

**LICENSE AGREEMENT
BETWEEN
CITY OF DULUTH
AND
INDEPENDENT SCHOOL DISTRICT NO. 709**

THIS AGREEMENT (this “Agreement”) is by and between Independent School District No. 709, a Minnesota public corporation (“ISD #709”), and the City of Duluth, a Minnesota municipal corporation (“City”).

WHEREAS, the Duluth Traverse is a bike-optimized, multi-use, natural surface trail designed to provide a nationally significant mountain biking experience, connect people to Duluth’s beautiful natural places, and exemplify best practices for environmentally sustainable trail design and management (the “Trail”).

WHEREAS, City and ISD #709 would like to expand the Trail to add a trail spur crossing real property owned by ISD #709, which property is legally described on the attached Exhibit A (the “ISD #709 Property”).

WHEREAS, the parties wish to create a revocable, non-exclusive license in favor of City to allow City and the general public to utilize a portion of the ISD #709 Property for use as a public multi-use recreational trail, which will constitute a portion of the Trail.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

I. LICENSE

A. Subject to the terms and conditions set forth in this Agreement, ISD #709 grants to City a revocable, non-exclusive license to access and utilize that portion of the ISD #709 Property shown on the attached Exhibit B (the “License Area”) for a ten-foot-wide multi-use recreational trail to be used by the general public.

B. City’s and the public’s use of the License Area shall be limited to public recreational trail purposes.

C. City shall have no obligation to construct or maintain any trails or other improvements within the License Area.

D. Either party may terminate this Agreement upon 60 days’ written notice to the other party.

E. City agrees that it will not include the trail spur located on the ISD #709 Property on any maps of the Trail produced or created by City, in order to limit disruption to school operations on the ISD #709 Property.

II. EFFECTIVE DATE

Notwithstanding the date of execution of this Agreement, this Agreement shall have an effective date as of July 1, 2017.

III. LAWS, RULES AND REGULATIONS

City agrees to conduct its activities related to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

IV. WAIVER

The waiver by City or ISD #709 of any breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any subsequent breach of same or any term, covenant, or condition of this Agreement.

V. NO THIRD PARTY RIGHTS

This Agreement is to be construed and understood solely as an agreement between City and ISD #709 regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions of this Agreement, which, as between City and ISD #709, may be waived at any time by mutual agreement between the parties.

VI. NOTICES

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City
City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, MN 55806

Independent School District No. 709
David Spooner
Manager of Facilities
215 N. 1st Avenue East
Duluth, MN 55802

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

VII. COMPLIANCE WITH AGREEMENT

The rights of City and the general public to occupy and use the License Area are subject to City's compliance with the undertakings, provisions, covenants, and conditions herein.

VIII. APPLICABLE LAW

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under the state courts located within St. Louis County, Minnesota.

IX. AMENDMENTS

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed this Agreement or their successors in office.

X. SEVERABILITY

ISD #709 and City agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

XI. AUTHORITY TO EXECUTE AGREEMENT

The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when executed by said officers will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

XII. ENTIRE AGREEMENT

This Agreement, including exhibits, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

**INDEPENDENT SCHOOL DISTRICT
NO. 709**

CITY OF DULUTH

By: _____

By: _____
Mayor

Its: _____
Authorized Representative

Attest:

Printed Name: _____

City Clerk

Date Attested: _____

Dated: _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A

The North Half of East Half of West Half of Northwest Quarter ($N \frac{1}{2}$ of $E \frac{1}{2}$ of $W \frac{1}{2}$ of $NW \frac{1}{4}$),
Section Five (5), Township Forty-nine (49), Range Fourteen (14) West of the Fourth Principal
Meridian

AND

Northwest Quarter of Northeast Quarter of Northwest Quarter ($NW \frac{1}{4}$ of $NE \frac{1}{4}$ of $NW \frac{1}{4}$),
Section Five (5), Township Forty-nine (49), Range Fourteen (14) West of the Fourth Principal
Meridian, EXCEPT a tract Three Hundred Feet (300') by Three Hundred Feet (300') at South
Side and EXCEPT .07 Acres at East Side

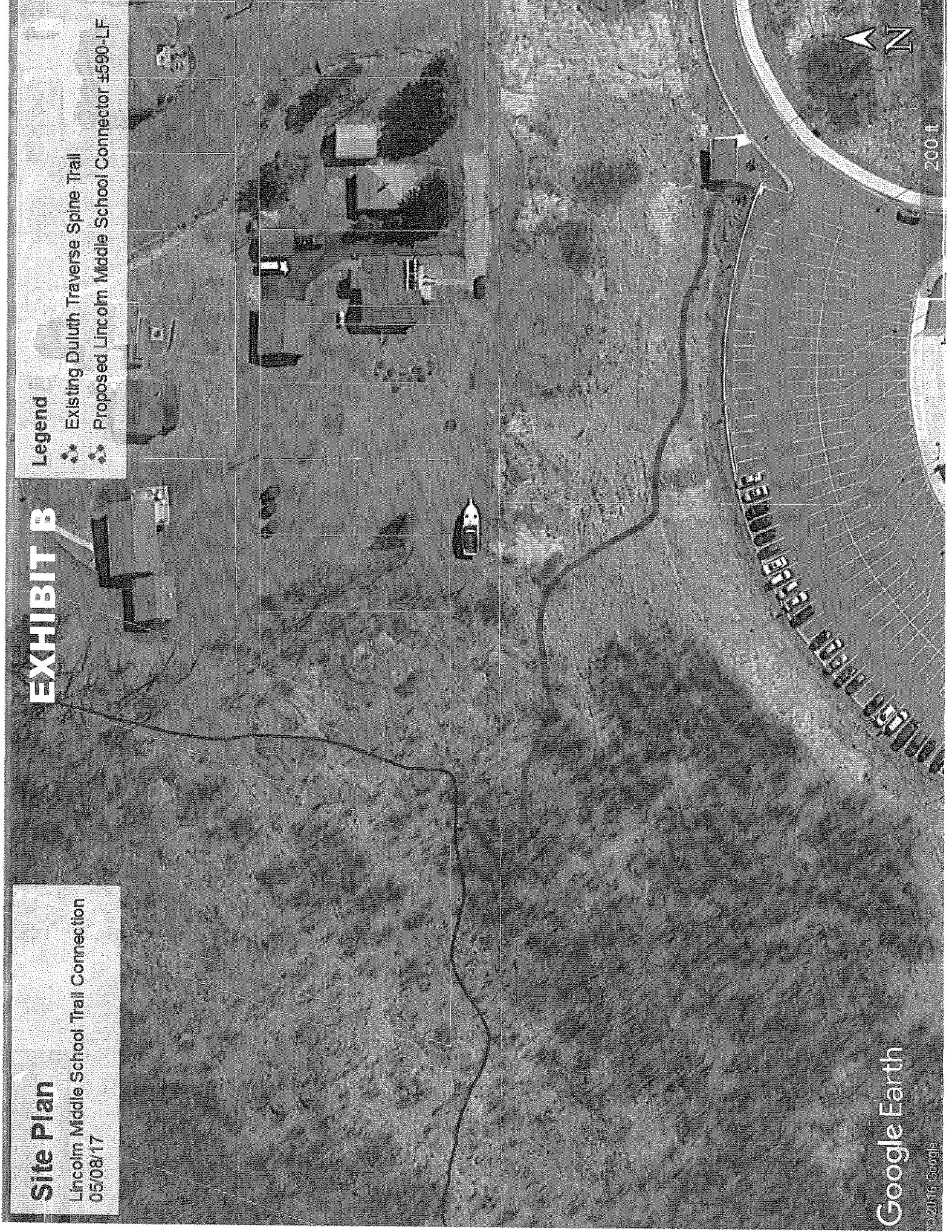
Site Plan

Lincoln Middle School Trail Connection
05/08/17

EXHIBIT B

Legend

- Existing Duluth Traverse Spine Trail
- Proposed Lincoln Middle School Connector #590-LF



**MEMORANDUM OF UNDERSTANDING BETWEEN
MINNESOTA NATIONAL GUARD
AND
INDEPENDENT SCHOOL DISTRICT 709**

1. **PURPOSE:** This Memorandum of Understanding (MOU)
 - A. Sets forth the parties' mutual understanding regarding the Minnesota National Guard's (MNNG) Chemical, Biological, Radiological, and Nuclear – Enhanced Response Force Package ("CERFP") conducting a training event at Central High School, 03-09 June 2017;
 - B. States the understanding of the parties regarding the scope of the training and use of facilities;
 - C. Addresses the joint training event with CERFP, 55th Civil Support Team of the MNNG, the Duluth Fire Department and several other local agencies.

2. **SCOPE OF APPROVED OPERATION:**
 - A. The MNNG will be conducting a joint training exercise 03-09 June 2017. The training will include the CERFP, 55th Civil Support Team, Duluth Fire Department, and other local agencies.
 - B. The training will take place Central High School in Duluth. Training will utilize the large asphalt parking lot on the southeast side of the building as well as the gymnasium and classrooms in the interior.
 - C. The training will allow the MNNG to work with local partners for a joint training event in a controlled civilian environment.
 - D. The training area shall be used solely for vehicles, personnel and equipment related to the CERFP training event.
 - E. The MNNG shall have the use of the premises for no cost.

3. **PLANNED DEPLOYMENT OF PERSONNEL AND EQUIPMENT:**
 - A. Personnel, vehicles and other equipment will be set up and begin training on the morning of 03 June. All personnel, vehicles and equipment will vacate the premises by the end of the day on 09 June.
 - B. The MNNG agrees to exercise reasonable care in the use and maintenance of the premises. The MNNG shall not make any alternations or improvements to the premises without prior written consent from ISD 709. The MNNG shall provide for litter clean up ad trash removal from the premises. The MNNG shall surrender the premises at the termination of this MOU in

the condition found prior to the commencement of this agreement at no expense to ISD 709, reasonable wear and tear expected. The MNNG shall be responsible for any damage done to the premises by the MNNG, its employees, agents, contractors or invitees.

C. ISD 709 reserves the right to the unlimited access to the premises for authorized personnel at any time while this agreement is in force for the purpose of inspection and ensuring that the provisions of this agreement are complied with by the MNNG.

4. **INSURANCE:** The MNNG is self-insured for workers' compensation, auto liability, and general liability which meets the State of Minnesota statutes section 466.04 requirements. ISD 709 shall not be liable or responsible for any accident or damage that may occur in the MNNG used of the premises.

5. **LAWS, RULES AND REGULATIONS:** During the term of this agreement, the MNNG agrees to operate all activities conducted on the premises in strict compliance with the United States Constitution, and with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, and ISD 709. The MNNG shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

6. **MODIFICATION:** Any modification of this MOU will be made in writing and signed by both parties.

7. **NOTICES:** Notices shall be sufficient if sent by regular United States mail postage prepaid addressed to ATTN: David Spooner, ISD 709, 215 North First Ave East, Duluth, Minnesota, 55802; and addressed to ATTN: MAJ Ryan Cochran, MN CERFP, Armed Forces Reserve Community Center, 505 Spirit River Drive, Cambridge, MN 55088, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

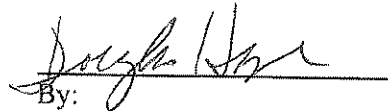
8. **EFFECTIVE DATE AND TERM:** This Memorandum of Understanding is effective when signed by both parties and will remain in effect until training is complete.

MINNESOTA NATIONAL GUARD

ISD 709

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By: _____


By: _____

DATE _____

5/11/17
DATE _____