

**CITY OF DULUTH- INDEPENDENT SCHOOL DISTRICT NO. 709  
JOINT POWERS AGREEMENT  
FOR THE CONSTRUCTION OF THE MULTI-USE DULUTH TRAVERSE TRAIL  
ON LINCOLN PARK SCHOOL PROPERTY**

**ARTICLE 1- PARTIES**

THIS AGREEMENT, entered into this 21st day of April, 2015, is by and between the CITY OF DULUTH, a municipal corporation of the County of St. Louis, State of Minnesota, (hereinafter "CITY"), and INDEPENDENT SCHOOL DISTRICT NO. 709 (hereinafter "SCHOOL DISTRICT").

**ADMINISTRATION**

For purposes of administering this Agreement, the City shall act through its Director of Public Administration or designee (the "Director"). School District shall act through its Director of Business Services or its designee.

**ARTICLE 2- PURPOSE AND PREMISES**

- 2.1. Pursuant to Minnesota Statutes, Section 471.59, local government units and other governmental entities may enter into an agreement through the action of their respective governing bodies to jointly or cooperatively exercise any power common to the contracting parties or any similar powers;

The SCHOOL DISTRICT owns property known as the Lincoln Park School, which is used for community education and recreational purposes, and is depicted in Exhibit A:

(the "School Property")

- 2.2. The City at its sole cost and expense is constructing the Duluth Traverse which is a multi-use, singletrack trail that is purpose-built for mountain biking and completely traverses the entire 26 mile long City of Duluth. A description of the Duluth Traverse is attached as Exhibit B.

A portion of the Duluth Traverse will cross School District property in the Lincoln Park neighborhood at the Lincoln Park School shown in [INSERT COLOR] Exhibit A (the "School Trail Portion").

The purpose of this Agreement is to facilitate the development of a segment of the Duluth Traverse Trail by the CITY on SCHOOL DISTRICT property

- 2.3. CITY and the SCHOOL DISTRICT desire the Duluth Traverse to cross the Lincoln Park School property for community pedestrian and bicycle connection, and recreational purposes; and
- 2.4. The purpose of this Agreement is to facilitate the development by the CITY of the School Trail Portion on School Property.

Said improvements will be implemented by the CITY or its agent over a period of years in planned phases involving funding by the CITY or by their agent.

### **ARTICLE 3- PLAN IMPLEMENTATION**

- 3.1. The CITY shall provide the SCHOOL DISTRICT for its review and comment a trail alignment as defined as a 50' wide corridor, 25' on either side of the center line of the trail, (hereafter referred to as the "PLAN"), for the development of the multi-use Duluth Traverse trail through and on School District Property.
- 3.2. The PLAN shall describe the Trail Corridor and the construction method and time line. .
- 3.3. The final PLAN shall be subject to approval by both the CITY Director and SCHOOL DISTRICT.
- 3.4. Any revisions or amendments to the final, approved PLAN shall be approved in writing by both the CITY Director and SCHOOL DISTRICT.
- 3.5. The City shall implement the PLAN for development as set forth under the terms of the PLAN document. It is expressly understood by both parties that the development of each phase of the PLAN shall be subject to the availability of funds and that City shall not be obligated to implement any phase of the PLAN at any time in which City determines that there is a lack of funds for such implementation.

### **ARTICLE 4- GRANT OF RIGHTS, MAINTENANCE AND OPERATION**

- 4.1. The School District grants the City permission to perform construction work and make installations of improvements to the Lincoln Park School property as are set forth in the Plan.
- 4.2. The City or their agent shall be responsible for the maintenance, repair or other operating costs of any improvement that it constructs pursuant to the PLAN unless the parties agree to a different allocation in writing. This maintenance shall occur only within the TRAIL CORRIDOR unless requested by City in writing.  
Each party and the public shall be allowed to utilize all improvements to the extent that scheduling of events, trail closures and maintenance allows such use.

### **ARTICLE 5- TERM OF OCCUPANCY**

- 5.1. This AGREEMENT shall run for a twenty (20) year period from the date of its execution (the "Initial Term") and may be renewed for successive five year periods as provided herein (each a "Renewal Term").
- 5.2. This AGREEMENT shall terminate if not renewed by both parties in writing at the end of the Term.
- 5.3. The parties shall meet and confer within ninety (90) days before the end of the Initial Term and any Renewal Term to renegotiate the terms and conditions of the AGREEMENT. Any modifications to this Agreement shall be reduced to writing and signed by both parties.

## **ARTICLE 6- TERMINATION OF AGREEMENT**

- 6.1. This AGREEMENT may be terminated by either party upon breach of any of the terms and conditions of this AGREEMENT by either of the parties and the failure to rectify or correct any such breach within thirty (30) days of the transmission of written notice of the breach.
- 6.2. This Agreement may be terminated by either party for any reason by providing the other 180 day notice.
- 6.3. Upon termination of this Agreement, or unless otherwise agreed upon in writing by both parties, any installations, structures, and improvements made by the CITY on SCHOOL DISTRICT property shall be removed by CITY if requested by the SCHOOL DISTRICT.

## **ARTICLE 7- LIABILITY**

- 7.1. As Between the Parties  
Each party hereto agrees that it will be solely liable for any liability arising out of any acts or omissions of itself or its officers, agents, servants, employees or subcontractors in the performance of its respective obligations under this Agreement.
- 7.2. Limitation of Liability  
Nothing herein shall be deemed to create any liability on behalf of either party not otherwise existing as to such party under the provisions of Minnesota Statutes Chapter 466 or to extend the amount of liability of either party to amounts in excess of that specified in said Chapter.
- 7.3. Third Party Liability  
Nothing herein shall be deemed to create any liability to any third party not otherwise existing under applicable law.

7.3. Hold Harmless

The City agrees to defend and hold the District harmless from any and all claims made against the District relating to the condition or location of trails constructed or defined on the Lincoln Park School property as identified in the Plan.

**ARTICLE 8- CIVIL RIGHTS ASSURANCES**

8.1. SCHOOL DISTRICT AND CITY, and their officers, agents, servants and employees as part of the consideration under this AGREEMENT, do hereby covenant and agree that:

8.1.1. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this AGREEMENT.

8.1.2. That all activities to be conducted pursuant to this AGREEMENT shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

**ARTICLE 9- RULES AND REGULATIONS**

Both parties agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and County and the City and their respective agencies which are applicable to their activities under this Agreement.

**ARTICLE 10- WAIVER**

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

**ARTICLE 11- APPLICABLE LAW AND VENUE**

11.1. This AGREEMENT together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

11.2. The courts of the district of St. Louis County, Minnesota shall be the exclusive jurisdiction to hear any matter arising out of this AGREEMENT.

**ARTICLE 12- SEVERABILITY**

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this AGREEMENT.

**ARTICLE 13- THIS IS THE ENTIRE AGREEMENT**

It is understood and agreed that the entire AGREEMENT of the parties is contained herein and that this AGREEMENT supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this AGREEMENT shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

**IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.**

**CITY OF DULUTH**, a Minnesota  
municipal corporation

**INDEPENDENT SCHOOL  
DISTRICT 709**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its School Board Chair

Attest:

By: \_\_\_\_\_  
City Clerk

Countersigned:

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City Auditor

Approved as to form:

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City Attorney

# Duluth Traverse Trail

Lincoln Park School Segment

## EXHIBIT A - PLAN FOR THE CONSTRUCTION OF THE MULTI-USE DULUTH TRAVERSE ON LINCOLN PARK SCHOOL PROPERTY

### Legend

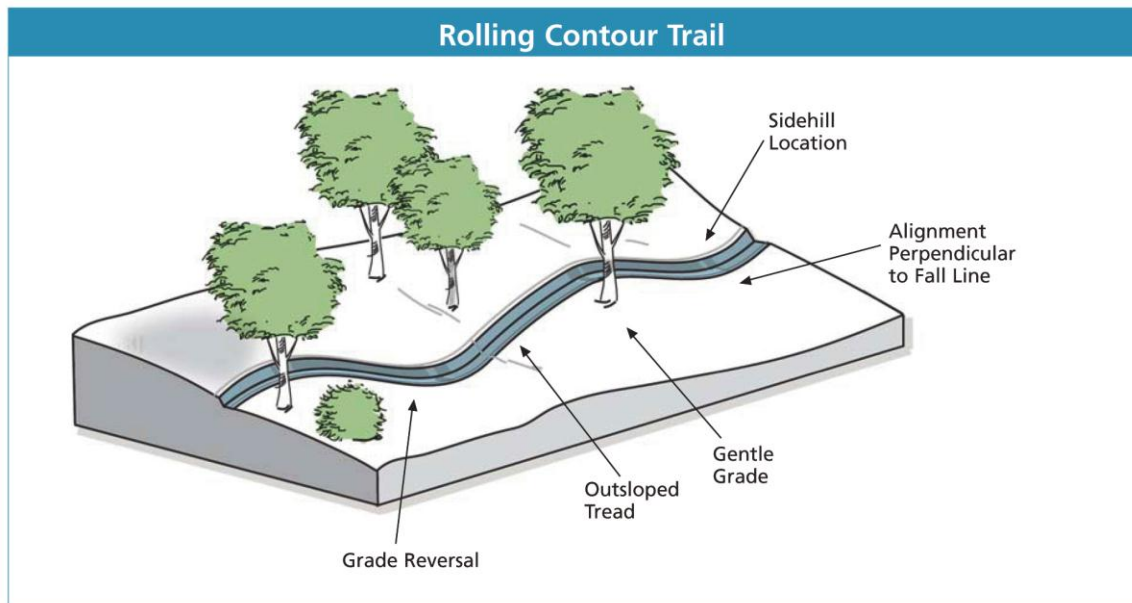
 Proposed Duluth Traverse Trail Alignment



## EXHIBIT B

### Description of the Duluth Traverse

The Duluth Traverse is natural surface, multi-use, singletrack trail that is purpose-built for mountain biking and completely traverses the entire 26 mile length of the City. It can also be defined as a rolling contour trail as depicted in Figure 1. Rolling Contour Trail construction is a sustainable natural surface trail construction method that sheds water from the surface of the trail. It allows the tread surface to quickly shed water that does not facilitate erosion and promotes the surface to dry. When constructed properly, these trails can handle significant recreational use without requiring high amounts of maintenance. The Duluth Traverse Trail System will feature trail centers with more extensive trail networks in Lester Park, Hartley Park, Piedmont-Brewer Park, Spirit Mountain and Mission Creek and the beginner level Duluth Traverse Trail will link them all together. The ultimate goal for this project is to create the first 100+ mile system of singletrack wildlands trail all within an urban environment. This vision will connect communities together, provide safe off street routes to school and also provide greater access for more people to mountain biking, hiking, running and snowshoeing. The proposed segment through the Lincoln School Property is a segment of the beginner level Duluth Traverse Trail that is the connector between trail centers. It will directly connect the Lincoln Park neighborhood to the Piedmont-Brewer Trail Center.



**Figure 1: Rolling Contour Trail**