

EXHIBIT 1

BOULDERING LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is by and between Ulland Brothers, Inc., a Minnesota corporation (“Owner”) and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (“City”).

WHEREAS, Owner owns property legally described on Exhibit A (the “Owner Property”).

WHEREAS, a portion of the Owner Property has historically been used by the general public as a bouldering location.

WHEREAS, the parties wish to create a revocable, non-exclusive license in favor of City to allow (i) the general public to utilize a portion of the Owner Property for bouldering, and (ii) the City to make certain improvements on the Owner Property in order to support the public’s use of the Owner Property for bouldering.

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, Owner grants to City a revocable, non-exclusive license (the “License”) to allow the general public to access and utilize (i) that portion of the Owner Property depicted in blue and white on the attached Exhibit B for bouldering purposes, and (ii) the access paths depicted in yellow and green on Exhibit B for trail purposes (collectively, the “License Area”).

B. The License includes the right of City, its contractors, agents, and employees to enter the License Area at all reasonable times for the purposes of locating, constructing, operating, installing, maintaining and repairing public bouldering locations, access paths, and related improvements within the License Area. City, its contractors, agents and employees may add, cut, trim, or remove from the License Area bark, sand, stones, boards, grass, trees, shrubs, other vegetation, or other landscaping in City’s discretion to maintain appropriate and safe bouldering locations and access paths. Owner shall have no obligation or duty to maintain, repair, or replace any improvements or vegetation in the License Area.

C. City agrees to maintain signage in the License Area identifying the area that is open to public use.

D. Either party may terminate this Agreement upon 60 days' written notice to the other party. This Agreement shall automatically terminate upon a change in ownership of the Owner Property.

E. To the extent permitted by law, Owner shall have and enjoy all of the protection from liability afforded an owner granting permission for the use of land for recreational purposes as provided in Chapter 604A of Minnesota Statutes and such statutory protection and limitations on duties, including but not limited to those set forth in Minn. Stat. §§ 604A.22 and 604A.23, which are hereby incorporated by reference.

F. Owner will notify City at least 3 days prior to engaging in blasting activities at its quarry located nearby the License Area. If City decides closure of the License Area during blasting is necessary to protect users of the Owner Property, City will close the License Area.

II. EFFECTIVE DATE AND RENEWAL TERMS

Notwithstanding the date of execution of this Agreement, this Agreement shall have an effective date of June 15, 2018 and shall continue until May 31, 2023, at which time this Agreement shall automatically renew for successive 5-year terms until it is terminated as provided elsewhere in this Agreement. At least 90 days prior to the end of each 5-year term (including the initial 5-year term), City shall mail written notice to Owner at the address set forth below notifying owner that the then-current 5-year term is about to end.

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 Owner 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 Owner 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 Owner, 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

Ulland Brothers, Inc.
Attn: Tim Grahek
7831 County Road 921
Virginia, MN 55792

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

Owner 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.

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

ULLAND BROTHERS, INC.

By: 

Its: President
Authorized Representative

Printed Name: Jeff Carlson

Dated: 6-15-2018

CITY OF DULUTH

By: _____
Mayor

Attest:

City Clerk

Date Attested: _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A

Owner Property Legal Description

The Northeast Quarter of Southwest Quarter (NE 1/4 of SW 1/4), Section Thirty-three (33) in Township Forty-nine (49) North of Range Fifteen (15) West of the Fourth Principal Meridian, according to the United States Government Survey thereof, except the Duluth, Winnipeg and Pacific Railway Company Right-of-Way; and

The Northwest Quarter of Southwest Quarter (NW 1/4 of SW 1/4) of Section Thirty-three (33) in Township Forty-nine (49) North of Range Fifteen (15) West of the Fourth Principal Meridian, according to the United States Government Survey thereof, except Duluth, Winnipeg and Pacific Railway Company Right-of-Way.

St. Louis County, Minnesota

Exhibit B

Legend

Proposed Trail Alignments

-  Bike/Hike
-  Hiking
-  Multi-Use - Paved
-  Climbing
-  Bouldering Pts

010-2742-05160
ULLAND BROTHERS INC

010-2742-05170
UNKNOWN

010-2742-05190
ULLAND BROTHERS INC

010-2742-05180
ULLAND BROTHERS INC

010-2742-05040
LAMETTI & SONS INC

010-2742-05220
CITY OF DULUTH

010-2742-05200
CITY OF DULUTH

010-2742-05210
ST OF MN
C278 L35

010-2742-05275
UNKNOWN

Existing Superior Hiking Trail

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 of this information. This information is not a legal survey and is not intended to be used as one. The data on this map is a compilation of records, information and data obtained from various City of Duluth offices and other sources affecting the area shown and is not intended to be used for any purpose other than that for which it was provided. The City of Duluth shall not be liable for errors or omissions in this data provided or for any damages in connection with the use of this information contained within.

Ely's Peak Proposed Trails



0 125 250 Feet
1 inch = 250 feet

Printed: 5/9/2018
photo date: 2016



010-2742-05275
UNKNOWN