PUBLIC WORKS AND UTILITIES COMMITTEE

10-0638R

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) TO DISPOSE OF SNOW ON PROPERTY OWNED BY DEDA.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the Duluth economic development authority (DEDA), to allow the city to dispose of snow from street plowing operations on certain DEDA-owned property known as lot D located west of Bayfront Park.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

PW&U/ATTY JC:dma 12/08/2010

STATEMENT OF PURPOSE: This resolution authorizes the city to execute a license agreement with DEDA, which allows the city to dispose of snow from its street plowing operations on DEDA property known as Lot D located west of Bayfront Park.

LICENSE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2010, by and between the Duluth Economic Development Authority (DEDA) and the City of Duluth (CITY).

LICENSE AND TERM

DEDA hereby grants to City a non-exclusive license upon the terms and provisions stated herein, and revocable at any time with or without cause in the sole discretion of DEDA to enter onto certain property known as "Lot D" and as shown on Exhibit "A" attached hereto (the Licensed Premises). The term of this license will commence on December 21, 2010, or upon DEDA's receipt of a technical assistance letter from the Minnesota Pollution Control Agency (Technical Assistance Letter), whichever is later, and shall continue until May 1, 2011, unless earlier terminated, for the sole purpose of dumping snow removed from City public streets.

COMPLIANCE WITH LAWS, PROTECTION OF OTHER PROPERTIES

During the term of this Agreement, City, its officers, agents, employees and invitees shall fully comply with all applicable laws. Neither City, its officers, agents, employees, or invitees, nor anyone accompanying City, its officers, agents, employees, or invitees shall deposit solid waste or liquid waste on or commit waste on or damage to the Licensed Premises or allow any public or private nuisance or other act or thing to take place, other than snow dumping on the Licensed Premises.

INDEMNIFICATION

As lawful consideration for using the Licensed Premises, City agrees to defend, indemnify, and hold harmless DEDA and its officers, agents, servants and employees from and against any and all losses, liens, claims, actions, demands, liabilities, judgments, penalties, injunctive relief, injury to person(s) or damage to the Licensed Premises, costs, damages and expenses by reason of any actual or alleged act or omission of City or its employees, members, agents, volunteers or invitees in connection with or relating to City's use or occupancy of the Licensed Premises including spills, leaks and cross-contamination. Upon ten (10) days' written notice, City shall appear and defend all claims and lawsuits against DEDA growing out of any such injuries or damages. DEDA does not waive its immunities under state or federal law.

ASSIGNMENT AND SUBLICENSING

The rights and obligations of City hereunder may not be assigned, subleased, sublicensed or in any other way transferred.

INSURANCE REQUIREMENTS

During the term of this license, City, at its own cost and expense, shall self insure comprehensive liability and property damage insurance applicable to the Licensed Premises, and City agents, employees, servants, invitees or licensees, sufficient to protect the interests of DEDA with a combined single limit of at least $1,500,000; for each occurrence $500,000; and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. DEDA shall be considered an additional insured.

USE AND MAINTENANCE

City agrees to comply with or perform reasonable requirements, conditions, or suggestions set forth in the Technical Assistance Letter prior to dumping any snow on the Licensed Premises. Additionally, City agrees to exercise care in the use and maintenance of the Licensed Premises during the term of this License Agreement. City agrees to pay for or repair upon demand any damage done to the Licensed Promises during the term of this License, including but not limited to damage to fencing.

TERMINATION

DEDA may, in its sole discretion, revoke this license at any time and for any reason after giving of ten (10) days' written notice to City as indicated in NOTICES.

ENTRY TO AND CLEANING OF LICENSED PREMISES

In the event that DEDA determines that oil or other fluids have leaked from the equipment, or if other debris or waste, including salt, is left on the Licensed Premises and an agency having proper jurisdiction requires clean up action, City shall properly perform and leave the Licensed Premises in a condition complying with the agency's requirements. In the event that City fails to clean-up the Licensed Premises, DEDA may cause such clean-up and City shall be responsible for all costs of clean-up.

City agrees that on or after May 1, 2011, and with a minimum of seven (7) days advance notification by DEDA (written or electronic), City will take those steps necessary to either remove any remaining snow from the Licensed Premises or otherwise take those steps necessary to accelerate the melt of said remaining snow earlier deposited onto the Licensed Premises by City.

In addition to any agency requirement for clean-up as set forth above, following the occurrence of the melting of snow, whether it be before, on or after May 1, 2011, City shall remove all garbage and debris of whatever nature from the Licensed Premises. In the event that City fails to remove said garbage and debris, DEDA cause such removal and City shall be responsible for all said removal costs.

CONSENTS

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

NOTICES

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

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

If to City: Chief Administrative Officer
City of Duluth
411 West First Street
402 City Hall
Duluth, MN 55802

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

_____
President

_____
Secretary

CITY OF DULUTH

_____
Mayor

Attest:

_____
City Clerk

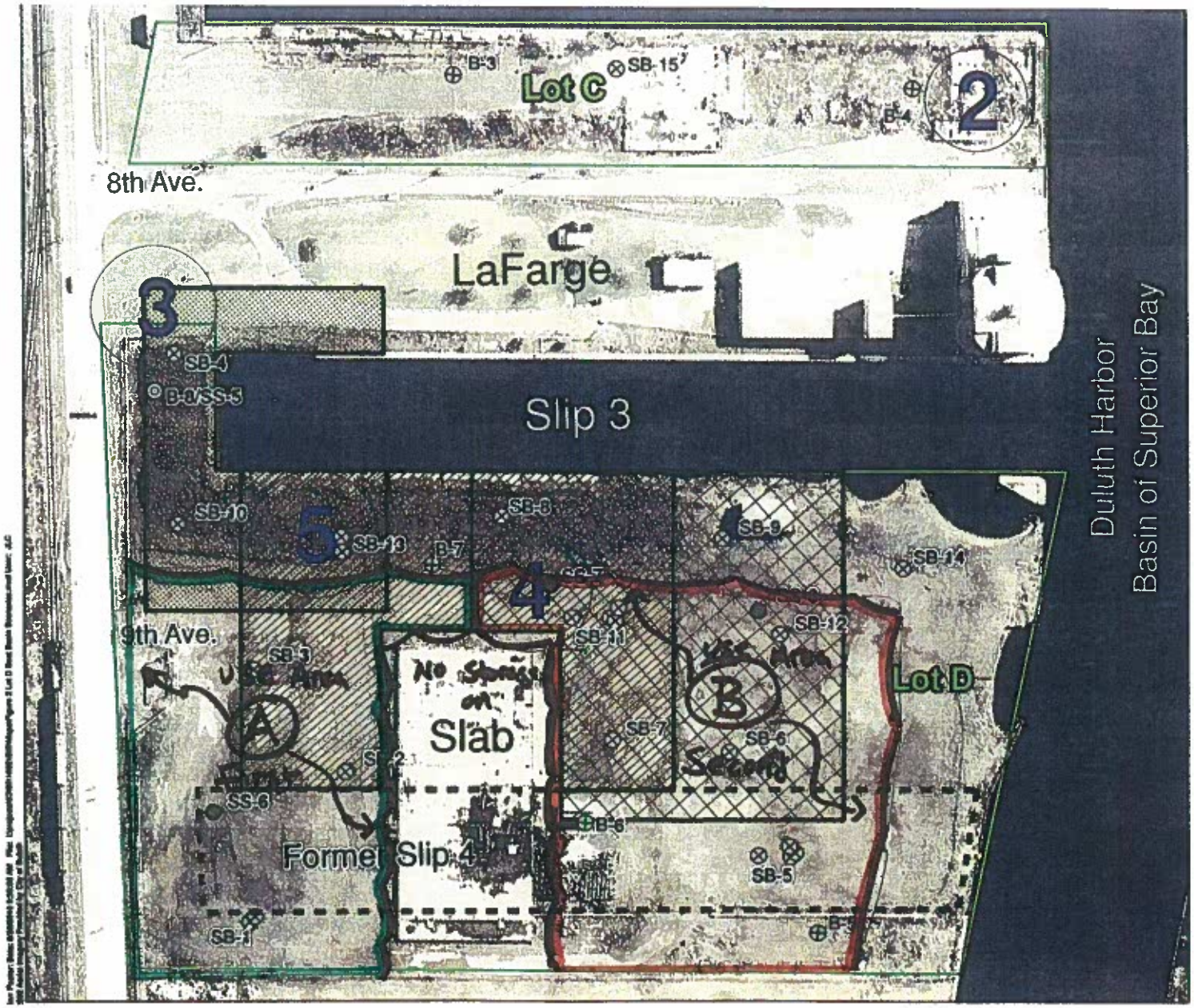
Countersigned:

_____
City Auditor

Approved as to Form:

_____
City Attorney

deda/agr/2010/1058lotDsnow



Environmental Boring (Barr 2010)
Intermediate Depth Soil Boring
Soil Boring with Shallow Sample
Shallow Depth Soil Sample
Bayfront Property Investigation Area (owned by Duluth Economic Development Authority)
Boat Basin Scenario A
Boat Basin Scenario B
Boat Basin Scenario C
Historical Feature
5 Location of Recognized Enviromental Conditions Identified in Phase I Enviromental Assessment (Barr, 2004)
Area A - Use First
Area B - Use Second

Feet
100 0 100 200

Meters
50 0 50

Figure 2

Lot D Proposed Snow Storage Areas
~~BOAT BASIN SCENARIOS WITH INVESTIGATION LOCATIONS~~
Bayfront Property
Duluth, Minnesota

(JMA2 12/07/10)

EXHIBIT A