



UNIVERSITY OF MINNESOTA

University Lease # U-1669

Temporary Construction Agreement

This Temporary Construction Agreement (“**Agreement**”) is entered into on the date of last signature below by and between Regents of the University of Minnesota, a Minnesota constitutional corporation (“**University**”) and City of St. Paul, a political subdivision of the State of Minnesota (“**Grantee**”).

WHEREAS, University is the owner of certain real property in St. Paul, Minnesota, as depicted on Exhibit A (“**University’s Property**”).

WHEREAS, Grantee desires to obtain from University a temporary construction license over and across a portion of University’s Property.

WHEREAS, University agrees to grant to Grantee a license under the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

1. Grant of License.

1.1 University grants to Grantee a temporary license over and across that portion of University’s Property depicted on Exhibit A (the “**License Area**”) for purposes of constructing a public multi-use trail and associated improvements (the “**Grantee’s Work**”).

1.2 The License Area is subject to: (a) any and all existing restrictions, covenants, easements, licenses, permits, leases and other encumbrances relating to the License Area; (b) all applicable federal, state, and local laws, regulations, ordinances, rules, and requirements; and (c) applicable University ordinances, policies, procedures, and rules.

2. Term. The Agreement shall be effective on April 1, 2020, and end on upon completion of Grantee’s Work, but in no event later than September 30, 2021 (the “**Term**”).

3. Fee. The fee for this license is \$1.00, which is due and payable within 35 days of submittal of signed Agreement. Grantee shall pay to University the fee without demand, offset, or counterclaim.

4. Use of the License Area.

4.1 Grantee agrees to inform University prior to Grantee's initial entry onto the License Area and to provide weekly updates to University about the status of Grantee's Work throughout the Term. University agrees that its contact person for purposes of this Section 4.1 shall be Kelley Brandt at 612-626-0565 and/or brand571@umn.edu.

4.2 Grantee and its employees, contractors, and consultants shall conduct all work on the License Area under a site-specific safety and health plan as defined and required in OSHA 29 CFR 1910.120.

4.3 Grantee and its contractors and consultants shall perform all construction in a good, safe, and workmanlike manner. Grantee and its contractors and consultants shall comply with all applicable federal, state, and local laws, regulations, ordinances, rules, and requirements and all applicable University ordinances, policies, procedures, and rules in their use of the License Area.

4.4 Grantee, at its sole cost and expense, shall ensure security and safety in the License Area during construction. The License Area (as shown on Exhibit A) shall be enclosed by a temporary six foot high chain link fence.

4.5 Grantee shall use its best efforts to minimize interference with or damage to University's Property and the conduct of its business thereon.

4.6 Grantee, at its sole cost and expense, shall promptly restore any damage to University's Property arising from or related to Grantee's use of the License Area pursuant to this Agreement. Upon receiving written notice of unrestored damage to University's Property, Grantee shall have the right to restore the damage, to the reasonable satisfaction of the University, within thirty (30) business days (the "**Cure Period**"), unless extended by mutual written agreement of the parties. If, upon receipt of written notice, Grantee fails to restore the damage to the reasonable satisfaction of the University within the Cure Period, Grantee shall reimburse the University for reasonable costs incurred by University in restoring such damage within 35 days of receipt of an invoice accompanied by supporting data in a form to reasonably evidence the costs in question.

4.7 Promptly after completion of construction, Grantee, at its sole cost and expense, shall: (a) remove all equipment and other property placed upon the License Area by Grantee or its contractors or consultants; and (b) remove all debris resulting there from; and (c) in coordination and consultation with the University, promptly restore the surface of the License Area to University's reasonable satisfaction. If Grantee's obligations in this Section are not completed within 30 days after the end of the Term, University shall have the right, but not the obligation, to perform them and Grantee agrees to reimburse University for its costs incurred in doing so within 35 days of receipt of an invoice accompanied by supporting data in a form to reasonably evidence the costs in question.

4.8 Grantee shall keep the License Area free of any and all mechanics', material suppliers', and other liens arising out of any work, labor done, services performed, or materials furnished for Grantee or its contractors or consultants or claimed to have been furnished for Grantee or its contractors or consultants; provided, however, that Grantee shall have a right to reasonably contest the filing of any mechanics' lien if: (i) Grantee provides the University with security reasonably satisfactory to the University (and for this purpose, a bond, letter of credit, or cash escrow in an amount equal to one hundred fifty percent (150%) of the lien will be considered satisfactory); and (ii) Grantee causes University's property to be released from the lien or liens in question not later than thirty (30) days prior to the time University's interest in the subject property would be forfeited.

5. Reservation of Rights. University reserves the right to occupy and use the License Area to inspect Grantee's use thereof and in any manner that is not inconsistent with the rights granted herein.

6. Condition of the Premises; Environmental.

6.1 University has made no representation whatsoever to Grantee concerning the condition of the License Area or the nature or extent of University's ownership interest therein. Grantee accepts all rights granted under this Agreement in an "AS IS, WHERE IS" and "WITH ALL FAULTS" condition, and subject to all limitations on University's rights, interests, and title to the License Area.

6.2 Grantee represents that it has inspected the License Area and enters into this Agreement with knowledge of its condition. Grantee shall determine the suitability of the License Area for Grantee's intended use, including without limitation geotechnical, structural, environmental, and health or safety conditions. Grantee acknowledges that this Agreement does not contain any implied warranties that Grantee or Grantee's contractors or consultants can successfully use the area to perform Grantee's work.

6.3 Grantee shall provide to University without charge electronic copies of any test results and reports it or its contractors or consultants obtain pertaining to the License Area. All test results and reports shall be sent to the University of Minnesota, Real Estate Office, 424 Donhowe Building, 319 15th Avenue Southeast, Minneapolis, MN 55455-0199, prior to submission to any regulatory agency. University may comment separately on said results and reports to any regulatory agency, but shall not alter any submission from Grantee to any regulatory agency.

6.4 Definitions. For purposes of this Agreement:

"Environmental Laws" means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substances, environmental protection, or health and safety, as now or may at any time hereafter be in effect and as amended from time to time, as well as the regulations adopted and promulgated thereunder, including without limitation: the Clean Water Act, also known as the

Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et seq.; the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. Section 6901 et seq.; and the Minnesota Environmental Response and Liability Act, Minnesota Statutes Chapter 115B.

“Hazardous Substance” means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any Environmental Laws; (ii) petroleum, petroleum products, and by-products, including crude oil and any fractions thereof; (iii) natural gas, natural gas liquids, liquefied natural gas, synthetic gas, and any mixtures thereof; (iv) asbestos or any material that contains any hydrated magnesium silicate minerals that crystallize as bundles of long, thin fibers that readily separate when broken or crushed; (v) radon; (vi) any other hazardous or radioactive substance, material, contaminant, pollutant, or waste; (vii) any substance with respect to which any federal, state, or local Environmental Law or governmental agency requires environmental investigation, monitoring, or remediation; and (viii) any other substance or material now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant under any Environmental Laws.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching, or migration of a Hazardous Substance into the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers, or other closed receptacles containing any Hazardous Substance), or into or out of any License Area, including the movement of any Hazardous Substance through the air, soil, surface water, groundwater, or property.

6.5 Grantee shall not and shall ensure that Grantee's contractors and consultants do not violate any Environmental Laws, including but not limited to those governing the Release, use, generation, storage, treatment, transportation, discharge, disposal or handling of Hazardous Substances in, upon, under, over or from the License Area. Grantee shall indemnify, defend and hold harmless University from and against any claim, damage or expense arising out of Grantee's breach of the foregoing obligations and covenants.

6.6 Grantee, at its sole cost and expense, shall:

- a. Notify University prior to any activity on the License Area that involves the Release, use, storage, generation, treatment, transportation, disposal, or handling of any Hazardous Substance;
- b. Comply with all Environmental Laws, including but not limited to those governing the Release, use, storage, generation, treatment, transportation, disposal, or handling of Hazardous Substances;

c. Immediately stop construction or any other activity in an area if Grantee encounters a Hazardous Substance in that area;

d. Call 911 immediately and ask to be connected to University's 911 call center (or contact University Police Department dispatch directly at 612-624-2677) (i) if Grantee encounters a Hazardous Substance; (ii) if a Hazardous Substance is Released on or from the License Area; (iii) of a violation of any Environmental Laws; (iv) of an inspection or inquiry by any governmental agency with respect to Grantee's use of the License Area; or (v) if Grantee receives any notice from any governmental agency alleging that any Environmental Laws have been violated by Grantee with respect to Grantee's use of the License Area.

e. Promptly perform activities necessary to avoid or minimize injury or liability to any person, or to prevent the Release or spread of any Hazardous Substance, or to prevent the spread of any contamination Released by the Grantee or its contractor(s).

f. Promptly respond to and comply with any United States Environmental Protection Agency and/or Minnesota Pollution Control Agency notice, order, request, or demand relating to potential or actual contamination on the License Area resulting from a Release by the Grantee or its contractor(s).

6.7 If University has reason to believe that a Hazardous Substance has been Released on the License Area by Grantee or its contractors or consultants, then University has the right, but not the obligation, to require Grantee, at Grantee's sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to University. Such an investigation shall be commenced within ten (10) days after University's request, and thereafter be diligently prosecuted to completion. Grantee shall provide to University without charge an electronic copy of the environmental audit immediately after it is completed.

6.8 If Grantee or its contractors or consultants expose or disturb soils, water, or other materials that appear to be contaminated based on visual and olfactory observation and/or field screening activities, Grantee shall test the soils, water, and other materials at Grantee's cost; testing shall be conducted by a certified laboratory. While the soils, water, and other materials are being tested, all potentially contaminated excavated soils and other materials shall be stored on 10 mil poly and covered appropriately until testing is complete. Water shall be stored and labeled, if necessary, in an approved storage vessel. Stored soils, water, and other materials shall be appropriately secured on-site, and are the responsibility of the Grantee. In addition, solely at University's discretion and upon the University's request, Grantee will provide to University splits of any samples of materials that Grantee collects so that University may undertake independent testing and analysis of the sample material.

a. If testing confirms—or any agency with jurisdiction thereof determines—that the excavated soils, water, or other materials are contaminated, Grantee shall, at its sole cost, collect, remove and appropriately dispose of all such contaminated soils, water, or other materials at an approved facility. Grantee shall assume full responsibility for impacted soil, water, and all other materials collected, excavated and removed from the License

Area. Grantee shall (a) seek and receive from a State and/or country approved disposal facility written pre-approval for receipt of impacted materials; and (b) provide such pre-approval to University. Grantee shall provide to University without charge copies of all test results and documentation regarding analysis and disposal of impacted soil, water, and materials removed from the License Area, including, but not be limited to, waste manifests, bills of lading, chain of custody documents and landfill/disposal facility receipt records. Grantee shall also consult with University before preparing any application for participation in the Minnesota Pollution Control Agency (“MPCA”) Voluntary Investigation and Clean-up Program (“VIC”) and/or the Petroleum Brownfields Program (“PB”).

b. If testing determines that the soils, water, or other materials are not contaminated, Grantee may with University’s prior written consent dispose of such materials on the License Area in accordance with existing MPCA Guidelines.

6.9 For the purposes of storm water management from the License Area, Grantee shall serve as the “owner” for purposes of Minnesota Rules 7090 and shall be responsible for obtaining, and complying with, any and all required permits.

6.10 If Grantee fails to perform its obligations under this Section, the University shall provide to Grantee written notice thereof. Grantee shall have the right to perform the obligations, to the reasonable satisfaction of the University, within thirty (30) business days (the “**Environmental Cure Period**”), unless extended by mutual written agreement of the parties. If, upon receipt of written notice, Grantee fails to perform the obligations within the Environmental Cure Period and to the reasonable satisfaction of the University, University shall have the right, but not the obligation, to perform Grantee’s obligations and charge Grantee for the costs and expenses reasonably incurred by University in doing so. Grantee shall reimburse University for all such costs and expenses within ten (35) days after receipt of an invoice therefor accompanied by supporting data in a form to reasonably evidence the costs in question.

7. Insurance.

7.1 Grantee’s Insurance Requirements. Grantee, at its sole cost and expense, shall obtain and keep in force the following insurance:

- a. Occurrence based general liability insurance covering claims arising from operations under this Agreement, whether such operations are performed by Grantee or its contractors or consultants, with limits required in Minnesota Statutes Section 466 (currently \$500,000.00 per person and \$1,500,000.00 per occurrence).
- b. Workers’ compensation insurance in compliance with all statutory requirements of the State of Minnesota.
- c. Grantee may self-insure with respect to the requirements of this Section.

7.2 The Grantee's Contractor(s) shall obtain and keep in force the insurance described in this Section:

- a. Occurrence based general liability insurance covering claims arising from operations under this Agreement, with minimum limits of \$5 million per occurrence, \$5 million annual general aggregate per project, \$5 million annual aggregate for Products/Completed Operations, \$5 million Personal and Advertising Injury, \$50,000 fire damage (any one fire), and \$5,000 medical expense (any one person per occurrence). Products and Completed Operations coverage must be maintained for at least three years after the Construction Completion Date. The general aggregate limit shall be maintained for at least three years after the Construction Completion Date. Regents of the University of Minnesota shall be named as an Additional Insured for ongoing and completed operations for claims arising out of the acts or omissions of Grantee's Contractor(s).
- b. Business Automobile Liability Insurance with a minimum limit of \$1 million each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owned automobiles. Regents of the University of Minnesota shall be named as an Additional Insured for claims arising out of the acts or omissions of Grantee's Contractor(s). Pollution liability coverage equivalent to that provided by ISO pollution liability-broadened coverage for autos endorsement CA 99 48 and the Motor Carrier Act endorsement MCS90 shall be included.
- c. Workers' compensation insurance in compliance with all statutory requirements of the State of Minnesota.
- d. Employer's Liability (Part B) Insurance with minimum limits of \$5 million bodily injury by disease per employee; \$5 million bodily injury by disease aggregate; and \$5 million bodily injury by accident.
- e. An Umbrella or Excess Liability insurance policy may be used to supplement Grantee's Contractor(s) policy limit to satisfy the minimum policy limits required by this Agreement. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies.
- f. Pollution Liability Insurance in the amount of \$2 million per occurrence and written on an occurrence basis. Damages covered by pollution liability insurance shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered cleanup costs, completed operations and defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages, as a result of pollution conditions (including mold and fungi) arising from Grantee's Work, (a) at the License Area, (b) in the course of transporting materials to or from the License Area, or (c) at or emanating from disposal sites to which the Grantee transported materials. Coverage for mold and fungi and for disposal sites may be on a claims made basis. Claims-made provisions, if any, must have a retroactive date of policy inception and must include an extended reporting period that is equal to the completed operations extension of five (5) years after the end of the Term. The Regents

of the University of Minnesota shall be named as Additional Insureds for claims arising out of the acts or omissions of Grantee's Contractor(s).

7.3 All policies shall provide: (i) that the policy will not be canceled, materially changed, or non-renewed without at least thirty (30) days' prior written notice to University; and (ii) that the policy is primary and any insurance maintained by University is excess and non-contributory. The certificates of insurance must reflect that the insurance requirements of this Agreement have been met as reasonably determined by University. All policies shall be written by a reputable insurance company acceptable to University or with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota.

7.4 Grantee shall waive and require all contractors and consultants of every tier to waive all subrogation and recovery rights against University. This shall be provided on the commercial general liability policy using a Waiver of Transfer of Rights of Recover Against Others to Us endorsement and on the workers' compensation policy using a Waiver Of Our Rights To Recover From Others Endorsement in favor of Regents of the University of Minnesota.

7.5 No endorsements, except those expressly stated herein, may be included on any policy limiting coverage without University's approval.

7.6 Grantee's Contractor(s) shall provide to University prior to commencing any work on the License Area fully executed Certificates of Insurance evidencing that it has obtained the required coverage and endorsements. At University's option, Grantee's Contractor(s) shall provide University with certified copies of insurance policies and all endorsements substantiating maintenance of the insurance required by this Agreement.

8. Indemnification and Release. Grantee agrees to indemnify, defend, and hold harmless University and its officers, employees, agents, and others acting on their behalf from and against any and all loss, damage, liability, cost and expense (specifically including attorneys' fees and other costs and expenses of defense) resulting from (i) Grantee's or its contractors' or consultants' use of the License Area; or (ii) any breach by Grantee of this Agreement. Grantee releases University from any liability, damage, loss or injury, either to persons or property, sustained by Grantee or any other party as a result of any damage, harm, injury, interference or reduction in use caused by Grantee to the License Area.

9. Taxes and Fees. Grantee shall pay when due all taxes, assessments or other government charges against the License Area or University's Property to the extent attributable to Grantee's use thereof.

10. Default. If at any time Grantee or Grantee's contractors or consultants fail to perform its obligations under this Agreement, University, in its sole discretion, may, upon not less than 30 days written notice to Grantee (or immediately in the event of any danger or potential danger to human health or the environment): (i) seek specific performance of the unperformed obligations; (ii) perform Grantee's obligations and charge Grantee for its costs reasonably incurred in doing so, after providing an opportunity to cure, to the University's reasonable satisfaction, within the

30 business day notice period; or (iii) terminate the Agreement and remove Grantee from the License Area. Grantee shall promptly reimburse University for University's reasonable costs incurred in performing Grantee's obligations and/or removing Grantee from the License Area within thirty-five (35) days after receiving an invoice therefor, accompanied by supporting data in a form to reasonably evidence the costs in question. University's remedies set forth in this Section shall be in addition to, and not in limitation of, any other remedies that University may have at law or in equity.

11. Notices. A notice, communication, or demand by either party to the other shall be sufficiently given or delivered upon receipt if personally delivered or three (3) days after sent by U.S. registered mail or certified mail, postage prepaid, return receipt requested; and

(i) in the case of University, is addressed or personally delivered to:

Regents of the University of Minnesota
C/o Real Estate Office
319 15th Avenue SE, Suite 451
Minneapolis MN 55455
reo@umn.edu

and

University of Minnesota
Office of the General Counsel
Attn: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006

(ii) in the case of Grantee, is addressed or personally delivered to:

Public Works Administration
City of St. Paul
25 West 4th Street
1500 City Hall Annex
Saint Paul, MN 55102

or at such other address with respect to either such party as that party may, from time to time, designated in writing and forward to the other as provided in this Section.

12. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

13. Severability. If any provision of this Agreement is declared invalid, illegal or otherwise unenforceable, that provision shall be deemed to have been severed from this Agreement and the remainder of this Agreement shall otherwise remain in full force and effect.

14. Complete Agreement. This Agreement (including all exhibits) constitutes the complete agreement between the parties with respect to the matters addressed herein. This Agreement shall be amended only in a writing duly executed by the parties to this Agreement.

15. Assignment. Grantee may not transfer or assign its rights under this Agreement without University's prior written consent.

16. Authority. Each of the undersigned parties represents and warrants that it has full authority to enter into this Agreement, and each individual signing this Agreement on behalf of a corporation or other entity hereby represents and warrants that he or she has full authority to sign on behalf of and to bind that party thereby.

17. Exhibits. Attached Exhibit A is incorporated by reference and hereby made a part of this Agreement.

18. Special Conditions Related to License. Grantee shall be responsible for ensuring that all of the following conditions shall be met:

- i. None.

IN WITNESS WHEREOF, the University and Grantee execute this Agreement.

Regents of the University of Minnesota

By: 

Name: Leslie Krueger

Title: Assistant Vice President for Planning, Space, and Real Estate

Date: 2/4/2020

City of St. Paul

By: _____

Name:

Title:

Date: _____

PARCEL 1

 LICENSE AREA = 5111 SQ FT

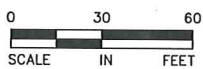
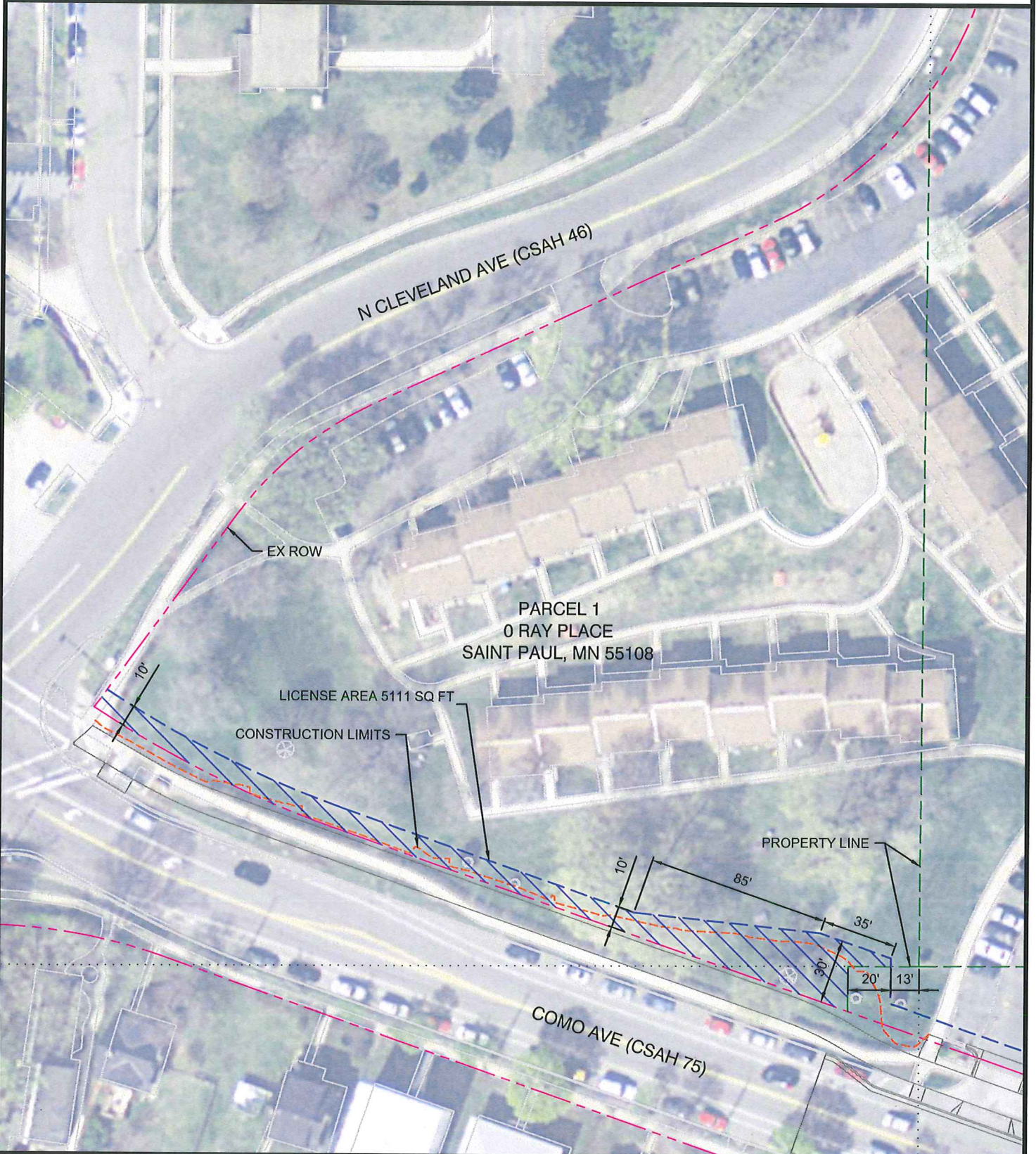


EXHIBIT A
0 RAY PLACE
SAINT PAUL, MN 55108
202923440123

PARCEL SKETCH
10/3/2019

SHEET 01 OF 04



PARCEL 2 (VIEW 1)
 LICENSE AREA = 18149 SQ FT




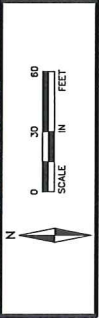

PARCEL SKETCH
 10/3/2019
 SHEET 02 OF 04

EXHIBIT A
 1170 GIBBS AVE
 SAINT PAUL, MN 55108-2029
 28292322001



PARCEL 2 (VIEW 2)
LICENSE AREA = 18149 SQ. FT



	PARCEL SKETCH
	10/3/2019
SHEET 03 OF 04	
EXHIBIT A	
1170 GIBBS AVE SAINT PAUL, MN 55108-2029 282923220001	
	

PARCEL 3



LICENSE AREA = 1310 SQ FT

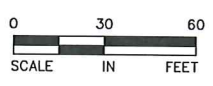
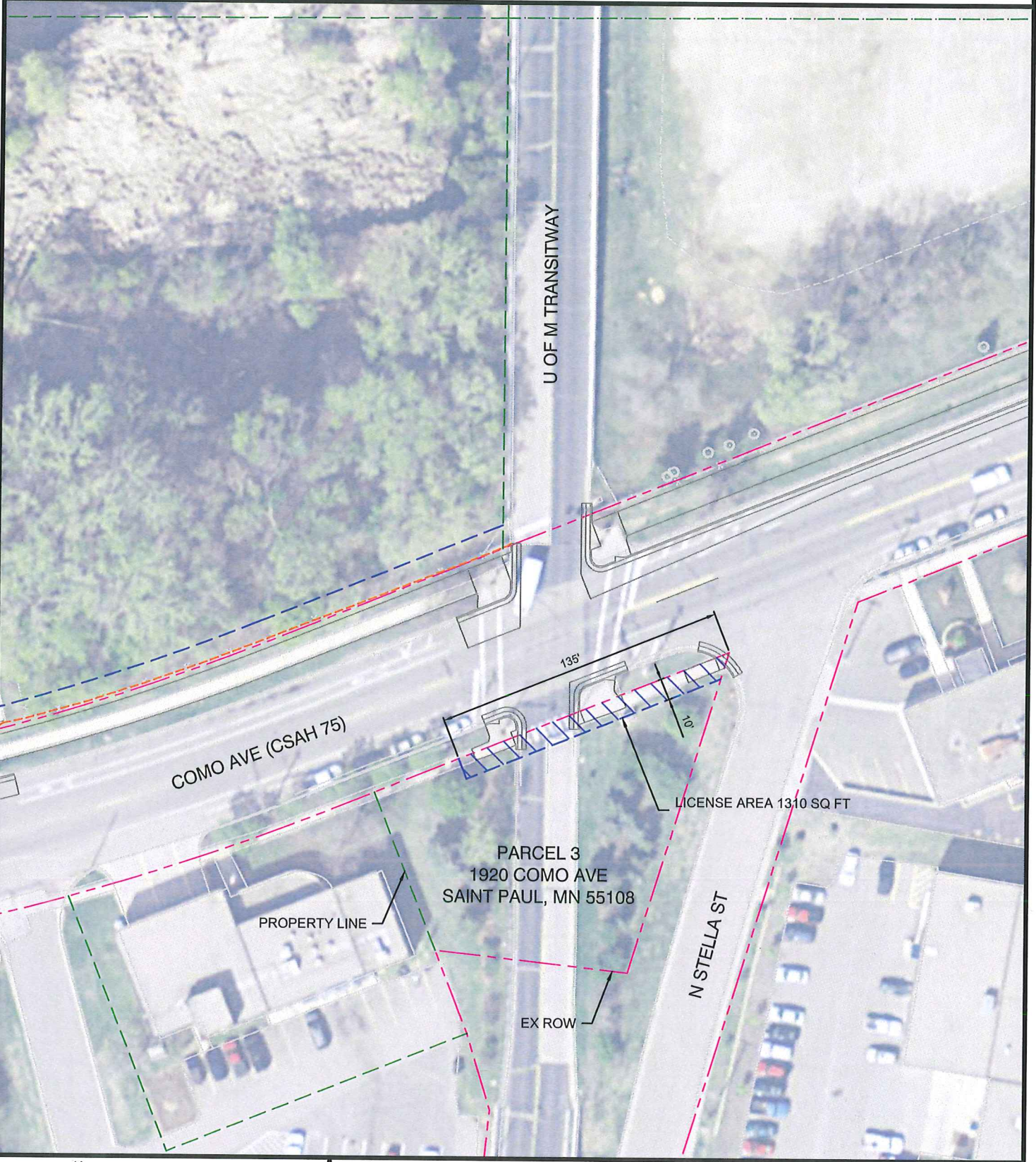


EXHIBIT A
1920 COMO AVE
SAINT PAUL, MN 55108
282923210009

PARCEL SKETCH
11/26/2019

SHEET 04 OF 04

