

AGREEMENT FOR LIMITED RIGHT OF ACCESS TO PUBLIC RIGHT OF WAY

This Agreement for Limited Right of Access to Public Right of Way ("Agreement") is entered into between the City of Saint Paul, a municipal corporation, ("City") and O'Halloran and Murphy, a C Corporation, which owns a funeral home business located at 575 Snelling Avenue South in the City of Saint Paul ("Business").

RECITALS

1. City is planning to perform certain street construction work on Snelling Avenue in the fall of 2017, which work will include construction of medians in the center of Snelling Avenue between Randolph Avenue and Ford Parkway.
2. The Business operates as a funeral home, and its functions require use of city streets, in particular Snelling Avenue, to lead funeral processions out of the home.
3. Business has raised concerns about the medians; and how the medians might impact its ability to traverse both directions on Snelling Avenue when beginning a funeral procession.
4. The City has agreed to accommodate the Business's concerns and will provide a median opening at or near the location depicted on Exhibit A under the terms and conditions of this Agreement.

CITY AND BUSINESS NOW HEREBY AGREE AS FOLLOWS:

Section 1: City and Business Responsibilities Regarding Construction and Maintenance:

- A. The City agrees to perform the following, at its own expense:
 1. As part of the median Construction on Snelling Avenue between Randolph Avenue and Ford Parkway, the City will include a median opening at as depicted on Exhibit A.
 2. City will allow use of the median opening only by the Business, only for the purpose of funeral processions, and expressly limited to the conditions stated herein.
 3. City will install signage at the median opening which will prohibit use of the median by all other traffic, except for Business funeral processions.
 4. If, in the judgment of the City, the median opening is or becomes subject to unauthorized use, City may, at its sole discretion, take further actions as it deems necessary to remedy the issue, or require removal of the median opening, and any costs of such actions will be the responsibility of the Business.

B. The Business agrees to perform the following, at its own expense:

1. Business will use the median opening for motor vehicle traffic, only for funeral processions that are escorted and flagged as required by law. No other use will be permitted.
2. Business will be solely responsible for plowing snow and/or removing debris from the median opening from the date of its construction, until this agreement is terminated.
3. Business will notify the City immediately if any structural damage or other unsafe condition either occurs or is found to exist in or around the median opening.
4. Business will be solely responsible for any and all costs associated with maintenance, repair, closure or any other actions required to maintain the safety and condition of the median opening from the date of its construction, until this agreement is terminated.
5. Upon termination of this agreement for any reason, Business will be responsible for any and all costs and expenses associated with closing the median, which the City may do in its sole discretion.

Section 2. Term and Notice.

This agreement shall remain in place until any one or more of the following events takes place:

1. Business is sold to any other owner, or for any reason ceases to be owned by its current owner(s).
2. Business at 575 Snelling Avenue ceases to be used as a funeral home.
3. If safety concerns require the median to be permanently closed, at the sole discretion of the City. Business shall be notified as soon as possible of this decision.

Immediately upon concurrence of either event 1 or event 2, Business shall send written notice thereof to the City, and shall cooperate fully with the City in all necessary actions thereafter to accomplish the closure of the median opening. Any notice or demand to be given under this Agreement shall be delivered in person or deposited in the United States, which shall be addressed as follows:

To City:	Director, Department of Public Works of the City of Saint Paul 25 West 4 th Street Saint Paul, MN 55102
----------	--

To Business: John O'Halloran, CFO
575 Snelling Avenue S.
Saint Paul, MN 55116

Section 3. Insurance.

Business shall acquire and maintain during the term of this Agreement the following coverage:

- A. Business shall be responsible for the self-insurance of, or the acquisition of Commercial Property Insurance on its personal property.
- B. COMMERCIAL GENERAL LIABILITY INSURANCE including blanket contractual liability coverage, personal injury liability coverage and broad form property damage liability endorsement with a combined single limit of not less than \$1,500,000 per occurrence, \$2,000,000 aggregate, shall be purchased or maintained by the Business. Such insurance shall: (i) name the City of Saint Paul as additional insured; (ii) be primary with respect to Business's insurance or self insurance; (iii) not exclude explosion, collapse and underground property damage; (iv) be written on an "Occurrence Form" policy basis; and (v) not contain an "aggregate" policy limit unless specifically approved in writing by City.
- C. PROFESSIONAL LIABILITY INSURANCE with minimum limits of \$1,500,000 per occurrence, \$2,000,000 aggregate shall be purchased or maintained by the Business.
- D. AUTOMOBILE LIABILITY INSURANCE with minimum limits of \$1,000,000 combined single limit and \$1,000,000 aggregate, covering hired, non-owned and owned automobiles.
- E. WORKERS' COMPENSATION INSURANCE per Minnesota Statutes with not less than statutory minimum limits; and EMPLOYERS' LIABILITY INSURANCE with minimum limits of at least \$500,000 per accident or disease and \$500,000 per employee.
- F. Business shall supply to City current insurance certificates for policies required in Section 3.
- G. The limits cited under each insurance requirement above establish minimums; and it is the sole responsibility of Business to purchase and maintain additional insurance that may be necessary in relation to this Agreement.
- H. Nothing in this license shall constitute a waiver by City of any statutory limits or exceptions on liability.
- I. Business shall place the insurance with responsible insurance companies

authorized and licensed to do business in the State of Minnesota and approved by City, and shall deliver copies of the policies to City on the date of Business's execution of this license. The policies required in paragraph (6) shall be endorsed to indicate that the insurer shall give the City notice of any changes or cancellation per the terms of the policy.

Section 4. Indemnification.

Business agrees to indemnify, defend, save and hold harmless the City of Saint Paul and any agents, officers and employees thereof from all claims, demands, actions or causes of action of whatsoever nature or character, arising out of or by reason of the existence, condition or use of the herein described median opening, or as a result of the operations or business activities taking place on or in proximity of the median opening.

Section 5. Additional Terms and Conditions are hereby expressly agreed to by City and Business as follows:

- A. Real Estate Taxes and Assessments. Business shall pay its proportionate share of the cost of real estate taxes, special assessments or service charges, if any, associated with Business's use of the median opening.
- B. Pollution and Contaminants. Business agrees to comply with all ordinances, laws, rules and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and the disposal of refuse, solid wastes or liquid wastes, and shall bear all costs and expenses arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify, defend, save and hold harmless Grantor from all liability, including, within the monetary limits of Minnesota Statutes chapter 466, fines, forfeitures and penalties arising from the failure by Grantee to comply with such ordinances, laws, rules or regulations.
- C. Compliance with all other applicable laws, rules and ordinances. Business agrees to comply with all other applicable ordinances, laws, rules and regulations enacted by any governmental body or agency insofar as they relate to Business's performance under this Agreement, and shall bear all costs and expenses arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify, defend, save and hold harmless Grantor from all liability, including, within the monetary limits of Minnesota Statutes chapter 466, fines, forfeitures and penalties arising from the failure by Grantee to comply with such ordinances, laws, rules or regulations.
- D. Surrender of Premises. Business, at the expiration of this Agreement, or any sooner termination of this agreement, shall quit peacefully and surrender possession of said median opening to City.

- E. Assignment. Each party binds itself and its successors and assigns with respect to all covenants in this Agreement, and neither party will assign or transfer its interest in this Agreement without the written consent of the other.
- F. Amendments. The provisions of this Agreement may be modified or amended at any time only by mutual written consent of the parties hereto.
- G. Entire Agreement. It is understood that this Agreement supersedes all oral agreements and negotiations between the parties related to the subject matters herein.

IN WITNESS WHEREOF, the parties hereto are authorized to be bound by the following signatories, and have executed this Agreement as of the date above written.

BY: O'HALLORAN AND MURPHY

John O'Halloran CFO
Printed name and title
John O'Halloran
Signature
8/10/2017
Date

BY: CITY OF SAINT PAUL

Mayor

Director of Public Works

City Attorney approval as to form