

# EXHIBIT 1

## LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND INDEPENDENT SCHOOL DISTRICT NO. 709

**THIS AGREEMENT** (this “Agreement”) is by and between Independent School District No. 709, a Minnesota public corporation (“ISD #709”), and the City of Duluth, a Minnesota municipal corporation (“City”).

**WHEREAS**, the Duluth Traverse is a bike-optimized, multi-use, natural surface trail designed to provide a nationally significant mountain biking experience, connect people to Duluth’s beautiful natural places, and exemplify best practices for environmentally sustainable trail design and management (the “Trail”).

**WHEREAS**, City and ISD #709 would like to expand the Trail to add a trail spur crossing real property owned by ISD #709, which property is legally described on the attached Exhibit A (the “ISD #709 Property”).

**WHEREAS**, the parties wish to create a revocable, non-exclusive license in favor of City to allow City and the general public to utilize a portion of the ISD #709 Property for use as a public multi-use recreational trail, which will constitute a portion of the Trail.

**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. LICENSE**

A. Subject to the terms and conditions set forth in this Agreement, ISD #709 grants to City a revocable, non-exclusive license to access and utilize that portion of the ISD #709 Property shown on the attached Exhibit B (the “License Area”) for a ten-foot-wide multi-use recreational trail to be used by the general public.

B. City’s and the public’s use of the License Area shall be limited to public recreational trail purposes.

C. City shall have no obligation to construct or maintain any trails or other improvements within the License Area.

D. Either party may terminate this Agreement upon 60 days’ written notice to the other party.

E. City agrees that it will not include the trail spur located on the ISD #709 Property on any maps of the Trail produced or created by City, in order to limit disruption to school operations on the ISD #709 Property.

**II. EFFECTIVE DATE**

Notwithstanding the date of execution of this Agreement, this Agreement shall have an effective date as of July 1, 2017.

**III. LAWS, RULES AND REGULATIONS**

City agrees to conduct its activities related to this Agreement 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, and City of Duluth.

**IV. WAIVER**

The waiver by City or ISD #709 of any breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any subsequent breach of same or any term, covenant, or condition of this Agreement.

**V. NO THIRD PARTY RIGHTS**

This Agreement is to be construed and understood solely as an agreement between City and ISD #709 regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions of this Agreement, which, as between City and ISD #709, may be waived at any time by mutual agreement between the parties.

**VI. NOTICES**

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City  
City of Duluth  
Attn: Property and Facilities Manager  
1532 W. Michigan Street  
Duluth, MN 55806

Independent School District No. 709  
David Spooner  
Manager of Facilities  
215 N. 1<sup>st</sup> Avenue East  
Duluth, MN 55802

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

**VII. COMPLIANCE WITH AGREEMENT**

The rights of City and the general public to occupy and use the License Area are subject to City's compliance with the undertakings, provisions, covenants, and conditions herein.

**VIII. APPLICABLE LAW**

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under the state courts located within St. Louis County, Minnesota.

**IX. AMENDMENTS**

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed this Agreement or their successors in office.

**X. SEVERABILITY**

ISD #709 and City agree that 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.

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

**XII. 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. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

*[Remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

**INDEPENDENT SCHOOL DISTRICT  
NO. 709**

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

Its: \_\_\_\_\_  
Authorized Representative

Printed Name: \_\_\_\_\_

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

**CITY OF DULUTH**

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

Attest:

\_\_\_\_\_  
City Clerk  
Date Attested: \_\_\_\_\_

Approved as to form:

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

Countersigned:

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

## **EXHIBIT A**

The North Half of East Half of West Half of Northwest Quarter (N  $\frac{1}{2}$  of E  $\frac{1}{2}$  of W  $\frac{1}{2}$  of NW  $\frac{1}{4}$ ),  
Section Five (5), Township Forty-nine (49), Range Fourteen (14) West of the Fourth Principal  
Meridian

AND

Northwest Quarter of Northeast Quarter of Northwest Quarter (NW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of NW  $\frac{1}{4}$ ),  
Section Five (5), Township Forty-nine (49), Range Fourteen (14) West of the Fourth Principal  
Meridian, EXCEPT a tract Three Hundred Feet (300') by Three Hundred Feet (300') at South  
Side and EXCEPT .07 Acres at East Side





# Site Plan

Lincoln Middle School Trail Connection  
05/08/17

# EXHIBIT B

## Legend

-  Existing Duluth Traverse Spine Trail
-  Proposed Lincoln Middle School Connector ±590-LF

