

Exhibit 1

AGREEMENT

THIS 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 (the “City”), and the GREATER DOWNTOWN COUNCIL, a Minnesota non-profit corporation (“GDC”).

WHEREAS, the City 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, the City has determined that the limited use of off-premises advertising has the potential to improve the level of information available to Skywalk System users and interest in the Skywalk System; 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 signage, under appropriate controls, to improve information available to Skywalk System users and increase interest in the Skywalk System (the “Program”); 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 agree as follows:

I. City Consent to Contract

Subject to the terms and conditions of this Agreement, the City consents to GDC entering into a valid and binding contract (the “Contract”) with a third-party vendor (the “Vendor”) to supply and install the Displays (defined below) and to provide and maintain advertising panels and Public Information Panels (defined below) within or upon the Displays. The Contract shall provide for up to thirty-eight (38) flat-panel 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 the ceilings, walls or floors of the Skywalk System, at locations approved by the City as provided in Paragraph II. C. below. For the purposes of this Agreement, the Flat Panel Displays and the Cling Displays shall be referred to as a “Display” or the “Displays”.

II. Conditions on Program

A. Consent of Owner

Prior to placing a Display on property owned by someone other than the City, GDC shall have obtained the consent, substantially in the form attached as Exhibit A, of the owner of the property upon which the Display is to be located, which consent shall have a term which equals or exceeds any commitment made by GDC to the Vendor in the Contract.

B. Display Design Approval

Prior to the placement of a Display, GDC shall have obtained approval of the design of the Display from the City’s Property and Facilities Manager, or their designee (the “Property Manager”), which approval shall not be unreasonably withheld. The center panel of not less than

fourteen (14) of the Flat Panel Displays shall be used for public information panels such as directories and maps of the Skywalk System (the “Public Information Panels”).

C. Display Location Approval

Prior to the placement of a Display, GDC shall have obtained the approval of the location of the Display from the Property Manager, 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 the 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 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 their sole discretion, may extend the sixty (60) day maximum period of display for a Cling Display prior to the commencement of such extended display period.

E. Northwest Passage-Special Conditions

All Displays placed within the Northwest Passage (identified on the attached Exhibit B) shall be Cling Displays, and may be placed only on the columns, ceilings and floors. The Displays within the Northwest Passage must not be visible to users of Interstate 35.

III. Vendor Contract

A. Vendor Selection

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

B. Content of Contract

The Contract shall: (i) cover the entirety of the Skywalk System; (ii) include all products and services necessary to provide, place, install (including required electrical connections), operate, maintain, remove and change, as appropriate, the Displays; (iii) include the sale, design, placement, and maintenance of all advertising and Public Information Panels within the Displays, and (iv) require that the Vendor, upon removal of a Display and/or termination of the Contract, restore the Skywalk System to the condition it was in prior to the installation of the Display(s).

C. Maximum Term of Contract

The Contract shall terminate on or before December 31, 2026.

D. Contact Information for Vendor

Within five (5) days of the effective date of a contract between the Vendor and GDC, GDC shall provide the Property Manager and the City Auditor with the name and address to which notices to be given to the Vendor shall be sent. Thereafter, GDC shall notify the City within five (5) days of any changes to the Vendor's contact information.

IV. Contract Proceeds and Reporting

A. Use of Contract Proceeds-Generally

All benefits accruing to GDC by virtue of the Contract shall be monetary in form and all proceeds of the Contract shall be used exclusively for the support, betterment, and maintenance of the Skywalk System. The design, placement, maintenance, servicing, and other services associated with the Public Information Panels shall be provided by the Vendor at no cost to GDC. In the event (i) this Agreement terminates for any reason (including expiration of the Term (defined below)), and (ii) the City and GDC do not immediately enter into a new agreement regarding the Program, then GDC shall pay to the City an amount equal to the unspent proceeds of the Contract and provide the City with a Financial Statement (defined below) covering the time period from the date of the most recently filed Financial Statement through the date of termination of this Agreement.

B. Annual Financial Reporting

Each year during the Term, GDC shall file with the City Auditor an itemized statement (the “Financial 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 Financial Statement shall be filed not later than March 1 of each calendar year during the Term (containing all required information for the previous calendar year, including for the year 2021).

V. Books and Records

GDC 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. GDC’s books and records shall be maintained in accordance with accepted accounting practices. During the Term and for six (6) years after the termination of this Agreement for any reason, GDC shall make its books and records

available to the City, upon reasonable request, during ordinary business hours at a location within the City to be designated by GDC.

VI. License

The City grants a revocable license to GDC and its sublicensees, including the Vendor, to install and operate the Displays in the locations depicted on the attached Exhibit C (collectively, the “Licensed Premises”), which locations are owned or operated by the City. GDC shall use the Licensed Premises solely for the Displays and for no other purpose. The City makes no representation that the Licensed Premises are suitable for any particular purpose or specific uses, and GDC accepts the Licensed Premises in “as is” condition without representations or warranties of any kind. The use of the Licensed Premises shall be at the sole risk of GDC. The City shall not be obligated to make any alterations or improvements to the Licensed Premises. GDC shall 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 or the Contract, shall not be considered employees of the 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 the City. In connection therewith, GDC hereby agrees to indemnify, save and hold harmless and defend the 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 the 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, 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 the City.

X. Term

Notwithstanding the date of execution, the term of this Agreement shall be deemed to commence on January 1, 2022 and expire on December 31, 2026, unless earlier terminated (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 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 the City of such violations, the City may immediately terminate this Agreement. When sending a notice of default to GDC, the City shall use its best efforts to send a copy of the notice of default to the Vendor, provided the Vendor's name and address has been provided to the City. In the event of termination of this Agreement due to default by GDC, in addition to other remedies available to the City, the City may require GDC to remove all of the Displays from the Skywalk System. Notwithstanding the above, GDC shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by GDC. Furthermore, and in addition to all other remedies, the City may recover from GDC any funds 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 shall 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. The City may pay the same on behalf of GDC and immediately collect the same from GDC. GDC shall 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 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 agrees 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 the City and consult with the City as to how GDC should respond to the request. GDC shall 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 of this Agreement. All previous agreements between the City and GDC relating to the subject matter of this Agreement are terminated and/or expired.

[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

GREATER DOWNTOWN COUNCIL

By: _____
Mayor

By: _____

Its: _____

Attest: _____
City Clerk

Printed Name: _____

Dated: _____

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

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
SUPERIOR STREET

3RD AVE. W.

DTA
TRANSIT
CENTER
EAST

SKYWALK
LEVEL 2

2ND AVE. W.

MICHIGAN STREET

FRONTAGE ROAD

INTERSTATE 35 SOUTH

INTERSTATE 35 NORTH

LAKE AVE. EXIT RAMP

RAILROAD




RAILROAD STREET W

RAILROAD STREET E

D.E.C.C.

SKYWALK LEVEL PLAN

PROJECT KEY

-  Public Improvements on DTA C.P.U. City Owned ROW or DTA Owns
-  Perpetual DTA Easement
-  Northwest Passage

TRUE
NORTH





EXHIBIT C

One Display

Two Displays

LEGEND

- Lakewalk
- Lakewalk Entrance
- One Way Street
- Parking
- Parks
- Scenic Railroad
- Scenic Railroad Boarding Stop
- Skywalk System
- Visitor Information
- Washrooms
- Bob Dylan Way

SKYWALK MILEAGE

- 1/2 MILE (Round Trip)
- 2/3 MILE (Round Trip)
- 1/3 MILE (Round Trip)
- 3/4 MILE (Round Trip)

LAKEWALK MILEAGE

6.2 MILES
(12.4 miles round Trip)
Lakewalk from Canal Park to 60th Ave E

Duluth Downtown Waterfront Clean & Safe Team

At your service . . .
Direction & Information
Hospitality · Crime Prevention
Public Safety · Visibility
(218) 390-8899
This is the Downtown Waterfront!

ATTRACTIONS, LANDMARKS AND PARKS

G 13	Aerial Lift Bridge	I 4	Greater Downtown Council
B 9	Bayfront Park	K 6	Lake Place Park & Image Wall
G 13	Lake Superior Maritime Visitor Center	U 7	Leif Erickson Park (Rose Garden)
F 10	Charter Fishing Dock	D 5	Public Library
D 3	Civic Center	G 10	Minnesota Slip Drawbridge
F 9	DECC	F 7	Northwest Passage/Skywalk
C 6	Depot/Duluth Heritage & Art Center	D 6	North Shore Scenic Railroad Stop
H 10	DeWitt Seitz Marketplace	C 8	Playfront Park
G 5	DTA Transit Center	I 5	Visit Duluth
I 8	Entry Clock Tower	F 10	Vista Cruises
P 6	Fitger's	G 8	William A. Irvin Ore Boat Museum
K 5	Fond-du-Luth Casino		
D 9	Great Lakes Aquarium & Freshwater Discovery Center		
U 7	Greater Downtown Council's Movies in the Park		
H 13	Horse Carriages		
G 8	Marcus Duluth Cinema		

To access downtown from I-35 eastbound, exit at 5th Ave. W.
To access downtown from I-35 westbound, exit at Lake Ave.
Free parking evenings & weekends at many ramps and on-street meters.



PARK PLUS COUPONS -
Many downtown businesses participate in this free parking program.
Ask for your coupon to park in the ramps or ride on the DTA.