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EXHIBIT 1

EAB CONTROL LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND STATE OF MINNESOTA

THIS EAB CONTROL LICENSE AGREEMENT (this "Agreement") is entered into by and between THE STATE OF MINNESOTA, acting through its Commissioner of Agriculture (the "State"), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota ("City").

The parties acknowledge the following:

A. City owns real property known as "Lincoln Park" generally located in the West End neighborhood of Duluth. The portions of Lincoln Park subject to this Agreement are depicted in green within the red outlined area on the attached Exhibit A-1 (the "Lincoln Park Property"). A list of the tax parcel numbers assigned to the City-owned parcels of real property involved in this Agreement pertaining to Lincoln Park is attached as Exhibit A-2.

B. City owns real property known as Central Park, which is generally located between West First Street and West Fourth Street, and between 14th Avenue West and 17th Avenue West and is depicted in the blue outlined area on the attached Exhibit B (the "Central Park Property").

C. The emerald ash borer ("EAB") is an Asian beetle that feeds on ash trees and has rapidly spread in the United States and eastern Canada. The spread of EAB in North America puts native ash species and the organisms dependent on them at risk. In July, 2017, EAB was found in a black ash stand in the southerly portion of Lincoln Park. In February, 2018, EAB was found in a black ash stand in Central Park.

D. Biocontrol is a long-term management strategy used for sustained control of invasive pests. This approach is generally limited to pests that have been established for more than five years, cannot be eradicated, and cause significant ecological, environmental, or economical damage. Biocontrol involves studying the biology of the pest, determining where it is native, and exploring those areas for predators that coevolved with the target pest and specifically attack it.

E. Biocontrol is the only management option that can be applied at the forest landscape level. Lincoln Park and Central Park meet the State's criteria for EAB biocontrol and presents another opportunity in Duluth to attempt to establish biocontrol agents. Therefore, the State wishes to undertake, at no cost to City, measures to biologically control EAB in Lincoln Park and Central Park (the "Project").

F. The State and City desire to enter into this Agreement to allow the State to implement the Project. The goal of the Project is to use natural predators to bring EAB populations into balance and reduce damage caused by EAB.

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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:

1. THE LICENSE.

A. Subject to the terms and conditions set forth herein, City grants to the State a non-exclusive license to enter and occupy the Lincoln Park Property and the Central Park Property (collectively, the "Licensed Premises") for the purpose of implementing the Project. The Project shall be completed by the State at no cost to City.

B. The State acknowledges and understands that the Licensed Premises are located in public parks, and the cooperation of all users and coordination of activities is required. This cooperation includes ingress and egress and use of amenities and related improvements. The State further acknowledges and understands that park improvements are planned during the Term (defined below) and agrees to communicate and coordinate the Project details with City's Parks and Recreation and Parks Maintenance Departments. City's Property and Facilities Manager (the "Manager") shall ultimately determine the appropriate use of the Licensed Premises and shall decide any disputes between the State and any other users of the Licensed Premises.

C. The State's use of the Licensed Premises shall in no way limit or restrict City's or the public's use of the Licensed Premises. City and the public shall continue to enjoy unlimited access to the Licensed Premises during the Term.

2. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on June 1, 2018, and shall continue through October 31, 2023, unless earlier terminated (the "Term").

3. *Intentionally Omitted*.

4. LIMITED USE. The State may use the Licensed Premises to work on the Project and for no other purpose. Any activities not approved by the Manager may be grounds for termination of this Agreement. The work to be performed on both the Lincoln Park Property and the Central Park Property is described as follows:

(a) Access for equipment, tools, and materials;
(b) Distribution of small devices containing parasitoid wasps in ash trees during summer months;
(c) Removal of the parasitoid wasp devices in the fall months to ensure that everything has developed and emerged from the devices;
(d) Selection of 12 trees on the Lincoln Park Property and 12 trees on the Central Park Property (in the black ash stands where EAB was originally identified) that had devices installed to be monitored long term for ash health. Monitoring includes documenting canopy class, woodpecker

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damage, epicormic sprouting, bark splits and exit holes every summer during the Term; and

(e) Sampling of small diameter ash trees to look for reproduction and establishment of parasitoid wasps beginning three years after initial release of parasitoid wasps.

The Licensed Premises will have two years of wasp releases during the Term per the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") guidelines. Wasp releases will be completed every other week from June through September during the two years of releases. The State will release three parasitoid wasp species, two that attack the larval stage of EAB under the ash bark and one that kills EAB eggs that are in bark crevices. The wasps are small like gnats and do not harm humans. The wasp species to be used have been selected by APHIS and the U.S. Forest Service and tested extensively to ensure that they will not negatively impact other species or the environment.

5. TERMINATION OR EXPIRATION.

A. Without Cause. Either party may terminate this Agreement without cause by providing at least thirty (30) calendar days' written notice to the other party.

B. For Cause. City may terminate this Agreement for the material breach by the State of any provision of this Agreement if such breach is not cured to the satisfaction of City within ten (10) days of delivery of a written notice by City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach.

C. Immediately. City may terminate this Agreement immediately on notice to the State if City believes in good faith that the health, welfare, or safety of occupants or neighbors of the Licensed Premises would be placed in immediate jeopardy by the continuation of this Agreement or the Project.

D. Surrender Possession. Upon termination or expiration of this Agreement, the State will surrender possession of the Licensed Premises to City in as good condition and state of repair as the Licensed Premises were in at the time the State took possession, reasonable wear and tear excepted.

6. CITY WARRANTY. City makes no representation that the Licensed Premises are suitable for any particular purpose or specific use and the State accepts the Licensed Premises in "as is" condition without representations or warranties of any kind.

7. MAINTENANCE AND RESTORATION.

A. The State agrees to exercise reasonable care and best practices in performance of the Project.

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B. Prior to expiration of the Term, the State shall restore the Licensed Premises to the equivalent of its original condition at the time of execution of this Agreement or better, or, upon demand, pay to City the reasonable costs incurred by City to repair any damage done to the Licensed Premises by the State, its employees, servants, agents, contractors, invitees, and licensees.

C. The State shall not make any alterations or improvements to the Licensed Premises that are not herein described without the prior written consent of City and then only upon the terms and conditions which may be imposed by City. The State agrees to pay to City upon demand the reasonable costs incurred by City to repair any damage done to the Licensed Premises by the State, its employees, servants, agents, contractors, invitees, and licensees during the Term.

8. HOLD HARMLESS. City and the State shall each be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other party. City's liability is governed by Minnesota Statutes Chapter 466 and other applicable law. The State's liability is governed by the Minnesota Tort Claims Act, Minn. Stat. § 3.736 and other applicable law.

9. INSURANCE. During the Term, the State shall have such insurance coverage as will protect the State and City against risk of loss or damage to the Licensed Premises and any other property of City located or used at the Licensed Premises and against claims which may arise or result from the use of the Licensed Premises during the Term. The State shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than $1,500,000 aggregate per occurrence for personal bodily injury and death and limits of $1,500,000 for property damage liability. Insurance required in this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the obligations set forth herein, and products – completed operations. The State shall provide City with Certificate(s) of Insurance evidencing the required insurance coverage, with 30-day notice of cancellation, non-renewal, or material change provisions included. City does not represent or guarantee that the types or limits of coverage required by this Agreement are adequate to protect the State's interests and liabilities. The required insurance policies and certificates shall be in form acceptable to the City Attorney and shall name City as an additional insured. City reserves the right to require the State to increase the coverages set forth above and to provide evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. § 466.04, as amended from time to time. If deemed sufficient by the City Attorney, the State may meet the requirements of this paragraph 9 in whole or in part through self-insurance.

10. INDEPENDENT CONTRACTOR. It is agreed that nothing contained in this Agreement is intended or should be construed in any manner as creating or

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establishing the relationship of co-partners between the parties or as constituting the State or the State's personnel as an agent, representative, or employee of City for any purpose or in any manner whatsoever. The State and its employees 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 the State's employees or agents while so engaged, shall in no way be the responsibility of City.

11. ASSIGNMENT. The State shall not in any way assign or transfer its rights or interests under this Agreement.

12. LAWS, RULES AND REGULATIONS.

A. The State shall conduct its activities related to the Licensed Premises in strict compliance with the United States Constitution and with all applicable laws, rules, and regulations. The State shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

B. The State agrees to procure, at the State's expense, all licenses and permits necessary for carrying out its obligations under this Agreement and completing the Project.

13. RECORDS RETENTION. The State 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.

14. DATA PRACTICES. City and the State shall comply with the Minnesota Data Practices Act, Minn. Stat. Chapter 13, as it applies to all data relating to this Agreement.

15. WAIVER. The waiver by City or the State of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition in this Agreement.

16. SEVERABILITY. 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.

17. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the State and City 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 shall have the right to make a claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which may be waived at any time by mutual agreement between the parties.

18. NOTICES. Notices provided pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

Minnesota Department of Agriculture Plant Protection Division Attn: Chris Mallet, Research Scientist 625 Robert Street North St. Paul, Minnesota 55155	City of Duluth Attn: Property and Facilities Manager 1532 W. Michigan Street Duluth, Minnesota, 55806

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

19. COMPLIANCE WITH AGREEMENT. The rights of the State to use the Licensed Premises are subject to the State's compliance with the undertakings, provisions, covenants, and conditions set forth in this Agreement.

20. APPLICABLE LAW. This Agreement, together with all of its paragraphs, terms, and provisions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

21. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

22. 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 individuals who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said individuals will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions of this Agreement.

23. 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.

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

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IN WITNESS WHEREOF, the parties have set their hands the day and date as indicated below.

CITY OF DULUTH, MINNESOTA

By: _____
Mayor

ATTEST:

_____
City Clerk

Dated: _____

COUNTERSIGNED:

_____
City Auditor

APPROVED AS TO FORM:

_____
City Attorney

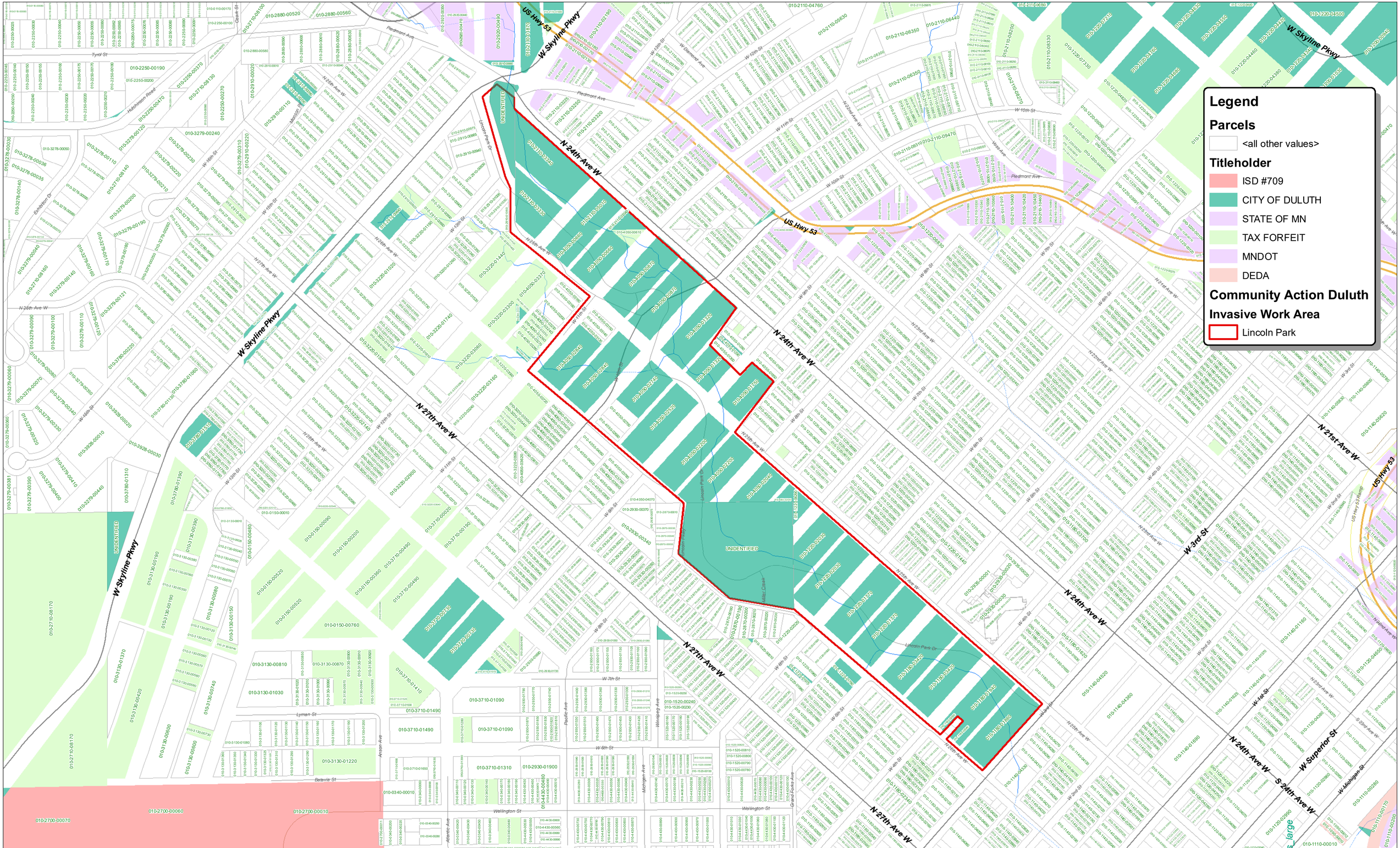
THE STATE OF MINNESOTA, acting through its Commissioner of Agriculture

By: DocuSigned by: Andrea Vaubel
A052B92710EE430...

Its: Assistant Commissioner

Printed Name: Andrea Vaubel

Dated: 5/11/2018



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-1

0 0.035 0.07 0.14 Miles

1 inch = 0.04 miles

Printed 3/28/2018

THE CITY OF DULUTH MINNESOTA

Invasive Areas_large

EXHIBIT A-2

LINCOLN PARK PROPERTY TAX PARCEL LIST

PARCEL
010-2110-03330
010-2110-03340
010-2110-05010
010-2110-07040
010-4050-00870
010-4050-01320
010-4050-01750
010-4050-02200
010-4050-02520
010-4050-02740
010-4050-02840
010-4050-03310
010-4050-03450
010-4050-03500
010-1180-01860
010-1180-01940
010-1180-02040
010-1180-02000
010-1180-03420
010-1220-01770
010-1220-02030
010-4050-02040
010-4050-00660
010-1220-06290

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Exhibit B - Central Park Property

0 125 250 Feet

1 inch = 250 feet

Printed: 5/8/2018

photo date: 2016

DULUTH

Exhibit Maps.mxd