

LAKEWALK TRAIL LICENSE AGREEMENT

THIS AGREEMENT, made this 7th day of October, 2009, by and between **ST. LOUIS AND LAKE COUNTIES REGIONAL RAILROAD AUTHORITY**, a political subdivision of the State of Minnesota, whose address is 801 SW Highway 169, Chisholm, MN 55719, here referred to as "Authority," and **CITY OF DULUTH**, a municipal corporation and governmental subdivision of the State of Minnesota, whose address is City of Duluth, City Hall, 411 West First Street, Duluth, MN 55802, herein referred to as "City."

RECITALS

WHEREAS, Authority is the owner of the Lakefront Line Right-of-Way ("Right-of-Way") which runs through the City of Duluth and over which various railroads operate trains and related railroad operations; and

WHEREAS, City is the owner and operator of a recreational trail known as the "Lakewalk" (the "Trail"); and

WHEREAS, City requests Authority to grant to City a license (the "Trail License") to locate the Trail within the Right-of Way and to go upon the Right-of Way immediately adjacent to the Trail for purposes of periodic inspection, maintenance and repair; and

WHEREAS, City further requests Authority to grant City a license over a portion of the Right-of Way in order to allow City and its contractor to construct the Trail (the "Construction License"); and

WHEREAS, except as otherwise provided herein, the Trail will be constructed strictly in accordance with the Plans and Specifications dated _____ for the City's Lakewalk Trail Project, City Project No. 0569TR (the "Plans and Specifications"); and

WHEREAS, Authority is willing to grant the Trail License and the Construction License to City under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the sum of One and No/100th Dollars (\$1.00) paid to Authority by City, and the other covenants and agreement herein contained on the part of City to be paid, kept and performed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. GRANT OF LICENSES

1.1 Trail License: Subject to the terms and conditions of this Agreement and for the term hereof, Authority hereby grants to City a non-perpetual, non-exclusive License to locate the Trail within the Right-of-Way between the Lakefront Line station 200+00 (intersection of the Right of Way and 47th Avenue East) as detailed in the Phase 3 Lakewalk East Extension Plan and station

260+76.7 (the intersection of the Right-of-Way and 60th Avenue East), from a point twenty-five feet (25') North of the north rail to the Northerly line of the Right-of-Way as shown on the Plans and Specifications (the "Trail Licensed Premises"). In addition, the Trail License authorizes City to go upon the Licensed Premises for the purpose of maintaining, inspecting, repairing, replacing or removing the Trail. The Trail License shall commence as of November 1, 2009 and shall remain in effect until November 1, 2029, unless earlier terminated pursuant to the terms of this Agreement.

1.2 Construction License: Subject to the terms and conditions of this Agreement, Authority hereby grants to City a Temporary Construction License in order to allow City and its contractor(s) to enter upon the Right-of-Way for the purpose of constructing the Trail and removing and replacing sanitary sewer and water mains. The Construction License shall apply to the portion of the Right-of-Way Northerly from a point ten feet (10') North of the north rail to the Northerly line of the Right-of-Way. The Construction License shall commence November 1, 2009 and, unless earlier terminated in accordance with the terms of this Agreement shall terminate on the date when City issues a Certificate of Completion to its contractor(s) constructing the Trail.

SECTION 2. FEE

2.1 City shall pay annually to Authority, payable on the first business day of each calendar year, a fee in the amount of One and No/100th Dollars (\$1.00).

SECTION 3. USE

3.1 The Trail License is solely for the purpose of allowing the recreational trail for pedestrian and non-motorized vehicle travel in the Right-of-Way, including bridges, culverts, cuts and fills, and for the purpose of inspecting, maintaining, repairing and replacing the Trail. Except as hereinafter provided for, snowmobiles and other motorized uses are specifically prohibited on the Trail License Premises. Signs placed by City shall be limited to interpretative and directional signs relating to non-motorized public recreational uses and shall be subject to advance approval of Authority. City shall post and maintain such signs and posters on the Trail License Premises as are necessary and suitable to delineate and locate the Trail, to prohibit the use of Authority's adjacent property, and to expressly inform the general public that the Trail License Premises is for "non-motorized use only." In no event shall City permit the placement of any commercial signage upon the Trail License Premises. The Trail License Premises shall be used for no other purpose without Authority's prior written consent.

3.2 Only City motor vehicles shall be allowed to be operated on the Trail License premises but only when necessary to accomplish a specific maintenance or repair project, when pedestrian access is not sufficient.

3.3 The Construction License shall be used by City solely for the purpose of constructing the Trail in accordance with the Plans and Specifications. The Construction License shall not be used by City for any other purpose without the prior written consent of Authority.

3.4 At no time shall City, its contractors or agents, interfere with the safe operation of railroad trains and equipment upon the Lakefront Line. City shall assure that City, its contractors and agents, maintain proper clearances on the railroad line and take all actions necessary to assure that railroad operations will not be in any way interfered with, impeded or delayed.

3.5 City shall not use the licenses granted hereunder for any purpose which is forbidden by any applicable law, regulation or rule of any governmental agency, including local, state or federal, or which may invalidate any policy of insurance issued to City or Authority.

3.6 City, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, shall not permit any hazardous materials to be deposited on the Right-of-Way or other lands of Authority through its/their operations or actions. If hazardous material is so deposited as a result of City's (or its agent's, servant's, employee's, director's, officer's, contractor's, subcontractor's and supplier's) action or omission or due to the transportation of hazardous materials, City, its successors and any permitted assigns, shall indemnify, save harmless and defend Authority, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, from and against any claims made against Authority, its agents, servants, employees, directors, officers, contractors, subcontractors and suppliers, arising there from. For the purposes of this Agreement, "Hazardous Material" shall mean any substance (i) defined as "hazardous substance" under Section 1.01(14) of CERCLA, 42 U.S.C. 9601(14) or any successor regulation; (ii) containing petroleum, including any fraction thereof; or (iii) determined to be deleterious to human health or the environment by any federal, state or local environmental, occupational health, or public health agency or authority. City expressly agrees to be responsible for any such contamination of the lands, property or Right-of-Ways of Authority or any adjacent premises as a result of City's (or its agent's, servant's, employee's, director's, officer's, contractor's, subcontractor's and supplier's) acts, omissions, negligence or due to the transportation of hazardous materials in the Sewer Line, and if any such contamination occurs, City, its successors and any permitted assigns, shall be responsible to clean-up, remediate and restore the land, property and Right-of-Way to their original condition or to a condition that is in compliance with applicable state and federal laws and regulations and all local ordinances.

SECTION 4. INGRESS AND EGRESS

4.1 Authority does not undertake to provide a means of ingress and egress for City to the licensed premises.

SECTION 5. CONSTRUCTION

5.1 The Trail shall be designed and initially constructed strictly in accordance with the Plans and Specifications. Authority hereby acknowledges that it has been provided with a copy of the Plans and Specifications and that City has provided an explanation of the work set forth therein, and hereby acknowledges its approval. The Plans and Specifications reflect a forty-eight inch (48") high wire mesh or chain link fence to be located within the Trail License Premises between the Trail and the railroad tracks along the entire length of the Trail, which fence shall be furnished, installed, maintained and relocated or removed as necessary, by City, and shall be of a design acceptable to

RRA. The Plans and Specifications, insofar as they pertain to the Trail or to any construction activity, means or methods within the Right-of-Way, or in any way pertaining to or affecting the Right-of-Way, shall not be amended, modified, changed, nor shall anything be added to or deleted from the Plans and Specifications, nor any change orders issued, without the prior written consent of Authority.

5.2 The design and construction of the Trail will be solely the responsibility of City, subject to the advance review and written approval by Authority with regard to location and manner of construction and materials. The Trail shall be of durable materials designed for long service life and relatively free from routine servicing and maintenance. Conformance with current applicable material specifications and codes is mandatory. City shall be responsible for determining the location, elevation and extent of all utilities, underground structures and/or obstructions in the vicinity of the installation whether shown on the approved plans and specifications or not.

5.3 Prior to any excavation taking place, City must obtain the advance written approval of Authority as to the location thereof. If it is determined by Authority that shoring is necessary for any excavation, it will be the responsibility of City to submit a shoring design for advance approval by Authority.

5.4 City's use, as herein defined, shall be such that it shall do so with a minimum of interference with natural drainage of Authority's lands and Right-of-Way. Any drainage facilities required shall be constructed, maintained, repaired and removed by City, at City's sole cost and expense, and all work associated therewith shall be subject to the advance written approval of the Director of Authority, or his duly authorized representative. City shall avoid disturbing existing drainage facilities except as approved by the Director of the Authority.

5.5 All ground profiles and vegetation cover on the Authority's property or affecting drainage from or to Authority's property, disturbed by City while acting under this license or during construction of the Trail, must be reestablished as provided for in the Plans and Specifications for the initial installation and all future maintenance work. Areas of Authority's property and/or Right-of-Way disturbed by the installation, maintenance, removal or relocation of the Trail shall be kept to a minimum. Disturbed areas shall be returned by City to normal grade and elevation, with compaction of backfill material and all excess or undesirable material removed by City at its sole expense. Protection against erosion shall be provided by City as provided for in the Plans and Specifications.

5.6 Exceptions to any design, location, construction or methods of installation provisions contained in this Agreement and attachments, must be authorized in writing by the Director of Authority, or his duly authorized representative. All requests for exceptions shall be fully documented by City including design data, cost comparisons and other pertinent information.

SECTION 6. FLAGGING AND MATERIAL STORAGE

6.1 City shall obtain and maintain, at the sole cost and expense of City, any flagmen, watchmen and/or inspectors Authority deems necessary or advisable for the proper protection of traffic moving on its tracks and to ensure the safety of its and other railroad operations during the

construction, maintenance, repair, relocation and/or removal of the Trail. Movement of personnel, equipment and materials over, across or on the tracks and Right-of-Way of Authority shall be held to a minimum and such movements shall be made only under the supervision and direction of the Director of Authority or his duly authorized representative.

6.2 Flagging services shall be performed by North Shore Track Services, Inc., or such other entity as Authority may designate, and it shall be the responsibility of City to contract directly with North Shore Track Services, Inc. or other entity designated by Authority for necessary flagging services, the total cost of such services to be borne solely by City.

6.3 Except as otherwise specifically permitted in the Plans and Specifications, other equipment necessary for City's operation of the Trail must be located outside the limits of the Right-of-Way.

SECTION 7. MATERIALS AND WORKMANSHIP

7.1 All materials and workmanship required in the construction, maintenance, repair, replacement, relocation and removal of the Trail shall be furnished by City, but shall be subject at all times to inspection by the Director of Authority, or his duly authorized representative. Any materials or workmanship not meeting the requirements of the Plans and Specifications or declared to be unsatisfactory by Authority shall be replaced by City at its own expense with materials and workmanship satisfactory to Authority. The privilege of inspecting the materials and workmanship involved in the construction, maintenance, repair, relocation and/or removal of the Trail and to notify City to renew, repair or replace materials and workmanship unsatisfactory to Authority shall not be construed as imposing any obligations whatsoever on Authority to inspect such materials and workmanship and to notify City to renew, repair and replace any materials or workmanship, it being the intent of the parties to this Agreement that the sole responsibility for the materials and workmanship used in the construction, maintenance, repair, relocation and/or removal of the Trail shall at all times be that of City alone.

7.2 When, in the sole opinion of Authority, the Trail is in a defective or dangerous condition, City shall, at its own cost and expense, within ten (10) calendar days after mailing of written notice from Authority, submit a preliminary, tentative plan to renew, repair or replace the Trail in a manner reasonably satisfactory to the Director of Authority, or his duly authorized representative. Upon approval of a final plan by the Director of Authority, City shall initiate the renewal, repair or replacement of the Trail within a reasonable time in accordance with the approved plan and shall continue renewal, repair or replacement without interruption to completion. For the purposes of this Section 7.2, a "reasonable time" will be determined by reference to the imminence of harm, damage or destruction to health or property; likely magnitude of the harm, damage or destruction, and the disruption of Authority's activities which may be caused by the defective or dangerous condition. However, the cost or expense involved in remedying the defective or dangerous condition shall not be a factor in determining "reasonable time."

SECTION 8. INSPECTION, MAINTENANCE, SERVICING AND REPLACEMENT OF TRAIL

8.1 Any and all inspection, maintenance, repair or replacement of the Trail shall be the sole responsibility of City and at its sole expense. Except in the event of an emergency, City shall comply with the ADVANCE NOTIFICATION provisions of Section 13 herein before entering upon Authority's property or the Right-of-Way except for that portion covered by the licenses granted pursuant to Paragraphs 1.1 and 1.2 above. Maintenance and repair must be performed by City so as to keep the Trail in a safe, functional condition, and in a good state of repair in accordance with the requirements of applicable Federal, State and Local laws, regulatory standards and utility codes, as well as any requirements of Authority.

8.2 City shall keep and maintain the Licensed Premises in good repair and in safe, neat, clean and respectable condition, and will properly dispose of all refuse therefrom and observe and comply with all statutes, ordinances, government regulations, and policies of Authority applicable thereto. City shall cause or suffer no waste of the License Premises and shall permit thereon no conduct which would be illegal or immoral or constitute a nuisance.

8.3 City shall be responsible at its sole cost and expense to replace and stabilize all earth cover and vegetation if and when it has eroded over the Trail License area where such erosion is due to, or caused by, the placement or existence of the Trail. City is also responsible for the repair of any settlement of backfills, fills and embankments which may occur due to the placement or existence of the Trail.

8.4 City shall submit to Authority for its prior approval, all plans and specifications concerning maintenance or repair work to be performed by City in regard to the Trail, other than routine, day-to-day inspection and maintenance.

8.5 City accepts the Licenses granted hereunder with the full understanding and awareness that Authority's maintenance or snow removal activities may result in damage to City's improvements and may impede access to the License Premises from time to time. Authority agrees to take reasonable measures to prevent damage to City improvements, but City agrees to assume full responsibility to repair and maintain its improvements even if damaged by Authority's railroad activities, maintenance activities, or snow removal activities, and City shall not in any event claim against City for damage to its improvements or damages due to impeded access to the License Premises.

CITY ACKNOWLEDGES THAT THE RIGHT-OF-WAY DESCRIBED HEREIN CONTAINS ACTIVE RAILROAD LINES USED FOR RAILROAD OPERATIONS. RAILROAD OPERATIONS ENTAIL OR CAUSE LOUD NOISES, SMOKE, DUST, STEAM, ODORS, VIBRATIONS, BRIGHT LIGHTS AND OTHER CONDITIONS. RAILROAD OPERATIONS ARE CONDUCTED AT ALL TIMES OF THE DAY AND NIGHT. THE INTENSITY AND DURATION OF RAILROAD OPERATIONS ON THE RAILROAD LINES CAN INCREASE AT ANY TIME WITHOUT WARNING TO CITY, INCLUDING, BUT NOT LIMITED TO, THE INITIATION OR RESUMPTION OF ACTIVE IRON ORE TRANSPORT AND OTHER RAILROAD FREIGHT OPERATIONS.

ACCORDINGLY, CITY TAKES THIS LICENSE WITH THE UNDERSTANDING AND AWARENESS THAT CITY'S USE OF THE LICENSED PREMISES MAY BE INTERFERED WITH BY RAILROAD OPERATIONS AND CITY SHALL HAVE NO RIGHT OR RECOURSE TO DEMAND ANY CHANGE OR CESSATION TO THE CHARACTER, CONDUCT OR CONDITIONS OF RAILROAD OPERATIONS DESCRIBED HEREIN OR FUTURE RAILROAD OPERATIONS OF ANY SORT OR NATURE WHATSOEVER.

SECTION 9. RELOCATION CHANGES AND ALTERATIONS

9.1 When and as often as Authority shall require to have the location and/or elevation of the Trail, or any portion thereof, change for the purposes of making improvements to the facilities of Authority, or minimizing any hazards presented by the Trail or the contents thereof, all as determined in Authority's sole discretion, City shall, at its own cost and expense, with due diligence and within a reasonable period of time after receipt of written notice from Authority, change the location and/or elevation of the Trail, or any portion thereof, to such a location and/or elevation as shall be reasonably designated by the Director of Authority or his duly authorized representative.

9.2 In the event City submits in writing a request to Authority to extend the relocation period, Authority shall respond within five (5) calendar days.

9.3 City agrees that upon request from Authority, it will, at its own cost and expense, make changes or alterations to the Trail when, in Authority's sole opinion, Authority's operations require modification to the Trail, or to minimize hazards presented by the Trail.

9.4 In the event City shall fail to change the location or elevation of, renew, repair or replace, alter, maintain, service, or make any changes requested by Authority, to the Trail, or any portion thereof, or to correct any dangerous or defective condition, or fails to perform any other matter required of City hereunder, after mailing of written notice from Authority as hereinbefore provided and within the time stipulated, then Authority may, without further notice to City, perform said work, all at the sole risk, cost and expense of City, or at Authority's option, declare this license terminated and require City to remove the Trail and restore the premises to its original condition.

SECTION 10. INSURANCE

10.1 Prior to use of the Right-of-Way and/or exercise of any of the privileges and activities provided by this Agreement, City, at its sole cost and expense, shall procure and maintain, or require the procurement and maintenance during the term of this Agreement insurance, or State approved self insured status, adequate to cover all liability hereunder assumed by City and to protect Authority, its officers, directors, employees, agents, contractors, subcontractors and suppliers with respect to losses arising out of the use of the Right-of-Way and/or construction, repair or maintenance of the Trail by City, its officers, employees, agents, contractors, subcontractors and suppliers.

10.2 Such insurance or self insurance coverage shall be placed with insurance carriers acceptable to Authority and shall include but not be limited to:

1. Statutory Workers' Compensation/Employers Liability with an Employers Liability Limit of not less than \$1,000,000 Each Accident.
2. Commercial General Liability Insurance Coverage, including contractual coverage, with a limit of not less than \$1,000,000 Each Occurrence/ \$1,000,000 Aggregate.
3. Commercial Automobile Liability Insurance Coverage with a limit of not less than \$1,000,000 Each Accident.
4. Commercial Umbrella Insurance Coverage with a limit of not less than \$4,000,000 Each Occurrence/\$4,000,000 Aggregate. The coverage provided by this policy shall be at least as broad in scope as the underlying liability coverage's specified in (1), (2) and (3) above.
5. Railroad Protective Liability Insurance in the amount of \$2,000,000 for Each Occurrence and \$6,000,000 in the Aggregate. City shall provide Authority with an original of said policy evidencing coverage for the full term of any construction operations provided by this Agreement or taking place or utilizing Authority's right-of-way to access a construction site.
6. All Risk Property Insurance including Flood and Earthquake in an amount of \$10,000,000 to provide protection for loss or damage to any, property of Authority, or the property of others in the care, custody or control of City, its, officers, employees, agents, contractors, subcontractors and suppliers. Such policy is to include Authority as a Loss Payee as applicable.

10.3 Authority and City acknowledge that City is a self-insured political subdivision of the State of Minnesota pursuant to Minn. Stat. §471.981 with respect to public liability; Minn. Stat. §176.18 1 with respect to workers' compensation; and Minn. Stat. §65B.48 with respect to no-fault auto liability. City represents that under the provisions of Minn. Stat. §466.09, it has the power and a statutory duty to levy taxes sufficient to pay any and all judgments rendered against it. During the term of this Agreement, City shall maintain all of the above self-insurance programs in strict accordance with the laws and rules of the State of Minnesota and shall at all times be certified by the State of Minnesota to operate said self-insurance program and shall afford Authority the coverage's set forth in subsection 10.2 above. In addition, City shall receive and investigate any and all claims related to or arising out of this Agreement. City shall also contract with legal counsel to pursue any negotiations or litigation that may be necessary based upon the circumstances of any claim involving this Agreement. City shall set aside funds for potential claims arising under this Agreement as required by State insurance regulations. City agrees that in case of any judgment in excess of funds so reserved, it will levy taxes to pay such judgment. City agrees that it shall use its State approved self-insurance program to indemnify Authority as provided in Section 11 of this Agreement. If City ceases to maintain any of its self-insurance programs relating to insurance coverage required by this

Section 10.3, or if any of said self-insurance programs fail to be approved by the State of Minnesota, or if City shall cease to have the power to levy taxes in an amount to cover any judgment against it, then City shall immediately purchase insurance as set forth in subsection 10.2 of this Section 10, and submit required certificates and policies to Authority as provided in this Section 10.

10.4 All of the above policies shall name Authority, its officers, directors, employees, and agents as additional insured and shall be endorsed to provide coverage to these additional insured on a primary basis without seeking contribution from any other insurance or self insurance available to Authority. In addition, the policy shall contain Severability of Interest Clauses and Waivers of Subrogation in favor of Authority, its officers, directors, employees and agents.

10.5 City shall furnish to Authority's Director insurance certificates in a form acceptable to Authority, evidencing compliance with the foregoing requirements and stating that the insurers will provide thirty (30) calendar days' advance written notice to Authority of the cancellation or material alteration in any of the required policies of insurance.

10.6 All coverage's are to be written on occurrence based policy forms with insurers acceptable to Authority. Claims made policy forms are subject to prior review and written approval by Authority.

10.7 City shall also require its contractors, suppliers, sub lessees, etc., to carry and furnish evidence of the above coverage's.

10.8 The providing of the above required insurance coverage's shall not be deemed a limitation on the liability of City as provided in this Agreement, but shall be additional security therefore.

10.9 Failure of City to comply with any one of the above described certificate of insurance requirements within thirty (30) calendar days of written notice by Authority to City of any such default may result in delay, and/or, at Authority's option, termination of this Agreement.

10.10 All insurance required to be carried by City shall be with insurance companies subject to Authority's approval.

10.11 Renewal certificates shall be furnished to Authority not less than thirty (30) calendar days prior to the expiration of the coverage's required by this Section 10. The insurances required hereunder shall be maintained in full force and effect until Authority finally releases in writing City from all obligations under the terms of this Agreement.

SECTION 11. INDEMNITY AND LIABILITY

11.1 City, its successors and any permitted assigns, shall assume all risk and liability for accidents and damages that may occur to person or properties on account of or in any way related to the construction, maintenance or operation of the Trail, and the City does hereby indemnify and hold harmless Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers,

directors, servants, employees and agents, from any and all costs, liabilities, expenses, suits, judgments or damages to person or property or claims of any nature whatsoever arising out of or in any way related to the construction, maintenance, or operation of the Trail or performance by City, its agents, servants, employees, officers, directors, contractors, subcontractors or suppliers of any of the obligations or privileges provided under this Agreement. Provided, however, with respect to any claim by or liability to a third party, nothing in this Paragraph 11.1 shall create a liability which would not otherwise exist.

11.2 City, for itself, its successors and any permitted assigns, does agree to indemnify, protect and save harmless Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents and employees from any and all claims, demands, awards and actions made, brought or obtained against Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents or employees, by anyone, including but not limited to claims brought by City, its agents, servants, directors, officers, contractors, subcontractors, suppliers or employees, for any and all injuries to person, including death arising there from, and damages to property due to, caused by or growing out of any accident or occurrence which but for this Agreement or the presence of City's employees, agents, servants, contractors, subcontractors or suppliers pursuant to this Agreement, would not have occurred or been incurred, except when such damages and injuries are attributable to the sole or concurrent fault, failure or negligence of Authority, its officers, directors, agents, servants, employees, contractors, subcontractors or suppliers. City agrees to defend, at its own expense, any suit or action brought against Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, servants, agents or employees, by reason of any matter referred to herein, and pay any judgment recovered or rendered in any such suit or suits. Notwithstanding anything in this Section 11.3 to the contrary, the foregoing release and waiver shall not apply to damage or injury caused by the intentional unlawful or fraudulent conduct of Authority.

11.3 City agrees to protect the property of Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, agents, servants, employees, contractors, subcontractors and suppliers (including rolling stock as well as stationary facilities) from damage on account of any accident or occurrence which *but for* this Agreement and privileges herein granted would not have occurred or been incurred except as provided above, and to promptly reimburse Authority, its successors, assigns, affiliates, subsidiaries, parent company, officers, directors, agents, servants, employees, contractors, subcontractors and suppliers for any and all such loss or damage.

SECTION 12. TERMINATION, DEFAULT

12.1 Unless cancelled at any time upon mutual agreement of City and Authority, upon thirty (30) days written notice, this Agreement and the privileges granted hereunder shall be and continue in full force and effect until November 1, 2029, except for City's continuing obligations to remove the Trail and restore the Right-of-Way and Authority's other property and its other obligations specifically provided in this Agreement.

12.2 This Agreement shall terminate prior to November 1, 2029 in the event that for twelve (12) consecutive months City shall cease to use the Trail or any replacement of the Trail for the

purpose herein stated, at which time the rights granted herein shall cease and terminate absolutely and this Agreement shall be null and void, except for City's continuing obligations to remove the Trail and restore the Right-of-Way and Authority's other property and its other obligations specifically provided in this Agreement.

12.3 This Agreement may be terminated prior to November 1, 2029 by Authority upon one (1) year's advance written notice to City in the event that Authority determines that the Licensed Premises are needed by Authority for railroad-related purposes.

12.4 Upon termination of this Agreement, City shall remove the Trail and all of its property, if any, within the time specified in any notice of termination. In effecting such removal, the premises and property of Authority shall be restored by City to a condition satisfactory to Authority's Director, or his duly authorized representative. If City shall fail to make the removal in the manner and time set forth herein, Authority may perform the removal and make said restoration, all at the sole risk, cost and expense of City, and may also dispose of any removed items without the necessity to account for the same or to give further notice to City.

12.5 If City shall fail to make the required removal, Authority shall have the further option to elect and notify City that all right, title and interest of City in any of its property shall be forfeited and shall vest absolutely in Authority as of the date of notice of such election.

12.6 In the event of City's breach of any covenant, condition, payment or other obligation under this Agreement, Authority, its successors and assigns, shall provide City with written notice of breach and thirty (30) calendar days in which to cure such breach, except that, if the nature of the breach is such that it cannot be reasonably cured within said thirty (30) day period, City shall commence cure within said thirty (30) day period and complete said cure as soon as is reasonably possible, subject to legal requirements imposed on the City by law. Any breach by the City which is not cured within the time provided shall entitle Authority to injunctive relief, specific performance and damages, together with such attorney's fees and costs as Authority may incur as a result of such breach or the enforcement of Authority's rights pursuant to this Agreement. Repeated material breaches of this Agreement by City, shall constitute cause for termination of this Agreement by Authority, and City shall immediately discontinue construction and/or operation of the Trail upon such termination. Authority's exercise of its right to terminate this Agreement shall not excuse City from the fulfillment or satisfaction of any obligation under this Agreement which has accrued prior to Authority's termination of the Agreement or of any obligations which this Agreement provides shall survive or be performed upon, termination.

12.6.1 In the event of Authority's breach of any covenant, condition, payment or other obligation under this Agreement, City, its successors and assigns, shall provide Authority with written notice of breach and thirty (30) calendar days in which to cure such breach except that, if the nature of the breach is such that it cannot be reasonably cured within said thirty (30) day period, Authority shall commence cure within said thirty (30) day period and complete said cure as soon as is reasonably possible, subject to legal requirements imposed on the Authority by law. Any breach by the Authority which is not cured within the time provided shall entitle City to injunctive relief,

specific performance and damages, together with such attorney's fees and costs as City may incur as a result of such breach or the enforcement of City's rights pursuant to this Agreement.

12.7 In the event that City shall be guilty of any act or omission in violation of its obligations under this Agreement and such violation constitutes an imminent hazard to the health or safety of persons or property, or an imminent hazard to Authority's ability to use the railroad facilities located on the Right-of-Way when it has need therefore, such condition shall be deemed an Emergency Default. In such case, Authority shall notify City by telephone at the City's Public Works and Utilities Department's emergency notification number appearing in area telephone directories or at such other number as the City's Director of Public Works and Utilities shall designate to Authority in writing from time to time and shall promptly follow up such telephonic notification with written confirmation thereof at the address provided for in Paragraph 27 below; such notifications shall set forth the nature of the Emergency Default and shall demand that City proceed to cure said Emergency Default condition immediately, subject to limits imposed on it by law. If City fails or refuses to proceed to so immediately cure such Emergency Default condition, Authority shall be entitled to itself proceed to cure such Emergency Default condition and to collect the reasonable costs thereof from City.

12.7.1 In the event that Authority shall be guilty of any act or omission in violation of its obligations under this Agreement and such violation constitutes an imminent hazard to the health or safety of persons or property or to City's ability to use the Trail when it has need therefore, such condition shall be deemed an Emergency Default. In such case, City shall notify Authority at such number as Authority shall designate to City in writing from time to time and shall promptly follow up such telephonic notification with written confirmation thereof at the address provided for in Paragraph 27 below; such notifications shall set forth the nature of the Emergency Default and shall demand that Authority proceed to cure such Emergency Default condition immediately, subject to limits imposed on it by law. If Authority fails or refuses to proceed to so immediately cure such Emergency Default condition, City shall be entitled to its elf proceed to cure such Emergency Default condition and to collect the reasonable costs thereof from Authority.

SECTION 13. ADVANCE NOTIFICATION

13.1 City shall notify the Director of Authority, in writing, three (3) business days (Monday-Friday) prior to starting construction and again by telephone at (218) 254-2575 at least twenty-four (24) hours before any work herein provided is to be undertaken.

SECTION 14. ORDINANCES, REGULATIONS, RULES AND APPLICABLE LAWS

14.1 City, at City's sole cost and expense, shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority, federal, state or local, having jurisdiction over the construction of the Trail and/or City's use, maintenance, repair and occupation under this Agreement, including but not limited to zoning, health, safety, building and/or environmental mailers.

14.2 City shall further defend, indemnify and hold Authority harmless from any violations of such laws, ordinances, rules, regulations and/or requirements, any penalty, levy, fine or assessments there from, and all costs of defense of or compliance with any citation, order or violation notice(s), including but not limited to any such penalties, levies, fines, assessments, compliance or remedial charge(s) arising after termination of this Agreement. For the purposes of this Section 14.2, the term Authority, shall include not only the Authority named herein but also any parent companies, subsidiaries, affiliates, successors, or assigns of Authority, or its or their agents, servants, employees, directors, officers, contractors, subcontractors or suppliers.

14.3 It is City's sole duty, responsibility and obligation to determine and obtain any permit, license or other permission required by law in order for City to perform its obligations provided in this Agreement including, but not limited to, the construction, maintenance, repair, relocation or replacement of the Trail. City shall provide Authority with a copy of any required permits, licenses, or other permission or documentation prescribed by law prior to commencing or engaging in the regulated activity.

SECTION 15. CLAIM OF TITLE

15.1 City shall not at any time own or claim any right, title or interest in or to the lands of Authority, the Right-of-Way of Authority nor shall the continued existence of this Agreement for any length of time give rise to any right, title or interest in and to the lands or Right-of-Way of Authority other than as specifically provided in this Agreement.

SECTION 16. RECORDING

16.1 Upon the request of either party, the other party shall join in the execution of a memorandum or so-called "short form" of this Agreement for the purpose of the recordation. Said memorandum or short form of this Agreement shall describe the parties, the termination provisions of this Agreement and shall incorporate this Agreement by reference. The party requesting the recording shall pay the recording costs.

SECTION 17. LIMITATIONS, RESERVATIONS AND RESTRICTIONS

17.1 This Agreement is made on an AS IS BASIS without warranties or representations of any nature or kind by Authority and subject to all of the limitations, reservations and restrictions upon the title of Authority and its right to use the Right-of-Way or other property. Authority does not warrant or represent the extent or duration of its interest, if any, in such property.

17.2 Other Agreements: The rights and privileges granted to City pursuant to this Agreement are subject to and subordinate to the agreements between Authority and Burlington Northern Railroad (BN), Duluth, Missabe & Iron Range Railway Company (DM&IR), Canadian National Railroad (CN), Lake Superior Museum of Transportation, and Minnesota Department of Transportation, relating to the Lakefront Line.

SECTION 18. INSPECTION

18.1 Notwithstanding any other provision of this Agreement, nothing contained herein shall relieve City from its obligation to inspect and at all times maintain in good condition and repair the Trail and facilities located under, along and across the land and Right-of-Way of Authority, or impose any obligation upon Authority in respect to such inspection and maintenance.

18.2 Authority shall have no responsibility or liability for any condition of the License Premises or for policing the safe and proper use thereof.

SECTION 19. SUCCESSORS AND ASSIGN

19.1 The terms, conditions, covenants and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Authority and the successors and assigns of City, provided, however, City may not assign, convey or encumber its rights under this Agreement except as set forth in Section 20 below.

SECTION 20. TRANSFER, ASSIGNMENT OR SUBLICENSE

20.1 City shall not voluntarily transfer, encumber or assign this Agreement or any of its rights and privileges herein granted, except with the prior written consent of Authority, which consent may be granted or withheld in the sole discretion of Authority. In the event, of any such unauthorized transfer, encumbrance or assignment of this Agreement, or any of the rights and privileges of City hereunder, Authority, at its option, may immediately terminate this Agreement by giving City or any transferee or assignee written notice of such termination.

20.2 City shall not conduct, promote or permit any races or competitive events within the Trail License Premises without the prior written authorization of Authority.

SECTION 21. TRACKS

21.1 It is understood and agreed that the permission herein granted to City does not include the right to move heavy equipment or vehicles over any unprotected tracks of Authority.

21.2 If, after the initial construction, in the judgment of the Director of Authority, it shall be necessary to protect the property of Authority, or property in its care and custody by use of crossing flagmen, or other protective measures which are required because of the Trail or City's operations, it is understood and agreed that City shall promptly reimburse Authority for the entire cost and expense thereof if Authority undertakes to provide or obtain such services.

SECTION 22. ENTIRE AGREEMENT

22.1 This Agreement and the Exhibits, and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Authority and City concerning the subject matter of this Agreement and there are no other covenants, promises, agreements, conditions or understandings, either oral or written between the parties hereto.

Except as herein otherwise specifically provided, no alteration, amendment, change or addition to this Agreement shall be binding upon Authority or City unless reduced to writing and signed by both parties.

SECTION 23. GOVERNMENTAL APPROVAL

23.1 To the extent required by law, this Agreement shall be subject to the approval, if necessary, of any State or Federal Commerce Commission, Board of Public Utility Commissioners, Public Service Commission or any other such Federal, State or local governmental body as may have jurisdiction.

SECTION 24. INTERPRETATION

24.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all terms of this Agreement shall be interpreted in accordance therewith.

SECTION 25. PARTIAL INVALIDITY

25.1 The invalidity, unenforceability or unconstitutionality of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid, unconstitutional or unenforceable provision or provisions were limited in scope and effect to the extent necessary to render such provision or provisions valid, enforceable and constitutional, and if such a limiting construction is not possible, such provision or provisions shall be omitted.

SECTION 26. NON-WAIVER OF COVENANTS

26.1 The failure of either party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provisions in the future nor in any way affect the validity of this Agreement, or any part thereof, nor the right of any party thereafter to enforce each and every such provision.

SECTION 27. NOTICES

27.1 Any notice, other than ADVANCE NOTICE described in Section 13, required or permitted to be given under this Agreement shall be in writing and deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

If to Authority:	St. Louis & Lake Counties Regional Railroad Authority Mr. Robert Manzoline, Director 801 SW Highway 169 Chisholm, MN 55719
If to City:	City of Duluth Director Department of Public Works and Utilities Room 200 City Hall 411 West First Street Duluth, MN 55802

SECTION 28. RELATIONSHIP OF THE PARTIES

28.1 The relationship of the parties is that of independent entities and in no way establishes a partnership, agency or joint venture relationship.

SECTION 29. SURVIVAL OF COVENANTS

29.1 Notwithstanding any other provision of this Agreement, the rights and obligations of the parties expressed in this Agreement, including but not limited to, any provisions concerning indemnity and liability, shall remain in effect for any legal proceeding brought against Authority, or its agents, servants, employees, directors, officers, successors or assigns, which was commenced after the termination of this Agreement, for whatever reason, but was caused by, alleged to be caused by, or grew out of any accident or occurrence which but for this Agreement, the Trail or the presence of City's officers, agents, employees, servants, contractors, subcontractors or suppliers pursuant to this Agreement, would not have occurred or been incurred, even when such proceeding is attributable to the sole or concurrent fault, failure or negligence of Authority, its officers, agents, employees, servants, contractors, subcontractors or suppliers.

IN WITNESS WHEREOF, the parties have mutually executed this Agreement, in duplicate, as of the day and year first above written.

CITY OF DULUTH, a Minnesota
Municipal Corporation

By: _____

Its Mayor

ST. LOUIS & LAKE COUNTIES REGIONAL
RAILROAD AUTHORITY,
a Minnesota Corporation

By: _____

Its Chairman

Attest:

By: _____

Its City Clerk

Approved: *as to form:*

Assistant City Attorney

Countersigned:

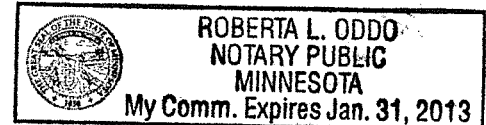
City Auditor

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this 7th day of October, 2009 by Steve Raukar, the Chairman, of the St. Louis and Lake County Regional Railroad Authority., an authority under the laws of the State of Minnesota, on behalf of the Authority.

Roberta L. Oddo
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)



The foregoing instrument was acknowledged before me this 28th day of October, 2009, by Don Ness and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a municipal corporation, on behalf of the City.

Mary Chapman
Notary Public

