

PUBLIC WORKS AND UTILITIES COMMITTEE

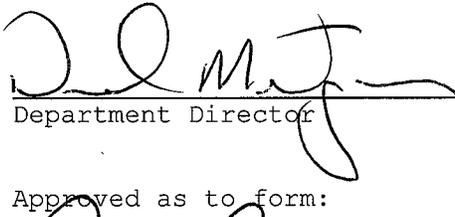
11-0565R

RESOLUTION AUTHORIZING LICENSE AGREEMENT WITH THE DULUTH SEAWAY PORT AUTHORITY FOR SCADA ANTENNA FOR LIFT STATION NO. 40.

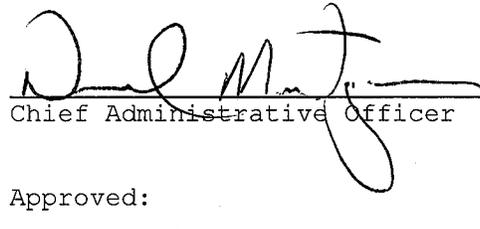
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a license agreement, a copy of which is on file in the office of the city clerk as Public Document No. _____, with the Duluth Seaway Port Authority for the placement of a SCADA antenna on Authority property for use in conjunction with sewer lift station no. 40 at no cost to city.

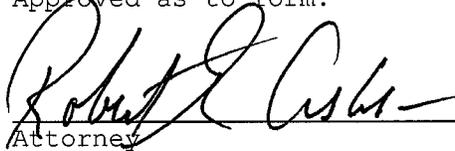
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

PW&U/ATTY REA:dma 10/20/11

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a license agreement allowing the City to place a SCADA antenna on a garage located on Authority property adjacent to the City's Lift Station No. 40.

**LICENSE AGREEMENT
TO ENTER ON PROPERTY, AND ATTACH ANTENNA**

THIS AGREEMENT is made as of this _____ day of _____, 2011, by and between City of Duluth, a Municipal corporation (hereinafter referred to as "City"), and the DULUTH SEAWAY PORT AUTHORITY (herein referred to as "Authority") a body corporate and politic, existing under the laws of the State of Minnesota, having its principal office in Duluth, Minnesota.

LICENSE AND TERM

The Authority 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 the Authority, upon Sixty (60) days prior written notice to City, to enter onto the garage building immediately adjacent to the sewer lift station conveyed to the City by Resolution No. 48-88 ("Licensed Premises"). The term of this license will commence on October 12, 2011 and run until terminated, for the sole purpose of attaching an antenna and related equipment and wiring on and to the Leased Premises.

COMPLIANCE WITH LAWS, PROTECTION OF OTHER PROPERTIES

During the term of this Agreement City and all persons accompanying their officers, agents, employees and invitees onto the Licensed Premises shall fully comply with all applicable laws. Neither City, their officers, agents, employees, or invitees, nor anyone accompanying City, their 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 attachment and operation of the antenna.

RELEASE AND INDEMNIFICATION OF THE AUTHORITY

In and for good and valuable consideration for the license given herein by the Authority, City hereby fully and forever releases and discharges the Authority and its agents, servants, employees, administrators, executors, successors, or assigns of and from all manner of actions, causes and causes of action, suits, debts, dues, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands whatsoever, in law or in equity, in any way arising from any and all injuries, losses, death and/or damages to persons and/or property arising, in whole or in part, out of the activities of City their employees, agents, representatives, officers, licensees, invitees, or servants using, occupying or visiting the Licensed Premises or who are by, in or on the same.

City agrees to indemnify, defend and hold harmless Authority against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of any work done, labor performed or materials furnished at the Licensed Premises.

Provided, however, that nothing herein shall be deemed to be a waiver by City or Authority of any of the provisions of Minnesota Statutes Chapter 466 or of extending liability to any third party by virtue of these provisions.

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 the Authority with a combined single limit of at least \$1,000,000; for each occurrence \$500,000. The Authority shall be considered an additional insured.

TERMINATION

The Authority may, in its sole discretion, revoke the within license at any time and for any reason after the giving of written notice by the Authority, by its Executive Director or his designee to City at least Sixty (60) days in advance of the effective date thereof, as indicated in NOTICES.

CLEANING OF LICENSED PREMISES

After termination City will properly clean and leave the Licensed Premises in a condition existing prior to antenna attachment. In the event that City fails to clean the Licensed Premises, AUTHORITY will clean and City will be responsible for all costs of clean-up.

NOTICES

Notices hereunder shall be deemed given if mailed by certified mail, return receipt requested, postage prepaid and addressed as follows:

If to the Authority: Jim Sharrow
 Duluth Seaway Port Authority
 1200 Port Terminal Drive
 Duluth, MN 55802
 Ph # 727-8525

If to City: Director of Public Works and
 Utilities

 City of Duluth
 411 West First Street

 Room 211B City Hall

 Duluth, MN 55802

Or at such other address or in such other manner as the parties shall from time to time designate to the other by notice given as herein provided. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency the Authority may give oral notice which shall be effective immediately.

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

DULUTH SEAWAY PORT AUTHORITY

By _____
Its _____

CITY OF DULUTH

By _____
Its Mayor

Attest:

By _____
City Clerk

Approved:

Countersigned:

Assistant City Attorney

City Auditor