

## **EXHIBIT 1**

### **LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND W.J. MCCABE CHAPTER, IZAAK WALTON LEAGUE OF AMERICA, INC.**

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between W.J. MCCABE CHAPTER, IZAAK WALTON LEAGUE OF AMERICA, INC., a Minnesota non-profit corporation ("McCabe"), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (the "City").

A. The City owns real property in the Spirit Mountain Recreation Area (as defined by applicable statute) that is administered, managed and controlled on behalf of City by the Spirit Mountain Recreation Area Authority (the "Authority") pursuant to Minnesota Laws 1973, Chapter 327, as it has been amended from time to time.

B. McCabe is a non-profit corporation that has worked for decades to protect the natural resources of Duluth and greater Minnesota.

C. The City, the Authority and the Minnesota Department of Natural Resources have been focused on restoring the Knowlton Creek watershed area, located in part within the Spirit Mountain Recreation Area, for approximately the past ten years, and have a continued interest in doing so. The Authority drafted a forest management plan (the "Plan") for the Spirit Mountain Recreation Area in 2011, which made recommendations relating to the Knowlton Creek Forest Site (the "Site"), which is a unique, naturally regenerated, old-growth forest stand of white pine and white cedar. The Site is depicted on the attached Exhibit A.

D. McCabe wishes to improve the Site, consistent with the recommendations of the Plan, through activities that will cause the regeneration of white pine, white cedar and northern hardwoods in areas with (1) an aspen overstory; (2) a canopy gap; or (3) a hardwoods overstory (the "Project").

E. Although the Spirit Mountain Recreation Area is administered, managed and controlled on behalf of the City by the Authority, the City has agreed to oversee the Project.

F. The parties wish to create a revocable, non-exclusive license in favor of McCabe to allow McCabe to complete the Project in accordance with the terms and conditions of this Agreement.

G. McCabe has represented itself as fully capable of completing the Project and as qualified and willing to perform the Project.

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. THE LICENSE.

A. Subject to the terms and conditions set forth in this Agreement, the City grants to McCabe a revocable, non-exclusive license to enter onto the Site via designated public roads and trails for the limited purpose of completing the Project. Access to the Site outside of designated public roads and trails shall not occur without the written permission of the City's Property and Facilities Manager or their designee (the "Manager"). The Project shall be completed by McCabe, its employees, agents and volunteers. The Project shall be at no cost to the City, except as otherwise set forth in this Agreement, or as may be approved by the City, in the City's sole discretion.

B. McCabe acknowledges and understands that the Site is public property, and the cooperation of all users and coordination of activities is required. This cooperation includes ingress, egress and use of amenities and related improvements. The Manager, in consultation with the Authority as necessary, shall ultimately determine the appropriate use of the Site and shall decide any disputes between McCabe and any other users of the Spirit Mountain Recreation Area.

C. McCabe's use of the Site shall in no way limit or restrict the City's or the public's use of the Site. The City shall continue to enjoy unlimited access to the Site during the Term. Notwithstanding the foregoing, McCabe may temporarily close off sections of the Site for public safety reasons when performing the Project by providing appropriate signage and/or fencing to notify the public of the activities occurring.

D. McCabe shall be responsible for all of its costs and employee compensation in connection with the Project, including but not limited to payroll, rental or purchase of equipment and all other expenses, except as otherwise set forth in this Agreement, or as may be approved by the City, in the City's sole discretion. McCabe may utilize the City's Volunteer Toolshed in accordance with the then-current policies governing use of the Volunteer Toolshed. McCabe's staff members and volunteers shall be employees or agents solely of McCabe and not employees or agents of the City.

E. McCabe will work on the Project in coordination with the City Forester (defined below), who will serve as the primary contact for the City. McCabe shall notify the Authority and the City Forester in writing no less than one week in advance of any planned activities on the Site. However, the City Forester may grant McCabe permission to work within the Site with less than one week's notice in the City Forester's sole discretion. In the event that the City or the Authority determines that the planned activities will interfere in any way with other activities planned for that time period (either at the Site or surrounding areas), McCabe shall reschedule its planned activities for a time that is acceptable to the City and the Authority. In the event of a major wind or other event causing substantial damage to the Site, the City may indefinitely suspend McCabe's access to the affected portion(s) of the Site by providing written notice to McCabe. In such an event, and as the City's resources allow, the City will reopen the affected portion(s) of the Site in the City's sole discretion.

F. The City and/or the Authority may be working within the Site or nearby areas during the Term, and McCabe's activities cannot interfere with the City's or the Authority's activities.

II. TERM OF THIS AGREEMENT. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on or about November 1, 2021, and shall continue through October 31, 2024, unless earlier terminated as provided in this Agreement (the "Term").

III. LICENSE ACTIVITIES.

A. Authorized Activities on Project. McCabe may, under the conditions set forth in this Agreement and consistent with the Plan, engage in the following activities for the purpose of completing the Project:

1. Remove invasive species and aspen as directed by the City's Forester (the "City Forester") through cutting, girdling or chemical treatment (chemical treatment requires further permission as set forth below in Section III.B.2.). Remove additional species of trees only as specifically directed by the City Forester in writing.

2. Disturb the soil surface to create a seedbed that will allow more seed to germinate, using hand tools and/or ATVs or small tractors pulling a harrow or drag.

3. Install tree cages (a maximum of 100 at any given time) on white cedar and hemlock to prevent deer browse.

4. Planting trees as approved from time to time by the City Forester in writing.

5. Perform other duties authorized by the City Forester in writing.

B. Regulation of Activities.

1. McCabe may use chainsaws, track wheelbarrows, lawnmowers, weed whips, brush cutters, saws, drills, mini-excavators, snowmobiles, track sleds and other mechanized equipment (collectively, the "Mechanized Equipment") to perform the Project, but must adhere to the following rules when using the Mechanized Equipment:

a. Only individuals designated by McCabe as a "chainsaw operator" will be allowed to operate chainsaws. McCabe shall adhere to Occupational Safety and Health Administration ("OSHA") requirements for working safely with chainsaws, including with respect to its volunteers.

b. Only individuals designated by McCabe as a "machine operator" will be allowed to operate Mechanized Equipment. McCabe shall adhere to OSHA requirements

associated with the use of wheel or track-propelled equipment, including with respect to its volunteers.

c. Only individuals designated by McCabe as a “power tool operator” will be allowed to operate power saws (circular saw), power pole saw, and brush cutters tools. McCabe shall adhere to OSHA requirements associated with the use of hand and power tools, including with respect to its volunteers.

d. The City Forester, in their sole discretion, retains the right to prohibit any type of equipment from being used by McCabe on the Site.

2. McCabe may not use chemical methods to remove brush, trees, and other vegetation, except (i) when removing or attempting to remove invasive species, (ii) when girdling or removing aspen, AND (iii) with written approval from the City. If McCabe wishes to use chemical removal methods, it must submit a written request in advance. The City may approve or refuse a request to use chemical removal methods in its sole discretion. In the event chemical removal methods are authorized, McCabe shall (i) use only the specific chemicals and methods authorized by the City, in the approved quantities; (ii) only disperse the chemical(s) on the invasive species identified in the City’s written approval; and (iii) use, transport and store the chemical(s) in accordance with applicable law and consistent with all guidelines imposed by the City.

3. All invasive species shall be removed from the site or otherwise disposed of using best practices to prevent regrowth.

4. All cut trees shall be left on the Site. The height of remaining tree stumps shall not exceed the diameter of the stump.

5. The removal of any trees other than the aspen designated for removal by the City Forester requires the written approval of the City Forester before removal. McCabe shall submit tree removal requests in writing to the City prior to removal of any tree other than the aspen designated by the City Forester, and the City may approve or reject those requests in its sole discretion.

6. McCabe must provide personal protective equipment necessary or adequate for all activities on the Site. The City will not provide recommendations and/or direction as to what, if any, personal protective equipment should be used by individuals working on the Project.

7. Any activities undertaken by McCabe that are not approved by the City Forester may be grounds for termination of this Agreement. McCabe shall perform all duties and activities authorized under this Agreement consistent with the Plan and/or at the direction of the City.

C. ATV Use. McCabe may, under the following conditions, use an all-terrain vehicle and other mechanized equipment which include mini-excavators and tracked wheelbarrows (“ATV”) to access the Site solely for the purpose of completing the Project:

1. ATV use shall be limited to (i) the Site, and (ii) designated ski trails, snowmobile trails, and forest roads. No other trail or off-trail use can have ATV traffic unless such use is approved by the City in advance pursuant to a written request submitted to the City. If such a request is approved, the City shall transmit permission in writing or via email. The City reserves the right to deny any such requests. Overland cutting is prohibited unless approved in writing by the City Forester in advance.

2. Speed of ATVs is limited to 10 miles per hour or less.

3. ATV users must yield to people and pets.

4. ATV use is limited to times when the trails are dry. ATV use is prohibited when the trails are wet and/or muddy. If McCabe causes any rutting on the Site or any other damage to a trail surface or any portion of the Site, McCabe shall promptly restore the rutted or damaged portion of the trail or the Site to its pre-existing condition.

5. ATV use on off-trail locations shall be minimized to the greatest extent possible and used to bypass bridges, boardwalk, and terrain where the ATV cannot be safely operated. If McCabe causes any rutting or any other damage to an off-trail surface, McCabe shall promptly restore the rutted or damaged portion of the off-trail surface to its pre-existing condition.

6. ATVs may be used only to (i) disturb the soil surface within the Site to create a seedbed that will allow more seed to germinate; and (ii) haul tools, materials, and equipment to and within the Site. ATVs may not be used for sightseeing or other purposes. ATVs may be used during daylight hours only and may not be used when it is dark.

7. ATVs must be clearly labeled or otherwise visibly displayed with a sticker or other device acceptable to the City to notify the public that such ATV use is specially authorized.

8. All ATVs used to complete the Project must be supplied by McCabe or its designated volunteers.

D. Volunteer Use. McCabe may use volunteers to perform work on the Project and, in such event, must supervise volunteers in accordance with the requirements under this Agreement, as well as adhere to the following:

1. McCabe must provide a crew leader to supervise volunteers at all times and submit the crew leader’s name and contact information to the City Forester. The type of

supervision will be based on type of work being performed and skill level of the volunteer, ranging from direct on-sight supervision to indirect supervision.

2. McCabe must train and supervise volunteers.
3. McCabe must provide volunteers with the appropriate tools to perform the Project.

E. Conformance to Specifications. McCabe shall complete the Project in a professional and diligent manner and use reasonable care in performing the Project. All work shall be done in accordance with the Plan or as otherwise directed by the City Forester. In the event McCabe performs work that does not conform to the Plan, the City may require that McCabe fix the non-conforming work, including revegetation in the event vegetation or trees are removed by McCabe without proper authorization. In the event of any conflict between this Agreement and the Plan, this Agreement shall control.

#### IV. TERMINATION.

A. Either party may terminate this Agreement without cause by providing at least fourteen (14) calendar days' written notice to the other party.

B. The City may terminate this Agreement for the material breach by McCabe of any provision of this Agreement if such breach is not cured to the satisfaction of the City within ten (10) days of delivery of a written notice by the City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach.

C. The City may terminate this Agreement immediately on written notice to McCabe if the City believes in good faith that the health, welfare, or safety of occupants or neighbors of the Site would be placed in immediate jeopardy by the continuation of this Agreement.

#### V. REPRESENTATIONS AND WARRANTIES.

A. The City makes no representation that the Site is suitable for any particular purpose or specific uses and McCabe accepts the Site in "as is" condition without representations or warranties of any kind.

B. McCabe represents and warrants that it shall perform its duties in a professional and diligent manner in the best interests of the City and the Authority and in compliance with all applicable laws.

C. McCabe represents and warrants that McCabe and all personnel and volunteers working on the Project shall have sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.

VI. RESTORATION.

Except as explicitly permitted by this Agreement, McCabe shall not make any alterations or improvements to the Site without the prior written consent of the City and then only upon the terms and conditions which may be imposed by the City. Prior to expiration of the Term, McCabe shall repair any damage caused by McCabe, its employees, servants, volunteers, agents, contractors, invitees, and licensees to the equivalent of its condition prior to the damage caused by McCabe, or better, or, upon demand, pay to the City the reasonable costs incurred by the City to repair any damage done by McCabe, its employees, servants, volunteers, agents, contractors, invitees, and licensees.

VII. HOLD HARMLESS. To the extent allowed by law, McCabe shall defend, indemnify and hold the City, the Authority and their respective employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from: (a) McCabe's breach of this Agreement; (b) McCabe's negligence or misconduct or that of its employees, agents, volunteers or contractors in completing any portion of the Project; (c) any claims arising in connection with McCabe's employees, agents, volunteers or contractors; or (d) the use of any materials supplied by McCabe to the City or the Authority unless such material was modified by the City or the Authority and such modification is the cause of such claim. This section shall survive the termination of this Agreement for any reason.

VIII. INSURANCE.

A. During the Term, McCabe shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) aggregate per occurrence for personal bodily injury and death. The City and the Authority shall be named as additional insureds therein. McCabe's insurance policies shall cover:

1. Public Liability, including premises and operations coverage.
2. Independent contractors - protective contingent liability.
3. Personal injury.
4. Owned, non-owned and hired vehicles.
5. Contractual liability covering the indemnity obligations set forth herein.

B. McCabe shall provide to the City a Certificate of Insurance in form acceptable to the Duluth City Attorney's Office evidencing such insurance coverages. The City does not represent or guarantee that these types or limits of coverage are adequate to protect McCabe's interests and liabilities. The form of the Certificate of Insurance shall (i) contain an unconditional requirement that the insurer notify the City and the Authority not less than 30 days prior to any cancellation, non-renewal or modification of the policy

or coverages evidenced by said certificate; and (ii) provide that failure to give such notice to the City and the Authority will render any such change or changes in said policy or coverages ineffective as against the City and the Authority. The use of an "Accord" form as a Certificate of Insurance shall be accompanied by two forms: 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as required by the Duluth City Attorney's Office.

C. During the Term, McCabe shall also have workers' compensation insurance in accordance with applicable law.

IX. INDEPENDENT CONTRACTOR. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting McCabe or McCabe personnel as an agent, representative, or employee of the City or the Authority for any purpose or in any manner whatsoever. McCabe and its employees shall not be considered employees of the City or of the Authority and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of McCabe's employees or agents while so engaged, shall in no way be the responsibility of the City or the Authority.

X. ASSIGNMENT. McCabe shall not in any way assign or transfer its rights or interests under this Agreement. However, McCabe may hire subcontractors to work on the Project. Any subcontractor hired by McCabe shall procure the required insurance coverages as described in Section VIII above and provide proof of coverage to the City prior to conducting any work on the Site. McCabe shall remain primarily responsible for all work performed by any subcontractor.

XI. LAWS, RULES AND REGULATIONS.

A. McCabe shall conduct its activities related to the Project 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, City of Duluth, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. McCabe shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

B. McCabe shall procure, at McCabe's expense, all licenses, permits, approvals and permissions necessary for carrying out its obligations under this Agreement and completing the Project, unless otherwise agreed to in advance by the City in writing.

C. McCabe shall ensure that its staff members, agents and volunteers complete the Project in a professional and diligent manner and shall use its best efforts to complete the Project in accordance with applicable timelines and schedules.



XII. RECORDS RETENTION. McCabe shall maintain all books, records, documents, and other evidence pertaining to this Agreement for six (6) years after termination or expiration of this Agreement for any reason.

XIII. GOVERNMENT DATA PRACTICES. All data collected, created, received, maintained or disseminated for any purpose by the parties because of this Agreement is governed by Minn. Stat. § 13.05, Subd. 11. McCabe shall comply with Minn. Stat. § 13.05, Subd. 11. McCabe agrees to hold the City, its officers, and employees harmless from any claims resulting from McCabe's failure to comply with this law.

XIV. WAIVER. The waiver by the City or McCabe of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition in this Agreement.

XV. SEVERABILITY. 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.

XVI. RECITALS INCORPORATED. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.

XVII. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between McCabe and the City regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter, except the Authority. Except the Authority, no person shall have the right to make a claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which may be waived at any time by mutual agreement between the parties.

XVIII. NOTICES. Notices provided pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

W.J. McCabe Chapter, Izaak  
Walton League of America, Inc.  
Attn: President  
P.O. Box 3063  
Duluth, MN 55803  
(218) 451-1415  
rcstaffon@msn.com

City of Duluth  
Attn: Property and Facilities Manager  
1532 W. Michigan St.  
Duluth, Minnesota 55806  
(218) 730-4430

Spirit Mountain Recreation Area Authority  
Attn: Executive Director  
9500 Spirit Mountain Place  
Duluth, MN 55810

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

XIX. INCIDENT REPORT. McCabe shall promptly notify the City in writing of any incident of injury or loss or damage to the Site, any other property of the City or the Authority, or any staff members, volunteers or invitees occurring during the performance of the Project. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster and sent to the Manager, using the City's then-current form of Incident Report.

XX. COMPLIANCE WITH AGREEMENT. The right of McCabe to use the Site is subject to McCabe's compliance with the undertakings, provisions, covenants, and conditions set forth in this Agreement.

XXI. APPLICABLE LAW. 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.

XXII. AMENDMENTS. All amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

XXIII. 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 individuals who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said individuals will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions of this Agreement.

XXIV. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

XXV. KEYS.

A. The Manager shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution for any locks within the Site. McCabe shall comply with the City's Key Control Policy, a copy of which shall be provided to McCabe, and is subject to unilateral change by the City during the Term.

B. McCabe shall not make copies of any keys that are distributed to McCabe. All keys shall be promptly returned to the Manager upon termination or expiration of this Agreement.

XXVI. 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. The exhibits to this Agreement include the following:

Exhibit A: Depiction of the Site

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

CITY OF DULUTH, MINNESOTA

W.J. MCCABE CHAPTER, IZAAK WALTON LEAGUE OF AMERICA, INC.

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

DocuSigned by:  
*Richard Staffon*  
597BB5440E2D401... \_\_\_\_\_

Its: \_\_\_\_\_  
Richard Staffon

ATTEST:  
\_\_\_\_\_  
City Clerk

Title: \_\_\_\_\_  
President

Dated: \_\_\_\_\_  
11/10/2021

Dated: \_\_\_\_\_

COUNTERSIGNED:

\_\_\_\_\_  
City Auditor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CONSENT BY AUTHORITY**

Spirit Mountain Recreation Area Authority consents to and affirms this License Agreement between the City of Duluth and the W.J. McCabe Chapter, Izaak Walton League of America, Inc., permitting the use of the Spirit Mountain Recreation Area by the W.J. McCabe Chapter, Izaak Walton League of America, Inc. to complete the Project (as defined above). Spirit Mountain Recreation Area Authority consents and affirms this License Agreement pursuant to its right to administer, manage and control the Spirit Mountain Recreation Area granted in Minnesota Laws 1973, Chapter 327, as it has been amended from time to time.

**SPIRIT MOUNTAIN RECREATION AREA AUTHORITY**

By: \_\_\_\_\_

Its: Board Chair

Dated: \_\_\_\_\_

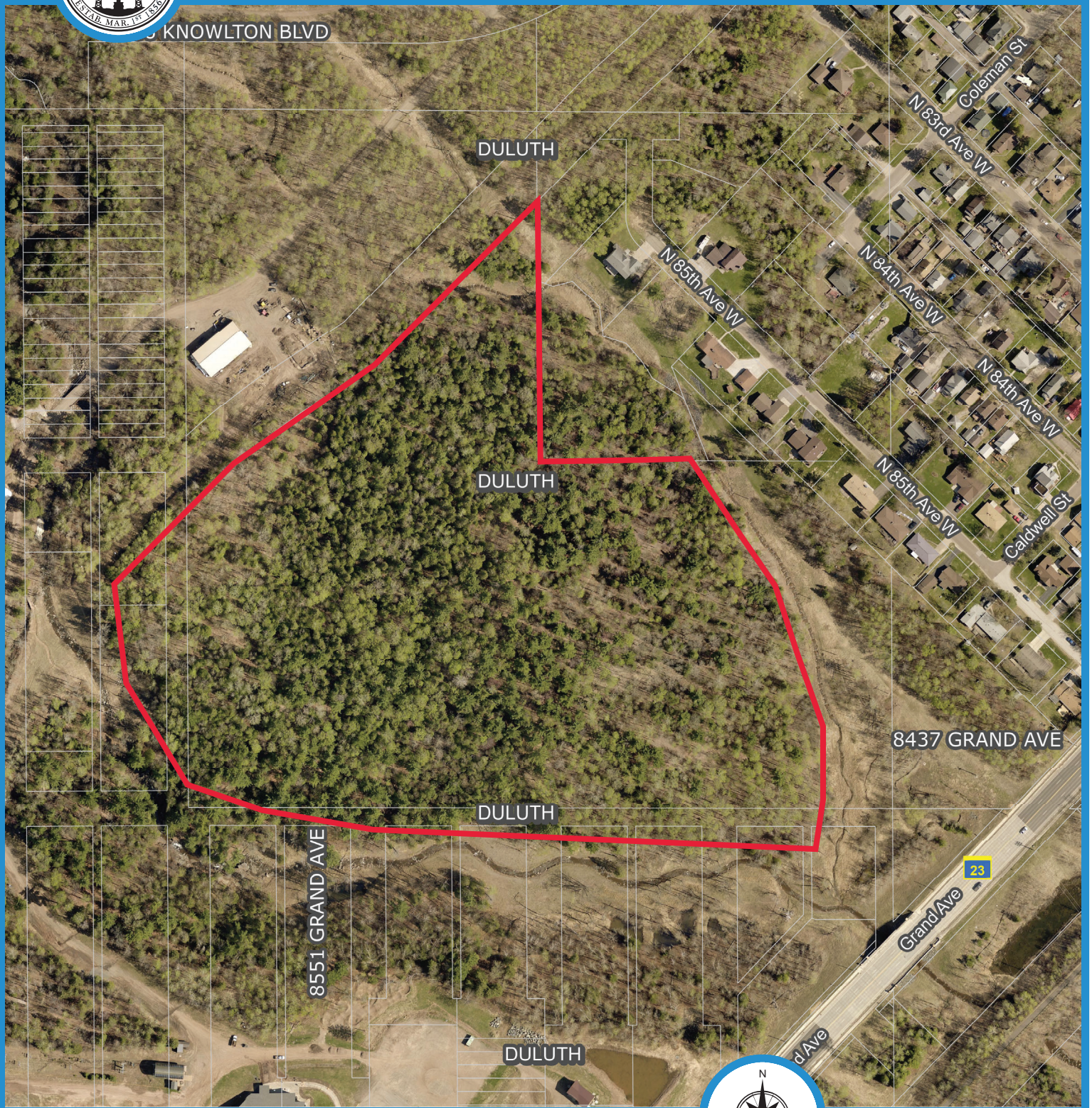
By: \_\_\_\_\_

Its: Secretary

Dated: \_\_\_\_\_



# EXHIBIT A



 Site

County Land Explorer  
St. Louis County [www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer) Minnesota

**Disclaimer**  
This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein

Map created using County Land Explorer  
[www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer)

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