

# EXHIBIT 1

## SECOND AMENDMENT TO AGREEMENT WITH LAKE SUPERIOR AND MISSISSIPPI RAILROAD

THIS SECOND AMENDMENT TO AGREEMENT (“Second Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, 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 LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY, a Minnesota non-profit corporation (“LSMR”). The City and LSMR are collectively referred to as the “Parties.”

WHEREAS, the Parties entered into an Agreement on or about February 10, 2003 pursuant to which LSMR was allowed to utilize certain railroad trackage owned by the City of Duluth identified as that portion of the former Burlington Northern, Inc. Spirit Lake to West Duluth Branch Line lying between Commonwealth Avenue in New Duluth and a point approximately midway between Clyde Avenue in the plat of Ironton Fourth Division and Spring Street in the plat of Riverside (the “Agreement”).

WHEREAS, the Parties entered into an Amendment to Agreement on or about November 9, 2009 (the “First Amendment”), which made certain amendments to the Agreement. (For the remainder of this Second Amendment, the term “Agreement” will refer to the Agreement as amended by the First Amendment.)

WHEREAS, the Parties wish to further amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the receipt and sufficiency of which is acknowledged, the Parties agree to amend the Agreement as follows:

I. Paragraph 8 of the Agreement is deleted in its entirety and completely replaced with the following Paragraph 8:

8. *Insurance*

a. *LSMR shall procure and maintain continuously in force a policy of insurance covering all of its activities on City-owned property. A Comprehensive General Liability Insurance policy shall be maintained in force by LSMR throughout the Term in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injuries and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage or One Million Five Hundred Thousand Dollars (\$1,500,000.00) single limit coverage per occurrence. Such coverage shall include all LSMR activities occurring on or within City-owned property whether said activities are performed by employees, agents, or volunteers of LSMR. The City does not represent or guarantee that these types or limits of coverage are adequate to protect LSMR’s interests and liabilities.*

b. *LSMR shall provide the City with Certificates of Insurance evidencing the required insurance coverages. The insurance policies must include a 30-day written notice of cancellation, non-renewal, or material change provision in favor of the City. The required policies of insurance shall be in a form acceptable to the City Attorney. The City*

*shall be named as an additional insured on the policies of insurance required by this Agreement. When using the "Accord" Certificate form cancellation provisions, the words "endeavor to" on- Line 2 must be deleted. As an additional insured under the insurance contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named Insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage." The City is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the agreement between the named insured and the City. The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, then it must be a pre-2004 edition.*

*c. The City reserves the right to require LSMR to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.*

*d. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.*

*e. The City shall not be liable to LSMR for any injury or damage resulting from any defect in the construction or condition of City-owned property, nor for any damage that may result from the negligence of any other person whatsoever.*

*f. LSMR shall indemnify, save harmless, and defend the City and its officers, agents, servants, and employees from and against any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or LSMR, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of LSMR arising out of, related to or associated with the use of City-owned property by LSMR or performance of its obligations under this agreement. This obligation shall survive expiration, cancellation or termination of this agreement for any reason.*

*g. If LSMR has employees, then it shall provide satisfactory proof of Statutory Minnesota Workers' Compensation Insurance.*

II. Paragraph 11 of the Agreement is deleted in its entirety and completely replaced with the following Paragraph 11:

*11. The term of this Agreement shall continue through December 1, 2018, unless cancelled as provided herein (the "Term"). Either party may cancel this lease by giving 60 days' written notice to the other party. Unless otherwise provided herein, notice to the City or LSMR shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below 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) 730-4436

Lake Superior and Mississippi Railroad Company  
Attn: Andrew Webb  
P.O. Box 16211  
Duluth, Minnesota 55816  
(218) 728-2262

III. Paragraph 12 of the Agreement is deleted in its entirety.

IV. The following Paragraphs 14, 15, and 16 are added to the Agreement:

14. *LSMR 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 for any reason.*

15. *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. LSMR shall comply with Minn. Stat. § 13.05, Subd. 11. LSMR agrees to hold the City, its officers, and employees harmless from any claims resulting from LSMR's failure to comply with this law.*

16. *LSMR agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of the LSMR's use and maintenance of the City-owned property, including sales taxes, if applicable. It is further agreed that the City may pay the same on behalf of LSMR and immediately collect the same from LSMR. LSMR 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.*

V. Except as specifically amended pursuant to this Second Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Second Amendment and the provisions of the Agreement, the provisions of the Second Amendment shall govern.

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and date first shown below.

CITY OF DULUTH

LAKE SUPERIOR AND MISSISSIPPI  
RAILROAD COMPANY

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

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

Its: \_\_\_\_\_

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

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

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

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

Countersigned:

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

Approved as to form:

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