

WATER MAIN EASEMENT AGREEMENT

This Water Main Easement Agreement (“Agreement”) is entered into by THE CITY OF DULUTH, MINNESOTA (“City”), and INDEPENDENT SCHOOL DISTRICT NO. 709 (“District”), effective _____, 2013.

RECITALS

A. District is the owner of the real property located in St. Louis County, Minnesota and described on **Exhibit A** attached hereto (the "District Property").

B. The District Property is a part of the Eastern High School campus.

C. As a part of its development of the Eastern High School campus, the District has agreed to provide a utility easement to the City and to install certain public improvements for which the City will assume responsibility.

D. The installation of the public improvements and the assumption of responsibility are governed by a Memorandum of Understanding (“MOU”) between the City and the District dated _____, 2013.

E. In conjunction with the installation of the public improvements, the District has agreed to convey to the City a utility easement within the area (the “Easement Area”) as the same is described and depicted on **Exhibit B** attached hereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the District agree as follows:

1. The recitals are included as a part hereof.

2. The District grants to the City a non-exclusive and perpetual easement (the "Right-of-

Way") over the Easement Area for the construction, maintenance, inspection, operation, protection, repair, replacement, and/or removal of a water main and related appurtenances and facilities for the transportation of water on, over, under and across the Easement Area. Except as otherwise agreed by the City and the District, water must be confined in pipes or mains and all pipes, mains, appurtenances and related facilities must be installed underground.

3. The District also grants to the city the right of ingress to and egress from the Easement Area across the District Property by means of roads and lanes on the District Property as and if they exist, otherwise, by such road, roads or paths as shall cause the least practical damage and inconvenience to the District.

4. The District reserves the right to use the Easement Area for purposes that will not interfere with the City's full enjoyment of the rights granted in this Agreement. The rights reserved by the District include, without limitation, the right to install pipes, mains, appurtenances, and related facilities within the Easement Area and the right to construct, reconstruct and improve any roadway, parking lot, curbs, gutters and sidewalks within the Easement Area; provided that the District shall not erect or construct any building or other structure, build or operate any wells, construct any reservoir or other obstruction on the Easement Area or diminish or substantially add to the ground cover over the Easement Area and the District will not carry on any excavation, installation, construction or other activity over, on or under the Easement Area such as to interfere with the rights granted to the City hereunder without the prior consent of the City.

5. After the City's acceptance of the initial installation of public improvements by the District and subject to any warranty requirements set forth in the MOU, the City shall operate and maintain all public improvements and utilities in a manner so that they are safe and useful for their intended purposes, do not create a nuisance, and do not harm the District, the District's Property, the

property of others, or any person.

6. The City shall not assign the Right of Way, or any part thereof or interest therein, or any rights or benefits pursuant to this Agreement, without the prior written consent of the District, which may be granted or denied in the District's sole discretion.

7. No delay on the part of the District in enforcing any of the terms of this Agreement shall be construed to or operate as a waiver of any covenant or condition hereof.

8. This Agreement shall be governed by the laws of the State of Minnesota, and all terms, conditions, and covenants herein shall be interpreted in accordance therewith.

9. This Agreement shall be binding upon the Easement Area and the parties hereto and their heirs, successors and assigns. The Right of Way shall be perpetual and the Right of Way and all other rights granted in this Agreement shall run with the land and shall be binding upon the heirs, successors and assigns of the parties.

WITNESS WHEREOF, the District and the City have caused this Agreement to be executed effective as of _____, 2013.

INDEPENDENT SCHOOL DISTRICT NO. 709

By _____
Its _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____ the _____ of Independent School District No. 709, on behalf of the district.

Notary Public

CITY OF DULUTH
a municipal corporation under
the laws of the State of Minnesota

By _____
Don Ness
Its Mayor

Attest:

By _____
City Clerk

Approved:

Assistant City Attorney

Countersigned:

City Auditor

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

The foregoing instrument was acknowledged before me this ____ day of _____,
2012, Don Ness and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a municipal
corporation created and existing under the Laws of the State of Minnesota, on behalf of City.

Notary Public

This instrument was drafted by:

Fryberger, Buchanan, Smith &
Frederick, P.A.

700 Lonsdale Building

302 West Superior Street

Duluth, Minnesota 55802

(218) 722-0861

DDM/3566-35

EXHIBIT A

DISTRICT PROPERTY

That portion of the W[']ly $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 7, Township 50, Range 13 West, lying S[']ly of Superior Street and N[']ly of the right of way of the Duluth & Iron Range Railroad Company and E[']ly of a line drawn parallel with and 20 rods E[']ly of the West line of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 7.

EXHIBIT B

DESCRIPTION AND DEPICTION OF EASEMENT AREA