

PUBLIC WORKS & UTILITIES COMMITTEE

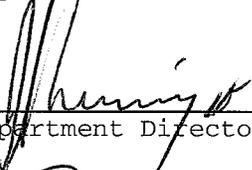
12-0174R

RESOLUTION AUTHORIZING A LIMITED USE PERMIT AGREEMENT
WITH MNDOT FOR CONSTRUCTION, OPERATION AND MAINTENANCE
OF THE LAKEWALK EAST OF 61ST AVENUE EAST.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with the Minnesota Department of Transportation granting the city a limited use permit for the construction, operation and maintenance of the Lakewalk recreational trail in the state's right-of-way for Trunk Highway 61 east of 61st Avenue East and connecting to Brighton Beach at substantially no cost to the city.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ENG MJD:jh 3/30/2012

STATEMENT OF PURPOSE: This resolution will authorize an agreement with MnDOT allowing the city to construct and operate the Lakewalk in the Highway 61 right-of-way east of 61st Avenue East and connecting to the Brighton Beach area as part of the trail extension to the Kitchi Gammi Trail.

The permit will allow the city to construct a tunnel under Highway 61 south of the EPA water quality lab and also to connect to the Kitchi Gammi trail to the east. The permit is being granted at no cost to the city.

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

LIMITED USE PERMIT

DRAFT COPY

C.S. 6925 T.H. 61
County of St. Louis
LUP # 6925-0037
Permittee: City of Duluth
Terminates: March 28, 2022

In accordance with Minnesota Statutes Section 161.434, the State of Minnesota, through its Commissioner of Transportation, MnDOT, hereby grants a Limited Use Permit to City of Duluth, Permittee, to use the area within the right of way of Trunk Highway No. 61 as shown in red on Exhibit "A", (the Area) attached hereto and incorporated herein by reference. This permit is executed by the Permittee pursuant to resolution, a certified copy of which is attached hereto and incorporated herein.

NONMOTORIZED RECREATIONAL TRAIL

The Permittee's use of the Area is limited to only the constructing, maintaining and operating a nonmotorized recreational trail (the Facility) and the use thereof may be further limited by 23 C.F.R. 652 also published as the Federal-Aid Policy Guide.

In addition, the following special provisions shall apply:

SPECIAL PROVISIONS

1. **TERM.** This permit will terminate at 11:59PM on March 28, 2022. This permit will not be renewed. This permit is also subject to cancellation and termination by the Minnesota Department of Transportation, with or without cause, by giving the Permittee 90 days written notice of such intent. Prior to termination, or within 90 days of the cancellation notice, the Facility shall be removed by the Permittee. The Permittee is required to return and restore the area to a condition satisfactory to the Minnesota Department of Transportation District Engineer. The removal of the Facility and the return and restoration of the Area shall be at no cost to the Minnesota Department of Transportation and at the sole expense of the Permittee. If Permittee desires to continue its use of the Area, the Permittee must reapply to the Minnesota Department of Transportation, at least 90 days prior to termination, for a new limited use permit.

After termination, any continued occupancy or use, under this permit, of the Area is not authorized. However, if such continued occupancy or use occurs, all provisions of this permit related to Permittee's liability or responsibility remain in effect. Permittee will pay MnDOT all costs and expenses, including attorney's fees, in any successful action brought by State of Minnesota to remove the facility and stop the continued occupancy or use.

2. **CONSTRUCTION.** The construction, maintenance, and supervision of the Facility shall be at no cost or expense to MnDOT.

Before construction of any kind, the plans for such construction shall be approved in writing by the Minnesota Department of Transportation, through the District Engineer. Approval from Minnesota Department of Transportation District Engineer shall be required for any changes from the approved plan.

The Permittee shall construct the Facility at the location shown in the attached Exhibit "A" subject to verification by the Minnesota Department of Transportation District Engineer that the construction geometrics and procedures result in a Facility that is compatible with the safe and efficient operation of the highway.

Upon completion of the construction of the Facility, the Permittee shall restore all disturbed slopes and ditches in such manner that drainage, erosion control and aesthetics are perpetuated.

The Permittee shall preserve and protect all utilities located on the lands covered by this permit at no expense to MnDOT and it shall be the responsibility of the Permittee to call the Gopher State One Call System at 1-800-252-1166 at least 48 hours prior to performing any excavation.

Any crossings of the Facility over the trunk highway shall be perpendicular to the centerline of the highway and shall provide and ensure reasonable and adequate stopping sight distance.

3. MAINTENANCE. Any and all maintenance of the Facility shall be provided by the Permittee at its sole cost and expense, including, but not limited to, plowing and removal of snow and installation and removal of regulatory signs. No signs shall be placed on any MnDOT or other governmental agency sign post within the Area. MnDOT will not mark obstacles for users on trunk highway right of way.
4. USE. Other than as identified and approved by MnDOT, no permanent structures or no advertising devices in any manner, form or size shall be allowed on the Area. No commercial activities shall be allowed to operate upon the Area.

Any use permitted by this permit shall remain subordinate to the right of the Minnesota Department of Transportation to use the property for highway and transportation purposes. This permit does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge Facility that would become subject to Section 4 (f) of the Federal-Aid Highway Act of 1968, nor does this permit establish a Bikeway or Pedestrian way which would require replacement pursuant to Minnesota Statutes Section 160.264. No rights to relocation benefits are established by this permit.

This permit is non-exclusive and is granted subject to the rights of others, including, but not limited to public utilities which may occupy the Area.

5. APPLICABLE LAWS. This permit does not release the Permittee from any liability or obligation imposed by federal law, Minnesota Statutes, local ordinances, or other agency regulations relating thereto and any necessary permits relating thereto shall be applied for and obtained by the Permittee.

6. CIVIL RIGHTS. The Permittee, for itself, its successors, and assigns, agrees to abide by the provisions of Title VI Appendix C of the Civil Rights Act of 1964, which provides in part that no person in the United States, shall on the grounds of race, color, or national origin, be excluded from, or denied use of any Facility.
7. SAFETY. MnDOT shall retain the right to limit and/or restrict any activity, including the parking of vehicles and assemblage of Facility users, on the highway right of way over which this permit is granted, so as to maintain the safety of both the motoring public and Facility users.
8. ASSIGNMENT. No assignment of this permit is allowed.
9. IN WRITING. Except for those which are set forth in this permit, no representations, warranties, or agreements have been made by MnDOT or Permittee to one another with respect to this permit.
10. ENVIRONMENTAL. The Permittee shall not dispose of any materials regulated by any governmental or regulatory agency onto the ground, or into any body of water, or into any container on the State's right of way. In the event of spillage of regulated materials, the Permittee shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable federal, state and local laws and regulations, at the sole expense of the Permittee.
11. MECHANIC'S LIENS. The Permittee (for itself, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against said lands, for or on account of any work done or materials furnished by it or any of them under any agreement or any amendment or supplement thereto.
12. NOTICES. All notices which may be given, by either party to the other, will be deemed to have been fully given when served personally on MnDOT or Permittee or when made in writing addressed as follows:

to Permittee at:

City of Duluth
Department of Public Works and Utilities
Engineering Division
211 City Hall
Duluth, MN 55802

and to MnDOT at:

State of Minnesota
Department of Transportation
District 1 Right of Way
1123 Mesaba Avenue
Duluth, MN 55811

The address to which notices are mailed may be changed by written notice given by either party to the other.

- 13 INDEMNITY. Permittee shall defend, indemnify, hold harmless and release the State of Minnesota, its Commissioner of Transportation and employees and its successors and assigns, from and against:
- (a) all claims, demands, and causes of action for injury to or death of persons or loss of or damage to property (including Permittee's property) occurring on the Facility or connected with Permittee's use and occupancy of the Area, regardless of whether such injury, death, loss or damage is caused in part by the negligence of State of Minnesota or is deemed to be the responsibility of State of Minnesota because of its failure to supervise, inspect or control the operations of Permittee or otherwise discover or prevent actions or operations of Permittee giving rise to liability to any person.
 - (b) claims arising or resulting from the temporary or permanent termination of Facility user rights on any portion of highway right of way over which this permit is granted;
 - (c) claims resulting from temporary or permanent changes in drainage patterns resulting in flood damages;
 - (d) any laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever filed or maintained for or on account of any work done or materials furnished; and
 - (e) any damages, testing costs and clean-up costs arising from spillage of regulated materials attributable to the construction, maintenance or operation of the Facility.

MINNESOTA DEPARTMENT
OF TRANSPORTATION

RECOMMENDED FOR APPROVAL

By: _____
District Engineer

Date _____

APPROVED BY:

COMMISSIONER OF TRANSPORTATION

By: _____
Director, Office of Land Management

Date _____

CITY OF DULUTH

By _____

Its _____

And _____

Its _____

The Commissioner of Transportation
by the execution of this permit
certifies that this permit is
necessary in the public interest
and that the use intended is for
public purposes.



City of Duluth

DEPARTMENT OF PUBLIC WORKS & UTILITIES
Engineering Division
211 City Hall - Duluth MN 55802
(218) 730-5200 Fax: (218) 730-5107

March 21, 2012

Duane Hill
District Engineer, District 1
Minnesota Department of Transportation
1123 Mississippi Avenue
Duluth, MN 55811

Dear Mr. Hill:

The City of Duluth is requesting a Limited Use Permit for the Lakewalk Trail in the Right of Way of Minnesota Highway 61. Phase 5 of the Lakewalk will complete the Lakewalk Trail system, linking downtown Duluth to Brighton Beach and, eventually, the Gitchi-Gami State Trail to Grand Marais.

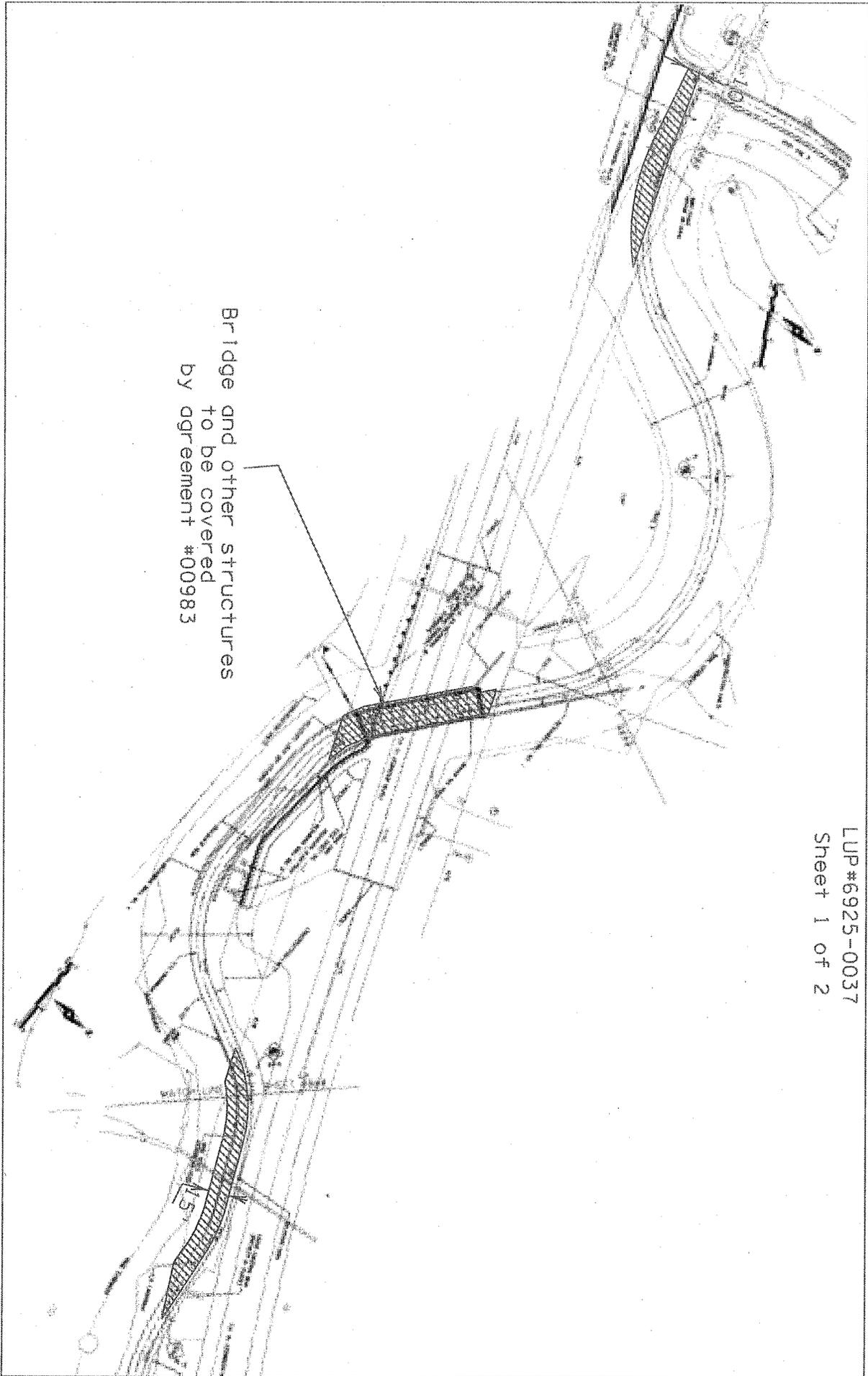
The City of Duluth will contract for construction of the Lakewalk using Federal Transportation Enhancement and DNR Trail Grant funds. The City of Duluth and its contractors will carry the necessary liability insurance.

Plan sheets 32 through 34, showing the proposed trail in Highway Right of Way, are attached.

Thank you,

Matt Decur
Project Engineer

cc: Roberta Dwyer, MnDOT



LUP#6925-0037
Sheet 1 of 2

