

# EXHIBIT 1

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the LAKE SUPERIOR CENTER AUTHORITY, a governmental corporation created and existing under the laws of the State of Minnesota (“LSCA”), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”).

The parties acknowledge the following:

A. The City owns, or otherwise has the right to use, certain real property more commonly known as “Bayfront Festival Park.” Bayfront Festival Park contains amenities that include but are not limited to green space, structures, playground area, a bathroom building, a community building and parking areas. Bayfront Festival Park is the site of numerous events and festivals throughout each year.

B. LSCA owns certain real property adjacent to Bayfront Festival Park, and has granted easements to the City for trail and other recreational purposes over its property under separate agreements.

C. There is a small portion of property owned by LSCA adjacent to Bayfront Festival Park and outlined in red on the attached Exhibit A (the “Licensed Premises”), for which there is no written agreement permitting use by the City and the public.

D. The City has an agreement with the Duluth Entertainment Convention Center Authority (the “DECC”) to produce, promote, coordinate, and manage special events at Bayfront Festival Park. The City also occasionally enters into agreements with other third parties for the use of Bayfront Festival Park for event purposes.

E. The City desires to continue to use the Licensed Premises for park, recreational, and other purposes in order to enhance and supplement the public’s use of Bayfront Festival Park.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### I. THE LICENSE.

A. Subject to the terms and conditions set forth herein, LSCA grants to the City an exclusive license for the use of the Licensed Premises. Notwithstanding the foregoing, the parties acknowledge that there may be certain dates on which LSCA desires to use the Licensed Premises for the benefit of LSCA (the “LSCA Use”). LSCA may use the Licensed Premises only with the prior written approval of the City’s Chief Administrative Officer or their designee (the “CAO”). LSCA shall provide the CAO with at least ninety (90) days’ prior written notice of its desire to use the Licensed Premises. The CAO will provide LSCA with a written response to its request for a LSCA Use within ten (10) business days of the request.

B. LSCA makes no representation that the Licensed Premises are or will be suitable for any particular purpose or specific uses, and the City accepts the Licensed Premises in “as is” condition without representations or warranties of any kind. LSCA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

II. USE OF THE LICENSED PREMISES. The Licensed Premises shall be used solely for purposes consistent with the use of Bayfront Festival Park including but not limited to park, recreation, events, festivals and other Bayfront Festival Park-related purposes.

III. AGREEMENTS FOR USE OF THE LICENSED PREMISES. The City may enter into agreements with third parties for the use of the Licensed Premises for purposes consistent with the use of Bayfront Festival Park. If the City enters into agreements with third parties for the use of the Licensed Premises, the agreements shall require that the third party indemnify LSCA and name LSCA as an additional insured on its commercial general liability insurance and, if appropriate, its automobile insurance policies.

IV. TERM OF AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2018, and shall continue until December 31, 2023 (the “Term”).

V. LICENSE FEE. LSCA will not charge the City for use of the Licensed Premises.

VI. TERMINATION.

A. Either party may terminate this Agreement without cause by providing one hundred thirty (130) days’ written notice to the other party.

B. Upon termination or expiration of this Agreement, the City shall surrender possession of the Licensed Premises in as good condition and state of repair as the Licensed Premises were in at the time the City took possession, normal wear and tear excepted.

VII. MAINTENANCE. The City will exercise reasonable care in the use and maintenance of the Licensed Premises during the Term. The City shall be responsible for all costs associated with the use and maintenance of the Licensed Premises, except if LSCA is using the Licensed Premises.

VIII. UTILITIES. The City shall be responsible for the cost of all utilities, if any, to the Licensed Premises.

IX. INDEPENDENT CONTRACTOR. Nothing in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the City as an agent, representative, or employee of LSCA for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

X. COMPLIANCE WITH LAWS. The City will operate or cause the operation of the Licensed Premises to be in compliance with the United States Constitution and with the

laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

XI. WAIVER. The waiver by the City or LSCA of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

XII. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person or entity. No person or entity 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 hereof.

XIII. NOTICES. Unless otherwise provided herein, notice to the City or LSCA shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

Lake Superior Center Authority  
Attn: Executive Director  
353 Harbor Drive  
Duluth, Minnesota 55802

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

XIV. APPLICABLE LAW.

A. 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 those courts located within St. Louis County, Minnesota.

B. 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, 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 the Agreement did not contain the particular term or provision held to be invalid.

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

XVI. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their 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 thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

XVII. COUNTERPARTS AND DELIVERY. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be 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.


XVIII. DATA PRACTICES. LSCA shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by LSCA under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by LSCA. If LSCA receives a request to release the data referred to in this clause, LSCA must immediately notify the City and consult with the City as to how LSCA should respond to the request. LSCA agrees to hold the City, its officers, and employees harmless from any claims resulting from LSCA’s unlawful disclosure or use of data protected under state and federal laws.

XIX. 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.

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

IN WITNESS WHEREOF, the parties have set their hand the day and date as shown below.

**LAKE SUPERIOR CENTER  
AUTHORITY**

By: 

Printed Name: ELAINE HANSEN

Its: LSCA CHAIR

**CITY OF DULUTH**

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

Attest: \_\_\_\_\_  
City Clerk

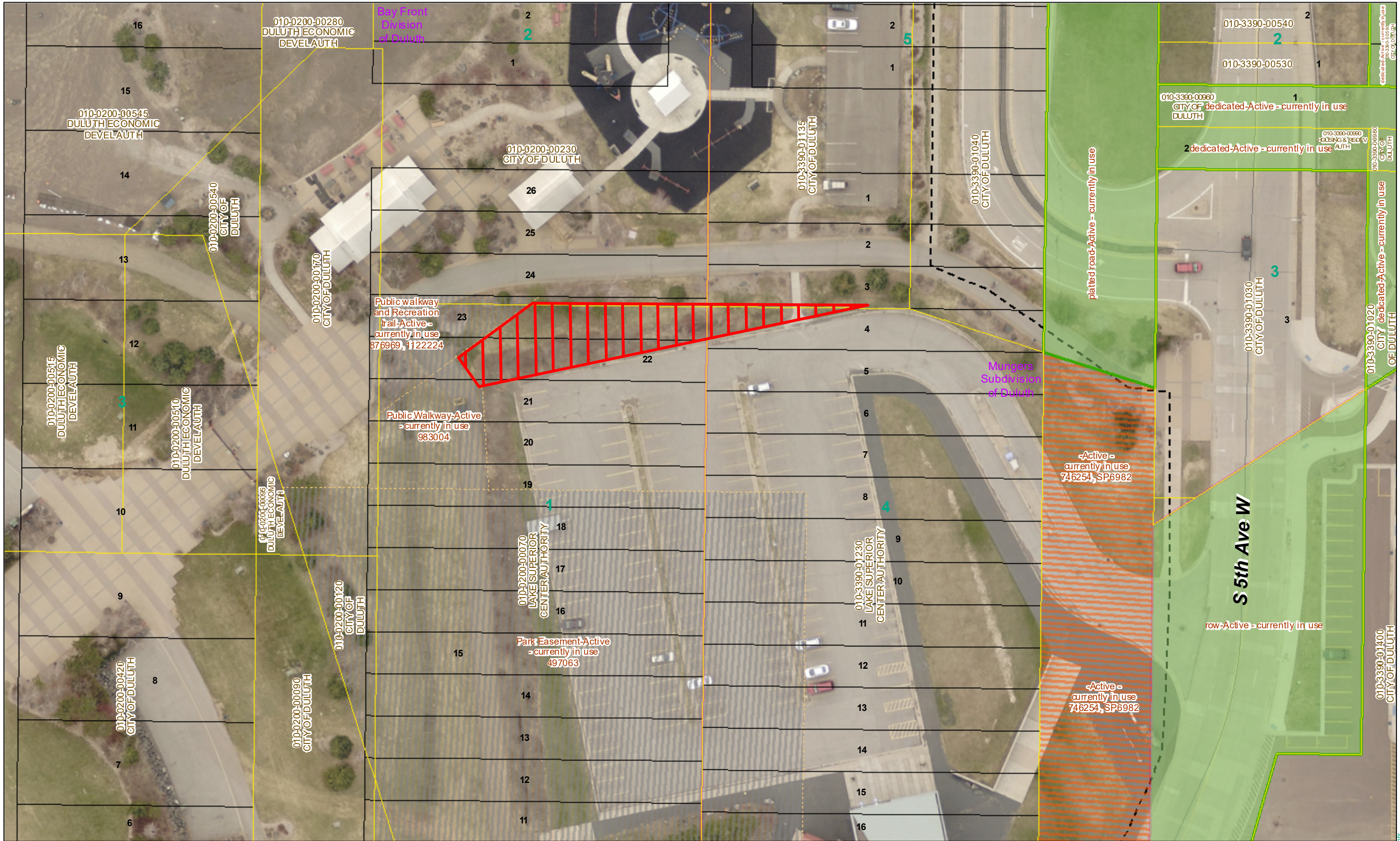
Date Attested: \_\_\_\_\_

Countersigned:

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

Approved as to form:

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



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



# EXHIBIT A LICENSED PREMISES

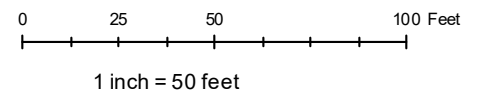


photo date: 2016

Printed: 4/17/2018



Bay Front, Easements