

EXHIBIT 1

MUD LAKE PROJECT AND LICENSE AGREEMENT BETWEEN CITY OF DULUTH AND STATE OF MINNESOTA

This License and Project Agreement (“Agreement”) effective as of the date of attestation of the City Clerk, is entered into by and between STATE OF MINNESOTA, by and through its Commissioner of Natural Resources (“State”), and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of Minnesota (“City”).

RECITALS:

- a. City appears to own certain real property in St. Louis County, Minnesota that is outlined in yellow on the attached Exhibit A (“Licensed Premises”) and staging locations as depicted in Exhibit B (“Staging Areas”).
- b. State owns the bed of public waters of Mud Lake below the ordinary low water level.
- c. The term “City Property” in this Agreement shall be inclusive of both the Licensed Premises and the Staging Areas.
- d. The State wishes to implement, at no expense to City, a habitat restoration project (the “Project”) in conjunction with the United States Army Corps of Engineers (“USACE”) in Mud Lake, as part of the Lower St. Louis River Area of Concern Remedial Action Plan. The primary objectives of the Project are to (i) restore sheltered bay habitat; (ii) remove abandoned infrastructure; and (iii) restore the biological and physical connections of Mud Lake to the St. Louis River.
- e. Most of the project is to be conducted on non-City owned land. However, some City land as previously described may be used. Any use of private or non-City owned land by State is not governed by this Agreement.
- f. State and City desire to enter into this Agreement to allow State temporary access to the identified areas of the City Property for the purposes permitted by this Agreement.
- g. State has provided Construction Plans created by the USACE, and State intends to hire a contractor to perform the work outlined in those plans (the “Work”).

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby agree as follows:

1. THE PROJECT.

1.1. City Approval. The Work on the Licensed Premises shall be done in accordance with the Construction Plans. City preliminarily approves the Construction Plans as applicable to City Property, however, City reserves the right to approve of any changes in Construction Plans.

- 1.1.1. The requirements and conditions set forth in (i) the exhibits to this Agreement; and (ii) any permits issued in relation to the Project, are incorporated into this Agreement.
- 1.1.2. State will give formal notice to City upon completion of the Work via certification by the State that the Work was constructed in complete accordance with all applicable construction standards as well as with the approved Construction Plans. Upon receiving such notice/certification, the City will inspect the Work. If the Work is in conformance with the applicable requirements, the City will assume ownership, operation and maintenance of them. If the Work is not in conformance with the applicable requirements, the City will provide formal notice to the State of the need for repair or replacement before City assumes ownership, operation, and maintenance of them.

1.2. Construction. The Work on the Licensed Premises will include the construction of an open earthen channel through the Licensed Premises and construction of a bridge, bridge abutments and supports, and restoration of the existing railroad tracks over the new channel (the “Improvements”). No other construction shall take place on City Property.

1.3. State Representations. State agrees to the following:

- 1.3.1. State and all personnel, and its contractors, working on the Project and performing the Work shall have sufficient training and experience to perform the duties set forth herein and shall be in good standing with all applicable licensing requirements.
- 1.3.2. State and all personnel will, and will cause its contractor to, conduct the Work in a professional and diligent manner, in the best interests of City and in compliance with all applicable laws.
- 1.3.3. The design of the channel and bridge shall meet any and all applicable building standards, including but not limited to, railroad construction standards.

1.4. City Representations.

- 1.4.1. City makes no representation that the City Property is suitable for any particular purpose or specific uses, and the State accepts the City Property in “as is” condition without representations or warranties of any kind. City makes no representations or warranties that it actually owns or has an interest in the City Property.

1.5. Restoration. State agrees to restore all portions of City Property disturbed as a result of the Project to the equivalent of its condition prior to the commencement of the Project, or better, unless otherwise expressly stated herein. Restoration shall be at the State’s sole cost and expense.

- 1.5.1. Restoration shall be completed prior to the expiration of the Term (defined below) and any erosion control blanket, straw, or the like for the purposes of erosion control and soil stabilization must be “weed free certified”.

- 1.5.2. Any access trail created by State on City Property that was not in existence prior to this Project will be restored only to a point of not causing erosion. City may advise and the State shall comply with desired restoration status, as needed.
- 1.5.3. The State shall not make any alterations or improvements to the City Property 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.
- 1.5.4. The restoration requirements of this Agreement shall survive termination for any reason and expiration of this Agreement.

2. THE LICENSE.

2.1. License. Subject to the terms and conditions set forth in this Agreement, City grants to State a non-exclusive license to enter and occupy the City Property for the purpose of: (i) constructing a channel and constructing a bridge and restoration of the existing railroad tracks on the Licensed Premises as described in the Construction Plans, (ii) staging equipment and materials as shown in Exhibit B, (iii) a prescribed burn of vegetation, and (iv) access for Project purposes conducted on nearby private property.

2.2. Use, Operation, and Maintenance. State may only use the City Property for the purposes set forth in this Agreement and for no other purposes. State's use of City Property shall be consistent with the Construction Plans, as they may be amended from time to time with the prior written consent of City.

- 2.2.1. Any activities on City Property that are not approved by City or otherwise authorized by this Agreement shall be grounds for termination of this Agreement, at the sole and exclusive discretion of City and in accordance with Section 2.6 of this Agreement.
- 2.2.2. State acknowledges that this Agreement only pertains to City Property and does not permit State to cross or use any adjacent land owned by City or any third party. State shall obtain written permission from owners of other property as necessary in order to complete the Project or any portion thereof.
- 2.2.3. The completed Improvements, if accepted by City will be owned and maintained by City or as City may assign.

2.3. Public Rights. State acknowledges and understands that its use of the City Property is subject to certain rights in favor of the public and other third parties working on the Project, 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 City shall ultimately determine the appropriate use of the City Property and shall decide any disputes between the

State and any other users of the City Property. City shall continue to enjoy unlimited access to the City Property during the Term (defined below).

2.4. Closures. State may temporarily close portions of the Licensed Premises when necessary to protect public safety and will post signage to notify the public of the construction activities occurring. State shall work with the City to install signage, at State's expense, and to alert the public, as necessary, of any closures or detours caused by the Project, including providing notice to the public of any applicable controlled burn.

2.5. LSMR. The State shall work with the Lake Superior & Mississippi Railroad ("LSMR") under a separate agreement to accommodate their operations during the duration of the Project. The State acknowledges that City shall not be responsible for coordinating with the LSMR on any part of the Project.

2.6. Term and Termination. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on April 1, 2026, and shall continue through December 31, 2028, unless earlier terminated (the "Term").

2.6.1. City may terminate this Agreement for the material breach by State of any provision of this Agreement if such breach is not cured to the satisfaction of City within thirty (30) 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.

2.6.2. City may terminate this Agreement immediately on notice to State if City believes in good faith that the health, welfare, or safety of occupants or neighbors of the City Property would be placed in immediate jeopardy by the continuation of State's use of City Property.

2.6.3. Upon termination or expiration of this Agreement for any reason, State will surrender possession of the City Property to City and shall restore the City Property to substantially the same condition as at the time the State took possession of the City Property, except that proper installation of the channel and the bridge, as contemplated by this Agreement is deemed to be acceptable alterations of the Licensed Premises.

2.7. Hold Harmless. City and 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 unless expressly stated otherwise in this Agreement. State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Chapter §3.736 and other applicable law. City's liability shall be governed by the provisions of Minnesota Statutes Chapter 466 and other applicable law. Nothing in this Agreement will be construed as a waiver by the City of any

immunity, defenses, or other limitations on liability to which the City is entitled by law, including but not limited to, the liability limits under Minnesota statutes Chapter 466.

2.7.1. State covenants that, during the term of the License, except in compliance with federal and state environmental laws, (i) no hazardous substances or flammable or explosive substances shall be used or kept on or about the City Property or any other property of City, (ii) State shall not, without City's prior written consent, bring, introduce, install, store, maintain, use, spill, remove, release, or dispose of any hazardous material on or about the City Property or any other property of City, (iii) State shall, and its use of the City Property shall, comply with all federal and state environmental laws, and (iv) State shall immediately notify City of (a) any violation of any federal or state environmental law, and (b) receipt of any notice or warning from, and/or any visit by, any environmental governmental agency for any reason whatsoever. Due to the nature of the Project, City acknowledges and consents that hazardous, flammable, or explosive substances may be used or kept on the City Property in carrying out the Project.

2.8. Insurance. During the Term, State shall either: (i) provide and maintain in full force and effect the minimum amounts of insurance coverage as stated below; or (ii) retain the risk of loss through self-insurance, in whole or in part. The minimum insurance requirements are as follows:

- (a) Workers compensation insurance in accordance with applicable law.
- (b) Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit that shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. State may meet the minimum amount of insurances as required above by obtaining an umbrella policy with a "form following" provision. Insurance coverage shall include premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the obligations set forth herein, and products – completed operations. City does not represent or guarantee that these types or limits of coverage are adequate to protect State's interests and liabilities. City shall be named as an additional insured under the Commercial General and Automobile Liability policies.

State shall provide City with the following: (i) upon execution of this Agreement, Certificate(s) of Insurance, in form acceptable to City, evidencing the required insurance coverage - with 30-day notice of cancellation, non-renewal, or material change provisions included AND/OR letter(s) of self-insurance, as applicable; and (ii) a certificate showing continued maintenance of such insurance and/or self-insurance shall be on file with City during the Term. City reserves the right to require 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.

2.9. Independent Contractors. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting State or State personnel or employees as an agent, representative, or employee of City for any purpose or in any manner whatsoever. The State and its personnel or 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.

2.10. Assignment. The State shall not in any way assign or transfer its rights or interests under this Agreement. However, the State may hire subcontractors to work on the Project. Any contractor or subcontractor hired by the State shall procure the required insurance coverages as described in Section 2.8 above and shall provide proof of coverage to City prior to conducting any work on the City Property. State shall remain primarily responsible for all work performed by any contractor or subcontractor.

2.11. Laws, Rules and Regulations. State shall conduct its activities related to the City Property 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, City of Duluth, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. State shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination.

2.11.1. Licenses/Permits. State shall procure, at State's expense, all licenses, permits, approvals and permissions necessary for carrying out its obligations under this Agreement and in connection with the Project.

2.12. Records Retention. State shall 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.

2.13. Government Data Practices. The City and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the City or the State.

If the Parties receive a request to release the data referred to in this clause, the Parties shall make a good faith effort to notify and consult with the other Party on what is Public Data and


how to respond to the request, prior to the release of data under this Agreement. The Parties responses to requests shall comply with all applicable law.

2.14. Waiver. The waiver by City or 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.

2.15. 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.

2.16. No Third Party Rights. This Agreement is to be construed and understood solely as an agreement between 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.

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

State of Minnesota
Director – Lands and Minerals  Division
Department of Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4045
(651) 259-5959

City of Duluth
Attn: Property Services Manager
1532 W. Michigan Street
Duluth, Minnesota 55806

Copy to: State of Minnesota
Attn: Ben Nicklay, Project Manager
Department of Natural Resources
525 Lake Avenue South #415
Duluth, Minnesota 55802

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

2.18. 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.

2.19. Amendments. All amendments to this Agreement shall be in writing and shall be executed in the same manner as this Agreement.

2.20. 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.

2.21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

2.22. 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.

2.23. Recording. Neither party shall record this Agreement in the St. Louis County real estate records without the prior written permission of the other party.

[Remainder of this page is intentionally left blank.]

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

CITY OF DULUTH, MINNESOTA

By: _____
Mayor (City Administrator per delegated authority)

ATTEST:

City Clerk

Dated: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney

STATE OF MINNESOTA, by and through its Director of Lands and Minerals Division

By: _____

Title: _____

Dated: _____

EXHIBIT A
LICENSED PREMISES

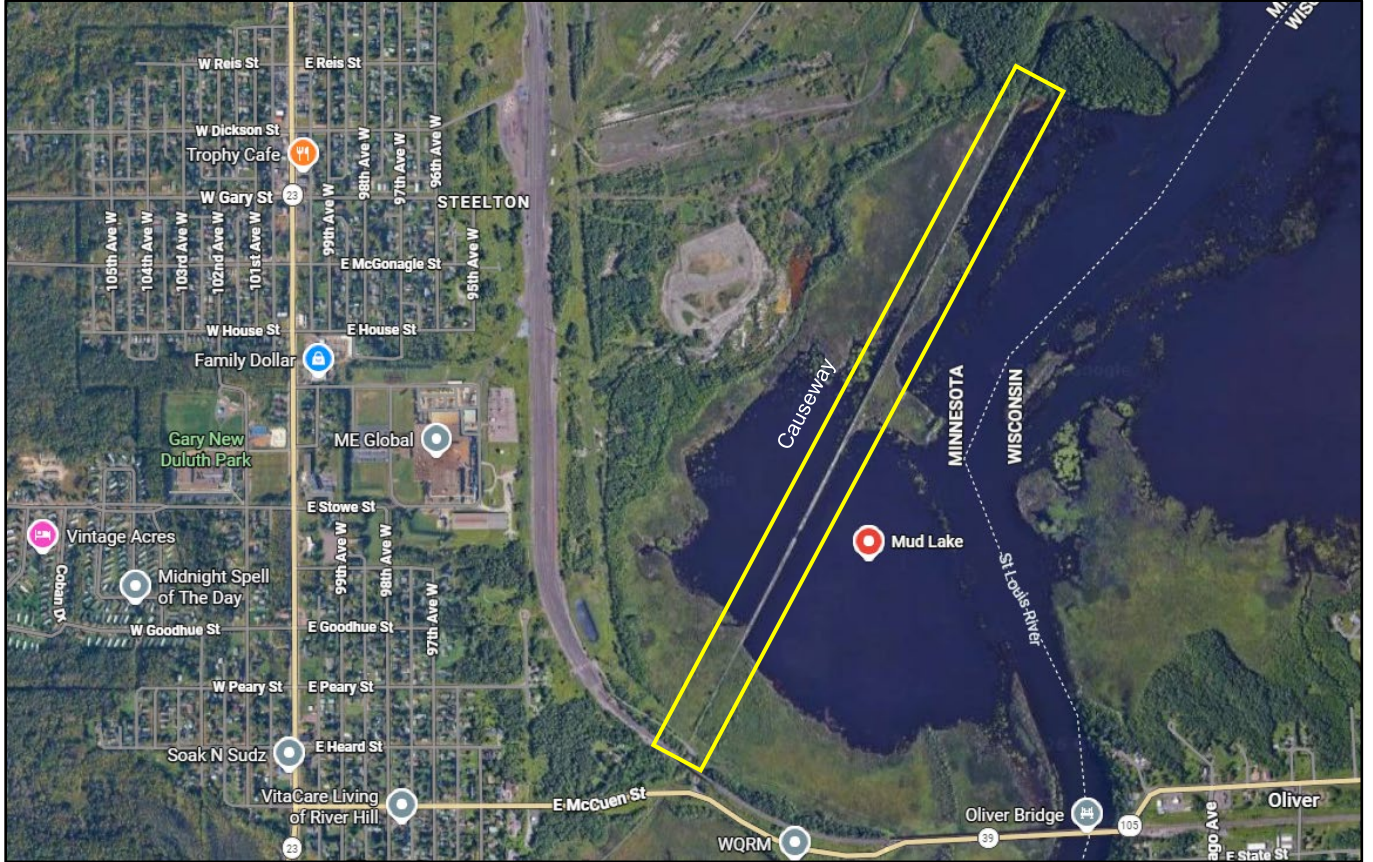


EXHIBIT B

ACCESS AND STAGING AREAS



