

PUBLIC WORKS AND UTILITIES COMMITTEE

12-022-0

ORDINANCE NO. _____

AN ORDINANCE TERMINATING AGREEMENT NO. 18,829 WITH EPA AND GRANTING THEM A ROAD EASEMENT FOR ACCESS TO THE WATER LAB.

CITY PROPOSAL:

The city of Duluth does ordain:

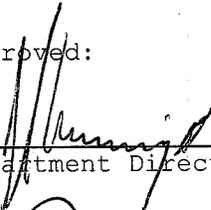
Section 1. That city contract no. 18,829 leasing certain property in Outlot D, EDGESHORE PARK DIVISION OF DULUTH to the U.S. Environmental Protection Agency ("EPA") is hereby terminated.

Section 2. The EPA is hereby granted an easement for roadway purposes over the following-described property:

The Northerly 66 feet of that portion of Outlot D, EDGESHORE PARK DIVISION OF DULUTH, which lies westerly of the northerly extension of the west line of Lot 1, Block 1 and easterly of the right-of-way line of 61st Avenue East, according to the recorded plat thereof.

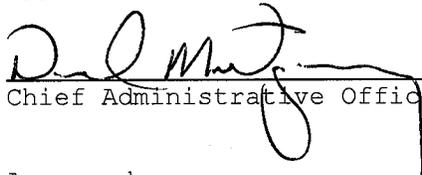
Section 3. This ordinance shall take effect 30 days from and after its passage and publication.

Approved:



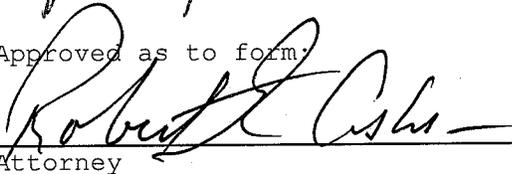
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PW&U/ATTY REA:cjk 3/30/2012

STATEMENT OF PURPOSE: The purpose of this ordinance is to terminate an existing lease of city-owned property lying between Superior Street and London Road and

east of 61st Avenue East with the EPA and to grant them an easement for an existing access road to the lab facility of 61st Avenue East.

For some time the city has leased the property to the EPA for environmental testing purposes of a type which we are assured is free of environmental risk and for a secondary access road to the EPA lab facilities from 61st. Avenue East.

EPA has ended their testing work on the property and therefore the only need they have for any of it is to maintain their access road, something which is more appropriately accomplished through the granting of road easement.

In its turn, the city needs an easement for the extension of Lakewalk from 60th Avenue East to Brighton Beach which will cross property owned by EPA. Therefore the city and EPA have agreed to terminate the lease and to exchange easements which will facilitate the current needs of the parties.

EASEMENT AGREEMENT

This Agreement is made and entered into by and between the City of Duluth, a public body corporate and politic created and existing under the laws of the State of Minnesota, hereinafter called the "Grantor" and United States of America, acting by and through the Director, Facilities Management and Services Division, U.S. Environmental Protection Agency (EPA) hereinafter called the "Grantee."

RECITALS:

- A. By virtue of the provisions of 40 U.S.C. 1314, the Administrator of EPA has the authority to accept from any State, political subdivision or agency thereof or any person, such rights-of-way or easements.
- B. The Administrator of EPA delegated the authority to acquire and dispose of real property and to make determinations required by law regarding real property and interests therein to the Director, Facilities Management and Services Division.
- C. The Grantor is owner of certain land described as a Outlot D in the site plan attached hereto as ATTACHMENT A (Site Plan).
- D. The Grantee requested a permanent easement from the City of Duluth for the use of a driveway used to access property owned by the EPA. The driveway currently crosses the land owned by the Grantor. The no fee easement is granted for roadway purposes over the property described as Northerly 66 feet of that portion of Outlot D, Edgshore Park Division of Duluth which lies westerly of the northerly extension of the west line of Lot 1 Block 1 and easterly of the right-of way line of 61st Avenue East East. The Easement location is shown on the Site Plan.
- E. This portion of the property is currently used by the EPA and no future use by the City of Duluth is currently anticipated. Therefore, the use by the Grantee is for an EXCLUSIVE right-of-way.
- F. The Grantor has determined that the Easement is not adverse to the interests of the City of Duluth provided that the Grantee complies with the conditions hereinafter described.

NOW, THEREFORE, the Grantor, by virtue of the aforesaid authority does hereby give, grant and convey to the Grantee, its successors and assigns, subject to the conditions and provisions hereinafter set forth, an EXCLUSIVE right-of-way for use of a driveway.

The Easement is granted subject to existing easements of record for roads, highways, railroads, pipelines and public utilities.

CONDITIONS AND PROVISIONS

- 1) The use, repair, replacement, security and maintenance of said driveway shall be performed without cost or expense to the Grantor.
- 2) The Grantee agrees to indemnify and hold the City of Duluth harmless for all claims for damage, loss or personal injury arising out of the Grantee's use of the Easement.
- 3) Any property of the Grantor damaged or destroyed by the Grantee incident to the use and occupation of the Easement shall be promptly repaired or replaced by the Grantee to the satisfaction of the Grantor.
- 4) All or any part of the Easement herein granted may be terminated by the Grantor for failure to comply with any or all of the terms or conditions of this grant, or for non-use for a two year period or for abandonment of rights granted herein.
- 5) The Grantee shall comply with all federal laws and regulations and with all applicable laws, ordinances, and regulation of the state, county, and municipality wherein the Easement is located.
- 6) The right-of-way Easement is binding upon and inures to the benefit of the parties hereto, their successors and assigns.

UNITED STATES OF AMERICA

BY: _____

Bridget Shea, Director
Facilities Management and Services Division
U.S. Environmental Protection Agency

The provisions and conditions of the within easement right-of-way grant are hereby approved and accepted this _____ day of _____, 2012.

CITY OF DULUTH, MINNESOTA

BY: _____

