

EXHIBIT 1

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (“City”), and the GREATER DOWNTOWN COUNCIL, a Minnesota non-profit corporation (“GDC”).

WHEREAS, City constructed and operates the Downtown Skywalk System in the City of Duluth (the “Skywalk System”), pursuant to which it has the right to control advertising, including off-premises advertising, throughout the Skywalk System; and

WHEREAS, City has determined that the limited use of off-premises advertising has the potential to improve the level of information and interest available to Skywalk System users; and

WHEREAS, for many years, GDC has worked with the City, the Downtown business community and the public to improve the business climate and general culture of Duluth’s Downtown area and, in particular, to support and improve the Skywalk System and its impacts on the Downtown; and

WHEREAS, after consultation with the business community and the public, GDC proposed to the City that the Skywalk System would be improved by a combination of additional public informational signage and advertising, under appropriate controls, to improve information available to Skywalk System users and increase the interest of the Skywalk System (the “Program”); and

WHEREAS, the owners of the properties on the Skywalk System are willing to cooperate with such Program provided that their out-of-pocket costs are reimbursed and that any profits therefrom are used for the benefit of the Skywalk System; and

WHEREAS, GDC has acted as facilitator of the Program pursuant to past agreements between GDC and the City since 2009, and the parties desire to continue to have GDC act in that role as set forth below.

NOW, THEREFORE, in consideration for the mutual covenants herein contained, the parties hereto agree as follows:

I. City Consent to Program

City hereby grants its consent to the GDC to contract with a third-party vendor (the “Vendor”) for the placement of up to thirty-eight (38) flat-panel, advertising displays (the “Flat Panel Display” or “Flat Panel Displays”) on the walls of the Skywalk System and up to four (4) cling displays (the “Cling Display” or “Cling Displays”) on walls or floors at approved locations, subject to the terms and conditions hereinafter set forth. For the purposes of this Agreement, the Flat Panel Displays and the Cling Displays shall be hereinafter referred to together as a “Display” or the “Displays”.

II. Conditions on Program

The following terms, conditions and limitations are hereby placed on the consent granted pursuant to Paragraph I above:

A. Consent of Owner

Prior to placing any Display at any location in the Skywalk System, GDC shall have obtained the consent to do so in writing from the owner of the property upon which said Display is to be located, which consent shall have a term which equals or exceeds any commitment made by GDC to the Vendor authorizing the Vendor to place the Display at said location. Written consent obtained from an owner of property shall be substantially in the form attached as Exhibit A and incorporated herein.

B. Display Design Approval

Prior to the placement of any Display within the Skywalk System, the City's Property and Facilities Manager (the "Property Manager") shall have approved the proposed design of said Display, which approval shall not be unreasonably withheld.

C. Display Location Approval

Prior to the placement of any Display within the Skywalk System, the Property Manager shall have approved the proposed location of said Display, which approval shall not be unreasonably withheld. Reasons for the Property Manager to withhold approval shall include, but not be limited to: (i) the proposed location potentially violating existing contractual commitments made by City to the owner of the affected property, (ii) the location of the Display potentially causing confusion or interfering with the convenient flow of Skywalk System traffic, and (iii) failure to locate Displays with public information panels in convenient or necessary areas of the Skywalk System.

D. Cling Displays-Special Conditions

All Cling Displays shall be made of a material easily removed from floor and wall surfaces and all Cling Displays shall be completely removed from their place of installation no more than sixty (60) days after their date of installation. Provided, however, that the Property Manager, in the exercise of his or her sole discretion, may agree to extend the sixty (60) day maximum period of display for any such Cling Display prior to the commencement of such extended display period.

III. Vendor Contract-Process

GDC shall enter into a valid and binding contract with the Vendor to supply and install the Displays and to provide and maintain the advertising and public information panels within or

upon said Displays. The following terms and conditions shall apply to the selection of the Vendor and the contract between GDC and the Vendor:

A. Vendor Selection

GDC shall not be required to select the Vendor with whom to contract based on the City's competitive bidding process, but shall establish a process of selection which is open to all parties qualified to provide the products and services to be provided. In selecting the Vendor with whom to contract, GDC may consider factors such as the quality of the Displays to be used, the experience of the Vendor in provision of similar services, previous experience with the Vendor and the maximizing of return to the Skywalk System. GDC's process and specifications for choosing the Vendor shall be subject to the approval of the Property Manager, which approval shall not be unreasonably withheld.

B. Content of Contract

GDC's contract with the Vendor shall be for all locations in the Skywalk System and shall include all products and services necessary to provide, place, install (including required electrical connections), operate, maintain, remove and change as appropriate all Displays authorized by this Agreement and to remove them if necessary and restore the premises to the condition they were in prior to the installation of said Displays upon termination of the contract. Said contract shall further include the sale, design as necessary, placement, and maintenance of all advertising within the Displays, including the public information panels referred to in Subparagraph C below.

C. Public Information Panels

The center panel of not less than fourteen (14) of the Flat Panel Displays shall be used for public information panels such as Skywalk System Directories and maps. The public

information panels within said Displays shall be designed by the Vendor in conjunction with the GDC, but the final design and locations thereof shall be subject to the prior approval of the Property Manager, which approval shall not be unreasonably withheld.

D. Maximum Term of Contract

The maximum term of the contract between GDC and the Vendor shall not exceed five (5) years.

E. Identity of Vendor

Within five (5) days of the effective date of any contract between any Vendor and GDC as authorized by this Agreement, GDC shall provide the Property Manager and the City Auditor with the name and address to which notices to be given to such Vendor shall be sent. Thereafter, GDC shall notify City within five (5) days of any changes in said information necessary to keep said information current.

IV. Contract Proceeds and Reporting

A. Use of Contract Proceeds-Generally

GDC agrees that it will require that all benefits accruing to GDC by virtue of the contract between it and Vendor shall be monetary in form and that all such proceeds shall be used exclusively for the support, betterment, and maintenance of the Skywalk System. In addition, all costs associated with the design, placement, maintenance, servicing, and other costs associated with the public information panels referred to in Subparagraph C of Paragraph III above shall be provided at no cost to GDC by the Vendor.

B. Annual Financial Reporting

Each year during the Term, GDC shall file with the City Auditor an itemized statement showing (i) all GDC income and expenses related to the Program, (ii) the total proceeds from the

Program, and (iii) detailed information showing how the proceeds of the Program have been spent for the support, betterment, and maintenance of the Skywalk System. The statement shall be filed not later than March 1 of each calendar year (containing all required information for the previous calendar year).

V. Books and Records

GDC agrees that it shall keep a complete set of financial books and records detailing all costs incurred by it in the performance of its obligations under this Agreement. Said books and records shall be maintained in accordance with accepted accounting practices and shall be made available to City upon its reasonable request therefor during ordinary business hours at a location within City of Duluth, Minnesota, to be designated by GDC during the Term of this Agreement and for six (6) years after the termination thereof.

VI. License

City hereby grants a revocable license to GDC and its sublicensees, which includes Vendor, to install and operate the Displays in the locations within the Skywalk System that are solely owned or operated by City. The specific locations within the Skywalk System granted in this license are depicted on the attached Exhibit B and shall be referred to collectively in this Agreement as the “Licensed Premises.” GDC agrees to use the Licensed Premises solely for the Program and for no other purpose.

City makes no representation that the Licensed Premises are suitable for any particular purpose or specific uses, and GDC accepts the Licensed Premises in an “as is” condition without representations or warranties of any kind. The use of the Licensed Premises shall be at the sole risk of GDC. City shall not be obligated to make any alterations or improvements to the Licensed Premises. GDC agrees to exercise reasonable care in its use of the Licensed Premises.

GDC shall not make any alterations or improvements to the Licensed Premises that are not herein described without the prior written consent of the City and then upon the terms and conditions which may be imposed by the City.

VII. Independent Contractor and Hold Harmless Clause

Any and all employees of GDC, or other persons, while engaged in the performance of any services required by GDC under this Agreement, shall not be considered employees of City; and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said employees or other persons while so engaged, and any and all claims made by third parties as a consequence of any act or omission on the part of GDC or its agents and employees or other persons while so engaged in any of the services provided herein, shall in no way be the obligation or responsibility of City. In connection therewith, GDC hereby agrees to indemnify, save and hold harmless and defend City and any of its agents and employees thereof, from any and all claims, demands, actions, or causes of action of whatsoever nature or character arising out of or by reason of the execution of the services provided for herein.

VIII. Control of Display Materials

Neither City nor GDC shall exercise or attempt to exercise any control, authority over or censorship of any advertisement or other materials placed or proposed to be placed in any of the Displays or over the identity of the entities allowed to display matters in the Displays. Except with respect to the public information panels referred to in Paragraph III.C. above, the choice of entities allowed to display materials in the Displays and of the materials so displayed shall be solely that of the Vendor. GDC shall ensure that the Displays and their contents comply with all applicable codes and laws.

IX. Assignability

GDC shall not assign any interest in this Agreement in any manner whatsoever, directly or indirectly, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of City.

X. Term

Notwithstanding the date of execution, the term of this Agreement shall be deemed to commence on September 1, 2016 and expire on December 31, 2021, unless terminated earlier as provided for herein (the “Term”).

XI. Early Termination of Agreement

Either party may terminate this Agreement without cause upon thirty (30) days’ written notice transmitted to the other party at the address set forth in Paragraph XII, provided that such termination will not result in a violation of the contract between GDC and the Vendor. In addition, in the event that GDC shall be in violation of any of the terms and conditions of this Agreement and shall have failed to cure all such violations within thirty (30) days of written notice from City of such violations, City may immediately terminate this Agreement; City agrees to use its best efforts to send copies of any such notice of default to any Vendor whose name and address has been provided to City by GDC at the time of sending such notice of default to GDC. In the event of termination of this Agreement due to default by GDC, in addition to other remedies available to City, City may require GDC and its Vendor to remove all Displays from the Skywalk System locations. Notwithstanding the above, GDC shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Agreement by GDC. Furthermore, and in addition to all other remedies, City may recover from GDC any funds received from Vendor expended in violation of the requirements of Paragraph IV.A. above.

XII. Notices

Unless otherwise provided herein, any notice, demand, or communications by either party to the other 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:

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

Greater Downtown Council
Attn: President
5 West First Street
Duluth, Minnesota 55802
(218) 727-8549

XIII. Taxes

GDC agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of GDC's operations under this Agreement, including sales taxes, if applicable. It is further agreed that City may pay the same on behalf of GDC and immediately collect the same from GDC. GDC shall further be obligated to collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

XIV. Data Practices.

A. All data collected, created, received, maintained or disseminated for any purpose by the parties because of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. The parties shall comply with the Minnesota

Government Data Practices Act. Each party agree to hold the other party, its officers, and employees harmless from any claims resulting from the other party's failure to comply with this law.

B. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of data by GDC. If GDC receives a request to release the data referred to in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, GDC must immediately notify City and consult with City as to how GDC should respond to the request. GDC agrees to maintain all books, records, documents, and other evidence pertaining to this Agreement for six (6) years after termination or expiration of this Agreement.

XV. General Provisions

A. The rights of GDC under this Agreement shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with promptly.

B. The waiver by the City or GDC 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.

C. This Agreement, together with all of its terms, covenants and conditions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

D. 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.

E. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
the day and year first shown below.

CITY OF DULUTH

By: _____
Mayor

Attest: _____
City Clerk

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

GREATER DOWNTOWN COUNCIL

By: Kristi Stokes

Its: President

Printed Name: KRISTI STOKES

Dated: 4-28-17

EXHIBIT A

SKYWALK SYSTEM DISPLAY LICENSE AGREEMENT

This Skywalk Display License Agreement ("Agreement") is entered into effective _____, 2016 by and between the Greater Downtown Council, a private, non-profit corporation, created and existing under the laws of the State of Minnesota ("GDC") and _____ ("Licensor"). This agreement describes the conditions concerning the installation and operation of Displays (defined below) in the skywalk system running through the Building(s) owned and/or operated by Licensor commonly known as the _____ Building(s) ("Building"), also identified in Exhibit A.

RECITALS

- A. The City of Duluth ("City") has caused to be constructed and is the operator of the Downtown Skywalk System in the City of Duluth, and it has the right to control advertising, including off-premises advertising, throughout the system.
- B. The GDC, on behalf of the downtown business community, and in an effort to improve the business climate and general culture of Duluth's Downtown area, entered into an agreement (the "City Agreement") with City, pursuant to which City granted to GDC the right to contract with a third party vendor for the placement of up to 24 flat panel advertising displays ("Displays") on the walls of the Downtown Skywalk System, subject to the terms and conditions of the City Agreement.
- C. GDC sought competitive bids for proposals to provide the Displays and advertising and has entered into a Skywalk System Display Agreement ("Vendor Agreement") with Media USA ("Vendor") to provide for and operate the Displays.
- D. As used herein, the term "Building" includes any portion of a skywalk bridge owned with or apportioned to the Building.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, GDC and Licensor agree as follows:

- 1. License and Location of Displays. Licensor hereby grants a license to GDC and its sublicensees, which may include Vendor, to install and operate Displays in the location(s) within the Building(s) identified in Exhibit A.
- 2. Specifications.
 - a. Prior to placing any Display in the Downtown Skywalk System, GDC must obtain the written approvals required in the City Agreement, including, without limitation, written approval from the Director of the City's Department of Administrative Services relating to the design and location of each Display.
 - b. Each Display will be of high quality and will be attached to wall spaces within the Downtown Skywalk System.
 - c. The Displays will be back-lighted, and will contain advertising transparencies for products and services.
 - d. The Displays, including any advertising media, will not protrude more than four (4) inches from the wall.
 - e. The display areas of each Display will be approximately three (3) feet tall by six (6) feet long.
 - f. The Displays will be single-frame, flat black and plexiglass covered.
 - g. The Displays will have clip design on the edges to allow for ease of replacement of advertising transparencies.
- 3. Installation, Maintenance, Electrical. GDC, by and through its sublicensees, will install, maintain and repair Displays in the Building in the locations provided under Section 1. All materials placed within the Building by GDC's sublicensees shall remain the personal property of the GDC's sublicensees after the termination or expiration of the term of this Agreement or any extension thereof.

Installation will include any electrical conduit and fixtures necessary to operate the Displays. Electric power required to light each display will be provided by the Licensor and will be drawn from the nearest available power source nearest to the Display. The new LED displays draw very minimal electricity.
- 4. Use of Funds Collected by GDC. GDC will use funds it collects from its sublicensees, after subtracting GDC's administrative overhead, solely to help defray costs associated with maintaining, improving and/or operating the Downtown Skywalk System.
- 5. Removal of Displays. Upon termination by expiration, mutual agreement of parties or as otherwise provided in this Agreement, or upon termination of the Vendor Agreement or any other agreement with a sublicensee by expiration or otherwise, the Displays will

be removed by GDC or its sublicensees, and GDC or its sublicensees will restore all walls on which Displays are installed to their original condition.

6. Display Content. The Vendor Agreement and any other agreement with a sublicensee will provide that the sublicensee will not solicit, accept or display (i) advertising for tobacco products or personal care products deemed to be offensive, or (ii) advertising that is patently offensive or obscene, or (iii) within a specific Display, advertising that is in direct competition with a business or service located on the property containing the Display, unless that competing service or business is also located within the property containing the Display.
7. Term. This Agreement shall be for a term of five (5) years, terminating on December 31, 2021, with automatic annual renewals thereafter, unless terminated upon notice by either party.
8. Exclusivity. GDC will have the exclusive right to provide advertising in Displays in fixed locations within the Building. This exclusive right does not apply to (i) on-premises advertising (including advertising for any business located within the Building or the same building complex), (ii) any directional or informational signage or (iii) signage permitted under existing City contractual commitments.
9. Interference. Licensor will not unreasonably obstruct or interfere with access to or view of the Display.
10. GDC Defaults. Each of the following will be an event of default by GDC under this Agreement (a "GDC Default"):
 - a. GDC fails to make any payment required under this Agreement.
 - b. GDC, or its sublicensees, is in breach or violation of any of its other duties, covenants or undertakings under this Agreement.

If a GDC Default occurs, Licensor may provide written notice of default to GDC. The written notice must specifically identify the Licensee Default and the steps required to provide cure, if permitted. GDC will have thirty (30) days to cure the default. If GDC does not cure the GDC Default as provided, then Licensor may terminate this Agreement without further notice to GDC. Upon such termination, GDC will remove all Displays and provide the restoration required under this Agreement within ninety (90) days of termination and if it does not do so, Licensor may at GDC's expense.

11. Licensor Defaults. If Licensor is in breach or violation of any of its duties, covenants or undertakings under this Agreement (a "Licensor Default"), then GDC may terminate this Agreement by providing Licensor with written notice of default. The notice must specifically identify the Licensor Default and the steps required to provide cure. Licensor will have sixty (60) days to cure the default. If Licensor does not cure the Licensor Default as provided, then GDC may terminate this Agreement without further notice to Licensor. Upon such termination, Licensor will pay GDC an amount equal to its costs of installing the Display, including any electrical and similar connections, less 20% for each full year that the Display has been installed.
12. Assignment by GDC. GDC may carry out its obligations under this Agreement by and through sublicensees, which may include Vendor, but may not assign all of its rights under this Agreement without the written approval of Licensor, which approval may not be unreasonably conditioned, delayed or denied.
13. Notices. All notices required in this Agreement shall be in writing and shall be sufficient in all respects if (i) delivered in person, (ii) sent by U.S. Mail, postage paid, or if sent by facsimile transmission if such transmission is confirmed by phone, (iii) by facsimile transaction report or (iv) deposited with a nationally recognized over-night courier, and if addressed as follows:

If to Licensor: _____

If to GDC: Greater Downtown Council
5 West 1st St., Suite 101
Duluth, Minnesota 55802
Fax: 218/722-3223

14. Time of Essence. Time is of the essence in all terms herein.

By: _____
Its _____

GREATER DOWNTOWN COUNCIL

By: _____
Its _____

EXHIBIT B

