License Number



### ENVIRONMENTAL ACCESS AGREEMENT

**THIS AGREEMENT** is entered into effective on the date of last signature below by and between Regents of the University of Minnesota, a Minnesota constitutional corporation, through its Real Estate Office (the “**University**”), and      , a       (the “**Grantee**”).

**WHEREAS,** Grantee desires access to University property described as       (the “**Premises**”) and as depicted on Exhibit A attached to this Agreement for the purpose of      ; and

**WHEREAS,** University is willing to permit Grantee to access the Premises for such purpose, pursuant to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE,** the parties agree as follows:

**1. Grant.** Subject to the terms and conditions of this Agreement, University grants to Grantee, and Grantee accepts, access to and use of the Premises beginning on      , for a period of       (     ) day(s). Grantee shall coordinate each day of access at least forty-eight (48) hours in advance with       at      . No work on the Premises shall commence without      ’s consent.

**2. Use of Premises.**

2.1 Grantee agrees to access and use the Premises solely for the purpose stated above. University shall have the right, in its sole discretion, to require Grantee to submit to University, for its prior review and approval, detailed plans and specifications describing Grantee’s proposed work on the Premises.

2.2 Before entering upon the Premises, Grantee and each of Grantee’s employees, contractors and consultants entering upon the Premises shall have completed 40-hour training in accordance with OSHA 29 CFR 1910.120.

2.3 Grantee and its employees, contractors, and consultants shall conduct environmental monitoring (field screening) using, at a minimum, a PID meter, at all times while on the Premises.

2.4 Grantee acknowledges University’s use of the Premises for       and agrees not to disturb such use.

2.5 Grantee shall comply with all applicable laws, statutes, regulations, ordinances, rules, and orders and University policies and rules in its use of the Premises pursuant to this Agreement. Only Grantee may enter the Premises under this Agreement. Grantee shall be qualified to perform any work undertaken by it on the Premises in a safe and professional manner in accordance with standard of care expected of professionals conducting similar work.

2.6 During the term of this Agreement, Grantee shall (a) promptly report and restore any damage to the Premises arising from, growing out of, or connected with Grantee’s or its employees’, contractors’, or consultants’ use of the Premises; and (b) upon completion of use of the Premises or the expiration or termination of this Agreement, whichever occurs first, Grantee shall, at its sole cost and expense, promptly restore the Premises to the condition which existed as of the effective date of this Agreement; or at University’s option, Grantee shall upon demand reimburse the University for any costs incurred by University in restoring such damage.

2.7 Grantee shall keep the Premises 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 employees, contractors or consultants or claimed to have been furnished for Grantee or its employees, contractors or consultants; provided, however, that Grantee shall have a right to reasonably contest the filing of any mechanics’ lien if: (a) Grantee provides University with security reasonably satisfactory to 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 (b) 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.

**3. Reports.** Grantee shall provide to University without charge electronic copies of any surveys, test results, documents or reports it obtains or creates pertaining to the Premises. All test results and reports shall be sent to the University of Minnesota, Real Estate Office, 451 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.

**4. Fee.** The fee for the permit is $     , payable upon the signing of this Agreement. In addition, Grantee shall be responsible for any costs incurred by University on account of Grantee’s use of the Premises or on account of Grantee’s breach of its obligations under this Agreement.

**5. Indemnification, Insurance.**

5.1 Indemnification. Grantee agrees to defend, indemnify and hold harmless the University from injuries, damages and loss, including costs and attorneys’ fees, arising from the acts and omissions of Grantee or Grantee’s employees, officers, consultants, contractors and agents.

5.2 Insurance. Grantee shall maintain, and shall ensure that its contractors and consultants maintain, the following insurance:

5.2.1 Commercial General Liability covering claims arising from operations under this Agreement, whether such operations are performed by Grantee or its contractors or consultants, with minimum limits of $5,000,000 per occurrence, $5,000,000 annual general aggregate per project, and $5,000,000 annual aggregate for Products/Completed Operations. The general aggregate limit shall apply per project and be maintained for at least three years after construction is complete. Regents of the University of Minnesota shall be named as an additional insured for ongoing and completed operations by endorsement on ISO forms CG 2010 07 04 and CG 2037 07 04 or their equivalent for claims arising out of the acts or omissions of Grantee, its contractors’ or consultants’, and anyone else for whom Grantee is responsible.

5.2.2 Business Automobile Liability Insurance with a minimum Combined Single Limit of $5,000,000 each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owed automobiles. Regents of the University of Minnesota shall be named as an additional insured.

5.2.3 Workers’ compensation insurance in compliance with all statutory requirements of the State of Minnesota.

5.2.4 Employer’s Liability insurance with minimum limits of $5,000,000 bodily injury by disease per employee; $5,000,000 bodily injury by disease aggregate; and $5,000,000 bodily injury by accident.

5.2.5 Pollution liability insurance with minimum limits of $2,000,000 per claim or occurrence and $2,000,000 aggregate limit. Covered damages 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 or damages.

5.2.6 An Umbrella or Excess Liability insurance policy may be used to supplement Grantee’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.

5.3 Insurance Conditions.

5.3.1 All policies shall provide: (i) that the policy will not be canceled 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. All policies shall be written by a reputable insurance company acceptable to University with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota.

5.3.2 Grantee shall waive and require all contractors and consultants of every tier to waive all subrogation and recovery rights against University.

5.3.3 Grantee shall provide to University prior to commencing any work on the Property fully executed Certificates of Insurance evidencing that it has obtained the required coverage and endorsements. At University’s option, Grantee shall provide to University certified copies of insurance policies and all endorsements substantiating maintenance of the insurance required by this Agreement.

5.3.4 Grantee shall impose the same or, at its election, more stringent requirements on its contractors and consultants performing work on the Property.

**6. Environmental.**

6.1 Grantee shall not—and shall ensure that others do not—install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or from the Premises in violation of any current or future federal, state, or local law, statute, regulation, ordinance, rule, code, or order relating to human health or the environment including, without limitation, the Resource Conservation Recovery Act (RCRA), the Toxic Substances Control Act (TOSCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (“**Environmental Laws**”). 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. “**Hazardous Substance**” means (i) any substance defined as a “hazardous substance” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or the Minnesota Environmental Response and Liability Act, (ii) petroleum, petroleum products and by-products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (iii) 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.

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

6.2.1 Notify University prior to any activity on the Premises that involves the use, storage, generation, treatment, transportation, release, disposal, or handling of any Hazardous Substance;

6.2.2 Comply with all Environmental Laws governing the use, storage, generation, treatment, transportation, release, disposal, or handling of Hazardous Substances;

6.2.3 Immediately stop construction or any other activity if Grantee encounters a Hazardous Substance;

6.2.4 Give immediate notice to       at    -   -     (i) if Grantee encounters a Hazardous Substance; (ii) if a Hazardous Substance is spilled or released on or from the Premises; (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 Premises; 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 Premises.

6.2.5 Promptly perform any investigative, remedial or other activities necessary to avoid or minimize injury or liability to any person, or to prevent the spread of contamination; and

6.2.6 Promptly respond to and comply with any notice, order, request, or demand relating to potential or actual contamination on the Premises.

6.3 If University has reason to believe that a Hazardous Substance has been discharged, spilt, or released on the Premises 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 an electronic copy of the environmental audit immediately after it is completed.

6.4 If during construction, Grantee or its employees, 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 soils and other materials shall be stored on ten (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.

6.4.1 If testing confirms—or any agency with jurisdiction thereof determines—that the soils, water, or other materials are contaminated, Grantee shall dispose of them appropriately at an approved facility and/or via an approved MCES or MPCA Discharge Permit at Grantee’s sole cost. Grantee shall assume full responsibility for impacted soil, water, and all other materials excavated and removed from the Premises. Grantee shall (a) seek and receive from a State and/or country approved disposal facility(ies) 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 Premises, including, but not be limited to, waste manifests, bills of lading, chain of custody documents and landfill/disposal facility receipt records. If identified releases are detected on the Premises and the site is entered into the MPCA's Voluntary Investigation and Clean-up Program (VIC) and/or the Petroleum Brownfields Program (PB), Grantee shall ensure that University is named as Successors or Assigns to any statutory liability assurance letter received from MPCA.

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

6.5 If Grantee fails to perform its obligations under this Section, 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 (10) days after receipt of an invoice therefor accompanied by supporting data in a form to reasonably evidence the costs in question.

**7. Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

#### If to University: Regents of the University of Minnesota

c/o Real Estate Office

Suite 451, Donhowe Building

319-15th Avenue SE

# Minneapolis, MN 55455-0199

Facsimile: (612) 624-6345

E-mail: [reo@umn.edu](mailto:reo@umn.edu)

With a copy to: Office of the General Counsel

Attn: Transactional Law Services

University of Minnesota

360 McNamara Alumni Center

200 Oak Street SE

Minneapolis, MN 55455-2006

Facsimile No.: (612) 626-9624

E-mail: [contracts@mail.ogc.umn.edu](mailto:contracts@mail.ogc.umn.edu)

If to Grantee:

Attn:

Facsimile No.:

E-mail:

**8. Default; Remedies.** If at any time Grantee fails to perform its obligations under this Agreement, University, in its sole discretion, may, upon not less than three (3) 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; or (iii) terminate the Agreement and remove Grantee from the Premises. Grantee shall promptly reimburse University for University’s costs incurred in performing Grantee’s obligations and/or removing Grantee from the Premises within ten (10) days after receiving an invoice therefore. University’s remedy 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.

**9. Assignment.** Grantee shall not assign its rights under this Agreement without University’s prior written consent, which consent University may grant or withhold in its sole discretion.

**10. Amendments.** This Agreement shall be amended only in a writing duly executed by the parties to this Agreement.

**11. Non-Waiver.** No waiver by University of any default or nonperformance by Grantee shall be deemed a waiver of any subsequent default or nonperformance by Grantee.

**IN WITNESS WHEREOF,** the parties execute this Agreement.

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| **Regents of the University of Minnesota**  By:  Name:  Title:  Date: | By:  Name:  Title:  Date: |

### EXHIBIT A

**THE PREMISES**