any parker with current ADA parking credentials.

Approved 7-0.

Andy Goldfine, President

RESOLUTION 2019-31

August 2, 2019

To prohibit parking in certain areas of East 1st Street adjacent to St. Luke's Hospital parking.

IT IS RESOLVED by the Duluth Parking Commission to remove six parking meters on the north side of the 1100 block of East 1st Street and prohibit parking in the same area.

STATEMENT OF PURPOSE:

This action serves to enhance safety for motorists by increasing sightline distances.

Approved 4-3.

Andy Goldfine, President

RESOLUTION 2019-32

August 2, 2019

To extend alternate side 1:00 a.m. to 7:00 a.m. parking to include the entire 1900 East block of 8th Street.

IT IS RESOLVED by the Duluth Parking Commission to extend alternate side 1:00 a.m. to 7:00 a.m. parking on the 1900 East block of 8th Street from its current end about halfway down the block to the end of the block.

STATEMENT OF PURPOSE:

This action serves to provide more daytime parking for residents and visitors to the referenced area while enhancing the clarity of the configuration.

Approved 7-0.

Andy Goldfine, President

RESOLUTION 2019-33

August 2, 2019

To relocate an on-street ADA parking zone on South Lake Avenue from a bus stop to an existing metered parking stall, in replacement of the meter.

IT IS RESOLVED by the Duluth Parking Commission to relocate the ADA parking zone currently within a Duluth Transit Authority bus stop on South Lake Avenue adjacent to Grandma's Sports Garden to the metered stall directly to the south, in replacement of the existing meter.

STATEMENT OF PURPOSE:

This action serves to provide consistent parking availability for both busses and parkers with accessibility needs.

Approved 7-0.

Andy Goldfine, President

RESOLUTION 2019-34

August 2, 2019

To create a two-hour time limit parking stall at 1324 East 1st Street.

IT IS RESOLVED by the Duluth Parking Commission to create a new two-hour time limit parking stall at 1324 East 1st Street.

STATEMENT OF PURPOSE:

This action serves to provide consistent parking availability for patients at the adjacent dental clinic and other short-term parkers.

Approved 7-0.

Andy Goldfine, President

RESOLUTION 2019-35

August 2, 2019

To temporarily provide monthly contract parking at Lot C.

IT IS RESOLVED by the Duluth Parking Commission to provide monthly contract parking at Lot C for no more than 30 parkers. Monthly rate will be set at \$75.00.

STATEMENT OF PURPOSE:

This action serves to accommodate the parking needs of parkers displaced by the nearby US Bank Ramp reconstruction, as well as other parkers.

Approved 7-0.

Andy Goldfine, President

RESOLUTION 2019-36

September 6, 2019

To install an ADA parking space at 1928 East 1st Street.

IT IS RESOLVED by the Duluth Parking Commission to install on-street ADA parking signage to serve the resident(s) at 1928 East 1st Street.

STATEMENT OF PURPOSE:

This action serves to meet the accessibility needs of resident(s) at the above-referenced address, as well as those of any parker with current ADA parking credentials.

Approved 5-0.

Andy Goldfine, President

RESOLUTION 2019-37

September 6, 2019

To install an ADA parking space at 622 North 1st Avenue East.

IT IS RESOLVED by the Duluth Parking Commission to install on-street ADA parking signage to serve the resident(s) at 622 North 1st Avenue East.

STATEMENT OF PURPOSE:

This action serves to meet the accessibility needs of resident(s) at the above-referenced address, as well as those of any parker with current ADA parking credentials.

Approved 5-0.

Andy Goldfine, President

RESOLUTION 2019-38

September 6, 2019

To convert two 80-minute meters to 15-minute meters on the zero block of West Superior Street.

IT IS RESOLVED by the Duluth Parking Commission to convert two 80-minute meters adjacent to Minnesota Power Employees Credit Union at 30 West Superior Street to 15-minute meters.

STATEMENT OF PURPOSE:

This action serves to meet the current needs of the area stakeholders by encouraging faster turnover of the referenced parking stalls.

Approved 5-0.

Andy Goldfine, President

RESOLUTION 2019-39

September 6, 2019

To convert one regular parking stall on the 400 West block of Superior Street to an ADA parking zone.

IT IS RESOLVED by the Duluth Parking Commission to convert one regular parking stall on the 400 West block of Superior Street, adjacent to the Ordean Building, to an ADA parking zone.

STATEMENT OF PURPOSE:

This action serves to meet the current accessibility needs of the area stakeholders..

Approved 5-0.

Andy Goldfine, President

DULUTH PUBLIC LIBRARY BOARD Minutes of Regular Meeting June 25, 2019

Call to Order: President Rosendahl called the meeting of the Duluth Library Board to order at 4:30 on June 25, 2019.

Introductions were made.

Members Present: Matt Rosendahl, Lizzy Luoma, David Sperl, Michelle Foshay,

Stephen Welsh, Neil Glazman

Also Present: Carla Powers, Lori Crocker (Branch Coordinator), Jim Filby Williams

Absent: Betty Ramsland, Sue Henke

Review and approve agenda: Agenda approved as drafted.

Public comment period: No comments.

Approve minutes of May 28, 2019 meeting: Motion by Sperl, seconded by Luoma, to approve the minutes of the May 28, 2019 board meeting as drafted. Motion approved unanimously.

Reports:

Friends of the Library Report

Written report was reviewed. Friends do not meet in June, as that is book sale month. The unofficial total for this year's sale was over \$19,000.

Foundation Report

Written report was reviewed. Rosendahl highlighted an upcoming meeting with city administration regarding support for an early literacy initiative.

Library Manager's Report

Written report was reviewed. Powers provided an update on the Superior Street restroom project, which is tentatively scheduled to begin in September. The Michigan Street men's room and the Green Room will be unavailable for at least part of the construction project.

Old Business:

Art Policy

Powers presented a revised draft of the art policy, which specifies that the library is seeking out art and not accepting unsolicited art at this time. Motion by Glazman, seconded by Rosendahl, to approve the policy as written. Approved unanimously.

New Business

Statement of Concern Form

Powers outlined a revised Statement of Concern form that was expanded to include art displays as well as items in the collection. Motion by Glazer, seconded by Welsh, to approve the form as written. Approved unanimously.

Ongoing Business

<u>Library advocacy</u> – No updates at this time.

Adjournment

Next regular meeting: August 27, 2019 in the Main Library Conference Room.

Exhibit A

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN HKM, P.A. AND CITY OF DULUTH

THIS SECOND AMENDMENT is made and entered into this ______ day of September, 2019, by and between the City of Duluth, hereinafter referred to as "City", and HKM, P.A., located at 30 East 7th Street, Suite 3200, St. Paul, MN 55101, hereinafter referred to as "Service Provider" for the purpose of rendering services to the City

WHEREAS, the City has an Agreement with the Service Provider identified as Agreement for Professional Services By and Between HKM, P.A. and City of Duluth with an effective date of December 7, 2018, and identified as City Contract #23598 (the "Agreement"); and

WHEREAS, a First Amendment to the Agreement was signed on April 16, 2019, authorizing an additional \$33,386 in expenditures for legal services; and

WHEREAS, City and Service Provider wish to amend Section II of the Agreement to authorize an additional \$13,925 in expenditures for legal services.

THEREFORE, the City and the Service Provider agree as follows:

In this Second Amendment to Agreement, the deleted terms will be struck out and the added terms will be underlined.

II. Fees

It is agreed between the parties that Service Provider's hourly rate for the term of this Agreement shall be as follows:

- For Peter Wanning, Attorney at Law (Sr. Shareholder) -- \$360 per hour
- For a Sr. Associate assisting Mr. Wanning -- \$275 per hour
- For Paralegal services -- \$175 per hour

plus mileage and out of pocket expenses and total cost to the City will not exceed the sum of Forty Eight Thousand Two Hundred Eight Six dollars (\$48,286) Sixty —Two Thousand Two Hundred Eleven dollars (\$62,211), payable from City Fund 110, Department 110, Division 1104, and Object 5304. The Service Provider will not incur additional fees and expenses without prior written authorization from the City. All bills for services rendered shall be submitted monthly to the City Attorney. Such billings shall be accompanied by documentation as shall reasonably be requested by the City Attorney.

Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

CITY OF DULUTH	HKM, P.A.
By: Mayor	By: Peter W. Wanning, Attorney at Law Date: 9/5/2019
Attest:City Clerk	-
Date:	
Countersigned:	
City Auditor	-
Approved as to form:	
City Attorney	,

Exhibit A

June 28, 2019

Wayne Parson, City of Duluth, Chief Financial Officer Room 120 City Hall Duluth MN 55802-1190

Dear Mr. Parson:

This letter is to address the DTA's requested tax levy for CY 2020. In the following correspondence I will outline the DTA's needs for fiscal year 2020 and the various sources and uses of these funds. Because the DTA 2020 budget is not yet finalized and anticipated contracts with the Minnesota Department of Transportation have not been enacted, the budget request for the DTA's subsidy needs for next year are conservative.

The DTA's transit levy amount for fiscal year 2020 is calculated as follows. Under Tax Code Section 458A.31, the DTA's levy percentage is set at .0007253. By multiplying this percentage by the City of Duluth's Market Value the DTA potential levy amount is in excess of \$4.5 million.

There are no Bond payments for 2020. The DTA Board after reviewing needs for 2020 has opted not to request the full levy available. Instead the DTA will be asking for \$1,591,900, for base services and an additional \$75,000 to replace Tourism taxes that support the Trolley services. This a total of \$1,666,900. Of the increase \$100,000 will be devoted to capital projects (fuel tank replacement and facility roof) and \$75,000 to operate the second trolley and maintain the free fares on that service. Since 2004 the City increase is a total of \$350,000. This is to less than \$22,000 per year or about 1.4% per year. The DTA Board of Directors approved this request at the June 26th meeting.

The DTA's 2020 draft operating budget for regular route and STRIDE operations plus capital needs estimates a total local contribution that will be equal to or more than the past levy. This is conservative as MN/DOT has yet to finalize the 2020 contracts based on a same level of State General Fund support. The Federal subsidies have been decreasing in the last several years.

The DTA has an ongoing need for capital projects, especially the need for periodic replacement of rolling stock and associated equipment. Any balance remaining from a tax levy must be committed to the continued capital maintenance of DTA facilities and rolling stock.

This request fully includes the operations at the Multimodal Facility operation as well as minor service adjustments during the Twin Ports Interchange Project.

Exhibit A

A full budget package reviewing the DTA's funding for 2020 is currently being prepared for City Council review.

In summary, please certify the DTA's levy in the amount of \$1,666,900. Please review this letter and do not hesitate to call me if you have any questions or concerns. Thank you.

Sincerely;

Chris Belden

DTA Director of Planning and Grants

Class Belde

cc The Honorable Mayor Emily Larson Noah Schuchman, Chief Administrative Officer Phil Pumphrey, DTA General Manager

Exhibit B



DULUTH TRANSIT AUTHORITY JUNE 2019 - RESOLUTION NO. 276

Concerning the DTA's Local Levy for 2020.

Whereas each year the DTA Board requests a local levy amount from the City of Duluth;

Whereas the DTA's legislatively and voter approved levy exceeds \$4 million; and

Whereas the levy request is based on the next year's anticipated need for operating and capital costs associated with the services provided by the DTA.

Now, therefore, be it resolved that the DTA Board of Directors requests that the City of Duluth sets the DTA levy at a total of \$1,666,900.00 for calendar year 2020.

PASSED AND ADOPTED THIS 26^{TH} DAY OF JUNE 2019 BY THE BOARD OF DIRECTORS OF THE DULUTH TRANSIT AUTHORITY.

ADOPTED:

Aaron Bransky

DTA Board President

Exhibit A

Housing and Redevelopment Authority of Duluth, MN

		2020 HRA TAX LEVY REQUEST									
\$	1,199,343.00	Estimated Tax Levy 2020 (.0179% of Taxable Market Value \$6,700,241 Statutory maximum is .0185% of estimated market value which is \$7,236,281,990									
SECTION 8	3 and PUBLIC I 295,466.00	HOUSING Funding shortfalls in the Section 8 and small rental assistance programs									
		\$	295,466.00								
LINCOLN \$ \$		TIVES Esmond Building Expen Lincoln Park Center - ca									
FURTHERING HOUSING ACTION FRAMEWORK AND CITY AFFORDABLE HOUSING INITIATIVES \$ 290,000.00 Emergency Home Repair and Healthy Home Rehabilitation and Repair Programs \$ 100,000.00 Funding for the City and HRA Joint Housing Developer Position and for required											
•	,	0.00 Funding for the City and HRA Joint Housing Developer Position and for required Environmental Review Services through Planning and Economic Development									
		\$	390,000.00								
COMMUNITY HOUSING SUPPORT SERVICES											
\$											
\$,	Rainbow Center Operat	ions								
\$		Lincoln Park Center Ope									
\$	61,000.00		revention Program Support								

296,263.00

\$

1,199,343.00 TOTAL

2019 HRA TAX LEVY REQUEST

\$ 1,115,956.00 Estimated Tax Levy 2019 (.0179% of Taxable Market Value \$6,234,389,638 BIL)

Statutory maximum is .0185% of estimated market value which would be nearly \$6.8BIL

SECTION 8 and PUBLIC HOUSING

343,000.00 Funding shortfalls including: Section 8, small rental assistance

programs, and Public Housing POHP bonding leverage

\$ 343,000.00

LINCOLN PARK INITIATIVES

\$ 267,000.00 Esmond Operating Support

\$ 267,000.00

FURTHERING HOUSING ACTION PLAN AND NEIGHBORHOOD STABILIZATION

\$ 99,784.00 Development and/or Rehab operating costs \$ 100,000.00 Build Up Duluth - "Orchards of Morgan Park"

\$ 70,000.00 Rehab and Neighborhood Redevelopment

\$ 269,784.00

COMMUNITY HOUSING SUPPORT SERVICES

\$ 137,172.00 2 Police Officers \$ 55,000.00 Rainbow Center

\$ 44,000.00 Lincoln Park Center

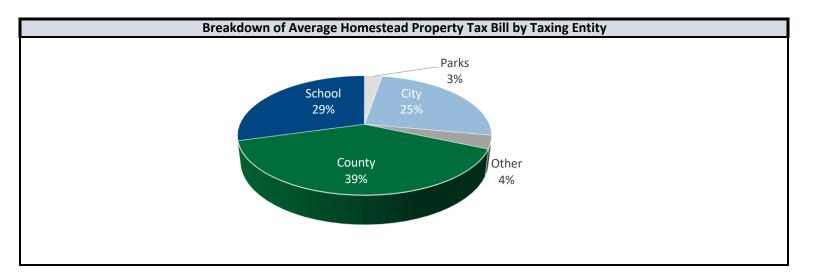
\$ 236,172.00

\$ 1,115,956.00 TOTAL

Exhibit B

HRA FISCAL YEAR 2020 BUDGET

		TOTAL		ow Income blic Housing	ı	Esmond		Section 8		Rehab	Ge	neral Fund	De	evelopment	Co	ordinated Entry		cocc
REVENUE ACCOUNTS																		
DWELLING RENTAL	\$	2,922,860	\$	2,907,190	\$	15,670												
NON-DWELLING RENTAL	\$	324,097	\$	323,497	\$	600												
REVENUES - HUD GRANTS	\$	11,968,030	\$	2,617,368			\$	8,860,052	\$	405,000					\$	85,610		
REVENUES-OTHER GOV GRANTS	\$	32,000							\$	-					\$	32,000		
MANAGEMENT FEES	\$	1,542,554															\$	1,542,554
INTEREST ON INVESTMENTS	\$	224,921	\$	25,332							\$	197,585					\$	2,004
TAX LEVY PROCEEDS/TIF PROCEEDS	\$	1,449,343									\$	1,199,343	\$	250,000				
LAND SALES	\$	60,000											\$	60,000				
OTHER	\$	400,929	\$	251,229	\$	100	\$	33,506	\$	72,000	\$	44,094	\$	-				
TOTAL OF REVENUE ACCOUNTS:	\$	18,924,734	\$	6,124,616	\$	16,370	\$	8,893,558	\$	477,000	\$	1,441,022	\$	310,000	\$	117,610	\$	1,544,558
EXPENSE ACCOUNTS																		
ADMINISTRATION	\$	6,267,458	\$	2,253,836	Ś	13,556	Ś	1,298,893	Ś	436,672	Ś	443,623	Ś	191,449	Ś	117,365	Ś	1,512,064
TENANT SERVICES	\$	56,049	\$	56,049	~	20,000	Ψ.	2,230,030	Ψ.	.50,572	*	0,023	Ψ.	202,	Ψ.	227,000	Ψ	2,322,00
UTILITIES	Ś	827,964	\$	772,101	Ś	34,652					Ś	20,011					\$	1,200
MAINTENANCE COSTS	Ś	2,667,246	Ś	2,628,812		16,146					Ś	11,070	Ś	5,188			\$	6,030
INSURANCE	Ś	355,115	Ś	260,804		37,008	Ś	15,139	Ś	5,000	Ś	3,981		8,062			Ś	25,121
PROTECTIVE SERVICES CONTRACT	Ś	180,165	\$	40,902	*	,	7		т	2,222	Ś	139,263	т	-,			*	
GENERAL EXPENSES	\$	309,234	\$	258,112	Ś	51,122					7							
INTEREST	\$	153,109	Ś	32,109	•	- /							\$	121,000				
PURCHASE & REHABILITATION	\$	290,000		ŕ					\$	290,000			·	,				
HOUSING ASSISTANCE PAYMENTS	\$	7,888,335					\$	7,888,335		,								
TOTAL OF EXPENSE ACCOUNTS:	\$	18,994,675	\$	6,302,725	\$	152,484	\$	9,202,367	\$	731,672	\$	617,948	\$	325,699	\$	117,365	\$	1,544,415
EXCESS (DEFICIT)OF REVENUE OVER EXPENSES	\$	(69,941)	\$	(178,109)	\$	(136,114)	\$	(308,809)	\$	(254,672)	\$	823,074	\$	(15,699)	\$	245	\$	143
NON-OPERATING (USES) SOURCES																		
Capital Expenditures	\$	(370,848)	\$	(289,348)	\$	-					\$	(81,500)	\$	-				
Bond Payments	\$	(412,969)	\$	(322,969)		-						, ,,	\$	(90,000)				
Net Asset Sale Transaction	\$	136,600	\$	-	\$	-							\$	136,600				
Operating Transfers Capital Fund	\$	627,714	\$	627,714	\$	-								•				
Operating Transfers General Fund	\$	-		•	\$	136,114	\$	308,809	\$	290,000	\$	(734,923)	\$	-				
NET CASH FLOW	\$	(89,444)	\$	(162,712)	\$	-	\$	-	\$	35,328	\$	6,651	\$	30,901	\$	245	\$	143



2020 Proposed Property Tax Levy 2019 Approved 2020 Proposed **Change In Levy** Levy Levy **General Operations Levy General Operations** \$ 19,195,600 \$ 21,879,300 \$ 2,683,700 150,000 150,000 Ś Provision for Tax Delinquency \$ **Total General Operations Levy** \$ 19,345,600 \$ 22,029,300 \$ 2,683,700 Supplemental Parks Levy \$ 280,000 \$ 280,000 \$ **Capital Projects Levy** \$ 6,982,600 \$ 6,982,600 \$ **Debt Service** Infrastructure Permanent Improvements 280,000 \$ 280,000 **Total Capital Projects Levy** 7,262,600 \$ 7,262,600 \$ **Street Light Levy** \$ 1,307,600 \$ 1,307,600 \$ **Street Maintenance Utility Levy** \$ 235,700 Street Maintenance 2,264,300 \$ 2,500,000 \$ Street Maintenance Debt 735,700 \$ \$ (735,700)\$ **Total Street Maintenance Utility Levy** 3,000,000 \$ 2,500,000 (500,000) **Total City Property Tax Levy** 31,195,800 \$ 33,379,500 2,183,700 **Parks Referendum Levy** 2,600,000 \$ 2,600,000 \$ **Property Tax Value Growth** 2,029,700 6.51% **Proposed City Levy Tax Impact** 154,000 0.49% 2020 Proposed City Tax Levy Increase 2,183,700 7.00%

MOTION TO AMEND RESOLUTION 19-0640

BY COUNCILORS SIPRESS AND FILIPOVICH

We move to amend Resolution 19-0640 as follows:

CITY PROPOSAL:

RESOLVED, that pursuant to Minnesota Statutes, Section 275.065, the city council adopts the following proposed tax levy:

- Section 1. The sum to be raised by taxation for the year 2020 for general operations is hereby determined to be the sum of \$33,379,50033,836,500 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts of the city, as set forth in the following sections, viz:
- Section 2. There will be levied for the support of the general fund the sum of \$22,029,300.
 - Section 3. There will be levied for support of the Parks fund the amount of \$280,000
- Section 4. There will be levied for the support of the street lighting fund the amount of \$1,307,600.
- Section 5. There will be levied for additional support to phase out the street lighting fund the amount of \$457,000.
- Section <u>56</u>. For the payment of debt, there will be levied for the general obligation debt fund the sum of \$6,982,600.
- Section 67. That pursuant to Laws of Minnesota 1971, Chapter 824, to pay for the portion of the cost of local improvements which will not sustain a special assessment, there will be levied for the permanent improvement fund the sum of \$280,000.
- Section 78. There will be levied for the support of the street maintenance utility fund the amount of \$2,500,000

STATEMENT OF PURPOSE: The purpose of this Motion to Amend Resolution19-0640 is to finance the street light fee phase out and add the street light fee to the levy.



DECEDENAME ADDRESS & DUONE

CITY OF DULUTH CITY CLERK'S OFFICE

330 City Hall 411 West First Street Duluth, Minnesota 55802-1189 Phone (218) 730-5500 Fax (218) 730-5923

FOR OFFICE U	JSE ONLY
DATE	
LICENSE #	
Old License New License	_ Type 11 Type 11-5

GOVERNMENT DATA PRACTICES ACT - CLASSIFICATION WARNING: The data you supply on this form will be used to process the license you are applying for. You are not legally required to provide this data, but we will not be able to process the license without it. Some of the data will be classified as public data if and when the license is granted. Private financial information including a tax identification number and social security number are classified as private data and will be available to governmental personnel and other governmental agencies whose access is necessary to perform their

LIQUOR LICENSE APPLICATION

License applied for:	Individual Fees	Indicate below
Investigation fee (one time)	\$ 209.00	\$ 209.00
On Sale Intoxicating Liquor	4317.00	
On Sale Sunday	178.00	
Dancing	1,130.00	
Additional Bar (each)	571.00	
After Hours Entertainment	262.00	
2:00 A.M. (Issued by the State - see form attached)	N/C (State fee)	
Liquor License Transfer Fee (For transfers only)	358.00	
Diquot Dicense Transcer 200 (2 of transcer conf)	TOTAL:	\$

DVICTORIOG NAME ADDRESS & DUONE

(Individual/corporation/partnership) 118 S 27TH AVE W DULUTH, MN 55806	NOBLIS POUR 1907 W SOPERIOR ST DULUTH, MW \$5806
MANAGER'S NAME, ADDRESS & PHONE NO. LOUIS HANSON ZOOS SWAN LAKE Rd DULUTH, MN 55812 Email:	NAME & ADDRESS OF PROPERTY OWNER: OMC TWO, LLC 1/8 5 Z7 TM AUF W DULUTH, MN 55806 LICENSE PERIOD: 9/1/ - 8/31/
MAILING ADDRESS IF OTHER THAN BUSINESS ADDRESS ADDRESS IF OTHER THAN BUSINESS ADDRESS	



CITY OF DULUTH CITY CLERK'S OFFICE 330 City Hall 411 West First Street Duluth, Minnesota 55802-1189 Phone (218) 730-5500

Fax (218) 730-5923

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

1. Name of Applicant (individual, partnership or corporation or association) that owns the business to be
licensed: MALE NOBLE POUR, LLC
2. Trade Name: MANE NOBLE POUR
3. Address of place to be licensed: 1907 W Superior ST DULUTH, MW 55806.
4. Designated Serving Areas (i.e. ground floor, second, deck, etc.) GROND FLOOR
5. Name and address of owner of building: OMC TWO, LLC 118 S. Z7 W NUEW DOLUTE
Any connection with applicant? 4ES Who receives the rent: 6mc, LLC.
5. Who will direct the operation of the business or serve as manager on the premises? List name, address & title:
7 If partnership, give name of each partner and percent of ownership, and if limited partnership, give details:
8. If corporation, list all stockholders, directors, officers and percent of stock or number of shares owned by each: THOMAS HANSON - 88% LOUIS HANSON 4% JEFFREY PETCOFF 4% DANIEL LEFEBURE 4%
9. State approximate distance of this establishment from nearest academy, college, university, church or school:
10. State whether any consideration, money or property, has been paid, or will be paid, given, exchanged or
pledged, by anyone, and to whom, for the purchase or operation of this business. State the amounts in
detail: NA
Failure to answer all questions truthfully on this application and attached "Exhibit A" which is made a part thereof, will be just cause for revocation of your license.
I (we) hereby certify that the applicant will be the sole owner and operator of this business to be conducted under the license and I (we) will notify the City Council in writing of any change in ownership in this business before the change is made, for the approval of the Alcohol Gambling & Tobacco Commission and City Council. I (we) have read the foregoing questions, and answers to said questions are true of my knowledge. I (we) will comply with all the provisions of the Alcoholic Beverage Code and the laws and regulations and their amendments.
Signature: The Date: 8-28-19
Signature:

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: JOEL'S, LLC, d/b/a Mexico Lindo, 600 East Superior Street #201, Duluth, Minnesota 55802

PLEASE BE ADVISED that on September 4, 2019, at 4:45 p.m. in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings, Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 through §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota

Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of hearing.

The person representing the City is Steven B. Hanke, Deputy City Attorney. His telephone number is (218)730-5271, email: shanke@duluthmn.gov.

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

- 1. JOEL'S, LLC, d/b/a Mexico Lindo, is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at the premises located at 600 East Superior Street #201, Duluth, Minnesota 55802.
- 2. An employee of the Licensee sold alcoholic beverages on the premises to two persons under the age of 21 at approximately 4:00 p.m. on Thursday, June 27, 2019 in violation of Duluth City Code Section 8-28 (Sales to minors prohibited). The employee was issued an administrative citation for said violation. The Licensee was also issued an administrative citation for its employee's violation pursuant to Duluth City Code Section 8-35 (Licensee personally liable for unauthorized sales). See City Docs. No. 1-2 (Duluth Police Department Report Case No. 19100500; City of Duluth Ordinance Violation Tickets.)
- 3. The employee pled guilty by paying his administrative citation on or about August 1, 2019,
- 4. Licensee has not yet paid his administrative citation.
- 5. Licensee's on-sale liquor license renewal application dated July 10, 2019 acknowledges that on "06-27-19 Employee sold alcoholic beverage to underage.")
- 6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code 8-9.

- Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.
- 8. Section 8-9(c) provides that "No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action."

Pursuant to City Code Sections 8-9(a) and (b) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-2.)

Dated: August 13, 2019

Ian B. Johnson, Secretary Alcohol, Gambling and Tobacco Commission

and.

STEVEN B. HANKE, Deputy City Attorney

and

Gunnar B. Johnson, City Attorney Attorneys for the Alcohol, Gambling and Tobacco Commission

Duluth Police Department Main Office

Reported Date: 06/27/2019 Time: 16:16 Case No.: 19100500

Code: Crime:

Class: Occurrence Date:

Location: 600 E SUPERIOR ST, DU, DULUTH, MN, , 55802; MEXICO LINDO

NARRATIVE

SYNOPSIS

This report will detail my involvement with an alcohol compliance check at Mexico Lindo, 600 E Superior St, in which a server, RIVERA-REYES, was cited for Sale to a Minor, City Ordinance 8-28, and the licensee was cited for Licensee Liable for Unauthorized Sale, City Ordinance 8-35.

NARRATIVE

On 06/27/2019 at approximately 1600 hours, I, Officer C. Vang, working in plainclothes along with my underage decoys, and and and went to the Mexico Lindo Restaurant located at 600 E Superior St to conduct an alcohol compliance check because of numerous complaints about staff serving underage patrons:

I waited outside of the restaurant in the hallway of the Fitgers complex while and Sent into the restaurant to try and obtain alcoholic beverages. I told had been text me if the restaurant sold them alcoholic beverages.

Approximately 15 minutes later, I received a text saying that the server served alcoholic beverages. I entered the restaurant and sat with sold and scould see a strawberry margarita sitting on the table top and Stein said he had a "Blue Moon" beer.

Industrial that the server was the male wearing a red shirt and that he never ask for identifications. A few minutes later the server, whom and dentified as the one who served them the drink came to the table that we were sitting at. At this time, I identified myself as a police officer and asked if he served

and and the alcoholic beverages and he said that he did. I asked the server if he had a driver's license and he said that he did. The MN driver's license identified the server as JUAN LUIS RIVERA-REYES, DOB

I asked RIVERA-REYES if there was a manager around and he went and got another person who identified himself as the manager ESTEBAN MAGANA

While RIVERA-REYES and MAGANA were standing next to the table we were sitting at, I heard RIVERA-REYES utter to MAGANA that he served alcohol and did not ask for identifications. I asked if there was a place we could talk and I, along with RIVERA-REYES, and MAGANA, went to the back right seating area of the restaurant where there were no other people around.

While sitting in the back right part of the restaurant, I explained to RIVERA-REYÉS and MAGANA that RIVERA-REYES had served alcoholic drinks to two underage patrons and that he was going to be cited for this violation, but that the licensee was also liable for the unauthorized sale, so that there would be two different citations at this point. I wrote out Citation #003459 to RIVERA-REYES for sale to minor and explained to him that he could pay the fine or appeal it, but that he needs to follow the directions on the back of the citation. After the completed citation was given to RIVERA-REYES, he went on about his business as a server. The manager, MAGANA, was sitting at the table this whole time with me and after filling out the citation for Licensee Liable for unauthorized sale, I gave that citation to MAGANA and also advised him they can pay the fine or if they want to appeal it, just follow the directions on the back of the citation. MAGANA told me that he's told all his employees to make sure that they check identifications, but apparently today RIVERA-REYES did not. I told MAGANA that I was conducting compliance checks on all alcohol establishments this last winter/spring and was at Mexico Lindo and at that time, I told the manager whom I thought was MAGANA but he corrected me and said it was another manager, that they needed to check identifications.

MAGANA asked me if these citations would affect their liquor license and I told him that they would have to come before the Alcohol, Gambling, and Tobacco Commission Board meeting at a later date, but I don't see, as this being their first time violating this ordinance, that their license would be suspended or revoked. MAGANA did not have any further question so we left the restaurant at this point.

.0

This Citation charges you with a violation of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number	2	Date/Time Issued	issued	
19100 530.	` ຜ	613719 8/16 6/18	19 61	633
Alleged Violator's Name	dame .	-		
100				
Address		City	State	Zip Code
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	4		The state of the s	

ETE STATE OF A	25.3%	
Sayura Bay	Cator	ordinance No. 8-35 alcolocitis
	Wedel Wolfston-miorgraficht	E Superior
License No.	Take	Charge E. S. Charge Live Description

CITY OF DULUTH

This Citation charges you with a violation of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

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KR Number	Date/Time Issued
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CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: Joel's LLC d/b/a Mexico Lindo, 600 East Superior Street Suite #201, Duluth, Minnesota 55802

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on September 4, 2019, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on September 4, 2019 upon completion of the hearing.

Deputy City Attorney Steven B. Hanke appeared on behalf of the City licensing staff. Attorney Andrew Poole and Managers Felipe Mata and Lorena Velez appeared on behalf of Licensee.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record, which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn. Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

- 1. Licensee is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at the premises located at 600 East Superior Street, Suite #201, Duluth, Minnesota 55802.
- 2. An employee of Licensee sold alcoholic beverages on the premises to two persons under the age of 21 at approximately 4:00pm on Thursday, July 27, 2019 in

- violation of Duluth City Code Section 8-28 (Sales to minors prohibited).
- 3. The employee was issued a citation for said violation and pled guilty by paying the \$200 fine.
- 4. The Licensee was also issued citation for its employee's violation pursuant to Duluth City Code Section 8-35 (*Licensee liable for unauthorized sales*).
- 5. The Licensee pled guilty for said violation by paying the \$200 fine.
- 6. This is the Licensee's first violations for purposes of the presumptive penalty schedule provided for in Duluth City Code 8-9.
- 7. Pursuant to Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.
- 8. Section 8-9(c) provides that "No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable -within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action."
- 9. Records supporting these findings of fact are attached to the enclosed Notice of Hearing as City document numbers 1-2.

CONCLUSIONS

Based upon these facts, the Commission makes the following conclusions:

- 1. An employee of Licensee sold alcoholic beverages on the premises to two persons under the age of 21 at approximately 4:00pm on Thursday, July 27, 2019 in violation of Duluth City Code Section 8-28 (Sales to minors prohibited).
- The Licensee is liable for this violation pursuant to Duluth City Code Section 8 (Licensee liable for unauthorized sales).
- 3. This is the Licensee's first violations for purposes of the presumptive penalty schedule provided for in Duluth City Code 8-9.
- 4. Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.
- 5. There are no aggravating or mitigating circumstances.

RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council find:

- 1. a first violation occurred; and
- 2. impose a \$500 fine payable within 30 days of final City Council action.

Dated:	9-	13:	-19	

CITY OF DULUTH ALCOHOL, GAMBLING AND TOBACCO COMMISSION

Patricia Stolee, President

FIRE SYSTEMS PLANS EXAMINER

SUMMARY/PURPOSE

Ensure public safety by implementing fire protection systems such as fire alarms and automatic sprinkler systems that are designed and installed to comply with required codes and standards.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- 1. Obtain and review commercial and residential sprinkler/fire alarm plans and specification for compliance with fire codes, ordinances, statutes, and regulations.
- 2. Evaluate performance based designs and provide analysis of fire science/modeling for code officials.
- 3. Interpret complex regulations and recommend approval of equivalents for approval by the authority having jurisdiction.
- 4. Interpret and enforce provisions of the fire code and other laws and regulations related to fire protection systems.
- 5. Collaborate with City staff, builders, architects, engineers, and others to discuss projects and plans related to fire suppression and alarm systems.
- 6. Review plans for building systems and components regulated by the fire code such as high-piled storage, spray booths, commercial kitchen hoods suppression systems, dust collection systems, hazardous materials storage and containment, medical gas systems, and others in cooperation with the Building Official and Building Safety Division staff.
- 7. Perform mathematical calculations to validate fire protection system designs for compliance with requirements.
- 8. Prepare comments identifying code deficiencies and explaining code requirements.
- 9. Process and document reviews and inspections using designated software system.
- 10. Maintain proficiency with code changes and ordinances.
- 11. Perform site inspections to confirm compliance with approved plans.
- 12. Coordinate with building safety personnel in establishing schedules and methods for providing fire protection plan review services.
- 13. Attend and participate in workshops, meetings, seminars, and/or training opportunities regarding certification, to acquire current industry knowledge, and to maintain current knowledge.
- 14. Be an effective team member by exhibiting self-motivation, supporting other employees in handling tasks, interacting effectively and respectfully with others, showing a desire to contribute to the team effort, accepting assignments willingly, and completing tasks within agreed upon timelines.
- 15. Other duties may be assigned.

JOB REQUIREMENTS

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skills, and abilities required.

1. Education & Experience Requirements

A. Five (5) years of verifiable experience performing inspections, plan review, design, or installations specific to fire protection systems.

2. License Requirements

- A. Must obtain fire sprinkler and fire alarm system plans examiner certification through a national model code agency such as the International Code Council (ICC) or National Fire Protection Association (NFPA) or state of Minnesota certification within six (6) months of hire
- B. Possess and maintain a valid Minnesota Class D Driver's License or privilege by date of hire.

3. Knowledge Requirements

- A. Extensive knowledge of applicable fire codes, ordinances, and statutes, where applicable.
- B. Extensive knowledge of sprinkler and fire alarm system installation methods.
- C. Extensive knowledge of legal aspects of fire code enforcement.
- D. Knowledge of algebra and geometry in order to evaluate designs for compliance with the required code.
- E. Knowledge of vocabulary used in sprinkler and fire alarm system plan review.
- F. Knowledge of office methods and procedures.

4. Skill Requirements

- A. Skill in communicating effectively verbally and in writing.
- B. Skill in operating computers, calculators, and other office machines.
- C. Skill in reading and interpreting specifications, codes, and ordinances.
- D. Skill in performing mathematical calculations related to fire protection system designs.
- E. Skill in properly applying fire codes and ordinances, where applicable.
- F. Skill in maintaining records and files, both paper and electronic.
- G. Skill in interpersonal and customer relations and conflict management.
- H. Skill in analyzing difficult situations and handling controversy.

5. Ability Requirements

- A. Ability to use technology and software for communication and documentation.
- B. Ability to exercise independent judgment.
- C. Ability to read and interpret plans and specifications.
- D. Ability to develop alternative solutions to problems.
- E. Ability to persuade people to work towards alternative solutions to problems.
- F. Ability to interpret instructions furnished in written, verbal, or diagrammatic form.
- G. Ability to read and interpret complex legal regulations.
- H. Ability to create and maintain a positive working environment that welcomes diversity, ensures cooperation, and promotes respect by sharing expertise with team members, fostering safe work practices, and developing trusting work relationships.

6. Physical Ability Requirements

- A. Ability to transport oneself to, from, and around sites of projects, tests, and other assignments.
- B. Ability to frequently walk, climb stairs and occasionally climb ladders, stoop, kneel, and reach overhead.
- C. Ability to occasionally lift and carry articles such as plans and specifications weighing up to 30 pounds.
- D. Ability to attend work on a regular basis.

HR: RT	Union: Basic	EEOC: Technicians	CSB: 09/03/2019	Class No:
WC: 9410	Pay: 30	EEOF: Housing	CC:	Resolution:



Business Subsidy Agreement Pre-Approval Report

TAF- Roers Lake and First Redevelopment Project

Business Subsidy Recipient Information

- 1. Name of Business or Organization: Roers Lake and First LLC
- 2. Address: 110 Cheshire Lane | Suite 120- Minnetonka, MN 55305
- 3. Does the recipient have a parent corporation?

No.

4. Did the recipient relocate as a result of signing this agreement?

No.

Summary Agreement Information

1. Brief description of the proposed project

The Project will consist of reconfiguring and remodeling the two buildings located at 1 (five-stories) and 5 (three-stories) East 1st street. Combined, the project consists of 55,000 square feet, including 9,000 square feet of commercial space and 47 apartment units (46,000 square feet). Of the apartments units, 10% will be available at rents affordable to those earning 80% or less of the Area Median Income. The buildings currently host commercial tenants on the first floors, but the upper floors of the buildings remain vacant. This project will utilize state and federal historic tax credits which the Developer will reinvest in the structure and integrity of the building, adhering to historic perseveration requirements. The proposed business subsidy in the form of tax abatement will be used toward the renovation and establishment of housing within the project.

2. Total value of proposed project

Total Development Costs: Approximately \$11 million.

Total projected estimated market value: Approximately \$5.5 million.

- 3. Summary of type(s) of subsidy and total dollar value for each
 - a. Type of assistance:
 - i. Tax Abatement Financing

- b. Grantor of assistance
 - i. City of Duluth and St. Louis County
- c. Total dollar value of assistance
 - i. Up to \$700,000 on or approximately 6% of the total project cost.
- 4. What other financing avenues were pursued?
 - a. State historic tax credits (secured)
 - b. Federal historic tax credits (secured)
 - c. Opportunity Zone Equity Fund (secured)

Applicability of Current Duluth and State Laws

- 1. Is this project covered under Duluth's Prevailing Wage law as defined in Article 2, Section 2-25? I
 - a. Yes.
- 2. Is this project covered under Duluth's Project Labor Agreement law as defined in Article 2, Section 2-29? If not, state the specific applicable exclusion.
 - a. Yes.
- 3. Is this project is covered by Duluth's Living Wage law as defined in Article 26, Chapter 2 of the Duluth City Code?
 - a. Yes.
- 4. Is this project is covered by the business subsidy statute as defined in Minnesota Statutes 116J.993-.995 and subject to reporting?
 - a. It is covered under the City's Business Subsidy criteria and will be subject to reporting.

Public Purpose and Public Benefit Criteria

- 1. Public Purpose Criteria. State which two (minimally) of the five public purposes this project meets with a brief explanation of why it the proposed project meets this criteria.
 - a. High quality jobs.
 - i. This project does not create any permanent jobs but will create prevailing-wage level construction jobs over its development.
 - b. Job retention
 - i. The limited housing supply is frequently cited as a challenge for Duluth businesses when recruiting and retaining employees. This project provides new market rate and affordable housing options in our city's largest employment center, creating more options for existing and would-be employees for our local businesses.
 - c. Diversify Duluth's economy
 - i. The downtown district contains the highest concentration of the Duluth's workforce; the vast majority of downtown employees commute from outside the employment core. Again, this is in part due to the limited availability of housing downtown. Additionally, the building is largely vacant and is

underutilized. This redevelopment invests in a historic building, reducing potential blight in our downtown, and provides market rate housing options at the heart of our downtown community. More people living downtown means more spending at local businesses throughout the week, year round.

d. Quality of life

i. As previously mentioned, many employees working downtown commute from across and outside of the community. This project provides the opportunity for those employees to live where they work, rendering some households able to eliminate one or more automobile; this in turn should reduce both the number of parking spaces needed downtown and the impact on our streets. Lastly, more downtown residents means healthier service and retail businesses, which leads to growth opportunities and a more vibrant city-core.

e. Tax Base

- i. The tax base is projected to increase from the current net tax capacity of \$19,482 to a net tax capacity of approximately \$84,000.
- 2. Preferential Public Benefit Criteria. Which other preferential public benefit criteria does this project meet, if any? Provide a brief explanation of how it meets the criteria.
 - a. Locally owned businesses
 - i. When available, local contractors will be hired to remodel and improve the building.
 - b. Workforce development and hiring low-income, unemployed and hard-to-employ residents
 - The construction of the project will be accompanied by hiring goals through the City of Duluth's Community Benefit Program, including providing building trades-opportunities for women and those populations experiencing barriers to employment.
 - c. Protected class business owners
 - i. See above.
 - d. Other community benefits
 - The project will utilize existing parking on site and has entered into a Lease
 Agreement with the City for space within the Medical District parking ramp. This
 results in a more efficient use of public infrastructure.
- 3. Duluth Comprehensive Plan and other City Plans
 - a. What current City plans, if any, cover this project? How does the project relate to the applicable plans?
 - i. The future land-use designation of the redevelopment site is Central Business Primary (CBP). According to the Imagine Duluth 2035 Comprehensive Plan, the CBP "encompasses a broad range of uses and intensities:
 - 1. Governmental campus
 - 2. Significant retail
 - 3. Entertainment and lodging
 - 4. Opportunities for high-density housing

- 5. Central plaza, public/ open space
- 6. Public parking facilities"
- b. Additionally, the project adheres to the following principles identified in the Comprehensive Plan:
 - 1. Principle #1 Reuse previously developed lands
 - 2. Principle #4 Support economic growth sectors
 - 3. Principle #8 Encourage mix of activities, uses and densities
- c. Are there any special zoning or permitting exemptions that need to be made for this project? If yes, provide a brief explanation.
 - i. No.

Specific project goals

- 1. For each public purpose state the specific, measurable and tangible goals that were set for the project:
 - a. Public Purpose Type of goal
 - i. The public purposes discussed above will be achieved by the reinvestment in and reuse of the five-story, 55,000 square foot historic building.
 - b. Specific Goals established
 - Achievement of the Business Subsidy Goal in accordance with City Council Resolution 19-0629R shall be measured as follows: Developer agrees that on or before December 31, 2021, it shall have constructed the Project on the Property in accordance with the Development Agreement.
 - c. Target Attainment Dates
 - i. See above.
- 2. Progress toward these goals will be reported by the recipient of a business subsidy on an annual basis by March 1 for the preceding year (see Section 8 (d) Business Subsidy Criteria), and provided to the Council by April 1.

TAX ABATEMENT AGREEMENT

County of St. Louis, and City of Duluth

THIS TAX ABATEMENT AGREEMENT, entered into this day of, 2019, by and between the County of St. Louis , a municipal corporation
created and existing under the laws of the State of Minnesota ("County") and the City of Duluth , a municipal corporation created and existing under the laws of the State of Minnesota
("City") is in response to the following:
A. City has a documented unfulfilled need to provide housing in the downtown area of Duluth.
B. Roers Lake & First LLC ("Developer") desires to redevelop property at 1 and 5 East First Street into approximately 47 rental units, 10% of which will be units with rents restricted to reflect 80% area median income to assist an unfulfilled need for such housing in downtown Duluth.
C. City desires to reimburse Developer for eligible costs associated with site development and construction of the project through abatement of real property taxes to be received by the City from payment of taxes on the property upon which the project will be located, all as authorized by Minnesota Statutes §§ 469.1813 - 1815.
D. County has agreed to assist City in reimbursing such costs based upon the County's ability to reimburse City for said costs through the abatement of real property taxes to be received by the County from the payment of taxes on the property upon which the project will be built, all as authorized by Minnesota Statutes §\$Sections 469.1813-1815.
E. Pursuant to County Board resolution
NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE I

<u>Definitions</u>: For the purposes of this Agreement the following terms shall have the meaning hereinafter ascribed to them:

1.1. <u>Project</u>: shall mean the redevelopment of the property located at 1 and 5 East First Street in downtown Duluth which project will be known as First Street Lofts

containing approximately 47 rental units, at least 10% of which (minimally, 5 rental units) will be rent restricted at 80% of area median income.

- 1.2. <u>Property</u>: shall mean the property upon which the Project will be constructed located in St. Louis County, Minnesota and legally described on Exhibit A attached hereto and made a part hereof.
 - 1.3. <u>TAF</u>: shall mean Tax Abatement Financing.
- 1.4. <u>Development Agreement</u>: shall mean that agreement between City and Developer which provides for the reimbursement to Developer of TAF-Eligible Costs up to the amount of \$700,000, up to \$300,000 of which will be funded through County tax abatement and up to \$400,000 of which will be funded through City tax abatement. An executed copy of the Development Agreement will be provided to County prior to or concurrent with County's execution of this Agreement.
- 1.5. <u>TAF Proceeds</u>: shall mean the portion of County real property taxes on the Property which is actually received by County in any year.
- 1.6. <u>TAF-Eligible Costs</u>: shall mean the eligible costs associated with redevelopment of the Project as shown on Exhibit B, attached hereto and made a part hereof, incurred as part of the Project and paid for by Developer.

ARTICLE II

TAF-Eligible Costs Stipulation. The parties hereto hereby agree that Developer will incur the TAF-Eligible Costs in furtherance of the Project that are listed on Exhibit B and that the amount of those costs for each item of such costs related thereto is substantially as shown on said Exhibit B. The parties further stipulate that the total amount of TAF-Eligible Costs incurred by Developer will be up to \$400,000 per the City and up to \$300,000 per the County. By requesting TAF, City certifies to County that it has determined the Project would not proceed without TAF, and understands that County will rely on such determination in passing any board resolution authorizing the transfer of TAF Proceeds to City.

ARTICLE III

TAF Proceeds to City.

3.1. Commencing with real estate taxes payable in the year 2021, County hereby agrees and commits that it will remit all TAF Proceeds as herein defined to City for the term of this Agreement in an amount not to exceed \$300,000.00. Said payments shall be due and payable to City no later than thirty (30) days after receipt thereof by County. County shall be obligated to pay those TAF Proceeds to City actually received by County and such obligation shall apply to such proceeds only when and to the extent received by County. The City has also agreed to abate up to \$400,000 of its share of real property taxes, which taxes are not included within this agreement.

- 3.2. Notwithstanding anything to the contrary herein, County's obligation to pay the TAF proceeds is furthered conditioned upon: a) Developer having fully paid real estate taxes on the Property in the relevant tax-payable year; b) no challenge to the tax assessment having been served upon County; c) certification from the City that TAF-Eligible Costs of at least \$300,000 have been paid by Developer; and d) no default or termination of the Development Agreement having occurred.
- 3.3. Payments may be made by check or wire transfer, as mutually agreed by the finance staff of the County and City, respectively. If a payment is not made in a particular year because the conditions described in Section 3.2 are not met, City's right to receive the payment in that year is terminated (i.e., payments are not withheld and paid in a future year).
- 3.4. The City shall apply the County TAF Proceeds solely to reimburse Developer, pursuant to the Tax Abatement Development Agreement, for TAF-Eligible Costs.

ARTICLE IV

Term. The term of this Agreement shall be deemed to run from the date of first receipt of TAF Proceeds by City from County for a period of ten (10) years or until the total amount of TAF Proceeds received by City equals the amount of \$300,000.00, whichever is sooner (the "Termination Event"). Upon the happening of the Termination Event, this Agreement shall terminate and County shall have no further obligation to remit TAF Proceeds to City.

ARTICLE V

<u>Default</u>. If City gives Developer any notice of default under the Development Agreement, City will promptly provide a copy of the default notice to County.

ARTICLE VI

Force Majeure. In the event that County is prevented from making the payments to City required by Article III above due to events or circumstances which were beyond its control, including but not limited to laws enacted by the State of Minnesota Legislature, it shall be County's obligation to use its best efforts to secure an alternative source or sources of funding to meet said obligation and to the extent that such source or sources are available, County is obligated to make the payments to City in amounts which County would have been obligated to pay City pursuant to said Article III, had it not been for the event of Force Majeure; provided that nothing herein shall be deemed to require County to make such payments from its General Fund or to levy additional property taxes on other property in St. Louis County to make such payments.

ARTICLE VII

Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

ARTICLE VIII

Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota without regard to its choice-of-law provisions. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

ARTICLE IX

<u>Severability</u>. 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.

ARTICLE X

<u>County Required Terms</u>: The City will incorporate the following text into the Development Agreement:

- 10.1 County Estimation of Value: The Developer understands that the County estimation of value is based upon the following assumptions: (1) currently existing market conditions; (2) a presumption that the existing market conditions continue without significant change; (3) the full completion of the Project, consistent with the plans provided to City and to St. Louis County; and (4) completion of the Project on the schedule provided to City and St. Louis County. This estimated valuation is based upon the understanding that market conditions cannot be predicted and may change by 2021. Other factors may impact the actual assessment value of the property once the Project is complete, including but not limited to onsite inspection of the completed Project.
- 10.2 The Developer has made its own projections of Tax Abatement and revenues to be generated from the Project and of the Developer's returns on cost or investment and the Developer has not relied on any assumptions, calculations, determinations or conclusions made by the City, the County, their governing body members, officers or agents, including independent contractors, consultants and legal counsel, servants and employees thereof, with respect to the foregoing or in determining to proceed with the Project.

ARTICLE XI

Reporting. The parties agree that the County Abatement does not constitute a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidy Act") as the Project will provide housing. In the unlikely event the Commissioner of the Department of Employment and Economic Development ("DEED") declared the County Abatement to be subject to the reporting identified in Section 116J.994, subd. 8(b) of the Business Subsidy Act, City agrees to file such reports on the County's behalf, with copies to the County. If the City fails to timely file such reports with DEED, and fails to cure that default within thirty (30) days after receiving written notice from the County regarding such default, the County may terminate this Agreement.

ARTICLE XII

<u>Entire Agreement</u>. This Agreement, including Exhibits A and B, constitutes the entire agreement between County and City and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto.

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

CITY OF DULUTH	COUNTY OF ST. LOUIS
By	By Board Chair
Attest:City Clerk	ByCounty Auditor
Countersigned:	Approved as to Form and Execution:
ByCity Auditor	ByAssistant County Attorney
Approved as to Form and Execution:	
ByCity Attorney	

 $I:\ATTORNEY\DEDA\ (015)\Development\ Agreements\ (DA)\Roers\ (19-0113)\Tax\ Abatement\ Agreement\ with\ St.\ Louis\ County\ 09-13-19\ final.docx$

EXHIBIT A

Legal Description of the Property

PID 010-0930-00010: DULUTH PROPER 1ST DIVISION EAST 1ST STREET - LOT 1 PID 010-0930-00020: DULUTH PROPER 1ST DIVISION EAST 1ST STREET - LOT 3

EXHIBIT B

TAF-Eligible Costs

TAF-Eligible Costs	\$ Amount
Construction Contract	\$6,498,140
Expected Contract Increases	\$132,860
Construction Contingency	\$455,000
Asbestos Abatement/Containment	\$55,000
Architect Fees	\$125,000
Total TAF-Eligible Costs	\$7,266,000

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

ROERS LAKE & FIRST LLC

Dated as of September_____, 2019

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EXHIBIT A – City Abatement Resolution EXHIBIT B - County Abatement Resolution EXHIBIT C – TAF-Eligible Costs EXHIBIT D - Certificate of Completion

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as the "City", and Roers Lake & First LLC, a Minnesota limited liability company, hereinafter referred to as "Roers."

WHEREAS, Roers proposes to redevelop the buildings located at 1 and 5 East First Street in downtown Duluth into approximately 47 studio, one and two bedroom units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% area median income, as well as approximately 9,000 square feet of commercial space; and

WHEREAS, the City and the County of St. Louis, Minnesota desire to assist the project with abatement of real estate taxes in an amount not to exceed \$400,000 in City property taxes and not to exceed \$300,000 in County property taxes to fill the gap in the available funding for the project, making the project financially feasible; and

WHEREAS, Roers is pursuing a commitment for financing and has agreed to make available sufficient equity monies that, when combined with the tax abatement, will be sufficient to complete the project;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

<u>Abatement Resolutions</u> means the City Abatement Resolution and the County Abatement Resolution.

Agreement means this Development Agreement and its exhibits as may be amended, restated, supplemented or otherwise modified from time to time.

Architect means the firm of Foundations Architecture.

<u>Building</u> means a structure on the Property containing approximately 47 studio, one and two bedroom units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% of the area median income (AMI) for St. Louis County as established by HUD as well as approximately 9,000 square feet of commercial space.

Business Subsidy Act means Minnesota Statutes §§116J.993 through 116J.995.

<u>City Abatement Resolution</u> means a resolution approved by the Duluth City Council, substantially in the form of that attached hereto as Exhibit A, authorizing the abatement of the real property taxes on the Property and the Project paid to the City for a term of up to twenty (20) years which will commence with taxes payable in 2021 and provide for a total of up to \$400,000 of tax abatement to be paid to Roers as provided for in the City Abatement Resolution and this Agreement.

<u>Construction Manager/Contractor</u> means either a construction management firm or a general contractor to construct the Project in accordance with the Plans, Specifications and Elevations approved pursuant to Article III.

<u>Director</u> means the City's Director of Planning and Development or such other person as is designated to act on behalf of her/him with regard to this Agreement.

County Abatement Resolution means a resolution approved by the St. Louis County Board of Commissioners, substantially in the form of that attached hereto as Exhibit B, authorizing the abatement of real property taxes on the Property and the Project paid to the County for a term of up to ten (10) years which will commence with taxes payable in 2021 and provide for a total amount not to exceed \$300,000 of tax abatement to be paid to Roers as provided for in the County Abatement Resolution and this Agreement.

<u>HUD</u> means the U.S. Department of Housing and Urban Development.

<u>Project</u> means the acquisition and redevelopment of the buildings located at 1 and 5 East First Street into approximately 47 studio, one and two bedroom units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% of the area median income (AMI) for St. Louis County as established by HUD, as well as approximately 9,000 square feet of commercial space, both components

collectively titled "1st Street Lofts", to be constructed in accordance with the Plans approved pursuant to Article III and having a total Project cost of not less than Ten Million Five Hundred Thousand Dollars (\$10,500,000).

<u>Property</u> means the real estate located in St. Louis County, Minnesota and legally described as Lots 1 and 3, Duluth Proper 1st Division East 1st Street.

<u>TAF-Eligible Costs</u> means, without intending thereby to limit or restrict any proper definition of such costs under any applicable laws or sound accounting practices, the following tax abatement financing eligible costs associated with redevelopment of the Project as more specifically set forth in Exhibit C:

- A. Obligations incurred for labor and to contractors, builders and materialmen in connection with the acquisition, construction and installation of the Project;
- B. Site improvement and off-site improvement costs required for the construction of the Project;
- C. Fees and expenses of the Construction Manager/Contractor and the Architect, for preparation of plans, drawings and specifications, assistance with bidding and supervising construction, as well as for the performance of all other duties of the Construction Manager/Contractor and the Architect regarding the acquisition and betterment of the Project.

ARTICLE II

Preconditions to Project Construction

Prior to the commencement of construction of the Building and as a precondition to the commencement thereof, Roers shall provide to the City the following items:

A. <u>Title</u>.

Evidence that the Property is owned by Roers in fee simple absolute and that an appropriate policy of title insurance has been issued in the name of Roers.

B. Approvals.

Approvals of the Abatement Resolutions.

C. Construction Plans

Approved Plans, Specifications and Elevations for the construction of the Project as described above and in Article III along with the Architect's or Construction Manager's certified estimate of the construction costs.

D. Construction Contract.

A copy of the executed contract between Roers and the Construction Manager/Contractor necessary to complete the construction of the Project in accordance with the Plans, Specifications and Elevations, approved pursuant to Article III.

E. <u>Proof of Financial Capacity</u>.

Evidence satisfactory to the Director of the ability of Roers to complete the Project, such as payment and performance bonds or a certified letter from Roers's lender stating financial capacity to complete the Project.

F. Financing.

Copies of financing commitments or capital commitments by Roers or a certification as to availability of funds acceptable to Director, which are utilized by Roers so that the total of said commitments and certification are not less than the total construction costs.

G. Construction Cost Certification.

Evidence satisfactory to the Director that the TAF-Eligible Costs of the Project will equal or exceed Seven Million Dollars (\$7,000,000).

H. Additional Documentation

Roers shall also deliver the following documents to the City:

- A certificate of Roers good standing;
- 2. An opinion of legal counsel addressed to the City stating that Roers is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota and has the power to own the Property and conduct its business as now conducted; and that all necessary limited liability company action has been taken by Roers to authorize the execution, delivery and performance by Roers of this Agreement;

 Insurance Certificates satisfying the coverage requirements of this Agreement.

I. Survey.

A survey of the Property prepared by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE III

Project Plans

A. Plans, Specifications and Elevations.

No less than 30 days prior to the commencement of construction of the Project by Roers, or such lesser time as approved by the Director, Roers shall submit working drawings, specifications and elevations for the Project to the Director for approval. All such plans, specifications and elevations shall be in conformance with this Agreement, with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of the City, the State of Minnesota and the United States of America. The Director's approval shall be provided to Roers in writing. If the Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Roers of said rejection together with a detailed explanation of the reason or reasons therefor, Roers shall submit new or corrected plans, specifications and elevations meeting said objections within 15 days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected plans hereinafter provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved in writing by the Director. The Director's approval of Roers's plans, specifications and elevations shall not constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Roers by law.

B. Changes After Initial Approval.

Any material or substantial changes made to plans by Roers after initial review by the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

ARTICLE IV

Construction

A. Construction.

Upon the fulfillment of the preconditions to construction provided for in Articles II and III, Roers shall commence construction of the Project in conformance with the plans approved pursuant to Article III. Provided, however, that said construction work shall be commenced no later than December 1, 2019 and shall be completed not later than December 31, 2021. Notwithstanding the above, the construction period may be extended upon the prior written approval of the Director, such approval not to be unreasonably withheld by the Director.

B. Roers to Bear All Costs.

Except for payments by the City provided for in Article VII, Roers specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.

C. <u>Prevailing Wage and PLA</u>.

Roers shall cause the laborers, mechanics and apprentice-trainees directly employed in the construction of the Project to be paid the wage rates as provided in the federal Davis Bacon Act, as amended. Payroll for the construction trades shall be submitted to the Director on a monthly basis. In addition, Roers shall require that its contractor or contractors constructing the Project enter into a Project Labor Agreement ("PLA") with Roers meeting the requirements of Section 2-29 of the Duluth City Code, 1959, as amended. Roers shall also enter into a Community Benefit Agreement in a form approved by the Director.

D. <u>Progress Reports</u>.

Until construction of the entire Project has been completed, Roers shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of construction of the Project. Additionally, upon reasonable notice, Roers also agrees that it will permit the City access to the Property and the Building to ascertain the progress of the Project.

ARTICLE V

Certificate of Completion

Upon completion by Roers of the construction of the Project in accordance with this Agreement and upon written request for the same from Roers, the Director will furnish to Roers an appropriate certificate certifying completion of construction of the Project, ("Certificate of Completion") substantially in the form of that attached hereto as Exhibit D. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction of the Project undertaken pursuant to this Agreement. Immediately upon issuance of the Certificate of Completion, Roers agrees to record the Certificate of Completion in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recordation, Roers shall immediately submit to the City an executed original of the Certificate of Completion showing the date and document numbers of record, or a certificate copy of the filed original. In the event the Director refuses or denies to provide a Certificate of Completion, the Director will, within said 30-day period, provide Roers a written statement indicating the reasons for such refusal or denial and what measures or actions are required in order to obtain a Certificate of Completion.

ARTICLE VI

<u>Audits</u>

The City and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Roers relating to the construction costs of the Project and compliance with affordability requirements. Additionally, Roers shall cause the Construction Manager/Contractor and the Architect to allow the City and its representatives at all reasonable times and after reasonable notice to inspect, examine and copy all books and records of the Construction Manager/Contractor and the Architect relating to the Project during the construction and for a period of six years after the recordation of the Certificate of Completion. Such records of Roers, the Construction Manager/Contractor and the Architect shall be kept and maintained by Roers for a period of six years following the recordation of the Certificate of Completion as provided for in Article V.

ARTICLE VII

Tax Abatement Assistance

As a part of the financial assistance provided to this Project to make it feasible, the City and St. Louis County have agreed to provide tax abatement assistance in the form of the Abatement Resolutions. Roers understands that the St. Louis County estimation of value is based upon the following assumptions: (1) currently existing market conditions, (2) a presumption that the existing market conditions continue without significant change, (3) the full completion of the Project, consistent with the plans provided to the City and to St. Louis County, and (4) completion of the Project on the schedule provided to the City and to St. Louis County. This estimated valuation is based upon the understanding that market conditions cannot be predicted and may change by 2021. Other factors may impact the actual assessment value of the Property once the Project is complete, including but not limited to onsite inspection of the completed Project.

Tax abatement proceeds shall only be made to reimburse Roers for TAF-Eligible Costs incurred and paid by Roers and only after the Certificate of Completion has been issued. The City shall remit the City abatement amounts to the Project only when, if and as property tax payments are received by the City from the Project and only to reimburse for a portion of the costs of constructing the Project. The County shall remit the County abatement amounts to the Project through the City only when, if and as property tax payments are received by County from the Project and only to reimburse for a portion of the costs of constructing the Project. Notwithstanding anything to the contrary herein, St. Louis County's obligation to pay the County abatement amount is further conditioned upon: a) Roers having fully paid real estate taxes on the Property in the relevant tax-payable year; b) no challenge to the tax assessment having been served upon St. Louis County County; c) certification from the City that TAF-Eligible Costs of at least \$300,000 have been paid by Roers; and d) no default or termination of the Development Agreement having occurred.

All requests for payment of TAF-Eligible Costs shall be approved for payment by the Director. All such requests shall be accompanied by documentation consisting of and establishing the following:

- A. Proof that contractors and suppliers have provided labor and materials to the construction of the Project for which Roers has not been previously reimbursed.
- B. Proof that the contractors and suppliers supplying the labor and materials referenced in Subparagraph A above have been paid therefor, including paid invoices, receipts, canceled checks, necessary lien waivers evidencing the same or comparable evidence of payment.
- C. In addition to the foregoing documentation, the City shall be entitled to request such additional information as it deems reasonably necessary to establish the costs for which reimbursement are requested comply with all requirements of this Agreement.

The City will, on each August 31 and December 31 (each a "Payment Date") commencing August 31, 2021 and terminating on the Termination Date set forth in Article XVI pay to Roers abatement of the taxes received by the City and St. Louis

County during the six-month period prior to that Payment Date, payable from Fund 310-030-5479 (Debt Service, Finance, Tax Abatement). The maximum amount to be paid to the Roers shall be the lesser of the TAF-Eligible Costs and \$700,000 (\$400,000 from City abatement and \$300,000 from County abatement). No interest shall accrue with respect to the principal amount of such costs.

In no case shall the City make payments of tax abatements to Roers pursuant to this Agreement that, together with any other abatements payable by the City and St. Louis County under Minnesota Statutes §§ 469.1812 to 469.1815, exceed in any one year the greater of 10% of the net tax capacity of the City or of the County, respectively, or \$200,000 for the City and the County, respectively; provided that in the event that total abatements payable by the City and/or the County in any year exceed the maximum under this section, the City will pay to Roers a reduced amount of the City/County tax abatements otherwise due pursuant to this Agreement in order for the City and/or the County to remain in compliance with Minnesota Statutes §§ 469.1812 to 469.1815 in that year.

Roers understands and acknowledges that neither the City nor St. Louis County makes representations or warranties regarding the amount of tax abatements that will be generated as a result of the Project. Roers has made its own projections of tax abatement and revenues to be generated from the Project and of Roers's returns on cost or investment and Roers has not relied on any assumptions, calculations, determinations or conclusions made by the City, St. Louis County, their governing body members, officers or agents, including independent contractors, consultants and legal counsel, servants and employees thereof, with respect to the foregoing or in determining to proceed with the Project.

Roers further understands and acknowledges that no assistance is being provided by the City hereunder except as set forth herein, and that Roers shall have no other claim against any funds of the City. The City shall have no obligation to make any payment to Roers from any source other than the tax abatements.

The City shall have no obligation to make any payment to Roers under this Agreement if there is an Event of Default on Roers' part under this Agreement that has not been cured as of the Payment Date.

ARTICLE VIII

Business Subsidy

The provisions of this Article constitute the "business subsidy agreement" for the purposes of the Business Subsidy Act.

- A. <u>Definitions</u>. For the purposes of determining whether the Business Subsidy Goal set forth in Paragraph E of this Article has been met, the following terms shall have the meanings hereinafter ascribed to them.
 - Benefit Date means the date upon which a Certificate of Completion has been issued by the City as set forth in Article V.
 - 2. Reporting Period means that calendar year, from January 1st of any year through December 31st of that calendar year for the period prior to the year in which a report referred to in Paragraph F of this Article is required.
- B. <u>Business Subsidy</u>. The business subsidy provided to Roers consists of the tax abatement assistance for a period of up to ten (10) years for the County abatement and up to twenty (20) years for the City abatement. The total amount of the City tax abatement assistance is up to \$400,000, and the total amount of tax abatement assistance from St. Louis County flowing through the City is up to \$300,000.
- C. Need for Subsidy. Without the tax abatement assistance to be provided pursuant to this Agreement, the cost of redevelopment of the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental of the units, and the available resources would be inadequate and not economically feasible to redevelop the Project and that, therefore, but for the tax abatement assistance to be provided for hereunder, the Project could not reasonably be expected to be redeveloped in the foreseeable future.
- D. <u>Public Purpose</u>. The public purpose of the tax abatement assistance to be provided pursuant to this Agreement is to redevelop a Project which will enhance the economic diversity of the City and the City's tax base; enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas or stimulating the redevelopment of underutilized, blighted or

obsolete and uses including rehabilitation or demolition of commercial areas in the City and substandard structures; expand the City's tax base and realize a reasonable rate of return on the public investment; provide affordable housing; encourage the development of commercial areas in the City that result in higher quality development or redevelopment and private investment; and achieve development on sites which would not be developed without assistance.

- E. <u>Business Subsidy Goal</u>. Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Roers agrees that on or before December 31, 2021, or such additional time as approved in writing by the Executive Director pursuant to Paragraph A of Article IV, it shall have redeveloped the Project on the Property in accordance with this Agreement (the "Business Subsidy Goal"). In accordance with §116J.994, Subdivision 4, the City has determined after a public hearing that the creation or retention of jobs is not a goal of this redevelopment effort. Accordingly, the wage and job goals are set at zero.
- F. Reporting Requirement. On or before March 1st of each year following the commencement of this Agreement, Roers shall file with the City and for two (2) years after the Benefit Date, reports on forms developed by the Minnesota Department of Employment and Economic Development ("DEED") setting forth Roers' progress in meeting the Business Subsidy Goal during the preceding Reporting Period. Said report shall include the information required in Minnesota Statute §116J.994, Subdivision 7, and shall be accompanied by such documentation as the Director shall reasonably request in writing. All such reports shall be signed on behalf of Roers by an officer of Roers with authority to bind Roers.
- G. Penalty. If the City does not receive the reports described in Paragraph F of this Article, it will send to Roers a warning by certified mail within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not received, Roers agrees to pay DEDA a penalty of \$100 for each subsequent day until the report is filed, up to a maximum of \$1,000.
- H. Special Event of Default if Business Subsidy Goals Not Met. Roers agrees that if

the Business Subsidy Goal of Project redevelopment is not met by December 31, 2021, or such additional time as approved in writing by the Director pursuant to Paragraph A of Article IV, as determined in the sole discretion of the City, Roers shall not receive any tax abatement assistance under this Agreement.

- I. Additional Enforcement. In the event that Roers shall fail for any reason whatsoever to meet the reporting requirements of Paragraph F of this fully and completely and in a timely manner as required, said failure shall be deemed to be a material breach of the terms and conditions of this Agreement and, in addition to the rights and remedies available to the City pursuant to Paragraph G, the City shall be entitled to withhold any payment due from the City under this Agreement and to withhold the performance of any obligation owed by the City under this Agreement until Roers' reporting obligations pursuant to this Article have been fully complied with. Further, the City shall be entitled to reimbursement for any reasonable costs, including the value of staff time and attorneys' fees and costs, incurred by the City to secure Roers' compliance with the reporting requirements.
- J. <u>Parent Corporation.</u> Roers represents that it does not have a "parent corporation" for purposes of Minnesota Statutes Section 116J.994. Day to day control of Roers is expected to be indirectly under the control of Roers Companies LLC, a Minnesota limited liability company.
- K. Other Financial Assistance. Roers represents that it reasonably expects the Project to qualify for State of Minnesota historic tax credits in the approximate amount of \$1,628,000 and Federal historic tax credits in the approximate amount of \$1,252,000.
- L. <u>Continued Operations Covenant</u>. Roers agrees to own and operate the Building and the Property and to not assign, convey, transfer, sell or change its identity in violation of Article XI for at least five (5) years after the Benefit Date (the "Continued Operations Covenant").

ARTICLE IX

Project Covenants

As an element of the consideration for the City to approve the Project and to provide tax abatement assistance to Roers, following the issuance of the Certificate of Completion and during the remainder of the term of this Agreement, Roers has committed that the Project will be operated so as to provide approximately 47 units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% area median income for St. Louis County as established by HUD, and will otherwise operate in conformance with the description of the Project herein for the term of this Agreement. Any violation of this commitment with regard to the Project shall constitute a breach of this Agreement, without regard to the ownership or control of the Project. Annually on or before March 1, Roers or its agent shall provide a copy of the residential rental rates charged for the units to the Director.

ARTICLE X

Operating Covenants

Roers agrees that in its operations and use of the Project and the Property, in accordance with industry standards, Roers shall:

A. Maintenance.

At all times cause the Building and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Building and Property and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Building and the Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems as well as outside maintenance including snow removal from all sidewalks, driveways and roadways, grass cutting and landscape maintenance, all necessary maintenance of storm water control and diversion

facilities included in the Plans and all other exterior maintenance to the Building and the Property.

B. <u>Utilities</u>.

Unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Building and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.

C. <u>Licenses and Permits</u>.

Preserve the existence of all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Building and the Property and to be qualified to do business in the State of Minnesota.

D. Obey All Laws.

Conduct its affairs and carry on its business and operations with respect to the Building and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota including all laws related to unlawful discrimination 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 ownership of the Building and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Roers' title to the Building and the Property.

E. Payment of Taxes.

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Building and the Property, subject to the right to contest in good faith in accordance with Minnesota law.

F. Assessment Fees and Charges.

Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Building and/or the Property, or any part thereof, and

to pay all fees, charges and rentals for utilities, service or extensions for the Building and the Property and all other charges lawfully made by any governmental body for public improvements.

G. Obligations and Claims.

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Building and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.

H. Continued Use.

Continue use of the Building and the Property as residential rental units and commercial space during the term of this Agreement, at least 10% of which residential units (minimally, 5 rental units) will be units with rents restricted to reflect 80% of the area median income (AMI) for St. Louis County as established by HUD. Continued use includes the rental units being offered for lease. Continued use does not require actual leasing as long as commercially reasonable efforts are being used to lease the rental units.

H. Living Wage.

Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance

ARTICLE XI

Provision against Liens

A. Provision against Liens.

Except for encumbrances permitted pursuant to Paragraph B below, Roers shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Building, the Property or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if Roers shall first notify the City of its intention to do so and post such security as the City

reasonably deems necessary, Roers may, in good faith, contest any such mechanic's or other liens filed or established as long as the City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

B. Provision Against Assignments, Transfers or Change in Identity of Roers.

Roers recognizes that, in view of the importance of the development of the Project to the general welfare of the community and the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Roers is of particular concern to the community, the City is relying upon the qualifications and identity of Roers to build and operate the Building and the Property. Therefore, except for the purposes of obtaining financing (including construction and permanent financing and historic tax credit equity investment) or as otherwise allowed by this Agreement, Roers represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of Roers, the Building, the Property, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Roers will not make or create or suffer to be made any such transfer of Roers's rights hereunder without the prior written approval of the City. If any assignment of Roers's obligations under this Agreement is approved by the City, any such assignee shall explicitly assume the obligations of Roers under this Agreement.

C. Permitted Encumbrances

Notwithstanding anything in this Article to the contrary, Roers is authorized to obtain construction and permanent financing for the Project and to mortgage the Project and the Property to provide security for construction and permanent financing, and to enter into such easements or financial or real estate agreements as are needed to construct and operate the Project. Roers is also authorized to

admit Bremer Community Investment Fund II LLC and its successors and assigns (collectively, the "Federal Historic Tax Credit Investor") as a member of Roers.

ARTICLE XII

Indemnification

A. Generally.

Roers shall to the fullest extent permitted by law, protect, indemnify and save the City and its officers, agents, servants, employees and any person who controls the City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from any of the following:

- 1. Any injury to or death of any person or damage to the Building or the Property or any part thereof, or growing out of or in connection with the use or non-use, construction or rehabilitation, condition or occupancy of the Building or the Property or any part thereof and also, without limitation, any and all acts or operations related to the construction or installation of the Project on any portion of the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Roers' customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;
- 2. Any breach of this Agreement by Roers;
- Any violation of any contract, agreement or restriction related to Roers' use
 of the Building or the Property which shall have existed at the
 commencement of the term of this Agreement or shall have been approved
 by Roers;
- 4. Any violation, or alleged violation by Roers, or any employee or agent of Roers or any contractor of Roers, of state, federal or local law, rule or

regulation affecting the Property or the Building or the ownership, occupancy or use thereof; and

5. Any mechanic's liens or similar liens.

B. Environmental Indemnification.

In addition to the generality of the foregoing, Roers hereby agrees for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments arising out of any condition existing on the Building or the Property whether preexisting or after-created which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Building or on the Property or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to the Building or the Property, and the indemnification granted hereby shall include all costs of cleanup, remediation, together with the costs incurred in proceedings before any court of law or administrative agency, including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans, as defined by the foregoing agencies, as may be necessary to meet the requirements of said agencies and any other costs and expenses of any kind whatsoever arising out of conditions existing in the Building or the Property.

C. Survival.

The indemnification set forth in this Article shall survive any termination of this Agreement, foreclosure or deed in lieu transfer of the Building or the Property.

D. Indemnification Procedures.

Promptly after receipt by Roers of notice of the commencement of any action with respect to which Roers is required to indemnify the City under this Article, the City shall notify Roers in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Roers shall assume the defense of such action, including the employment of counsel satisfactory to the City and the payment of expenses. In so far as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against Roers, the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Roers.

ARTICLE XIII

Insurance

Roers shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to the Building or the Property arising in any way out of or as a result of Roers' occupancy of or use of the Building or the Property, carried in the name of Roers and the City as their respective interests may appear, as follows:

A. <u>Insurance During Construction</u>.

Roers, prior to entering on the Property for construction of the Project, shall procure or cause to be procured and maintain or require the Construction Manager/Contractor and all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. <u>Property Insurance</u>.

"All Risk" builders' risk insurance on all work on the Project, including foundations, permanent fixtures and attachments, machinery and

equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located in the Building or on the Project or the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed \$20,000 per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Building and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the name of Roers and shall bear a payee clause in favor of the City with loss proceeds under any property policies made payable to the City, to the extent of its advance of funds. The Construction Manager/Contractor, contractors, all subcontractors, and suppliers and Roers shall waive all rights against the City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. <u>Public Liability Insurance</u>.

Public Liability Insurance written on an "occurrence" basis in limits of not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The Construction Manager/Contractor shall also require such liability coverage of its contractors and subcontractors unless they are insured under the Construction Manager/Contractor's policies. The Construction Manager/Contractor's, contractors' and subcontractors' liability coverages shall include:

- (a) Contractors' public liability--premises and operations;
 - (b) Independent contractors' vicarious liability;
 - (c) Personal injury;
 - (d) Owned, non-owned, and hired vehicles;

- (e) Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- (f) Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employer's liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance.

1. <u>Property Insurance</u>.

Prior to the expiration of the builders' risk coverage specified above and during the entire term of this Agreement, the Building, the Project, and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$20,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Roers hereby waives any and all claims or causes of action against the City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss.

Liability Insurance.

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Roers 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 \$2,000,000 per occurrence for personal bodily injury and death and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. Insurance shall cover:

- (a) Public liability, including premises and operations coverage.
- (b) Independent contractors' vicarious liability;
- (c) Personal injury.

- (d) Owned, non-owned and hired vehicles.
- (e) Contractual liability covering the indemnity obligations set forth herein.
- (f) Products--completed operations.

D. Workers' Compensation.

Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees' liability insurance shall be carried in limits of \$100,000 per employee as required by Minnesota law.

E. Requirements for All Insurance/Additional Insured.

All insurance required in this Article 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. The City of Duluth shall be named as an additional insured on all liability insurance required under this Article.

F. Policies.

Roers shall be required to supply to the City certification of all policies required under this Agreement. In addition, each insurer providing such policies shall be required to provide evidence satisfactory to the Director that such policies will require the insurer to give the City 30 days' written notice prior to cancellation or modification of said insurance.

G. Uninsured Loss.

In the event that, during the term of this Agreement, the Building or the Property or any portion thereof is destroyed by fire or other casualty covered by insurance, Roers shall forthwith repair, reconstruct, and restore the Building and the Property to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Roers shall apply the proceeds of any insurance received by Roers to the payment or reimbursement of the costs thereof. Roers shall, complete the repair, reconstruction and restoration of the Building and the Property whether or not the proceeds of any insurance received by Roers are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written

consent of the City, Roers may construct a building of a new design having utility to the City equal to or greater than the Building, approved by the City as a replacement to the Building, at its own cost and at no cost to the City. In the event that the City approves construction of such a replacement building, said building shall be constructed in accordance with the terms hereof. In the event that Roers fails to complete repair, reconstruction, and restoration as required by this Section G within 18 months from the date of damage, then Roers shall promptly repay to the City all abatement payments Roers has received under this Agreement and this Agreement shall thereupon terminate. Notwithstanding the above, Roers may request the City to consider waiving the repayment requirement upon evidence provided by Roers that market conditions make reconstruction economically infeasible.

ARTICLE XIV

<u>Defaults and Remedies Therefor</u>

A. <u>Events of Default</u>.

The following shall be deemed to be Events of Default by Roers under the terms and conditions of this Agreement to which the remedies set forth in Paragraph B below or as otherwise set forth in this Agreement shall be applicable. Except as otherwise specifically provided in this Agreement, following notice of a default, Roers shall have 30 days to cure such default and provide evidence of such cure to the City. The Director may grant extension of the opportunity to cure such a default if such default is not reasonably susceptible to being cured within thirty (30) days. The City shall accept any cure of an Event of Default hereunder effectuated by the Federal Historic Tax Credit Investor to the same extent that the City would accept a cure directly by Roers under this Agreement.

- 1. Roers fails to pay when due any real estate tax payment or legally-imposed assessment with regard to the Building or the Property.
- Roers shall permit any liens on the Building or the Property except as expressly provided for in this Agreement.

- 3. Roers shall fail to complete construction of the Project in conformance with the requirements of this Agreement.
- 4. The Building shall fail to be operated in accordance with the requirements of Article IX or any other requirements of this Agreement during the term of this Agreement.
- Roers shall fail to repair, reconstruct or restore the Building and the Property
 in the event of fire or other casualty in accordance with the requirements of
 Article XIII G.
- 6. Any of the following shall occur: (i) Roers shall seek relief in bankruptcy, or make a general assignment for the benefit of creditors, or (ii) there is filed by or against Roers a petition in bankruptcy or for the appointment of a receiver, or (iii) any creditor commences under any bankruptcy or insolvency law proceedings for relief against Roers, or (iv) an action is sought for the composition, extension, arrangement or adjustment of Roers's obligations, or (v) discontinues its business as a going concern, or (vi) Roers defaults on any other obligation to the City beyond any applicable notice and cure periods, or (vii) Roers' business is taken over or control is assumed by any government or governmental agency.
- 7. Any of the following shall occur:
 - i. Any warranty, representation or statement made by Roers in this Agreement is untrue or misleading in any material respect.
 - ii. Any financial information provided by or on behalf of Roers is untrue or misleading in any material respect.
 - iii. This Agreement ceases to be in full force and effect at any time and for any reason.
 - iv. Roers defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Roers' property or Roers' ability to perform its obligations under this Agreement.

- v. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Roers or by any governmental agency against any collateral securing financing. However, this Event of Default shall not apply if there is a good faith dispute by Roers as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Roers gives the City written notice of the creditor or forfeiture proceeding and deposits with the City monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by the City, in its sole discretion, as being an adequate reserve or bond for the dispute.
- vi. Roers is in default of any other obligation of Roers under the terms and conditions of this Agreement.

B. <u>General Remedies</u>

Except as otherwise set forth in this Agreement, the City shall have the following remedies in the case of a continuing Event of Default by Roers:

- 1. Terminate this Agreement.
- Suspend or terminate at the City's discretion payment of tax abatement proceeds to Roers otherwise payable hereunder.
- 3. Seek and be entitled to monetary damages from Roers for any damages incurred by the City as a result of Roers' default.
- Seek and be entitled to injunctive or declaratory relief as is necessary
 to prevent Roers' violation of the terms and conditions of this
 Agreement or to compel Roers' performance of its obligations
 hereunder.
- 5. Cumulatively to exercise all other rights, options and privileges provided by agreement, law or in equity.

C. Non-Waiver.

The waiver by the City of any Event of Default on the part of Roers or the failure of the City to declare default on the part of Roers of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent

Event of Default on the part of Roers of the same or of any other obligation of Roers under this Agreement. To be effective, any waiver of any Event of Default by Roers hereunder shall be in writing by the City.

D. Remedies Cumulative.

The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of an Event of Default hereunder.

E. Attorneys' Fees.

In the event that Roers is in default of any of the terms and conditions of this Agreement and the City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XV

Representations, Covenants and Warranties

A. Representations, Covenants and Warranties of the City.

The City represents, covenants and warrants as follows:

- 1. The City is a duly formed and validly existing municipal corporation and political subdivision of the State of Minnesota, governed by the Constitution and laws of the State of Minnesota and its home rule charter.
- The officers of the City executing this Agreement have been duly authorized to execute and deliver this Agreement and perform its obligations hereunder pursuant to the terms and provisions of a resolution of the Council of the City.
- 3. This Agreement is binding and enforceable against the City in all respects.

B. Representations, Covenants and Warranties of Roers.

Roers represents, covenants and warrants as follows:

- 1. Roers is a duly formed and validly existing limited liability company under the laws of the State of Minnesota, is not in violation of its organizational documents, has power to enter into this Agreement and to perform its obligations hereunder, and has duly authorized the execution, delivery, and performance of this Agreement by proper corporate action.
- 2. Roers is not in violation of any provision of its organizational documents, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule or regulation to which it is a party or by which it or its properties are bound or affected, other than violations and defaults which would not, individually or in the aggregate, have a material adverse effect on the financial position or results of operation of Roers.
- 3. The execution and delivery by Roers of this Agreement, compliance with the provisions thereof by Roers and the performance by Roers of its agreements, covenants, and obligations under this Agreement, do not, in any material respect, constitute on the part of Roers a breach or violation of, or default under, its organizational documents, will not violate any law or regulation applicable to Roers, or result in the breach of, or constitute a default under, any indenture or loan, credit, or other agreement or instrument to which Roers is a party or by which it or its property is bound or affected.
- 4. There are no actions, suits or proceedings pending or, to the knowledge of Roers, threatened against Roers or any premises leased or owned by Roers in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Roers, could have a material adverse effect upon Roers, any premises leased or owned by Roers, the financial position of Roers, or the operation of Roers, and that Roers is not in default of any order of any court or governmental agency.
- 5. No consent, approval, or authorization of, or permit or license from, or registration with, or notice to any federal or state regulatory authority or any third party not already obtained is required in connection with the execution,

- delivery, and performance by Roers of this Agreement, or any document or instrument related thereto.
- 6. Roers is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- 7. Roers shall promptly and at all times pay all reasonable fees and expenses incurred by the City in pursuing its rights under this Agreement following an Event of Default by Roers, including attorneys, accountants and other fees.
- 8. Except as permitted in this Agreement, Roers will not sell, encumber, transfer or otherwise pledge the Building or the Property to any other person for any purpose whatsoever except with the prior written consent of the City.
- 9. Roers will perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Roers and the City. Roers shall notify the City promptly in writing of any default in connection with this Agreement or in any other agreement between Roers and the City promptly upon Roers becoming aware of such default.
- 10. Except as otherwise permitted, Roers shall not, without written consent of the City, engage in any business activities substantially different than those in which Roers is presently engaged, or cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, dissolve or transfer or sell the Building or the Property out of the ordinary course of business.
- 11. Roers shall not enter into any agreement containing any provisions which would be violated or breached by the performance of Roers' obligations under this Agreement or in connection herewith.
- 12. Except for any permitted encumbrances under this Agreement, Roers shall not subject the Building or the Property to any additional declaration, condition, restriction or easement without the prior written consent of the City.

- 13. Roers shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon). Roers shall obtain, in a timely manner, all required permits, licenses and approvals, and shall meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. Roers shall be responsible for obtaining all of the permits and licenses necessary for construction and operation of the Project.
- 14. The execution of this Agreement has been duly and fully authorized by Roers' governing body, board or executive, that the manager or officer who executed this Agreement on its behalf is fully authorized to do so, and that this Agreement when thus executed by said manager or officer on its behalf will constitute and be the binding obligation and agreement of Roers in accordance with the terms and conditions thereof.
- 15. This Agreement is binding and enforceable against Roers in all respects.

ARTICLE XVI

Term

The term of this Agreement shall commence upon attestation by the City Clerk and shall continue until all tax abatement payments provided for in the Abatement Resolutions have been paid, unless this Agreement is terminated earlier as provided for herein (the "Termination Date"). Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

ARTICLE XVII

Runs with the Land

This Agreement shall be deemed to run with the Property and shall enure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XVIII

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City:

City of Duluth
Attn: Director of Planning & Economic Development
160 City Hall
411 West 1st Street
Duluth, MN 55802

In the case of Roers:

Roers Lake & First LLC 110 Cheshire Lane, Suite 120 Minnetonka, MN 55305 Attn: Brian Roers and Jared Ackmann

With a copy to:

Winthrop & Weinstine, P.A. 225 South 6th Street, Suite 3500 Minneapolis, MN 55402 Attn: Kevin McLain

And to:

Bremer Community Investment Fund II LLC 225 South 6th Street, Suite 300 Minneapolis, MN 55402 Attn: Vassil Zanev And to:

Jones Walker LLP

201 St. Charles Avenue, Suite 5100

New Orleans, LA 70170

Attn: Jonathan R. Katz

ARTICLE XIX

Recordation

Immediately upon execution of this Agreement, Roers agrees to record this

Agreement in the office of the St. Louis County Recorder and to pay all costs associated

therewith. Upon recordation, Roers shall immediately submit to the City an executed

original of this Agreement showing the date and document numbers of record, or a duly

certified copy of the original.

ARTICLE XX

<u>Disclaimer of Relationships</u>

Roers acknowledges that nothing contained in this Agreement nor any act by the

City or Roers shall be deemed or construed by Roers or by any third person to create any

relationship of third-party beneficiary, principal and agent, limited or general partner, or

joint venture between the City and Roers.

ARTICLE XXI

Applicable Law

This Agreement together with all of its Articles, 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 Duluth, Minnesota.

34

ARTICLE XXII

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XXIII

Title of Articles

Any title, Articles and Paragraphs in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XIV

Severability

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

ARTICLE XXV

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment 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 XXVI

Counterparts

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

ARTICLE XXVII

Subordination

This Agreement shall be subordinate to that certain mortgage given by Roers on or about the date of this Agreement to Bremer Bank, National Association, providing construction and permanent financing for the Project.

[Remainder of page left blank intentionally. Signature page follows.]

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

CITY OF DULUTH, a Minnesota	ROERS LAKE & FIRST LLC,
Municipal Corporation	a Minnesota limited liability company
	By: Roers Lake & First MM LLC
Ву	Its: Managing Member
Emily Larson, Mayor	
	By: Roers Lake & First MM Manager
Attest:	LLC
	Its: Manager
By	
Its City Clerk	By: Roers Companies LLC
, 2019	Its: Manager
(Date)	
Countersigned:	By:
_	Brian J. Roers, its Manager
Its Auditor	
Approved:	
Its City Attorney	

I:\ATTORNEY\DEDA (015)\Development Agreements (DA)\Roers (19-0113)\Roers Development Agreement - 9-16-19 final.docx

EXHIBIT A

City Abatement Resolution

EXHIBIT B

County Abatement Resolution

EXHIBIT C

TAF-Eligible Costs

TAF-Eligible Costs	\$ Amount	
Construction Contract	\$6,498,140	
Expected Contract Increases	\$132,860	
Construction Contingency	\$455,000	
Asbestos Abatement/Containment	\$55,000	
Architect Fees	\$125,000	
Total TAF-Eligible Costs	\$7,266,000	

EXHIBIT D

CERTIFICATE OF COMPLETION

RECITALS:

A.	On		, 20	, the C	ity of Dulutl	n, a home r	ule
charter cit	y and political	subdivision of			•	•	
& First LL	C, a Minnesot	a limited liab	ility company	("Roers"),	entered into	a Developm	ent
Agreemer	nt which was	recorded in	the Office	of the St.	Louis Coun	ty Recorder	on
		_, 20, as	Document N	lo	(th	e "Developm	ent
Agreemer	nt"), relating t	o property lo	ocated in St.	Louis Cou	inty, Minnes	ota, and lega	ally
described	as:						

Lots 1 and 3, Duluth Proper 1st Division East 1st Street

- B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.
- C. The Development Agreement requires Roers to complete construction of the Project no later than December 31, 2021, subject to adjustment as provided in the Development Agreement.
- D. Article V of the Development Agreement provides that a Certificate of Completion be issued by the City through its Director upon completion by Roers of the construction of the Project.
- E. Roers has completed construction of the Project in a manner deemed sufficient by the City to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

- 1. Construction of the Project, pursuant to the Development Agreement, has been completed and those requirements under the Development Agreement which relate solely to Project construction have been fulfilled, but all other conditions, provisions and restrictions contained in the Development Agreement shall remain in effect.
- 2. The Recorder in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

CITY OF DULUTH

	By:
	By: Director of Planning and Economic Development
STATE OF MINNESOTA)) SS COUNTY OF ST. LOUIS)	
COUNTY OF ST. LOUIS)	
	acknowledged before me thisday of, the Director of Planning and Economic
Development of the City of Duluth, a ho State of Minnesota, on behalf of the Cit	me rule charter city and political subdivision of the
	Notary Public

EXHIBIT A

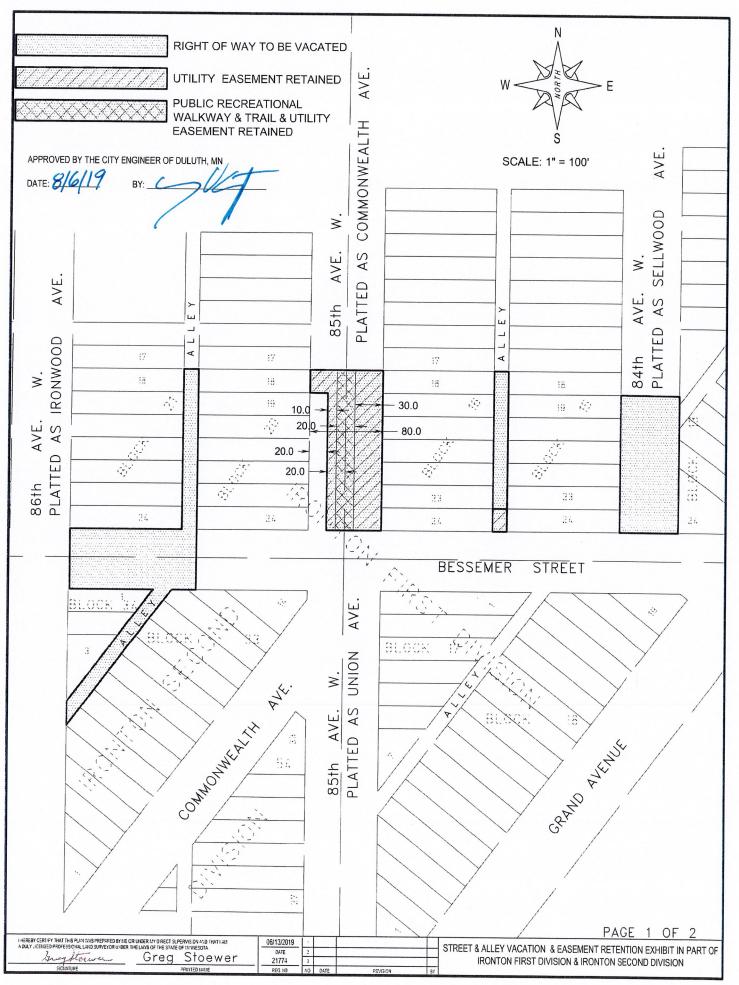


EXHIBIT B

DESCRIPTIONS OF STREETS AND ALLEYS TO BE VACATED, EASEMENTS TO BE RETAINED.

84th Avenue West, platted as Sellwood Ave., from the north line of Bessemer Street to the easterly extension of the south line of Lot 18, Block 15, IRONTON FIRST DIVISION.

The east half of 85th Avenue West, platted as Commonwealth Ave., from the north line of Bessemer Street to the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

Reserving a 20.00 foot public recreational walkway and trail easement 10.0 feet either side of the center line of said 85th Avenue West, between the north line of Bessemer Street and the easterly extension of the south line of Lot 17, Block 20, IRONTON FIRST DIVISION.

Reserving a utility easement, between the north line of Bessemer Street and the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

The west half of 85th Avenue West, platted as Commonwealth Ave., from the easterly extension of the south line of Lot 17, Block 20, to the easterly extension of the south line of Lot 18, Block 20, IRONTON FIRST DIVISION.

Reserving a 20.00 foot public recreational walkway and trail easement 10.0 feet either side of the center line of said 85th Avenue West, between the north line of Bessemer Street and the easterly extension of the south line of Lot 17, Block 20, IRONTON FIRST DIVISION.

Reserving a utility easement, between the north line of Bessemer Street and the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

The east 20.00 feet of the west half of 85th Avenue West, platted as Commonwealth Ave., from the north line of Bessemer Street to the easterly extension of the south line of Lot 18, Block 20, IRONTON FIRST DIVISION.

Reserving a 20.0 foot public recreational walkway and trail easement 10.0 feet either side of the center line of said 85th Avenue West between the north line of Bessemer Street and the easterly extension of the south line of Lot 17, Block 20, IRONTON FIRST DIVISION.

Reserving a utility easement, between the north line of Bessemer Street and the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

Bessemer Street in IRONTON FIRST DIVISION, from the southerly extension of the west line of Block 21 to the southerly extension of the west line of Block 20, IRONTON FIRST DIVISION.

The Alley between Block 15 and Block 16, IRONTON FIRST DIVISION, from the north line of Bessemer Street to the easterly extension of the south line of Lot 17, said Block 16.

Reserving a utility easement in said Alley between Block 15 and Block 16 from the north line of Bessemer Street to the easterly extension of the south line of Lot 23, Block 16.

The Alley between Block 20 and Block 21, IRONTON FIRST DIVISION, from the north line of Bessemer Street to the easterly extension of the south line of Lot 17, said Block 21.

The Alley between Block 33 and Block 34, IRONTON SECOND DIVISION.

Bessemer Street in IRONTON SECOND DIVISION, from the northerly extension of the west line of Block 34, IRONTON SECOND DIVISION to the southerly extension of the west line of Block 20, IRONTON FIRST DIVISION.



CITY OF DULUTH

Planning and Development Division

411 W 1st St, Rm 110 * Duluth, Minnesota 55802-1197

Phone: 218/730.5580

File Number	PL 19-0	70	Contact		John Kelle	Э У
Туре	and alley	of portions of unimproved street with retention of pedestrian and ement over part of vacation area	Planning Commission Date May 14, 2019			May 14, 2019
Deadline	Application Date Date Extension Letter Mailed		May 16, 20	19	60 Days	July 15, 2019
for Action			May 2, 201	May 2, 2019 120 Day		September 13, 2019
Location of S	Location of Subject Oakland Avenue between Gold		d Street and	Marylaı	nd Street	
Applicant	City of Du	lluth, Parks Department	Contact	Jim Shoberg		
Agent			Contact			
Legal Description		See attached	•	•		
Site Visit Date		June 4, 2019	Sign Notice Date			May 28, 2019
Neighbor Letter Date		May 31, 2019	Number o	Number of Letters Sent		12

Proposal

The applicant is requesting to vacate portions of the platted right-of-way of 84th Avenue West, 85th Avenue West, Bessemer Street and Alley's while retaining a pedestrian and utility easement over a portion of the vacated area of 85th Avenue West.

Recommended Action: Recommend to City Council approval of the Vacation and retention of a Trail Easement

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential	Urban Residential/Open Space
North	R-1/P-1	Grand Avenue Nordic Center	Open Space
South	R-2	Residential	Urban Residential
East	R-2/P-1	Vacant land/Grand Avenue	Open Space/Neighborhood Commercial
West	P-1	Vacant land/Park land	Open Space

Summary of Code Requirements

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

- 1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;
- 2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
- 3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 – Promote reinvestment in neighborhoods.

Governing Principle #8 – Encourage mix of activities, uses, and densities.

Governing Principle #10 – Take actions that enhance the environment, economic, and social well-being of the community.

Policy #2 – Reduce infrastructure costs through innovation and wholesale design change

S-4, Evaluate streets in low-density areas that could be replaced, reduced, removed, or made private to more effectively utilize maintenance budgets and long-term capital replacement funds.

Review and Discussion Items

Staff finds that:

- 1) The applicant is requesting to vacate portions of the platted right-of-way of 84th Avenue West, 85th Avenue West, Bessemer Street and Alley's while retaining a public recreational walkway and utility easement over a portion of the vacation area of 85th Avenue West. The utility easement to be retained is for an existing natural gas, water and sewer lines. The public recreational walkway easement will provide neighborhood access to the Grand Avenue Nordic Center. public recreational walkway
- 2) The City of Duluth is the owner of land on the north, east and west sides of the proposed vacation area and has trails on the lands associated with the Grand Avenue Nordic Center and Spirit Mountain recreation. Single-family homes are adjacent to the proposed vacation areas. These property owners have signed the required petition for a vacation of right-of-way.
- 3) The right-of-way will not be needed by the City for the safe and efficient circulation of automobiles or trucks. The new Grand Avenue Nordic Center north of the existing neighborhood precludes any new development from occurring.
- 4) There are no plans at this time to improve the proposed trail easement.
- 5) Aside from the natural gas, water and sewer pipes located in the right-of-way of 85th Avenue West, there are no other public improvements in the proposed vacation areas and there are no plans to extend road or utility improvements in the proposed vacation area. The other vacation areas are not needed for the efficient supply of utilities or public services in the city, nor for the promotion of public health, safety, or welfare of the citizens of Duluth.
- 6) No additional private development is planned in the area as the City is the owner of the property on to the north, east and west sides of the vacation area. Additionally, street extensions are not planned. There is existing unimproved platted ROW to the south to allow future roads to be constructed should the area be developed.
- 7) No public or agency comments have been received to date.
- 8) Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

Staff Recommendation

Based on the above findings, staff recommends that Planning Commission recommend approval of the vacation of the street and retention of a pedestrian and utility easement as shown in the attached vacation exhibit, subject to the following condition:

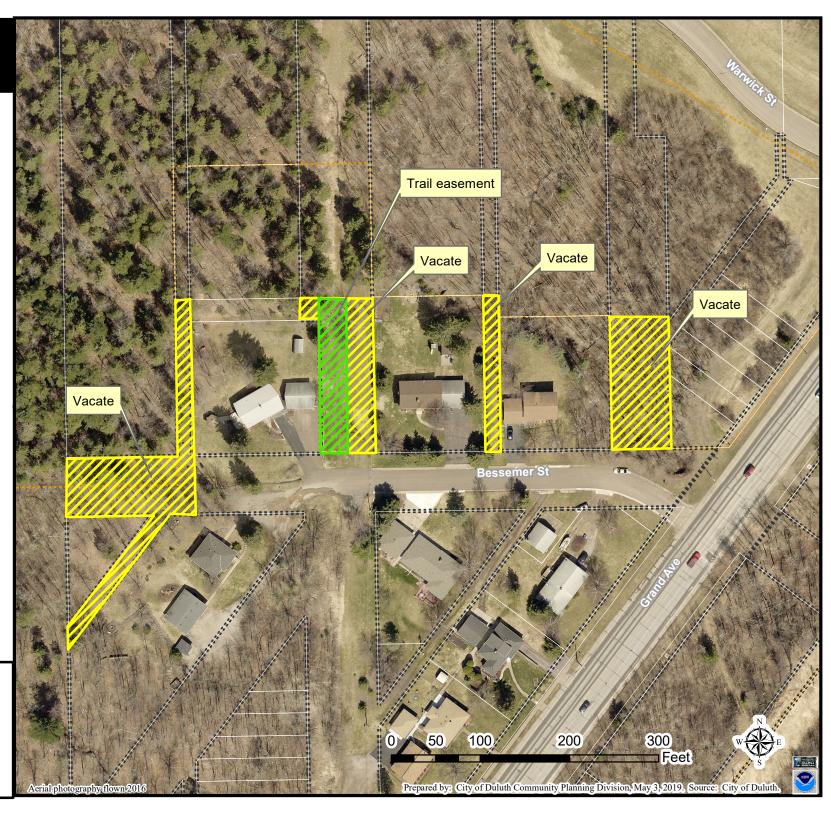
1) The vacation and pedestrian and utility easement retention will lapse if the vacation is not recorded in the office of the Saint Louis County Recorder within 90 days of City Council approval of the vacation.

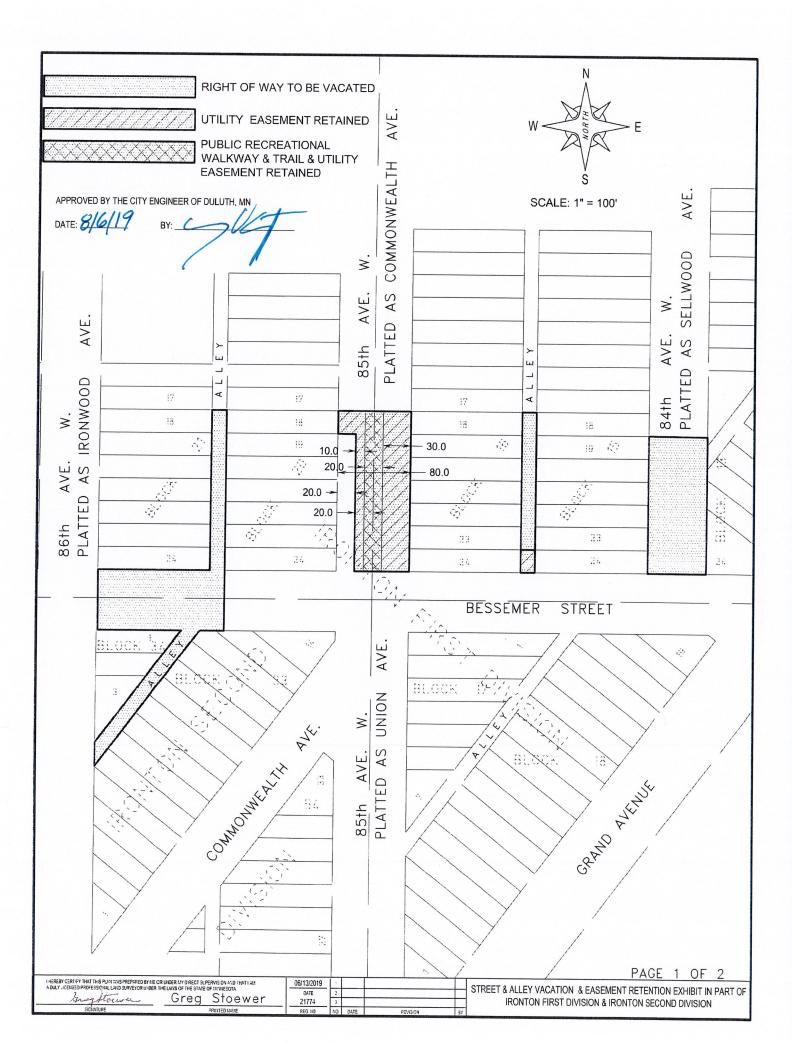


PL 19-070 Right of Way Vacation



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.





DESCRIPTIONS OF STREETS AND ALLEYS TO BE VACATED, EASEMENTS TO BE RETAINED.

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Reserving a 20.00 foot public recreational walkway and trail easement 10.0 feet either side of the center line of said 85th Avenue West, between the north line of Bessemer Street and the easterly extension of the south line of Lot 17, Block 20, IRONTON FIRST DIVISION.

Reserving a utility easement, between the north line of Bessemer Street and the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

The west half of 85th Avenue West, platted as Commonwealth Ave., from the easterly extension of the south line of Lot 17, Block 20, to the easterly extension of the south line of Lot 18, Block 20, IRONTON FIRST DIVISION.

Reserving a 20.00 foot public recreational walkway and trail easement 10.0 feet either side of the center line of said 85th Avenue West, between the north line of Bessemer Street and the easterly extension of the south line of Lot 17, Block 20, IRONTON FIRST DIVISION.

Reserving a utility easement, between the north line of Bessemer Street and the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

The east 20.00 feet of the west half of 85th Avenue West, platted as Commonwealth Ave., from the north line of Bessemer Street to the easterly extension of the south line of Lot 18, Block 20, IRONTON FIRST DIVISION.

Reserving a 20.0 foot public recreational walkway and trail easement 10.0 feet either side of the center line of said 85th Avenue West between the north line of Bessemer Street and the easterly extension of the south line of Lot 17, Block 20, IRONTON FIRST DIVISION.

Reserving a utility easement, between the north line of Bessemer Street and the westerly extension of the south line of Lot 17, Block 16, IRONTON FIRST DIVISION.

Bessemer Street in IRONTON FIRST DIVISION, from the southerly extension of the west line of Block 21 to the southerly extension of the west line of Block 20, IRONTON FIRST DIVISION.

The Alley between Block 15 and Block 16, IRONTON FIRST DIVISION, from the north line of Bessemer Street to the easterly extension of the south line of Lot 17, said Block 16.

Reserving a utility easement in said Alley between Block 15 and Block 16 from the north line of Bessemer Street to the easterly extension of the south line of Lot 23, Block 16.

The Alley between Block 20 and Block 21, IRONTON FIRST DIVISION, from the north line of Bessemer Street to the easterly extension of the south line of Lot 17, said Block 21.

The Alley between Block 33 and Block 34, IRONTON SECOND DIVISION.

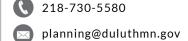
Bessemer Street in IRONTON SECOND DIVISION, from the northerly extension of the west line of Block 34, IRONTON SECOND DIVISION to the southerly extension of the west line of Block 20, IRONTON FIRST DIVISION.

							PAGE 2 OF 2
THEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OF		05/14/2019	1			T	CTDEET 9 ALLEY VACATION 9 EACHWENT RETENTION EXCURRENT RADE OF
ADULT DICERSED PROFESSIONAL LAND SURVETOR UNDER II	0 01	DATE	2			Т	STREET & ALLEY VACATION & EASEMENT RETENTION EXHIBIT IN PART OF
myttoewer	Greg Stoewer	21774	3				IRONTON FIRST DIVISION & IRONTON SECOND DIVISION
S GNATURE	POWITED HAVE	SEC VIO	210	DATE	SEMEION	lov	



Planning & Development Division

Planning & Economic Development Department



Room 160 411 West First Street Duluth, Minnesota 55802

File Number	PL 19-125 Interim Use Permit Renewal – Vacation Dwelling Unit		Contact	Contact Chris Lee		e, clee@duluthmn.gov	
Туре			Planning Commission Date		September 10, 2019		
Deadline	Applicat	Application Date		August 15, 2019 60 Days August 23,2019 120 Days		October 23, 2019	
for Action	Date Extension Letter Mailed		August 23,2			December 22, 2019	
Location of Su	bject	1004 Minnesota Ave	•				
Applicant	Petra Pro	perties	Contact	Contact Steve Peters			
Agent	Francine S	Spears	Contact				
Legal Descript	ion	Lot 179 Block 0, Upper Duluth La	ake Avenue (01	0-4380-00	900)		
Site Visit Date Augu		August 24, 2019	Sign Notice	Sign Notice Date		august 27, 2019	
Neighbor Letter Date		August 26, 2019	Number of	Number of Letters Sent 3		7	

Proposal

Applicant proposes to use the house with 4 bedrooms for vacation rental. Up to 9 people will be allowed to stay in the home. A vacation dwelling unit allows for periods of occupancy of 2 to 29 days, with a minimum stay of 2 nights.

Staff is recommending that planning commission recommend approval.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	One-family dwelling	Traditional Neighborhood
North	R-1	Undeveloped street	Traditional Neighborhood
South	R-1	Dwellings	Traditional Neighborhood
East	R-1	Park Point Beach	Preservation
West	R-1	Dwellings	Traditional Neighborhood

Summary of Code Requirements:

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in the R-1 District.

UDC Sec. 50-37.10.B . . . Council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The . . . Council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.1.P, a development agreement regarding the design, construction, and operation of the special use, to protect the Comprehensive Land Use Plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to meet.

UDC Sec. 50-37.10.E ... the Council shall only approve an interim use permit, or approve it with conditions, if it



Planning & Development Division

Planning & Economic Development Department

Room 160 411 West First Street Duluth, Minnesota 55802



determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location; 2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 - Strengthen neighborhoods Governing Principle #8 - Encourage mix of activities, uses, and densities

Econ. Dev. Policy #3 - Build on Existing Economic Strengths & Competitive Advantages **S9:** Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

The site is developed consistent with the future land use as described and the applicant is not proposing alterations to the use.

Review and Discussion Items:

- 1) Applicant's property is located at 1004 South Lake Avenue. The proposed vacation dwelling units contain 4 bedrooms, which would allow for a maximum of 9 guests. This 1,985 square foot traditional home was constructed in 1891.
- 2) Permit holders must designate a managing agent or local contact who resides with 25 miles of the City and who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the City. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary. Applicant has listed Francine Spears to serve as the managing agent.
- 3) The site has room for 6 vehicles to be parked on the driveway and off the street as required by the UDC. There will be a space for a single trailer in the garage on the property.
- 4) The applicant has indicted that there will be a picnic table and a grill for use by renters and it is adequately screened.



Planning & Development Division

Planning & Economic Development Department

Room 160 411 West First Street Duluth, Minnesota 55802



- 5) A time limit on this Interim Use Permit ("IUP") is needed to minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 6) Applicant has obtained the City of Duluth Tourism Tax license, the Minnesota Department of Health Lodging License, have a Tax ID number, a fire operational permit, and a Hotel/Motel License.
- 7) Applicant must comply with Vacation Regulations (included with staff report), including providing information to guests on city rules (included with staff report as "Selected City Ordinances on Parking, Parks, Pets, and Noise").
- 8) No comments from citizens, City staff, or any other entity were received regarding the application.

Staff Recommendation:

Based on the above findings, Staff recommends that Planning Commission recommend approval subject to the following:

- 1) The Interim Use Permit shall not be effective until the applicant has received all required licenses and permits for operation.
- 2) The applicant must provide a written disclosure to all guests stating that quiet hours shall be observed between the hours of 10 p.m. and 8 a.m.
- 3) No fires on the beach.
- 4) The applicant shall adhere to the terms and conditions listed in the Interim Use Permit document and provide evidence of compliance, which will be included in the resolution.

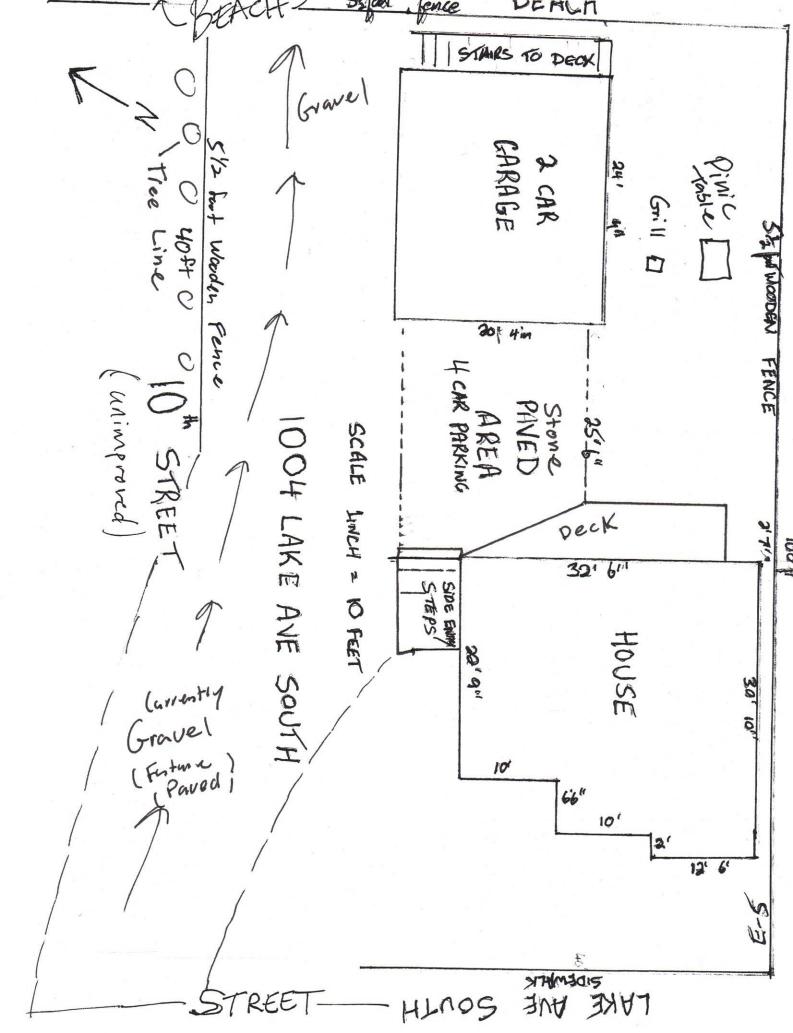


PL 19-125:Interim Use Permit 1004 S lake Ave



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1004 South Lake Ave



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Planning & Development Division Planning & Economic Development Department

218-730-5580
planning@duluthmn.gov

Room 160 411 West First Street Duluth, Minnesota 55802

File Number	PL 19-117		Contact	Contact Kyle Den		ning, kdeming@duluthmn.gov	
Туре	Interim Use Permit – Vacation Dwelling Unit		Planning Commission Date		n Date	September 10, 2019	
Deadline Application Date		on Date	August 7, 20:	August 7, 2019 60 Days		October 6, 2019	
for Action			August 21, 20	August 21, 2019 120 Days		December 5, 2019	
Location of Subject 30 North First Avenue We		30 North First Avenue West (Dow	ntown)				
Applicant	Jason Taly	/ Rachel Wagner	Contact				
Agent			Contact	ontact			
Legal Descript	Legal Description Nly 40 feet of Lots 14 and 16, D		uth Proper Fir	st Divisio	n (010-094	0-00730)	
Site Visit Date		August 26, 2019	Sign Notice Date			August 27, 2019	
Neighbor Letter Date		August 27, 2019	Number of Letters Sent		ent	46	

Proposal

Applicant proposes to rent out a 2-bedroom apartment on the 2nd floor of a two-story building downtown to groups in size up 5 people.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	Downtown Mix (F-8)	Mixed Use – retail & residential	Central Business District - Primary
North	Downtown Mix (F-8)	Mixed Use	Central Business District - Primary
South	Downtown Mix (F-8)	Mixed Use	Central Business District - Primary
East	Downtown Mix (F-8)	Mixed Use	Central Business District - Primary
West	Downtown Mix (F-8)	Institutional	Central Business District - Primary

Summary of Code Requirements:

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in the F-8 District.

UDC Sec. 50-37.10.B . . . Council shall make a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The . . . Council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.1.P, a development agreement regarding the design, construction, and operation of the special use, to protect the Comprehensive Land Use Plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to meet.

UDC Sec. 50-37.10.E . . . the Council shall only approve an interim use permit, or approve it with conditions, if it determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location; 2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by

the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 - Strengthen neighborhoods

Governing Principle #8 - Encourage mix of activities, uses, and densities

Econ. Dev. Policy #3 - Build on Existing Economic Strengths & Competitive Advantages
 S9: Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth

Future Land Use – Central Business Primary - Encompasses a broad range of uses and intensities: governmental campus, significant retail, entertainment and lodging, opportunities for high-density housing, central plaza, public/open space, public parking facilities, high height and density limits, protection of historic buildings or building groups, form-based guidelines, pedestrian-oriented design, no off-street parking required, but loading required, avenue lake views are protected.

Review and Discussion Items:

- 1) Applicant's property is located at 30 North First Avenue West, which is also known as 30 West First Street in some City records. The vacation dwelling unit is on the second floor of a two-story, mixed-use building constructed in 1883. The proposed vacation dwelling unit contains 4,000 sq. ft., has 2 bedrooms, which would allow for a maximum of 5 guests.
- 2) The applicant lives within the required distance when the property is rented and will notify the owners within 100 feet with their contact info. after Council approval (which is recommended to be a condition of approval).
- 3) Because the property is in a Form district, the provision of off-street parking is not required by the UDC. However, the applicant has leased two parking spaces from a private party that will be available for guests' use. The parking spaces are located off the alley below First Street between 1st Ave. W. and 2nd Ave. W. The applicant has indicated that they will not accept guests with motorhomes or trailers.
- 4) A time limit on this Interim Use Permit ("IUP") is needed to minimize negative impacts to surrounding uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 5) Applicant has obtained a City of Duluth Tourism Tax permit and has a State Tax ID number for paying sales tax. They have had inspections for the Minnesota Department of Health Lodging License and Fire Operational Permit, but they will need to complete the process and be issued permits from the two entities before their IUP can be issued. Therefore, staff recommends this be a condition of approval. An additional recommended condition is that they apply for, and be issued, a Hotel/Motel License from the City Clerk.
- 6) Applicant must comply with Vacation Dwelling Unit Use Specific Standards, including providing information to guests on city rules (included with staff report as "Selected City Ordinances on Parking, Parks, Pets, and Noise").
- 7) No comments from citizens, City staff, or any other entity were received regarding the application.

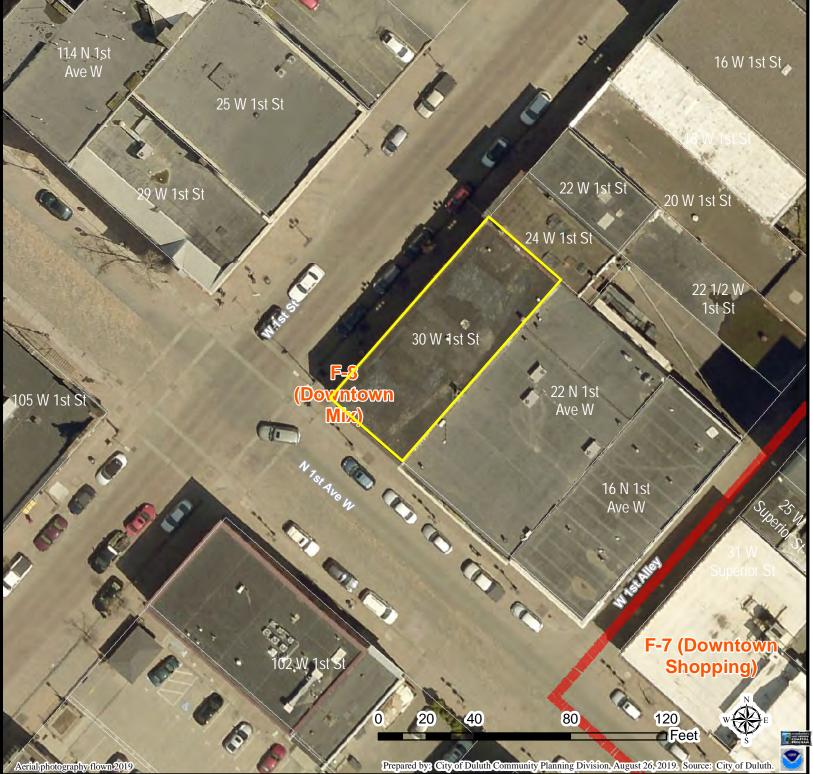
Staff Recommendation:

Based on the above findings, Staff recommends that Planning Commission recommend approval subject to the following:

- 1) The Interim Use Permit shall not be effective until the applicant has received all required licenses and permits for operation, including State Lodging License, Fire Operational Permit, and Hotel/Motel License; and
- 2) The Interim Use Permit shall not be effective until the applicant has provided evidence that property owners within 100 feet of the vacation dwelling unit have been noticed with their or their managing agent's contact info.; and
- 3) The applicant shall adhere to the terms and conditions listed in the Interim Use Permit document and provide evidence of compliance, which will be included in the resolution, and any modifications deemed necessary by the Land Use Supervisor, provided that no such administrative approval shall constitute a variance from Chapter 50.



PL 19-117
Vacation Dwelling Unit
Interim Use Permit
30 N 1st Ave W
Jason Taly/Rachel Watson

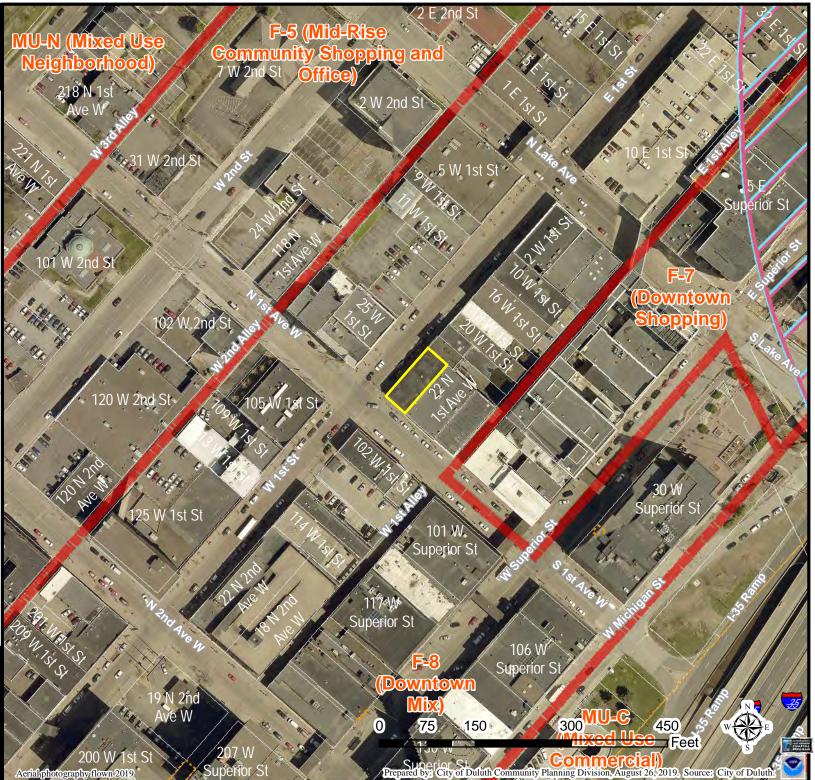


Legend
Easement Type
Utility Easement
Other Easement
Zoning Boundaries
Floodplain (UDC)
General Flood Plain
Flood Way
Flood Fringe
Shoreland (UDC)
Cold Water
Natural Environment
General Development
Wetlands (NRRI)

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PL 19-117
Vacation Dwelling Unit
Interim Use Permit
30 N 1st Ave W
Jason Taly/Rachel Watson



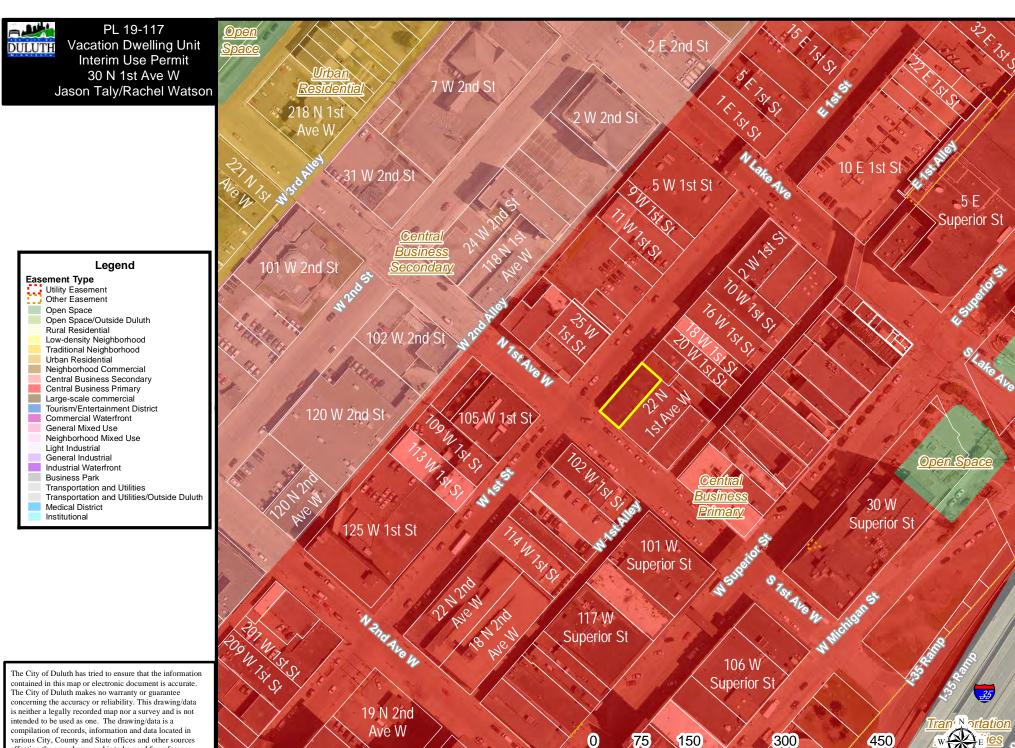
Shoreland (UDC)
Cold Water
Natural Environment
General Development
Wetlands (NRRI)

Legend
Easement Type
Utility Easement
Other Easement

Zoning Boundaries

Floodplain (UDC)
General Flood Plain
Flood Way
Flood Fringe

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207 W

Superior St

200 W 1st St

Aerial photography flown 2019

Feet

Prepared by: City of Duluth Community Planning Division, August 26, 2019. Source: City of Duluth

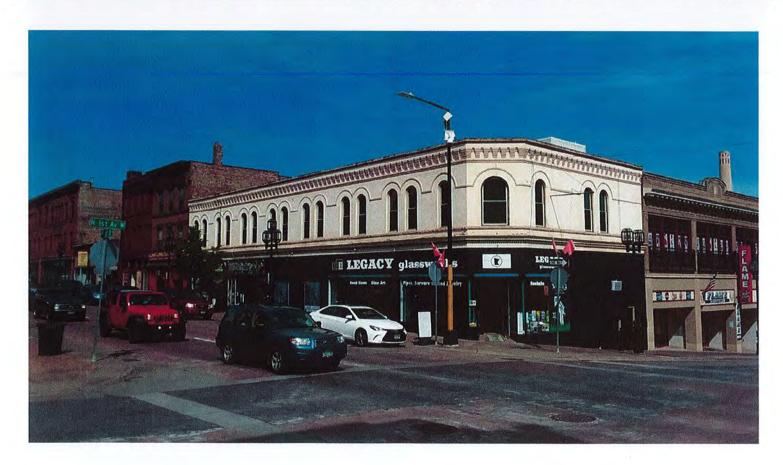
various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within











































Vacation Dwelling Unit Worksheet (April 2018)

1. The mir	nimum rental perior	d shall be not less than	two consecutive nights/What will be your minimum rental
period?_	7	nights	
	al number of perso	ns that may occupy the	e vacation dwelling unit is one person plus the number of
How man	ly legal bedroom	s are in the dwelling	? What will be your maximum occupancy?
		provided at the following	ng rate:
a	. 1-2 bedroom unit	, 1 space	
1 b	. 3 bedroom unit, 2	spaces	
J/ C	. 4+ bedroom unit,	number of spaces equa	al to the number of bedrooms minus one.
it d	I. Vacation dwelling	units licensed on May	15, 2016, are entitled to continue operating under the former off
15 this st	treet parking requir	ement. The parking ex	emption for vacation dwelling units licensed on May 15, 2016,
			erest in the permitted property.
How man	y off-street park	ing spaces will your	unit provide?
		oat, personal watercraf	ft, snowmobiles, etc.) may be parked at the site, on or off the king? If so, where?
5. The pro	perty owner must o	obtain all licenses and p	permits from the City of Duluth and State of Minnesota required
	occupancy on the prapplication.	operty for 2 to 29 days	s. Provide copies of the lodging and fire inspection reports with
₫ M	In Department of	Health Lodging Lice	ense (Requires Inspection)
			(Requires Inspection)
	ity of Duluth Hot		
		rism Tax Number	
☑ S	tate of Mn Tax Id	lentification Number	
6. The pro	perty owner must p	provide required docum	ents and adhere to additional requirements listed in the City of
			ing of a guest record, designating and disclosing a local contact,

- property use rules, taxation, and interim use permit violations procedures.
- 7. The property owner must provide a site plan, drawn to scale, showing parking and driveways, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbeque grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen that may be required to buffer these areas from adjoining properties. Please note that this must be on 8×11 size paper.

8. The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs
first. An owner of a vacation dwelling unit permitted prior to May 15, 2016, may request, and the land use supervisor
may grant, an application for adjustment of an existing permit to conform to this section, as amended, for the
remainder of the permit term.
9. Permit holder must keep a guest record including the name, address, phone number, and vehicle (and trailer)
license plate information for all guests and must provide a report to the City upon 48 hours' notice. Please explain
how and where you will keep your guest record (log book, excel spreadsheet, etc):
Log Book Cor Guest's To Sign
10. Permit holder must designate a managing agent or local contact who resides within 25 miles of the City and who
has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The
permit holder must notify the Land Use Supervisor within 10 days of a change in the managing agent or local
contact's contact information. Please provide the name and contact information for your local contact:
Jason Taly
11. Permit holder must disclose in writing to their guests the following rules and regulations:
a. The managing agent or local contact's name, address, and phone number;
b. The maximum number of guests allowed at the property;
c. The maximum number of vehicles, recreational vehicles, and trailers allowed at the property and where
they are to be parked;
d. Property rules related to use of exterior features of the property, such as decks, patios, grills, recreationa
fires, pools, hot tubs, saunas and other outdoor recreational facilities;
e. Applicable sections of City ordinances governing noise, parks, parking and pets;
Please state where and how this information will be provided to your guests:
info packet Left on The counter
12. Permit holder must post their permit number on all print, poster or web advertisements. Do you agree to
include the permit number on all advertisements? $\underline{\cancel{100}}$
·
13. Prior to rental, permit holder must provide the name, address, and phone number for the managing agent or
local contact to all property owners within 100' of the property boundary; submit a copy of this letter to the Planning
and Community Development office. In addition, note that permit holder must notify neighboring properties within 1
days of a change in the managing agent or local contact's contact information.
As British and I william much be improved and an Operational Demait instead by the Fire Demarkies office.
14. Prior to rental , the building must be inspected <u>and</u> an Operational Permit issued by the Fire Prevention office.
Permit holder must apply for and be granted State and local sales tax numbers, including Hotel and Motel Use Sales
Tax, as discussed in item number 5 above; submit a copy of these approvals to the Planning and Community
Development office.

EXHIBIT A

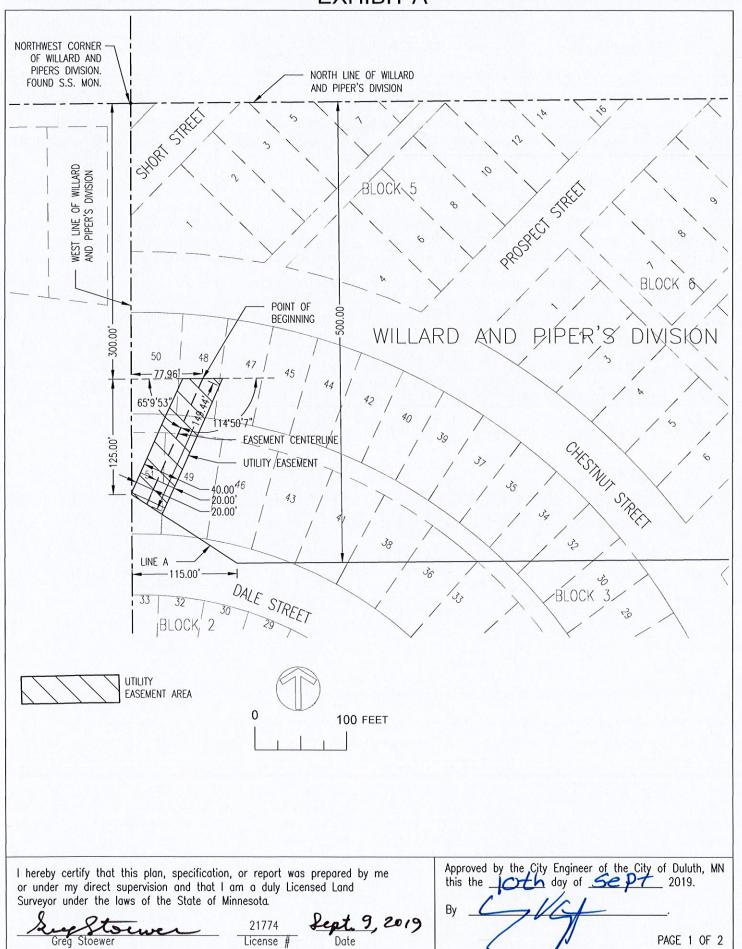


EXHIBIT B

A 40.00 foot wide easement for utility purposes across the following described portions of Lots 47-51, Block 3 and alley lying adjacent to lots 48, 49, 50 and 51, Block 3 of Willard and Piper's Division, according to the recorded plat thereof, St. Louis County, Minnesota, centerline of said 40.00 foot easement is described as follows:

Commencing at the northwest corner of said Willard and Piper's Division; thence south 300.00 feet along the west line of said Willard and Piper's Division; thence east on a line that is parallel with the north line of Willard and Piper's Division 77.96 feet to the point of beginning of said easement centerline; thence southwesterly deflecting 114 degrees 50 minutes 7 seconds to the right 149.44 feet to the terminus of said centerline on the following described Line A. Line A begins at a point on said west line of Willard and Piper's Division that is 425 feet south of the northwest corner of Willard and Piper's Division, and runs to a point that is 500.00 feet south of the north line of Willard and Piper's Division and 115.00 feet east of the west line of Willard and Piper's Division.

Said easement area is shortened or prolonged northeasterly to a line 300.00 feet south of and parallel with the north line of said Willard and Piper's Division, and shortened or prolonged southwesterly to said Line A and the west line of Willard and Piper's Division.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

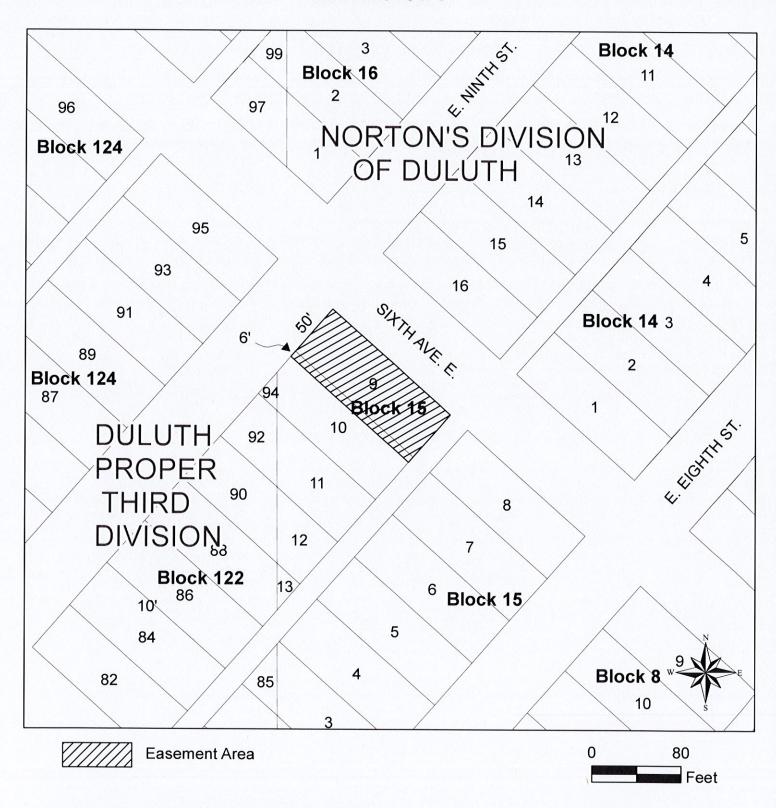
Greg Stoewer

21//4 License # <u>Lept. 9,</u> 2019

Ву

PAGE 2 OF 2

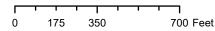
Exhibit A



Lot 9 and the northeasterly 6 feet of Lot 10, Block 15, Norton's Division of Duluth, St. Louis County, Minnesota, according to the recorded plat thereof.

APPROVED BY CITY ENGINEER DATE





Conversion of West 1st Street from one way to two way traffic Project #1854



ATTACHMENT 1





STATE OF MINNESOTA PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

Federal Project Number: <u>STPF-TA 3920(085)</u> State Project Number (SP): <u>118-090-024</u>

Project Identification: Phase II Architectural History Evaluation

This contract is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), the City of Duluth, Address: 411 West 1st Street, Duluth, Minnesota 55802 ("City"), and Deco Cultural Services, LLC, a Limited Liability Company, Address: 207 4th Avenue North, South St. Paul, Minnesota 55075 ("Contractor").

RECITALS

- 1. Minnesota Statutes §15.061 authorizes State to engage such assistance as deemed necessary.
- 2. State is in need of Contractor to conduct a Phase II architectural history evaluation for the Lakewalk Trail Project in Duluth, Minnesota.
- 3. This contract is funded in whole or in part with federal dollars from CFDA #20.205.
- 4. Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of State.

CONTRACT TERMS

1. Term of Contract, Survival of Terms and Incorporation of Exhibits

1.1 **Effective Date**: This contract will be effective on the date State obtains all required signatures under Minnesota

Statutes §16C.05, subdivision 2. Contractor must not begin work under this contract until this contract is fully executed and Contractor has been notified by State's Authorized

Representative to begin the work.

1.2 Expiration Date: This contract will expire on June 30, 2020, or when all obligations have been satisfactorily

fulfilled, whichever occurs first.

1.3 Survival of Terms: All clauses which impose obligations continuing in their nature and which must survive in order

to give effect to their meaning will survive the expiration or termination of this contract, including, without limitation, the following clauses: 8. Indemnification, Standard of Care, Liability for Work and Deliverable Standards; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction and

Venue; and 14. Data Disclosure.

1.4 **Exhibits**: Exhibits A through E are attached and incorporated into this contract.

2. Contractor's Duties

2.1 Contractor, who is not a state employee, will perform the tasks and provide the deliverables described in Exhibit A.

3. Time

3.1 Contractor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence. Contractor will perform its duties as expeditiously as is consistent with professional care and skill and the orderly progress of the project. If Contractor fails to substantially perform its duties by the time fixed for the completion of the work, State may immediately terminate this contract. Neither party will be held responsible for delay or failure to perform when such delay or failure is due to a "force majeure event" including acts of God, acts of the public enemy, unusually severe weather, or acts of governmental authorities.

4. Consideration and Payment

- 4.1 **Consideration.** State will pay for all services performed by Contractor under this contract as follows:
 - 4.1.1 **Compensation.** Contractor will be paid on a Fixed Hourly Rate basis as follows:

Direct Labor Costs

Task	Hours	Hourly Rate	Cost
Research	60	\$100.00	\$6,000.00
Fieldwork	10	\$100.00	\$1,000.00
Report	66	\$100.00	\$6,600.00

Total Direct Labor Costs

\$13,600.00

Direct Expense Costs

Description	Units	Unit Rate	Cost
Mileage	500	\$0.58	\$290.00
Parking	1	\$20.00	\$20.00
Copies	1	\$50.00	\$50.00
Lodging	1	\$150.00	\$150.00
Meals	1	\$36.00	\$36.00

Total Direct Expense Costs

\$546.00

- 4.1.2 **Overtime.** State will not pay overtime rates for any overtime worked by Contractor or a subcontractor unless State's Authorized Representative has specifically authorized overtime, in writing.
- 4.1.3 **Direct Costs**. Allowable direct costs include project specific costs listed above. Any other direct costs not listed above must be approved, in writing, by State's Authorized Representative prior to expenditure.
- 4.1.4 **Travel Expenses.** Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Minnesota Department of Transportation Travel Regulations". Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. State of Minnesota will be considered the home base for determining whether travel is "out of state". See Exhibit B for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.
- 4.1.5 **Total Obligation.** State will pay eighty percent of the project costs (up to \$11,316.80). The City will pay twenty percent of the project costs (up to \$2,829.20). The total obligation for all compensation and reimbursements to Contractor under this contract will not exceed **\$14,146.00**.

4.2 Payment

- 4.2.1 **Invoices**. Contractor must submit invoices electronically for payment, using the format set forth in Exhibit C, on a monthly basis. Contractor will invoice State and City directly. Invoices will detail the total cost of the project, and also identify the 80% State and 20% City amount due.
- 4.2.2 **Progress Reports.** Contractor must submit a monthly progress report, using the format set forth in Exhibit D showing the progress of work in work hours according to the tasks listed in Article 2 Scope of Work.
- 4.2.3 **State's Payment Requirements**. State will promptly pay all valid obligations under this contract as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Contractor's invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Contractor within 10 days of discovering the error. After State receives the corrected invoice, State will pay Contractor within 30 days of receipt of such invoice.
- 4.2.4 All Invoices Subject to Audit. All invoices are subject to Audit, at State's discretion.

^{*} Labor Rate includes direct labor, overhead and profit

- 4.2.5 **Invoice Package Submittal**. Contractor must submit the signed invoice, the signed progress report and all required supporting documentation, for review and payment, to State's Consultant Services Section, at ptinvoices.dot@state.mn.us. Invoices will not be considered "received" within the meaning of Minnesota Statutes §16A.124 until the signed documents are received by State's Consultant Services Section.
 - 4.2.5.1 Each invoice must contain the following information: MnDOT Contract Number, Contractor's invoice number (sequentially numbered), Contractor's billing and remittance address, if different from business address, and Contractor's signature attesting that the invoiced services and costs are new and that no previous charge for those services and goods has been included in any prior invoice.
 - 4.2.5.2 Except for Lump Sum contracts, direct nonsalary costs allocable to the work under this contract, must be itemized and supported with invoices or billing documents to show that such costs are properly allocable to the work. Direct nonsalary costs are any costs that are not the salaried costs directly related to the work of Contractor. Supporting documentation must be provided in a manner that corresponds to each direct cost.
 - 4.2.5.3 Except for Lump Sum contracts, Contractor must provide, upon request of State's Authorized Representative, the following supporting documentation:
 - 4.2.5.3.1 Direct salary costs of employees' time directly chargeable for the services performed under this contract. This must include a payroll cost breakdown identifying the name of the employee, classification, actual rate of pay, hours worked and total payment for each invoice period; and
 - 4.2.5.3.2 Signed time sheets or payroll cost breakdown for each employee listing dates and hours worked. Computer generated printouts of labor costs for the project must contain the project number, each employee's name, hourly rate, regular and overtime hours and the dollar amount charged to the project for each pay period.
- 4.2.6 **Subcontractors**. If Contractor is authorized by State to use or uses any subcontractors, Contractor must include all the above supporting documentation in any subcontractor's contract and Contractor must make timely payments to its subcontractors. Contractor must require subcontractors' invoices to follow the same form and contain the same information as set forth above.
- 4.2.7 **Retainage.** Under Minnesota Statutes §16C.08, subdivision 2(10), no more than 90% of the amount due under this contract may be paid until State's agency head has reviewed the final product of this contract. The balance due will be paid when State's agency head determines that Contractor has satisfactorily fulfilled all the terms of this contract.
- 4.2.8 **Federal Funds.** If federal funds are used, Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by Contractor's failure to comply with federal requirements.

5. Conditions of Payment

5.1 All services provided by Contractor under this Contract must be performed to State's satisfaction, as determined at the sole discretion of State's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations, including business registration requirements of the Office of the Secretary of State. Contractor will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state or local law.

6. Authorized Representatives

6.1 **State's Authorized Representative.** State's Authorized Representative will be:

Name: Ashley Duran, Contract Administrator
Address: Minnesota Department of Transportation
Consultant Services Unit, Mail Stop 680

395 John Ireland Boulevard, St. Paul, Minnesota 55155-1800

Telephone: 651-366-4627

E-Mail: ashley.duran@state.mn.us

State's Authorized Representative, or his/her successor, will monitor Contractor's performance and has the authority to accept or reject the services provided under this contract.

6.2 State's Project Manager. State's Project Manager will be:

Name: Renee Barnes, Historian

Address: Minnesota Department of Transportation

Cultural Resources Unit, Mail Stop 620

395 John Ireland Boulevard, St. Paul, Minnesota 55155-1800

Telephone: 651-366-4291

E-Mail: renee.barnes@state.mn.us

State's Project Manager, or his/her successor, has the responsibility to monitor Contractor's performance and progress. State's Project Manager will sign progress reports, review billing statements, make recommendations to State's Authorized Representative for acceptance of Contractor's good or services and make recommendations to State's Authorized Representative for certification for payment of each invoice submitted for payment.

6.3 County's Authorized Representative. County's Authorized Representative will be:

Name: Patrick Loomis, Project Engineer

Address: City of Duluth

411 West 1st Street, Duluth, Minnesota 55802

Telephone: 218-730-5094

E-Mail: ploomis@duluthmn.gov

6.4 Contractor's Authorized Representative. Contractor's Authorized Representative will be:

Name: Andrea Pizza, Principal Address: Deco Cultural Services, LLC

207 4th Avenue North, South St. Paul, Minnesota 55075

Telephone: 651-276-9446

E-Mail: andrea@decocultural.com

If Contractor's Authorized Representative changes at any time during this contract, Contractor must immediately notify State.

7. Assignment, Amendments, Waiver and Contract Complete

- 7.1 **Assignment.** Contractor may neither assign nor transfer any rights or obligations under this contract without the prior consent of State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.
- 7.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 7.3 **Waiver.** If State fails to enforce any provision of this contract, that failure does not waive the provision or State's right to subsequently enforce it.
- 7.4 **Contract Complete.** This contract contains all prior negotiations and agreements between State and Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

8. Indemnification, Standard of Care, Liability for Work and Deliverable Standards

- 8.1 **Indemnification**. In the performance of this contract by Contractor, or Contractor's agents or employees, Contractor must indemnify, save and hold State, its agents, and employees harmless from any and all claims or causes of action, including reasonable attorney's fees incurred by State, to the extent caused by Contractor's: 1) intentional, willful, or negligent acts or omissions; 2) breach of contract or warranty; or 3) breach of the applicable standard of care. The indemnification obligations of this section do not apply if the claim or cause of action is the result of State's sole negligence. This clause will not be construed to bar any legal remedies Contractor may have for State's failure to fulfill its obligation pursuant to this contract.
- 8.2 **Standard of Care**. In the performance of its professional services, Contractor will use that degree of care, knowledge and skill ordinarily exercised by other reputable professionals in the field under like circumstances within the state of Minnesota.

- 8.3 **Liability for Work**. Contractor will be responsible for any damages incurred as a result of its failure to comply with the standard of care or other failure to comply with contract requirements, and for any loss or cost to repair or remedy such non-compliance, however, Contractor will not be liable for consequential or punitive damages, including but not limited to those arising from, loss of use, loss of profits or revenue, loss of financing commitments or fees or the cost of capital. State acknowledges its duty to mitigate damages.
- 8.4 **Deliverable Standards**. All services provided by the Contractor pursuant to this contract, which do not meet the requirements of this Article 8.4, will be considered defective work. All services provided by Contractor pursuant to this contract must be in accordance with (1) the requirements and specifications set forth in this contract; (2) the required standard of care; (3) applicable state and federal standards, specifications, policies and practices; and (4) applicable federal, state, and local, laws, ordinances, rules, and regulations.
 - 8.4.1 **Rejection and Correction of Defective Work**. State has the authority to reject services that do not meet the requirements of the contract. Contractor will be responsible for promptly making such revisions, repairs or corrections to its work and deliverables as are necessary to meet the contract requirements. Such revisions, repairs and corrections will be made without additional compensation.
 - 8.4.2 **No Waiver**. Acceptance of Contractor's services by State is not a waiver of any provision of this contract and does not relieve Contractor of the responsibility for correcting a subsequently- discovered failure to conform to the requirements of the contract.
 - 8.4.3 **Effect of Acceptance**. It is understood by the parties that State will rely on the professional performance and ability of Contractor. Any examination by State or the federal government, or any acceptance or use of the work product of Contractor, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of Contractor which would relieve Contractor from any liability or expense that could be connected with Contractor's sole responsibility for the propriety and integrity of the professional work to be accomplished by Contractor pursuant to this contract.
 - 8.4.4 Consultation Concerning Deliverables. Contractor must, at no additional cost to State, confer with State at any time during construction or any phase of work performed by others based on deliverables provided by Contractor, when necessary for the purpose of interpreting or clarifying such deliverables. Contractor must give immediate attention to these requests so there will be minimal delay to the construction or other work as referenced. State will notify Contractor of any request for interpretation, clarification or correction. Notification may be in writing, or by telephone and confirmed in writing. Contractor must respond to such notice within three business days and must promptly perform the necessary services to minimize any delays to State. Contractor may be required to make a field review of the project site, if directed by State's Authorized Representative, and Contractor may be required to send personnel to the appropriate State district office as part of performing the necessary services.
 - 8.4.5 **Subsequent Corrections**. If State determines that additional field or office work may be required due to Contractor's failure to comply with the contract requirements and the standards set forth in this Article 8, then Contractor must perform such additional work as may be necessary to bring the work into compliance with such requirements and standards. Contractor must prepare any and all plans or data needed to correct its deliverables without additional compensation, even though Contractor may already have received final payment. Contractor must give immediate attention to these changes so there will be minimal delay to the construction or other work as referenced.
 - 8.4.6 **Reliance on State-Furnished Data**. The parties understand and agree that Contractor must rely on documents, drawings, specifications and studies provided to Contractor by State and others on its behalf in making its opinions of conformity to specifications and standards. Contractor will not be entitled to rely on such documents, drawings or specifications that Contractor knows to be incorrect or incomplete, unless it has first brought such concerns to the attention of State and has been directed to proceed notwithstanding such concerns.

9. State Audits

9.1 Under Minnesota Statutes §16C.05, subdivision 5, Contractor's books, records, documents and accounting procedures and practices relevant to this contract are subject to examination by State, State's Auditor or the Legislative Auditor, as appropriate, for a minimum of six years from the expiration date of this contract.

10. Government Data Practices and Intellectual Property

10.1 **Government Data Practices**. Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either Contractor or State. If Contractor receives a request to release the data referred to in this Clause, Contractor must immediately notify State and consult with State as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.

10.2 Intellectual Property Rights

10.2.1 **Intellectual Property Rights**. State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Contract. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Contractor, its employees, agents and subcontractors, either individually or jointly with others in the performance of this contract. Works includes Documents. "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Contractor, its employees, agents or subcontractors, in the performance of this contract. The Documents will be the exclusive property of State, and Contractor upon completion or cancellation of this contract must immediately return all such Documents to State. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." Contractor assigns all right, title and interest it may have in the Works and the Documents to State. Contractor must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

10.2.2 **Obligations**

- 10.2.2.1 **Notification**. Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Contractor, including its employees and subcontractors, in the performance of this contract, Contractor will immediately give State's Authorized Representative written notice thereof and must promptly furnish State's Authorized Representative with complete information and disclosure thereon.
- 10.2.2.2 Representation. Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State and that neither Contractor nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Contractor's expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Contractor's or State's opinion is likely to arise, Contractor must, at State's discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of State will be in addition to and not exclusive of other remedies provided by law.

11. Workers' Compensation

11.1 Contractor certifies that it is in compliance with Minnesota Statutes §176.181, subdivision 2, pertaining to workers' compensation insurance coverage. Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way State's obligation or responsibility.

12. Publicity and Endorsement

- 12.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify State as the sponsoring agency and must not be released without prior written approval from State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.
- 12.2 **Endorsement.** Contractor must not claim that State endorses its products or services.

13. Governing Law, Jurisdiction and Venue

13.1 Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings arising out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14. Data Disclosure

14.1 Under Minnesota Statutes §270C.65, and other applicable law, Contractor consents to disclosure of its social security number, federal employer tax identification number and Minnesota tax identification number, already provided to State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring Contractor to file state tax returns and pay delinquent state tax liabilities, if any, or pay other state liabilities.

15. Subcontractors

15.1 Subcontracts

- 15.1.1 If Contractor is authorized by State to use, or uses, any subcontractors, Contractor will be responsible for coordinating and managing the work of such subcontractors. The use of subcontractors does not relieve Contractor from its obligation to perform the services specified in this contract.
- 15.1.2 Contractor's subcontracts must contain all appropriate terms and conditions of this contract, including Articles 1, 2, 4, 5, 6 and 9 of this Contract as they apply to the subcontractor.
- 15.1.3 Contractor must require subcontractors' invoices to follow the same format and contain the same information as set forth in Article 4.
- 15.1.4 Contractor must submit a copy of all subcontracts exceeding \$10,000.00 to State's Authorized Representative no later than 30 calendar days after executing the subcontract and prior to beginning work under the subcontract. Upon request by State, a copy of any executed subcontract under \$10,000.00 must be sent to State's Authorized Representative.

15.2 Payment to Subcontractors

15.2.1 (If applicable) As required by Minnesota Statutes §16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

16. Termination and Suspension

- 16.1 **Termination by State.** State or the Commissioner of Administration may terminate this contract at any time. Upon termination, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 16.2 **Termination for Insufficient Funding**. State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to Contractor. Written notice may be transmitted by electronic means. State is not obligated to pay for any services that are provided after notice and effective date of termination. However, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. State must provide Contractor notice of the lack of funding within a reasonable time of

- State's receiving that notice.
- 16.3 **Suspension.** State may immediately suspend this contract in the event of a total or partial government shutdown due to failure to have an approved budget by the legal deadline. Work performed by Contractor during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.
- 17. Affirmative Action Requirements for Contracts in Excess of \$100,000.00 and Contractor has More than 40 Fulltime Employees in Minnesota or its Principal Place of Business INTENTIONALLY OMITTED

18. Insurance Requirements

- 18.1 Insurance Certificates and Continuity of Coverage Required. Contractor must not commence work under this contract until Contractor has obtained all of the insurance required below and State has been provided with a certificate of insurance showing that Contractor has each type of coverage and limits required under this contract. Contractor must file the certificate with State's Authorized Representative within 30 days after execution of this contract and prior to commencing any work under this contract. Contractor must maintain such insurance in full force and effect throughout the term of this contract.
- 18.2 **Required Insurance**. Contractor must maintain and furnish satisfactory evidence of the following insurance policies:
 - 18.2.1 Workers' Compensation Insurance: Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
 - \$100,000.00 Bodily Injury by Disease per employee
 - \$500,000.00 Bodily Injury by Disease aggregate
 - \$100,000.00 Bodily Injury by Accident

If Minnesota Statutes §176.401 exempts Contractor from Workers' Compensation insurance requirements or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If, during the course of performing this contract, Contractor becomes eligible for Workers' Compensation Insurance, Contractor must comply with the Workers' Compensation Insurance requirements of this section and provide State with a certificate of insurance showing such coverage.

- 18.2.2 **Commercial General Liability Insurance**: Contractor must maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under this contract whether the operations are by Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor pursuant to this Contract. Insurance minimum limits are as follows:
 - \$2,000,000.00 per occurrence
 - \$2,000,000.00 annual aggregate
 - \$2,000,000.00 annual aggregate Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured, to the extent permitted by law

- 18.2.3 **Commercial Automobile Liability Insurance**: Contractor is required to maintain insurance protecting Contractor from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired and non-owned autos which may arise from operations under this contract and in case any work is subcontracted the Contractor will require the subcontractor to provide Commercial Automobile Liability. Insurance minimum limits are as follows:

 \$2,000,000.00 per occurrence Combined Single limit for Bodily Injury and Property Damage
 - In addition, the following coverages should be included:
 - Owned, Hired, and Non-owned Automobile
- 18.2.4 **Professional/Technical, Errors and Omissions and/or Miscellaneous Liability Insurance**: Contractor must maintain insurance providing coverage for all claims Contractor is legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to Contractor's professional services performed under this contract. Unless otherwise specified within this contract, Contractor is required to carry the following minimum limits:
 - \$2,000,000.00 per claim
 - \$2,000,000.00 annual aggregate

Any deductible will be the sole responsibility of Contractor and may not exceed \$50,000.00 without the written approval of State. If Contractor desires State's approval to have a higher deductible amount, Contractor must make such request in writing, specifying the amount of the desired deductible and providing financial statements, acceptable to State, to enable State to ascertain Contractor's ability to cover the deductible from its own resources. State will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act. The retroactive or prior acts date of such coverage must not be after the effective date of this contract and Contractor must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be obtained to fulfill this requirement.

18.2.5 Additional Insurance Conditions:

- 18.2.5.1 Contractor's policies will be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of Contractor's performance under this contract;
- 18.2.5.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the state of Minnesota within five business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance written notice to the state of Minnesota.
- 18.2.5.3 Contractor is responsible for payment of contract related insurance premiums and deductibles;
- 18.2.5.4 If Contractor is self-insured, a Certificate of Self-Insurance must be provided to State;
- 18.2.5.5 Contractor's policies must include legal defense fees in addition to its liability policy limits, with the exception of Article 18.2.4 above;
- 18.2.5.6 Contractor will obtain insurance policies from insurance companies having an "AM BEST" rating of "A minus", a Financial Size Category VII, or better, and authorized to do business in the state of Minnesota; and
- 18.2.5.7 An Umbrella or Excess Liability insurance policy may be used to supplement Contractor's policy limits to satisfy the full policy limits required by this contract.
- 18.3 **Right to Terminate**. State reserves the right to immediately terminate the contract if Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Contractor. All insurance policies must be open to inspection by State and copies of policies must be submitted to State's Authorized Representative upon written request.

19. Discrimination Prohibited by Minnesota Statutes §181.59

19.1 Contractor will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

20. E-Verify Certification (In accordance with Minnesota Statutes §16C.075)

20.1 For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc. All subcontractor certifications must be kept on file with Contractor and made available to State upon request.

21. Plain Language; Accessibility Standards

- 21.1 **Plain Language**. Except for designs, plans, layouts, maps and similar documents, Contractor must provide all deliverables in "Plain Language". Executive Order 14-07 requires the Office of the Governor and all Executive Branch agencies to communicate with Minnesotans using Plain Language. As defined in Executive Order 14-07, Plain Language is a communication which an audience can understand the first time they read or hear it. To achieve that, Contractor will take the following steps in the deliverables:
 - Use language commonly understood by the public;
 - Write in short and complete sentences;
 - Present information in a format that is easy-to-find and easy-to-understand; and
 - Clearly state directions and deadlines to the audience.
- 21.2 Accessibility Standards. Except for designs, plans, layouts, maps and similar documents, Contractor agrees to comply with the State of Minnesota's Accessibility Standard (http://mn.gov/oet/images/Stnd_State_Accessibility.pdf) for all deliverables under this contract. The State of Minnesota's Accessibility Standards entail, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 of the Rehabilitation Act, as amended. Contractor's compliance with the State of Minnesota's Accessibility Standard includes, but is not limited to, the specific requirements as follows:
 - All videos must include closed captions, audio descriptions and a link to a complete transcript;
 - All documents, presentations, spreadsheets and other material must be provided in an accessible format. In addition, Contractor will provide native files in an editable format. Acceptable formats include InDesign, Word and Excel; and
 - All materials intended for downloading and printing such as promotional brochures, must be labeled as such and the content must additionally be provided in an accessible format.

22. Certification of Nondiscrimination (in accordance with Minnesota Statute §16C.053)

22.1 For services valued in excess of \$50,000, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Contractor's business. For purposes of this section, "discrimination" includes, but is not limited to, engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

23. AASHTOWare Activities

23.1 For contracts that involve the use of AASHTOWare; AASHTOWare activities conducted by Contractor must adhere to the software license agreement(s) that State has executed with the American Association of State Highway and Transportation Officials (AASHTO). The license agreement and any supplemental agreements can be found on State's Consultant Services website, under the AASHTOWare Access Provisions section, at: http://www.dot.state.mn.us/consult/consultantcorner.html.

24. Additional Provisions

STATE ENCLIMERANCE VERIFICATION

24.1 Contractor Payment Form Requirement. Contractors making payments to subcontractors, regardless of their tier or Disadvantaged Business Enterprise (DBE) status, are required to complete Exhibit E, the "Contractor Payment Form", and submit it to State's Office of Civil Rights (OCR) until final payment is made. Contractor must include payments to subcontractors, service providers, sub-consultants and independent contractors. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to Contractor to be withheld. Contractor must submit one copy of this form to State's OCR and one to State's Project Manager, no later than 10 days after receiving a payment from State.

DEPARTMENT OF TRANSPORTATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes §16A.15 and §16C.05.	(with delegated authority)
Signed:	Signed:
Date:	Title:
	Date:
CONTRACTOR Contractor certifies that the appropriate person(s) have executed the contract on behalf of Contractor as required by applicable articles,	COMMISSIONER OF ADMINISTRATION
bylaws or resolutions.	Signed:
Signed: One C. Pyjn Deco Cultural Services LLC	Date:
Title:Chief Manager	
Date: September 9, 2019	
CITY	
Signed:	
Title:	

THIS ENTIRE SCOPE OF WORK FALLS UNDER SOURCE TYPE 1071

PROJECT BACKGROUND

Contractor will conduct a Phase II architectural history evaluation for the Lakewalk Trail Project in Duluth, Minnesota. Andrea Pizza will serve as Contractor's Principal Investigator. This Phase II evaluation will assess the National Register of Historic Places (National Register) individual eligibility of the Brighton Beach Tourist Camp (SL-DUL-2328) (Camp), previously inventoried as a contributing element of the historic Skyline Parkway and through which the proposed project will run, and the Brighton Beach Fireplace/Shelter (SL-DUL-3132) (Shelter), a separately inventoried element of the park proximate to the proposed trail. This scope of work is for conducting Phase II evaluation on ONLY the Camp and Shelter require Phase II evaluation.

PROJECT TASKS

Task 1: Research

Contractor will carry out intensive research at the Minnesota Historical Society library; the University of Minnesota libraries, including the Kathryn A. Martin Archives & Special Collections at Duluth; the Minnesota State Historic Preservation Office (SHPO), and online, through such sites as Minnesota Reflections. Research may also be conducted at the St. Louis County Historical Society or other repositories, if it is determined that relevant resources may be housed there. Contractor will use this research to develop an in-depth property history and detailed historic contexts that will frame the significance evaluation of the properties. Additionally, the research will attempt to locate information on comparative tourist-camp properties in Duluth, to assess the relative significance and integrity of the Camp and Shelter with regard to their contextual associations.

Task 2: Fieldwork

Contractor will intensively document the properties through field notes and digital photography. All survey work will follow the SHPO's *Historic and Architectural Survey Manual* and *State's Cultural Resources Unit Project and Report Requirements*. Research conducted at the Martin Archives and if needed, the St. Louis County Historical Society, will occur in combination with the fieldwork mobilization.

Task 3: Reporting

Contractor will prepare a technical report that describes the project area and the project methods and results, inclusive of property history, historic contexts, and significance and integrity evaluations. The report will provide recommendations regarding the Camp and the Shelter. Updated Minnesota Individual Property Inventory Forms will be prepared for both properties. Geographic Information System (GIS) deliverables will be provided per the *State's Cultural Resources Unit Project and Report Requirements*.

Contractor will NOT delivery hard copies of the report; Contractor will provide an Adobe® (.pdf) version of the report to State and the City for distribution needs.

PROJECT SCHEDULE

Contractor will being work on this project immediately upon receipt of notice to proceed. The following schedule has been developed based on a notice to proceed of September 2019.

Task Timeline

Initiate Research

Complete Phase II Fieldwork

Submittal of Draft Technical Report

No later than October 1, 2019

No later than October 31, 2019

No later than December 4, 2019

Submittal of Final Technical Report

Two weeks after receipt of comments on draft

THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

Minnesota Department of Transportation Reimbursement Rates for Travel Expenses

Subject Personal Car Commercial Aircraft Personal Aircraft Rental Car Taxi	Conditions/Mileage (1) (2) (1) (2) (2) (3)	Rate Current IRS Rate Actual Cost Current IRS Rate Actual Cost Actual Cost
	Meals	
Breakfast	(1) (5)	\$9.00/person
Lunch	(1) (5)	\$11.00/person
Dinner	(1) (5)	\$16.00/person
	Lodging	
Motel, Hotel, etc.	(2) (4) (6)	Actual Cost
Laundry/Dry Cleaning (After seven continuous days in Travel Status)	(1) (3)	\$16.00/week
Telephone, Personal	(1)	\$3.00/day

Travel Status

- More than 35 miles from Home Station and/or stay overnight at commercial lodging (motel, etc.).
- Leave home in travel status before 6 a.m. for breakfast expense that day.
- In travel status after 7 p.m. for supper expense that day.
- On travel status and/or more than 35 miles from Home Station for lunch expense that day.

Restrictions

- (1) A maximum rate shown or a lesser rate per actual reimbursement to an employee.
- (2) Include receipt or copy of receipt when invoicing. (Coach class for aircraft, standard car size, and standard room (not to exceed \$150.00)).
- (3) Include receipt or copy of receipt when more than \$10.00.
- (4) Reasonable for area of a stay.
- (5) The gratuity is included in maximum cost.
- (6) To be in Travel Status and at a commercial lodging.

MnDOT Contract No. 1035319 Phase II Architectural History Evaluation Exhibit C Invoice

			IN	NVOICE NO			
		Estimate		on:% (from		eport)	
nvoice Inst	ructions:		Fina	l Invoice? Yes	∐ No		
Contractor n							
2. Sign the 3. Attach s 4. Scan the a. Con b. Con c. Sup	e invoice and prosupporting docuse entire invoice impleted, Signed impleted, Signed poorting Documete: Whenever possible with the supporting Documete: Whenever possible invoice with the supporting Documeter with the supporting Documeter with the supporting Documeter with the support in the	ogress report mentation package*, in the Invoice Form Progress Report entation	following o	plicable) ges to portrait page		document to decrease	the size.
MnDOT C	ontract No. 10	35319			Rilling Period	: From t	0
		: June 30, 2020				. 1 Tom t	o
	r: 118-090-024				invoice Bate.		
				Total	Total	Amount	Billed
				Contract	Billing	Previously	This
				Amount	to Date	Billed	Invoice
1. Direct Labor Costs:			\$13,600.00				
(Attach Supporting Documentation)			\$546.00				
2. Direct Expense Costs: (Attach Supporting Documentation)			\$546.00				
(Finaless 5)	upporting Documen	Net Earning	s Totals:	\$14,146.00			
			<u> </u>		Total Amount 1	Due This Invoice:	
Contract	_	this table whe	n submitti	0	0% Portion: 0% Portion:		
Source	Total	Amount	Billed Th	nis			_
Type	Billing to Date	Previously Billed	Invoice		that the statemen	ts contained on this i	nvoice, and
1071						are true and accurat	
Total**					~ .	a false or fraudulen	
**Must Ma	ntch Net Earnin	ngs Totals Abov	/e			record in connection this invoice is subject	
				Contract	or: Deco Cultura	al Services, LLC	
				Signatur	e:		
				Print Na	me:		
				Title:			

^{*}If you are unable to support electronic submission of Invoices, you must contact the Authorized Representative for possible alternatives.

MnDOT Contract No. 1035319
Phase II Architectural History Evaluations
Exhibit D

For In	voice No.:	Progress Report Form
Progress Report Instructions:		
1. Contractor must complete the progress report form	, in its entirety.	
2. Contractor must sign the progress report.	-	
3. Contractor must include the completed, signed pro and/or invoice form for further details).	gress report as part of the invoice package, and	d submit it as instructed (see Contract
(Note: Whenever possible, convert landscape page	es to portrait pages and optimize the document	t to decrease the size.)
MnDOT Contract No. 1035319	Billing Period: from	to
Contract Expiration Date: June 30, 2020		
SP Number: 118-090-024		
From: Deco Cultural Services LLC		

Task	% of Total Contract	% Work Completed This Period	NGINEERIN % Work Completed To Date	G ESTIMAT Weight % Completed This Period	E Weight % Work Completed to Date	Hours Budget	Hours Accrued This Period	Total Hours Accrued To Date	*% of Budget Hours Used
1	2	3	4	5	6	7	8	9	10
Research	44%					60			
Fieldwork	7%					10			
Report	49%					66			
TOTALS:	100%					136		-	

*Note: If Budgeted Hours Used for any task exceeds 100%, Contractor must attach an explanation to the invoice package.

I certify that the above statement is correct, and certify that I have not knowingly made a false statement or used a false record in the preparation of this form:

Contractor's Project Manager Date

State Project Number:	Payment Reporting Period: to	Prime Contractor:
Invoice Number:	Date Paid by State:	Subcontractor:

Submittal Instructions: Contractors making payments to subcontractors, regardless of their tier or DBE status, are required to complete and submit this form to State's Office of Civil Rights (OCR) until final payment is made. Contractor must include payments to subcontractors, service providers, sub-consultants and independent contractors. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to the Prime Contractor to be withheld. Contractor must submit one copy of this form to State's OCR (at Joyce.Brown-Griffin@state.mn.us); State's Project Manager, Consultant Services (at ptinbox@state.mn.us) no later than 10 days after receiving a payment from State.

(A) Contractor's Name, Addres	s & Teleph	one Number	(B) Total Contra	ct Amount	(C) Committed DBE	% (D) Actual DBE % to Date
Name:						
Address:						
Phone:						
(E) Name of Subcontractor(s)/S	upplier(s)	(F) DBE? (indicate)	(G) Description (of Work	1	(H) Subcontract Amount
1.			1.			1.
2.			2.			2.
3.			3.			3
(I) Amount of Current Payment (J) Date Subcontractor Payment Issued		(K) Amount Paid to Date (L) % Paid to Date		(M) Final Payment? (Yes or No)		
1.	1.				1.	1.
2.	2.				2.	2.
3.	3.				3.	3.
(N) Company Official's Signatu	re, Title &	Contact Info	(O) Date Signed	(P) Name, T	Title & Contact Info for	the Individual Completing the Report
Signature:			Signature:			
Title:			1	Title:		
Phone Number:	Fax N	Number:		Phone Numb	ber:	Fax Number:

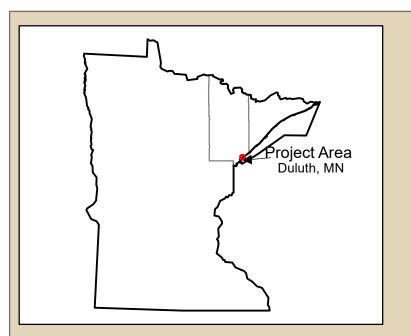
(This form may be submitted in an alternate format)

Contractor Payment Form Instructions:

- (A) Contractor's Name, Address & Telephone Number: Enter the Prime Contractor's Information
- (B) Total Contract Amount: Enter the Total Contract Amount of the contract, as a whole
- (C) Committed DBE %: Enter the DBE requirement, as certified by the Prime Contractor in their proposal, which is the minimum percentage to be met.
- (D) **Actual DBE % To Date**: Enter the DBE percentage that have been met to date.
- (E) Name of Subcontractor(s)/Supplier(s): Enter the name of each subcontractor and/or supplier being used under the contract (add lines if necessary).
- (F) **DBE?:** Indicate whether each subcontractor and/or supplier is a DBE, or not.
- (G) **Description of Work:** Enter a description of the service(s) each subcontractor and/or supplier is providing under the contract.
- (H) **Subcontract Amount:** Enter the amount each subcontractor and/or supplier has been contracted for.
- (I) Amount of Current Payment: Enter the amount each subcontractor and/or supplier is being paid in this reporting period.
- (J) **Date Subcontractor Payment Issued:** Enter the date that the Prime issued payment to the Subcontractor.
- (K) **Amount Paid to Date:** Enter the amount each subcontractor and/or supplier has been paid to date, including the current payment.
- (L) % Paid to Date: Enter the percentage of total payments each subcontractor and/or supplier has received to date, in comparison to their contracted amount.
- (M) Final Payment? (Yes or No): Indicate whether the payment for each subcontractor and/or supplier, for the current payment, is the final payment or not.
- (N) Company Official's Signature and Title: A company official must sign each Contractor Payment Form submitted include their title for reference.
- (O) **Date Signed**: Enter the date the Contractor Payment Form was signed by the company official.
- (P) Name & Title of Individual Completing the Report: Enter the Name and Title of the person who actually completed the Contractor Payment Form.

If you have any questions regarding this form, call the Office of Civil Rights at 651-366-3073

[CS/CM Last Updated 07/14/2017] 2





Legend
Project Extent



0 0.25 0.5 Miles

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



Exhibit A

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN MADDEN, GALANTER, HANSEN, LLP AND CITY OF DULUTH

THIS FIRST AMENDMENT is made and entered into this _____ day of September, 2019, by and between the City of Duluth, hereinafter referred to as "City", and Madden, Galanter, Hansen, LLP., located at 7760 France Avenue South, Suite 290, Bloomington, MN 55435, hereinafter referred to as "Service Provider" for the purpose of rendering services to the City

WHEREAS, the City has an Agreement with the Service Provider identified as Agreement for Professional Services By and Between Madden, Galanter, Hansen LLP. and City of Duluth with an effective date of July 1, 2018, and identified as City Contract #23507 (the "Agreement"); and

WHEREAS, City and Service Provider wish to amend Paragraph 2 of the Agreement to authorize an additional \$20,000 in expenditures for legal services; and

WHEREAS, City and Service Provider wish to amend Paragraph 3 of the Agreement to extend the term of the Agreement to December 31, 2021.

THEREFORE, the City and the Service Provider agree as follows:

In this Amendment to Agreement, the deleted terms will be struck out and the added terms will be underlined.

2. Fees

It is agreed between the parties that Service Provider's hourly rate for the term of this Agreement shall be no more than \$170.00 per hour, plus mileage and out of pocket expenses, and shall not exceed the total sum of forty thousand dollars (\$40,000) sixty thousand dollars (\$60,000) payable from City Fund 110-110-1104-5304. The Service Provider will not incur additional fees and expenses without prior written authorization from the City. All bills for services rendered shall be submitted monthly to the City Attorney. Such billings shall be accompanied by documentation as shall reasonably be requested by the City Attorney.

3. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 20192021, unless terminated earlier as provided for herein. Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part

without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Service Provider under this Agreement shall become the property of the City and Service Provider shall promptly deliver the same to the City. Service Provider shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Service Provider, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Service Provider which gave rise to such breach.

Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

CITY OF DULUTH	MADDEN, GALANTER, HANSEN, LLP
By: Mayor	By: Susan Hansen, Attorney at Law Date: 8/27/19
Attest: City Clerk	Date: 0/21/19
Date:	
Countersigned:	
City Auditor	
Approved as to form:	
City Attorney	

FIRST AMENDMENT TO PARTNER AGREEMENT REGARDING FY 2016 NATIONAL SEXUAL ASSAULT KIT INITIATIVE ("SAKI") BETWEEN THE CITY OF DULUTH AND PROGRAM FOR AID TO VICTIMS OF SEXUAL ASSAULT, INC. ("PAVSA")

THIS AMENDMENT, effective on date of attestation by the city clerk, is by and between the CITY OF DULUTH, a State of Minnesota municipal corporation ("City"), and the PROGRAM FOR AID TO VICTIMS OF SEXUAL ASSAULT, INC., a private non-profit corporation under the laws of the State of Minnesota, ("PAVSA").

WHEREAS, the City, and PAVSA (the "Parties") entered into a partner agreement ("Agreement") in December of 2016 under which the City was to act as fiscal agent for grant funds received from the Bureau of Justice Assistance of the U.S. Department of Justice to fund the City of Duluth 2016 Sexual Assault Kit Initiative Project and the Parties were to use the funds to support a multidisciplinary community response team to engage in the comprehensive reform of the approach to sexual assault cases from evidence found in previously unsubmitted sexual assault kits that had not been submitted to a crime laboratory for testing and the Agreement is identified as City Contract #23052; and

WHEREAS, the Parties to the Agreement wish to extend the expiration date of the Agreement from September 30, 2019 to September 30, 2020.

THEREFORE, the Parties agree to amend ARTICLE IV of the Agreement as follows:

In this Amendment to the Agreement, the deleted terms will be struck out and the added terms will be underlined.

ARTICLE IV

Term

The Term of this Agreement shall run concurrently with the Budget Period set forth in the Grant Award and shall run through September 30, 2019 2020.

Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

[Remainder of this page left blank; signature page to follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY OF DULUTH

By: Mayor	PROGRAM FOR AID TO VICTIMS OF SEXUAL ASSAULT, INC., a private non-profit corporation
Attest: City Clerk	By:
Date:	
Countersigned:	Its:
	Date:
City Auditor	
Approved as to form:	
City Attorney	

STATE OF MINNESOTA

COMMUNICATIONS FACILITY

USE AGREEMENT AMENDMENT

Agreement #98282 Amendment 2 Duluth Tower

THIS AMENDMENT, by and between <u>State of Minnesota</u>, <u>Department of Transportation</u>, hereinafter referred to as Mn/DOT, and <u>City of Duluth Police Department</u>, hereinafter referred to as DPD;

WHEREAS, the Commissioner of Transportation is empowered by Minnesota Statute 174.70, Subd. 2 to enter into agreements to permit non-state owned communications equipment on Mn/DOT owned communications towers, land, buildings or other structures which are under the jurisdiction of the Commissioner of Transportation, and

WHEREAS, Mn/DOT and the DPD entered into Agreement No. <u>98282</u>, dated <u>March 17, 2011</u>, and <u>Amendment 1</u> dated <u>July 3, 2012</u>, involving the use of antenna space on Mn/DOT's Tower and a designated location in Mn/DOT's communications shelter located at <u>329 West 10th St.</u> in the city of <u>Duluth, MN</u>;

WHEREAS, MN/DOT and DPD deem certain amendments and additional terms and conditions mutually beneficial for the effective continuation of said Agreement;

NOW THEREFORE, MN/DOT and DPD agree to substitution and/or addition of the following terms and conditions, which shall become a part of Agreement No. <u>98282</u>, effective as of the date set forth hereinafter.

WHEREAS, DPD has proposed to add an additional panel antennas to the Communications Facility, as agreed to in said Lease Section 8., DPD's proposal shall be included herein by Amendment hereto;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants herein contained, which each of the parties hereto acknowledge as adequate and sufficient, it is hereby agreed as follows:

4. PAYMENT OF ELECTRICAL SERVICES

4.1 DPD agrees to pay to Mn/DOT for eight (8) base stations, payable annually in the amount of five hundred dollars and zero cents (\$500.00) which shall commence on October 1, 2019, Rates shall be applied as noted below:

1 to 2 Stations = \$300.00 per year 3 to 4 Stations = \$400.00 per year

5 or more Stations = \$500.00 per year

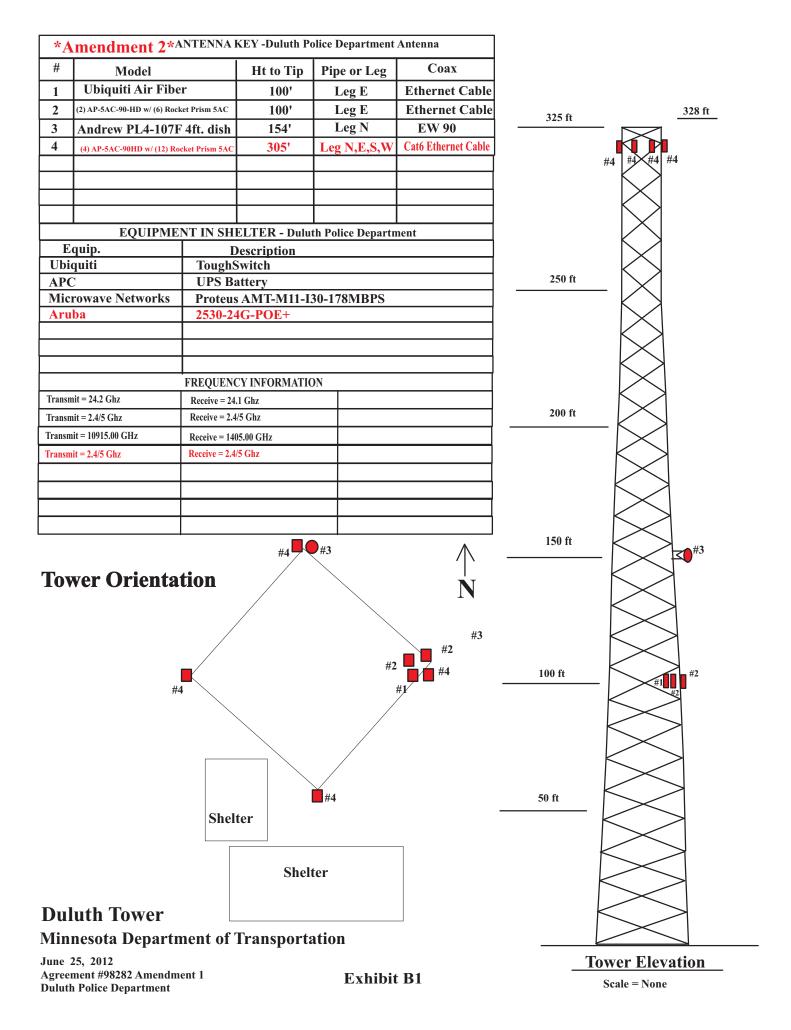
Except as modified by the provisions of this Amendment, said Lease is ratified and confirmed as originally written.

ATTACHMENTS

Revised Exhibit B1 – Tower Diagram with DPD Antenna Location

IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.

THE CITY OF DULUTH POLICE DEPARTMENT:	Mn/DOT:
DPD certifies that the appropriate person(s) have executed the Use Agreement on behalf of DPD as required by applicable articles, bylaws, resolutions or ordinances	STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION OFFICE OF ELECTRONIC COMMUNICATIONS
Print Name: Title:	ByTimothy Lee TitleDirector Date
CITY OF DULUTH By	APPROVED: MNDOT CONTRACT MANAGEMENT
Print Name:	Ву
Title: Mayor (Print or type) Date:	Title
Attest:	
Print Name:	
Title: City Clerk (Print or type)	
Date:	
Countersigned:	
City Auditor	
Approved as to form:	
City Attorney	



PUBLIC SAFETY COMMITTEE

3/38/11

11-0097R

RESOLUTION AUTHORIZING THE CITY OF DULUTH POLICE DEPARTMENT TO ENTER INTO A USE AGREEMENT WITH THE STATE OF MINNESOTA, DEPARTMENT OF TRANSPORTATION ("MN/DOT") PERMITTING THE POLICE DEPARTMENT TO INSTALL AND MAINTAIN COMMUNICATIONS EQUIPMENT ON THE MN/DOT COMMUNICATIONS TOWER.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to enter into a communications facility use agreement with the state of Minnesota, department of transportation, allowing the city of Duluth police department to lease space on the communications tower located at 329 West 10th Street, which tower is owned by the state of Minnesota; agreement to be substantially in the form of Public Document No. ______ on file in the office of the city clerk.

Approved:

_

Department Director

Approved:

Auditor

Chief Administrative

Approved for presentation to council:

Officer

Approved as to form:

POLICE/ATTY

TLL:blj

2/17/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement for the lease of space on a Mn/DOT communications tower located within the city of Duluth. The police department will be installing equipment onto this tower and maintaining that equipment. This equipment will be used to communicate with wireless cameras that will be installed as part of the Port Security Camera Project.

STATE OF MINNESOTA

COMMUNICATIONS FACILITY

USE AGREEMENT

Agreement #98282 Duluth Tower

THIS AGREEMENT, by and between <u>State of Minnesota</u>, <u>Department of Transportation</u>, hereinafter referred to as Mn/DOT, and the City of Duluth Police Department, hereinafter referred to as DPD;

WHEREAS, the Commissioner of Transportation is empowered by Minnesota Statute 174.70, Subd. 2 to enter into agreements to permit non-state owned communications equipment on Mn/DOT owned communications towers, land, buildings or other structures which are under the jurisdiction of the Commissioner of Transportation, and

WHEREAS, the State of Minnesota owns and the Commissioner of Transportation has custodial responsibility for a communications tower, shelter, and land on which the tower is located, herein referred to respectively as the "Communications Facility," located at 329 West 10th Street in the City of Duluth, which is more fully described in **Exhibit A2**, attached hereto, and

WHEREAS, MN/DOT has determined that said tower and shelter have excess capacity which is surplus to its needs and MN/DOT is willing and able to provide space on the Tower and in Shelter to DPD under certain terms and conditions, and

WHEREAS DPD requires space on this Tower and in Shelter to install and maintain DPD'S communications equipment as described in the attached **Exhibit B1**.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants herein contained, which each of the parties hereto acknowledge as adequate and sufficient, it is hereby agreed as follows:

1. <u>COMMUNICATIONS FACILITY</u>

MN/DOT grants and DPD accepts this "Agreement" for the use of Antenna space and shelter space on or within Mn/DOT's <u>Duluth Communications Facility</u> located in the County of <u>St. Louis</u>, Minnesota, more fully described on attached <u>Exhibit A2</u>.

2. TERM

The term of this Agreement is for <u>ten (10)</u> years, commencing on <u>March 1, 2011</u>, and expiring <u>February 28, 2021</u>.

- 2.1 This Agreement shall renew automatically on the expiration date at the same terms and conditions as described herein, unless otherwise terminated by one or both parties as set forth in paragraphs 2.2 and 5 of this Agreement.
- 2.2 In the event that either party elects not to renew this Agreement or renegotiate the terms of the agreement before the expiration date, that party shall give written notice to the other party informing that they wish to terminate or renegotiate the Agreement. Said notice must be received <u>forty-five (45)</u> days prior to the expiration date.

3. <u>USE</u>

- 3.1 Mn/DOT hereby grants DPD a non-exclusive right to install, use and maintain DPD'S communications equipment on the Communications Facility, subject to the terms and conditions described herein. Mn/DOT reserves the right to allow Mn/DOT'S Property to be used by others and make additions, deletions and modifications to Mn/DOT'S communications equipment, if any, located on Mn/DOT'S Property.
- 3.2 Placement of Antenna(s): DPD shall, at DPD'S expense, mount DPD'S antenna(s) only in such location(s) on the Communications Tower as described in **Exhibit B1**, attached hereto.
- 3.3 Placement of Communications Equipment: DPD shall, at DPD'S expense, locate and install their Communications Equipment only in such location(s) inside Mn/DOT's shelter as described in **Exhibit B3** and conform to the installation instructions in **Exhibit B3**.
- 3.4 DPD may not add additional equipment or antennas from that described in **Exhibits B1**, attached hereto without the written approval of Mn/DOT, which shall be granted only in the form of a written amendment hereto.

4. ELECTRICAL SERVICES FEE

4.1 DPD agrees to pay to Mn/DOT for two (2) base station(s), for the Term of the Agreement the sum of three hundred dollars and zero cents (\$300.00), payable annually. Rates applied as noted below:

1 to 2 Stations = \$300.00 per year 3 to 4 Stations = \$400.00 per year 5 or more Stations = \$500.00 per year

- 4.2 If this Agreement is terminated at any time other than on the first day of a month, the fee shall be prorated, beginning on the first day of the next month, as of the date of termination, and all prepaid fees shall be reimbursed to DPD.
- 4.3 DPD agrees to pay Mn/DOT the ANNUAL fee set forth above upon execution of this Agreement, and then annually upon receiving an invoice on anniversary date of this

Agreement. Payment will be mailed or delivered to the address provided below unless otherwise instructed on the invoice:

Minnesota Department of Transportation Office of Electronic Communications 1500 West County Road B2 MS-730 Roseville, Minnesota 55113 (651) 234-7964

All correspondence and telephone calls concerning billing issues should be directed to the address provided above.

5. <u>TERMINATION</u>

- 5.1 DPD may terminate this Agreement for any reason at any time upon giving thirty (30) days written notice of such termination to the Mn/DOT.
- 5.2 DPD may terminate this Agreement if DPD is unable to obtain the required governmental and Federal Communications Commission approvals to operate at the Communications Facility.
- 5.3 Mn/DOT may terminate this Agreement for the following reasons:
 - a. In the event of any failure of DPD to pay any fee due under this Cooperative Agreement within a reasonable amount of time. Or, any failure to perform any other of the terms, and conditions of this Agreement to be observed or performed by DPD for more than thirty (30) days after written notice of such default has been given to DPD. Upon such termination, DPD shall quit and surrender the Communications Facility to Mn/DOT; and by such repossession, Mn/DOT shall not be deemed to have waived its right (if any) to collect fees due (if any) from DPD hereunder or to enforce the other obligations of DPD hereunder.
 - b. Property is needed for governmental services, including but not limited to: tower space, shelter space, ground space, Highway requirements, or other required governmental services.
- Upon termination, DPD shall have one hundred eighty (180) days from the date of delivery of notice of termination to remove all of DPD'S equipment from the Communications Facility and MN/DOT'S Property. DPD'S failure to remove such equipment within one hundred eighty (180) days of expiration or termination of this Cooperative Agreement shall be deemed to be abandonment of the improvements and Mn/DOT may possess, remove and dispose of the equipment at will and charge DPD for the reasonable cost of removal and disposal thereof.

- 5.5 Upon termination and at Mn/DOT'S written request, DPD shall restore any painted surfaces disturbed by DPD'S occupancy to their original condition.
- 5.6 Mn/DOT and DPD hereby agree that DPD shall not be reimbursed by Mn/DOT for any investment or expense incurred by DPD as a result of this Agreement upon termination of the Agreement.

6. <u>DUTIES OF MN/DOT</u>

- 6.1 Mn/DOT shall provide for the general maintenance of Mn/DOT'S Property, and Communications Facility, including obstruction lights, if any, inspections and any other measures necessary to maintain the safety and utility of Mn/DOT'S Property. Mn/DOT agrees to maintain Mn/DOT'S Property in strict accordance with all local, state and federal rules and regulations. This shall include, but not be limited to, weed control, tower lights, tower lighting alarm system, lighting monitoring and any other FCC or FAA mandated codes.
- 6.2 Mn/DOT shall, upon execution of this Agreement, provide DPD with the name, address and telephone numbers of Mn/DOT'S Authorized Agent, who shall be DPD'S day-to-day contact person for resolution of equipment issues and other technical issues that may arise during the term of the Agreement. This information is also provided in **Exhibit C** attached hereto.
- 6.3 Mn/DOT hereby grants to DPD non-exclusive right of access to the Communications Facility as necessary to install and maintain DPD'S equipment.
- 6.4 Mn/DOT shall provide DPD with a method of access to the Communications Facility as described in **Exhibit C**, attached hereto.
- 6.5 Mn/DOT shall furnish and provide electrical services, including emergency back-up power to DPD for its use.
- 6.6 Mn/DOT hereby grants to DPD easement rights to connect to services that are available from third party vendors.
- 6.7 Mn/DOT shall approve all electrical and telephone wiring routes inside Mn/DOT'S shelter prior to installation by DPD or DPD'S contractors, which approval shall not be unreasonably withheld.
- 6.8 Mn/DOT shall have no liability to DPD for interruptions of electricity or telephone service by third party vendors or any other interruptions beyond Mn/DOT'S direct control.

7. DUTIES OF DPD

- 7.1 DPD warrants that DPD'S use of the Communications Facility shall not interfere with any of Mn/DOT'S communications equipment or any other users that are on Mn/DOT'S Property prior to the effective date of this Cooperative Agreement. In the event there is interference, DPD shall promptly shut down that portion of its equipment causing the interference, except for intermittent testing, until the interference is corrected. If at any time there is future use of Mn/DOT'S Property by any other communications users, Mn/DOT shall have the responsibility to order the operator of the newly-added equipment to shut down that portion of its equipment causing the interference, except for intermittent testing, until the interference is corrected.
- 7.2 DPD shall in no way alter, disrupt, modify or damage existing drainage patterns and systems affecting the Communications Facility.
- 7.3 DPD, its employees, contractors or consultants shall not perform any construction or any physical modifications of the Communications Facility, including the tower and tower grounds, without first obtaining Mn/DOT'S written consent.
- 7.4 Prior to installing, replacing or modifying any equipment on the Communications Facility, DPD shall notify Mn/DOT'S Authorized Agent and secure written approval from Mn/DOT'S Authorized Agent to proceed.
- 7.5 All wiring shall conform to the existing wiring method used at the Communications Facility and shall conform to the National Electrical Code. DPD shall obtain, or require its contractors to obtain, any necessary permits from applicable units of local government.
- 7.6 DPD shall notify Mn/DOT'S Authorized Agent of any scheduled access or emergency access to the Communications Facility as described in **Exhibit C** "Site Access" attached hereto.
- 7.7 DPD shall install and maintain DPD'S antennas and equipment in accordance with standard engineering practices and in accordance with Mn/DOT'S technical standards, if any. DPD'S communications equipment shall be installed operated and maintained in conformance with 47 Code of Federal Regulations 1.1310, regulating radio frequency radiation exposure levels, and in conformance with all applicable rules and regulations established by the Federal Communications Commission.
- 7.8 DPD shall not cause any mechanic or materialmen's liens to be placed on Mn/DOT'S Property as a result of DPD'S occupancy of said Communications Facility.
- 7.9 DPD hereby agrees that DPD'S access to the Communications Facility shall be limited to personnel qualified to perform equipment installation, maintenance of electrical and other specialized equipment, and other work as necessary to maintain the DPD'S

communications system in proper working order in and around the Communications Facility and tower.

- 8. <u>CHANGES TO DPD'S EQUIPMENT</u> Any future changes to DPD'S antenna, cabling, or related equipment, as well as any changes of wattage, frequency, or functionality of DPD'S equipment, whether or not said alterations affect the fees payable under this Use Agreement or require one-time payments for engineering studies, plan review, modifications to MN/DOT'S property or any other reason, shall be included herein by Amendment hereto.
- 9. <u>INSURANCE</u> DPD and Mn/DOT agree that each party, and all subcontractors, will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. DPD, and subcontractors, agree to maintain self insurance or acquire at its sole expense during the term of this Agreement, commercial general liability insurance.

DPD, and its subcontractors, agree to provide proof of insurance if requested by Mn/DOT.

- 10. <u>PERSONAL PROPERTY</u> Any fixtures or equipment attached to, or installed in any part of the Communications Facility by DPD shall remain the personal property of DPD with right of replacement or removal at all reasonable times during the term of this Use Agreement, or any extension thereof.
- 11. <u>DESTRUCTION OF THE COMMUNICATIONS FACILITY</u> If the Communications Facility is destroyed or damaged by fire, tornado, flood, civil disorder or any other cause so that the Communications Facility are rendered unusable, the electrical fee shall be abated from the date of such damage, and if MN/DOT fails to restore the Communications Facility to a safe, operational condition within thirty (30) days, this Cooperative Agreement shall be deemed terminated, thus releasing both parties of all obligations hereunder.
- 12. <u>NOTICES</u> All notices or communications between DPD and Mn/DOT shall be sent in writing to the following:

Mn/DOT:

Minnesota Department of Transportation
Office of Electronic Communications
Attn: Lease Manager
1500 West County Road B2 MS-730
Roseville, Minnesota 55113
(651) 234-7947 or (651) 234-7977

Duluth Police Department
Attn:

() Federal Tax ID:
State ID:

13. MODIFICATIONS/AMENDMENTS Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of the DPD and Mn/DOT. This Agreement shall supersede all other oral and written agreements prior to execution of this document. IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.

LIST OF EXHIBITS

EXHIBIT A1: Tower Registration (ASR)

EXHIBIT A2: Location Map

EXHIBIT B1: Tower Diagram with DPD Antenna location

EXHIBIT B2: Compound Layout Diagram

EXHIBIT B3: Installation Instructions

EXHIBIT C: Site Access

EXHIBIT D: Statement of Structural Analysis Requirement

THE CITY OF DULUTH POLICE **DEPARTMENT** DPD certifies that the appropriate person(s) have executed the Use Agreement on behalf of DPD as required by applicable articles, bylaws, resolutions or ordinances By_____ Print Name: _____ Title: (Print or type) Date By_____ Print Name: (Print or type) Title: Ву_____ Print Name: Title: (Print or type)

Date:_____

DPD:

Mn/DOT:

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
OFFICE OF ELECTRONIC COMMUNICATIONS

Ву		
Mark Gleseke	.	
Title: <u>Director</u>		
Date		



UNITED STATES OF AMERICA FEDERAL COMMUNICATIONS COMMISSION ANTENNA STRUCTURE REGISTRATION



Owner MINNESOTA, STATE OF

FCC Registration
Number (FRN): 0002608115 ____

,	· · · · · · · · · · · · · · · · · · ·		Antenna Structure Registration Number:	
MS730	0.77		1014618	
MINNESOTA, STATE 395 John Ireland	Blvd.,			
SAINT PAUL, MN 55	Issue Date:			
			04-07-2006	
Location of Antenna Structure: 329 W LOTH ST			Ground Elevation (AMSL): 384.0	meters
DULUTH, MN			Overall Height Above Groun	
Latitude	Longitude		104.5 Overall Height Above Mean Level (AMSL):	meters Sea
46-47-26.0N	92-6-51.0W	NAD83	488.5	meters
Painting and Lighting Requiremer FAA Chapters 4, Paint and Light	8, 13	with FAA Circular N	umber 70/7460-1H	
Special Conditions:				
				:

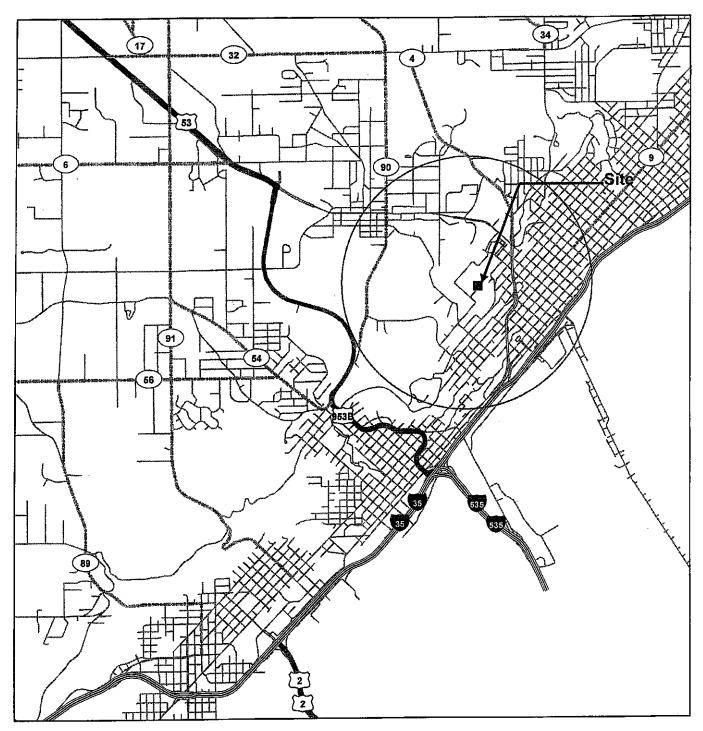
This registration is effective upon completion of the described antenna structure and notification to the Commission. YOU MUST NOTIFY THE COMMISSION WITHIN 24 HOURS OF COMPLETION OF CONSTRUCTION OR CANCELLATION OF YOUR PROJECT, please file FCC Form 854. To file electronically, connect to the antenna structure registration system by pointing your web browser to http://wireless.fcc.gov/antenna. Electronic filing is recommended. You may also file manually by submitting a paper copy of FCC Form 854. Use purpose code "NT" for notification of completion of construction; use purpose code "CA" to cancel your registration.

The Antenna Structure Registration is not an authorization to construct radio facilities or transmit radio signals. It is necessary that all radio equipmen ton this structure be covered by a valid FCC license or construction per milt.

You must immediately provide a copy of this Registration to all tenant licensees and permittees sited on the structure described on this Registration (although not required, you may want to use Certified Mail to obtain proof of receipt); and display your Registration Number at the site. See reverse for important information about the Commission's Antenna Structure R egistration rules.

138

FCC 854R August 2005



LOCATION MAP

Duluth Antenna Farm

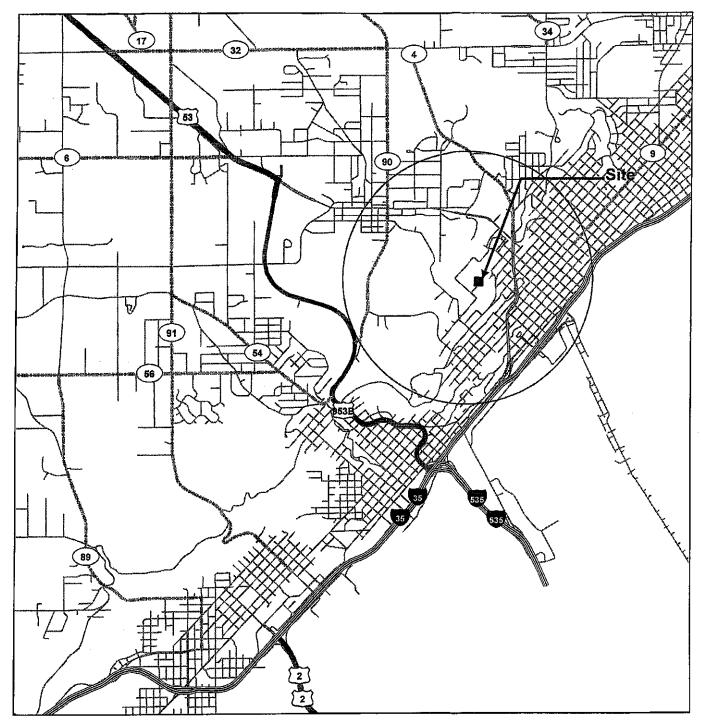
NE of the NE Quarter, Section 28 T50N, R14W, of Unorginized Territory of Herman City of Duluth, St. Louis County, Minnesota

Agreement #98282 Duluth Police Department **Driving Directions**

North on I35 at intersection of I535 continue for .7 miles to exit 256A, take ramp right for SR-194 West/Mesaba Ave toward Superior St. for .8 miles, turn left onto W 3rd St. for .2 miles, turn right onto N 8th Ave W for .4 miles, turn right onto W 9th St. for .3 miles, turn right onto W 10th St. and contine .1 miles to the end of the road.



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LOCATION MAP

Duluth Antenna Farm

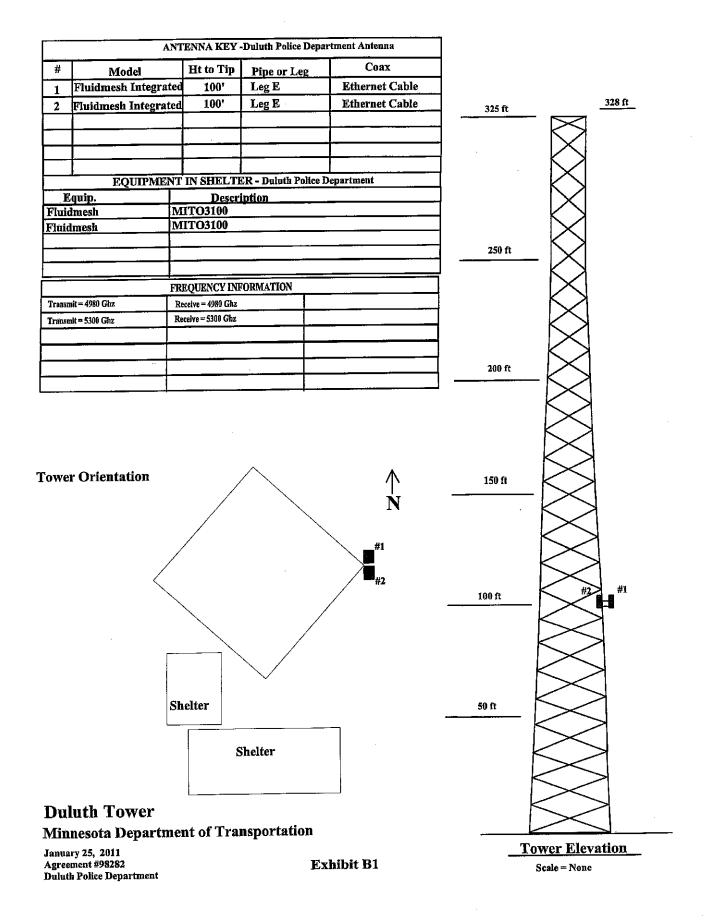
NE of the NE Quarter, Section 28 T50N, R14W, of Unorginized Territory of Herman City of Duluth, St. Louis County, Minnesota

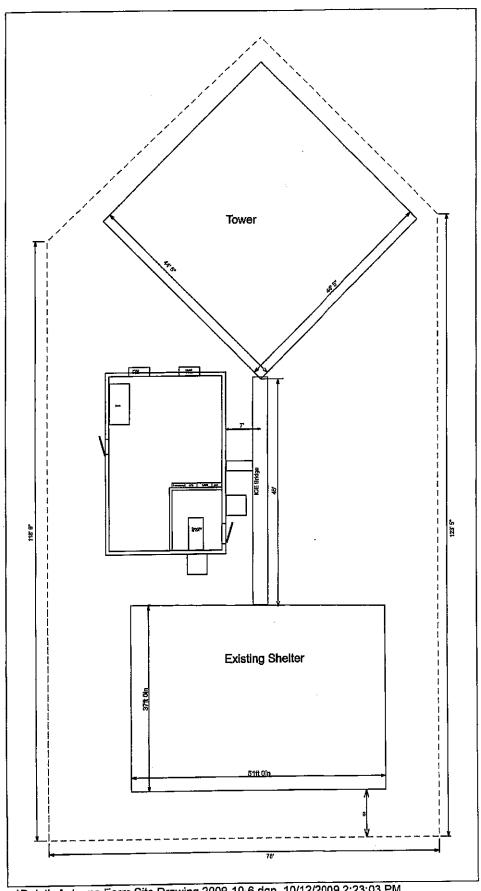
Agreement #98282 Duluth Police Department **Driving Directions**

North on i35 at intersection of i535 continue for .7 miles to exit 256A, take ramp right for SR-194 West/Mesaba Ave toward Superior St. for .8 miles, turn left onto W 3rd St. for .2 miles, turn right onto N 8th Ave W for .4 miles, turn right onto W 9th St. for .3 miles, turn right onto W 10th St. and contine .1 miles to the end of the road.



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...\Duluth Antenna Farm Site Drawing 2009-10-6.dgn 10/12/2009 2:23:03 PM Exhibit B2

Installation Instructions

RACK SPACE:

Duluth Police Department (LESSEE) or its contractor shall arrange for rack space with the Radio Maintenance Supervisor (RMS) in accordance with Exhibit B3.

If no Mn/DOT space is available, LESSEE will have to provide a rack to install in shelter. Rack type and installation location shall be approved by RMS.

InterMod Panel:

LESSEE shall install an Intermod Suppression Panel. This item is a requirement at all Mn/DOT towers and of all VHF radio users. A Sinclair PC2213 or equivalent. This item is necessary due to the close proximity of the LESSEE frequencies used at the site and the frequencies used by other public safety agencies.

Grounding

LESSEE or its contractor installation work shall be R56 compliant.

Entrance Panel

LESSEE or its contractor shall arrange the entrance panel location with the RMS.

Coax Management

LESSEE or its contractor shall arrange the cable management location with the RMS.

RMS
Radio Maintenance Supervisor
Darwin Salo
(218) 742-1084
(218) 404-0462 Cellular



Grant Agreement

Page	1	αf	2
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Minnesota Department of Public Safety ("State") Office of Traffic Safety 445 Minnesota St. Suite 1620 St. Paul, Minn. 55101-2190	Grant Program: 2020 Toward Zero Deaths (TZD) Enforcement Project No.: 20-02-02, 20-03-04, 20-03-20, 20-04- 01, 20-04-04 Grant Agreement No.: A-ENFRC20-2020-DULUTHPD-082		
Grantee: Duluth Police Department 2030 N. Arlington Ave. Duluth, Minn. 55811-2030	Grant Agreement Term: Effective Date: Oct. 1, 2019 Expiration Date: Sept. 30, 2020		
Grantee's Authorized Representative: Lieutenant Chad Nagorski Duluth Police Department 2030 N. Arlington Ave. Duluth, Minn. 55811-2030 Phone: (218) 730-5656 E-mail: cnagorski@duluthmn.gov	Grant Agreement Amount: Original Agreement \$264,750.00 Matching Requirement \$0.00		
State's Authorized Representative: Kammy Huneke Office of Traffic Safety 445 Minnesota St. Suite 1620 St. Paul, Minnesota 55101-2190 Phone: (651) 201-7070 E-mail: kammy.huneke@state.mn.us	Federal Funding: CFDA #20.600, 20.608, 20.616 FAIN: 18X9205464MN17, 18X9204020MN17, 18X920405BMN17, 18X920405DMN17 State Funding: None Special Conditions: None		

Under Minn. Stat. § 299A.01, Subd 2 (4) the State is empowered to enter into this grant agreement.

Term: Effective date is the date shown above or the date the State obtains all required signatures under Minn. Stat. § 16B.98, subd. 7, whichever is later. Once this grant agreement is fully executed, the Grantee may claim reimbursement for expenditures incurred pursuant to the Payment clause of this grant agreement. Reimbursements will only be made for those expenditures made according to the terms of this grant agreement. Expiration date is the date shown above or until all obligations have been satisfactorily fulfilled, whichever occurs first.

The Grantee, who is not a state employee will:

Perform and accomplish such purposes and activities as specified herein and in the Grantee's approved 2020 Toward Zero Deaths (TZD) Enforcement Application ("Application") which is incorporated by reference into this grant agreement and on file with the State at Office of Traffic Safety, 445 Minnesota St., Suite 1620, St. Paul, Minn. 55101. The Grantee shall also comply with all requirements referenced in the 2020 Toward Zero Deaths (TZD) Enforcement Guidelines and Application which includes the Terms and Conditions and Grant Program Guidelines (https://app.dps.mn.gov/EGrants), which are incorporated by reference into this grant agreement.

Budget Revisions: The breakdown of costs of the Grantee's Budget is contained in Exhibit A, which is attached and incorporated into this grant agreement. As stated in the Grantee's Application and Grant Program Guidelines, the Grantee will submit a written change request for any substitution of budget items or any deviation and in accordance with the Grant Program Guidelines. Requests must be approved prior to any expenditure by the Grantee.

Matching Requirements: (If applicable.) As stated in the Grantee's Application, the Grantee certifies that the matching requirement will be met by the Grantee.



Grant Agreement

Page 2 of 2

Payment: As stated in the Grantee's Application and Grant Program Guidance, the State will promptly pay the Grantee after the Grantee presents an invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services and in accordance with the Grant Program Guidelines. Payment will not be made if the Grantee has not satisfied reporting requirements.

Certification Regarding Lobbying: (If applicable.) Grantees receiving federal funds over \$100,000.00 must complete and return the Certification Regarding Lobbying form provided by the State to the Grantee.

1. ENCUMBRANCE VERIFICATION Individual certifies that funds have been encumbered as	3. STATE AGENCY			
required by Minn. Stat. §§ 16A.15 and 16C.05.	Signed:(with delegated author	oity)		
Signed:	(with delegated authority) Title:			
Date:				
Grant Agreement No. A-ENFRC20-2020-DULUTHPD-082 PO No. 3-62821				
2. GRANTEE				
The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.				
Signed:				
Print Name:				
Title:				
Date:				
Cianal.				
Signed:				
Print Name:	Distribution:	DPS/FAS		
Title:	2.5trouton.	Grantee		
Date:		State's Authorized Representative		

Budget Summary

Budget		
Budget Category	State Reimbursement	Local Match
Administration - DWI		
Administration - DWI	\$3,500.00	\$0.00
Total	\$3,500.00	\$0.00
Administration - Other		
Administration - Other	\$500.00	\$0.00
Total	\$500.00	\$0.00
Corrections Assistance		
Corrections Assistance	\$0.00	\$0.00
Total	\$0.00	\$0.00
Dispatch - DWI		
Dispatch - DWI	\$15,000.00	\$0.00
Total	\$15,000.00	\$0.00
Dispatch - Other		
Dispatch - Other	\$3,000.00	\$0.00
Total	\$3,000.00	\$0.00
Enforcement - DWI		
Enforcement - DWI	\$175,000.00	\$0.00
Total	\$175,000.00	\$0.00
Enforcement - Pedestrian		
Enforcement - Pedestrian	\$12,500.00	\$0.00
Total	\$12,500.00	\$0.00
Enforcement - Distracted		
Enforcement - Distracted	\$16,200.00	\$0.00
Total	\$16,200.00	\$0.00
Enforcement - Seat Belt		
Enforcement - Seat Belt	\$18,250.00	\$0.00
Total	\$18,250.00	\$0.00
Enforcement - Speed		
Enforcement - Speed	\$17,500.00	\$0.00
Total	\$17,500.00	\$0.00
Enforcement - Move Over		

09/11/2019 Page 1 of 2

Organization: Duluth Police Department

Budget Summary

Enforcement - Move Over	\$1,800.00	\$0.00
Total	\$1,800.00	\$0.00
Mileage Expenses		
Mileage Expenses	\$0.00	\$0.00
Total	\$0.00	\$0.00
TZD Conference Hotel		
TZD Conference Hotel	\$1,500.00	\$0.00
Total	\$1,500.00	\$0.00
Training/Meeting Match		
Training/Meeting Match	\$0.00	\$0.00
Total	\$0.00	\$0.00
Total	\$264,750.00	\$0.00

09/11/2019 Page 2 of 2

LEASE AGREEMENT BETWEEN THE CITY OF DULUTH AND DULUTH AMATEUR HOCKEY ASSOCIATION

THIS LEASE AGREEMENT (this "Agreement") is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City," and the DULUTH AMATEUR HOCKEY ASSOCIATION, a Minnesota non-profit corporation, hereinafter referred to as "DAHA."

WHEREAS, City is the owner of an arena located off of Woodland Avenue, near the intersection of Woodland Avenue and Isanti Street, more commonly known as the "Fryberger Arena," that is depicted on the attached Exhibit A;

WHEREAS, DAHA's mission is to promote and inspire in youth the ideals of health, citizenship, and character; to bring area youth together through the common interest in sportsmanship, fair play, and fellowship; to impart to the game elements of safety, sanity, and intelligent supervision; and to keep the welfare of the player first and foremost, and entirely free of adult lust for glory (its "Mission"); and

WHEREAS, DAHA carries out its Mission by organizing and providing youth an opportunity to participate and excel through the sport of hockey through its hockey program, while building and developing sportsmanship, self-esteem, confidence, and respect for others (its "Services"); and

WHEREAS, DAHA has leased the Fryberger Arena for decades and desires to continue to lease the Fryberger Arena for advancement of its Mission and provision of its Services to the community as set forth herein; and

WHEREAS, City desires to allow DAHA to lease the Fryberger Arena as provided herein for DAHA's provision of an indoor ice facility in relation to providing its Services.

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

I. Administration.

For purposes of administering this Agreement, City shall act through its Facilities & Property Manager or designee (the "PFM Manager"). DAHA shall act through its Executive Director or designee.

II. Definitions.

For purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. <u>Arena</u>: shall mean the Fryberger Arena building used primarily for playing ice hockey and similar uses located on City-owned property adjacent to the Woodland Community Club at 3211 Allendale Avenue.
- B. <u>Leased Premises</u>: shall mean the Arena and that portion of City-owned property outlined in red on Exhibit A and the Leasehold Improvements (defined below) located thereon. In addition, during such times when DAHA or its officers, members, agents, employees, guests and contractors are using any City-owned or City-controlled property (including the Parking Area (defined below)), that property shall be deemed to be a part of the Leased Premises for the purposes of Articles IX and XI below.
- C. <u>Leasehold Improvements</u>: shall mean City-owned equipment that is a part of the Leased Premises, fixtures, counters, cabinets, moveable dividers and other personal property purchased and installed by DAHA that are or become affixed to the real estate.
 - D. <u>Summer Season</u>: shall mean the period April 1 through September 30.
- E. <u>Parking Area</u>: shall mean the parking lot depicted on Exhibit A as outlined in blue.
 - F. Winter Season: shall mean the period October 1 through March 31.

III. <u>Use of Leased Premises and Grant of Rights</u>.

- A. City leases to DAHA and DAHA leases from City, upon the terms and conditions set forth in the Agreement, the Leased Premises.
- B. Subject to the terms and conditions set forth in this Agreement, City grants to DAHA and its officers, members, agents, employees, guests, and contractors the non-exclusive use of the Parking Area during the Term (defined below) to temporarily park motor vehicles when there are available spaces. DAHA's use of the Parking Area shall not in any way impede City's access to any portion of the Arena.
- C. DAHA is permitted to leave its personal property on the Leased Premises during the entirety of the Term (defined below). DAHA is solely responsible for the proper storage of any of its personal property on the Leased Premises. However, DAHA is not allowed to store or allow long-term storage of vehicles, equipment, or construction materials on the Leased Premises in such a manner as to constitute a visual blight on the neighborhood, in the sole determination of the PFM Manager. DAHA shall ensure that Zambonis and any other motorized vehicle to be stored within the Arena or any other structure on the Leased Premises complies with all building, fire, and other codes applicable to the storage of such vehicles in such structure. City is not responsible for any damage, theft, and/or vandalism of DAHA's personal property on the Leased Premises.
- D. Notwithstanding the Term (defined below) of this Agreement, DAHA may only use the Leased Premises during the Winter Season. Except as specifically permitted by this

Agreement, DAHA may not use the Leased Premises during the Summer Season without securing prior written authorization from the PFM Manager.

- E. DAHA may only utilize the Leased Premises to provide its Services.
- F. DAHA may operate concessions on the Leased Premises. If DAHA operates concessions, then it must comply with all applicable licensing requirements. DAHA is responsible for all costs relating to the operation of the concessions, including paying all taxes and applicable license or permit fees. If required to do so, DAHA shall provide specialized disposal receptacles and related pick-up services through a competent vendor for the handling of liquid, oil, fatty, or other materials disposed of and requiring special and/or separate handling before, during, or after operation of the concessions.
- G. City makes no representation or warranty, either express or implied, that the Leased Premises or the Parking Area are suitable for specific uses, and DAHA accepts the Leased Premises and the Parking Area in "as is" condition without representations or warranties of any kind. City is not obligated to make any alterations or improvements on or to the Leased Premises or the Parking Area, or to provide any maintenance to the Leased Premises or the Parking Area, except as may be expressly required by Article VII.
- H. DAHA acknowledges that the Parking Area is used by multiple user groups and therefore use of the Parking Area requires the cooperation of all users. DAHA acknowledges that the PFM Manager shall ultimately determine the appropriate use of the Parking Area and shall prevail in any disputes between user groups.
- I. DAHA shall not sublet any space(s) within the Leased Premises or assign any part of this Agreement without obtaining prior written approval of the PFM Manager, and then only under the conditions required by City.

IV. Lease Payments and Other Costs.

A. Rent. Monthly rent during the term shall be \$0. The consideration for the lease of the Leased Premises shall instead be (i) the public benefit provided by DAHA through the provision of its Services; and (ii) payment of all taxes, charges, costs and expenses that DAHA assumes or agrees to pay under this Agreement, including but not limited to maintenance costs, together with all interest and penalties that may accrue thereon in the event of the failure of DAHA to pay those items.

B. Additional Rent.

1. <u>Utilities</u>. Subject to the provisions of this Agreement, DAHA shall pay any and all charges for electricity, steam, water, sewer and gas utilities furnished to the Leased Premises during the Winter Season, including but not limited to hook-up charges and assessments. In addition, DAHA shall pay any and all charges for the following utilities furnished to the Leased Premises during the entirety of the Term, including but not limited to hook-up charges and assessments: telephone, cable TV, satellite, internet and any other utilities deemed necessary or desirable by DAHA. All utilities servicing the Leased Premises shall be in the name of DAHA,

except for electricity, steam, water, sewer and gas utilities. For all utilities in the name of City, DAHA shall promptly reimburse City following receipt of an invoice from City. DAHA shall not receive any credit, offset or reduction in its utility bills based on City's Community Solar Garden credits.

- 2. <u>Taxes</u>. DAHA shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of DAHA's use of the Leased Premises, including real property and sales taxes, if applicable. City may pay the same on behalf of DAHA and immediately collect the same from DAHA. DAHA shall collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and shall file all required reports and forms in proper form related thereto on or before their due date.
- 3. Other Costs of Leased Premises. In addition to the foregoing, DAHA shall bear and promptly pay, on or before the due date, all other costs, fees, and charges of any kind whatsoever arising out of the use or occupancy of the Leased Premises; provided that nothing shall prevent DAHA from contesting in good faith any such payment requirement except as such contest would negatively affect City's rights under this Agreement and except for payments to City.

V. Term and Termination.

A. <u>Term.</u> Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on September 1, 2019 and expire on August 31, 2020, unless earlier terminated as provided for herein (the "Term").

B. Termination.

- 1. <u>Without Cause</u>. Either party may terminate this Agreement without cause by providing at least ninety (90) days' written notice upon the other.
- 2. <u>For Cause</u>. Should DAHA violate any of the provisions of this Agreement, City shall provide to DAHA written notice of such violation or default and shall allow DAHA thirty (30) days within which to cure or remedy any violations or defaults set forth therein. The notice shall identify the violation or default and the necessary actions to remedy the violation or default. If such violation or default is not cured or remedied within thirty (30) days, City may terminate this Agreement immediately by serving notice to DAHA in the manner described and may reenter the Leased Premises.
- 3. <u>Immediately By City</u>. City may terminate this Agreement immediately on notice to DAHA and re-enter the Premises if City believes in good faith that the health, welfare, or safety of the Leased Premises, occupants, or neighbors would be placed in immediate jeopardy by the continuation of DAHA's operations.

C. Surrender Possession.

- 1. Upon expiration or termination of this Agreement, whichever occurs first, DAHA shall surrender possession of the Leased Premises to City in as good condition and state of repair as the Leased Premises were in at the time DAHA took possession, reasonable wear and tear excepted. The Leased Premises shall be immediately returned to the control of City.
- 2. Upon expiration or termination of this Agreement, whichever occurs first, DAHA shall restore the Leased Premises to its original condition at the time of execution of this Agreement, reasonable wear and tear excepted, or, upon demand, pay to City the reasonable costs incurred by City to restore the Leased Premises to its original condition at the time of execution of this Agreement, reasonable wear and tear excepted.
- 3. Prior to expiration of this Agreement or within fourteen (14) days of early termination, whichever occurs first, DAHA may remove its personal property from the Leased Premises. The removed personal property shall remain exclusive property of DAHA. All personal property remaining on the Leased Premises (i) upon expiration of this Agreement, or (ii) fourteen (14) days after early termination of this Agreement, shall become the exclusive property of City.
- 4. Upon termination or expiration of this Agreement, DAHA waives any and all rights, if any, to relocation benefits under the Uniform Acquisition Assistance and Relocation Act of 1974, as amended, and any laws or regulations promulgated with regard thereto that might arise out of this Agreement.
- D. <u>Other Remedies</u>. In addition to the remedies set forth elsewhere in this Agreement, City shall have the following remedies in the event of a default by DAHA:
 - 1. Terminate this Agreement and, in its discretion, retake the Leased Premises.
 - 2. Seek and be entitled to monetary damages, including consequential damages.
- 3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent DAHA's violation of the terms and conditions of this Agreement, or to compel DAHA's performance of its obligations under this Agreement.
- 4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.
- E. <u>Remedies Cumulative</u>. Except as may be specifically set forth in this Agreement, the remedies provided under this Agreement shall be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default under this Agreement.

VI. Maintenance and Operation.

- A. DAHA shall maintain the Leased Premises and Parking Area in good order and condition and state of repair, reasonable wear and tear excepted, including but not be limited to the following maintenance activities, all to be performed at DAHA's sole expense:
- 1. Provide those items required for daily operation and maintenance of the Leased Premises, including but not limited to, interior light bulbs, paper products, plastic products (e.g., garbage bags).
- 2. Perform minor repairs so as to maintain the Leased Premises in a reasonable state of repair.
- 3. Provide proper waste disposal and recycling containers and deposit all litter and other waste from the Leased Premises, the Parking Area and other outdoor spaces into outdoor garbage and recycling containers and arrange for removal by garbage and recycling hauling providers.
- 4. Remove snow and ice and provide appropriate treatment on the Leased Premises, including the Parking Area, sidewalks around the Leased Premises, and all walkways to the Arena and within the Arena to insure the safety of all users.
- 5. Ensure cleanliness and building shut-down procedures (lights off, doors securely locked, etc.) on a daily basis during the Winter Season following conclusion of programs and events.
- 6. Undertake routine repair of the electrical and mechanical systems, floors, and ceilings, and replace all glass within the Arena.
- 7. Operate the Arena's ventilation system on a year-round basis to prevent the formation of mold or other damage to the Arena caused by lack of sufficient air exchange.
- 8. Keep the Leased Premises free from rodents, insects, and other pests. City may require DAHA to contract with a pest exterminating contractor to exterminate as may be necessary and as may be directed by City. The sole cost and expense of this service shall be the responsibility and obligation of DAHA. It is further agreed that City may pay a pest exterminating contractor on behalf of DAHA and immediately collect the same from DAHA, or reduce any amount owed to DAHA by City pursuant to this Agreement.
- 9. Comply with City's verbal and written guidelines and instructions relating to recycling, energy efficiency, and maintenance applicable to the Leased Premises. DAHA may have appliances on the Leased Premises only with the PFM Manager's prior written approval. Any appliance on the Leased Premises must be energy star certified.

- 10. Maintain its own equipment in a safe, legal, and properly maintained manner. DAHA shall prohibit the use of any unsafe, illegal, or deficient equipment on the Leased Premises.
- 11. Provide, at DAHA's sole expense, all staff, equipment, and cleaning supplies necessary to carry out the provisions of this Agreement and provide its Services.
- B. DAHA shall promptly notify the PFM Manager of proposed major or non-routine repair work needed at the Leased Premises, including any repair work that requires a licensed or skilled tradesperson.
- C. DAHA shall follow City's established verbal and written policies, procedures, and instructions regarding premises and/or building safety and security, including, but not limited to, securing exterior doors. DAHA shall immediately report any safety or security issues or concerns to City's Police Department and the PFM Manager.
- D. DAHA shall provide the PFM Manager with the name(s) and contact information of any on-site supervisors and rink managers responsible for the operation of the programming and supervision of the activities on the Leased Premises. However, DAHA acknowledges and agrees that it is solely responsible to supervise its activities, programs, events and participants.

VII. City Responsibilities.

- A. In City's sole discretion, City shall perform necessary major repairs and non-routine maintenance to the structural and mechanical components of the Leased Premises and the Arena's plumbing and electrical systems. Non-routine maintenance shall be defined as major system replacement or repair items or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset and key changes.
- B. City shall pay any and all charges for electricity, steam, water, sewer and gas utilities furnished to the Leased Premises during the Summer Season, excluding hook-up charges and assessments.

VIII. Alterations or Improvements.

A. DAHA may, at its sole cost and expense, make suitable improvements or alterations to the Leased Premises upon advance written approval from City. This provision includes the delivery, installation, and/or storage of any temporary or permanent containers or structures on the Leased Premises. All improvements or alterations to the Leased Premises (excluding appliances and equipment plugged into an electricity source) shall become the property of City. Prior to commencing any improvements or alterations, DAHA shall submit to City a Project Proposal Request along with detailed plans. A copy of the required form of Project Proposal Request is attached as Exhibit B. These documents shall be submitted to City at least forty-five (45) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Code.

- B. Not less than thirty (30) days prior to commencement of any construction, alteration or improvement on the Leased Premises, DAHA will provide City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by City's Claims Investigator and Adjuster before the commencement of any construction hereunder.
- C. DAHA shall be responsible for operational costs and maintenance of improvements, installations, and facilities installed pursuant to this Article VIII. and shall operate them in a safe manner.

IX. Provision Against Liens and Other Encumbrances.

DAHA shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Leased Premises, or any part thereof, provided that if DAHA shall first notify City of its intention to do so and post such security as City reasonably deems necessary, DAHA may, in good faith, contest any such mechanics' or other liens filed or established as long as City does not deem its interest or rights in this Agreement or in the Leased Premises to be subject to foreclosure by reason of such contest.

X. Communications.

- A. The parties shall communicate openly and regularly with one another regarding the obligations under this Agreement.
- B. The parties will meet before the Winter Season begins and after the Winter Season concludes to jointly inspect the condition of the Leased Premises and, if necessary, to review the terms and conditions of this Agreement.

XI. Insurance and Indemnification.

Α. DAHA, at its sole cost and expense, shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than \$2,000,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$2,000,000 for damage liability, including limits of not less than \$100,000 for damage to rented premises (each occurrence). If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. Insurance required by this Agreement 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. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products – completed operations. DAHA shall provide Certificates of Insurance to City evidencing the required insurance coverage. The required insurance policies are subject to approval by the City Attorney and shall contain a condition that they may not be cancelled without thirty (30) days' advance written notice to City. The Certificates of Insurance shall name City as an additional insured.

- B. City reserves the right to require DAHA to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.
- C. City does not represent or guarantee that the types or limits of insurance coverage required by this Agreement are adequate to protect DAHA's interests and liabilities.
- D. City shall not be liable to DAHA for any injury or damage resulting from any defect in the construction or condition of the Leased Premises or the Parking Area, nor for any damage that may result from the negligence of any other person whatsoever.
- DAHA shall be responsible for any losses or damages whatsoever caused by the E. acts of DAHA, or its employees, agents, participants, volunteers, or invitees. DAHA agrees to indemnify, save harmless, and defend City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damages and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of City or DAHA, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of DAHA, arising out of, related to or associated with the lease, use, maintenance or operation of the Leased Premises or the Parking Area by DAHA or performance of its obligations under this Agreement. Promptly after receipt by City of notice of the commencement of any action with respect to which DAHA is required to indemnify City, City shall notify DAHA in writing of the commencement thereof, and, subject to the provisions of this Agreement, DAHA shall assume the defense of such action, including the employment of counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against DAHA, City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of DAHA. This indemnification provision shall survive expiration or termination of this Agreement for any reason.

XII. Financials, Reporting, and Records Retention.

- A. DAHA shall comply with the Reporting Requirements outlined in Exhibit C attached hereto and incorporated herein by reference.
- B. As provided in Minn. Stat. § 16C.05, Subd. 5, all DAHA books, records, documents, accounting procedures and practices related to the operation of the Leased Premises are subject to examination by City or the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance notice by City, DAHA shall provide all requested financial information.
- C. DAHA shall maintain all records relating to its Services and to the Leased Premises during the Term and for six (6) years after termination, cancellation, or expiration of this Agreement.

XIII. Notices.

Unless otherwise provided herein, notice to City or DAHA shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth Attn: Property & Facilities Manager 1532 West Michigan Street Duluth, MN 55806 (218) 730-4430 DAHA Attn: Executive Director 120 S. 30th Ave. West Duluth, MN 55806 (218) 728-8000

XIV. Access and Keys.

- A. City shall have unlimited access to the Leased Premises during the Term for any purpose. DAHA shall not change the locks or otherwise prohibit or inhibit City's access to any portion of the Leased Premises.
- B. The PFM Manager shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution. DAHA shall comply with City's Key Control Policy, a copy of which shall be provided to DAHA, and is subject to unilateral change by City during this Agreement.
- C. DAHA shall not make copies of any keys to the Leased Premises. All keys shall be promptly returned to the PFM Manager upon termination or expiration of this Agreement.
- D. DAHA shall provide the PFM Manager with a current list of all key holders to the Leased Premises including contact information. DAHA will update the list whenever there is a change and at any time upon the request of the PFM Manager.

XV. Compliance with Laws.

- A. DAHA shall make its Services available to all users and shall not discriminate on the basis of race, color, creed, national origin, sexual orientation, disability, sex, religion, or status with regard to public assistance, and shall not violate any federal, state or local civil rights law, rule or regulation in the use of the Leased Premises.
- B. DAHA shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Leased Premises.
- C. DAHA shall operate the Leased Premises and provide its Services in compliance with the United States Constitution, and with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth.
- D. DAHA shall procure at its sole expense all licenses and permits necessary for carrying out the provisions of this Agreement and providing its Services on the Leased Premises.

XVI. Smoking, Tobacco, & Alcohol Use.

DAHA acknowledges and agrees that there shall be no smoking or use of tobacco, alcohol, or illegal drugs whatsoever on the Leased Premises or as otherwise prohibited by state or local laws.

XVII. Government Data Practices.

- A. DAHA shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by DAHA under this Agreement.
- B. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by DAHA. If DAHA receives a request to release the data referred to in this clause, DAHA must immediately notify City and consult with City as to how DAHA should respond to the request. DAHA agrees to hold City, its officers, and employees harmless from any claims resulting from DAHA's unlawful disclosure or use of data protected under state and federal laws.

XVIII. Incident Reports.

DAHA shall notify the PFM Manager in writing of any incident of injury or loss or damage to the Leased Premises or to any of DAHA's participants or invitees occurring within the Leased Premises or the Parking Area during the Term, except for damage to DAHA's personal property. Such written report shall be in a form acceptable to City's Claims Investigator and Adjuster. A copy of City's current form of Incident Report is attached hereto as Exhibit D.

XIX. <u>Independent Relationship</u>.

- A. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting DAHA as agents, representatives or employees of City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- B. DAHA and its employees shall not be considered employees of City and any claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of DAHA's employees or agents while so engaged shall in no way be the responsibility of City.

XX. General Provisions.

A. Nothing in this Agreement is intended to or should be construed as a waiver by City of any immunities, defenses or other limitations on liability to which City is entitled by law, including, but not limited to, the liability limits under Minnesota Statutes Chapter 466.

- B. By this Agreement the parties do not create a principle/agent relationship. DAHA will not be deemed as acting as an agent of City nor will it be deemed as acting in an official capacity. DAHA is a tenant of the Leased Premises and shall not represent itself as an agent of City.
- C. The waiver by City or DAHA of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.
- D. The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under those courts located within St. Louis County, Minnesota.
- E. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- F. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.
- G. Prior to execution of this Agreement by City, DAHA shall provide evidence that it is an entity legally capable of entering into obligations of a contract and it is a non-profit organization currently in good standing with the Minnesota Secretary of State.
- H. This Agreement may be amended only by a written instrument signed by both parties. 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.
- I. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.
- J. The rights of DAHA to lease, occupy, and use the Leased Premises are subject to DAHA's compliance with the undertakings, provisions, covenants, and conditions herein.

- K. This Agreement, including exhibits, 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 hereof.
- L. The terms, covenants and conditions of this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.
 - M. Time is of the essence in all provisions of this Agreement.
- N. Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.
 - O. The following are the exhibits to this Agreement:

Exhibit A Depiction of Leased Premises
Exhibit B Project Proposal Request
Exhibit C Reporting Requirements
Exhibit D Incident Report

[Remainder of this page is intentionally left blank.]

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

CITY OF DULUTH	DULUTH AMATEUR HOCKEY ASSOCIATION
By: Mayor	Printed Name: Jason Wat
Attest: City Clerk	
Dated:	
Countersigned:	Its: Executive Director Dated: $\frac{c}{\ln 19}$
City Auditor	
•	
Approved as to form:	
City Attorney	



Printed Date: 9/11/2018

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



Exhibit A Fryberger Arena





100 200 Feet



Exhibit B Public Administration Department Parks and Recreation Division

Duluth Parks & Recreation

City Hall - Ground Floor • 411 West First Street • Duluth, Minnesota • 55802 218-730-4300 • www.duluthmn.gov/parks/index.cfm

April 9, 2019

Dear Community Partner:

Thank you for your interest in proposing an improvement project for City property. We recognize that working closely with the community is an important way we can fulfill our responsibility to develop long-term strategies, plans and improvements that benefit the greatest number of constituents possible and effectively use limited resources.

Each year there are numerous requests for projects on City property. To better respond to the requests, the City has developed a system that will result in better communications, tracking and processing of project proposals. It establishes Parks and Recreation as the City entity that will: (1) accept and review all submitted parks related Project Proposal Forms; (2) conduct an internal review to determine compatibility with all parks planning documents, industry best practices, and standards set by the Division, (3) pending preliminary approval by parks review staff, forward to appropriate city staff in other divisions, (4) if approved, facilitate the process to project completion. Once your project proposal request is received, staff will initiate the review process, with the intent to provide a response within sixty (60) days.

The intent of this process is to expedite decision making, properly evaluate proposals against existing plans, standards, and uses; clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns. At any point in the process, Parks and Recreation can be contacted to respond to questions or concerns.

In past years, this process has seen a number of projects completed for the betterment of our community, including installation of park benches, playfield renovations and community beautification projects. Proposals may be submitted by individuals and community organizations, as well as City staff.

Please note that acquiring funds for a project through CDBG, a DNR grant, fundraising, donations or other means does not guarantee project acceptability. Any project on City property must also receive recommendation and approval by the appropriate City officials. It is strongly recommended that City approval should occur in advance of, or at least concurrent with, pursuing funding.

If you have any questions, please contact Jessica Schoonover at (218) 730-4325.

Sincerely,

Jessica Peterson

Parks and Recreation Manager

City of Duluth

411 W First Street

Duluth, MN 55802





Use this form to propose a City of Duluth improvement project on park property. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests. You or your organization will receive a response to the project proposal request within sixty (60) days of submission. Please submit completed form, along with attached map to: projectproposal@duluthmn.gov.

APPLICANT CONTACT INFORMATION

Date of Application:		
		IS YOUR PROJECT RELATED TO
Name:		PUBLIC
Organization:		-ARTS-
018011120110111		-MEMORIALS-
Address:	City/State/Zip:	-MONUMENTS-
	, , ,	
Park Location:	E-mail:	IF SO, YOUR PROPOSAL WILL BE
Primary Phone:	Secondary Phone:	SHARED WITH THE DULUTH PUBLIC
		ARTS COMMISSION FOR REVIEW.

PROJECT PROPOSAL

Use additional sheets if more space is needed.

PROJECT LOCATION

Describe as best as possible the location of the proposed project. Give the park name, location within park, and GPS coordinates. If the project is City-wide, please state "City-wide."

PROJECT DESCRIPTION

Describe the proposed project in as much detail as possible. Why is the project needed and necessary? What do you propose doing? Maps, sketches, diagrams, and/or schematic drawings are required so those reviewing the proposal have a better understanding of your project. These may include location, sizes, wording, colors, etc. Please attach any additional information about this project.

Attached Not Applicable

PROJECT JUSTIFICATION

Describe the benefit of the proposed project. Is it a safety issue? Will it provide cost savings to the City? Is it a functional improvement? Does it provide aesthetic benefit to the park?





PROJECT COST

Describe the approximate cost to complete the project. This can be a "guesstimate." This is only considered to be a rough guideline.

POTENTIAL SOURCE OF FUNDING

Describe potential funding sources for the project.

NEIGHBOR SUPPORT

Does this project have the support of neighbors living nearby?

Yes No Uncertain Not Applicable

Comments:

ENERGY USE

Will this project change the use of any energy type listed below?

Yes No Uncertain Not Applicable

If yes, check all energy types where use is expected to change.

ELECTRICITY (kWh) GAS (Therms) OIL (gallons) STEAM (Pounds) WATER and SEWER (CCF)

ADDITIONAL CONSIDERATIONS

The City of Duluth considers our long-term strategies, Master Plans, Accessibility Plan and Capital Improvement list, as well as legal requirements, in evaluating proposals. Please review the considerations below and add any comments you have.

<u>CONSIDERATION (A):</u> Project is compatible with Park Master Plan, systems plans, Strategic Plans, etc. **COMMENT (A):**

<u>CONSIDERATION (B):</u> Project is compliant with ADA Accessibility Plans. **COMMENT (B):**





CONSIDERATION (C): Project is compatible with surrounding and adjoining uses. **COMMENT (C):**

CONSIDERATION (D): Project will meet standards for materials and construction practices. **COMMENT (D):**

<u>CONSIDERATION (E):</u> Project complies with zoning code and land uses. **COMMENT (E):**

CONSIDERATION (F): Project does or does not require a permit. **COMMENT (F):**

<u>CONSIDERATION (G):</u> Increases cost to maintain or operate. (Note: If this is the case, and the project is approved, it may need to be incorporated into the Capital Improvement Plan and be approved by City Council.)

COMMENT (G):

SUBMIT COMPLETED FORMS to:

JESSICA SCHOONOVER
ADMINISTRATIVE CLERICAL SPECIALIST
CITY OF DULUTH
PARKS AND RECREATION
411 WEST FIRST STREET
DULUTH, MN 55802
projectproposal@duluthmn.gov
(218) 730-4325



Exhibit B Public Administration Department Parks and Recreation Division

Duluth Parks & Recreation

City Hall - Ground Floor • 411 West First Street • Duluth, Minnesota • 55802 218-730-4300 • www.duluthmn.gov/parks/index.cfm

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Sincerely,

Jessica Peterson

Parks and Recreation Manager

City of Duluth

411 W First Street

Duluth, MN 55802





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Date of Application:		
		IS YOUR PROJECT RELATED TO
Name:		PUBLIC
Organization:		-ARTS-
018011120110111		-MEMORIALS-
Address:	City/State/Zip:	-MONUMENTS-
	, , ,	
Park Location:	E-mail:	IF SO, YOUR PROPOSAL WILL BE
Primary Phone:	Secondary Phone:	SHARED WITH THE DULUTH PUBLIC
		ARTS COMMISSION FOR REVIEW.

PROJECT PROPOSAL

Use additional sheets if more space is needed.

PROJECT LOCATION

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Comments:

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ELECTRICITY (kWh) GAS (Therms) OIL (gallons) STEAM (Pounds) WATER and SEWER (CCF)

ADDITIONAL CONSIDERATIONS

The City of Duluth considers our long-term strategies, Master Plans, Accessibility Plan and Capital Improvement list, as well as legal requirements, in evaluating proposals. Please review the considerations below and add any comments you have.

<u>CONSIDERATION (A):</u> Project is compatible with Park Master Plan, systems plans, Strategic Plans, etc. **COMMENT (A):**

<u>CONSIDERATION (B):</u> Project is compliant with ADA Accessibility Plans. **COMMENT (B):**





CONSIDERATION (C): Project is compatible with surrounding and adjoining uses. **COMMENT (C):**

CONSIDERATION (D): Project will meet standards for materials and construction practices. **COMMENT (D):**

<u>CONSIDERATION (E):</u> Project complies with zoning code and land uses. **COMMENT (E):**

CONSIDERATION (F): Project does or does not require a permit. **COMMENT (F):**

<u>CONSIDERATION (G):</u> Increases cost to maintain or operate. (Note: If this is the case, and the project is approved, it may need to be incorporated into the Capital Improvement Plan and be approved by City Council.)

COMMENT (G):

SUBMIT COMPLETED FORMS to:

JESSICA SCHOONOVER
ADMINISTRATIVE CLERICAL SPECIALIST
CITY OF DULUTH
PARKS AND RECREATION
411 WEST FIRST STREET
DULUTH, MN 55802
projectproposal@duluthmn.gov
(218) 730-4325

EXHIBIT C REPORTING REQUIREMENTS

- A. On or before October 1st of each year, a current listing of all DAHA officers, board members, and a designation of the official contact person responsible for the administration of this agreement (including day-to-day scheduling and maintenance duties) along with addresses and phone numbers.
- B. On or before October1st of each year, a current copy of DAHA's By-Laws, Articles of Incorporation, Constitution, or other document which defines DAHA as a viable Minnesota non-profit organization.
- C. Current /updated Certificate of Insurance for each year of this Agreement, including any insurance provided by USA Hockey Association.
- D. Provide a Form 990 (informational return) filed annually with the IRS.
- E. Any other information regarding the use of the Leased Premises as the City may request from time to time.

Exhibit D City of Duluth Incident/Injury Report

<u>Supervisor to complete within 24 hours of incident/injury.</u> If injury required treatment by a medical provider, attach medical documentation. Completed forms should be emailed to <u>accidentreporting@duluthmn.gov</u>.

Date of incident/injury:	☐ Employee ☐	Non-Employee	Departmen	t/Division:			
Choose one that best describes this clain	n: 🗆 Incident onl	y, no medical care	☐ Med	ical only, no lost ti	me □ Ir	njury include	s lost time
Initial treatment sought: Hospital E	R	Doctor/clin	nic name, add	ress, phone numb	er:		
☐ Clinic							
☐ Refused to	o see MD / None						
Last name:		First name:			MI:	SSN:	
		riist name.			IVII.	3314.	
Address:	Class	7'		Dlama		Data afficial	
City:	State:	Zip code:		Phone:		Date of birt	
Date of hire: Occ	cupation:					Gender: ∟	l Male □ Female
Did injury occur on employer's premises?	P ∨os □ No	Name and addre	ass of the plan	ce of the occurren	CO.		
Did injury occur on employer's premises:		Name and addit	ess of the pla	ce of the occurren	cc.		
Time employee began work:	Па	 m □nm ⁻	Time of injury		Па	am 🗆 n m	
Date employer notified of injury:				r notified of lost tin			
First date of any lost time:		n to work date:	Date employe	RTW			s □ No □ N/A
Describe the nature of the illness or injury					Willingstile	10113. 🗀 10	3 🗆 100 🗀 10//1
Describe the flature of the limess of injury	7. De specific. Inclu	iue bouy parts ane	cieu.				
Describe the activities when injury occurr	ed with details of h	now it happened.					
What tools, equipment, machines, objects	s and/or substance	es were involved?					
Incident investigation conducted: ☐ Yes	. □ No Date s	upervisor notified:		Date	report com	nleted·	
		•					
Supervisor name:			Supervi	sor phone numbe	l		
Names and phone numbers of witnesses	:						
Incident was a result of: ☐ safety viola	ition \square machi	ine malfunction	☐ product	defect □ m	otor vehicle	accident	□ N/A
Supervisor comments:							
What actions have been taken to prevent recurrence?							

City of Duluth Incident/Injury Report

<u>CAUSE</u>			ΜΔΡΚ ΔΡΕΔς	OF INJURY BELOW:		
☐ Slip and fall				an "X" in the text box wherever needed.		
☐ Struck by eq	·		Front	Back		
☐ Lifting or mov	•					
☐ Caught (in, o☐ Needle punc	-		()	()		
	e (□ Right □ Left)		ZVA.			
☐ Repetitive/ov	,		ATRO	RIF		
☐ Other (specif			1 FILM	1 MAN		
TYPE OF INJUI	• -		MANY	1 1111111111111111111111111111111111111		
☐ Scrape/bruis						
☐ Sprain/strain			ALMH	1 AMA		
☐ Puncture wo			The I Y I have	and \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		
☐ Cut/laceratio	n		Right Left	Left Right		
☐ Concussion			MU			
☐ Bite			1117			
	rn/rash/breathing difficulties		\	1 \/\/		
☐ No apparent	• •		AK	1 A N		
☐ Other (specif	ý):					
	COMPLETE FO	R VEHICLE, EQUIPM	ENT, OR PROPERTY DA	MAGE		
	For vehicle accidents: Attach	sketch and additional	information of how vehicle	e accident occurred.		
	Include street names, direction	of travel, locations of veh	nicles, objects and traffic con	trol devices († North)		
Incident Locatio	n:		Time of incident:	a.m. □ p.m.		
Police called:	☐ Yes ☐ No Po	olice Traffic Accident Repor	rt ICR #:			
	Description:					
City vehicle,	Vehicle #:	Make/Model:		Year:		
property, or equipment	Describe damage:	Waterwood		1 0411		
involved	Describe damage.					
	Owner full name:			☐ Driver ☐ Passenger ☐ Other		
Non-city	Owner address:					
vehicle, property, or	Owner phone number:		Vehicle license #:			
equipment	Make/Model:		Color:	Year:		
involved	Describe damage:		•	<u>'</u>		
	3					
Weather condi	tions: Roadway conditions:	Light conditions:	Approximate temperature: _	 °F		
		☐ Night	Estimated speed:			
	Cloudy □ Wet □ Paved	□ Day	•	•		
□ Fog □ S	,	•	Vehicle: ☐ Loaded ☐			
□ Snow	□ lce	□ Poor	What was load:			
			Drug and/or alcohol test?	」Yes □ No □ N/A		
The Incident/Ini	ury Form should be printed and si	inned by supervisor and a	employee Completed forms	can he scanned to		
	ng@duluthmn.gov.	igned by supervisor and t	employee. Completed forms (can be scanned to		
						
Supervisor Sign	nature:		Date	e:		
. 3						
Employee Signa	ature:		Date	e:		

Exhibit 1

FIRST AMENDMENT TO INVASIVE SPECIES CONTROL SERVICES AND LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND COMMUNITY ACTION DULUTH

The Invasive Species Control Services and License Agreement #23443 dated April 20, 2018 (the "License Agreement") between the City of Duluth ("City") and Community Action Duluth ("CAD") (hereinafter collectively referred to as the "Parties") is amended as set forth below. Capitalized terms used in this First Amendment to Invasive Species Control Services and License Agreement (this "First Amendment"), but not defined herein, shall have the same meaning ascribed to them as in the License Agreement.

WHEREAS, the Parties wish to amend the License Agreement to: (a) include additional real estate to the Hartley Park Property and (b) extend the Term.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the Parties agree to amend the License Agreement as follows:

- A. Exhibit A-1 is amended and completely replaced with the attached Amended Exhibit A-1.
- B. Exhibit A-2 is amended and completely replaced with the attached Amended Exhibit A-2.
 - C. Section II is amended and completely replaced with the following Section II:
 - II. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on or about April 1, 2018, and shall continue through March 31, 2020, unless earlier terminated (the "Term").
- C. Except as specifically amended pursuant to this First Amendment, the License Agreement remains in full force and effect. In the event of a conflict between the provisions of this First Amendment and the License Agreement, the provisions of the First Amendment shall govern.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and date first shown below.

CITY OF DULUTH, MINNESOTA	COMMUNITY ACTION DULUTH
By: Mayor ATTEST:	Its: Jetfrey R. Longenecker Title: Exec. Dir.
City Clerk	Dated: 9-10-19
Dated:	
COUNTERSIGNED:	
City Auditor	
APPROVED AS TO FORM:	
City Attorney	

010-2710-00380 010-2710-00400 Rosyn Ave. -Sarlisle Ave Waverly St St-Andrews unjog Anna St Lewis St 2,600 Feet St Paul Ake Fairmont St 3 Isanti St Minneapoli 010-2710-03 Harvald Ave 9vA hibanu ☐ W Arrowhead Road 010-2710-00390 le ndalle Hartley Field ÐΛ E Anoka St 010-2710-03170 010-2710-03200 1,300 010-2710-00 Community Action Duluth - Invasive Work Area Northfield St W Anoka St 010-2710-00350 010-2710-03180 010-2710-032 **AMENDED EXHIBIT A-1** KolstadiA Hartley Park Regents of the U of M 010-2710-02860 0-2710-00600 Area Name: Hartley Ewing City of Duluth Tax Forfeit Marshall & Well Ave ISD #709 Ownership 010-2710-02830 010-2710-02840 W Victoria St 98500 Kenwood Dr 010-2710-00560 Hand Visten Road South Road neither a legally recorded map nor a survey and is not drawing/data is a commitation of any Information contained within. The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, incling any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office. North Road iddle Road Linzie Road ocated in various City, County and State offices and other sources affecting the area shown is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this 010-2710-00540 Norton Road Macfarlane Road The City of Duluth has tried to ensure that the info document is accurate. The City of Duluth makes or reliability. This drawing/data is neither a legally or reliability. Printed Date: 8/26/2019 010-4410-01010 Park рәшеиип

AMENDED EXHIBIT A-2

HARTLEY PARK PROPERTY TAX PARCEL NUMBERS

010-4405-00200	010-2116-00190
010-4405-00210	010-2116-00200
010-2710-02820	010-2116-00210
010-2710-02825	010-2116-00220
010-2710-02830	010-2116-00230
010-2710-02840	010-2116-00240
010-2710-02860	010-2116-00250
010-2710-00525	010-2116-00260
010-2710-00526	010-2116-00270
010-2710-00560	010-2116-00280
010-2710-00572	010-2116-00290
010-2710-00585	010-2116-00300
010-2710-00590	010-2116-00310
010-2710-00595	010-2116-00320
010-2710-00596	010-2116-00330
010-2710-00600	010-2116-00340
010-2710-00350	010-2116-00350
010-2710-00330	010-2116-00480
010-2710-03170	010-2116-00490
010-2710-03200	010-2116-00500
010-2710-03185	010-2116-00510
010-2710-03180	010-2116-00520
010-2710-03195	010-2116-00530
010-2710-03190	010-2116-00540
010-2710-03210	010-2116-00550
010-2710-03245	010-2116-00560
010-2710-03100	010-2116-00570
	010-2116-00580 010-2116-00590
	010-2116-00590
	010-2116-00610
	010-2116-00610
	010-2116-00620
	010-2116-00640
	010-2116-00650
	010-2110-00030

DULUTH TRAVERSE TRAIL EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement Agreement") is entered into by and between THE MARSHALL SCHOOL, a Minnesota non-profit corporation ("Grantor") and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota ("City").

Grantor, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does grant and convey to City, its successors and assigns, a perpetual, non-exclusive easement for public multi-use trail purposes (the "Easement") over, under and across Grantor's property in the County of St. Louis, State of Minnesota, legally described on the attached Exhibit A, in the location legally described on the attached Exhibit B and depicted on the attached Exhibit C (the "Easement Area"). The Easement shall extend to and bind the successors and assigns of Grantor and City and shall run with the land.

City, its contractors, agents, and employees may enter the Easement Area at all reasonable times for the purposes of locating, constructing, operating, maintaining and repairing a trail and other improvements within the Easement Area. City, its contractors, agents, and employees may cut, trim, or remove from the Easement Area trees, shrubs

or other vegetation in City's reasonable discretion. City, its contractors, agents and employees may construct erosion control structures necessary to maintain a clear, dry passage through the Easement Area, including installing, maintaining, repairing and replacing waterbars, steps, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the Easement Area, but without diverting water in a matter that is harmful to or damages Grantor's property.

As to any contractors and/or agents performing work in the Easement Area at the request of the City, such contractors and/or agents shall (i) have in effect for the duration of such work liability insurance in the amount of \$1,000,000, which insurance shall name Grantor as an additional insured with respect to such work, and (ii) provide City with a certificate of insurance at least ten (10) days in advance of performing such work. In the event of an emergency, as soon as practical, City will still obtain a certificate of insurance from any contractors and/or agents performing work and require that any contractors and/or agents list Grantor as an additional insured, but Grantor will waive the obligation to provide the certificate of insurance ten (10) days in advance.

City's and the public's use of the Easement Area shall be limited to public recreational trail use and purposes. City agrees to maintain signage in the Easement Area identifying the area that is open to public use.

Grantor shall have no obligation or duty to maintain, repair, or replace any improvements or vegetation in the Easement Area. Grantor specifically does not warrant or represent that it will take any action to protect the Easement Area from erosion.

To the extent permitted by law, Grantor shall have and enjoy all of the protection from liability afforded an owner granting an easement for the use of land for recreational

purposes as provided in Chapter 604A of Minnesota Statutes and such statutory protection and limitations on duties, including but not limited to those set forth in Minn. Stat. §§ 604A.22 and 604A.23, which are hereby incorporated by reference.

To the extent permitted by Minnesota law, City shall indemnify, save harmless, and defend Grantor and its successors and assigns from and against any and all claims asserted by any person arising from or relating to any negligent acts of City in carrying out its obligations under this Easement Agreement.

The parties represent to each other that the execution of this Easement Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Easement Agreement on their behalf are fully authorized to do so, and that this Easement Agreement when executed by said officers will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be executed on the day and year first written below.

THE MARSHALL SCHOOL Printed Name: Kevin J. Breen Its: Head of School THE MARSHALL SCHOOL, a Minnesota non-profit corporation, on behalf of the

corporation. Donna Marie Kanoff Notary Public - Minnesota

	CITY	OF DULUTH
	Ву:	Emily Larson, Mayor
	Attest	:: Chelsea Helmer, City Clerk
, 2019, by Emily Larse	on and unicipal	ed and sworn before me this day of Chelsea Helmer, Mayor and City Clerk, corporation organized and existing under of the City.
		Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Office of the City Attorney City of Duluth 411 W. First Street, Room 410 Duluth, MN 55802

EXHIBIT A

East half of Southeast Quarter of Northeast Quarter (E 1/2 of SE 1/4 of NE 1/4), Section Twenty-one (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian.

AND

All that part of the East Half of Southeast Quarter (E 1/2 of SE 1/4) of SECTION Twenty-one (21), Township Fifty (50) North, Range Fourteen (14) West, lying Northerly of Central Entrance, State Highway No. 194, a public highway as the same is laid out and constructed over and across said Southeast Quarter, EXCEPT the following described parcels:

- a. All that part of the Easterly 264.76 feet of the Westerly 759.65 feet of the E1/2 of SE1/4, Section 21, Township 50 North, Range 14 West of the Fourth Principal Meridian, lying Northerly of Central Entrance, State Highway 194; EXCEPT the Northerly 200 feet thereof.
- b. The Northerly 100.0 feet of the E1/2 of NE1/4 of SE1/4 of Section 21, Township 50 North, Range 14, West of the Fourth Principal Meridian.
- Commencing at the Northwest corner of said NE1/4 of SE1/4, thence C. Southerly, along the West line of said NE1/4 of SE1/4, a distance of 200.05 feet, thence deflect 91 degrees 15 minutes to the left in an Easterly direction, along a line 200.0 feet Southerly measured at a right angle to and parallel with the North line of said NE1/4 of SE1/4 a distance of 759.83 feet to the point of beginning; thence deflect 91 degrees 15 minutes to the right in a Southerly direction, along a line 759.65 feet Easterly measured at a right angle to and parallel with the West line of said NE1/4 of SE1/4, a distance of 218.26 feet; thence deflect 81 degrees 45 minutes 20 seconds to the left in an Easterly direction, along the Northerly right of way line of said Central Entrance, a distance of 47.62 feet; thence Easterly and Southerly along a tangent curve concave to the Southwest having a radius of 851.51 feet, a central angle of 9 degrees 41 minutes 38 seconds, a distance of 144.07 feet; thence Northerly, along the prolongation of the radial line of said curve, a distance of 277.10 feet; thence deflect 109 degrees 11 minutes 18 seconds to the left in a Westerly direction, along the line 200.00 feet Southerly and parallel to the North line of said NE1/4 of SE1/4, a distance of 272.69 feet to the point of beginning, containing 1.275 acres of land, more or less.
- d. Commencing at the Northwest corner of said NE1/4 of SE1/4; thence Southerly along the West line of said NE1/4 of SE1/4, a distance of 200.05 feet; thence deflect 91 degrees 15 minutes to the left in an Easterly direction along a line 200.0 feet Southerly measured at a right angle to and parallel with the North line of said NE1/4 of SE1/4, a distance of 759.83 feet; thence deflect 91 degrees 15 minutes to the right in a Southerly direction along a line 759.65 feet Easterly measured at a right angle to and parallel with the West line of said NE1/4 of SE1/4, a distance of 218.26 feet; thence

deflect 81 degrees 45 minutes 20 seconds to the left in an Easterly direction, along the Northerly right-of-way line of said Central Entrance, a distance of 47.62 feet; thence Easterly and Southerly along a tangent curve concave to the Southwest having a radius of 851.51 feet; a central angle of 9 degrees 41 minutes 38 seconds a distance of 144.07 feet to the point of beginning; thence Northerly along the prolongation of the radial line of said curve, a distance of 177.00 feet; thence deflect 90 degrees to the right in an Easterly direction, a distance of 150.00 feet; thence deflect 90 degrees to the right in a Southerly direction, a distance of 190.32 feet to a point on the said Northerly right-of-way line of Central Entrance; thence along said Northerly right-of-way line of Central Entrance Northerly and Westerly along a curve to the left having a radius of 851.51 feet; a central angle of 10 degrees 08 minutes 46 seconds, a distance of 150.79 feet to the point of beginning, containing 0.625 acres of land, more or less.

- All that part of the NE1/4 of SE1/4, Section 21, Township 50 North, Range e. 14 West of the Fourth Principal Meridian, lying Northerly of Central Entrance, State Highway No. 194, and lying Easterly and Northerly of the line described as follows: Commencing at the Northwest corner of said NE1/4 of SE1/4, thence Southerly, along the west line of said NE1/4 of SE1/4, a distance of 200.05 feet; thence deflect 91 degrees 15 minutes to the left in an Easterly direction, along a line 200.00 feet distant Southerly and parallel with the North line of said NE1/4 of SE1/4, a distance of 1032.52 feet; thence deflect 70 degrees 48 minutes 42 seconds to the left in a Northerly direction a distance of 105.88 feet to the intersection with a line 100.00 feet distant Southerly and parallel with the North line of said NE1/4 of SE1/4 and said point of intersection being the point of beginning of the line to be described; thence Southerly along the last described line a distance of 55.98 feet; thence deflect 90 degrees 00 minutes 00 seconds to the left in an Easterly direction a distance of 150.00 feet; thence deflect 90 degrees 00 minutes 00 seconds to the right in a Southerly direction a distance of 323.0 feet, more or less to the Northeasterly right of way line of said Central Entrance, and said line there terminating.
- f. The Northerly 100.00 feet of the E1/2 of NE1/4 of SE1/4, Section 21, Township 50 North, Range 14, West of the Fourth Principal Meridian.

EXHIBIT B

MARSHALL SHOOL DESECRIPTION

DESCRIPTION:

A Ten foot wide easement over, under and across all that part of the West half of the Northeast One-quarter of the Southeast One-quarter (W 1/2 of the NE 1/4 of the SE 1/4), Section Twentyone (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, City of Duluth, St. Louis County, Minnesota centered on the following described line: Commencing at the northeast corner of said W 1/2 of the NE 1/4 of the SE 1/4; thence South 89 degrees 33 minutes 02 seconds West along the north line of said W 1/2 of the NE 1/4 of the SE 1/4, a distance of 177.55 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence southwesterly 62.47 feet along a non-tangential curve concave northwesterly having a radius of 205.00 feet, a central angle of 17 degrees 27 minutes 34 seconds, and a chord bearing of South 69 degrees 55 minutes 00 seconds West; thence southwesterly 48.49 feet along a tangential curve concave southeasterly having a radius of 159.40 feet and a central angle of 17 degrees 25 minutes 44 seconds; thence southwesterly 53.79 feet along a tangential curve concave northerly having a radius of 80.00 feet and central angle of 38 degrees 31 minutes 27 seconds; thence southwesterly 43.67 feet along a tangential curve concave southeasterly having a radius of 90.00 feet and a central angle of 27 degrees 47 minutes 56 seconds; thence southwesterly 29.59 feet along a tangential curve concave southeasterly having a radius of 75.00 feet and a central angle of 22 degrees 36 minutes 17 seconds; thence southwesterly 50.38 feet along a tangential curve concave northwesterly having a radius of 225.00 feet and a central angle of 12 degrees 49 minutes 48 seconds; thence southwesterly 77.04 feet along a tangential curve concave southeasterly having a radius of 225.00 feet and a central angle of 19 degrees 37 minutes 09 seconds; thence southwesterly 37.17 feet along a tangential curve concave northwesterly having a radius 125.00 feet and a central angle of 17 degrees 02 minutes 21 seconds; thence southwesterly 96.54 feet along a curve concave southeasterly having a radius of 140.00 feet and a central angle of 39 degrees 30 minutes 32 seconds to the north Right-of-Way line of Central Entrance (a.k.a State Highway No. 194) and said line there terminating.

The northerly sidelines of said easement are prolonged or shortened to terminate on the north line of said W 1/2 of the NE 1/4 of the SE 1/4.

The southerly sidelines of said easement are prolonged or shortened to terminate on the north line of said north Right-of-Way line of Central Entrance (a.k.a State Highway No. 194).

AND

A Ten foot wide easement over, under and across all that part of the East half of the Southeast One-quarter of the Northeast One-quarter (E 1/2 of the SE 1/4 of the NE 1/4), Section Twentyone (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, City of Duluth, St. Louis County, Minnesota centered on the following described line:

Commencing at the southwest corner of said E 1/2 of the SE 1/4 of the NE 1/4; thence North 01 degrees 15 minutes 05 seconds East along the west line of said E 1/2 of the SE 1/4 of the NE 1/4, a distance of 206.03 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence northeasterly 20.10 feet along a non-tangential curve concave southeasterly having a radius of 466.61, a central angle of 02 degrees 28 minutes 06 seconds, and a chord bearing of North 43 degrees 30 minutes 32 seconds East; thence North 08 degrees 52 minutes 46 seconds East, a distance of 25.83 feet; thence northerly 37.62 feet along a non-tangential curve concave northeasterly having a radius of 85.00 feet and a central angle of 25 degrees 21 minutes 27 seconds and a chord bearing of North 04 degrees 50 minutes 42 seconds West; thence North 06 degrees 14 minutes 27 seconds East, a distance of 68.02 feet; thence northwesterly 22.77 feet along a tangential curve concave southwesterly having a radius of 30.00 feet and central angle of 43 degrees 29 minutes 49 seconds; thence northerly 67.87 feet along a tangential curve concave easterly having a radius of 48.14 feet and a central angle of 79 degrees 57 minutes 44 seconds; thence northeasterly 21.87 feet along a tangential curve concave northwesterly having a radius of 20.00 feet and a central angle of 62 degrees 39 minutes 38 seconds; thence northwesterly, westerly and southwesterly 8.54 feet along a tangential curve concave southwesterly having a radius of 5.00 feet and a central angle of 97 degrees 52 minutes 30 seconds; thence southwesterly 17.49 feet along a tangential curve concave southeasterly having a radius of 191.38 feet and a central angle of 05 degrees 14 minutes 08 seconds to the west line of said E 1/2 of the SE 1/4 of the NE 1/4 and said line there terminating.

The sidelines of said easement are prolonged or shortened to terminate on the west line of said E 1/2 of the SE 1/4 of the NE 1/4.

AND

A Ten foot wide easement over, under and across all that part of the East half of the Southeast One-quarter of the Northeast One-quarter (E 1/2 of the SE 1/4 of the NE 1/4), Section Twenty-one (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, City of Duluth, St. Louis County, Minnesota centered on the following described line:

Commencing at the southwest corner of said E 1/2 of the SE 1/4 of the NE 1/4; thence North 01 degrees 15 minutes 05 seconds East along the west line of said E 1/2 of the SE 1/4 of the NE 1/4, a distance of 502.35 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence northerly 42.92 feet along a non-tangential curve concave northwesterly having a radius of 650.00 feet, a central angle of 03 degrees 47 minutes 01 seconds, and a chord bearing North 29 degrees 47 minutes 31 seconds East; thence northerly 19.97 feet along a tangential curve concave northwesterly having a radius of 75.00 feet and a central angle of 15 degrees 15 minutes 16 seconds; thence northeasterly 44.94 feet along a tangential curve concave southeasterly having a radius of 150.00 feet and central angle of 17 degrees 10 minutes 03 seconds; thence northerly 80.88 feet along a tangential curve concave westerly having a radius of 66.00 feet and a central angle of 70 degrees 12 minutes 41 seconds; thence northerly 57.99 feet along a tangential curve concave easterly having a radius of 43.38 feet and a central angle of 76 degrees 35 minutes 32 seconds; thence northerly 28.23 feet along a tangential curve concave northwesterly having a

radius of 40.00 feet and a central angle of 40 degrees 26 minutes 17 seconds; thence northerly 68.21 feet along a tangential curve concave easterly having a radius of 175.00 feet and a central angle of 22 degrees 20 minutes 00 seconds; thence northerly 33.29 feet along a tangential curve concave northwesterly having a radius of 100.00 feet and a central angle of 19 degrees 04 minutes 19 seconds; thence northerly 22.67 feet along a tangential curve concave easterly having a radius of 75.00 feet and a central angle of 17 degrees 19 minutes 18 seconds; thence North 16 degrees 20 minutes 19 seconds East, a distance of 64.95 feet; thence North 12 degrees 52 minutes 25 seconds East, a distance of 100.00 feet; thence northerly 24.02 feet along a tangential curve concave southeasterly having a radius of 325.00 feet and a central angle of 04 degrees 14 minutes 05 seconds; thence northerly 85.23 feet along a tangential curve concave northwesterly having a radius of 359.95 feet and a central angle of 13 degrees 34 minutes 02 seconds; thence northerly 29.45 feet along tangential curve concave westerly having a radius of 690.00 feet and a central angle of 02 degrees 26 minutes 43 seconds to the east line of the easterly Right-of-way line of Pecan Avenue and said line there terminating.

The southerly sidelines of said easement are prolonged or shortened to terminate on the west line of said E 1/2 of the SE 1/4 of the NE 1/4.

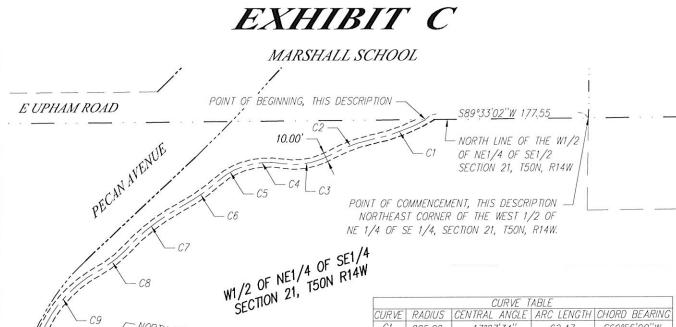
The northerly sidelines of said easement are prolonged or shortened to terminate on the easterly Right-of-way line of Pecan Avenue.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the state of Minnesota.

Paul A. Vogel

Signed

Date 9/05/2017 License No. 44075



CENTRAL ENTRANCE LINE	CI	205.00	17°27′34′′	62.47	S69°55'00''W
CENTRAL ENTRANCE (STATE HIGHWAY NO. 194)	C2	159.40	17°25′44′′	48.49	S69°30'14"W
(STATE LUCY	C3	80.00	38°31'27"	53.79	S80°05'04"W
CENTRAL	C4	90.00	27°47′56′′	43.67	S85°26'49"W
THE ENTRANCE	C5	75.00	22°36'17"	29.59	S60°14'43"W
CENTRAL ENTRANCE (STATE HIGHWAY No. 194)	C6	225.00	12°49'48''	50.38	S55°21'28"W
- HIGHWAY NO 104	C7	225.00	19°37′09''	77.04	S51°57'47"W
10. 194)	C8	125.00	17°02'21''	37.17	S52°'40'40"W

PERMANENT EASEMENT:

A Ten foot wide easement over, under and across all that part of the West half of the Northeast One-quarter of the Southeast One-quarter (W 1/2 of the NE 1/4 of the SE 1/4), Section Twenty-one (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, City of Duluth, St. Louis County, Minnesota centered on the following described line:

Commencing at the northeast corner of said W 1/2 of the NE 1/4 of the SE 1/4; thence South 89 degrees 33 minutes 02 seconds West along the north line of said W 1/2 of the NE 1/4 of the SE 1/4, a distance of 177.55 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence southwesterly 62.47 feet along a non-tangential curve concave northwesterly having a radius of 205.00 feet, a central angle of 17 degrees 27 minutes 34 seconds, and a chord bearing of South 69 degrees 55 minutes 00 seconds West; thence southwesterly 48.49 feet along a tangential curve concave southeasterly having a radius of 159.40 feet and a central angle of 17 degrees 25 minutes 44 seconds; thence southwesterly 53.79 feet along a tangential curve concave northerly having a radius of 80.00 feet and central angle of 38 degrees 31 minutes 27 seconds; thence southwesterly 43.67 feet along a tangential curve concave southeasterly having a radius of 90.00 feet and a central angle of 27 degrees 47 minutes 56 seconds; thence southwesterly 29.59 feet along a tangential curve concave southeasterly having a radius of 75.00 feet and a central angle of 22 degrees 36 minutes 17 seconds; thence southwesterly 50.38 feet along a tangential curve concave northwesterly having a radius of 225.00 feet and a central angle of 12 degrees 49 minutes 48 seconds; thence southwesterly 77.04 feet along a tangential curve concave southeasterly having a radius of 225.00 feet and a central angle of 19 degrees 37 minutes 09 seconds; thence southwesterly 37.17 feet along a tangential curve concave northwesterly having a radius 125.00 feet and a central angle of 17 degrees 02 minutes 21 seconds; thence southwesterly 96.54 feet along a curve concave southeasterly having a radius of 140.00 feet and a central angle of 39 degrees 30 minutes 32 seconds to the north Right-of-Way line of Central Entrance (a.k.a State Highway No. 194) and said line there terminating.

The northerly sidelines of said easement are prolonged or shortened to terminate on the north line of said W 1/2 of the NE 1/4 of the SE 1/4.

The southerly sidelines of said easement are prolonged or shortened to terminate on the north line of said north Right-of-Way line of Central Entrance (a.k.a State Highway No. 194).



S41°26'35'

Basis of Bearing is Grid North, St. Louis County Transverse Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

License # 44075

Signature: Sun 13/16

Date: 09/05/2017

DATE REVISED: 09/05/17

DATE PREPARED: 07/27/17

PROJ NO: 170381

FILE: 170381vSurv.

SHEET 1 of 3 SHEETS



39°30'32"

96.54

140.00

PERFORMANCE DRIVEN DESIGN.

LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, NN 55802 | 218.727.8446

EXHIBIT C

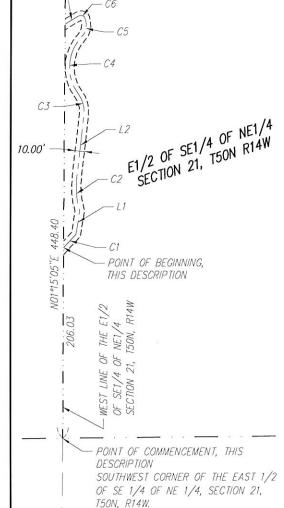
MARSHALL SCHOOL

PERMANENT EASEMENT:

A Ten foot wide easement over, under and across all that part of the East half of the Southeast One-quarter of the Northeast One-quarter (E 1/2 of the SE 1/4 of the NE 1/4), Section Twenty-one (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, City of Duluth, St. Louis County, Minnesota centered on the following described line:

Commencing at the southwest corner of said E 1/2 of the SE 1/4 of the NE 1/4; thence North 01 degrees 15 minutes 05 seconds East along the west line of said E 1/2of the SE 1/4 of the NE 1/4, a distance of 206.03 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence northeasterly 20.10 feet along a non-tangential curve concave southeasterly having a radius of 466.61, a central angle of 02 degrees 28 minutes 06 seconds, and a chord bearing of North 43 degrees 30 minutes 32 seconds East; thence North 08 degrees 52 minutes 46 seconds East, a distance of 25.83 feet; thence northerly 37.62 feet along a non-tangential curve concave northeasterly having a radius of 85.00 feet and a central angle of 25 degrees 21 minutes 27 seconds and a chord bearing of North 04 degrees 50 minutes 42 seconds West; thence North 06 degrees 14 minutes 27 seconds East, a distance of 68.02 feet; thence northwesterly 22.77 feet along a tangential curve concave southwesterly having a radius of 30.00 feet and central angle of 43 degrees 29 minutes 49 seconds; thence northerly 67.87 feet along a tangential curve concave easterly having a radius of 48.14 feet and a central angle of 79 degrees 57 minutes 44 seconds; thence northeasterly 21.87 feet along a tangential curve concave northwesterly having a radius of 20.00 feet and a central angle of 62 degrees 39 minutes 38 seconds; thence northwesterly, westerly and southwesterly 8.54 feet along a tangential curve concave southwesterly having a radius of 5.00 feet and a central angle of 97 degrees 52 minutes 30 seconds; thence southwesterly 17.49 feet along a tangential curve concave southeasterly having a radius of 191.38 feet and a central angle of 05 degrees 14 minutes 08 seconds to the west line of said E 1/2 of the SE 1/4 of the NE 1/4 and said line there terminating.

The sidelines of said easement are prolonged or shortened to terminate on the west line of said E 1/2 of the SE 1/4 of the NE 1/4.



CURVE TABLE					
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING	
C1	466.61	02°28'06''	20.10	N43°30'32"E	
C2	85.00	25°21'27"	37.62	NO4°50'42"W	
C3	30.00	43°29'49''	22.77	N15°30'27"W	
C4	48.14	79°57′44′′	67.18	NO2°43'30"E	
C5	20.00	62°39'38''	21.87	N11°22′33″E	
C6	5.00	97°52′30′′	8.54	N68°53'31"W	
C.7	191 38	05°14'08"	1749	\$59°33'10"W	

Session Clerkin	LINE TABLE	
LINE	BEARING	LENGTH
L1	N08°52'46"E	25.83
12	N06°14'27"F	68.02



Basis of Bearing is Grid North, St. Louis County Transverse Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

License # 44075

Signature: Sch ///

License # 44075

Date: 09/05/2017

DATE REVISED: 09/05/17

DATE PREPARED: 07/27/17

PROJ NO: 170381

FILE: 170381vSurv.

SHEET 2 of 3 SHEETS



PERFORMANCE DRIVEN DESIGN.

LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

EXHIBIT C

MARSHALL SCHOOL

PERMANENT EASEMENT :

A Ten foot wide easement over, under and across all that part of the East half of the Southeast One-quarter of the Northeast One-quarter (E 1/2 of the SE 1/4 of the NE 1/4), Section Twenty-one (21), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, City of Duluth, St. Louis County, Minnesota centered on the following described line:

Commencing at the southwest corner of said E 1/2 of the SE 1/4 of the NE 1/4; thence North 01 degrees 15 minutes 05 seconds East along the west line of said E 1/2 of the SE 1/4 of the NE 1/4, a distance of 502.35 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence northerly 42.92 feet along a non-tangential curve concave northwesterly having a radius of 650.00 feet, a central angle of 03 degrees 47 minutes 01 seconds, and a chord bearing North 29 degrees 47 minutes 31 seconds East; thence northerly 19.97 feet along a tangential curve concave northwesterly having a radius of 75.00 feet and a central angle of 15 degrees 15 minutes 16 seconds; thence northeasterly 44.94 feet along a tangential curve concave southeasterly having a radius of 150.00 feet and central angle of 17 degrees 10 minutes 03 seconds; thence northerly 80.88 feet along a tangential curve concave westerly having a radius of 66.00 feet and a central angle of 70 degrees 12 minutes 41 seconds; thence northerly 57.99 feet along a tangential curve concave easterly having a radius of 43.38 feet and a central angle of 76 degrees 35 minutes 32 seconds; thence northerly 28.23 feet along a tangential curve concave northwesterly having a radius of 40.00 feet and a central angle of 40 degrees 26 minutes 17 seconds; thence northerly 68.21 feet along a tangential curve concave easterly having a radius of 175.00 feet and a central angle of 22 degrees 20 minutes 00 seconds; thence northerly 33.29 feet along a tangential curve concave northwesterly having a radius of 100.00 feet and a central angle of 19 degrees 04 minutes 19 seconds; thence northerly 22.67 feet along a tangential curve concave easterly having a radius of 75.00 feet and a central angle of 17 degrees 19 minutes 18 seconds; thence North 16 degrees 20 minutes 19 seconds East, a distance of 64.95 feet; thence North 12 degrees 52 minutes 25 seconds East, a distance of 100.00 feet; thence northerly 24.02 feet along a tangential curve concave southeasterly having a radius of 325.00 feet and a central angle of 04 degrees 14 minutes 05 seconds; thence northerly 85.23 feet along a tangential curve concave northwesterly having a radius of 359.95 feet and a central angle of 13 degrees 34 minutes 02 seconds; thence northerly 29.45 feet along tangential curve concave westerly having a radius of 690.00 feet and a central angle of 02 degrees 26 minutes 43 seconds to the east line of the easterly Right-of-way line of Pecan Avenue and said line there terminating.

The southerly sidelines of said easement are prolonged or shortened to terminate on the west line of said E 1/2 of the SE 1/4 of the NE 1/4.

The northerly sidelines of said easement are prolonged or shortened to terminate on the easterly Right-of-way line of Pecan Avenue.

POINT OF COMMENCEMENT, THIS DESCRIPTION SOUTHWEST CORNER OF THE EAST 1/2 OF SE 1/4 OF NE 1/4, SECTION 21, T50N, R14W.

		CURVE 1	ABLE	
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING
C1	650.00	03°47′01"	42.92	N29°47'31"E
C2	75.00	15°15′16"	19.97	N20°16'22"E
C3	150.00	17°10'03"	44.94	N21°13'46"E
C4	66.00	70°12'41"	80.88	NO5°17'34"W
C5	43.38	76°35′32"	57.99	N02°06'08"W
C6	40.00	40°26'17"	28.23	N15°58'30"E
C7	175.00	22°20'00"	68.21	N06°55'21"E
C8	100.00	19°04′19"	33.29	N08°33'11'E
C9	75.00	17°19′18″	22.67	N07°40'41"E
C10	325.00	04°14′05"	24.02	N14°59'27"E
C11	359.95	13°34'02"	85.23	N10°19'31"E
C12	690.00	02°26′43"	29.45	NO4°45'52"E

10.00

E1/2 OF SET/4 OF NET/4

SECTION 21, TSON RIAN

POINT OF BEGINNING,

THIS DESCRIPTION

LINE TABLE			
LINE	BEARING	LENGTH	
L1	N16°20'19"E	64.95	
L2	N12°52'25"E	100.00	





Basis of Bearing is Grid North, St. Louis County Transverse Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

FASIFRI

RIGHT-OF-WAY LINE OF PECAN AVENUE

V01°15'05'

502.

License # 44075

Signature:

Date: 09/05/2017

DATE REVISED: 09/05/17 DATE PREPARED: 07/27/17 PROJ NO: 170381

FILE: 170381vSurv.

SHEET 3 of 3 SHEETS



PERFORMANCE DRIVEN DESIGN.

LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (this "**Agreement**") is entered into as of the date of last signature below by and among Regents of the University of Minnesota, a Minnesota constitutional corporation (the "**University**") and the City of Duluth, a Minnesota municipal corporation ("**City**").

WHEREAS, University owns and operates the WR Bagley Nature Area as part of its Duluth campus in St. Louis County, Minnesota (the "Premises"), parts of which are suitable for a recreational trail; and

WHEREAS, City owns and operates recreational trails in Duluth; and

WHEREAS, University, in keeping with its missions of research and discovery, teaching and learning, and outreach and public service, agrees to permit City to construct, operate and maintain a public, multi-use recreational trail on the Premises (such portion referred to herein as the "Trail").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

- 1. Grant of Easement. University does grant and convey to City, its successors and assigns, a perpetual, non-exclusive easement for public multi-use trail purposes over, under, and across property in the County of St. Louis, Minnesota, in the location legally described and depicted on the attached Exhibit A (the "Easement Area"). City's and the public's use of the Easement Area shall be limited to public recreational trail purposes. The easement created by this Agreement shall extend to and bind the successors and assigns of University and City and shall run with the land. Only non-motorized recreational use shall be permitted on the Easement Area, except those used in connection with construction, maintenance, and emergency response.
- 2. Trail Construction and Maintenance. City may enter onto the Easement Area for the sole purpose of locating, constructing, operating, maintaining, and repairing a trail or other associated improvements within the Easement Area. City shall construct (i) a natural surface trail up to a maximum width of 4 feet wide within the Easement Area; (ii) a 4-foot wide boardwalk trail over wet areas; and (iii) a 6-foot wide boardwalk trail with handrails over open water areas (Minnesota Department of Natural Resources "temp crossing" style tethered to a tree on one side,

with no permanent structure). City may install trail signage as follows: (i) on 4x4 green treated signposts at entrances; and (ii) on fiberglass flat-blade style signposts at trail intersections and at reasonable intervals along the Trail to help ensure that Trail users can discern and stay on the Trail. "Natural surface" means the trail will be made from materials located within the Easement Area, and additional native gravels will be brought in if necessary. Existing rocks from within the Easement Area may be moved around to complete the construction, as necessary. City, 'its contractors, agents, and employees may cut, trim, or remove from the Easement Area trees, shrubs or other vegetation in City's discretion to support adequate site lines, but City will not remove living trees with a diameter at breast height greater than 6 inches without written permission from University. City, its contractors, agents, and employees may cut, trim, or remove downed or dead trees regardless of width within the Easement Area in City's discretion. City, its contractors, agents and employees may construct erosion control structures necessary to maintain a clear, dry passage through the Easement Area, including installing, maintaining, repairing and replacing waterbars, rolling grade dips, rock checks, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the Easement Area. University shall retain ownership of and maintenance responsibilities for the existing timber bridge located within the Easement Area in the location shown on Exhibit A-4.

- 3. No Warranty. University provides no warranty as to the fitness of the Premises for the intended use and City accept the Premises in "as is" condition.
- **4. Fee.** The fee for this Agreement is waived.
- **Responsibilities of City**. City shall be responsible for the following:
 - A. developing standards for the design and construction of the Trail;
- B. collaborating with University regarding (i) Trail signage, (ii) monitoring and maintenance of the Trail, (iii) establishing, promulgating and enforcing rules, regulations and policies for safe use and enjoyment of the Trail; (iv) routing of the Trail within the Easement Area in order to avoid environmentally sensitive areas;
- C. complying with all applicable federal, state and local statutes, laws, rules and ordinances in the design and operation of the Trail;
- D. complying with applicable University policies, rules and procedures in the design and operation of the Trail, so long as they do not unreasonably interfere with the safety, operation or use of the Trail;
- E. placing signage at Trail entrances, Trail intersections, and at reasonable intervals along the Trail to help ensure that Trail users can discern and stay on the Trail;
- F. year-round grooming and maintenance of the Trail for safe and passable use by Trail users, including removal of fallen trees and storm debris, pruning lower tree branches and removal of small brush and saplings for sight line maintenance, removal of rocks from the Trail,

repair of erosion issues, replacement of stolen or damaged signage; and use of mechanized single-track grooming equipment;

- G. inspecting and monitoring the Trail for hazards at reasonable intervals, but not less than monthly or within four days after a major storm that may be expected to knock down trees or otherwise impede the use of the Trail; and
 - H. repairing damage to any feature along the Trail damaged by Trail users.

6. University's Rights. University shall have the right to:

- A. review and provide input to the City on the standards established by the City for the design and construction of the Trail;
- B. collaborate with the City regarding (i) Trail signage, (ii) monitoring and maintenance of the Trail, (iii) establishing, promulgating and enforcing rules, regulations and policies for safe use and enjoyment of the Trail; and (iv) routing of the Trail within the Easement Area in order to avoid environmentally sensitive areas;
- C. place snow anywhere within the Easement Area, even if the result is that the Trail is not passable and it prevents the City from using mechanized single-track grooming equipment; and
- D. use the Premises including the Trail in any manner as the University deems appropriate, so long as it does not damage the Trail or unreasonably disturb the operation and use of the Trail (except that University shall have the right to place snow on the Easement Area even if it disturbs the operation and use of the Trail, as specifically permitted by sub paragraph C above).
- 7. **Failure to Maintain Trail.** In the event the City fails to properly maintain the Trail for safe and passable use by Trail users within a period of 18 months following written notice from University of its failure to maintain the Trail, the University may apply for termination of the easement through the City's public vacation process.
- **8. Indemnification**. To the extent permitted by law, City agrees to defend with counsel reasonably acceptable to University, indemnify and hold harmless University from and against all claims, actions, damages, judgments, fines, liabilities, and expenses (including attorneys' and other professional fees) that may be imposed upon or incurred or paid by or asserted against University by reason of or in connection with any loss of life, personal injury, or loss or damage to property and resulting from the negligent or wrongful acts of City's employees, agents, or contractors.
- 9. Insurance. City is an authorized self-insured entity under Minnesota law. City shall require its contractors working on the Easement Area to obtain and keep in force (i) commercial general liability insurance, including coverage for bodily and personal injury, property damage, with limits of not less than \$1,000,000 each occurrence, \$2,000,000 annual aggregate; (ii) automobile and recreational vehicle liability insurance in an amount not less than \$1,000,000 combined single limit; and (iii) workers' compensation insurance to the extent required by law.

Each policy shall be issued by companies reasonably acceptable to University, naming Regents of the University of Minnesota as an additional insured, and such insurance companies shall endeavor to notify University in writing at least 30 days before canceling any such policy.

10. Notices. All notices, requests, and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by electronic mail (provided such delivery is confirmed by recipient), or by a recognized overnight courier service or by United States mail, first class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to University:

University of Minnesota c/o Real Estate Office

Attention: Leasing Manager 424 Donhowe Building 319 15th Avenue SE

Minneapolis, MN 55455-0199

E-mail: reo@umn.edu

With a copy of any notices of default to:

University of Minnesota

Office of the General Counsel Attn: Transactional Law Services 360 McNamara Alumni Center

200 Oak Street SE

Minneapolis, MN 55455-2006

E-mail: contracts@mail.ogc.umn.edu

If to City:

City of Duluth Attn: City Clerk City Hall, Room 330 411 West First Street Duluth, MN 55802

- 11. Amendments. This Agreement shall be amended only in a writing duly executed by both parties to this Agreement.
- 12. Relationship of the Parties. It is not the intent of this Agreement to create the relationship of partners, joint ventures or an association among any of the parties, nor will either party, its directors, employees, agents, or representatives be considered directors, employees, agents, or representatives of the other party.
- 13. Use of Name or Word Marks. No party to this Agreement shall use the name, trademark, trade name or other designation of any of the other parties without the prior express written permission of that party.

- **14. Governing Law.** The laws of the state of Minnesota shall govern the validity, construction, and enforceability of this Agreement, without giving effect to its conflict of laws principles.
- **15. Authority.** The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies, boards or partners, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when executed by said officers will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

[Signatures follow.]

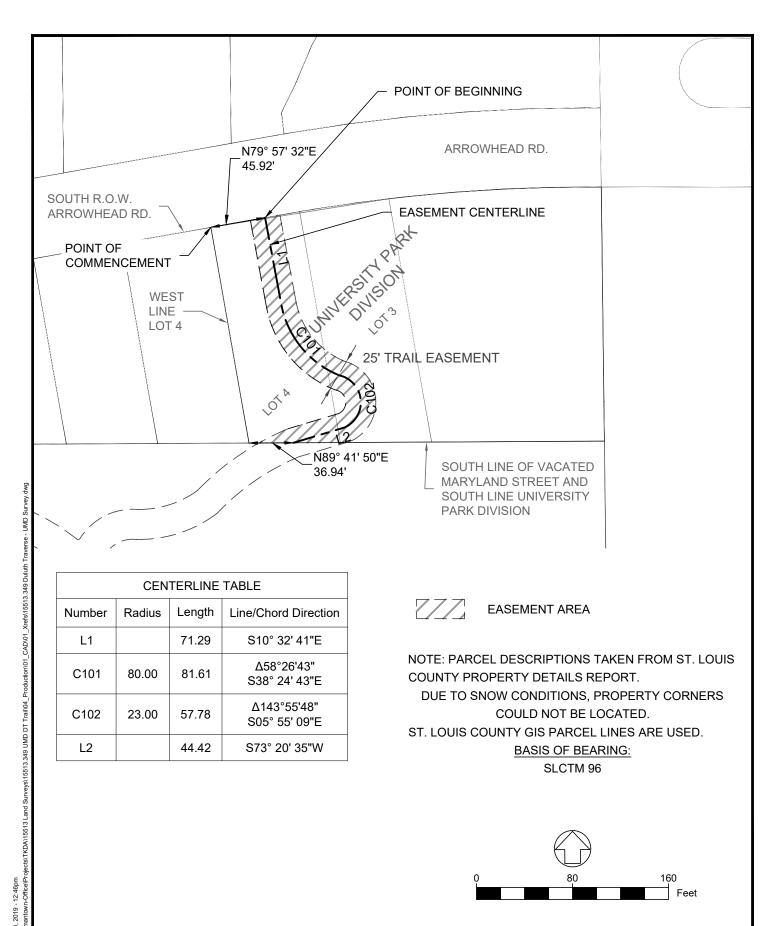
IN WITNESS WHEREOF, University and City hereby execute this Agreement.

Regents of the University of Minnesota	City of Duluth
By: Name: Leslie Krueger Title: Assistant Vice President – Planning, Space and Real Estate	By:Name: Emily Larson Title: Mayor
	By: Name: Chelsea Helmer Its: City Clerk
STATE OF MINNESOTA COUNTY OF Hennepin SS	
On September 12, 2019, before me pethe Assistant Vice President - Planning, Space, and Real Minnesota, a Minnesota constitutional corporation, in and who executed the foregoing instrument and a his/her voluntary act and deed.	ersonally appeared Lestie houser, restate of Regents of the University of to me known to be the identical person named acknowledged that he/she executed the same as Notary Public
STATE OF MINNESOTA COUNTY OF ST. LOUIS SS	KERI ANN NELSON Notary Public Minnesota My Commission Expires Jan 31, 2022
On	th, a Minnesota municipal corporation, to me who executed the foregoing instrument and
	Notary Public
This instrument was drafted by: Office of the City Attorney Room 410 City Hall 411 West 1st Street	

Duluth, MN 55802-1198

EXHIBIT A

Easement Area

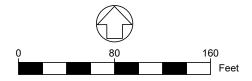


CENTERLINE TABLE			
Number	Radius	Length	Line/Chord Direction
L1		71.29	S10° 32' 41"E
C101	80.00	81.61	Δ58°26'43" S38° 24' 43"E
C102	23.00	57.78	Δ143°55'48" S05° 55' 09"E
L2		44.42	S73° 20' 35"W

777 **EASEMENT AREA**

NOTE: PARCEL DESCRIPTIONS TAKEN FROM ST. LOUIS COUNTY PROPERTY DETAILS REPORT. DUE TO SNOW CONDITIONS, PROPERTY CORNERS COULD NOT BE LOCATED. ST. LOUIS COUNTY GIS PARCEL LINES ARE USED.

BASIS OF BEARING: SLCTM 96





11 E. Superior Street, Suite 420 Duluth, MN 55802 218.724.8578 tkda.com

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION REPORT WAS PREPARED BY ME OR UNDER IN SULL SULL SELECTION OF THE LAWS OF THE LA

EXHIBIT 1 15513.349 **DULUTH TRAVERSE TRAIL** 1 of 2

-Office/Projects/TKDA/15513 Land Surveys\15513.349 UMD DT Trail\04_Production\01_CAD\01_Xrefs\15513.349 Duluth Traverse - UMD Survey. 10, 2019 - 12:46pm Sep DATE:

PLOT

A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF LOTS 3 AND 4 OF UNIVERSITY PARK DIVISION ACCORDING TO THE RECORDED PLAT THEREOF, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA CENTERED ON THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 4;

THENCE NORTH 79 DEGREES 57 MINUTES 32 SECONDS EAST 45.92 FEET ALONG THE NORTH LINE OF SAID LOT 4, BEARINGS REFERENCED TO THE ST. LOUIS COUNTY TRANSVERSE MERCATOR 1996 COORDINATE SYSTEM, TO THE POINT OF BEGINNING;

THENCE SOUTH 10 DEGREES 32 MINUTES 41 SECONDS EAST 71.29 FEET;

THENCE SOUTHEASTERLY 81.61 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE NORTHEAST, RADIUS 80.00 FEET, CENTRAL ANGLE OF 58 DEGREES 26 MINUTES 43 SECONDS, AND A CHORD BEARING SOUTH 38 DEGREES 24 MINUTES 43 SECONDS EAST;

THENCE SOUTHEASTERLY AND SOUTHWESTERLY 57.78 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 23.00 FEET, CENTRAL ANGLE OF 143 DEGREES 55 MINUTES 48 SECONDS, AND A CHORD BEARING SOUTH 5 DEGREES 55 MINUTES 09 SECONDS EAST;

THENCE SOUTH 73 DEGREES 20 MINUTES 35 SECONDS WEST 44.42 FEET MORE OR LESS TO THE SOUTH LINE OF SAID LOT 4, AND SAID LINE THERE TERMINATING.

THE NORTHERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE NORTH LINE OF SAID LOT 4.

THE SOUTHERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE SOUTH LINES OF SAID LOTS 3 AND 4.

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	CENTERLINE TABLE				
Number	Radius	Length	Line/Chord Direction		
C103	212.47	87.77	Δ23°40'12" S55° 30' 27"W		
C104	94.43	62.11	Δ37°41'10" S72° 09' 39"W		
C105	39.58	44.40	Δ64°16'27" S63° 25' 26"W		
C106	14.19	22.44	Δ90°38'36" S78° 57' 45"W		
C107	167.84	186.34	Δ63°36'40" N83° 02' 38"W		
L3		121.82	S53° 27' 18"W		
C108	140.53	90.05	Δ36°42'51" S75° 22' 39"W		
C109	31.97	66.62	Δ119°22'46" S52° 32' 54"W		
C110	26.33	29.71	Δ64°40'03" S19° 19' 51"W		
L4		34.56	N89° 42' 30"W		
L5		24.48	N59° 13' 32"W		
L6		36.93	S79° 25' 25"W		
C111	64.81	60.13	Δ53°09'41" S85° 11' 53"W		
C112	228.99	137.03	Δ34°17'11" S68° 05' 28"W		

	CENTERLINE TABLE			
Number	Radius	Length	Line/Chord Direction	
C113	52.47	90.77	Δ99°06'20" S38° 57' 29"W	
L7		37.86	S28° 12' 18"E	
C114	23.72	26.48	Δ63°57'39" S04° 22' 38"W	
C115	98.80	172.81	Δ100°12'58" S12° 24' 00"E	
L8		143.51	S60° 32' 34"E	
C116	128.97	125.11	Δ55°34'59" S24° 15' 48"E	
L9		21.68	S29° 34' 42"E	
L10		20.78	S03° 37' 26"W	
L11		33.68	S03° 34' 46"W	
L12		66.68	S00° 15' 50"W	
C117	67.64	65.57	Δ55°32'33" S23° 02' 06"E	
C118	16.56	27.95	Δ96°42'56" S30° 01' 37"E	
L13		86.35	S23° 51' 30"W	
L14		90.65	S14° 36' 15"W	

NOTE: PARCEL DESCRIPTIONS TAKEN FROM ST. LOUIS COUNTY PROPERTY DETAILS REPORT. DUE TO SNOW CONDITIONS, PROPERTY CORNERS COULD NOT BE LOCATED.

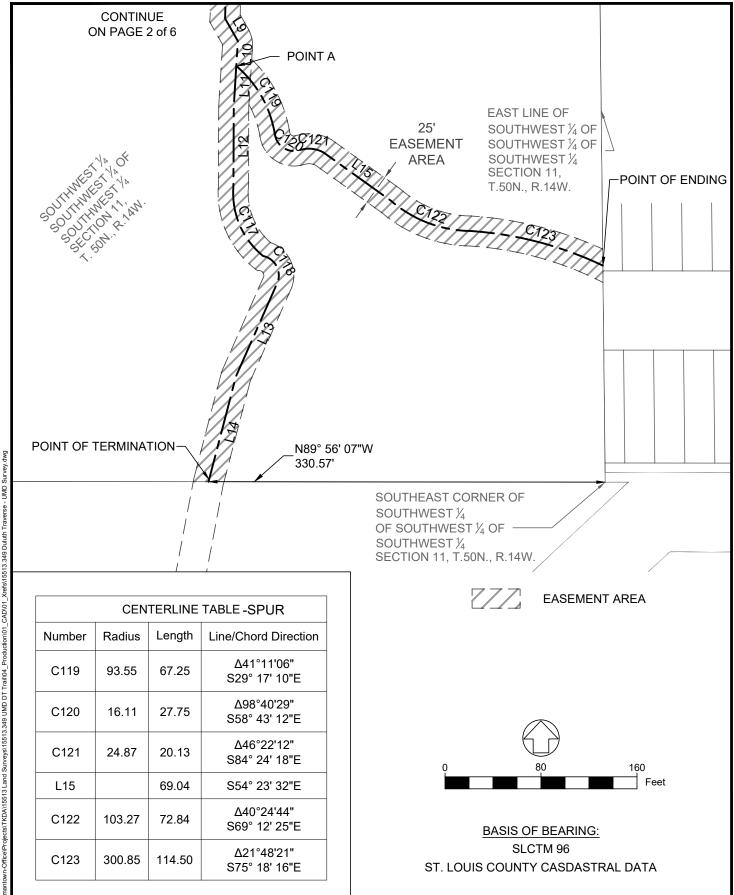
ST. LOUIS COUNTY GIS PARCEL LINES ARE USED.

TK	DA

11 E. Superior Street, Suite 420 Duluth, MN 55802 218.724.8578 tkda.com I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER POINT OF SUPERVISION AND THAT A A 2 L. L. DE IS 5 SURVEYOR UNDER THE LAWS OF THE CAA COF MINNES OF MI

EXHIBIT 2	15513.349
DULUTH TRAVERSE TRAIL	1 of 6

PLOT DATE: Sep 10, 2019 - 12-46pm FILE NAME: Surveys\15S13.349 UMD DT Trail\04_Production\01_CAD\01_Xre\s\15S13.349 Dutuh Traverse - UMD Survey dwg



ST. LOUIS COUNTY CASDASTRAL DATA

EXHIBIT 2

DULUTH TRAVERSE TRAIL

15513.349

3 of 6

S75° 18' 16"E

11 E. Superior Street, Suite 420

Duluth, MN 55802 218.724.8578 tkda.com

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OF REPORT WAS PREPARED BY ME OR UNDER TWO II O SUPERVISION AND THAT WAS A SOF MINISTER WAS A SOFT MINISTER WAS AND MINISTER WAS A SOFT MINISTER WAS A SOFT MINISTER WAS A SOFT MINI

PLOT DATE: Sep 10, 2019 - 12:46pm FILE NAME: P:\Hermantown-Office\Pr

MAIN LINE EASEMENT

A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 50 WEST, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN, AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11 CENTERED ON THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 4 OF UNIVERSITY PARK DIVISION ACCORDING TO THE RECORDED PLAT THEREOF, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA; THENCE NORTH 89 DEGREES 41 MINUTES 50 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 4 A DISTANCE OF 36.94 FEET, BEARINGS REFERENCED TO THE ST. LOUIS COUNTY TRANSVERSE MERCATOR 1996 COORDINATE SYSTEM, TO THE POINT OF BEGINNING;

THENCE SOUTHWESTERLY 87.77 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 212.47 FEET, CENTRAL ANGLE OF 23 DEGREES 40 MINUTES 12 SECONDS, AND A CHORD BEARING SOUTH 55 DEGREES 30 MINUTES 27 SECONDS WEST;

THENCE SOUTHWESTERLY 62.11 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 94.43 FEET, CENTRAL ANGLE OF 37 DEGREES 41 MINUTES 10 SECONDS, AND A CHORD BEARING SOUTH 72 DEGREES 09 MINUTES 39 SECONDS WEST;

THENCE SOUTHWESTERLY 44.40 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 39.58 FEET, CENTRAL ANGLE OF 64 DEGREES 16 MINUTES 27 SECONDS, AND A CHORD BEARING SOUTH 63 DEGREES 25 MINUTES 26 SECONDS WEST;

THENCE SOUTHWESTERLY AND NORTHWESTERLY 22.44 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTH, RADIUS 14.19 FEET, CENTRAL ANGLE OF 90 DEGREES 38 MINUTES 36 SECONDS, AND A CHORD BEARING SOUTH 78 DEGREES 57 MINUTES 45 SECONDS WEST;

THENCE WESTERLY 186.34 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTH, RADIUS 167.84 FEET, CENTRAL ANGLE OF 63 DEGREES 36 MINUTES 40 SECONDS, AND A CHORD BEARING NORTH 83 DEGREES 02 MINUTES 38 SECONDS WEST;

THENCE SOUTH 53 DEGREES 27 MINUTES 18 SECONDS WEST 121.82 FEET;

THENCE WESTERLY 90.05 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTH, RADIUS 140.53 FEET, CENTRAL ANGLE OF 36 DEGREES 42 MINUTES 51 SECONDS, AND A CHORD BEARING SOUTH 75 DEGREES 22 MINUTES 39 SECONDS WEST;

THENCE SOUTHWESTERLY 66.62 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 31.97 FEET. CENTRAL ANGLE OF 119 DEGREES 22 MINUTES 46 SECONDS. AND A CHORD BEARING SOUTH 52 DEGREES 32 MINUTES 54 SECONDS WEST;

THENCE SOUTHERLY 29.71 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 26.33 FEET, CENTRAL ANGLE OF 64 DEGREES 40 MINUTES 03 SECONDS, AND A CHORD BEARING SOUTH 19 DEGREES 19 MINUTES 51 SECONDS WEST;

THENCE NORTH 89 DEGREES 42 MINUTES 30 SECONDS WEST 34.56 FEET;

THENCE NORTH 59 DEGREES 13 MINUTES 32 SECONDS WEST 24.48 FEET;

THENCE SOUTH 79 DEGREES 25 MINUTES 25 SECONDS WEST 36.93 FEET;

THENCE WESTERLY 60.13 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTH, RADIUS 64.81 FEET, CENTRAL ANGLE OF 53 DEGREES 09 MINUTES 41 SECONDS, AND A CHORD BEARING SOUTH 85 DEGREES 11 MINUTES 53 SECONDS WEST;

THENCE SOUTHWESTERLY 137.03 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 228.99 FEET, CENTRAL ANGLE OF 34 DEGREES 17 MINUTES 11 SECONDS, AND A CHORD BEARING SOUTH 68 DEGREES 05 MINUTES 28 SECONDS WEST;

THENCE WESTERLY AND SOUTHERLY 90.77 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 52.47 FEET. CENTRAL ANGLE OF 99 DEGREES 06 MINUTES 20 SECONDS. AND A CHORD BEARING SOUTH 38 DEGREES 57 MINUTES 29 SECONDS WEST;



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THENCE SOUTH 28 DEGREES 12 MINUTES 18 SECONDS EAST 37.86 FEET;

THENCE SOUTHERLY 26.48 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 23.72 FEET, CENTRAL ANGLE OF 63 DEGREES 57 MINUTES 39 SECONDS, AND A CHORD BEARING SOUTH 4 DEGREES 22 MINUTES 38 SECONDS WEST;

THENCE SOUTHERLY 172.81 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST, RADIUS 98.80 FEET, CENTRAL ANGLE OF 100 DEGREES 12 MINUTES 58 SECONDS, AND A CHORD BEARING SOUTH 12 DEGREES 24 MINUTES 00 SECONDS EAST;

THENCE SOUTH 60 DEGREES 32 MINUTES 34 SECONDS EAST 143.51 FEET;

THENCE SOUTHERLY 125.11 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 128.97 FEET, CENTRAL ANGLE OF 55 DEGREES 34 MINUTES 59 SECONDS, AND A CHORD BEARING SOUTH 24 DEGREES 15 MINUTES 48

THENCE SOUTH 29 DEGREES 34 MINUTES 42 SECONDS EAST 21.68 FEET;

THENCE SOUTH 03 DEGREES 37 MINUTES 26 SECONDS WEST 20.78 FEET TO (POINT A), BEING THE BEGINNING OF A SOUTHEASTERLY SPUR LINE;

THENCE SOUTH 03 DEGREES 34 MINUTES 46 SECONDS WEST 33.68 FEET;

THENCE SOUTH 00 DEGREES 15 MINUTES 50 SECONDS WEST 66.68 FEET;

THENCE SOUTHERLY 65.57 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE EAST, RADIUS 67.64 FEET, CENTRAL ANGLE OF 55 DEGREES 32 MINUTES 33 SECONDS, AND A CHORD BEARING SOUTH 23 DEGREES 02 MINUTES 06 SECONDS EAST;

THENCE SOUTHEASTERLY AND SOUTHERLY 27.95 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 16.56 FEET, CENTRAL ANGLE OF 96 DEGREES 42 MINUTES 56 SECONDS, AND A CHORD BEARING SOUTH 30 DEGREES 01 MINUTES 37 SECONDS EAST;

THENCE SOUTH 23 DEGREES 51 MINUTES 30 SECONDS WEST 86.35 FEET;

THENCE SOUTH 14 DEGREES 36 MINUTES 15 SECONDS WEST 90.65 FEET MORE OR LESS TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11 THAT IS 330. 57 FEET WEST OF THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, DESCRIBED LINE THERE TERMINATING.

THE NORTHERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE SOUTH LINE OF SAID LOT 4, UNIVERSITY PARK DIVISION.

THE SOUTHERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11.

AND ALSO

SPUR EASEMENT

A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, AND CENTERED ON THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT A;

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THENCE SOUTHEASTERLY 67.25 FEET ALONG A CURVE CONCAVE TO THE SOUTHWEST, RADIUS 93.55 FEET, CENTRAL ANGLE OF 41 DEGREES 11 MINUTES 06 SECONDS, AND A CHORD BEARING SOUTH 29 DEGREES 17 MINUTES 10 SECONDS

THENCE SOUTHEASTERLY AND EASTERLY 27.75 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHEAST, RADIUS 16.11 FEET, CENTRAL ANGLE OF 98 DEGREES 40 MINUTES 29 SECONDS, AND A CHORD BEARING SOUTH 58 DEGREES 43 MINUTES 12 SECONDS EAST;

THENCE EASTERLY 20.13 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE SOUTH, RADIUS 24.87 FEET, CENTRAL ANGLE OF 46 DEGREES 22 MINUTES 12 SECONDS, AND A CHORD BEARING SOUTH 84 DEGREES 24 MINUTES 18 SECONDS EAST;



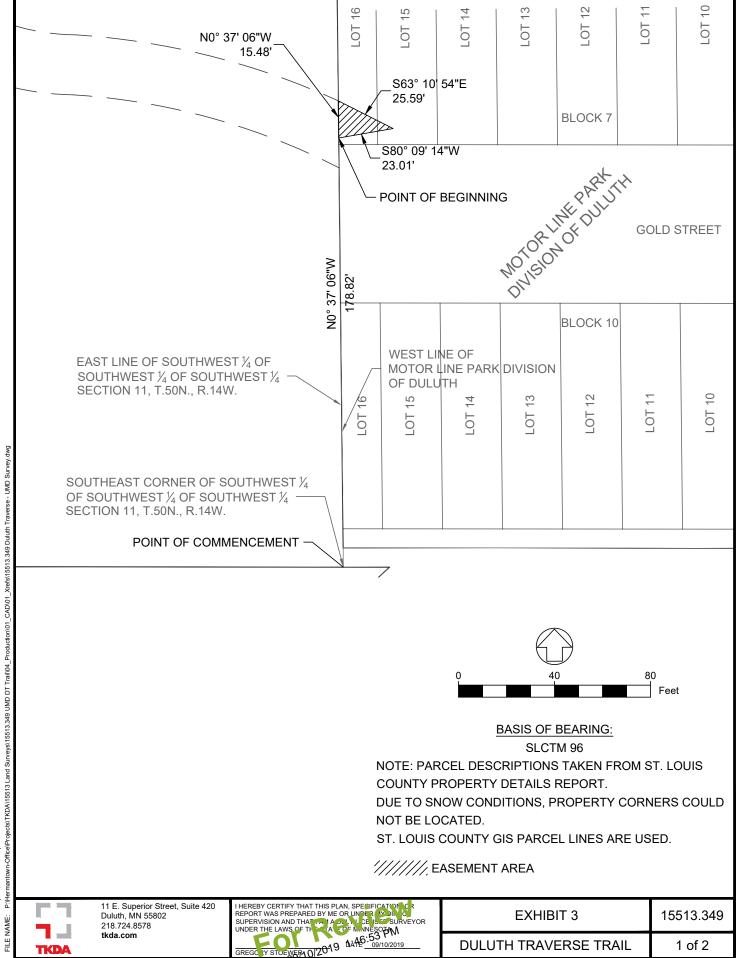
THENCE SOUTH 54 DEGREES 23 MINUTES 32 SECONDS EAST 69.04 FEET;

THENCE SOUTHEASTERLY 72.84 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHEAST, RADIUS 103.27 FEET, CENTRAL ANGLE OF 40 DEGREES 24 MINUTES 44 SECONDS, AND A CHORD BEARING SOUTH 69 DEGREES 12 MINUTES 25 SECONDS EAST;

THENCE EASTERLY 114.50 FEET MORE OR LESS ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTH, RADIUS 300.85 FEET, CENTRAL ANGLE OF 21 DEGREES 48 MINUTES 21 SECONDS, AND A CHORD BEARING SOUTH 75 DEGREES 18 MINUTES 16 SECONDS EAST TO THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, AND SAID LINE THERE TERMINATING.

THE NORTHWESTERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE EAST LINE OF MAIN LINE EASEMENT.

THE SOUTHEASTERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11.



PLOT DATE: Sep 10, 2019 - 12.46pm FILE NAME: P:\Hermantown-Office\Projects\TKDA115513 Land Surveys\15 AN EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF LOTS 15 AND 16, BLOCK 7, MOTOR LINE PARK DIVISION OF DULUTH ACCORDING TO THE RECORDED PLAT THEREOF, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE FOURTH PRINCIPAL MERIDIAN;
THENCE NORTH 0 DEGREES 37 MINUTES 06 SECONDS WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, ALSO BEING THE WEST LINE OF SAID MOTOR

LINE PARK DIVISION, A DISTANCE OF 178.82 FEET TO THE POINT OF BEGINNING, BEARINGS REFERENCED TO THE ST. LOUIS COUNTY TRANSVERSE MERCATOR 1996 COORDINATE SYSTEM;

THENCE CONTINUING NORTH 0 DEGREES 37 MINUTES 06 SECONDS WEST ALONG THE WEST LINE OF MOTOR LINE PARK

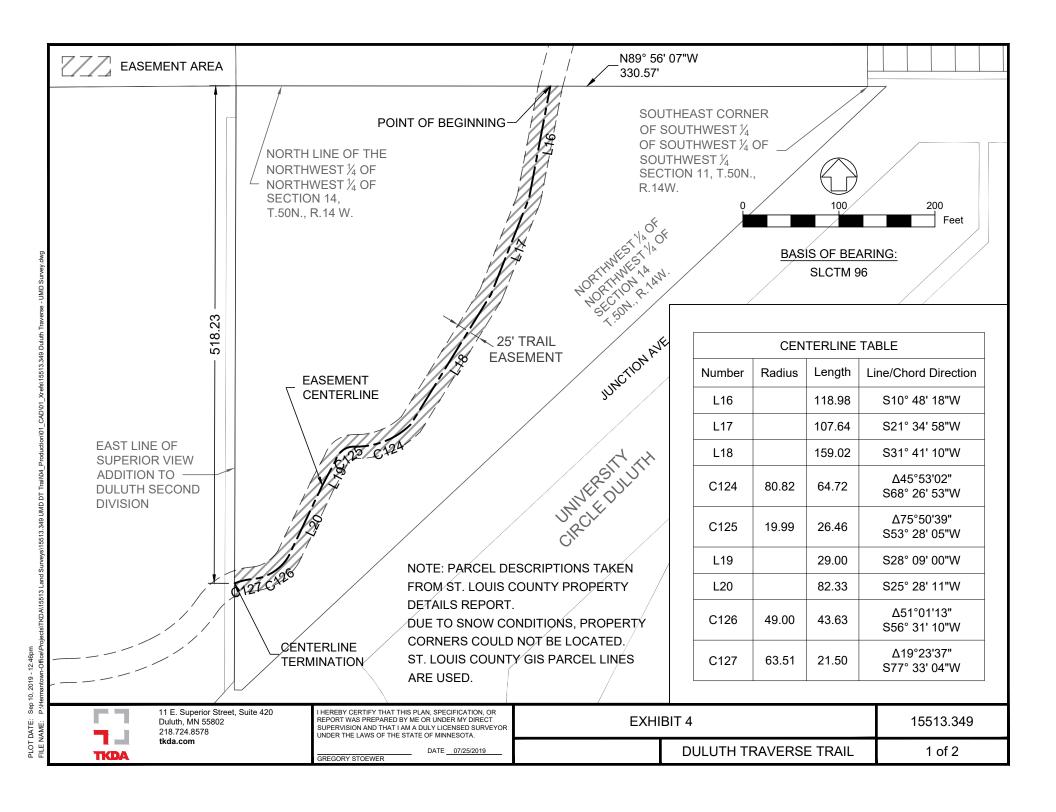
THENCE SOUTH 63 DEGREES 10 MINUTES 54 SECONDS EAST 25.59 FEET;

DIVISION OF DULUTH, A DISTANCE OF 15.48 FEET;

THENCE SOUTH 80 DEGREES 09 MINUTES 14 SECONDS WEST TO THE POINT OF BEGINNING.

PLOT





A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 50 WEST, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN CENTERED ON THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 50 WEST, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN; THENCE NORTH 89 DEGREES 56 MINUTES 07 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11 A DISTANCE OF 330.57 FEET, BEARINGS REFERENCED TO THE ST. LOUIS COUNTY TRANSVERSE MERCATOR 1996 COORDINATE SYSTEM, TO THE POINT OF BEGINNING:

THENCE SOUTH 10 DEGREES 48 MINUTES 18 SECONDS WEST 118.98 FEET;

THENCE SOUTH 21 DEGREES 34 MINUTES 58 SECONDS WEST 107.64 FEET;

THENCE SOUTH 31 DEGREES 41 MINUTES 10 SECONDS WEST 159.02 FEET;

THENCE SOUTHWESTERLY 64.72 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 80.82 FEET, CENTRAL ANGLE OF 45 DEGREES 53 MINUTES 02 SECONDS, AND A CHORD BEARING SOUTH 68 DEGREES 26 MINUTES 53 SECONDS WEST;

THENCE SOUTHWESTERLY 26.46 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 19.99 FEET, CENTRAL ANGLE OF 75 DEGREES 50 MINUTES 39 SECONDS, AND A CHORD BEARING SOUTH 53 DEGREES 28 MINUTES 05

THENCE SOUTH 28 DEGREES 09 MINUTES 00 SECONDS WEST 29.00 FEET;

THENCE SOUTH 25 DEGREES 28 MINUTES 11 SECONDS WEST 82.33 FEET;

THENCE SOUTHWESTERLY 43.63 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 49.00 FEET, CENTRAL ANGLE OF 51 DEGREES 01 MINUTES 13 SECONDS, AND A CHORD BEARING SOUTH 56 DEGREES 31 MINUTES 10 SECONDS WEST;

THENCE EASTERLY 21.50 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 63.51 FEET, CENTRAL ANGLE 19 DEGREES 23 MINUTES 37 SECONDS, AND A CHORD BEARING SOUTH 77 DEGREES 33 MINUTES 04 SECONDS WEST TO A POINT ON THE WEST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14 THAT IS 518.23 FEET SOUTH OF THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14, AND SAID LINE THERE TERMINATING.

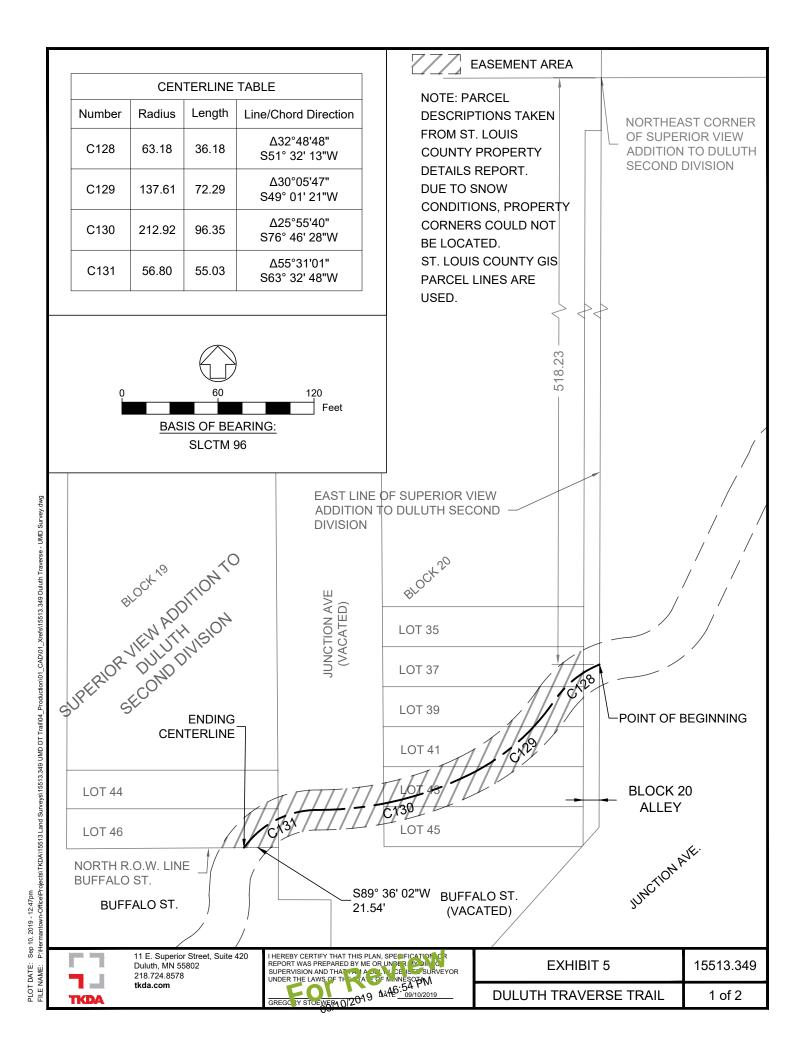
THE NORTHERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON SAID SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11.

THE WESTERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE WEST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14.



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-Office\Projects\TKDA\15513 Land Surveys\15513.349 UMD DT Trail\04_Production\01_CAD\01_Xrefs\15513.349 Duluth Traverse - UMD Survey.dwg

10, 2019 - 12:47pm

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DATE:

A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF VACATED JUNCTION AVENUE, LOTS 44 AND 46 OF BLOCK 19 AND LOTS 37, 39, 41, 43 AND 45 OF BLOCK 20, SUPERIOR VIEW ADDITION TO DULUTH SECOND DIVISION ACCORDING TO THE RECORDED PLAT THEREOF, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA CENTERED ON THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE EAST LINE OF SAID SUPERIOR VIEW ADDITION TO DULUTH SECOND DIVISION, DISTANT 518.23 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SUPERIOR VIEW ADDITION TO DULUTH SECOND DIVISION; THENCE SOUTHWESTERLY 36.18 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 63.18 FEET, CENTRAL ANGLE OF 32 DEGREES 48 MINUTES 48 SECONDS, AND A CHORD BEARING SOUTH 51 DEGREES 32 MINUTES 13 SECONDS WEST;

THENCE SOUTHWESTERLY 72.29 FEET ALONG A REVERSE CURVE CONCAVE TO THE NORTHWEST, RADIUS 137.61 FEET, CENTRAL ANGLE OF 30 DEGREES 05 MINUTES 47 SECONDS, AND A CHORD BEARING SOUTH 49 DEGREES 01 MINUTES 21 SECONDS WEST;

THENCE WESTERLY 96.35 FEET ALONG A TANGENT CURVE CONCAVE TO THE NORTH, RADIUS 212.92 FEET, CENTRAL ANGLE OF 25 DEGREES 55 MINUTES 40 SECONDS, AND A CHORD BEARING SOUTH 76 DEGREES 46 MINUTES 28 SECONDS WEST;

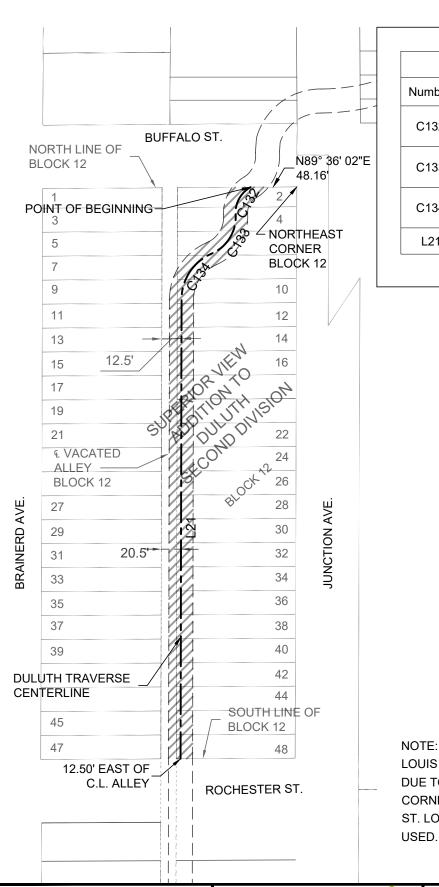
THENCE SOUTHWESTERLY 55.03 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, RADIUS 56.80 FEET, CENTRAL ANGLE OF 55 DEGREES 31 MINUTES 01 SECONDS, AND A CHORD BEARING SOUTH 63 DEGREES 32 MINUTES 48 SECONDS WEST TO A POINT THAT IS ON THE SOUTH LINE OF SAID LOT 46, BLOCK 19 THAT IS 21.54 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 46 AND SAID LINE THERE TERMINATING.

THE EASTERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE EAST LINE OF SAID LOTS 37 AND 39, BLOCK 20 OF SUPERIOR VIEW ADDITION TO DULUTH SECOND DIVISION.

THE WESTERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE SOUTH LINE OF SAID LOT 46.

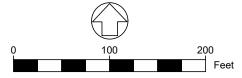






	CENTERLINE TABLE				
Number	Radius	Length	Line/Chord Direction		
C132	30.19	33.55	Δ63°39'25" S29° 30' 27"W		
C133	41.60	51.91	Δ71°30'34" S31° 06' 28"W		
C134	51.87	57.79	Δ63°49'48" S34° 37' 38"W		
L21		480.97	S00° 07' 17"W		

EASEMENT AREA



BASIS OF BEARING: SLCTM 96

NOTE: PARCEL DESCRIPTIONS TAKEN FROM ST.
LOUIS COUNTY PROPERTY DETAILS REPORT.
DUE TO SNOW CONDITIONS, PROPERTY
CORNERS COULD NOT BE LOCATED.
ST. LOUIS COUNTY GIS PARCEL LINES ARE
USED.

TKDA

11 E. Superior Street, Suite 420 Duluth, MN 55802 218.724.8578 tkda.com I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OF REPORT WAS PREPARED BY ME OR UNDER TO JAN 10 SUPERVISION AND THAT A 142 L. L. L. E. IS SURVEYOR UNDER THE LAWS OF THE CALL OF MINNESOFM.

GREGORY STOEWERN 0 | 2019

EXHIBIT 6 15513.349

DULUTH TRAVERSE TRAIL 1 of 2

nantown-Office\Projects\TKDA\15513 Land Surveys\15513.349 UMD DT Trail\04_Production\01_CAD\01_Xrefs\15513.349 Duluth Traverse - UMD Survey.dwg PLOT DATE: Sep 10, 2019 - 12:47pm FILE NAME: P:\Hermantown-Office\Pr

-Office/Projects/TKDA/15513 Land Surveys/15513.349 UMD DT Trail/04_Production/01_CAD\01_Xrefs\15513.349 Duluth Traverse - UMD Survey.dwg Sep 10, 2019 - 12:47pm DATE:

PLOT

A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF VACATED BLOCK 12 ALLEY AND EVEN-NUMBERED LOTS 2 THROUGH 48 OF BLOCK 12, SUPERIOR VIEW ADDITION TO DULUTH SECOND DIVISION ACCORDING TO THE RECORDED PLAT THEREOF, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA CENTERED ON THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID BLOCK 12 THAT IS DISTANT 48.16 FEET WEST OF THE NORTHEAST CORNER OF SAID BLOCK 12, SAID POINT IS POINT OF BEGINNING;

THENCE SOUTHERLY 33.55 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE EAST, RADIUS 30.19 FEET, CENTRAL ANGLE OF 63 DEGREES 39 MINUTES 25 SECONDS, AND A CHORD BEARING SOUTH 29 DEGREES 30 MINUTES 27 SECONDS WEST;

THENCE SOUTHWESTERLY 51.91 FEET ALONG A REVERSE CURVE CONCAVE TO THE NORTHWEST, RADIUS 41.60 FEET, CENTRAL ANGLE OF 71 DEGREES 30 MINUTES 34 SECONDS, AND A CHORD BEARING SOUTH 31 DEGREES 06 MINUTES 28 SECONDS WEST;

THENCE SOUTHERLY 57.79 FEET ALONG A REVERSE CURVE CONCAVE TO THE SOUTHEAST, RADIUS 51.87 FEET, CENTRAL ANGLE OF 63 DEGREES 49 MINUTES 48 SECONDS, AND A CHORD BEARING SOUTH 34 DEGREES 37 MINUTES 38 SECONDS WEST TO A POINT THAT IS 12.50 FEET EAST OF THE CENTERLINE OF SAID VACATED ALLEY OF BLOCK 12;

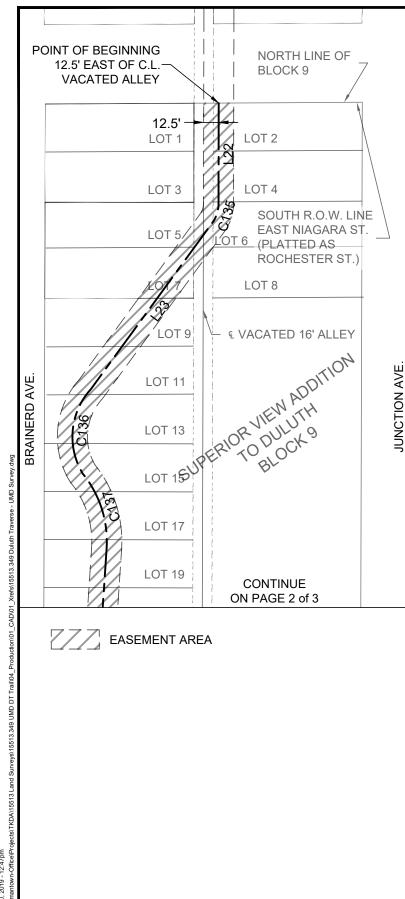
THENCE SOUTH 0 DEGREES 07 MINUTES 17 SECONDS WEST ALONG A LINE PARALLEL WITH AND DISTANT EAST 12.50 FEET FROM SAID CENTERLINE OF VACATED ALLEY A DISTANCE OF 480.97 FEET MORE OR LESS TO THE SOUTH LINE OF SAID BLOCK 12, AND SAID LINE THERE TERMINATING.

THE NORTHERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE NORTH LINE OF SAID BLOCK 12.



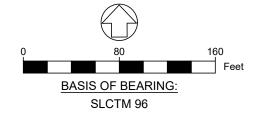
218.724.8578 tkda.com





	CENTERLINE TABLE				
Number	Radius	Length	Line/Chord Direction		
L22		84.55	S00° 07' 12"W		
C135	28.20	14.23	Δ28°55'26" S16° 25' 24"W		
L23		173.46	S36° 07' 43"W		
C136	59.12	75.75	Δ73°24'42" S05° 43' 40"W		
C137	89.58	68.13	Δ43°34'26" S17° 31' 21"E		
L24		209.06	S03° 47' 29"W		
C138	70.85	51.93	Δ42°00'03" S24° 08' 58"W		
C139	68.11	54.50	Δ45°50'48" S23° 32' 12"W		
L25		35.43	S05° 46' 35"E		
C140	45.94	45.71	Δ57°00'53" S34° 59' 16"E		
C141	17.43	37.14	Δ122°04'15" S11° 03' 32"E		
C142	36.54	40.73	Δ63°52'17" S18° 56' 42"W		
C143	52.67	43.78	Δ47°37'50" S13° 11' 09"W		
C144	12.57	11.43	Δ52°07'36" S65° 58' 51"W		
	•	•	•		

EASEMENT AREA



NOTE: PARCEL DESCRIPTIONS TAKEN FROM ST. LOUIS COUNTY PROPERTY DETAILS REPORT.

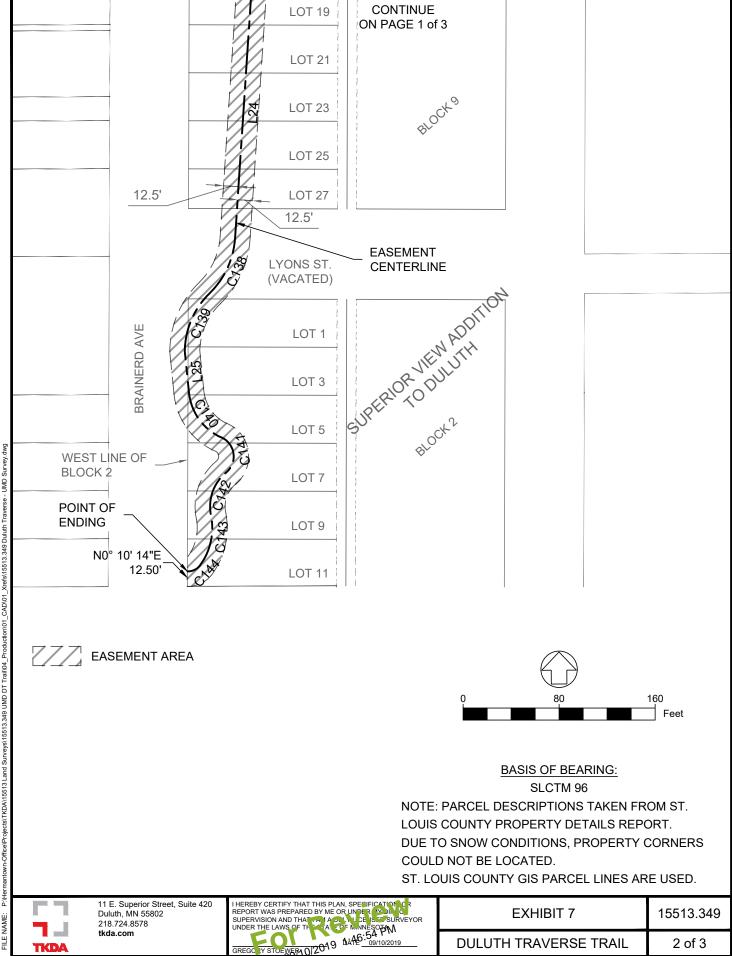
DUE TO SNOW CONDITIONS, PROPERTY CORNERS COULD NOT BE LOCATED. ST. LOUIS COUNTY GIS PARCEL LINES ARE USED.



11 E. Superior Street, Suite 420 Duluth, MN 55802 218.724.8578 tkda.com

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION REPORT WAS PREPARED BY ME OR UNDER THE SUPERVISION AND THAT AT A 2011 LOE 157 SUR UNDER THE LAWS OF THE

EXHIBIT 7	15513.349
DULUTH TRAVERSE TRAIL	1 of 3



PLOT DATE: Sep 10, 2019 - 12:47pm FILE NAME: P:\Hermantown-Office\Projects\TKDA A TWENTY-FIVE FOOT WIDE EASEMENT OVER, UNDER AND ACROSS ALL THAT PART OF VACATED BLOCK 9 ALLEY, VACATED LYONS STREET, LOTS 2, 4, 6, AND 8 AND ODD-NUMBERED LOTS 5 THROUGH 27 OF BLOCK 9 AND ODD-NUMBERED LOTS 1 THROUGH 11 OF BLOCK 2, SUPERIOR VIEW ADDITION TO DULUTH ACCORDING TO THE RECORDED PLAT THEREOF, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA CENTERED ON THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID BLOCK 9 WITH A LINE THAT IS PARALLEL WITH AND 12.50 FEET EAST OF THE CENTERLINE OF VACATED BLOCK 9 ALLEY FOR A POINT OF BEGINNING;

THENCE SOUTH 0 DEGREES 07 MINUTES 12 SECONDS WEST ALONG SAID PARALLEL LINE 84.55 FEET, BEARINGS REFERENCED TO THE ST. LOUIS COUNTY TRANSVERSE MERCATOR 1996 COORDINATE SYSTEM;

THENCE SOUTHERLY 14.23 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 28.20 FEET, CENTRAL ANGLE OF 28 DEGREES 55 MINUTES 26 SECONDS, AND A CHORD BEARING SOUTH 16 DEGREES 25 MINUTES 24 SECONDS WEST;

THENCE SOUTH 36 DEGREES 07 MINUTES 43 SECONDS WEST 173.46 FEET,

THENCE SOUTHERLY 75.75 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST, RADIUS 59.12 FEET, CENTRAL ANGLE OF 73 DEGREES 24 MINUTES 42 SECONDS, AND A CHORD BEARING SOUTH 5 DEGREES 43 MINUTES 40 SECONDS WEST;

THENCE SOUTHERLY 68.13 FEET ALONG A REVERSE CURVE CONCAVE TO THE WEST, RADIUS 89.58 FEET, CENTRAL ANGLE OF 43 DEGREES 34 MINUTES 26 SECONDS, AND A CHORD BEARING SOUTH 17 DEGREES 31 MINUTES 21 SECONDS EAST; THENCE SOUTH 3 DEGREES 47 MINUTES 29 SECONDS WEST 209.06 FEET;

THENCE SOUTHERLY 51.93 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE WEST, RADIUS 70.85 FEET, CENTRAL ANGLE OF 42 DEGREES 00 MINUTES 03 SECONDS, AND A CHORD BEARING SOUTH 24 DEGREES 08 MINUTES 58 SECONDS WEST;

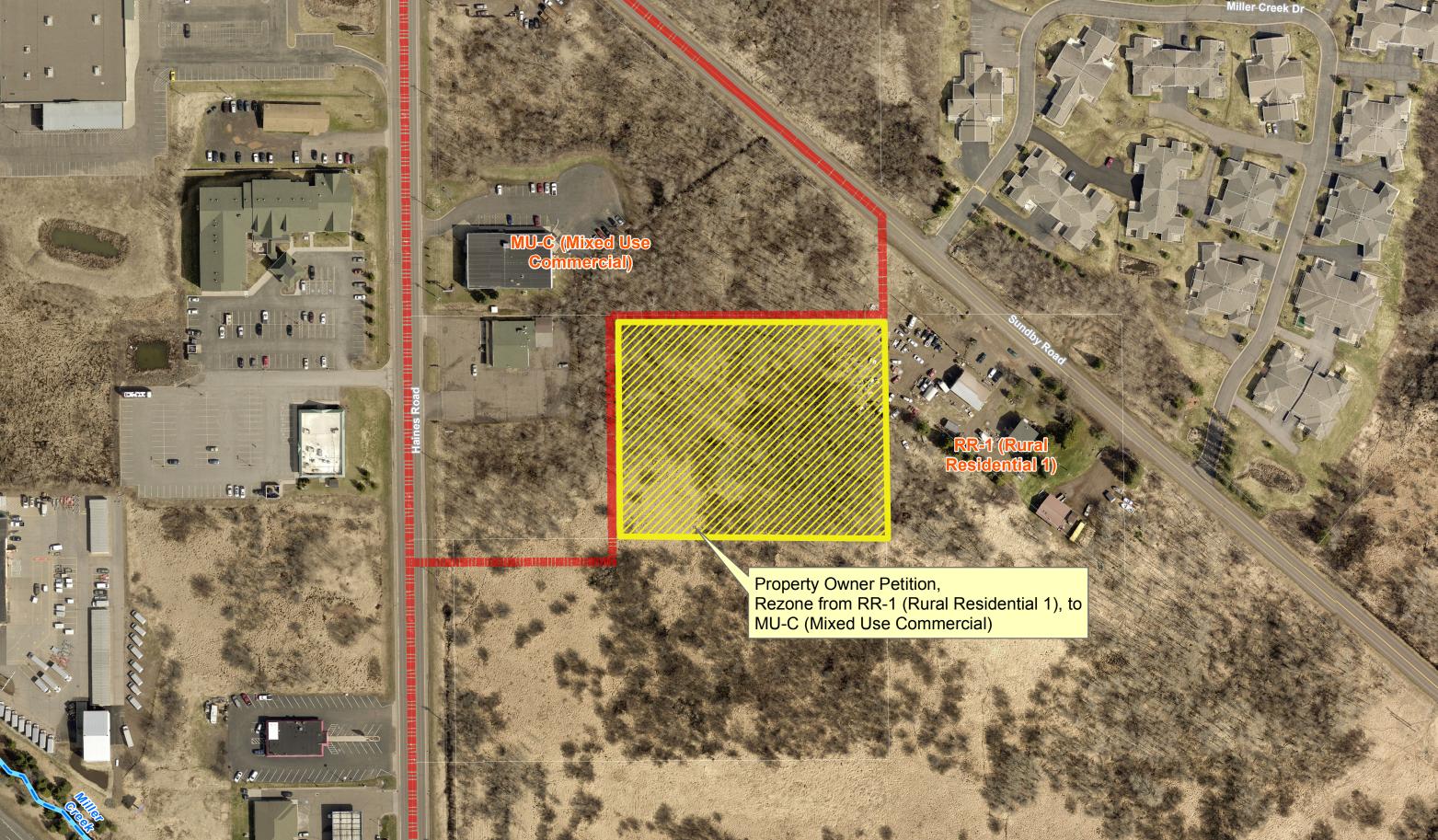
THENCE SOUTHERLY 54.50 FEET ALONG A REVERSE CURVE CONCAVE TO THE EAST, RADIUS 68.11 FEET, CENTRAL ANGLE OF 45 DEGREES 50 MINUTES 48 SECONDS, AND A CHORD BEARING SOUTH 23 DEGREES 32 MINUTES 12 SECONDS WEST; THENCE SOUTH 5 DEGREES 46 MINUTES 35 SECONDS EAST 35.43 FEET:

THENCE SOUTHEASTERLY 45.71 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE NORTHEAST, RADIUS 45.94 FEET, CENTRAL ANGLE OF 57 DEGREES 00 MINUTES 53 SECONDS, AND A CHORD BEARING SOUTH 34 DEGREES 59 MINUTES 16 SECONDS EAST;

THENCE SOUTHERLY 37.14 FEET ALONG A REVERSE CURVE CONCAVE TO THE WEST, RADIUS 17.43 FEET, CENTRAL ANGLE OF 122 DEGREES 04 MINUTES 15 SECONDS, AND A CHORD BEARING SOUTH 11 DEGREES 03 MINUTES 32 SECONDS EAST; THENCE SOUTHERLY 40.73 FEET ALONG A REVERSE CURVE CONCAVE TO THE EAST, RADIUS 36.54 FEET, CENTRAL ANGLE OF 63 DEGREES 52 MINUTES 17 SECONDS, AND A CHORD BEARING SOUTH 18 DEGREES 56 MINUTES 42 SECONDS WEST; THENCE SOUTHERLY 43.78 FEET ALONG A REVERSE CURVE CONCAVE TO THE WEST, RADIUS 52.67 FEET, CENTRAL ANGLE OF 47 DEGREES 37 MINUTES 50 SECONDS, AND A CHORD BEARING SOUTH 13 DEGREES 11 MINUTES 09 SECONDS WEST; THENCE SOUTHWESTERLY 11.43 FEET MORE OR LESS ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 12.57 FEET, CENTRAL ANGLE OF 52 DEGREES 07 MINUTES 36 SECONDS, AND A CHORD BEARING SOUTH 65 DEGREES 58 MINUTES 51 SECONDS WEST TO THE WEST LINE OF SAID BLOCK 2, AND SAID LINE THERE TERMINATING.

THE SOUTHWESTERLY SIDELINES OF SAID EASEMENT ARE PROLONGED OR SHORTENED TO TERMINATE ON THE WEST LINE AND SOUTH LINE OF LOT 11 OF SAID BLOCK 2.





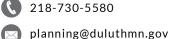


Planning & Development Division

Duluth, Minnesota 55802

Planning & Economic Development Department

Room 160
411 West First Street



File Number	PL 19-112 Rezone from RR-1 to MU-C		Contact Steven Robert Planning Commission Date		Steven Robertson	
Туре					September 10, 2019	
Deadline	Applicat	Application Date		July 23, 2019 60 Days		September 21, 2019
for Action	Date Extension Letter Mailed		August 14, 2019		120 Days	November 20, 2019
Location of Su	bject	4250 Haines Road				
Applicant	IGO Properties, LLC		Contact			
Agent	Johnson Killen and Seiler, PA		Contact	Amano	Amanda Mangan	
Site Visit Date Septe		September 2, 2019	Sign Notice	Sign Notice Date		August 23, 2019
Neighbor Letter Date August 22, 2019		Number of Letters Sent		18 (+7 Hermantown)		

Proposal

The property owner is proposing to rezone property from the current zoning of Rural Residential 1 (RR-1) to Mixed Use Commercial (MU-C).

Staff Recommendation

Staff is recommending approval of the proposed rezoning to MU-C.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	RR-1	N/A (Formerly Club/Assembly)	Central Business Secondary
North	MU-C	Commercial	Central Business Secondary
South	RR-1	Undeveloped	Preservation
East	RR-1	Undeveloped	Preservation
West	Hermantown	Commercial/Undeveloped	Hermantown

Summary of Code Requirements

- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.
- UDC Sec. 50-37.3.B.3 Where a proposed amendment to the zoning map would change any property from a residential district to a mixed use, form or special purpose district, a planning commission hearing and a notice of three weeks shall be required. In addition, the affirmative vote of 2/3 of the council shall be required if he city has not received the written consent of the owners of 2/3 of those properties located wholly or partially within 100 feet of the property proposed to be rezoned;
- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application:
- 1. Is consistent with the Comprehensive Land Use Plan; 2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3. Is required by public necessity, convenience, or general welfare, or good zoning practice; 4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principles

Governing Principle#8-Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide

Governing Principle #10-Take actions that enhance the environment, economic, and social well-being of the community. Initiate land use, site design, transportation, building design, and materials policies which reduce consumption of finite resources, generation of solid waste, and introduction of toxic materials to land, air, or waters. Also implement resiliency in design and operation with City systems and infrastructure that serve both public and private land uses.

Future Land Use

Central Business Secondary- An area adjacent to and supporting the central business primary area or a stand-alone area providing a similar mix of destination land uses but at a lower intensity than the primary CB area. Includes mixed regional and neighborhood retail, employment centers, public spaces, medium density residential, and public parking facilities. Density/Design/Intenesity: Medium densities; multi-story and mixed-use buildings are encouraged, Form-based guidelines, Pedestrian-oriented design, Limited off-street parking required, loading facilities required

Site History or Previous Studies

A wetland delineation was completed for this approximately 5-acre site in September 2016 (PL 16-118). The wetland delineation identified "two predominant wetland areas, which are associated with the Miller Creek floodplain to the south. This wetland occupies about half of the property and exhibits both Type 6 and Type 7 characteristics with Type 6/7 features being the dominant condition in the area near the Haines Road property."

This property was the site of the former Elks Lodge#133. The 14,100 square foot structure was demolished in 2017 (BWRCK1709-005). An approximately 30,000 square foot gravel/hard surfaced parking surface remains on the property from the previous use. Around September 2017, an additional approximately 20,000 square feet of the site was cut and graded to the rear of the Elks Lodge, generally outside of delineated wetland areas.

Review and Discussion Items:

- 1) The applicant is proposing to rezone property from the current zoning of Rural Residential 1 (RR-1) to Mixed Use Commercial (MU-C). The front 1/3 of the property is currently zoned MU-C and the rear 2/3 of the parcel is zoned RR-1. The applicant is submitting zoning petition so that the entire parcel is zoned MU-C.
- 2) The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan, and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or be considered arbitrary and capricious. Good zoning practice requires that zone districts be consistent with the future land use category identified for the area.
- 3) The future land use category of Central Business Secondary is most commonly reflected in the City's zoning map as either as a form district or MU-C. Other criteria for zoning include considering existing land use patterns and if the rezoning is related to the needs to the community or existing land use. This area, both in Hermantown and Duluth, has developed as a commercial strip heavily dependent and designed for vehicle access only, MU-C zoning is more appropriate than form district zoning. Haines Road is adjacent to the west, and Arrowhead Road and Hwy 53 are north and south of the site respectively, each a distance of approximately ¼ of a mile.

- 4) The purpose of the MU-C district is to provide for community and regional commercial development along commercial corridors and nodal centers. Intended non-residential uses include retail, lodging, service, and recreational facilities needed to support the community and region. Development should facilitate pedestrian connections between residential and non-residential uses.
- 5) The applicant's representative has stated that the goal for the property as a storage area to support "light vehicle sales, recreational trailers, ATVs, etc. Ultimately, the goal of the owners is to make the whole property more marketable as a mixed-use commercial property". In the MU-C district, new structures over 500 square feet need a MU-C Planning Review approved by the Planning Commission as part of the building permit application approval process. The land use "automobile and light vehicle repair and service" has three use specific standards, including the requirement that storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property.
- 6) Reuse of the site would be limited by the presence of wetlands and any proposed new impacts to existing wetlands would need to follow the Wetlands Conservation Act of 1991 (avoid impacts, minimize impacts, reduce impacts, and replace impact wetlands). Any additional tree removal would require an updated tree replacement plan reviewed and approved by the City Forester.
- 7) Based on the development pattern of adjacent areas and the purpose statement of MU-C zone districts, rezoning as proposed in the attached map is appropriate for this area.
- 8) No written correspondence has been received as of the date that this memo was printed (August 28, 2019), with the exception of an email from St. Louis County stating that future access to Haines Road (CSAH 91) must be permitted by the St. Louis County Public Works Department.

Staff Recommendation:

Based on the above findings and supporting statements below, staff recommends that the Planning Commission recommend approval to the City Council of the rezoning as shown on the map titled Proposed Rezoning Area Map.

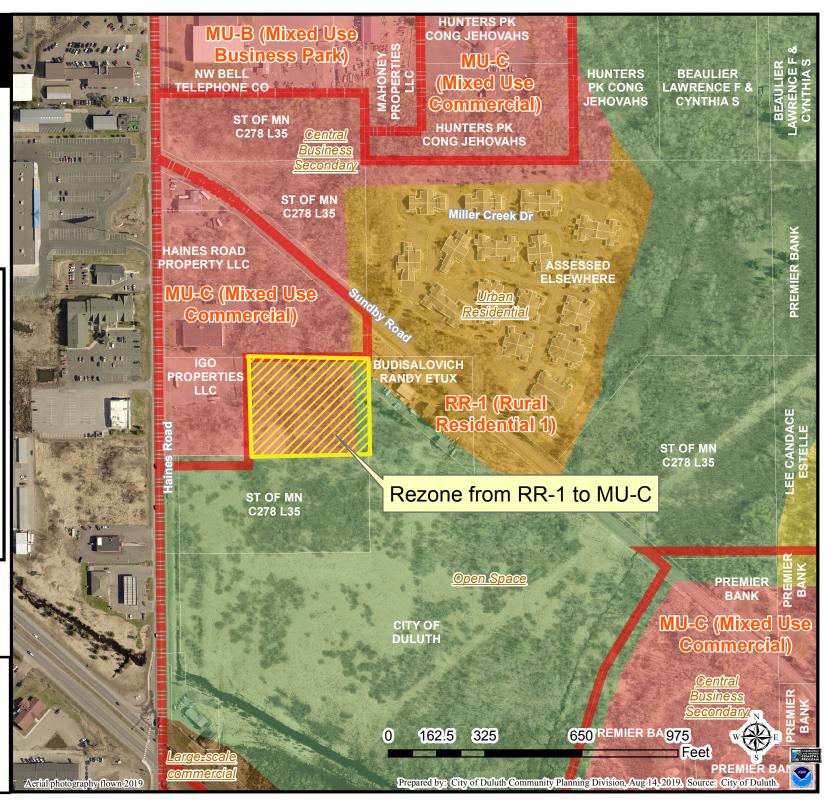
- 1) The proposed zone districts are the most reasonably able to implement the objectives of the Comprehensive Plan related to the land use for this area.
- 2) Material adverse impacts on nearby properties are not anticipated.



Legend Zoning Boundaries Open Space Open Space/Outside Duluth Rural Residential Low-density Neighborhood Traditional Neighborhood Urban Residential Neighborhood Commercial Central Business Secondary Central Business Primary Large-scale commercial Tourism/Entertainment District **Commercial Waterfront** General Mixed Use Neighborhood Mixed Use Light Industrial General Industrial Industrial Waterfront **Business Park** Transportation and Utilities Transportation and Utilities/Outside Duluth Medical District

Institutional

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is no compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.





Legend Floodplain (UDC)

General Flood Plain

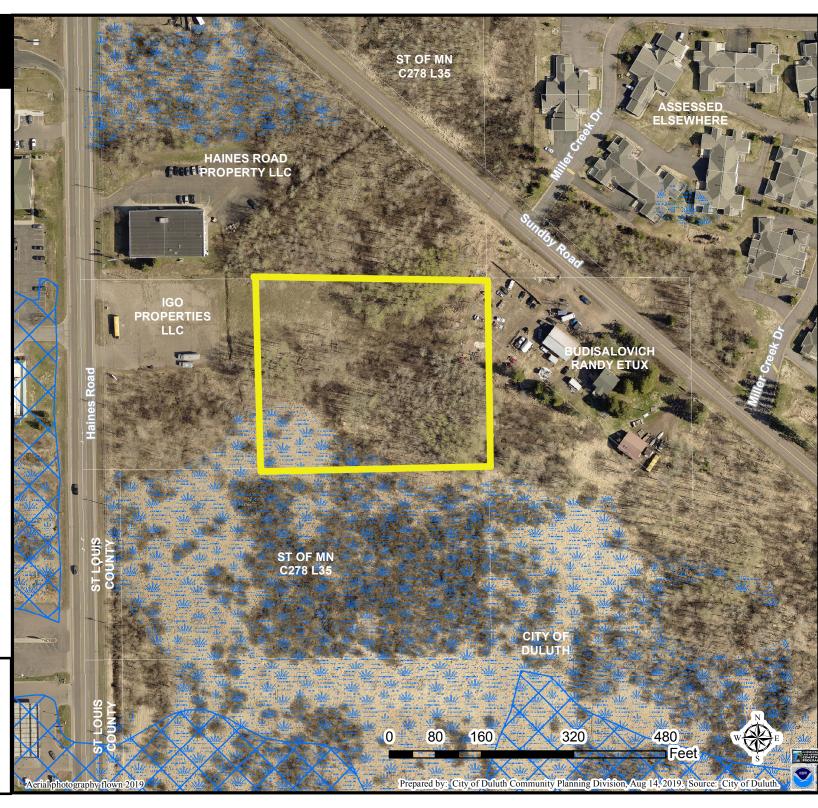
Flood Way

Flood Fringe

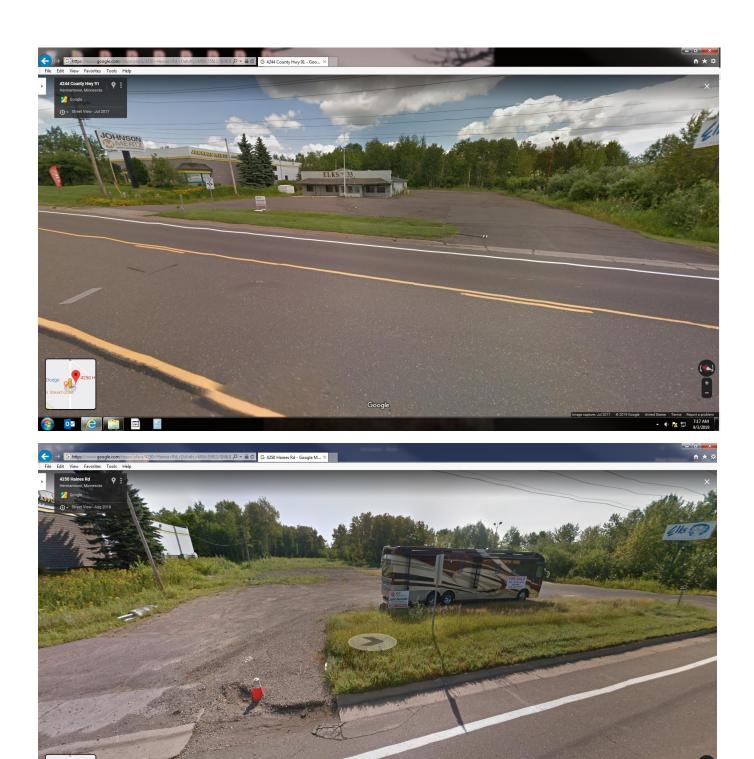
Trout Stream (GPS)
Other Stream (GPS)

Wetlands (NRRI)

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.







Uses Allowed in Mixed Use-Commercial (MU-C) Zone District Revised January 2019

Permitted Uses

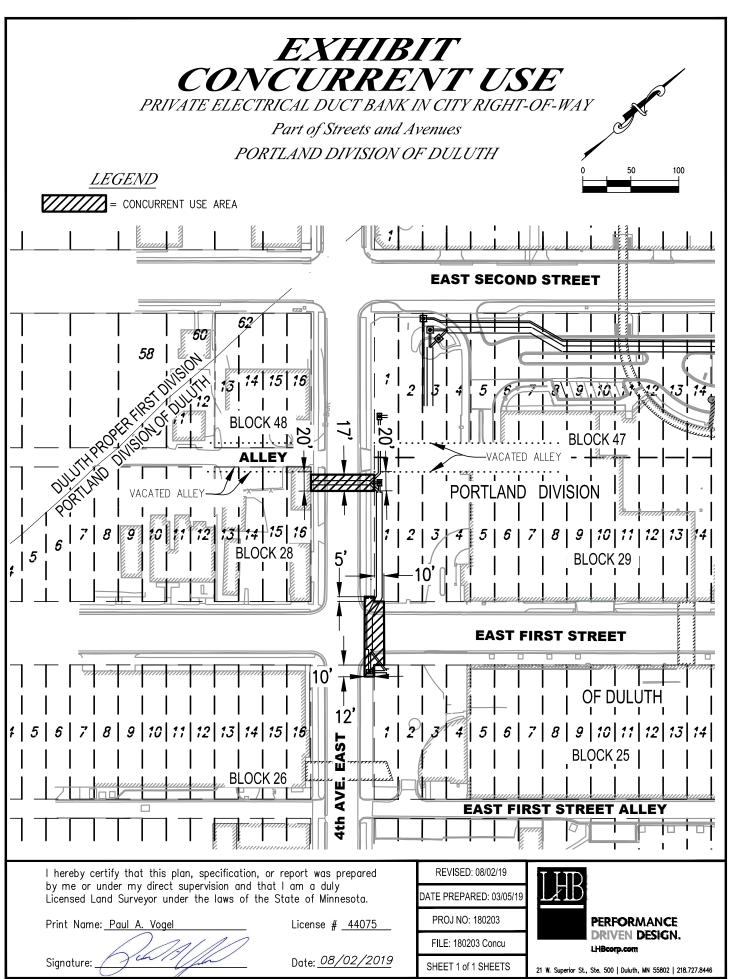
- Dwelling, multi family
- Dwelling, live-work
- Residential care facility/assisted living (7 or more)
- Rooming house
- Bus or rail transit station
- Club or lodge (private)
- Government building or public safety facility
- Museum, library or art gallery
- Park, playground or forest reserve
- Religious assembly, small (less than 50,000 sq ft)
- Religious assembly, large (50,000 sq ft or more)
- Business, art or vocational school
- School, elementary
- Medical or dental clinic
- Nursing home
- Agricultural, community garden
- Veterinary or animal hospital
- Convention or event center
- Indoor entertainment facility
- Restaurant, small (less than 5,000 sq. ft.)
- Restaurant (5,000 sq. ft. or more)
- Theater
- Hotel or motel

- Bed and breakfast
- Bank
- Office
- Data center
- Preschool
- Day care facility, small (14 or fewer)
- Day care facility, large (15 or more)
- Funeral home or crematorium
- Personal service and repair, small
 - (less than 10,000 sq. ft.)
- Personal service and repair, large (10,000 sq. ft. or more)
- Garden material sales
- Grocery store, small (less than 15,000 sq. ft.)
- Grocery store, large (15,000 sq. ft. or more)
- Retail store not listed, small (less than 15,000 sq. ft.)
- Retail store not listed, large (15,000 sq. ft. or more)
- Automobile and light vehicle repair and service
- Automobile and light vehicle sales, rental, or storage
- Filing station
- Parking lot (primary use)
- Parking structure

Special Uses

- Cemetery or mausoleum Major utility or wireless School, middle or high telecommunication facility
- Agricultural, famers' market Solar, geothermal, or biomass power facility (primary use)
 - Water or sewer pumping stations/reservoirs
 - Recycling collection point (primary use)

- Kennel
- Other outdoor entertainment or recreation use not listed
- Building materials sales
- Electric power transmission line or substation



LEGAL DESCRIPTION:

That part of Fourth Avenue East southwesterly of the northeasterly line of said Fourth Avenue East, adjacent to the southeasterly 17.00 feet of the northwesterly 20.00 feet of Lot 1, Block 29, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

That part of Fourth Avenue East northeasterly of the southwesterly line of said Fourth Avenue East, adjacent to the southeasterly 17.00 feet of the northwesterly 20.00 feet of Lot 16, Block 28, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

Those parts of East First Street and Fourth Avenue East adjacent to the southeasterly 5.00 feet of the southwesterly 10.00 feet of Lot 1, Block 29, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota; lying between two lines 10.00 feet southwesterly of and 10.00 feet northeasterly of the northeasterly line of said Fourth Avenue East and said Fourth Avenue East extended.

AND

Those parts of East First Street and Fourth Avenue East adjacent to the northwesterly 12.00 feet of the southwesterly 10.00 feet of Lot 1, Block 25, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota; lying between two lines 10.00 feet southwesterly of and 10.00 feet northeasterly of the northeasterly line of said Fourth Avenue East and said Fourth Avenue East extended.

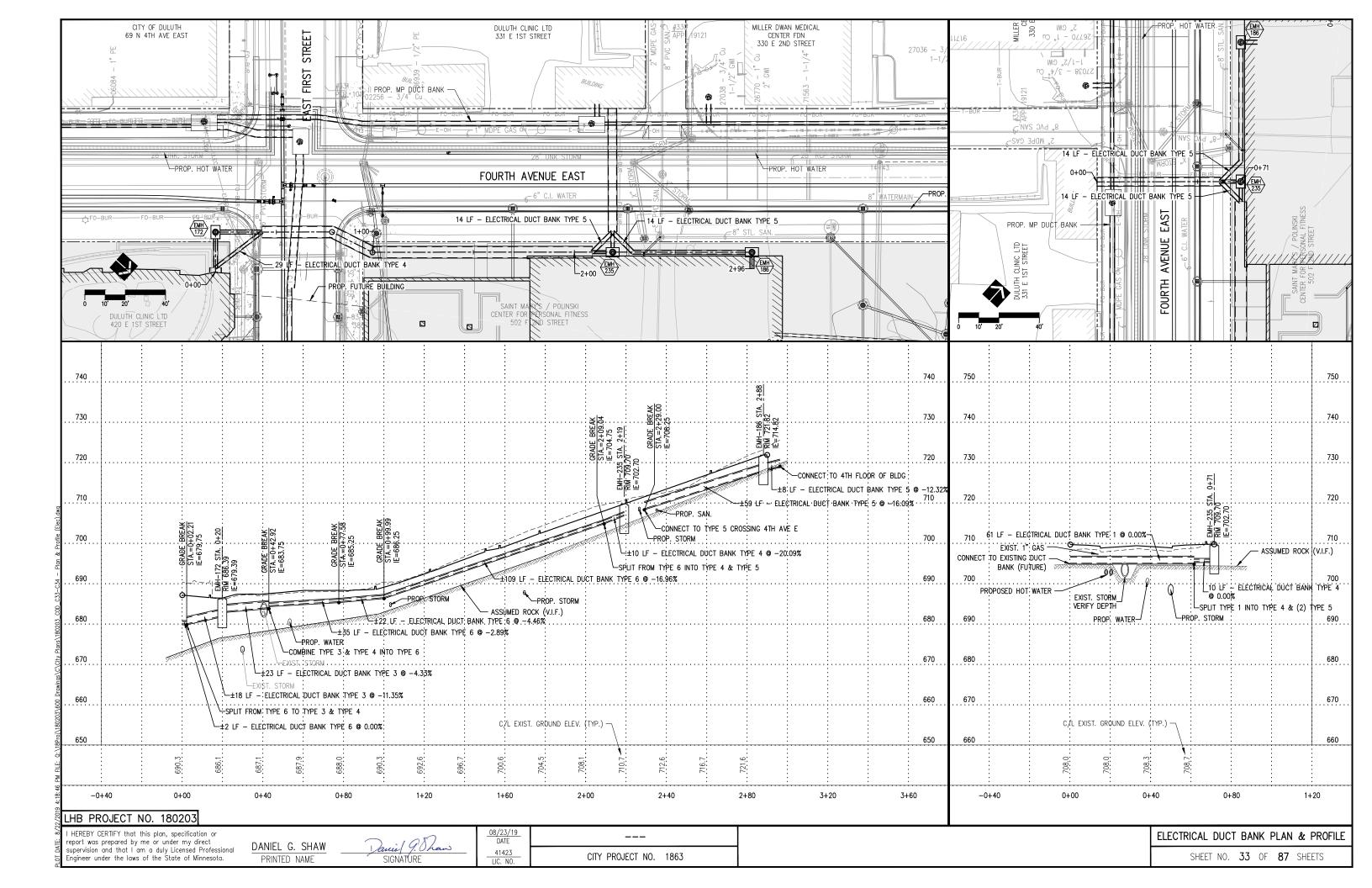
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Signed

Date 8/2/2019 License No. 44075

William William Control of the Contr





Planning & Development Division

Planning & Economic Development Department



Room 160 411 West First Street Duluth, Minnesota 55802

File Number	PL 19-020		Contact	Contact		Steven Robertson		
Туре	Concurrent Use Permit		Planning Co	Planning Commission Date		September 10, 2019		
Deadline	Application Date		August 2, 20	August 2, 2019 60 Days August 23, 2019 120 Days		October 8, 2019		
for Action			August 23, 20			December 7, 2019		
Location of Subject 4 th Avenue East, and East 1 st Stre		st Street						
Applicant Essentia Health		Contact	Scot Ra	Scot Ramsey, Vice President Facilities				
Agent	LHB		Contact	Evan Aljoe, Healthcare Studio Lead		care Studio Lead		
Legal Description		See Attached	Sign Notice	Sign Notice Date		August 27, 2019		
Site Visit Date		September 2, 2019	Number of	Number of Letters Sent		N/A		

Proposal

The applicant is seeking a concurrent use permit to construct private underground utilities within the public right-of-way of Fourth Avenue East and East First Street, for electrical power conduits from their project to new Minnesota Power transformers.

Staff Recommendation

Staff is recommending Planning Commission recommend approval to the City Council.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-I	Medical	Medical District
North	MU-I	Medical	Neighborhood Mixed Use/Urban Res.
South	F-8	Highway/Commercial	Tourism/Open Space
East	MU-N/MU-I Residential		Urban Residential
West	Yest MU-I/F-5/F-8 Commercial Ce		Central Business Primary/Secondary

Summary of Code Requirements

UDC Section 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

- 1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
- 2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
- 3. No portion of a public easement proposed for use is being physically used or occupied by the public.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Principle #5 -Promote reinvestment in neighborhoods.

Duluth is strongly defined by its neighborhoods. This system should be supported through land use and transportation that foster neighborhood reinvestment. New development or redevelopment should maximize public investment that strengthens neighborhood commercial centers or diversifies residential opportunities that fit the neighborhood's character.

Governing Principle #8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide.

Future Land Use

Future Land Use Institutional. Applicable to medical, university/college, public school, religious, or governmental campuses. Can include adjacent areas that support them, with related commercial and/or office uses, and residential uses in the fringe areas of the district.

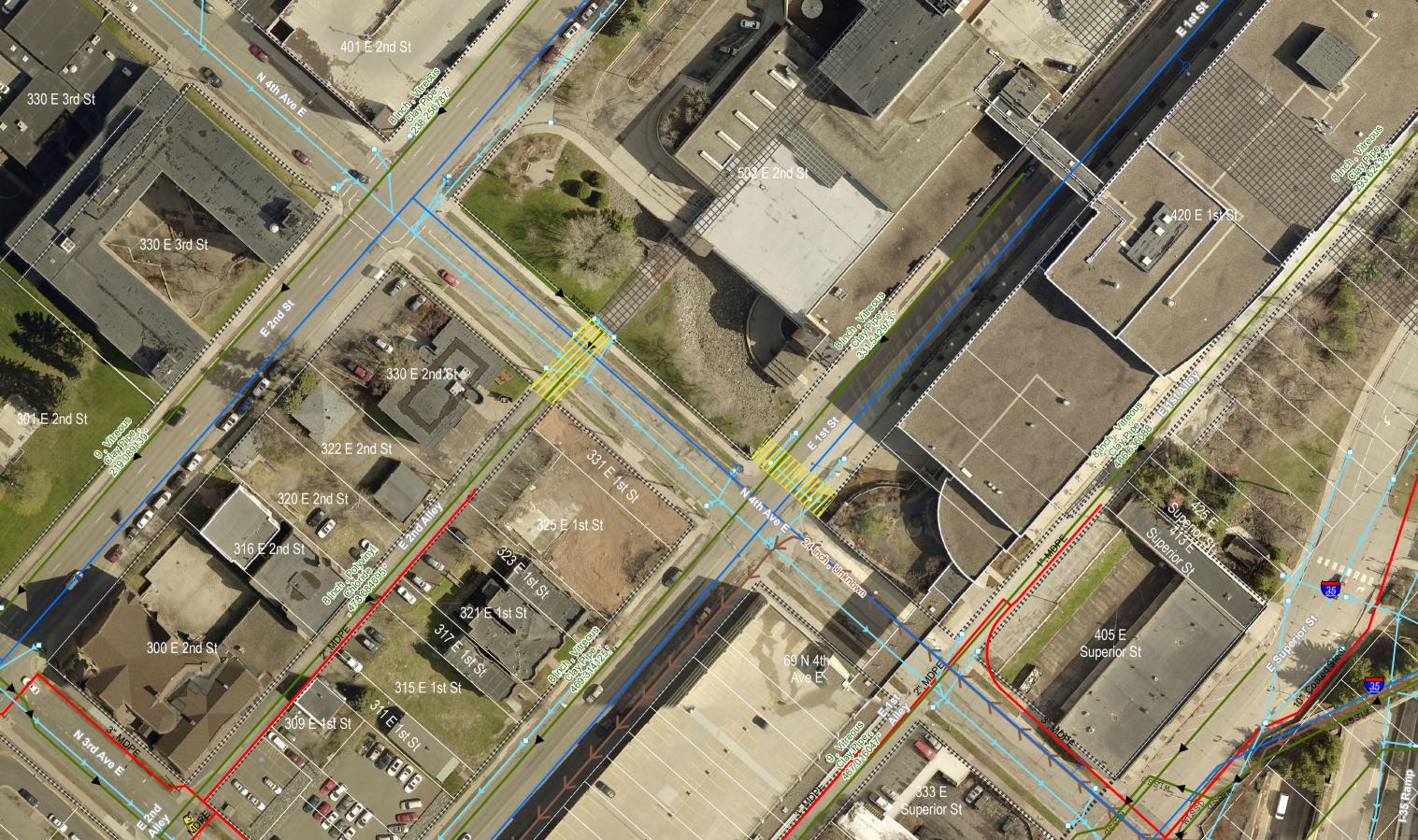
Review and Discussion Items:

- 1) The applicant is seeking a concurrent use permit to construct private underground utilities within the public right-of-way of Fourth Avenue, to provide electrical duct banks from the existing emergency generators. This application is related to the MU-I Planning Review (PL 19-018) for the new 940,000 square foot medical facility proposed by Essentia Health.
- 2) The area proposed for the concurrent use permit will not take away from the public's ability to use the public right-of-way, nor will it harm or inconvenience the health, safety and general welfare of the city.
- 3) Concurrent use permits are approved by the City Council via an ordinance. Unlike street right-of-way vacations, concurrent use permits are not recorded at with St. Louis County as they are voidable agreements between the City and property owners. City engineering has reviewed and approved the exhibits.
- 4) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against all occurrences in the right-of-way. Other protections for the city and the public are typically included in the ordinance that is submitted for the City Council's review. The ordinance will require that the project proposer will locate any underground items in accordance with Gopher State One Call rules, and that the city will bear no responsibility for locating any facility related to the concurrent use permit except as it is legally responsible under the Gopher State One Call rules.
- 5) No comments were received from the public or other government agencies at the time this staff report was written (September 3, 2019), other than technical comments/corrections to the exhibits.
- 6) A condition of earlier zoning applications was that Essentia Health locate any private improvements in accordance with Gopher State Once Call rules and that they or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects. On August 14, 2019, Essentia Health was enrolled in Gopher One as a provider (MN01741).
- 7) Per UDC Sec. 50-37.1.N, approved concurrent use permits lapse if the project or activity authorized by the permit has not begun within one-year.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission approve the concurrent use permit with the following conditions:

- 1) Applicant construct and maintain the project as identified in the attached exhibits.
- 2) Applicant provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 3) Applicant will remove the obstructions at the applicant's expense if directed to by the City with appropriate notice.
- 4) The structure will need to comply with any applicable engineering standards, or building or fire code requirements.
- 5) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.





August 22, 2019

Community Planning Division – City Hall c/o Steven Robertson 411 W. 1st Street Room #110 Duluth, MN 55802

RE: Concurrent Use Permit for 4th Avenue East

Dear Mr. Roberson:

The purpose for this concurrent use is to locate private underground electrical conduits from the new Minnesota Power transformers located west of 4th avenue east to the new project located east of 4th avenue east. These electrical feeds provide the main power for the project.

Please feel free to contact me directly if you have any further questions or concerns.

LHB

Evan Aljoe

Healthcare Studio Leader

Hvan Aljoe

c: Scot Ramsey

Vice President – Facilities Essentia Health East

Q:\18Proj\180203\400 Design\403 Regulatory\concurrent use\4th Ave\Re-submittal 20190802\Concurrent Use cover letter-4th ave.docx

1 715.392.2902



April 17, 2019

Community Planning Division – City Hall c/o Keith Hamre, Director 411 W. 1st Street Room #110 Duluth, MN 55802

RE: Concurrent Use Permit Acknowledgement

Dear Mr. Hamre:

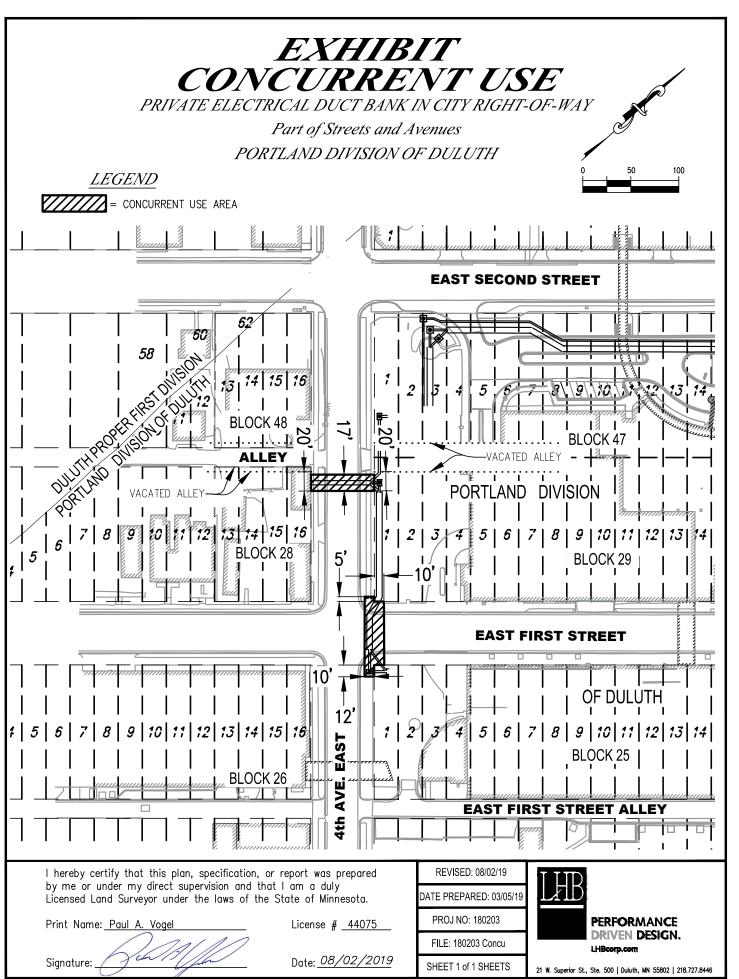
Pursuant to our Concurrent Use of Streets Application and the requirement of Section 50-37.7.C (f), we acknowledge that to the extent any of Essentia's private improvements are installed in the public right of way that they may be removed by the City of Duluth if needed for installation or repair of public improvements or if Essentia, as applicant, violates the terms of the permit granted.

Please feel free to reach me by phone at (218) 786-2625 with any questions or concerns related to this correspondence.

Sincerely,

Scot Ramsey

Vice President – Facilities Essentia Health East



LEGAL DESCRIPTION:

That part of Fourth Avenue East southwesterly of the northeasterly line of said Fourth Avenue East, adjacent to the southeasterly 17.00 feet of the northwesterly 20.00 feet of Lot 1, Block 29, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

That part of Fourth Avenue East northeasterly of the southwesterly line of said Fourth Avenue East, adjacent to the southeasterly 17.00 feet of the northwesterly 20.00 feet of Lot 16, Block 28, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

Those parts of East First Street and Fourth Avenue East adjacent to the southeasterly 5.00 feet of the southwesterly 10.00 feet of Lot 1, Block 29, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota; lying between two lines 10.00 feet southwesterly of and 10.00 feet northeasterly of the northeasterly line of said Fourth Avenue East and said Fourth Avenue East extended.

AND

Those parts of East First Street and Fourth Avenue East adjacent to the northwesterly 12.00 feet of the southwesterly 10.00 feet of Lot 1, Block 25, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota; lying between two lines 10.00 feet southwesterly of and 10.00 feet northeasterly of the northeasterly line of said Fourth Avenue East and said Fourth Avenue East extended.

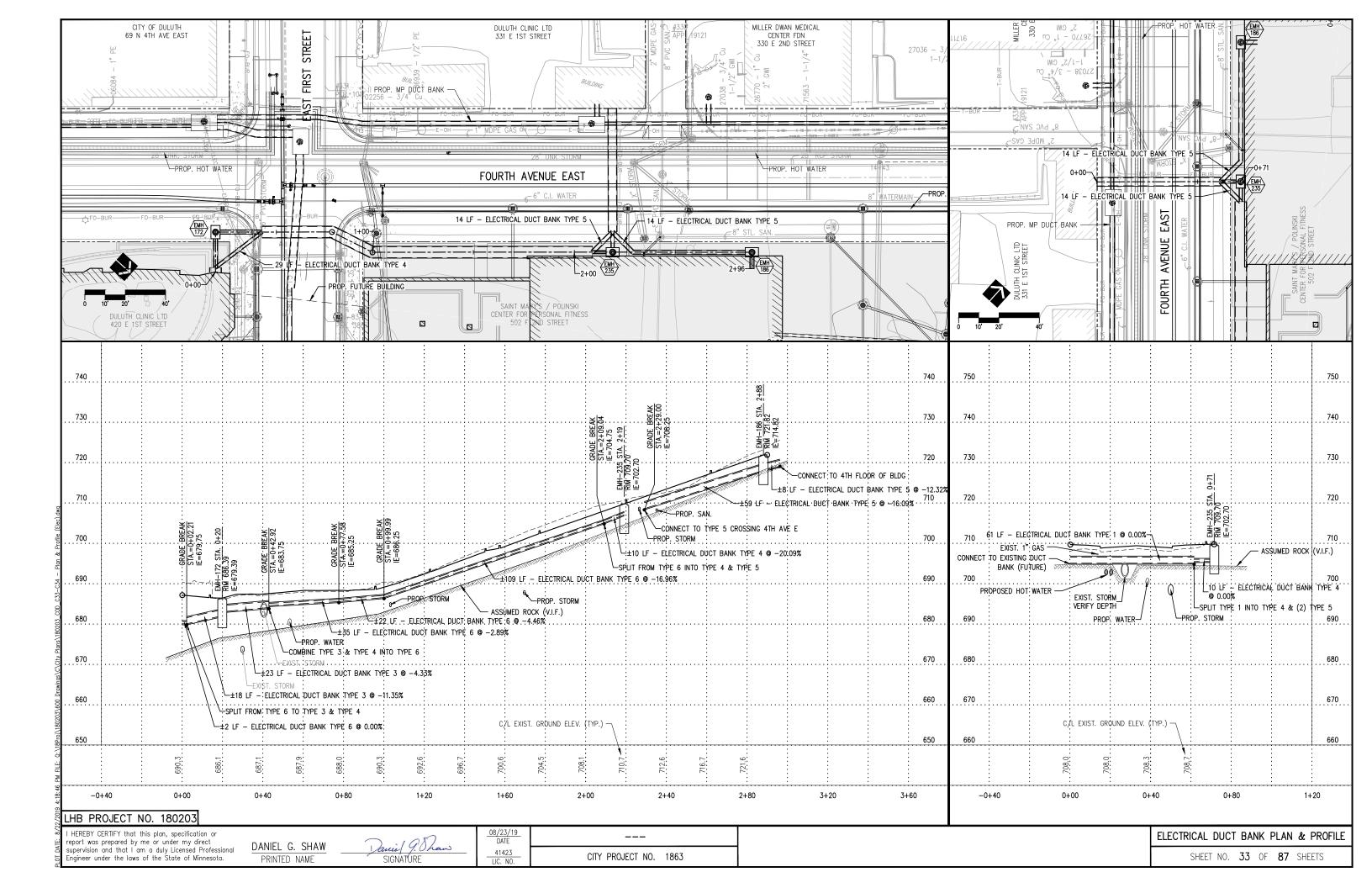
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

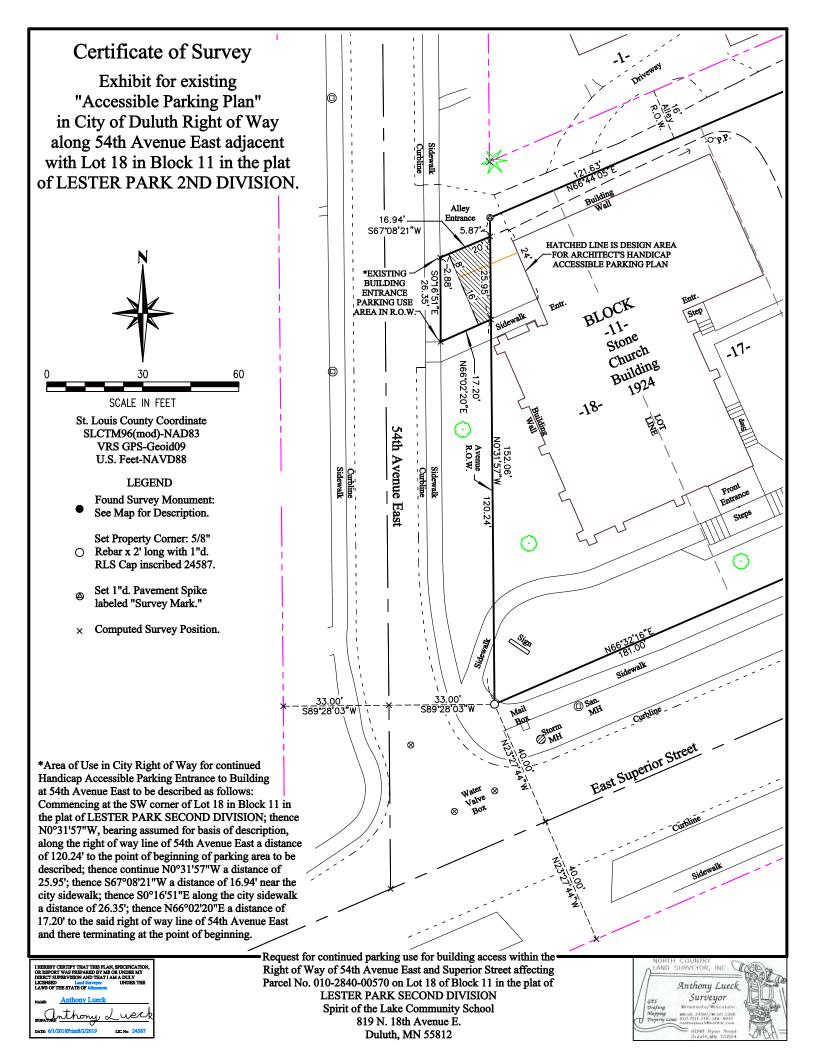
Paul A. Vogel

Signed

Date 8/2/2019 License No. 44075

William William Control of the Contr







Planning & Development Division

Planning & Economic Development Department

Room 160 411 West First Street Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

File Number	PL 19-113		Contact	Jenn Reed	d Moses, 730-5328	
Туре	Concurrent Use Permit		Planning Commission Date		9/10/19	
Deadline	Application Date		8/16/19	60 Days	10/15/19	
for Action	Date Extension Letter Mailed			120 Days	s 12/14/19	
Location of Subject		5401 E Superior St				
Applicant	Applicant Spirit of the Lake Community School		Contact			
Agent	Agent N/A		Contact			
Legal Descrip	otion	Parcel ID Number 010-2840-0	0570			
Site Visit Date		9/3/19	Sign Notice Date 8/2		8/27/19	
Neighbor Lett	ter Date	N/A	Number of Letters Sent N		N/A	

Proposal

The Spirit of the Lake Community School would like to continue to use two existing parking spaces within the right of way of 5401 E Superior Street as accessible parking.

Staff Recommendation

Staff is recommending that planning commission recommend approval to City Council.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-N	Former church	Mixed Use Neighborhood
North	R-1	Residential	Residential Traditional
South	MU-N	Residential	Mixed Use Neighborhood
East	MU-N	Residential	Mixed Use Neighborhood
West	R-1	Residential	Residential Traditional

Summary of Code Requirements

UDC Section 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

- 1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
- 2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
- 3. No portion of a public easement proposed for use is being physically used or occupied by the public.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #1 – Reuse previously developed lands: includes adaptive reuse of existing building stock and historic resources, as this strengthens neighborhoods. This property is a former Methodist church that was vacant, and will now be used as a school.

Governing Principle #11 – Consider education systems in land use actions: Neighborhood-based schools promote walkable, safe communities and reduce transportation expenses. This school is located in the Lakeside neighborhood.

Future Land Use – Mixed Use Neighborhood: A transitional use between more intensive commercial uses and purely residential neighborhoods. Includes conversions of houses to office or live-work spaces. May include limited commercial-only space oriented to neighborhood or specialty retail markets.

Recent History:

- Early 2018: Lester Park United Methodist Church discontinues operation and lists property for sale.
- August 14, 2018: Planning Commission approves a variance to allow a school to operate in a building 3' from the side property line and 9' from the rear property line. At this time, property owner is informed that existing parking within the right of way of 54th Avenue E did not have a proper concurrent use permit, so a condition of the variance approval was that the school must either apply for and receive a concurrent use permit for this parking, or remove the parking.

Review and Discussion Items

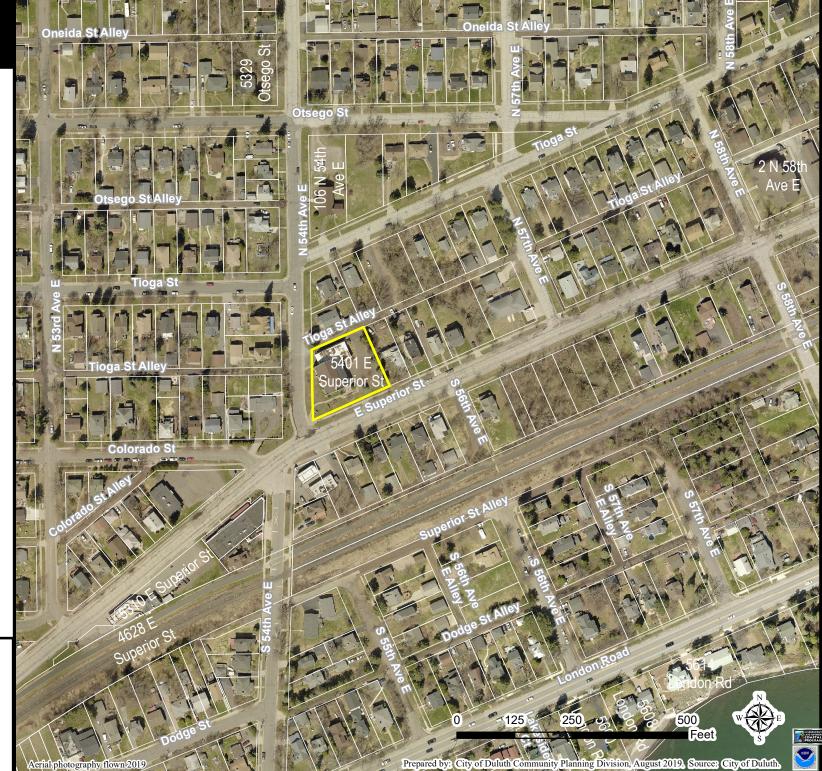
Staff finds that:

- 1.) The applicant is seeking a concurrent use permit to use an existing paved area within the right of way for accessible parking. This area was paved and striped when the applicant purchased the property from the Methodist church in 2018.
- 2.) The concurrent use would provide two parking spaces, which are the only accessible spaces on the site. These two spaces bring the total site parking to 11 spaces (which includes parking in a nearby gravel lot adjacent to the alley).
- 3.) While there are no known snow clearing issues previously, the City's Street Maintenance Division has indicated concerns about alley access for snow clearing if a car is parked in the northernmost space, as well as snow from clearing operations being deposited into the parking area. The applicant is aware of these concerns and has been advised additional permit conditions will specify the school's responsibility for snow clearing in these situations.
- 4.) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. Other protections for the city and the public are typically included in the ordinance that is submitted to City Council. The ordinance will require the applicant be responsible for snow clearing within the parking area, including snow from City plowing operations that lands within the area, and that the school will responsible for alley clearing in the event that a parked vehicle blocks a plow's access to the alley.
- 5.) The area proposed for the concurrent use permit will not take away from the public's ability to use the public right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city.
- 6.) No public, agency, or other comments have been received as of August 29, 2019.

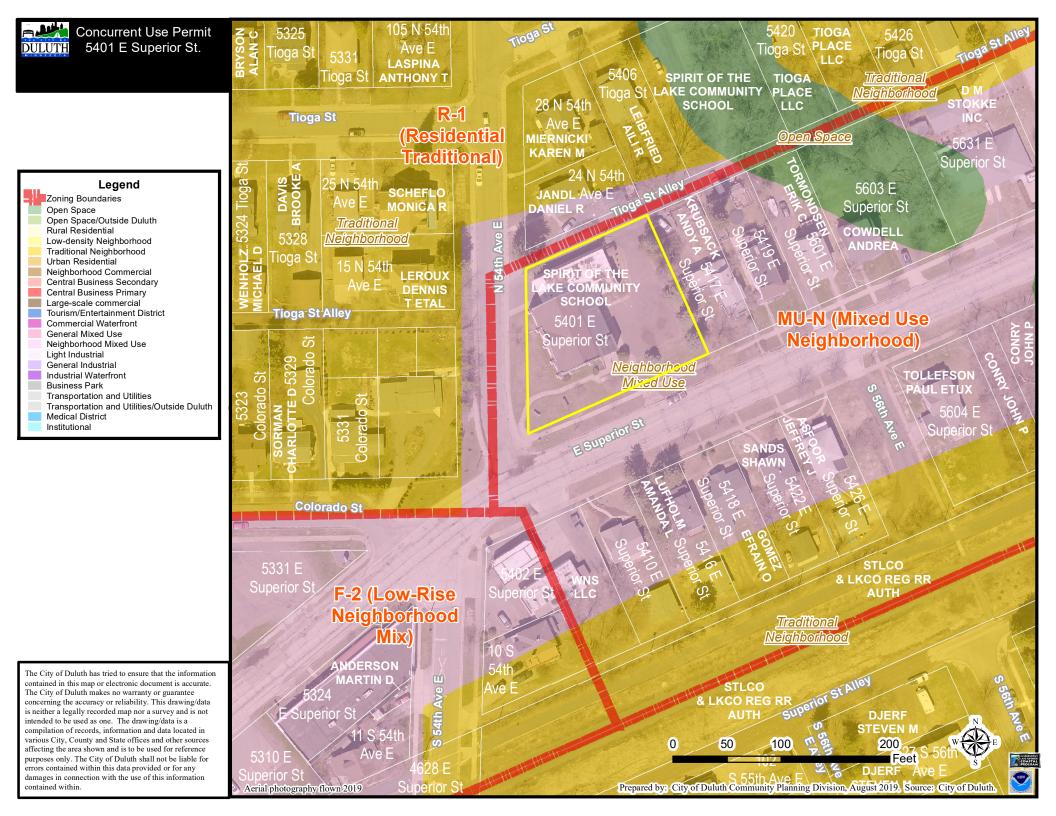
Staff Recommendation

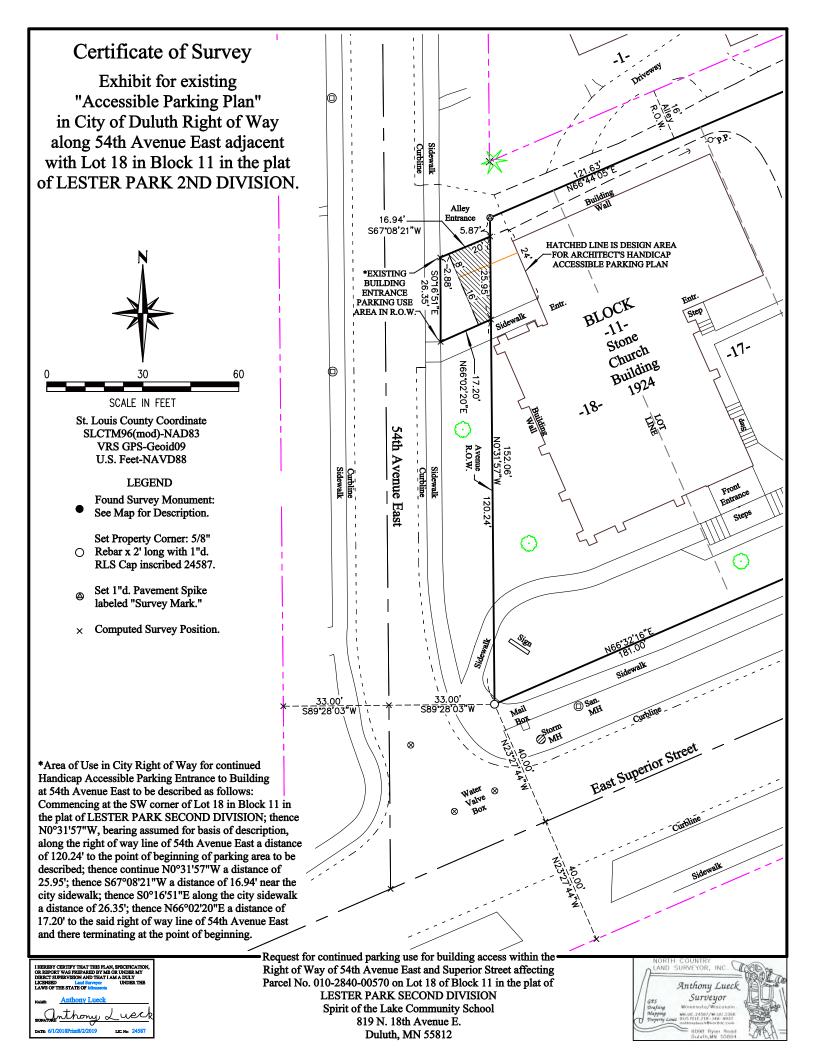
Based on the above findings, Staff recommends that Planning Commission recommend approval of the concurrent use permit with the following conditions:

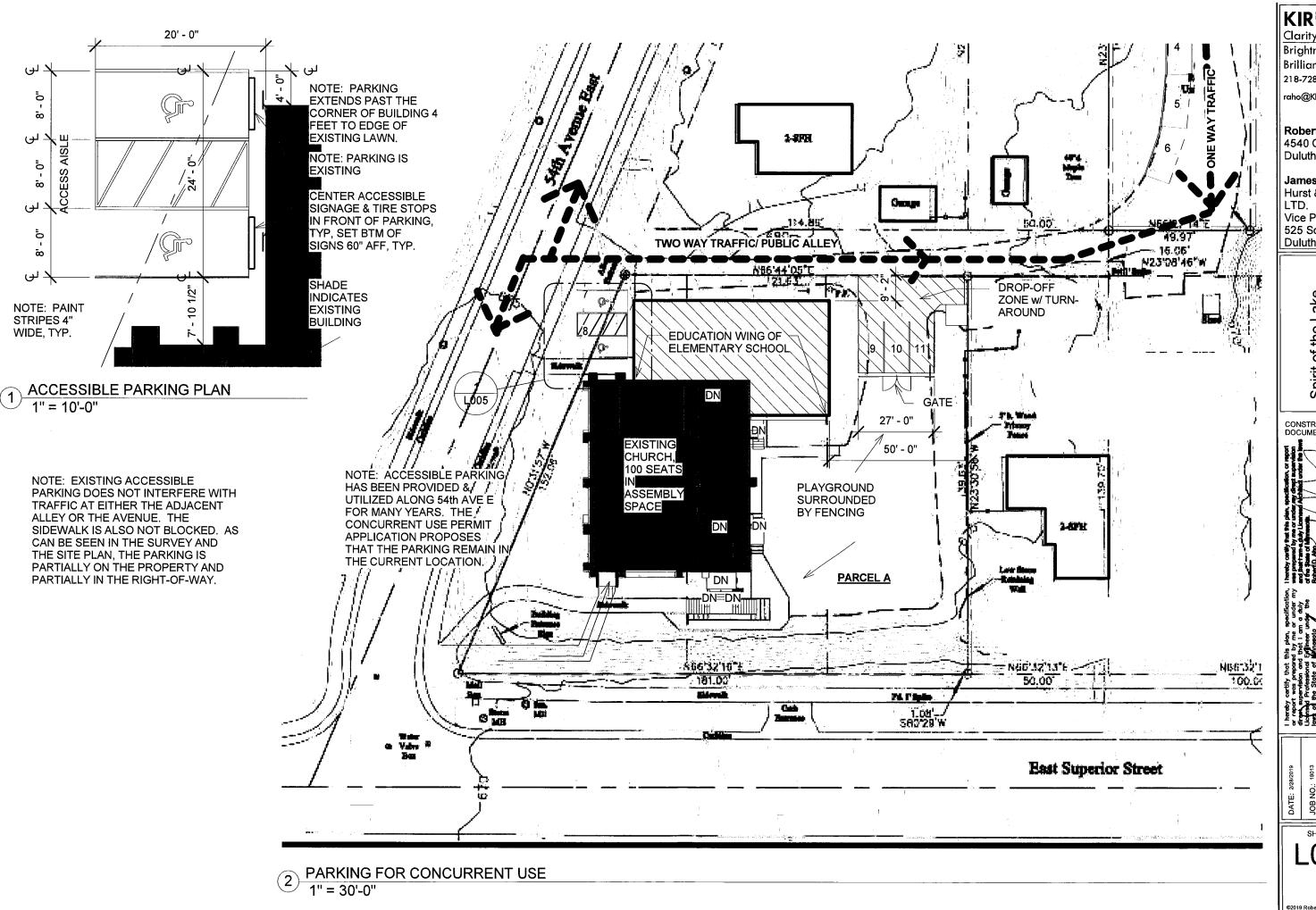
- 1.) The school may continue to use and maintain the existing parking spaces but may not alter or reconstruct the area. Any future changes shall require a subsequent Concurrent Use Permit or, if snow clearing or other issues arise, relocation of the accessible parking.
- 2.) Applicant shall provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 3.) Applicant will remove the obstructions at the applicant's expense if directed to by the City with appropriate notice.



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KIRKAUS LLC Brightness **Brilliant!** 218-728-4826 raho@KIRKAUS.com Robert Aho, AIA 4540 Carey Rd Duluth, MN 55803 James P. Berry P.E. Hurst & Henrichs MN Vice President 525 South Lake Ave. Duluth, MN 55802 Spirit of the Lake Community School Duluth, MN CONSTRUCTION DOCUMENTS NEW STRUCTURAI ENGINEERING DRAWN BY: JOB NO.: L005

Jennifer Moses

From: Jennifer Moses

Sent: Monday, August 26, 2019 3:14 PM

To: 'SLCS'

Cc: Kaleb Montgomery; Cindy Voigt; Bruce Kellerhuis

Subject: Concurrent Use Permit - Parking

Hello,

As we have been reviewing your application for a Concurrent Use Permit at 5401 E Superior St., I wanted to let you know about some concerns that have arisen regarding the existing parking, centered on snow clearing. The existing alley is very narrow, as you know, and the snow plows already have challenges getting the alley plowed. I'm not sure whether the previous owners had any issues related to this (and if you are in touch with them you may want to reach out and ask about snow clearing), but given the narrow space here, 1. If there is anyone parked in the space closest to the alley, the plow would not be able to gain access to the alley (which of course is used by neighbors as well, so this could potentially impact them) and 2. The snow from alley plowing would land in the parking spaces, and you would be responsible for removing that snow. I wanted you to understand this before we moved forward, as we would include language in the staff report and city council ordinance about your responsibility for snow clearing in the area, and consequences if a plow is unable to gain access due to parked cars. Although it has been used for parking up until this point, the City has never before granted official approvals, so we want to make sure any concerns are addressed at this point. I'm happy to talk about these concerns if you'd like. I understand you've had the unfortunate circumstance of buying this property with the understanding that the prior improvements were fully allowed, and that you are depending on these spaces for your accessible parking for the building, so we'd like to keep working with you on the CUP process even though we will need to add caveats about snow clearing.

As a reminder, your sign notice for the Concurrent Use Permit is required to be in place by tomorrow, 8/27. Let me know if you have any questions.

Thanks,

Jenn

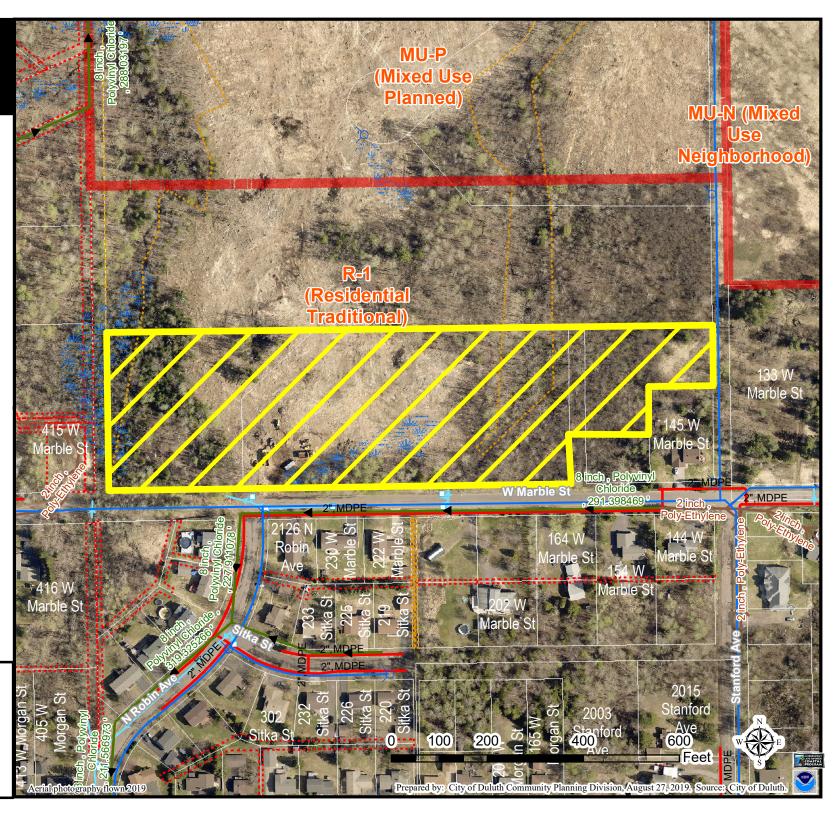
Jenn Reed Moses, AICP | Community Planning Division | City of Duluth | 411 W 1st Street Room 110, Duluth, MN 55802 | 218-730-5328 (direct) | <u>imoses@duluthmn.gov</u>



PL 19-122 DULUTH UDC Map Amendment R-1 to R-P Lotus Realty Services and Gospel Tabernacle



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Planning & Development Division

Planning & Economic Development Department

Room 160 411 West First Street Duluth, Minnesota 55802



File Number	PL 19-122		Contact		Kyle Deming		
Туре	Rezone fro	Planning Commission Date		September 10, 2019			
Deadline	Deadline Application Date		August 27, 2019 60 Days		60 Days	October 26, 2019	
for Action			2019	120 Days	December 25, 2019		
Location of Su	bject	North side of Marble Street between	en Robin Av	enue and	Stanford A	venue (Duluth Heights)	
Applicant	Lotus Real	ty Services and Gospel Tabernacle	Contact	Brad Jo	Brad Johnson		
Agent	LHB, Inc.		Contact	Heidi B	Heidi Bringman		
Legal Description		Lot 4, Block 1, Harbor Light Division; Lots 5-13 &		& Lots 36	5-40, Block 5	5, Kensington Place Addition	
Site Visit Date		August 27, 2019	Sign Notice Date			August 27, 2019	
Neighbor Letter Date		August 28, 2019	Number of Letters Sent		Sent	29	

Proposal

Rezone a 9.8 acre property from the Residential-Traditional (R-1) to Residential-Planned (R-P) to facilitate a development of 25 single-detached and twinhome dwellings on a private street with 3.5 acres of open space.

Staff Recommendation

Staff is recommending approval of the proposed rezoning to R-P.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Undeveloped	Low-Density Neighborhood
North	R-1	Undeveloped	Low-Density Neighborhood
South	R-1	Single-Family Dwellings	Low-Density Neighborhood
East	R-1	Single-Family Dwelling	Low-Density Neighborhood
West	R-1	Single-Family Dwelling	Low-Density Neighborhood

Summary of Code Requirements

- UDC Sec. 50-14.7.A: Purpose

The R-P district is established to provide a flexible development option for residential projects that integrate creative site design, provide a variety of housing types, provide unique on-site amenities, conserve natural features, increase pedestrian connectivity, or otherwise result in a final product that provides a greater level of public benefit than would be required under the existing zone district. Each R-P district requires approval of an R-P regulating plan that includes the location, type and intensity of proposed development and a description of public amenities or benefits included. Single-family residences, two-family residences and townhouses, as well as accessory uses, are permitted, as shown in Table 50-19.8, provided projects are compatible in scale and character with the surrounding neighborhood and are included in the approved R-P plan;

- UDC Sec. 50-14.7.C: Modifications

An applicant may seek only the modifications in Table 50-14.7-1, based on demonstration of how the proposal supports the

purpose of the R-P district as stated in subsection 50-14.7.A and the following desired R-P amenities:

- 1. Significant preservation and protection of natural resources and undeveloped areas, including wetlands and trees.
- 2. A higher level of sustainability in buildings, site design, and transportation.
- 3. More efficient and effective use of streets, utilities, and public facilities to support high quality development at a lesser cost.
- 4. Recreational facilities that are open to the public, such as parks and playgrounds.
- 5. Accommodations for and linkages to mass transit.
- 6. Creative site design as appropriate for the site.
- 7. Bike lanes and trails within the development and connecting to other trails and destinations.
- 8. Pedestrian amenities such as benches, plazas, pedestrian-scaled lighting, traffic calming, and art.
- UDC Table 50-14.7-1: Modifications Allowed.

Applicant may seek only certain modifications to the base zoning.

- UDC Sec. 50-14.7.H: Required rezoning application and regulating plan contents.
- 1. The rezoning application (approved per Section 50-37.3) shall include the following information:
- (a) A concept map showing the property to be rezoned and general uses within the area; (b) Maximum residential densities and maximum square footage for nonresidential land uses; (c) Maximum building heights;
- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.
- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application:
- 1. Is consistent with the Comprehensive Land Use Plan;
- 2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3. Is required by public necessity, convenience, or general welfare, or good zoning practice;
- 4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principles

Governing Principle #2 - Declare the necessity and secure the future of undeveloped places.

Undeveloped areas are an essential part of Duluth's municipal fabric— urban plazas, neighborhood parks, large tracts of public ownership, and private lands zoned for minimal development. This project preserves open space by allowing for a more clustered form of development than anticipated under the base zoning category.

Governing Principle #7 - Create and maintain connectivity.

Connectivity is established through our network of streets and highways, transit system, sidewalks, greenways, bikeways, and trails (local and regional). This development would include a private street that connects to the public street network, and a paved trail connecting into the northern portion of Harbor Light. The development will better utilize Marble Street and available city utilities, as described in the comprehensive plan.

Governing Principle #12 - Create efficiencies in delivery of public services.

The costs of public service must be considered in land use decisions. This project reduces public costs by providing a private street and otherwise using existing utilities and streets.

Future Land Use

Low-Density Neighborhood - Single-family housing with urban services. Typified by curvilinear streets, houses with longer dimension parallel to street, and attached garages. Includes a range of house sizes and lot sizes. Non-residential uses are mainly uses such as schools and churches. Parks and open space are located within or adjacent. 3-4 units/acre (future study), conservation development an option, required with sensitive lands overlay limited number of secondary/granny flats

Site History or Previous Studies

- 1. Site is part of a 40-acre area originally owned by ISD 709 who determined the land was surplus and sold it to Duluth Gospel Tabernacle in 2011.
- 2. April 12, 2016: Planning Commission approved the Arrowhead Road Land Use Study that considered higher intensity land uses along Arrowhead Rd. from Arlington Ave. to Swan Lake Rd. (PL 16-030).
- 3. May 19, 2016: Wetland Delineation approved for the site identifying 8.7 acres of mostly Type 7 Hardwood Swamp scattered throughout the 39.2-acre site (PL 15-173).
- 4. December 12, 2016: City Council rezoned the north half of the subject site from RR-1 Rural Residential to R-2 Urban Residential & the south half of the site from RR-1 to R-1 Traditional Residential (Ord. 16-074-O, #10486, PL 16-127).
- 5. November 2, 2016: Wetland Replacement Plan approved to allow 0.9 acres of wetland impact on the site for a new church and commercial use of the property. Wetland credits to be purchased in Cook Co. (PL 16-132).
- 6. April 25, 2017: City Council approved Comprehensive Plan Future Land Use Map amendments to implement the land use study, which resulted in changing the north half of the subject site to Urban Residential from Low-Density Residential and leaving the south half of the subject site Low-Density Residential (Res. #16-0305, PL 16-030).
- 7. May 9, 2017: Planning Commission approved the Preliminary Plat of the 39.2 acre Harbor Light Division (PL 17-061).
- 8. October 10, 2017: Planning Commission approved the Final Plat of the Harbor Light Division (PL 17-107) subdividing 39.2 acres into 4 building lots, including the this subject property.
- 9. March 13, 2018: Planning Commission approved the replatting of Harbor Light Division to dedicate two public roads for the property (PL 18-019).
- 10. July 9, 2018: City Council approved Ordinance #10578 rezoning the north 18 acres of the Harbor Light plat to Mixed Use-Planned (MU-P) (PL 18-069).
- 11. August 14, 2019: Land Use Supervisor approved a Boundary Line Adjustment affecting Lots 3 and 4, Block 1, Harbor Light Division, to take 2.3 acres from Lot 3 and add it to Lot 4 resulting in Lot 4 being 7.19 acres (PL 19-102).

Review and Discussion Items:

- 1) The proposal is a 25-unit (with a mix of single-detached and twinhome dwellings) Common Interest Community (CIC) located on private streets with 3.5 acres of open space, trails, a pocket park, and storm water treatment facilities all owned and managed by a home owners association. Approval of the R-P Plan will enable the applicant to use the CIC process to subdivide the land and allow for common ownership of shared spaces. The open space, trails, and pocket park will be designed for and intended to be made available for the general public, including the surrounding neighborhood and the new uses to the north, to use.
- 2) The applicant has provided a Concept Map and General Layout as well as a table showing proposed modifications to zoning requirements. The applicant's Public Benefits Summary explains how the proposed site design will meet the purpose statement of the R-P Zone District.
- 3) The proposed project is consistent with the future land use designation showing single and twinhome dwellings with attached garages on a curving street with all municipal utilities. The overall density is 2.6 units per acre and the proposal is to conserve 3.5 acres as open space with trails. The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan, and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or be considered arbitrary and capricious. Good zoning practice requires that zone districts be consistent with the future land use category identified for the area. In this case, the Low-Density Neighborhood designation speaks of single-family housing with urban services on curvilinear streets, attached garages, with a range of house sizes, with an overall density of 3-4 units per acre. Conservation development is listed as an option with parks and open space areas located within or adjacent.

- 4) The applicant's Public Benefits Summary says "the site design and layout of the R-P development has been studied and intentionally designed to work well with existing site constraints and the natural topography" and "will be providing public benefit by conserving natural areas and allowing community access to 3.5 acres of green space . . . made up of preserved wetlands along with a designated tree conservation area with high quality woods that include white pine, red pine, maple, birch, aspen and basswood species." Additional public benefits include natural surface trails to connect Marble Street to Evergreen Circle and the paved pathway for a looped trail system, a pocket park along Marble Street, and on-site storm water management using green infrastructure systems draining to preserved wetland areas. These Concept Plan features advance R-P zoning requirements.
- 5) The 2018 Housing Indicator Report (https://duluthmn.gov/media/8390/2018-housing-indicator-report.pdf) identifies the continued need for housing units in Duluth. The proposed development provides housing in an area with existing infrastructure and is consistent with the scale of the surrounding neighborhood. The proposed housing, open space, and trails contributes to the general welfare of the community.
- 6) The proposed project orients the 25 new dwellings to the internal private streets and retains trees along the north side of part of Marble Street as a buffer and "pocket park" managed by the homeowners association for the benefit of new and existing residents. The new trails and open space will be a benefit to the surrounding neighborhood. Existing utility and street infrastructure have capacity to handle the proposed development according to the City Engineering Division.
- 7) The applicant held a neighborhood meeting (summary of comments attached) on August 28 with about 15 people in attendance. No other written correspondence has been received as of the date that this report was printed.

Staff Recommendation:

Based on the above findings, summarized below, staff recommends that the Planning Commission recommend approval to the City Council of the rezoning to R-P.

- 1) The proposed zone district is reasonably able to implement the objectives of the Comprehensive Plan related to the land use for this area; and
- 2) The proposed rezoning is related to the overall housing and open space needs of the community and the scale of adjacent land uses; and
- 3) The proposed Concept Plan features, when detailed in a Regulating Plan, are anticipated to satisfy R-P zoning requirements; and
- 4) Material adverse impacts on nearby properties are not anticipated.

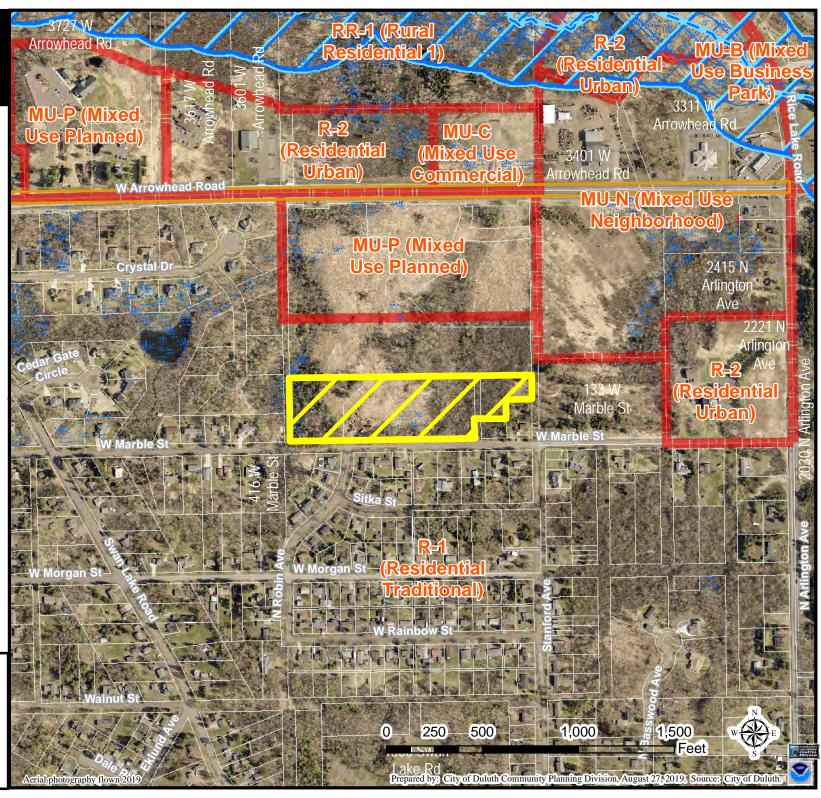


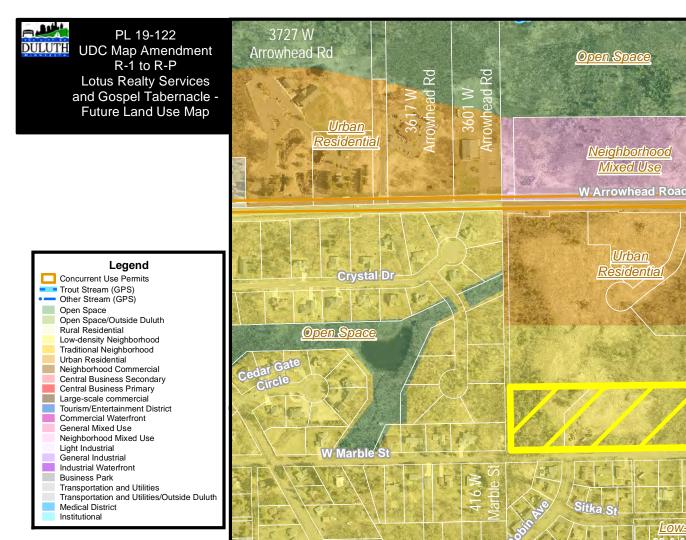
PL 19-122
UDC Map Amendment
R-1 to R-P
Lotus Realty Services

Lotus Realty Services and Gospel Tabernacle



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Urban Residential **Arlington Ave** Low=density The City of Duluth has tried to ensure that the information Open 250 500 1,000 1,500 Feet Prepared by: City of Duluth Community Planning Division, August 27, 2019. Source: City of Duluth. contained within. Aerial photography flown 2019

3311 W

Arrowhead Rd

Nefghborhood

Commercial

Neighborhood

Mixed

2415 N

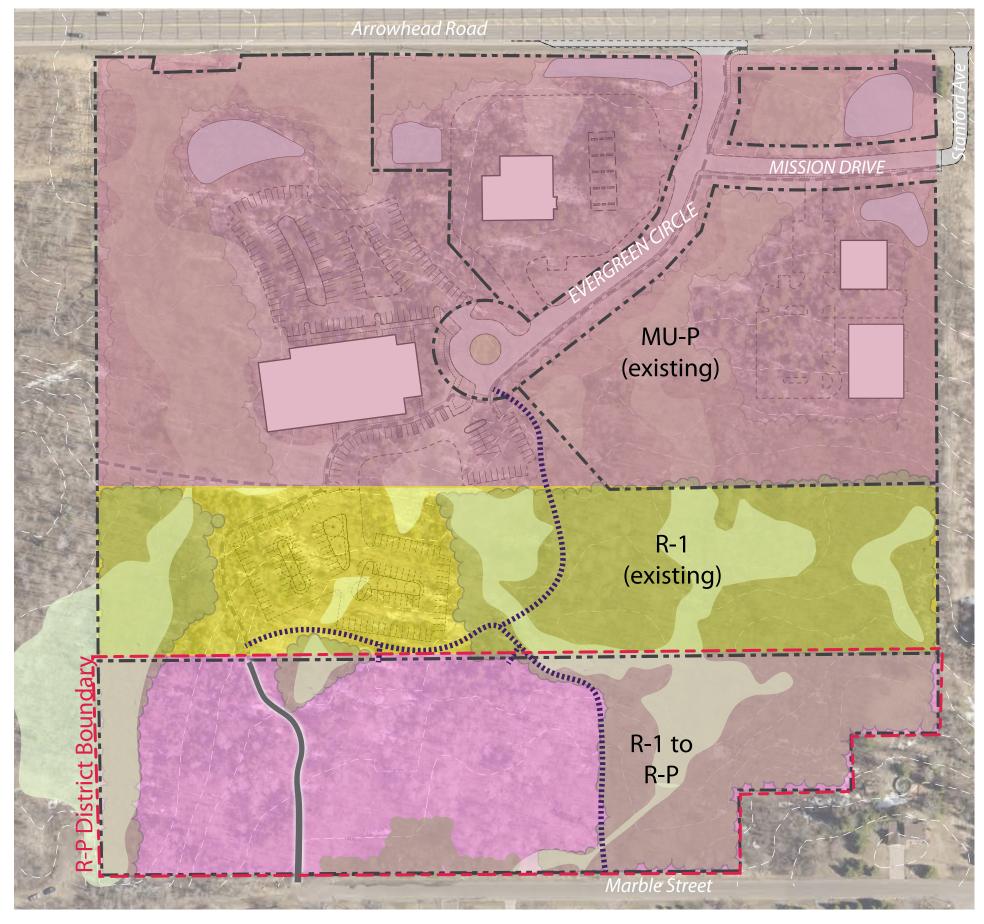
Arlington Av

3401

Arrowhead I

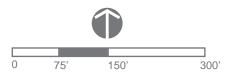
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R-P Concept Map



	Parcel Allocation						
Parcel	Gross Acres	Open Space/ Green Space	Net Developed Acres	Permitted Uses	Maximum Density	Max. Height	
3	9.8 ac	3.5 ac	6.3 ac	Single-family residences, Two-family residences, and Town- houses	Medium Density	35′	

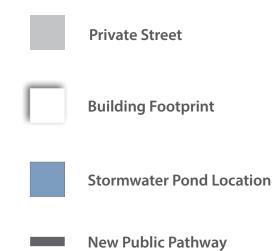
R-P District Dimensional Standards					
	Lot Standards				
Minimum Lot Area	Single Family	3,200 sq ft			
	Two-Family, Townhouse	2,400 sq ft			
Minimum Lot Frontage	Single Family, Two-family, and Townhouse	30 ft			
Minimum depth of front and rear yard	Single Family, Two-family, and Townhouse	20 ft			
Minimum side yard setback	Single Family, Two-family, and Townhouse	5 ft			

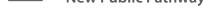


R-P General Layout (Proposed)



Legend











Harbor Light Development Lot 4 RP District – Public Benefits Summary

Per UDC Section 50-14.7, the following design features and desired amenities will be included in the Lot 4 RP District:

<u>Variety of housing types, creative site design + a high level of sustainability:</u>

The proposed Residential Planned (RP) district at Harbor Light Lot 4 will consist of a unique residential development with a mix of housing types including 9 single-family residences and 16 twinhome units surrounded by a mature maple basswood forest. The development will be situated within the Duluth Heights neighborhood, accessed from West Marble Street, and will include a private looped road with a dead-end spur for individual and shared driveway access. The building architecture of the new homes will be sustainable, aesthetically pleasing and will fit into the existing neighborhood character with the use of similar roof lines and natural materials to provide a consistent and intentional look.

<u>Unique site amenities, public open spaces + neighborhood connections:</u>

The project will incorporate distinctive on-site amenities including a small pocket park, bench seating, visitor parking (for 4 cars), and will also increase neighborhood connectivity by providing a new pedestrian looped trail system which will begin at the intersection of West Marble Street and North Robin Avenue. A new paved trail will run along the west side of the private road to the shared visitor parking area, then travel north through Lot 3, and eventually will connect with the sidewalk/trail system on Evergreen Circle, Mission Drive and Arrowhead Road. In addition to the paved trail, a natural surface footpath will link to the adjacent neighborhood to the west via Crystal Drive (on Lot 3), as well as loop back towards Marble Street on the east side of the development of Lot 4. The new trail system will be maintained in partnership by the home-owners association and the Gospel Tabernacle Church, but will be open to the general public to enjoy. This new pedestrian circulation system will total over 1 mile in length and will provide new connections to the adjoining neighborhoods as well as to Arrowhead Road that have not otherwise existed before.

<u>Preservation and protection of natural resources, + undeveloped areas:</u>

The RP district will be providing a public benefit by conserving natural areas and allowing community access to 3.5 acres of green space on privately owned land. The green space is made up of preserved wetlands along with a designated tree conservation area with high-quality woods that include white pine, red pine, maple, birch, aspen and basswood species. The green space areas are home to wildlife habitat and act as buffers from wind as well as provide screening from other developed areas. A small pocket park, located just north of Marble Street and managed by the homeowners association, will also serve as a passive green space for the neighborhood and community to enjoy.

Preserving this ample green space will be benefiting the community in multiple ways, as providing the opportunity to experience nature in a close setting has been shown to be beneficial to human health and wellness by reducing stress, improving general mood and attitude, increase mental health, improve mindfulness and creativity. It will also provide homeowners a chance to connect with each other as the presence of trees and landscape has been shown to promote community connections. Lastly, views of green space are linked to greater perceptions of well-being, neighborhood satisfaction and safety.

Effective use of site design to support high quality development at lesser cost:

The site design and layout of the RP development has been studied and intentionally designed to work well with existing site constraints and the natural topography to reduce overall construction costs, thereby providing another great public benefit. Because of recent development occurring on adjacent Lots 1 & 3, there was a considerable cost savings to rough grade Lot 4 simultaneously with the current project. To even further lessen costs, the overall development footprint was reduced which also allowed for significant preservation of wetlands and mature vegetation to occur. As part of the low impact design philosophy, a looped road system was planned to maximize housing units on both sides of the streets and where feasible, driveways will be shared. In addition to the visitor parking area, some on-street parking near the trail may be incorporated into the design. Private utilities will be located within the loop road and will be brought to each building with connection hook-ups. Twinhomes on the north side of the site will be sited to maximize the existing grades and will have a 5'-6' elevation change providing a desirable look-out condition with views to the north. Other sustainable and cost-effective site design features include curb and gutter along the road to assist with drainage, green infrastructure practices such as raingardens or biofiltration swales, to help manage stormwater run-off, as well as the planting of landscape trees and turf restoration in all disturbed areas. Because the site design and infrastructure for the development has already been intentionally planned for and designed as one whole project, the building costs for each home will be greatly reduced. Obtaining this type of housing density while still providing a highquality development at lower costs will benefit the neighborhood and general public.

With these design features and desired amenities listed above, the RP district will provide a lower cost option and a better final product for the LOT 4 development and will be providing a greater level of public benefit than required under the existing zone district.

Harbor Light Lot 4 Development - Neighborhood Meeting Summary

A neighborhood Open House meeting was held on August 28th 2019, from 4:30 – 6pm at the Crooked Pint Ale House to share proposed residential development plans for Lot 4 of the Harbor Light Development with interested residents. There was approximately 15 attendees present, see attached sign-in sheet for details. A summary of the general comments and questions are below.

- Many residents liked the proposed trail system and were happy to see how it linked to adjacent neighborhoods.
- One resident on Marble Street was not happy with the proposed housing development as it will
 increase traffic on the quiet street and she will be losing privacy and views to the trees across
 the street.
- A few people appreciated that the development will have its own private road rather than having many driveways outlet onto Marble Street.
- Many residents liked that there are no plans to connect Marble Street to Evergreen Circle, only a pedestrian through-route will exist to Arrowhead Road.
- Will Marble Street get upgraded with the new development? A few people commented on the poor condition of Marble Street to the east.
- There was concern that the proposed development would be low-income housing. A board of possible housing styles was present to show housing types, style, and approximate sizes.
- There was desire to preserve the large maple tree at the corner of Marble Street and N Robin Ave. The plans currently show the private road meeting up with N Robin Ave near the tree's location. LHB will assess the grades and street alignment to see if it can be preserved.
- There was also desire to preserve the remaining trees to serve as a buffer between Marble Street and the housing development (some in the ROW). LHB will assess the grades and make a concerted effort to salvage as many trees as possible.

Harbor Light Lot 4 Development – Neighborhood Meeting Summary LHB Job#: 150732

08/29/19

 From:
 Bill Benson

 To:
 Kyle Deming

 Subject:
 RE: PL 19-122

Date: Tuesday, September 10, 2019 11:20:11 AM

TO: Planning Commission

RE: Notice of Public Hearing for Rezoning 9.8 ac. On the north side of Marble St. to Residential-Planned (R-P) PL 19-122

Several months ago there was a hearing regarding this same area asking that the residential site plans be vacated to allow for the development and construction of a church by Duluth Gospel Tabernacle. I don't believe there was much, if any, opposition to that plan. We did become concerned as the site was being cleared because it seemed to be of a much larger scope and the large wooded area was clear cut from Arrowhead Road to within a few feet of Marble.

Our concerns are heightened with the request by the Duluth Gospel Tabernacle and Lotus Realty Services to now develop the area into Residential-Planned. On its face the area of development per the site plan seems reasonable if there isn't any additional requests to further develop the area. The planning commission needs to carefully consider the impact to an area of only single family dwellings into an area with the option (per the R-P code) for multiple family dwellings especially regarding the infrastructure and the already deteriorated condition of the local streets.

Thank you for your consideration and attention to this matter.

Respectfully,

Michael J. Benson, Property Owner

William E. Benson, Jr. and JoEllen Benson, Relative Homestead/Life Time Estate

219 Sitka Street Duluth, MN 55811



Looking east down Marble St. at Robin Ave. Intersection, site to the left



Looking north down Robin Ave. into the site



Looking south down Robin Ave. at Marble St. intersection, site behind



Taken from Marble St. looking north toward the site



City of Duluth

Legislation Details (With Text)

File #: 19-033-O **Name:**

Type: Ordinance Status: Passed

File created: 6/14/2019 In control: Planning and Economic Development

On agenda: 6/24/2019 **Final action:** 7/8/2019

Title: AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT USE PERMIT FOR A PRIVATE

ELECTRICAL DUCT BANK IN THE PLATTED STREET RIGHT OF WAY OF NORTH FIFTH AVENUE

EAST.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Attachment 1, 2. Attachment 2

Date	Ver.	Action By	Action	Result
7/8/2019	1	City Council	adopted	
6/24/2019	1	City Council	read for the first time	

AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT USE PERMIT FOR A PRIVATE ELECTRICAL DUCT BANK IN THE PLATTED STREET RIGHT OF WAY OF NORTH FIFTH AVENUE EAST.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to St. Mary's Duluth Clinic Health System, dba Essentia Health East, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

- (a) A private electrical duct bank, as shown in the exhibit Attachment 1.
- Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:
- (a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and
- (b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and
- (c) The insurance policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth, directed to the attention of the director of planning and economic development; and
 - (d) The city of Duluth shall be named as an additional insured; and
 - (e) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to

use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 60 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

<u>Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice.</u> Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, sidewalks, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

- (a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibits; and
- (b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement; and
- (c) Permittee will locate any private improvements in accordance with Gopher State Once Call rules and the Permittee or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects; and
- (d) Within 45 days of installing the private improvements, Permittee shall submit record drawings shall be in accordance with the city of Duluth Public Works and Utilities' "Engineering

guidelines for Professional Services and Developments"; and

- (e) Permittee shall provide notice to City Engineer at 218-730-5200 at least two working days in advance of any work permitted under this permit or any other permits related to such work and shall schedule such work to coordinate with any required inspections; and
- (f) Permittee shall obtain all other permits as may be required by the city, other governmental agencies, and, including, but not limited to obstruction, excavation, electrical, stormwater, etc; and
- (g) Permittee must repair or replace at their expense any damage to anything in the right-of -way caused by the Permittee's permitted installation or operations to the city's reasonable satisfaction; and
- (h) The Permittee shall maintain the private improvements in a good and safe condition, and in compliance with all applicable fire, health, building or other codes or permits as applicable.
- Section 9. The following events shall automatically cause the termination of the term of this ordinance:
- (a) The failure by the permittee to file the required insurance certificate as specified in Section 2 60 days after this ordinance takes effect, or to file the insurance certificates annually thereafter; or
- (b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect; or
- (c) The failure of the permittee to register with Gopher State One Call as a facility operator, or to maintain current contact information with Gopher One.
- Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.
- STATEMENT OF PURPOSE: This is one of three concurrent use permits allowing private obstructions in the public right of way, granted to Essentia Health East for the new Vision Northland project (replacement hospital bed tower, clinic space, and surgery suites).
- PL 19-019, inpatient tower and replacement of a portion of existing clinic over the alley right of way between Superior Street and East First Street;
- PL 19-021, inpatient tower and replacement of a portion of existing clinic over First Street and placement of new structural supports within right of way of East First Street,
- PL 19-022, private utility work to provide electrical duct banks from the existing emergency generators within the right of way of North 5th Avenue East.

These three concurrent use permits are being reviewed in coordination with a MU-I Planning Review (PL 19-018) and an UDC Map Amendment to rezone (PL 19-023) in conformance with the City's Comprehensive Plan and future land use map.

On May 29, 2019, the Duluth city planning commission held a special public hearing on the proposal as described in Attachment 2, and voted 7 yeas, 0 nays, 0 abstentions, to recommend that the city council approve the request for a concurrent use of streets, with the condition that the applicant comply with all the conditions listed in the ordinance.

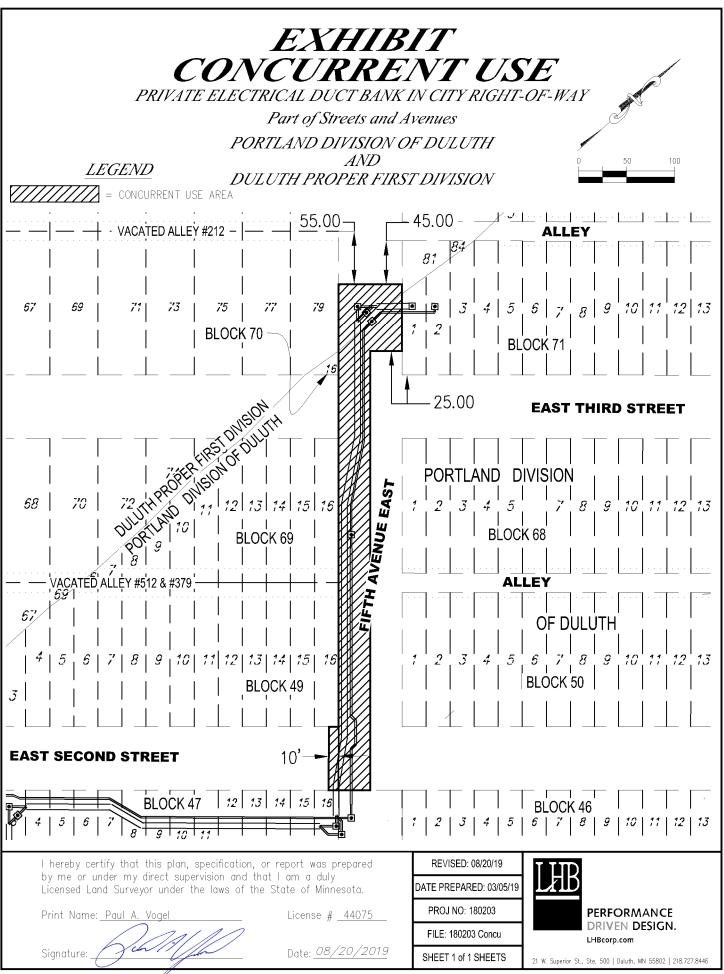
File #: 19-033-O, Version: 1

Petition received: May 8, 2019

Action deadline: September 5, 2019

Applicant: Essentia Health East

PL 19-022



LEGAL DESCRIPTION:

All that part of Fifth Avenue East and East Second Street easterly of a line 10.00 feet westerly of the west line of said Fifth Avenue East and northerly of the south line of East Second Street adjacent to Lot 16, Block 47, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East and East Second Street easterly of a line 10.00 feet westerly of the west line of said Fifth Avenue East adjacent to Lot 16, Block 49, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East and East Third Street easterly of west line of said Fifth Avenue East adjacent to Lot 16, Block 69, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East and East Third Street easterly of west line of said Fifth Avenue East adjacent to Lot 16, Block 70, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East northerly of line 25.00 feet northerly of the north line of East Third Street adjacent to Lot 1, Block 71, PORTLAND DIVISION OF DULUTH, City of Duluth, St. Louis County, Minnesota.

AND

All that part of Fifth Avenue East adjacent to Lot 79 southerly of a line 55.00 feet southerly of and parallel with the centerline of vacated alley adjacent to said Lot 79, East Third Street, DULUTH PROPER FIRST DIVISION, City of Duluth, St. Louis County, Minnesota.

AND

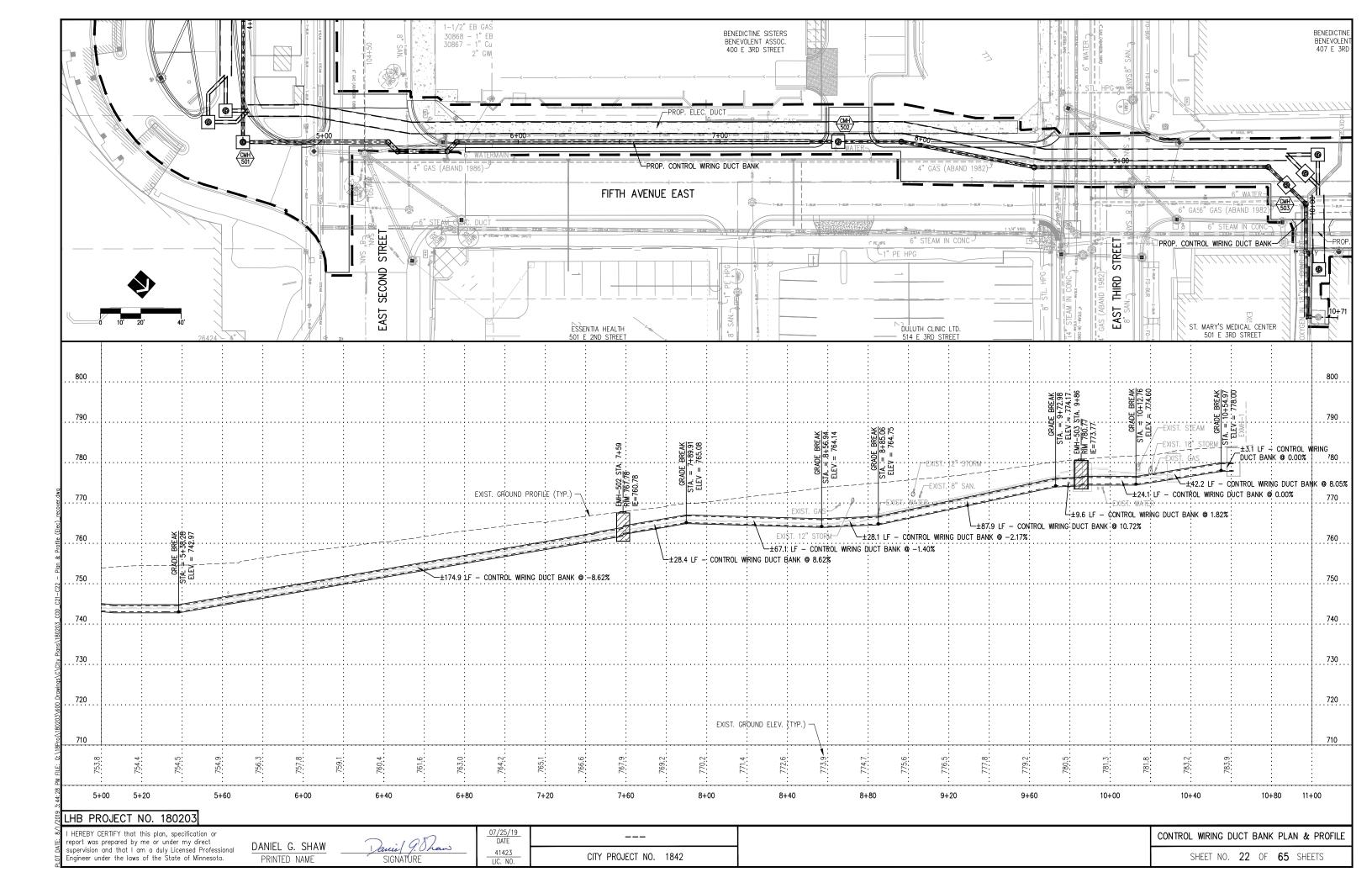
All that part of Fifth Avenue East adjacent to Lot 81southerly of a line 45.00 feet southerly of and parallel with the south line of alley adjacent to said Lot 81, East Third Street, DULUTH PROPER FIRST DIVISION, City of Duluth, St. Louis County, Minnesota.

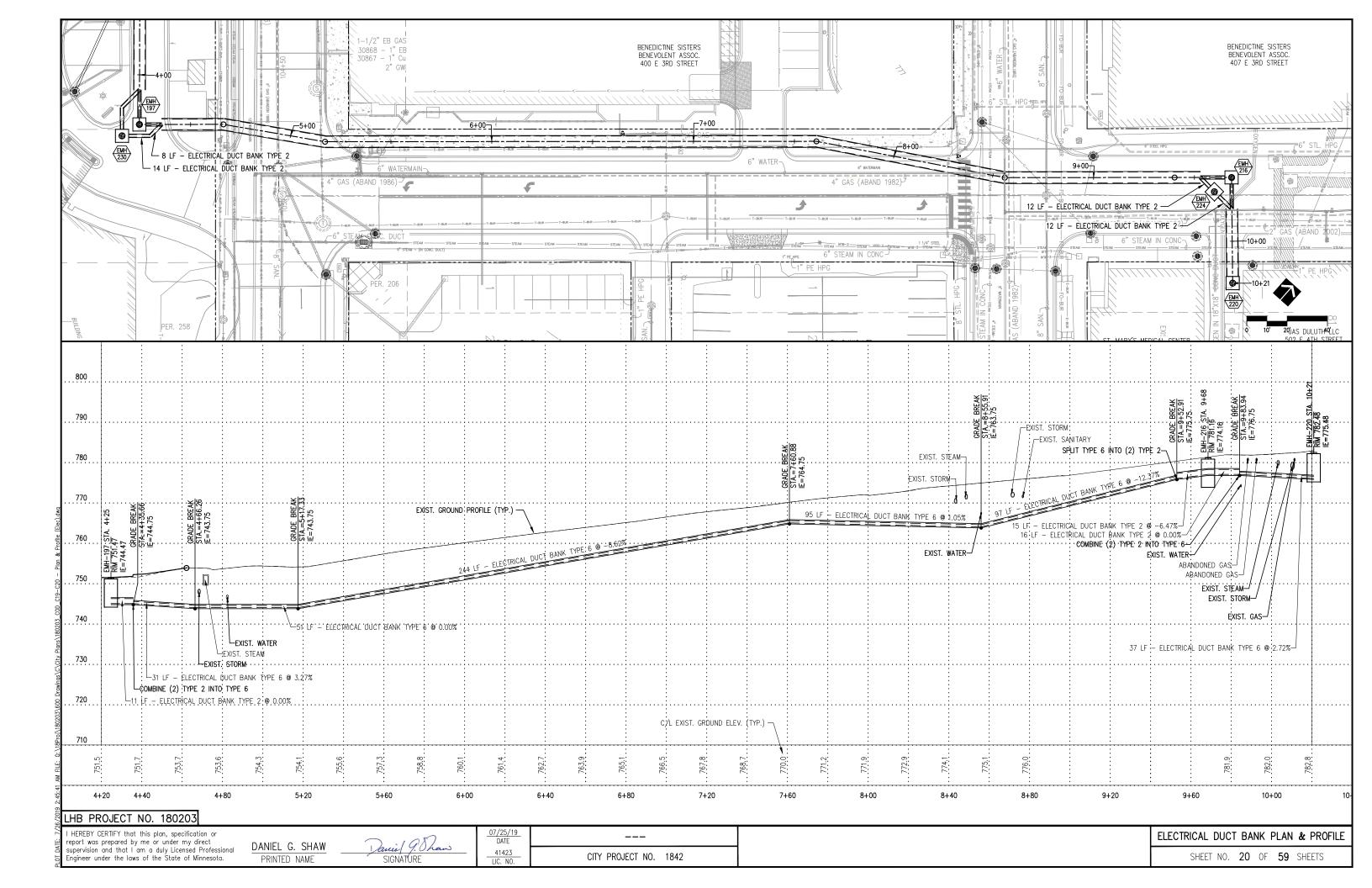
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Date / 20 / ZO / 2019 License No. 44075

Page 1 of 1







Planning & Development Division

Planning & Economic Development Department



Room 160 411 West First Street Duluth, Minnesota 55802

File Number	PL 19-022*		Contact	Contact Steven Rob		ertson	
Туре	Concurrent Use Permit*		Planning Commission Date		on Date	September 10, 2019	
Deadline	Application Date		August 2, 20	August 2, 2019 60 Days		October 8, 2019	
for Action			August 23, 2019		120 Days	December 7, 2019	
Location of Subject 5 th Avenue East,		5 th Avenue East, Generally Betwe	, Generally Between East Third and East Second Street				
Applicant	Essentia I	Health	Contact	Contact Scot Ramsey, Vice President Facilities			
Agent	LHB		Contact	Evan A	van Aljoe, Healthcare Studio Lead		
Legal Description		See Attached	Sign Notice Date			August 27, 2019	
Site Visit Date		September 2, 2019	Number of Letters Sent		Sent	N/A	

Proposal

The applicant is seeking an amendment to an approved concurrent use permit to construct private underground utilities within the public right-of-way of Fifth Avenue. The applicant intends on adding a second bank of underground private conduit for low voltage communication and data cabling along the same route.

Staff Recommendation

Staff is recommending Planning Commission recommend approval to the City Council.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-I	Medical	Medical District
North	MU-I	Medical	Neighborhood Mixed Use/Urban Res.
South	F-8	Highway/Commercial	Tourism/Open Space
East	MU-N/MU-I	Residential	Urban Residential
West	MU-I/F-5/F-8	Commercial	Central Business Primary/Secondary

Summary of Code Requirements

UDC Section 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

- 1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
- 2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
- 3. No portion of a public easement proposed for use is being physically used or occupied by the public.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Principle #5 -Promote reinvestment in neighborhoods.

Duluth is strongly defined by its neighborhoods. This system should be supported through land use and transportation that foster neighborhood reinvestment. New development or redevelopment should maximize public investment that strengthens neighborhood commercial centers or diversifies residential opportunities that fit the neighborhood's character.

Governing Principle #8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide.

Future Land Use

Future Land Use Institutional. Applicable to medical, university/college, public school, religious, or governmental campuses. Can include adjacent areas that support them, with related commercial and/or office uses, and residential uses in the fringe areas of the district.

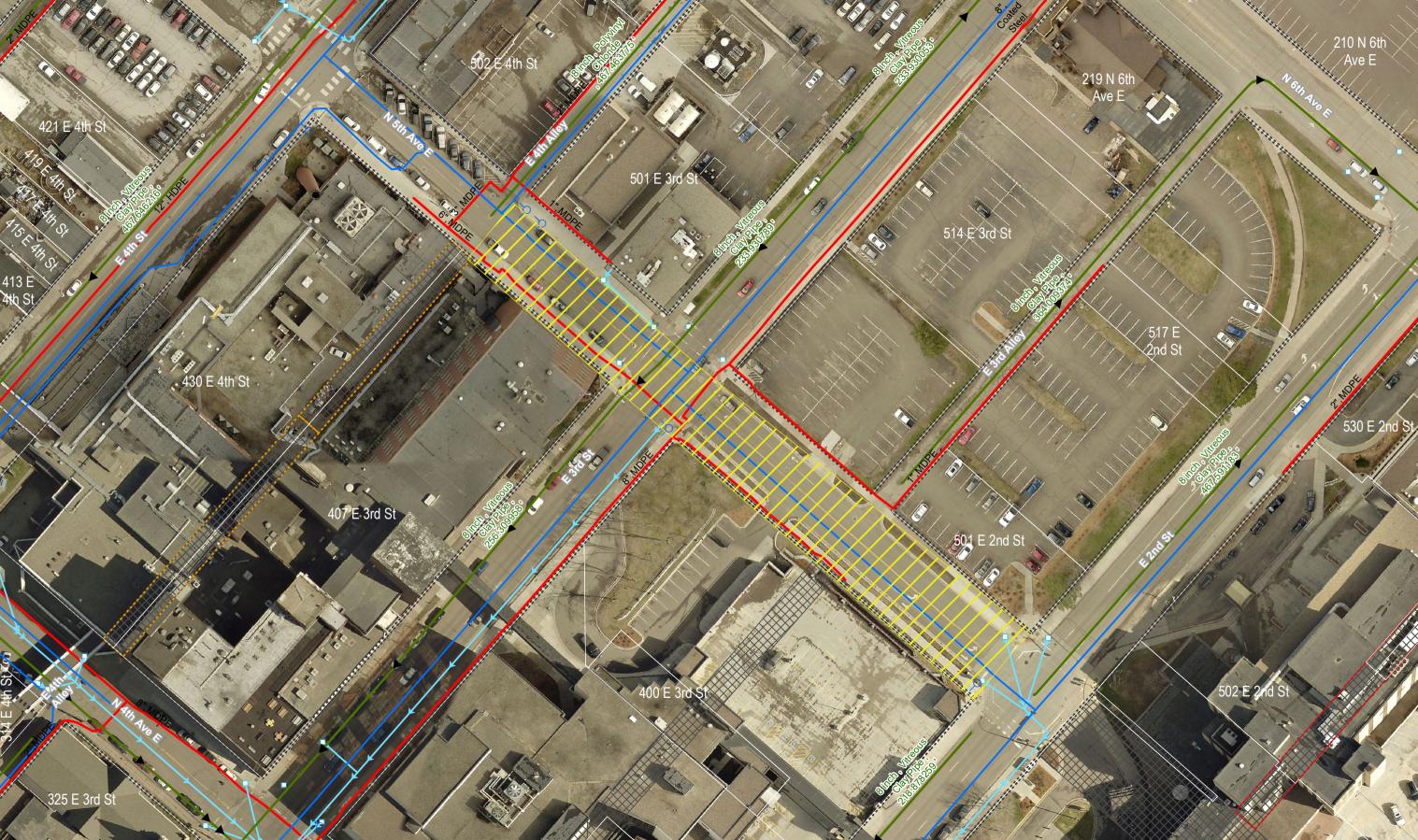
Review and Discussion Items:

- 1) The applicant is seeking an amendment to a previously approved concurrent use permit to construct private underground utilities within the public right-of-way of Fifth Avenue, adding a second bank of underground private conduit for low voltage communication and data cabling along the same route. This application is related to the MU-I Planning Review (PL 19-018) for the new 940,000 square foot medical facility proposed by Essentia Health.
- 2) The area proposed for the concurrent use permit will not take away from the public's ability to use the public right-of-way, nor will it harm or inconvenience the health, safety and general welfare of the city.
- 3) Concurrent use permits are approved by the City Council via an ordinance. Unlike street right-of-way vacations, concurrent use permits are not recorded at with St. Louis County as they are voidable agreements between the City and property owners. City engineering has reviewed and approved the exhibits.
- 4) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against all occurrences in the right-of-way. Other protections for the city and the public are typically included in the ordinance that is submitted for the City Council's review. The ordinance will require that the project proposer will locate any underground items in accordance with Gopher State One Call rules, and that the city will bear no responsibility for locating any facility related to the concurrent use permit except as it is legally responsible under the Gopher State One Call rules.
- 5) No comments were received from the public or other government agencies at the time this staff report was written (September 3, 2019), other than technical comments/corrections to the exhibits.
- 6) A condition of earlier zoning applications was that Essentia Health locate any private improvements in accordance with Gopher State Once Call rules and that they or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects. On August 14, 2019, Essentia Health was enrolled in Gopher One as a provider (MN01741).
- 7) Per UDC Sec. 50-37.1.N, approved concurrent use permits lapse if the project or activity authorized by the permit has not begun within one-year.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission approve the concurrent use permit with the following conditions:

- 1) Applicant construct and maintain the project as identified in the attached exhibits.
- 2) Applicant provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 3) Applicant will remove the obstructions at the applicant's expense if directed to by the City with appropriate notice.
- 4) The structure will need to comply with any applicable engineering standards, or building or fire code requirements.
- 5) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.





August 22, 2019

Community Planning Division – City Hall c/o Steven Robertson 411 W. 1st Street Room #110 Duluth, MN 55802

RE: Concurrent Use Permit for 5th Avenue East

Dear Mr. Roberson:

The purpose for this concurrent use is to locate private underground utilities within the ROW. The utilities consist of two separate sets of electrical conduit. 1 set of conduit will extend emergency electrical power from existing emergency generators located north of 3rd Avenue down the west side of 5th avenue east and across 2nd street to the project. The second set of conduit will extend low-voltage communication and data cabling along the same route.

Please feel free to contact me directly if you have any further questions or concerns.

LHB

Evan Aljoe

Healthcare Studio Leader

From Aljoe

c: Scot Ramsey

Vice President – Facilities Essentia Health East

Q:\18Proj\180203\400 Design\403 Regulatory\concurrent use\5th Ave\20190802 Amendment\Concurrent Use cover letter - 5th Ave.docx



April 17, 2019

Community Planning Division – City Hall c/o Keith Hamre, Director 411 W. 1st Street Room #110 Duluth, MN 55802

RE: Concurrent Use Permit Acknowledgement

Dear Mr. Hamre:

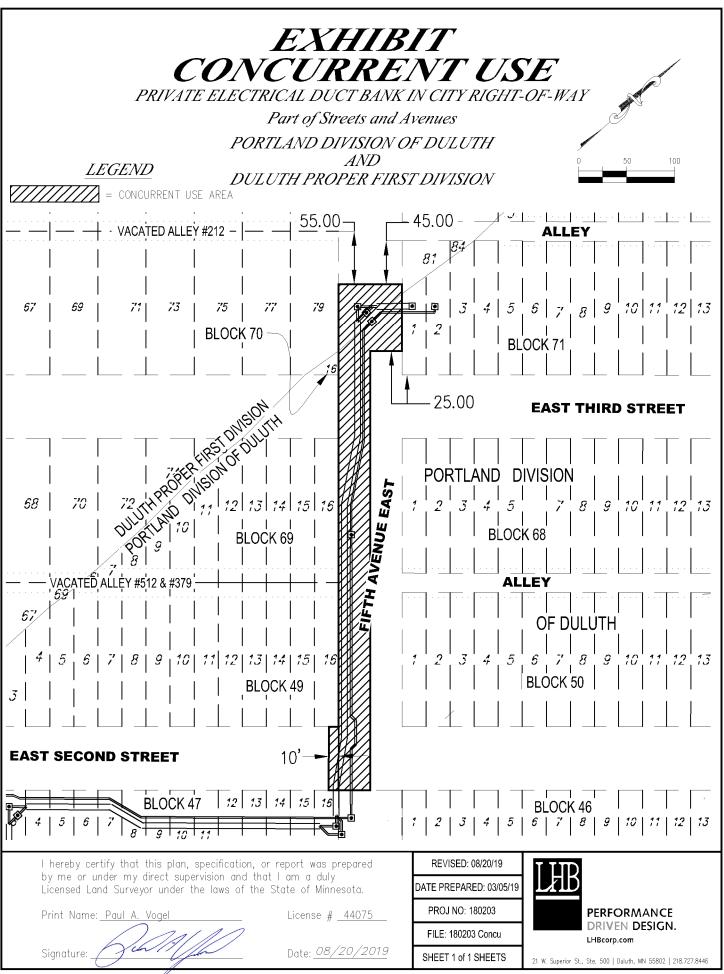
Pursuant to our Concurrent Use of Streets Application and the requirement of Section 50-37.7.C (f), we acknowledge that to the extent any of Essentia's private improvements are installed in the public right of way that they may be removed by the City of Duluth if needed for installation or repair of public improvements or if Essentia, as applicant, violates the terms of the permit granted.

Please feel free to reach me by phone at (218) 786-2625 with any questions or concerns related to this correspondence.

Sincerely,

Scot Ramsey

Vice President – Facilities Essentia Health East



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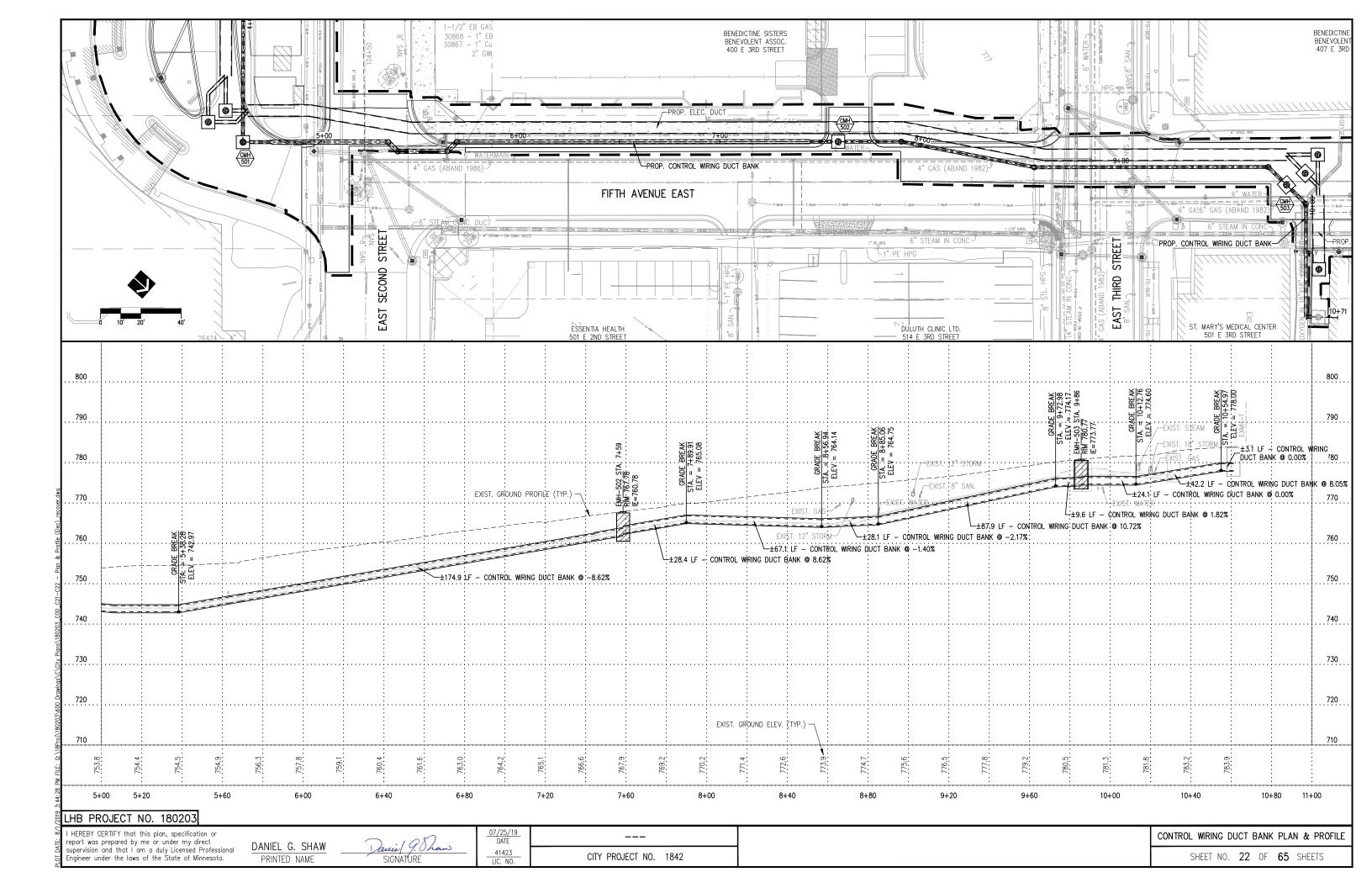
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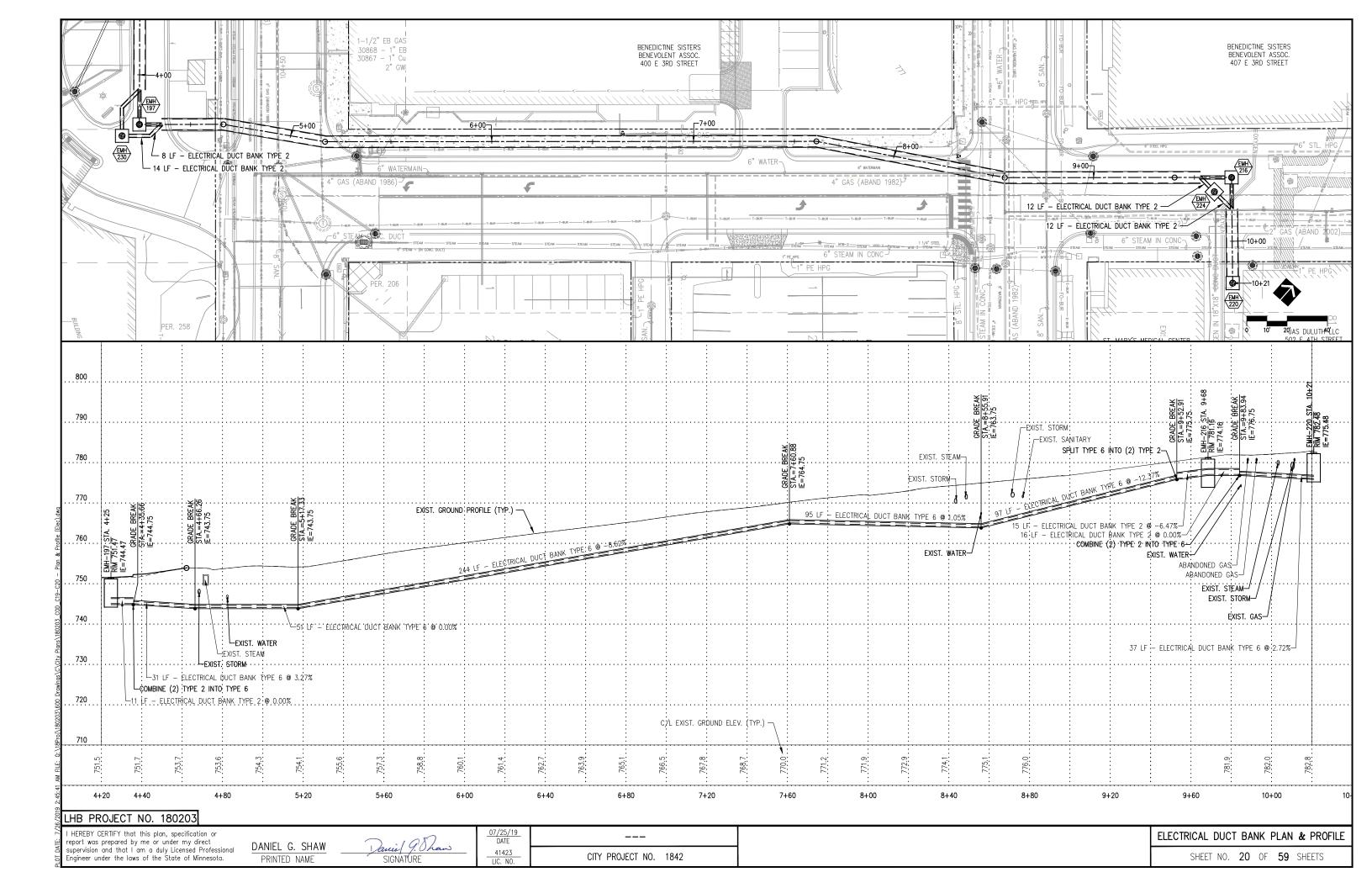
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Date 20/20/9 License No. 44075

Page 1 of 1







City of Duluth

Legislation Details (With Text)

File #: 19-033-O **Name:**

Type: Ordinance Status: Passed

File created: 6/14/2019 In control: Planning and Economic Development

On agenda: 6/24/2019 **Final action:** 7/8/2019

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- Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:
- (a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and
- (b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and
- (c) The insurance policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth, directed to the attention of the director of planning and economic development; and
 - (d) The city of Duluth shall be named as an additional insured; and
 - (e) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to

use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 60 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

<u>Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice.</u> Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, sidewalks, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

- (a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibits; and
- (b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement; and
- (c) Permittee will locate any private improvements in accordance with Gopher State Once Call rules and the Permittee or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects; and
- (d) Within 45 days of installing the private improvements, Permittee shall submit record drawings shall be in accordance with the city of Duluth Public Works and Utilities' "Engineering

guidelines for Professional Services and Developments"; and

- (e) Permittee shall provide notice to City Engineer at 218-730-5200 at least two working days in advance of any work permitted under this permit or any other permits related to such work and shall schedule such work to coordinate with any required inspections; and
- (f) Permittee shall obtain all other permits as may be required by the city, other governmental agencies, and, including, but not limited to obstruction, excavation, electrical, stormwater, etc; and
- (g) Permittee must repair or replace at their expense any damage to anything in the right-of -way caused by the Permittee's permitted installation or operations to the city's reasonable satisfaction; and
- (h) The Permittee shall maintain the private improvements in a good and safe condition, and in compliance with all applicable fire, health, building or other codes or permits as applicable.
- Section 9. The following events shall automatically cause the termination of the term of this ordinance:
- (a) The failure by the permittee to file the required insurance certificate as specified in Section 2 60 days after this ordinance takes effect, or to file the insurance certificates annually thereafter; or
- (b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect; or
- (c) The failure of the permittee to register with Gopher State One Call as a facility operator, or to maintain current contact information with Gopher One.
- Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.
- STATEMENT OF PURPOSE: This is one of three concurrent use permits allowing private obstructions in the public right of way, granted to Essentia Health East for the new Vision Northland project (replacement hospital bed tower, clinic space, and surgery suites).
- PL 19-019, inpatient tower and replacement of a portion of existing clinic over the alley right of way between Superior Street and East First Street;
- PL 19-021, inpatient tower and replacement of a portion of existing clinic over First Street and placement of new structural supports within right of way of East First Street,
- PL 19-022, private utility work to provide electrical duct banks from the existing emergency generators within the right of way of North 5th Avenue East.

These three concurrent use permits are being reviewed in coordination with a MU-I Planning Review (PL 19-018) and an UDC Map Amendment to rezone (PL 19-023) in conformance with the City's Comprehensive Plan and future land use map.

On May 29, 2019, the Duluth city planning commission held a special public hearing on the proposal as described in Attachment 2, and voted 7 yeas, 0 nays, 0 abstentions, to recommend that the city council approve the request for a concurrent use of streets, with the condition that the applicant comply with all the conditions listed in the ordinance.

File #: 19-033-O, Version: 1

Petition received: May 8, 2019

Action deadline: September 5, 2019

Applicant: Essentia Health East

PL 19-022





Planning & Development Division

Planning & Economic Development Department



Room 160 411 West First Street Duluth, Minnesota 55802

File Number	PL 19-109		Contact	Steven Ro	ertson	
Туре	Rezone fi	rom RR-1 to MU-B	Planning C	commission Date	August 13, 2019	
Deadline	Application Date Date Extension Letter Mailed		60 Day		N/A City Application	
for Action			N/A	120 Days	N/A	
Location of Su	bject				·	
Applicant	City of Du	uluth	Contact	Planning and Development		
Agent			Contact			
Legal Descript	ion	See Attached Map				
Site Visit Date		July 30, 2019	Sign Notice	e Date	July 30, 2019	
Neighbor Letter Date		July 30, 2019	Number o	f Letters Sent	25	

Proposal

The City is proposing to rezone property from the current zoning of Rural Residential 1 (RR-1) and Residential-Traditional (R-1), to Mixed Use Business Park (MU-B).

Staff Recommendation

Staff is recommending approval of the proposed rezoning to MU-B.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	RR-1,R-1	Residential, Undeveloped	Business Park
North	I-G,MU-B	Industrial	General Industrial
South	R-1	Undeveloped, Residential	Open Space, Traditional Neighborhood
East	I-G	Undeveloped	Open Space, General Industrial
West	RR-1	Undeveloped	Open Space

Summary of Code Requirements

- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.
- UDC Sec. 50-37.3.B.3 Where a proposed amendment to the zoning map would change any property from a residential district to a mixed use, form or special purpose district, a planning commission hearing and a notice of three weeks shall be required. In addition, the affirmative vote of 2/3 of the council shall be required The city has not received the written consent of the owners of 2/3 of those properties located wholly or partially within 100 feet of the property proposed to be rezoned;
- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application:
- 1. Is consistent with the Comprehensive Land Use Plan;
- 2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3. Is

required by public necessity, convenience, or general welfare, or good zoning practice;

4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principles

Governing Principle 8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide

Future Land Use

Business Park- Primarily office and light industrial areas developed in a unified manner, with standards for site design and circulation patterns, signage, landscaping, and building design.

Site History or Previous Studies

The Gary New Duluth Small Area Plan was completed in May 2014. Goal 2 of the plan is to "change zoning map designation to better reflect existing land use while minimizing potential negative impacts to surrounding area". This specific subject area was not addressed in the plan, however.

The Imagine Duluth 2035 Comprehensive Land Use Plan was adopted on June 25, 2018. The plan recommended 21 changes to the future land use plan. This area is addressed as Becks Road (Site 2) "The area along Becks Road is changed from Preservation to Business Park. Much of this area is currently owned by the State of Minnesota due to tax forfeiture. It is in close proximity to the demolition landfill and has good access to Becks Road, as well as water and sewer infrastructure."

Review and Discussion Items:

- 1) The City is proposing to rezone property from the current zoning of Rural Residential 1 (RR-1) to Mixed Use Business Park (MU-B).
- 2) The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan, and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or be considered arbitrary and capricious. Good zoning practice requires that zone districts be consistent with the future land use category identified for the area.
- 3) Prior to the adoption of the Imagine Duluth 2035 Plan, the future land use designation of this area was preservation. Areas with a future land use designation of preservation generally have a zoning designation of R-C or RR-1.
- 4) State Statute requires that a community's zoning map implement the general objectives of the Comprehensive Plan. The future land use category of Business Park is most commonly reflected in the City's zoning map as MU-B. Other criteria for zoning include considering existing land use patterns and if the rezoning is related to the needs to the community or existing land use. The current land use of the subject area is undeveloped, with a major road to the north, waterway to the south, and a demolition landfill to the east.
- 5) The purpose of the MU-B district is to accommodate modern light industrial and technology-based developments of attractive integrated design and function. The development standards for this district are intended to ensure that projects minimize adverse impacts on surrounding uses and neighborhoods, reduce impacts on the natural environment, enhance the visual quality of development and ensure the provision of adequate and cost-efficient public facilities. Intended uses include wholesaling, industrial services, research laboratories, and light manufacturing needed to support the community and region at large.

6) Based on the development pattern of adjacent areas and the purpose statement of MU-B zone districts, rezonin	ıg as
proposed in the attached map is appropriate for this area.	

7) No \	written corresponden	e has beer	า received a	as of the	date that th	nis memo was	printed (<i>P</i>	August 5,	2019).
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Staff Recommendation:

Based on the above findings, staff recommends that the Planning Commission recommend approval to the City Council of the rezoning as shown on the map titled Proposed Rezoning Area Map.

- 1) The proposed zone districts are the most reasonably able to implement the objectives of the Comprehensive Plan related to the land use for this area.
- 2) Material adverse impacts on nearby properties are not anticipated.

Uses Allowed in Mixed Use-Business Park (MU-B) Zone District Revised January 2019

Permitted Uses

- Bus or rail transit station
- Government building or public safety facility
- Business art or vocational school
- Medical or dental clinic
- Kennel
- Veterinary or animal hospital
- Convention or event center
- Indoor entertainment facility
- Restaurant (less than 5,000 sq. ft.)
- Restaurant (5,000 sq. ft. or more)
- Hotel or motel
- Bed and breakfast
- Bank
- Office
- Data center
- Business park support activities
- Funeral home or crematorium
- Mini-storage facility
- Personal service and repair, small (less than 10,000 sq. ft.)
- Personal service and repair, large (10,000 sq. ft. or more)

- Building material sales
- Automobile and light vehicle repair service
- Automobile and light vehicle sales, rental or storage
- Filing station
- Parking lot (primary use)
- Parking structure
- Truck or heavy vehicle sales, rental, repair and storage
- Contractor's shop and storage yard
- Dry cleaning and laundry plant
- Research laboratories
- Industrial services
- Manufacturing, craft artisan studio
- Manufacturing, craft brewery
- Manufacturing, light
- Truck freight or transfer terminal
- Solar, geothermal, or biomass
 - facility (primary use)
 Storage warehouse
- Wholesaling

Special Uses

- Cemetery or mausoleum
- Museum, library or art gallery
- Religious assembly, small (less than 50,000 sq ft)
- Religious assembly, large (50,000 sq. ft. or more)
- Other outdoor entertainment or recreation use not listed
- Electric power transmission line or substation

- Major utility or wireless telecommunication facility
- Radio or television broadcast tower
- Water or sewer pumping stations/reservoirs
- Wind power facility (primary use)
- Recycling collection point (primary use)
- Sold waste disposal or processing facility

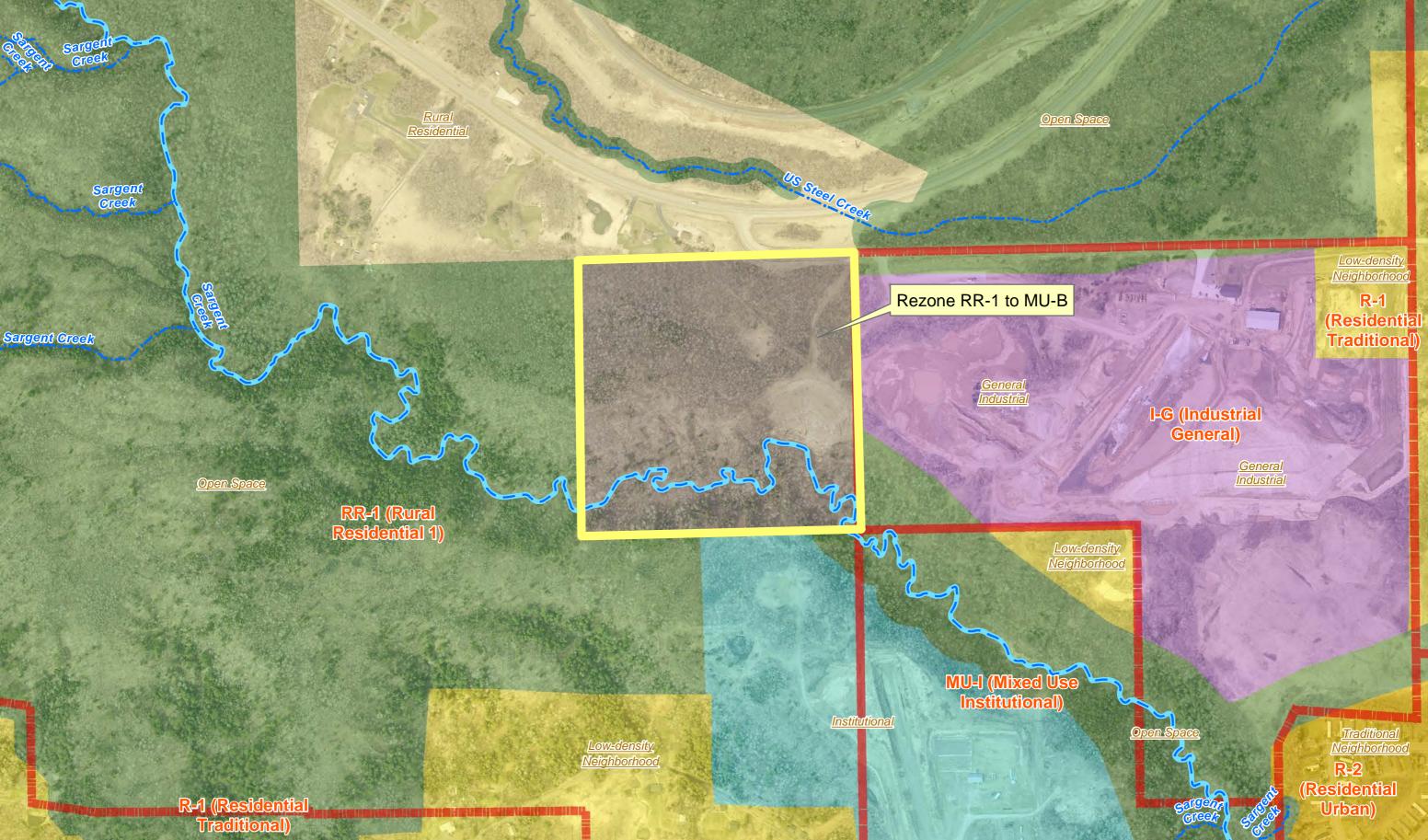
Interim Uses

- Medical cannabis distribution facility
- Medical cannabis laboratory





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PL 19-110 Rezone To MU-B

Legend

Floodplain (UDC)
General Flood Plain

Flood Way Flood Fringe

Trout Stream (GPS)

· Other Stream (GPS)

840 1,260 210 420 Feet Aerial photography flown 2016 Prepared by: City of Duluth Community Planning Division, July 10, 2019. Source: City of Duluth.

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waterfront-related uses. Given these similarities, in the future these categories should be evaluated to determine if combining them is desirable. The boom in craft manufacturing and artisan spaces further supports a blending of industrial and commercial areas. The resulting land use category should encourage a variety of water dependent uses, preserve necessary industrial areas, and promote public water access.

Form Districts—The 2006 Comprehensive Land Use Plan called for form-based guidelines in the Central Business Primary and Central Business Secondary areas, as well as in some Urban Residential and Traditional Neighborhood areas. The study done as part of the UDC creation in 2009-2010 further defined and mapped form district areas, including some (but not all) of the Central Business Primary and Central Business Secondary areas, and Neighborhood Commercial and Mixed Use Neighborhood. The Future Land Use categories and map should be amended to clarify those areas designated for form districts and to better align with the UDC. In addition, it should include an analysis of streetscape and form type that is being identified for the area.

Map Amendments

In addition to changes to the categories as mentioned above, Imagine Duluth 2035 amends the Future Land Use Map as follows:

Midway Annexation (Site 1)

The areas subject to this change were brought into the city from Midway Township as part of the City and Township's orderly annexation agreement. The majority of the lands are in public ownership and are designated Open Space. Lands along Becks Road, which provides a strong connection to Interstate 35, are designated General Industrial. This reflects existing heavy industrial land uses, including gravel mining and cement and asphalt production.

Becks Road (Site 2)

The area along Becks Road is changed from Preservation to Business Park. Much of this area is currently owned by the State of Minnesota due to tax forfeiture. It is in close proximity to the demolition landfill and has good access to Becks Road, as well as water and sewer infrastructure.

Becks Road & Commonwealth Ave Intersection (Site 3)

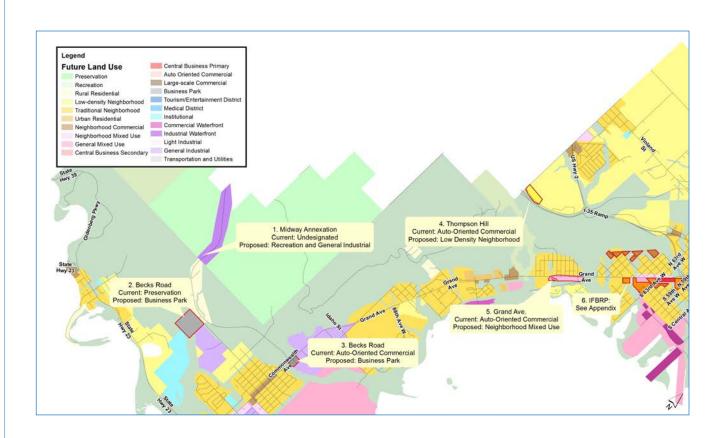
In this location, lands were previously designated for Auto-Oriented Commercial uses. This area is now designated for Business Park development, which is intended for job-intensive uses.

Thompson Hill (Site 4)

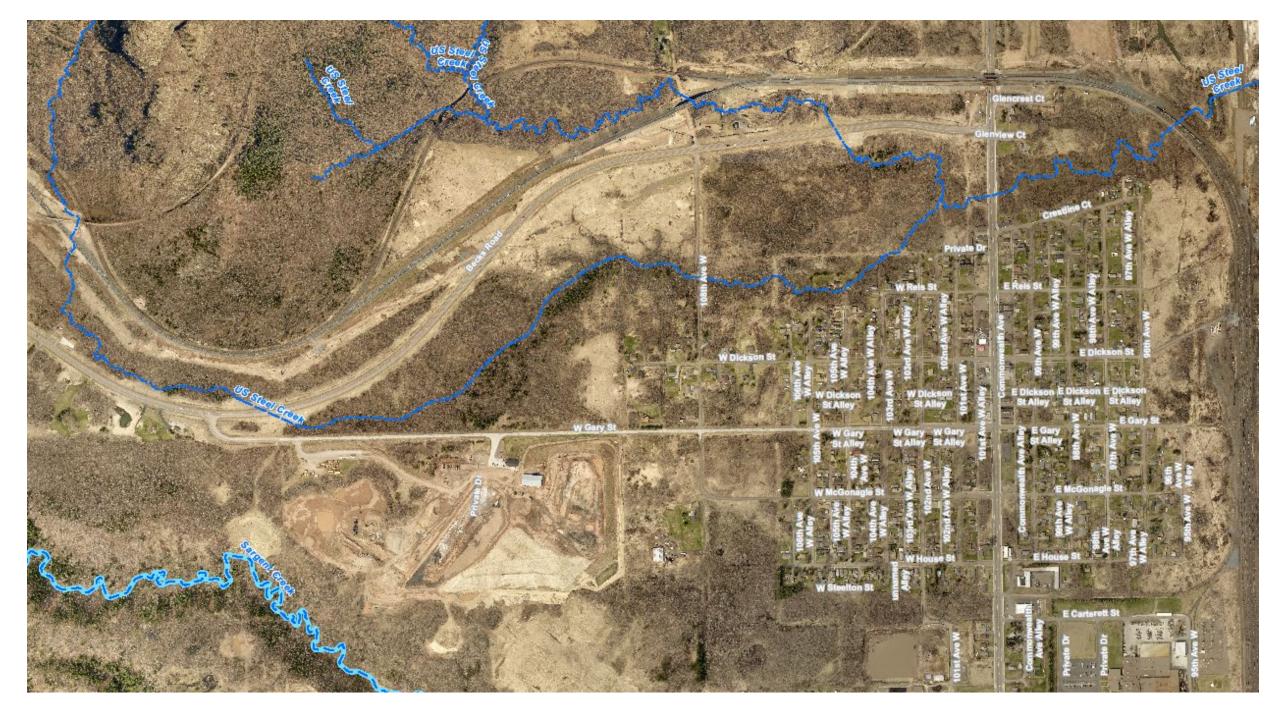
This site changes from Auto-Oriented Commercial to Low Density Neighborhood. The change is based on the availability of utilities and consistency between this area and other lands immediately to the north. This area of the city is part of the Kingsbury Creek and Knowlton Creek watersheds; low intensity uses are appropriate.

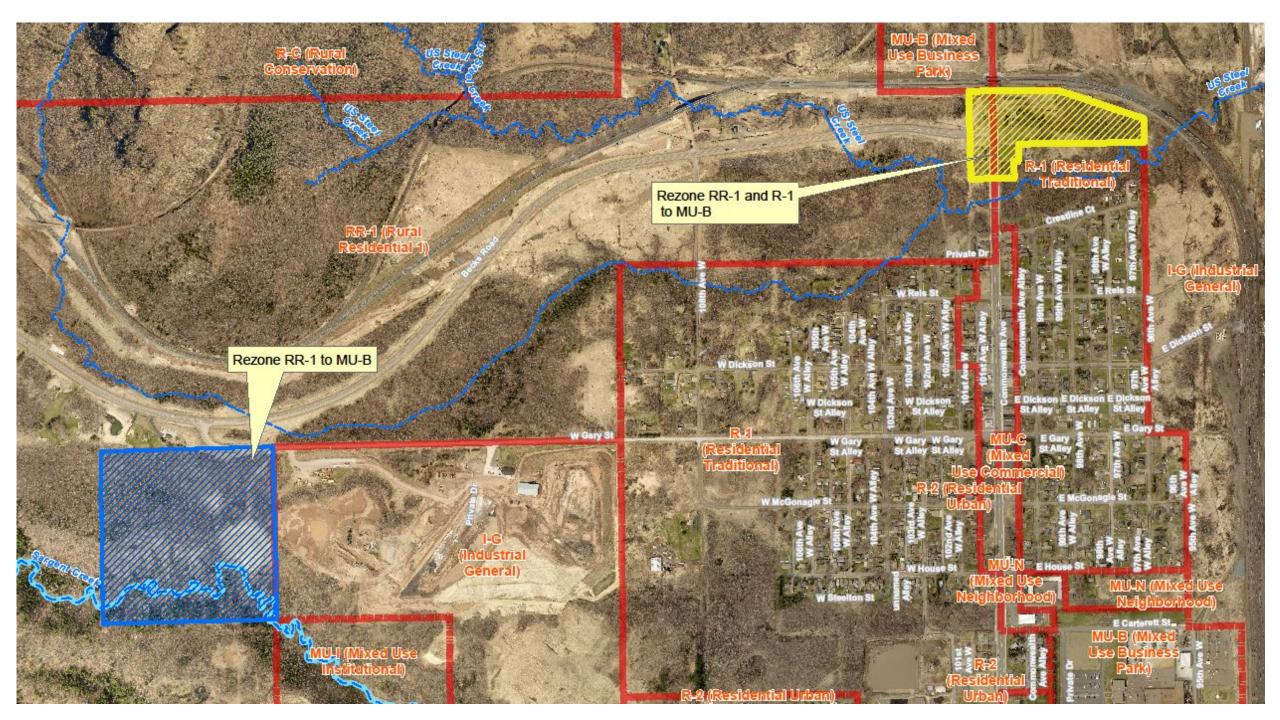
Grand Avenue (Site 5)

This changes from Auto-Oriented Commercial to Neighborhood Mixed Use. Change to neighborhood oriented commercial activities will allow for redevelopment of sites serving the residential area on the uphill side of Grand Avenue. Neighborhood oriented uses are most appropriate, allowing higher intensity commercial activities to be located in the Core Investment Areas to the east and west of this area of the city.



August 13, 2019 Planning Commission Hearing





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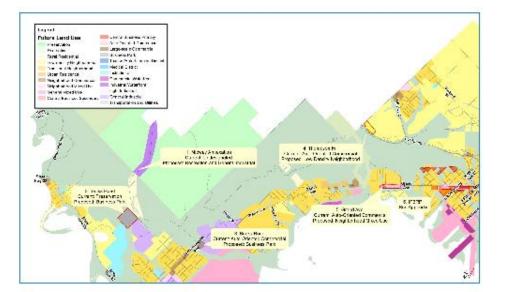
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06/25/2018

LAND USE

LAND USE



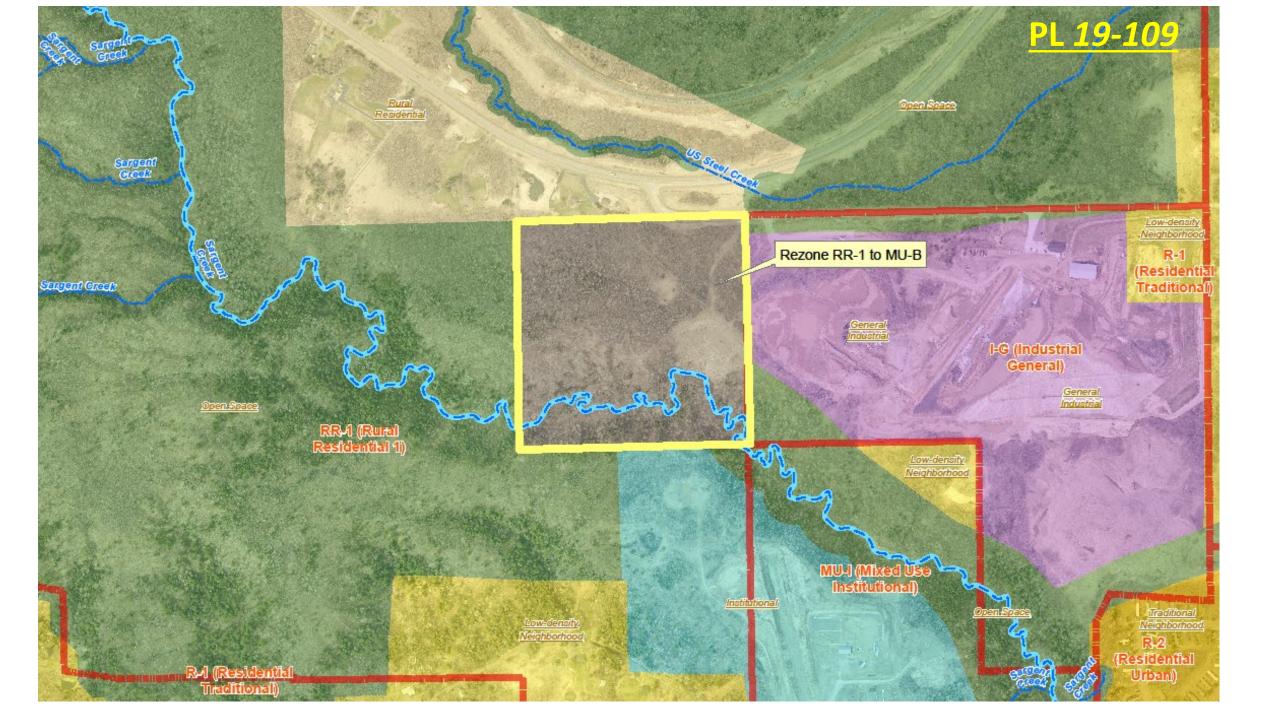
PL 19-109 Rezone To MU-B

Legend Vacated ROW Floodplain (UDC) General Flood Plain Flood Way Flood Fringe

Trout Stream (GPS)
Other Stream (GPS)

210 420 840 1,260 Prepared by: City of Duluth Community Planning Division, July 10, 2019. Source: City of Duluth.

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PL 19-110 Rezone To MU-B

Legend

Vacated ROW Floodplain (UDC)

General Flood Plain
Flood Way

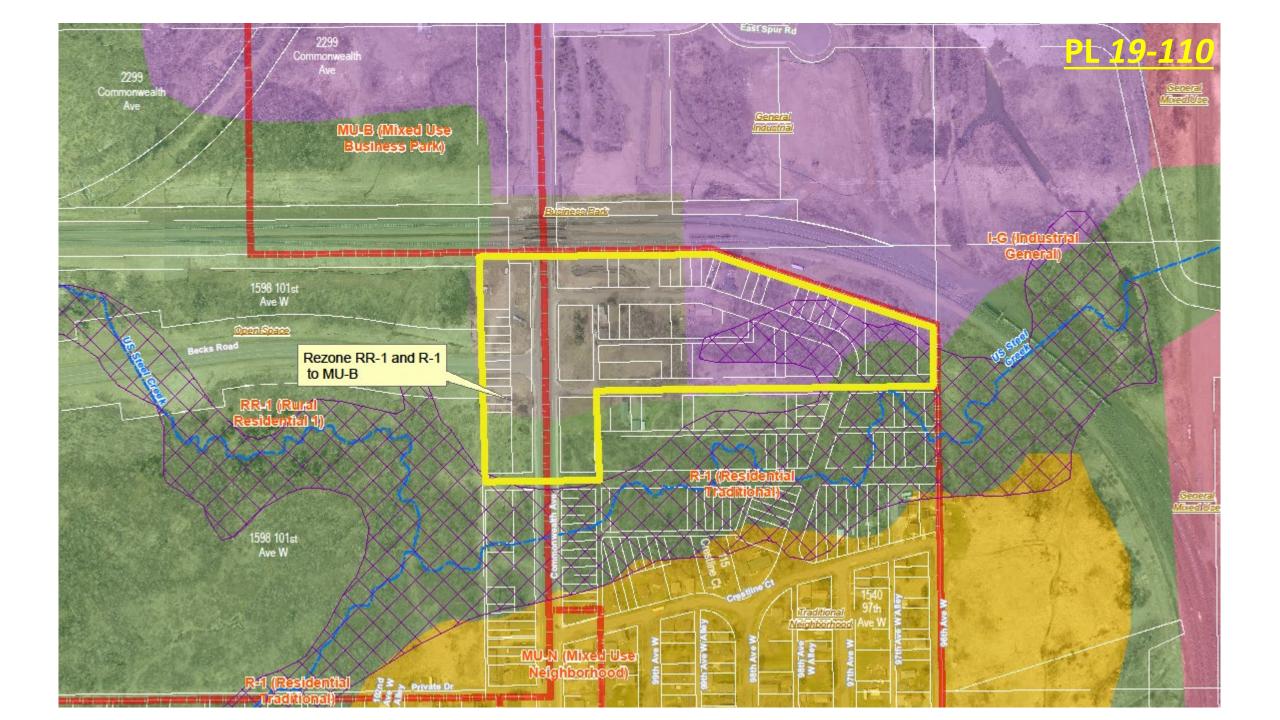
Flood Fringe

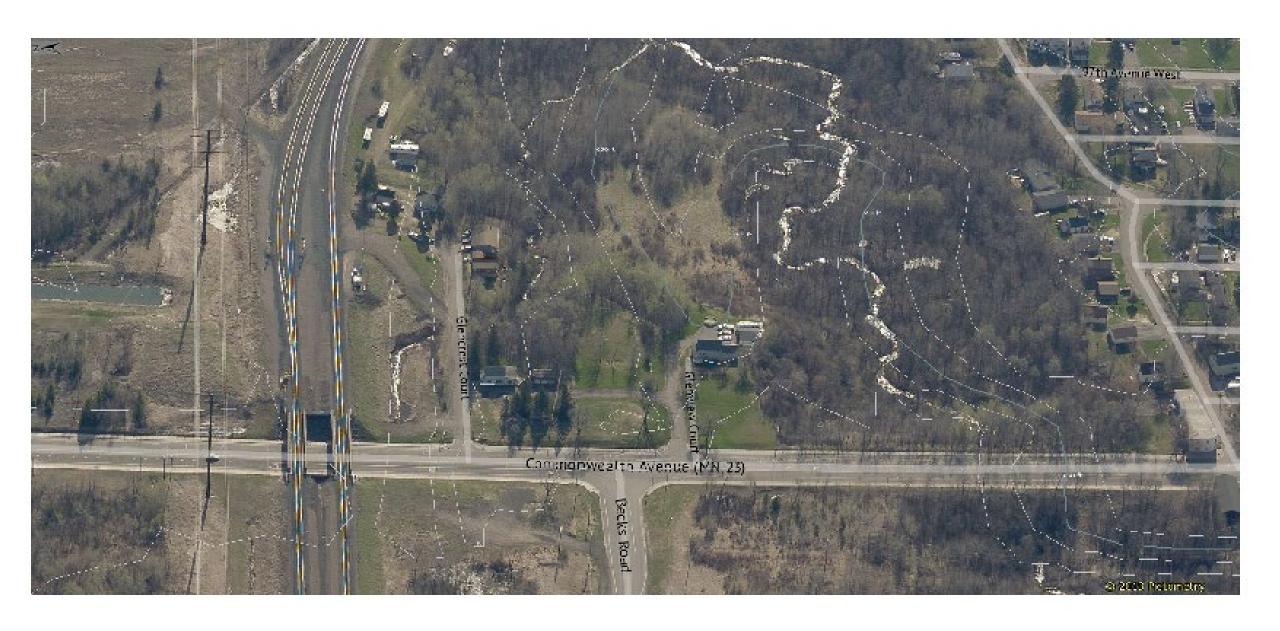
Trout Stream (GPS)

· Other Stream (GPS)

115 230 460 MIS: Prepared by: City of Duluth Community Planning Division, July 10, 2019. Source: City of Duluth. Arrial photography flown 2016

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Uses Allowed in Residential-Traditional (R-1) Zone District **Revised January 2019**

Permitted Uses

Dwelling, one-family

Dwelling, two-family

Residential care facility/assisted Living (6 or fewer)

Park, playground or forest reserve

School, elementary

Agriculture, community garden

Day care facility, small (14 or

fewer)

Special or Interim Uses

Dwelling, townhouse

Manufactured Home Park

Co-housing facility

Residential care facility/assisted living (7 or more)

Cemetery or mausoleum

Government building or public safety facility

- Museum, library, or art gallery

Religious assembly, small (less than 50,000 sq. ft. or more)

 Religious assembly, large (50,000 sq. ft. or more)

School, middle or high

Agriculture, urban

Bed and breakfast

Preschool

Day care facility, large (15 or more)

Electric power transmission line or substation

- Major utility or wireless telecommunication facility

 Water or sewer pumping stations/reservoirs

Interim Uses

Vacation dwelling unit

Accessory vacation dwelling unit

Uses Allowed in Mixed Use-Business Park (MU-B) Zone District Revised January 2019

Permitted Uses

Bus or rail transit station

Government building or public safety facility

Business art or vocational school

Medical or dental clinic

Kennel

Veterinary or animal hospital

Convention or event center

Indoor entertainment facility

Restaurant (less than 5,000 sq. ft.)

Restaurant (5,000 sq. ft. or more)

Hotel or motel

Bed and breakfast

Bank

Office

Data center

Business park support activities

Funeral home or crematorium

Mini-storage facility

 Personal service and repair, small (less than 10,000 sq. ft.)

Personal service and repair, large

(10,000 sq. ft. or more)

Building material sales

Automobile and light vehicle repair

service

Automobile and light vehicle sales,

rental or storage

Filing station

Parking lot (primary use)

Parking structure

Truck or heavy vehicle sales, rental,

repair and storage

Contractor's shop and storage yard

Dry cleaning and laundry plant

Research laboratories

Industrial services

Manufacturing, craft artisan studio

Manufacturing, craft brewery

Manufacturing, light

Truck freight or transfer terminal

Solar, geothermal, or biomass facility (primary use)

Storage warehouse

Wholesaling

Special Uses

Cemetery or mausoleum

Museum, library or art gallery

Religious assembly, small (less than 50,000 sa ft)

- Religious assembly, large (50,000

sa. ft. or more)

- Other outdoor entertainment or recreation use not listed

Electric power transmission line or substation

Major utility or wireless telecommunication facility

Radio or television broadcast tower

Water or sewer pumping

stations/reservoirs

Wind power facility (primary use)

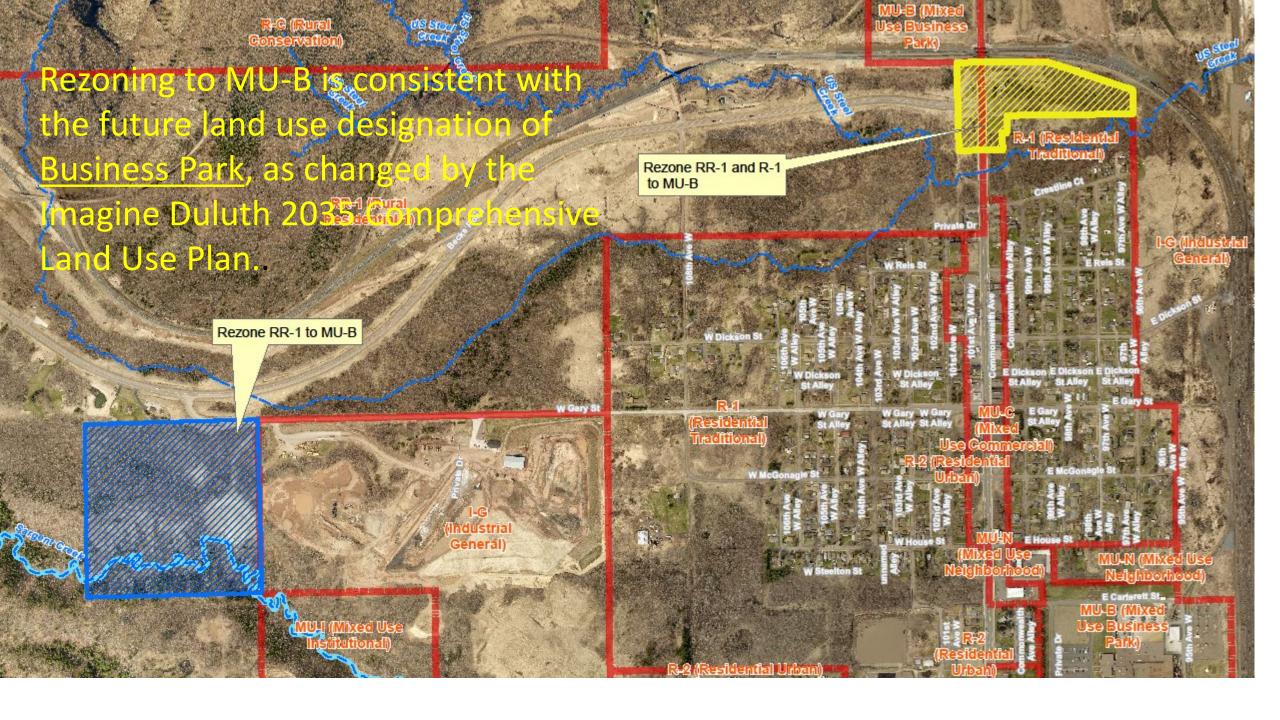
Recycling collection point (primary use)

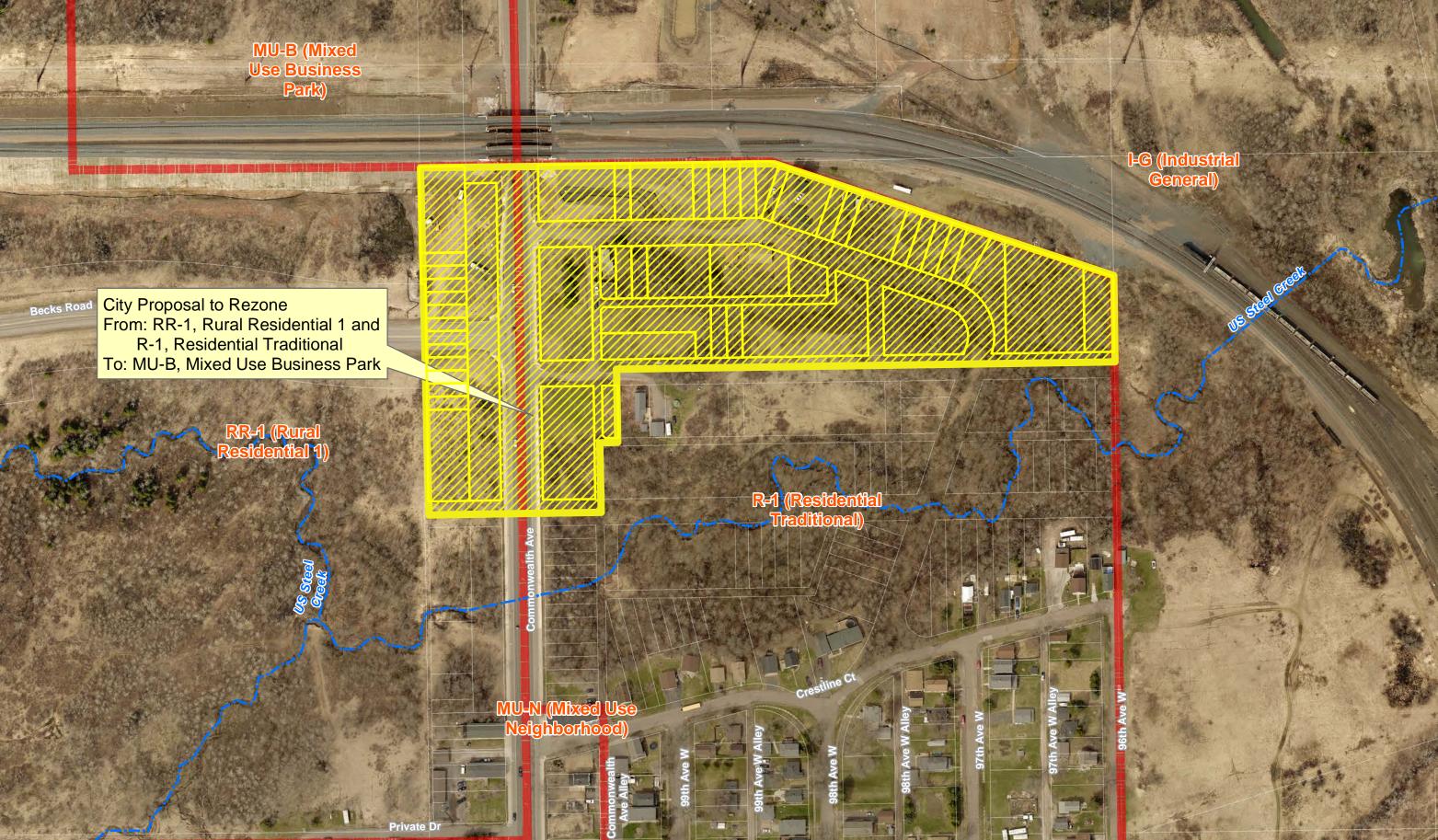
 Sold waste disposal or processing facility

Interim Uses

Medical cannabis distribution facility

Medical cannabis laboratory







Planning & Development Division

Planning & Economic Development Department



Room 160 411 West First Street Duluth, Minnesota 55802

File Number	PL 19-110		Contact Steven F		Steven Rob	obertson	
Туре	Rezone from RR-1 and R-1, to MU-B		Planning Commission Date		August 13, 2019		
Deadline for Action	Application Date				60 Days	N/A City Application	
	Date Extension Letter Mailed		N/A 12		120 Days	N/A	
Location of Sul	bject						
Applicant	City of Duluth		Contact	Planning	Planning and Development		
Agent			Contact				
Legal Description		See Attached Map					
Site Visit Date		July 30, 2019	Sign Notice Date			July 30, 2019	
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Proposal

The City is proposing to rezone property from the current zoning of Rural Residential 1 (RR-1) and Residential-Traditional (R-1), to Mixed Use Business Park (MU-B).

Staff Recommendation

Staff is recommending approval of the proposed rezoning to MU-B.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	RR-1,R-1	Residential, Undeveloped	Business Park
North	I-G,MU-B	Industrial	General Industrial
South	R-1	Undeveloped, Residential	Open Space, Traditional Neighborhood
East	I-G	Undeveloped	Open Space, General Industrial
West	RR-1	Undeveloped	Open Space

Summary of Code Requirements

- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.
- UDC Sec. 50-37.3.B.3 Where a proposed amendment to the zoning map would change any property from a residential district to a mixed use, form or special purpose district, a planning commission hearing and a notice of three weeks shall be required. In addition, the affirmative vote of 2/3 of the council shall be required The city has not received the written consent of the owners of 2/3 of those properties located wholly or partially within 100 feet of the property proposed to be rezoned;
- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application:
- 1. Is consistent with the Comprehensive Land Use Plan;
- 2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3. Is

required by public necessity, convenience, or general welfare, or good zoning practice;

4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principles

Principle 5 -Promote reinvestment in neighborhoods.

Duluth is strongly defined by its neighborhoods. This system should be supported through land use and transportation that foster neighborhood reinvestment. New development or redevelopment should maximize public investment that strengthens neighborhood commercial centers or diversifies residential opportunities that fit the neighborhood's character.

Governing Principle 8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide

Future Land Use

Business Park- Primarily office and light industrial areas developed in a unified manner, with standards for site design and circulation patterns, signage, landscaping, and building design.

Site History or Previous Studies

The Gary New Duluth Small Area Plan was completed in May 2014. Goal 2 of the plan is to "change zoning map designation to better reflect existing land use while minimizing potential negative impacts to surrounding area". This specific subject area was not addressed in the plan, however.

The Imagine Duluth 2035 Comprehensive Land Use Plan was adopted on June 25, 2018. The plan recommended 21 changes to the future land use plan. This area is addressed as Becks Road & Commonwealth Ave Intersection (Site 3). "In this location, lands were previously designated for Auto-Oriented Commercial uses. This area is now designated for Business Park development, which is intended for job-intensive uses."

Review and Discussion Items:

- 1) The City is proposing to rezone property from the current zoning of Rural Residential 1 (RR-1) and Residential-Traditional (R-1), to Mixed Use Business Park (MU-B).
- 2) The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan, and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or be considered arbitrary and capricious. Good zoning practice requires that zone districts be consistent with the future land use category identified for the area.
- 3) Prior to the adoption of the Imagine Duluth 2035 Plan, the future land use designation of this area was auto-orientated commercial, which translates to a zoning designation of Mixed Use Commercial (MU-C). The MU-C zone district allows a wide variety of commercial and related land uses, but single and two family dwellings and townhomes are considered non-conforming uses. The auto-oriented commercial future land use designation was not carried forward into the Imagine Duluth 2035 plan.
- 4) State Statute requires that a community's zoning map implement the general objectives of the Comprehensive Plan. The future land use category of Business Park is most commonly reflected in the City's zoning map as MU-B. Other criteria for zoning include considering existing land use patterns and if the rezoning is related to the needs to the community or existing land use. The current land use of the subject area includes residential (several single-family homes), but otherwise is generally either vacant or uses related to the railroad which runs along the north and east perimeter.

- 5) The purpose of the MU-B district is to accommodate modern light industrial and technology-based developments of attractive integrated design and function. The development standards for this district are intended to ensure that projects minimize adverse impacts on surrounding uses and neighborhoods, reduce impacts on the natural environment, enhance the visual quality of development and ensure the provision of adequate and cost-efficient public facilities. Intended uses include wholesaling, industrial services, research laboratories, and light manufacturing needed to support the community and region at large.
- 6) Based on the character of this neighborhood, the development pattern of adjacent neighborhoods, and the purpose statement of MU-B zone districts, rezoning as proposed in the attached map is appropriate for this area.
- 7) No written correspondence has been received as of the date that this memo was printed (August 5, 2019).

Staff Recommendation:

Based on the above findings, staff recommends that the Planning Commission recommend approval to the City Council of the rezoning as shown on the map titled Proposed Rezoning Area Map.

- 1) The proposed zone districts are the most reasonably able to implement the objectives of the Comprehensive Plan related to the land use for this area.
- 2) Material adverse impacts on nearby properties are not anticipated.

Uses Allowed in Mixed Use-Business Park (MU-B) Zone District Revised January 2019

Permitted Uses

- Bus or rail transit station
- Government building or public safety facility
- Business art or vocational school
- Medical or dental clinic
- Kennel
- Veterinary or animal hospital
- Convention or event center
- Indoor entertainment facility
- Restaurant (less than 5,000 sq. ft.)
- Restaurant (5,000 sq. ft. or more)
- Hotel or motel
- Bed and breakfast
- Bank
- Office
- Data center
- Business park support activities
- Funeral home or crematorium
- Mini-storage facility
- Personal service and repair, small (less than 10,000 sq. ft.)
- Personal service and repair, large (10,000 sq. ft. or more)

- Building material sales
- Automobile and light vehicle repair service
- Automobile and light vehicle sales, rental or storage
- Filing station
- Parking lot (primary use)
- Parking structure
- Truck or heavy vehicle sales, rental, repair and storage
- Contractor's shop and storage yard
- Dry cleaning and laundry plant
- Research laboratories
- Industrial services
- Manufacturing, craft artisan studio
- Manufacturing, craft brewery
- Manufacturing, light
- Truck freight or transfer terminal
- Solar, geothermal, or biomass
 - facility (primary use)
 Storage warehouse
- Wholesaling

Special Uses

- Cemetery or mausoleum
- Museum, library or art gallery
- Religious assembly, small (less than 50,000 sq ft)
- Religious assembly, large (50,000 sq. ft. or more)
- Other outdoor entertainment or recreation use not listed
- Electric power transmission line or substation

- Major utility or wireless telecommunication facility
- Radio or television broadcast tower
- Water or sewer pumping stations/reservoirs
- Wind power facility (primary use)
- Recycling collection point (primary use)
- Sold waste disposal or processing facility

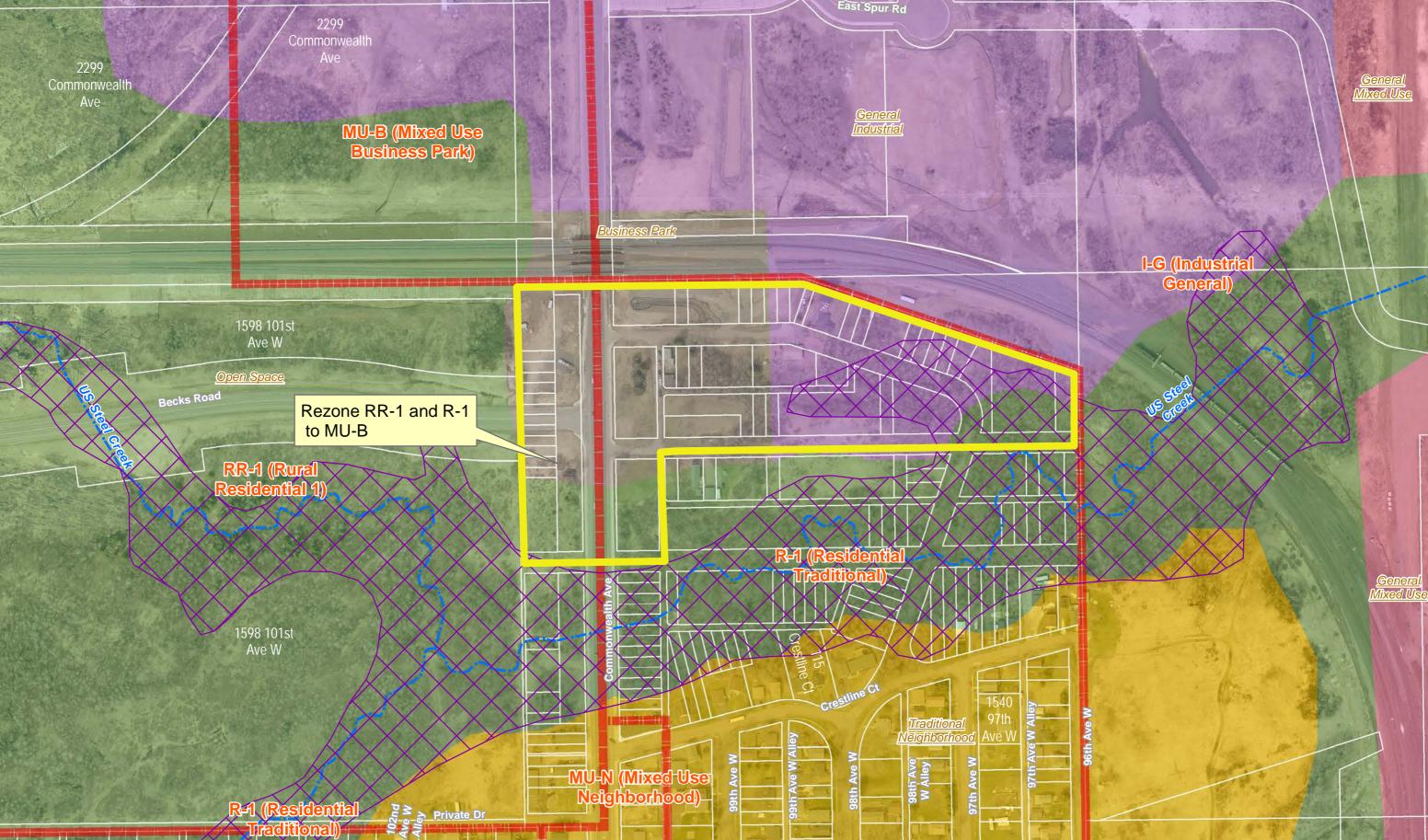
Interim Uses

- Medical cannabis distribution facility
- Medical cannabis laboratory





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PL 19-110 Rezone To MU-B

Legend

Floodplain (UDC)
General Flood Plain

Flood Way Flood Fringe

Trout Stream (GPS)

· Other Stream (GPS)

US Steel Greek 115 230 460 690 Prepared by: City of Duluth Community Planning Division, July 10, 2019, Source: City of Duluth. Aerial photography flown 2016

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waterfront-related uses. Given these similarities, in the future these categories should be evaluated to determine if combining them is desirable. The boom in craft manufacturing and artisan spaces further supports a blending of industrial and commercial areas. The resulting land use category should encourage a variety of water dependent uses, preserve necessary industrial areas, and promote public water access.

Form Districts—The 2006 Comprehensive Land Use Plan called for form-based guidelines in the Central Business Primary and Central Business Secondary areas, as well as in some Urban Residential and Traditional Neighborhood areas. The study done as part of the UDC creation in 2009-2010 further defined and mapped form district areas, including some (but not all) of the Central Business Primary and Central Business Secondary areas, and Neighborhood Commercial and Mixed Use Neighborhood. The Future Land Use categories and map should be amended to clarify those areas designated for form districts and to better align with the UDC. In addition, it should include an analysis of streetscape and form type that is being identified for the area.

Map Amendments

In addition to changes to the categories as mentioned above, Imagine Duluth 2035 amends the Future Land Use Map as follows:

Midway Annexation (Site 1)

The areas subject to this change were brought into the city from Midway Township as part of the City and Township's orderly annexation agreement. The majority of the lands are in public ownership and are designated Open Space. Lands along Becks Road, which provides a strong connection to Interstate 35, are designated General Industrial. This reflects existing heavy industrial land uses, including gravel mining and cement and asphalt production.

Becks Road (Site 2)

The area along Becks Road is changed from Preservation to Business Park. Much of this area is currently owned by the State of Minnesota due to tax forfeiture. It is in close proximity to the demolition landfill and has good access to Becks Road, as well as water and sewer infrastructure.

Becks Road & Commonwealth Ave Intersection (Site 3)

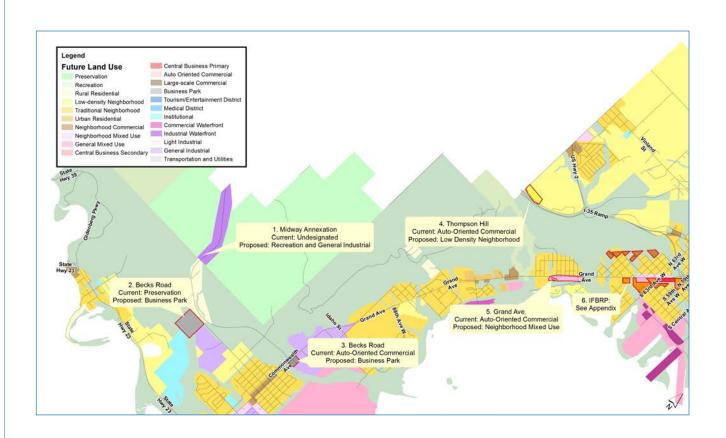
In this location, lands were previously designated for Auto-Oriented Commercial uses. This area is now designated for Business Park development, which is intended for job-intensive uses.

Thompson Hill (Site 4)

This site changes from Auto-Oriented Commercial to Low Density Neighborhood. The change is based on the availability of utilities and consistency between this area and other lands immediately to the north. This area of the city is part of the Kingsbury Creek and Knowlton Creek watersheds; low intensity uses are appropriate.

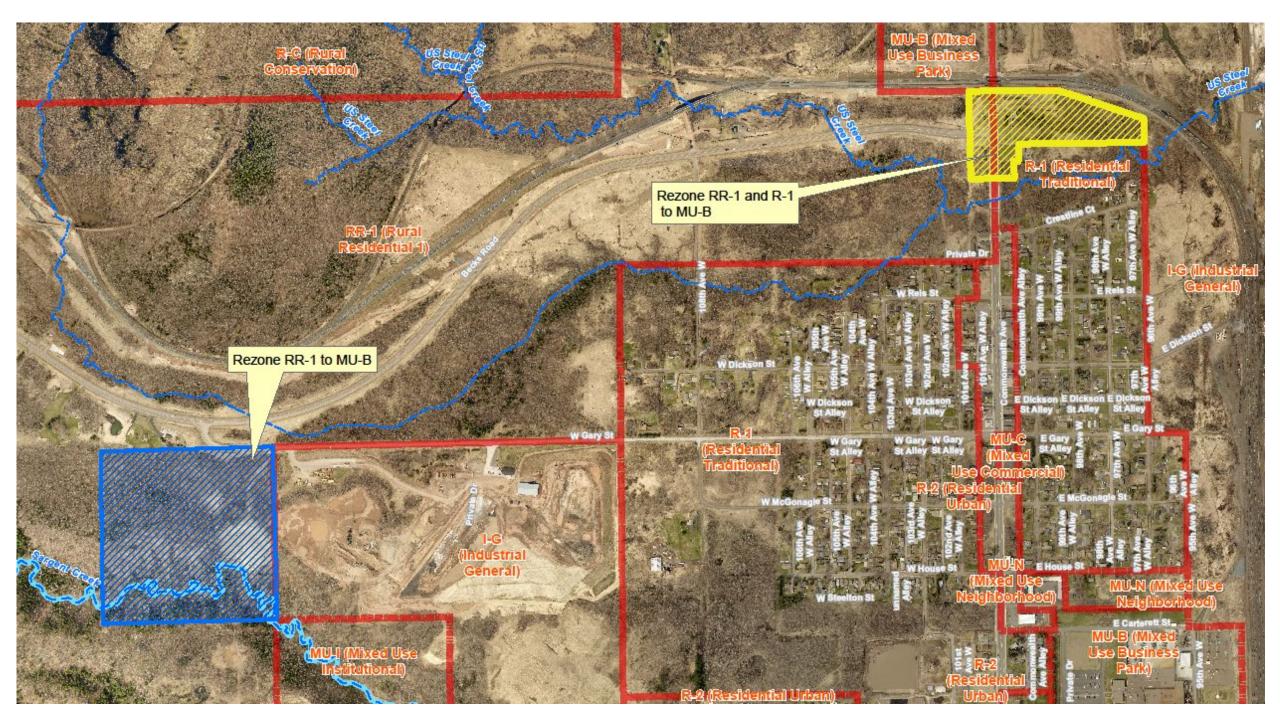
Grand Avenue (Site 5)

This changes from Auto-Oriented Commercial to Neighborhood Mixed Use. Change to neighborhood oriented commercial activities will allow for redevelopment of sites serving the residential area on the uphill side of Grand Avenue. Neighborhood oriented uses are most appropriate, allowing higher intensity commercial activities to be located in the Core Investment Areas to the east and west of this area of the city.



August 13, 2019 Planning Commission Hearing





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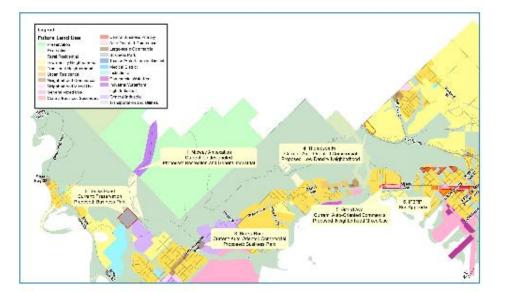
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06/25/2018

LAND USE

LAND USE

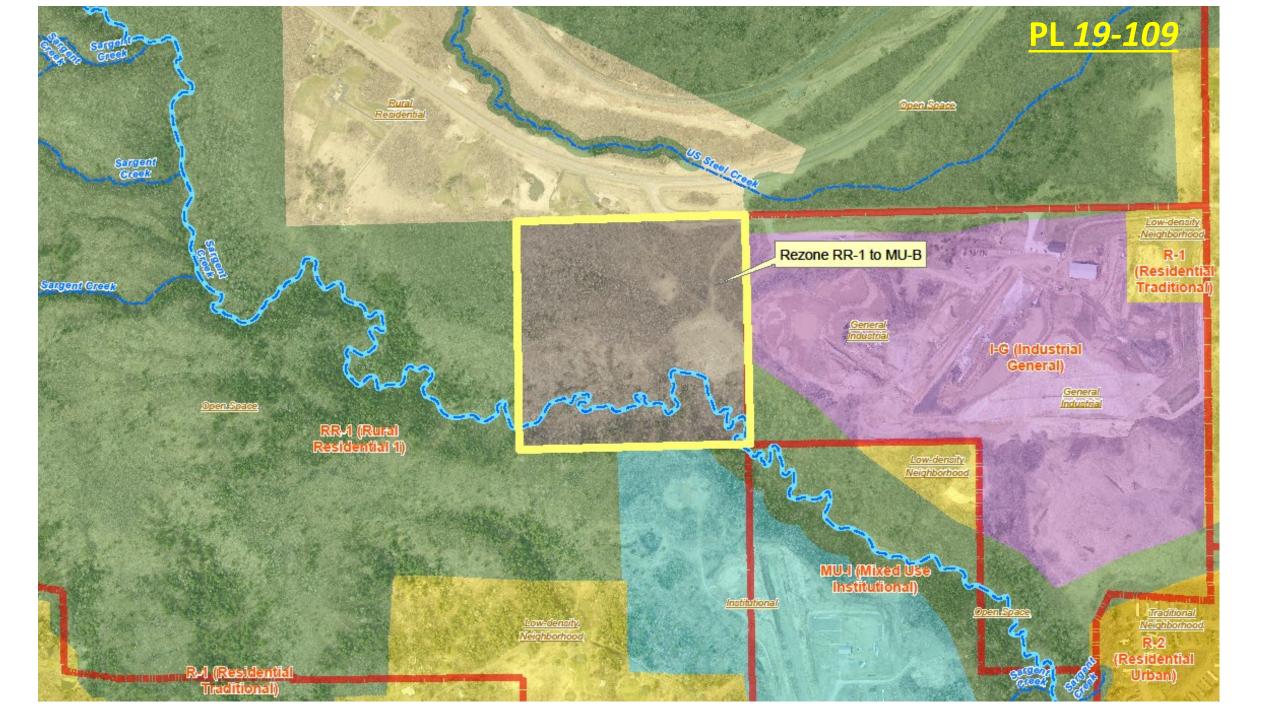


PL 19-109 Rezone To MU-B



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PL 19-110 Rezone To MU-B

Legend

Vacated ROW Floodplain (UDC)

General Flood Plain
Flood Way

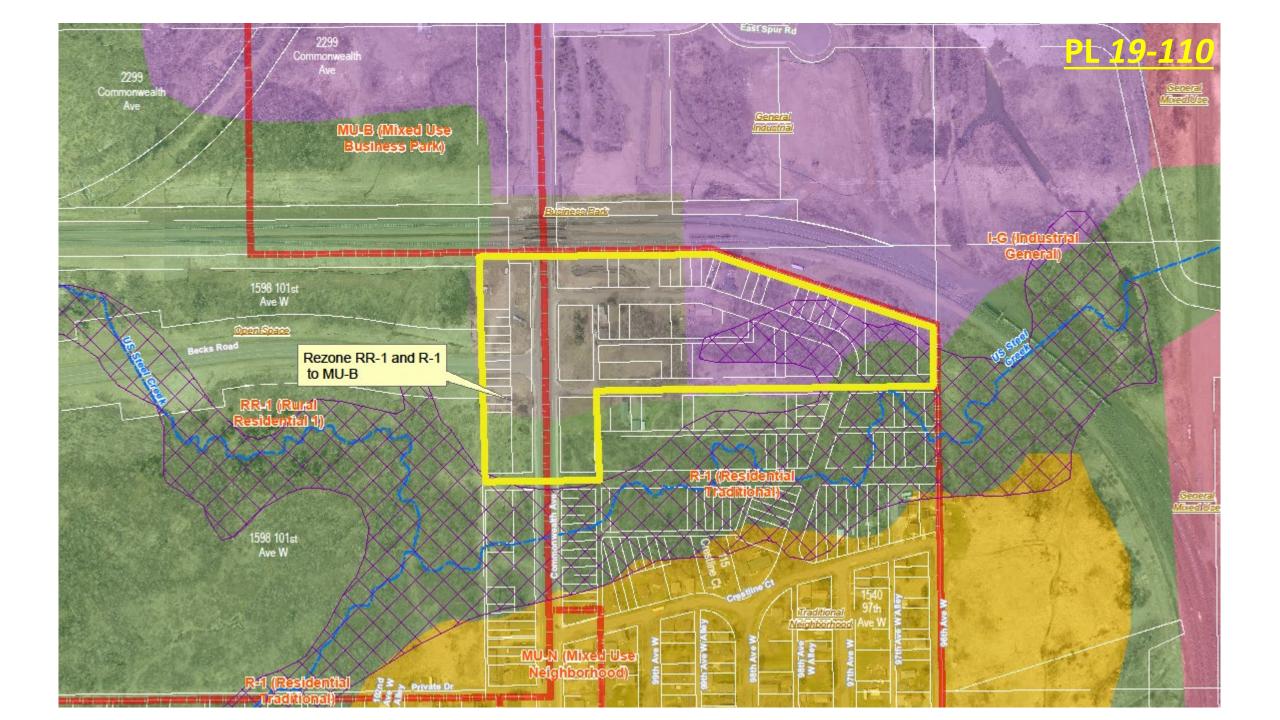
Flood Fringe

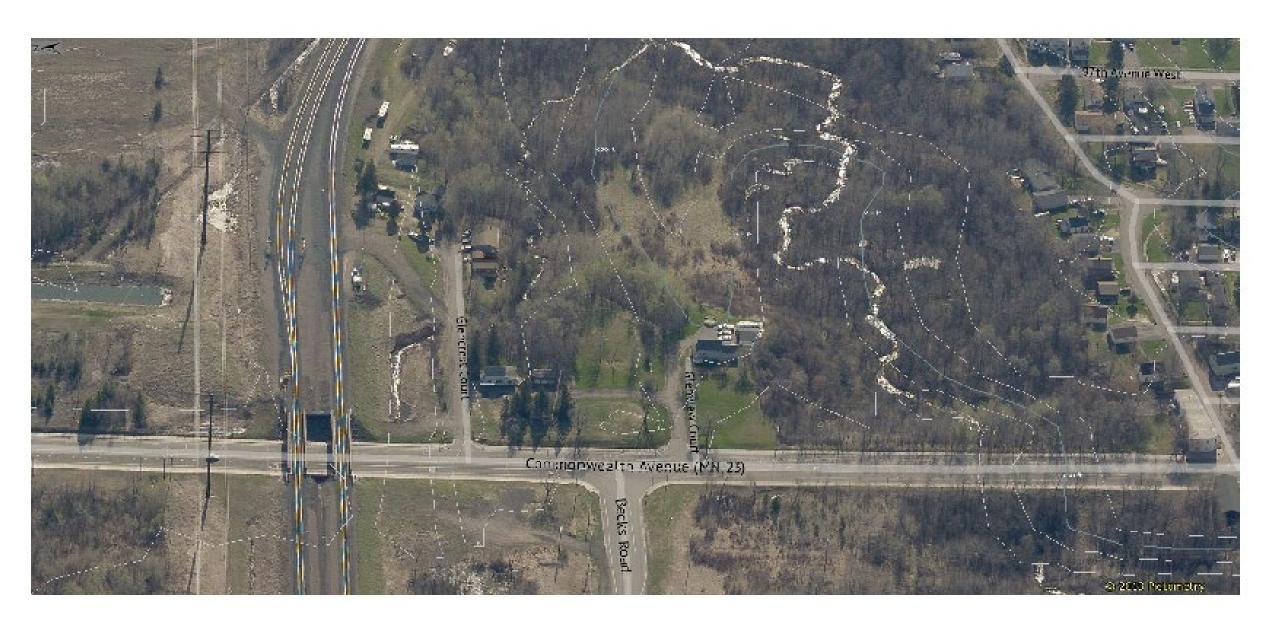
Trout Stream (GPS)

· Other Stream (GPS)

115 230 460 MIS: Prepared by: City of Duluth Community Planning Division, July 10, 2019. Source: City of Duluth. Arrial photography flown 2016

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Uses Allowed in Residential-Traditional (R-1) Zone District **Revised January 2019**

Permitted Uses

Dwelling, one-family

Dwelling, two-family

Residential care facility/assisted Living (6 or fewer)

Park, playground or forest reserve

School, elementary

Agriculture, community garden

Day care facility, small (14 or

fewer)

Special or Interim Uses

Dwelling, townhouse

Manufactured Home Park

Co-housing facility

Residential care facility/assisted living (7 or more)

Cemetery or mausoleum

Government building or public safety facility

- Museum, library, or art gallery

Religious assembly, small (less than 50,000 sq. ft. or more)

 Religious assembly, large (50,000 sq. ft. or more)

School, middle or high

Agriculture, urban

Bed and breakfast

Preschool

Day care facility, large (15 or more)

Electric power transmission line or substation

- Major utility or wireless telecommunication facility

 Water or sewer pumping stations/reservoirs

Interim Uses

Vacation dwelling unit

Accessory vacation dwelling unit

Uses Allowed in Mixed Use-Business Park (MU-B) Zone District Revised January 2019

Permitted Uses

Bus or rail transit station

Government building or public safety facility

Business art or vocational school

Medical or dental clinic

Kennel

Veterinary or animal hospital

Convention or event center

Indoor entertainment facility

Restaurant (less than 5,000 sq. ft.)

Restaurant (5,000 sq. ft. or more)

Hotel or motel

Bed and breakfast

Bank

Office

Data center

Business park support activities

Funeral home or crematorium

Mini-storage facility

 Personal service and repair, small (less than 10,000 sq. ft.)

Personal service and repair, large

(10,000 sq. ft. or more)

Building material sales

Automobile and light vehicle repair service

Automobile and light vehicle sales, rental or storage

Filing station

Parking lot (primary use)

Parking structure

Truck or heavy vehicle sales, rental,

repair and storage

Contractor's shop and storage yard

Dry cleaning and laundry plant

Research laboratories

Industrial services

Manufacturing, craft artisan studio

Manufacturing, craft brewery

Manufacturing, light

Truck freight or transfer terminal

Solar, geothermal, or biomass facility (primary use)

Storage warehouse

Wholesaling

Special Uses

Cemetery or mausoleum

Museum, library or art gallery

Religious assembly, small (less than 50,000 sa ft)

- Religious assembly, large (50,000 sa. ft. or more)

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Electric power transmission line or substation

Major utility or wireless telecommunication facility

Radio or television broadcast tower

Water or sewer pumping

stations/reservoirs

Wind power facility (primary use)

Recycling collection point (primary use)

 Sold waste disposal or processing facility

Interim Uses

Medical cannabis distribution facility

Medical cannabis laboratory

