

# COUNCIL COPY

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

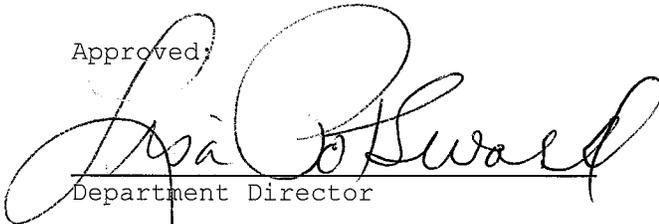
12-0090R

RESOLUTION AUTHORIZING A THREE YEAR AGREEMENT WITH DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY FOR THE PRODUCTION, PROMOTION AND MANagements OF EVENTS AT BAYFRONT FESTIVAL PARK AT AN ANNUAL COST OF \$50,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to execute and implement a three year agreement with Duluth Entertainment Convention Center Authority (DECC) for the production, promotion and management of events at Bayfront Festival Park, substantially the same as that on file with the city clerk as Public Document No. \_\_\_\_\_, and providing for the payment of \$50,000 per year, payments to be made from Fund 258-030-5310 (Tourism Taxes, Finance Dept., Contract Services).

Approved:

  
Department Director

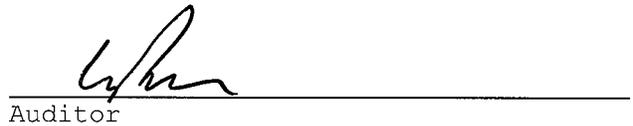
Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

Approved:

  
Auditor

ADM/PARKS DM:slw 2/15/2012

STATEMENT OF PURPOSE: This resolution authorizes a three year agreement for professional entertainment management services for events that occur at the Bayfront Festival Park (Bayfront). The DECC has nation-wide relationships with a wide range of act promoters, extensive experience in attracting strong events and managing and supporting the entire event process. Under the terms of the agreement, DECC will produce, promote, coordinate and manage all events held at Bayfront, including the many community based events currently managed by the city's parks staff. DECC will also manage the parking lots. Revenue received from the parking lots will be available for promoting, managing and producing large scale events at Bayfront. Such use of the parking revenue is subject to approval by the city's chief administrative officer.

**AGREEMENT TO PRODUCE, PROMOTE, COORDINATE AND MANAGE  
EVENTS HELD AT BAYFRONT FESTIVAL PARK**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, is made by and between the CITY OF DULUTH (City) and DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY (DECC). (Each a “party” or collectively the “parties”). This Agreement supercedes and replaces any prior agreement between the parties regarding this subject matter.

WHEREAS, the City owns certain property located in the Bayfront area of the City of Duluth as shown on Exhibit A attached hereto and incorporated herein (the “City Property”); and

WHEREAS, the Duluth Economic Development Authority (DEDA) owns certain property located in the Bayfront area of the City of Duluth indicated as Lots B, C and D hereinafter collectively referred to as the “DEDA Lots”) and certain property adjacent to Lot B (the “Adjacent Property”) as shown on Exhibit A (the “DEDA Lots and the Adjacent Property are collectively referred to as the “DEDA Property”); and

WHEREAS, the City and DEDA entered into a license agreement to allow the City to operate the DEDA Lots for vehicular parking lot and for other uses, and use the Adjacent Property for Bayfront Festival Park-related purposes (the “DEDA License Agreement” attached hereto as Exhibit D); and

WHEREAS, the Lake Superior Center Authority (LSCA) owns certain property located adjacent to the Bayfront area of the City of Duluth shown on Exhibit A (the “LSCA Property”);

WHEREAS, the City and LSCA entered into a license agreement to allow the City to use the LSCA Property for Bayfront Festival Park-related purposes (the “LSCA License Agreement” attached hereto as Exhibit E).

WHEREAS, the City Property, the DEDA Property and LSCA Property are collectively referred to as the Premises as described in paragraph 1 below.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **PREMISES:** In consideration of the mutual covenants as set forth herein, the sufficiency of which is hereby acknowledged, the City agrees to permit the DECC the management as described herein of Bayfront and certain additional property including grounds and structures, but excluding the playground area commonly known as Playfront Park, and as delineated on attached Exhibit A. The properties shown on Exhibit A are hereinafter referred to as the Premises. The City makes no representations that the Premises is suitable for the specific uses set forth herein.

2. **TERM:** The term of this Agreement shall commence on the Effective Date and shall continue through December 31, 2014 unless earlier terminated as provided for herein.

3. **DUTIES OF DECC:** The DECC's services ("Services") under this Agreement shall be to (i) produce, promote, coordinate, and manage City sponsored Events held at the Bayfront Festival Park ("Bayfront") described in paragraph A below; and (ii) to book, produce, coordinate and manage City Third Party Sponsored Events and DECC Events hereinafter defined and described herein. Each an "Event" or collectively the "Events".

A. City-Sponsored Events. A City-Sponsored Event is an Event operated by, sponsored by or otherwise supported by the City through financial or in-kind support which is free to the public to attend (i.e. no gate admission fee is charged). DECC shall act as Event solicitor, promoter, manager, and producer for all components of City sponsored Events as agreed between the City and DECC. The parties agree to meet on or before October 1 of each year to determine the City sponsored Events to be held during the following year. The Services shall include without limitation the following:

1. Act as the coordinator of Events.
2. Solicit sponsors to financially underwrite the activities of each Event.
3. Secure entertainment, food, and craft vendors including entering into a contract to sublease space to such vendors (the "Sub-lessees").
4. Arrange for and coordinate for supplemental services as necessary (e.g. catering, electrical, security and janitorial) ("DECC Services")
5. Coordinate communications and activities with participating volunteers and organizations.
6. Prepare a master "floor" plan and coordinate and assign all space.
7. Coordinate and supervise all set up, take down, clean up, and site restoration of the Premises.
8. Implement and coordinate marketing efforts.
9. Insure that all third parties participating in each Event abide by regulations, statutes, and ordinances applicable to the Premises.
10. Provide on-site supervision and control of all activities during each Event.
11. Provide the appropriate number of staff, based on the size of the Event and the related features, to manage each Event, including a staff person who shall have overall responsibility for such obligations, who shall serve as the Event liaison and who shall have day-to-day decision-making authority with respect to carrying out such obligations, including serving as the contact person with whom City may communicate any issues that may require consent or cooperation with DECC.
12. Provide all accounting services including but not limited to collecting all use fees and deposits, billing, and collection.
13. Actively promote each Event including but not limited to placement of advertisement in local newspaper, on the DECC's website and it other media venues.

B. City Third Party Sponsored Events. A "City Third Party Sponsored Event" is an Event for which the City and a Third Party have an agreement, including any

extension of such agreement, to hold an Event(s) on the Premises. A list of the “City Third Party Sponsored Events” is attached hereto as Exhibit B. The DECC will provide, at a minimum, the services outlined below:

1. Coordinate scheduling of dates of City Third Party Sponsored Events.
2. Ensure that all parties abide by regulations, statutes, and ordinances applicable to the Premises.
3. Coordinate on-site supervision and control during all Events.
4. Provide all accounting services including but not limited to collecting all use fees and deposits, billing, and collection.

C. DECC Events. A “DECC Event” is an Event which the DECC sponsors and promotes the Event or contracts with a third party promoter to hold an Event on the Premises. The Services shall include without limitation the following:

1. Use best efforts to bring DECC Events to the Premises that will enhance the use of the Premises by adding entertainment and cultural value to the City and draw visitors to the City.
2. Secure and contract with third party promoters of an Event. The DECC will use a form of agreement approved by the City Attorney. Such form of agreement will include language indemnifying the City, DEDA and LSCA and naming them as additional insureds.
3. Provide the Services as described in Paragraphs 3.A and 3.B.
4. Ensure that all marketing and promotion of DECC Events include the Bayfront logo acknowledging “Bayfront” as a City owned park.

D. Event Schedule and Website: DECC shall create and maintain a master schedule of all Events held on the Premises (“Master Calendar”). In addition, DECC will be responsible for maintaining and updating as necessary the Bayfront Park’s website ([www.bayfrontfestivalpark.org](http://www.bayfrontfestivalpark.org)). All content placed on the website must be pre-approved by the City’s Parks Manager. The website shall be limited to Bayfront information; placement of any non-Bayfront related information is prohibited. The website and all content is the property of the City.

E. Sub-lessee requirements: It shall be the responsibility of the DECC to verify that each Sub-lessee possess a valid City of Duluth Sales Tax Permit before allowing for the set up or subsequent sales activities of any such Sub-lessee. The DECC shall provide evidence to the City that all Sub-lessee meet all minimum St. Louis County Health Department requirements or any other requirements including without limitation insurance as may be required by any applicable laws, codes, or ordinances in force at the time of each separate Event.

F. Alcohol: DECC shall have the sole exclusive right to vend alcohol at the Events. DECC shall insure said vendor has appropriate insurance coverage naming City of Duluth and DECC as Additional Insureds. Sales of alcoholic beverages shall comply with all applicable local ordinances and state laws. Notwithstanding the forgoing, the

DECC shall have the right to subcontract its right to vend alcohol to qualified alcohol distributors or sponsors.

- G. Event Parking. DECC shall be responsible for management of parking fee collection and parking lot management for all parking lots included in the Premises as delineated in Exhibit A of this Agreement (the "Parking Lots"). As part of DECC's responsibilities under this Agreement, DECC may negotiate the use, management and proceeds of any or all Parking Lots with Third Party Event promoters. The DECC shall have the right to use 100% of the revenues collected from parking fees as part of an incentive package to induce large/national acts to perform at the Premises.. DECC may use parking proceeds, subject to approval by the City, for the promotion, management and production of Events.

The DECC's access to the use of the Parking Lots for use in the promotion and management of Events is subject to the terms and conditions of DEDA License Agreement and any applicable City Third Party Sponsored Events. The use of the Parking Lots is subject to approval by the City's CAO or Parks Manager.

The City and DECC shall agree at the time the list of City sponsored events is finalized pursuant to paragraph 3.A. on whether parking at any such Events shall be free or other reduced rate.

In addition, DECC will provide parking services as described in this section 3.G. from time to time as agreed between the parties for City-wide events such as Grandma's Marathon and the Northshore Inline Marathon.

- H. Hours of Operation. The City agrees to allow DECC and or its contracted musicians, musical or Event groups, to perform music or other related, appropriate entertainment at the Premises not earlier than 10:00 a.m. on the dates of each separately scheduled special Event. Except as otherwise agreed in writing, all performances shall end at 11:00 p.m. on Sunday through Thursday Event days and 11:59 p.m. on Friday and Saturday Event days.
- I. Special Event Camping. DECC's services under this Agreement may also include the management of any special Event camping on the Premises; however, Special Event Camping will be limited to Lots B, C or D only and will specifically exclude the Festival Park area and the Adjacent Property. At DECC's sole option, DECC may enter into agreements for special Event camping subject to required DEDA approvals contained in the DEDA License Agreement.
- J. Maintenance and Operation. The DECC agrees that it shall be responsible, as determined by the City, for the repair or damage caused as a result of any Events. DECC is responsible for set up and take down activities, and restoration of the Premises to its original condition within a reasonable amount of time, not to exceed forty-eight (48) hours, normal wear and tear excepted.

The DECC shall provide all equipment necessary for the presentation of the Events, including trash collection receptacles in sufficient quantity to maintain the Premises in a reasonable state of cleanliness including but not limited to the removal of garbage from the trash collection receptacles to the dumpsters and for removal of the dumpsters. The DECC shall to the extent possible separate of recyclables, such as plastic bottles, aluminum cans, and cardboard boxes, that is generated at the Events and for its removal from the site to the appropriate collection site. If the DECC fails to return the Premise to its original condition within the time specified in herein, the City reserves the right provide services or contract with others to provide such services and will deduct such costs from the payments to DECC provided for in Paragraph 6.B.

The DECC shall provide a sufficient quantity of portable toilet units, including a minimum of two (2) handicap accessible units, complete with ongoing cleaning and servicing throughout each Event to provide safe, minimum standards of sanitation and public convenience. The number of portable toilet units may be adjusted, at the direction of the St. Louis County Health Department or the City. The DECC shall provide sufficient staff to maintain/clean the permanent toilet building during each separate Event. The City will be responsible to maintain/clean the permanent toilet buildings during non-Event times.

DECC agrees that vehicular access to said Premises shall be strictly limited to the "Vehicle Access" roadway from Railroad Street and as specifically designated and labeled on Exhibit A. At no time shall any vehicle be parked, operated, or permitted except upon those areas of Premises labeled "Vehicle Access" or "Parking" unless approved in writing by the Manager of Parks and Recreation. The DECC shall not allow any vehicles on any grass area, except with the use of plywood boards to protect the turf. DECC shall be responsible for the enforcement of this provision for all vehicles on the Premises whether said vehicles are owned by DECC, DECC employees, agents of DECC, concessionaires, DECCs, or the general public. The City reserves the right to order the immediate removal of any vehicle used or parked in violation of this provision.

- K. Facility supervision and security. (i) DECC agrees that at all times during permitted use of the Premises under this Agreement, the Premises will be properly supervised and overseen by an employee or agent of DECC with sufficient empowerment and decision making authority to act on behalf of DECC. DECC shall provide the City with a list of supervisory employees or agents, properly identified, complete with dates, times, and cell phone numbers, when said employees or agents shall be on-duty before, during, or after each separate Event. The Manager of Parks and Recreation will provide to the DECC a list of City employees or agents, properly identified, with sufficient empowerment and decision making authority, to act on behalf of the City, complete with dates, times, and cell phone numbers who shall be on-duty before, during, or after each separate Event.

(ii) The DECC shall be responsible for providing an adequate number of security personnel based on the expected attendance of the Event. In the event that the attendance projected by the DECC is substantially inaccurate, or the Event is conducted by the DECC or any third-party in such a manner as to create a risk of disorder, the City

may at any time, including during the course of the Event, provide such additional security service as the City's Chief of Police or Parks Manager in their sole and reasonable discretion deems necessary, upon prior notice to DECC, and DECC shall be liable for the cost of such additional service. The DECC agrees to employ a security agency licensed by the State of Minnesota whose employees acting as security guards are properly licensed. The City prohibits the use of armed security personnel unless specifically agreed to in writing by City's Chief of Police, who may approve or deny any such request in his sole discretion. The City's Police Officers may remove any person from the Event and/or Premises who the City believes is disrupting or obstructing the proper operation and management of the Premises.

- L. Subcontractors. DECC may use non-employees or subcontractors ("Subcontractors") to perform part of the Services; provided, however, that (i) DECC shall periodically notify City of the identity of each such Subcontractors; (ii) City may at any time request the immediate replacement of any such Subcontractor, without stating a cause thereof; and (iii) the cost of any Subcontractor retained by DECC for Services otherwise to be performed by DECC under this Agreement will be borne solely by DECC. Prior to retaining a Subcontractor, DECC shall require each Subcontractor to agree to be bound by DECC's obligations under this Agreement including but not limited to insurances requirements. DECC agrees to cause all Subcontractors to observe the terms of this Agreement and will be responsible for any breach of this Agreement by any of its Subcontractors.
- M. Incident Reports. DECC agrees to promptly make the City's Parks Manager aware in writing of any incident of injury or loss or damage to the property of City or any Event's participants or invitees occurring within the Premises during any Event. Such written report shall be in a form acceptable to the City's Risk Manager. A copy of the City's form of Incident Report is attached hereto as Exhibit C.
- N. Limits of Usage. DECC agrees that the Premises shall only be used for the Events, Event camping and related support services and for no other purpose. Such use is subject to any City Third Party Sponsored Event Agreement, the DEDA License Agreement and the LSCA License Agreement. The rights of DECC to occupy, use, and maintain said Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are complied with strictly and promptly by DECC.
- O. Compliance with Laws. DECC agrees to operate the special Events and all activities conducted on said Premises in strict compliance with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and the City. DECC agrees to procure, at the DECC's expense, all licenses and permits necessary for carrying out the provisions of this Agreement.
- P. Licensing and Royalty Payments. The DECC agrees that all Events, except the City Sponsored Events are covered by current and valid ASCAP, BMI, and SESAC licenses ("Licenses"). DECC acknowledges that these Events are DECC functions and are being performed under the DECC's Licenses. DECC shall insure that all licensing and/or royalty payments are made under the applicable Licenses. DECC shall insure that all Events promoted by third-parties are covered by current and valid Licenses.

- Q. Sound Level. The DECC agrees that any amplified sound produced by musical entertainment groups and or other amplified sound shall not exceed an approved sound level established by Minnesota Pollution Control Agency. The DECC shall be responsible for reducing the level of sound that is not in compliance of the authorized sound level.
- R. Policies and Procedures. The DECC agrees to work with the City in developing new policy and procedures for managing Bayfront Festival Park in accordance with current venue management industry standards. Any such proposed changes must be mutually agreed upon by the City and the DECC; however, the Manager of Parks and Recreation shall have the final authority to approve any change to policies and procedures.

4. **DUTIES OF CITY:**

- A. To the extent the City has fencing available, the City shall permit the DECC the use of the portable fencing units as well as additional fencing material. It shall be the responsibility of the DECC and/or other third party promoter, at their expense, to put up and take down this fencing according to each Event needs. It shall be the responsibility of the DECC to make sure that any theft or damage, other than normal wear, of the fencing material that occurs during any Event in which the fencing is used, is repaired or replaced by the DECC and/or other Event organizers at their expense.
- B. The City shall permit the DECC the use of the city stage for the Events. The City shall put up the stage at the beginning of the season and take down said stage at the end of the season. It shall be the responsibility of the DECC to make sure that any damage, including any damage caused by fire, to the stage, other than normal wear, that occurs during any Event in which the stage is used, is repaired or replaced by the DECC and for other Event organizers at their expense.
- C. The City will be responsible for clean-up at the conclusion of the City-Sponsored Fourth Fest Event.
- D. The City will provide ground maintenance including regular mowing and plowing of the parking lots and sidewalks.

5. **COMMUNICATION:** The parties agree that the exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement.

- A. The DECC shall provide the City's CAO and Parks Manager with the Master Calendar and will be responsible for notifying the City whenever an Event has been contractually booked and/or cancelled. DECC will promote all Events held at the Premises on its website. The City shall not issue any media releases with any Event information provided by the DECC without prior approval from the DECC.
- B. DECC agrees to provide to the City's Park Manager a report on or before the first (1<sup>st</sup>) day of each month identifying the scheduled activities to be held at the Premises during the following month including a copy of any brochures, advertisements, flyers, sample

invites etc. promoting such activities. In addition, when applicable, DECC will provide website link relating to the activity to the City for inclusion on the City's website.

- C. DECC agrees to provide to the City's Park Manager a summary report by September 30 of each year identifying all activities held on the Premises during the current year's entertainment season. The report will include statistics about the activity including date of the activity, name of activity, number of people in attendance and brief description of the activity.

**6. COMPENSATION:**

- A. The City shall pay the DECC an annual base fee of \$50,000 for the Services provided under this Agreement provided that all terms and conditions of this Agreement have been performed to the satisfaction of the Manager of Parks and Recreation.
- B. Payments shall be quarterly with payments of \$12,500 to be paid on January 15 April 15, July 15 and October 15 of each year of this agreement, payable from Fund 258-030-5310 (Tourism Taxes, Finance Depart., Contract Services).

**7. USE FEES:**

- A. The City shall be sole recipient of the facility use fee ("Fee") as established by the City Council for all Events booked, coordinated, and managed by the DECC and/or produced by a third party promoter.
- B. For 2012, the DECC shall charge the use fee as established under the City's 2012 City Schedule found at [www.duluthmn.gov/clerk/permits/index.cfm](http://www.duluthmn.gov/clerk/permits/index.cfm) ("Fees") with the exception of vendor fees. The DECC shall charge a flat \$300.00 fee to all Events which host vendors.
- C. For years 2013 and 2014, the City and DECC agree to meet on or before October 1<sup>st</sup> of each year to determine an appropriate fee structure for the following year. The DECC acknowledges and agrees that the City's decision will prevail in the event of a disagreement between the DECC and the City relating to fees.
- D. The DECC shall collect and deposit all Fees including applicable deposits and shall maintain accurate accounting of Fees.
- E. The DECC shall provide the City Auditor with monthly financial report of all fees collected from Events held during the previous month along with a check for the Fees collected for that month. The format of the financial report must be approved by the City Auditor. This monthly report is due along with any fees due to the City on the 15<sup>th</sup> day of the month.
- F. All monthly fees shall be deposited in Fund 237-015-4623 (Bayfront Festival Park, Administrative Services, Rent of Land). Such fees shall be available for use by the DECC, subject to approval by the City, in the promotion, marketing and production of Events.
- G. The DECC will be responsible for returning the applicable deposits to the Third Party Promoter at the conclusion of the Event and after its inspection of the Premises less any amount retained for unpaid Fees or damages.
- H. DECC will be the sole recipient of all fees collected for any DECC Services.

I. DECC shall have the right to retain 100% of the proceeds from sponsorship sales, concession sales, vendor sales, alcohol sales, and tickets sales attributable to sales by the DECC.

8. **ASSIGNABILITY:** Except as provided for in paragraph 3, DECC shall not assign or transfer any of its rights or interests under this Agreement in any way whatsoever without the express written consent of the City's Chief Administrative Officer.

9. **ALTERATIONS OR IMPROVEMENTS:**

A. DECC shall not drive stakes, excavate, or otherwise install any underground apparatus into any of the grounds on the Premises without first providing a detailed, precise map to the City of all proposed underground locations at least thirty (30) days in advance of each separate Event. DECC shall not proceed with any underground actions without first securing written approval from the Manager of Parks and Recreation, or the City's Public Administration Officer in the Manager's absence, and further having all underground utilities properly located by One Call or identified by the City prior to proceeding with said underground actions.

B. DECC shall limit the on-ground use of wires, hoses, and other such items to only those areas which are not accessible to normal pedestrian traffic. In the event DECC needs to allow the installation of on-ground utilities, DECC shall first secure the permission of the Manager of Parks and Recreation or the City's Public Administration Officer, and comply with all applicable codes and laws pertaining to said installations.

C. DECC may make temporary improvements to the grounds, such as the erection of fencing, scaffolding, special platforms, water tanks, rigging, or other apparatus necessary to ensure the success of said Event or the safety of staff, performers, and the general public ("Temporary Improvements"). DECC shall submit plans to the City showing the proposed location of all such apparatus upon the grounds at least seven (7) days in advance of each separate Event. No construction, alteration, or improvement shall begin until approved in writing by the Manager of Parks and Recreation or the City's Public Administration Officer in the Manager's absence, and all necessary building permits are secured. All construction or apparatus installed on said Premises shall conform to any and all applicable laws or building codes governing such installations.

D. DECC agrees that prior to commencing any construction, erection, alteration, or improvement on the Premises that DECC will provide the City with a Certificate of Insurance evidencing that all persons, whether in the direct employ of DECC or agents hired by DECC, are covered by Workers' Compensation Insurance as required by Minnesota Statutes. DECC shall submit such Certificate of Insurance in advance of any work being done. No construction, erection, alteration, or

improvement shall be commenced until such time as said Certificate of insurance is reviewed and approved by the City Attorney in writing.

- E. DECC may not make any long term temporary (improvements or structures that are on the Premises remain on the Premises for more than one (1) Event) or permanent improvement to any part of the Premises, its buildings, or its facilities without securing approval of the City's Facilities Manager. A Project Proposal Form must be submitted to City Hall, Parks and Recreation, Attn: Kathy Bergen, 411 W 1st Street, Duluth, MN 55802. DECC's improvements shall be maintained by DECC and unless otherwise agreed upon in writing, ownership of any improvement will be with the City. DECC shall be responsible for any and all operational costs and maintenance of such improvements, installations, and facilities and shall operate them in a safe manner. No construction, alteration, or improvement shall begin until approved as provided by this paragraph and all necessary building permits are secured. All construction shall conform to the State Building Code.

10. **INSURANCE:** DECC shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota:

- A. Workers' Compensation Insurance in accordance with the laws of the State of Minnesota.
- B. Commercial General Liability Insurance in an amount of not less than \$1,500,000 combined single limit or \$1,500,000 bodily injury per occurrence; \$500,000 property damage per occurrence and \$1,500,000 in aggregate and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance.
- C. Automobile Liability coverage in an amount not less than \$1,500,000 combined single limit or \$1,500,000 bodily injury per occurrence; \$500,000 property damage per occurrence.
- D. The City reserves the right to require increased coverage limits from those specified above in response to legislative action or court decision which have the effect of increasing the City's liability limits.
- E. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect DECC, its employees, agents, and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by DECC, its employees, agents, and representatives in the negligent performance of work covered by this Agreement.
- F. The City, LSCA and DEDA shall be named as additional insureds on each liability policy other than the Workers' Compensation policies of DECC.
- G. Certificates showing that DECC is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be filed with the City during the term of this Agreement.
- H. If proof of such insurance is in the form of a so-called "Accord" form of certificate, the words, "endeavor to" shall be stricken from the notice provisions thereof. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.
- I. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being

given to the City, LSCA and DEDA.

- J. If DECC conducts the sale of any product or service through any third party vendor or contractor, DECC will be required to secure Product Liability Insurance coverage with the same limits as stated above. If any third party vendor or contractor sells, serves, or otherwise dispenses alcoholic beverages of any kind, DECC shall provide evidence of Liquor Liability Insurance coverage for the dispensing of such beverages in the same limits as stated above. Evidence of such insurance coverage shall be specified in the above described Certificate of Insurance and name the City, LSCA and DEDA as additional insureds.

**11. HOLD HARMLESS:**

- A. DECC agrees to defend, indemnify, and save harmless the City, LSCA and DEDA, and their respective officers, agents, servants, and employees from any and all liens, claims, suits, demands, liability, judgments, costs, damages, and expenses asserted by any person or persons including agents or employees of the City, LSCA and DEDA or DECC by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation, or work of DECC or its employees, subcontractors or agents while engaged in the execution, performance, or failure to adequately perform DECC's obligations under this Agreement. On ten days written notice from the City, DECC will appear and defend all lawsuits against the City, LSCA or DEDA growing out of such injuries or damages, except such acts, omissions, or work by City Employees or agents.
- B. City agrees to defend, indemnify and save harmless the DECC and its officers, agents, servants, and its employees from any and all liens, claims, suits, demands, liability, judgments, costs, damages, and expenses asserted by any person or persons including agents or employees of the City, LSCA or DEDA or DECC by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation, or work of City, LSCA or DEDA or its employees or agents while engaged in the execution, performance, or failure to adequately perform their obligations under this Agreement. On ten days written notice from the DECC, City will appear and defend all lawsuits against the DECC growing out of such injuries or damages, except such acts, omissions, or work by DECC or its agents.

**12. INDEPENDENT CONTRACTOR:** It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting DECC as an agent, representative, or employee of the City, LSCA or DEDA for any purpose or in any manner whatsoever. DECC and its employees 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 DECC's employees or agents while so engaged, and any and all claims whatsoever on behalf of DECC's employees and agents arising out of employment shall in no way be the responsibility of City, LSCA or DEDA. DECC's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, LSCA or DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay, and PERA. Further,

neither the City, LSCA or DEDA shall in no way be responsible to defend, indemnify, or save harmless DECC from liability or judgments arising out of the acts or omissions of DECC or its employees or agents while performing the work specified by this Agreement.

13. **REPORTING:** DECC agrees that, as provided in Minnesota Statutes 16C.05, Subdivision 5, all DECC books, records, documents, and accounting procedures and practices are subject to examination by the City or the State Auditor for six (6) years from the date of execution of this Agreement. Upon reasonable notice by the City, DECC shall provide all requested financial information. Five working days shall be deemed reasonable notice.

14. **TERMINATION OF AGREEMENT:**

- A. This Agreement may be terminated by the City upon breach of any of the terms and conditions of this Agreement by the DECC and the failure to rectify or correct any such breach within five (5) business days of the transmission of written notice to the DECC of said breach. Notice shall be provided in accordance with the terms of this Agreement.
- B. Any party hereto shall have the right to cancel their participation in the Agreement with or without cause upon one hundred and twenty (120) days written notice. Notice shall be provided in accordance with the terms of this Agreement. The DECC shall be responsible for all outstanding expenses and/or fees due the City or others by the DECC from any Event covered under this Agreement and produced by DECC.

15. **CITY/DEDA ACCESS:**

- A. The City or DEDA expressly reserve the right to the unlimited access to the Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection and ensuring that the provisions of this Agreement are complied with by DECC. The Manager of Parks and Recreation shall provide all Bayfront Festival Park Event access passes, as needed, for access by authorized personnel. DECC acknowledges and agrees that the City or DEDA may use each of their respective properties and such use will not interfere with the allowed DECC uses as set forth herein.
- B. DECC shall not change the locks or otherwise prohibit or inhibit the City access to any portion of the Premises. Facility Management for the City shall be exclusively responsible for the design of keying systems, lock changes, key fabrication and key distribution and DECC agrees to abide by the Key Control Policy, a copy of which shall be provided to DECC. DECC will promptly return all keys to the City's Parks Manager upon termination of this Agreement.

16. **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.

17. **GENERAL PROVISIONS:**

- A. The City's Manager of Parks and Recreation, or the City's Public Administration

Officer in the Manager's absence, and the DECC, shall be solely responsible for the cancellation or termination of any special Event necessitated by inclement weather.

B. The waiver by the City or DECC 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 is to be construed and understood solely as an agreement among the parties hereto and shall not be deemed to create any rights in any other person. No person 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 hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

D. Unless otherwise provided herein, notice to the City or DECC 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	Duluth Entertainment Convention
Parks and Recreation Division	Center Authority
Attention: Kathy Bergen	Attn: Dan Russell and
411 W. 1 <sup>st</sup> Street	Chelly Townsend
Duluth, MN 55802	350 Harbor Drive
tel.: (218) 730-4309	Duluth, MN 55802

E. This Agreement may be executed in separate counterparts with the same effect as if all signatures were on the same Agreement.

F. For purposes of this Agreement, a telecopy or facsimile document and signature shall be deemed as, and shall serve as, an original Agreement and signature.

18. **AUTHORITY TO EXECUTE AGREEMENT:** The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their 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 thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

19. **ENTIRE AGREEMENT:** This Agreement, along with Exhibits A, B, and C, D and E embodies the entire understanding of the parties and there are no further or other agreements, permits, or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

**SIGNATURES APPEAR ON THE FOLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized.

**CITY OF DULUTH**

**DULUTH ENTERTAINMENT CONVENTION  
AUTHORITY**

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

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

ATTEST:

By  
City Clerk  
Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Countersigned:

By: \_\_\_\_\_  
City Auditor

**EXHIBIT A**  
**MAP OF THE PREMISES**



Licensed Premises

EXHIBIT

## **EXHIBIT B**

### **CITY THIRD PARTY SPONSORED EVENTS**

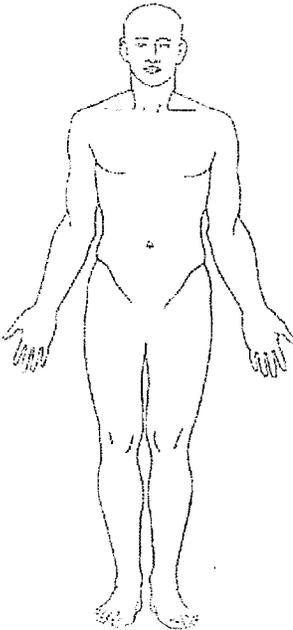
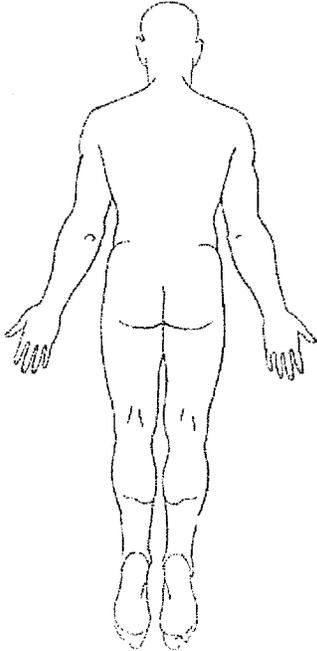
1. Bluesfest
2. Bentleyville

**EXHIBIT C**  
**INCIDENT REPORT**

## INCIDENT REPORT

Supervisor and injured employee to complete within 24 hours of incident/injury.

Please print clearly and fax completed form to: 1-866-286-5258

Company Name: Duluth Police Dept.		Dept. / Div: Patrol		<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	
Last name:		First:		Middle initial:	
Address:					
City:		State:		Zip code:	
Phone:					
Incident Date:		Time:	Left work:	Returned:	Lost time <input type="checkbox"/> Yes <input type="checkbox"/> No
Explanation for Injury/Incident: _____					
Incident investigation conducted: <input type="checkbox"/> Yes <input type="checkbox"/> No					
Date supervisor notified:			Date report completed:		
Supervisor's name: _____					
Names / Phone #'s of witnesses: _____					
Was there a: Safety violation <input type="checkbox"/> Machine malfunction <input type="checkbox"/> Motor vehicle accident <input type="checkbox"/>					
Supervisor's comments: _____					
What actions have been taken to prevent recurrence? _____					
<b>CAUSE</b> <input type="checkbox"/> Slip and Fall <input type="checkbox"/> Struck by equipment <input type="checkbox"/> Lifting or moving <input type="checkbox"/> Caught (In, on or between) <input type="checkbox"/> Needle puncture <input type="checkbox"/> Object in eye (Right <input type="checkbox"/> Left <input type="checkbox"/> <input type="checkbox"/> Repetitive / Overuse <input type="checkbox"/> Other		<b>MARK AREAS OF INJURY BELOW</b> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Front</b>   </div> <div style="text-align: center;"> <b>Back</b>   </div> </div>			
<b>TYPE OF INJURY</b> <input type="checkbox"/> Scrape / Bruise <input type="checkbox"/> Sprain / Strain <input type="checkbox"/> Puncture wound <input type="checkbox"/> Cut / Laceration <input type="checkbox"/> Concussion <input type="checkbox"/> Bite <input type="checkbox"/> Chemical burn / Rash / Breathing difficulties <input type="checkbox"/> Other <input type="checkbox"/> No apparent injury					
Employee referred to: Clinic <input type="checkbox"/> Hospital ER <input type="checkbox"/> Refused to see MD <input type="checkbox"/>					
DR / Clinic			Phone Number:		
Supervisor's signature:			Date:		
Employee's signature:			Date:		

NOTE: Complete side 2 if Vehicle, Equipment, or Property Damage

<b>INCIDENT LOCATION:</b>			
<b>POLICE CALLED?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Police Traffic Accident Report ICR#:</b>	
<b>City Vehicle, Property, or Equipment Involved</b>	Description: _____ Vehicle #, Make, Model, Year: _____ Describe Damage: _____		
<b>Non-City Vehicle, Property, or Equipment</b>	Owner Name: _____ <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other Owner Address/Phone #: _____ Vehicle License #: _____ Color: _____ Make/Model: _____ Year: _____ Describe Damage: _____		
<u><b>Weather Conditions</b></u> <input type="checkbox"/> Clear <input type="checkbox"/> Wind <input type="checkbox"/> Rain <input type="checkbox"/> Cloudy <input type="checkbox"/> Fog <input type="checkbox"/> Sleet <input type="checkbox"/> Snow	<u><b>Roadway Conditions:</b></u> <input type="checkbox"/> Dry <input type="checkbox"/> Mud <input type="checkbox"/> Wet <input type="checkbox"/> Paved <input type="checkbox"/> Snow <input type="checkbox"/> Unpaved <input type="checkbox"/> Ice	<u><b>Light Conditions:</b></u> <input type="checkbox"/> Night <input type="checkbox"/> Day <input type="checkbox"/> Good <input type="checkbox"/> Poor	<u><b>Other:</b></u> Approx. Temp: _____ Estimated Speed: _____ mph Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty What was load: _____ Drug and/or Alcohol Test? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>MISCELLANEOUS COMMENTS:</b> _____			

Sketch below how vehicle accident occurred (Give street names, direction of travel, locations of vehicles, objects and traffic control devices) ↑ North

**EXHIBIT D**  
**DEDA License Agreement**

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under the laws of the State of Minnesota, ("DEDA"), 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. The City owns certain property located in the Bayfront area of the City of Duluth known as Bayfront Festival Park upon which various festivals and activities occur ("Bayfront Festival Park").

B. DEDA owns certain property located in the Bayfront area of the City of Duluth indicated as Lots B, C and D (Lots B, C and D hereinafter jointly referred to as the "DEDA Lots") and certain property adjacent to Lot B ("Adjacent Property") as shown on Exhibit A.

C. Pursuant to DEDA Resolution 11D-55, DEDA entered into an agreement with Bentleyville Tour of Lights, Inc. ("Bentleyville") for the purpose of operation and management of parking in Lots B and C including the period of November 10, 2012 through December 31, 2012 (the "Bentleyville Management Agreement"). Under the Bentleyville Management Agreement, DEDA will receive a portion of parking fees related to Lots B and C from Bentleyville.

D. Pursuant to DEDA Resolution 11D-50 and City Council Resolution No. 11-0568, DEDA entered into a license agreement with the City which allows the City to dispose of snow from street plowing operations on a portion of Lot D (the "Snow Disposal Area") for the period of October 26, 2011 through May 1, 2012 (the "Current Snow Disposal License").

E. DEDA anticipates it will enter into an annual license agreement with Bentleyville on property adjacent to Lot D as shown on Exhibit A for the purpose of storing the Bentleyville tree (the "Tree Storage Area"). Bentleyville will require access over Lot D for purposes of its license agreement.

F. DEDA will also require access to its Storage Building abutting the Licensed Premises on Lot D during the term of this Agreement.

G. DEDA and the City desire to enter into this License Agreement to allow the City to operate the DEDA Lots for vehicular parking and, upon the approval of DEDA's Executive Director or designee (the "Executive Director") for other uses, and to allow the City use of the Adjacent Property for Bayfront Festival Park-related purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. THE LICENSE. Subject to the terms and conditions set forth herein, DEDA grants to the City an exclusive license for the use and during the term set forth below in the DEDA Lots and the Adjacent Property as shown on Exhibit A (the "Licensed Premises"). Notwithstanding the above, with respect to Lot D, the City or any third party contractor shall be allowed ingress and egress to the Snow Disposal Area during the term of the Current Snow Disposal License and any future snow disposal license that DEDA may enter into with the City during the term of this Agreement. Additionally, with respect to Lot D, Bentleyville shall be allowed access to the Tree Storage Area, during the term of any future license agreement with Bentleyville for tree storage. Finally, DEDA shall be allowed access to its storage building at any time while this Agreement is in force.

2. USE OF THE LICENSED PREMISES. The DEDA Lots shall be used for the purpose of vehicular parking and as a pleasure skating rink. Notwithstanding the above, in addition to the use of the DEDA Lots for vehicular parking and pleasure skating, at the sole discretion and upon the prior written approval of the Executive Director, the City may use the DEDA Lots for other approved uses. The Adjacent Property shall be used solely for purposes consistent with the use of the remainder of Bayfront Festival Park.

3. THIRD PARTY AGREEMENTS. If the City enters into third party agreements for vehicular parking or other approved uses with respect to the DEDA Lots or for purposes consistent with the use of the remainder of Bayfront Festival Park with respect to the Adjacent Property, such third party agreements shall require that the third party indemnify DEDA and name DEDA as an additional insured on its commercial general liability insurance and, if appropriate, its automobile insurance policies, and, unless otherwise agreed to in writing by the Executive Director, shall further require insurance limits of not less than \$1.5 million and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance or such increased liability limits as set forth in Minnesota Statutes Section 466.04. Upon request, an executed copy of each agreement, along with evidence of insurance, shall be promptly provided to the Executive Director.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2012, and shall continue until December 31, 2014. Notwithstanding the above and with respect to Lots B and C only, the term of this Agreement shall exclude the period of November 10, 2012 through December 31, 2012. Use of Lots B and C during this period is addressed separately in the Bentleyville Management Agreement. It is anticipated by the parties that the City will enter into an agreement with Bentleyville for parking for the years 2013 and 2014.

5. LICENSE FEE. The City agrees that for the use of the Licensed Premises, it shall pay \$62,000 to DEDA each year during the term of the Agreement, said payment to be made on or before January 31 for the preceding year, payable from City Fund 505-015-1481-5447 (Parking Fund, Administrative Services, Meters & Municipal Lots, Payment to other Govt. Agencies) into DEDA Fund 860. Notwithstanding the above, in the event that DEDA receives parking fees under the Bentleyville Management Agreement of \$62,000 or less, then the City shall only be required to pay to DEDA the difference between \$62,000 and the amount paid to DEDA under the Bentleyville Management Agreement. However, in the event that DEDA receives more than \$62,000 under the Bentleyville Management Agreement in 2012, then DEDA shall pay to the City the difference between such amount and \$62,000, said payment to be made on or before January 31, 2013, payable from DEDA Fund 860 into City Fund 505-015-1481-4654 (Parking Fund, Administrative Services, Meters & Municipal Lots, Other Reimbursements). If DEDA fails to timely pay to the City those fees in excess of \$62,000 received by DEDA under the Bentleyville Management Agreement in 2012 as set forth herein, then the City shall have the right to off-set the full amount of the unpaid fees against any future fees owed to DEDA by the City under the terms of this Agreement.

6. TERMINATION. Either party may terminate this Agreement without cause upon one hundred thirty (130) days' written notice to the other party as provided for in Paragraph 22. Upon termination, the City shall be responsible for payment of a prorated portion of the annual license fee as follows. If terminated during:

January through April	0%
May through June	5%
July	15%
August	30%
September through November	45%
December	100%

7. DEDA WARRANTY. DEDA makes no representation that the Licensed Premises are suitable for any specific uses and the City accepts the Licensed Premises in an "as is" condition without representations or warranties of any kind. The operation of parking and all other activities on the Licensed Premises shall be at the sole risk of the City. DEDA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

8. MAINTENANCE. The City agrees to exercise reasonable care in the maintenance of the Licensed Premises during the term of this Agreement. The City shall not make any alterations or improvements to the Licensed Premises without the prior written consent of the Executive Director and upon the terms and conditions which may be imposed by the Executive Director in his/her sole discretion. The City shall plow snow from the DEDA Lots and shall provide for litter clean up and trash removal

on the Licensed Premises. Except for the construction of capital improvements as provided for in Paragraph 10 below, the City shall surrender the Licensed Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement at no expense to DEDA, reasonable wear and tear excepted. The City agrees to pay upon demand any damage done to the Licensed Premises by the City, its employees, servants, agents, contractors, invitees and licensees during the term of this Agreement.

9. UTILITIES. The City shall be responsible for the cost of all utilities to the Licensed Premises.

10. CAPITAL IMPROVEMENTS. It is anticipated that the City may, at its expense, desire to make certain capital improvements to the Licensed Premises which may include paving Lot B. Additionally, the City has agreed to construct a non-motorized trail at its expense as shown on Exhibit A on or before September 30, 2012. The trail shall consist of a sixteen-foot wide trail corridor including a ten-foot wide paved trail with a two-foot wide shoulder on each side. The City shall not make any capital improvements to the Licensed Premises without the prior written consent of the Executive Director and upon the terms and conditions which may be imposed by the Executive Director in his/her sole discretion. The City shall be responsible for securing all necessary permits and approvals required by the City and all other regulatory agencies having jurisdictional authority over any of the work to be performed.

Prior to any work being performed, the City shall provide to the Executive Director for written approval complete contract drawings and specifications on all work to occur on the Licensed Premises. All such work shall conform to all applicable regulations, building codes and health standards and shall be done by competent contractors in the time and manner approved by the Executive Director. The City shall require all contractors to obtain construction bonds as well as public liability and property insurance in such amounts that will protect DEDA's interest in the Licensed Premises, and DEDA shall be named as an additional insured on all such insurance policies. The City shall pay for all costs in connection with improvements to the Licensed Premises including but not limited to permit fees, engineering fees and construction costs.

Upon termination of this Agreement, all such capital improvements to the Licensed Premises shall become the property of DEDA.

11. ACCESS. DEDA expressly reserves the right to the unlimited access to the Licensed Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection and ensuring that the provisions of this Agreement are complied with by the City.

12. SALE OR DEVELOPMENT OF LOT C AND/OR LOT D. DEDA contemplates and the City understands and agrees that DEDA may sell or develop Lot C and/or Lot D during the term of this Agreement. DEDA agrees to give the City seventy-five (75) days' written notice of such sale as provided for in Paragraph 22. In the event of such sale(s) or development, Lot C or Lot D or both, as applicable, shall cease to be part of the Licensed Premises and the license fee shall be reduced on a prorated basis using an annual base rate of \$3,500 per lot.

13. HOLD HARMLESS. DEDA shall not in any way be liable or responsible for any accident or damage that may occur in the City's use of the Licensed Premises during the term of this Agreement. The City agrees to defend, indemnify, and save harmless DEDA, and its officers, agents, servants, and employees from any and all liens, judgments, claims including those for contribution and indemnity, suits, demands, liability, costs, damages, and expenses asserted by any person or persons including agents or employees of DEDA or the City by reason of death or injury to person or persons or the loss or damage to property or any cause of action arising out of or in connection with or relating to the City's use or occupancy of the Licensed Premises except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of DEDA and its officers, agents, servants or employees. On ten days' written notice from DEDA, the City will appear and defend all lawsuits against DEDA growing out of such injuries or damages.

14. INSURANCE. During the term of this Agreement, the City, at its own cost and expense, shall self insure comprehensive liability and property damage insurance applicable to the Licensed Premises and the City's employees, servants, agents, contractors, invitees and licensees, sufficient to protect the interests of DEDA with a combined single limit of at least \$1,500,000; for each occurrence \$500,000; and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. DEDA shall be considered an additional insured.

15. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the City as an agent, representative, or employee of DEDA for any purpose or in any manner whatsoever. The City and its employees shall not be considered employees of DEDA and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the City's employees or agents while so engaged, and any and all claims whatsoever on behalf of the City's employees and agents arising out of employment shall in no way be the responsibility of DEDA. The City's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay, and PERA.

16. REPORTING. The City agrees that, as provided in Minnesota Statutes 16C.05, Subdivision 5, all the City's books, records, documents, and accounting procedures and practices related to this Agreement are subject to examination by DEDA and the State Auditor for six (6) years from the date of execution of this Agreement. Upon ten (10) days' advanced notice by DEDA, the City shall provide all requested financial information. DEDA agrees that the City may examine DEDA's books, records and related documents for the purpose of determining the license fee due DEDA and/or the payment to be made by DEDA to the City for the calendar year 2012 (depending on the parking fees received by DEDA under the Bentleyville Management Agreement in 2012) payable on or before January 31, 2013, pursuant to Paragraph 5 of this Agreement.

17. ASSIGNMENT. The City shall not in any way assign or transfer its rights or interests under this Agreement or subcontract with any other party without the prior written consent of the Executive Director. Notwithstanding the above, the parties contemplate that the City will enter into an Agreement with the DECC to undertake some or all of the City's rights and interests hereunder. The terms of any such Agreement are subject to the approval of the Executive Director, which approval shall not be unreasonably withheld.

18. LAWS, RULES AND REGULATIONS. During the term of this Agreement, the City, agrees to operate the Licensed Premises and all activities conducted on the Licensed Premises in strict compliance with the United States Constitution and with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, and DEDA, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. The City shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. The City agrees to procure, at the City's expense, all licenses and permits necessary for carrying out the provisions of this Agreement.

19. WAIVER. The waiver by DEDA or the City 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.

20. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person 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 hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

21. DEFAULT. If the City fails to make any payment due under this Agreement, or if the City becomes bankrupt or insolvent, or if the City fails in keeping and performing any term or condition of this Agreement and such a default continues for thirty (30) days after DEDA has given written notice to the City of said default, or, in the event that such default shall be incapable of cure during said thirty-day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion, DEDA may terminate this Agreement by written notice to the City setting forth the date of termination. In such event, DEDA may seek and be entitled to monetary damages from the City, may seek and be entitled to injunctive and declaratory relief, and may seek other legal or equitable relief.

22. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to DEDA, 402 City Hall, 411 West First Street, Duluth, Minnesota 55802, ATTN: Executive Director; and addressed to City of Duluth, 402 City Hall, 411 West First Street, Duluth, MN 55802, ATTN: Chief Administrative Officer or to such other persons or addresses as the parties may designate to each other in writing from time to time.

23. COMPLIANCE WITH AGREEMENT. The rights of the City to use the Licensed Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are complied with promptly by the City.

24. 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.

25. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

26. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their 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 thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

27. ENTIRE AGREEMENT. This Agreement, including Exhibit A, 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.

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

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

CITY OF DULUTH

By: \_\_\_\_\_  
Its President

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its Secretary

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Countersigned:

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

Date: \_\_\_\_\_

Approved as to form:

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



**EXHIBIT E**

**LSCA License Agreement**

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the CITY OF DULUTH (the "City"), and the LAKE SUPERIOR CENTER AUTHORITY ("LSCA").

The parties acknowledge the following:

A. The City owns certain property located in the Bayfront area of the City of Duluth known as Bayfront Festival Park upon which various festivals and activities occur ("Bayfront Festival Park").

B. LSCA owns certain property located in the Bayfront area of the City of Duluth adjacent to the Bayfront Festival Park.

C. It is anticipated that the City will enter into an Agreement with the Duluth Entertainment Convention Center Authority ("DECC") or other third party service provider to produce, promote, coordinate and manage special events held at Bayfront Festival Park.

D. The City desires to enter into this License Agreement to allow the use of LSCA's property adjacent to the Bayfront Festival Park for Bayfront Festival Park-related purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. THE LICENSE. Subject to the terms and conditions set forth herein, LSCA grants to the City an exclusive license for the use and during the term set forth below in LSCA's property adjacent to Bayfront Festival Park as shown on Exhibit A (the "Licensed Premises").

2. USE OF THE LICENSED PREMISES. The Licensed Premises shall be used solely for purposes consistent with the use of Bayfront Festival Park including but not limited to food vendors, alcohol vendors and other concessionaires and business ventures.

3. THIRD PARTY AGREEMENTS. If the City enters into third party agreements for purposes consistent with the use of Bayfront Festival Park with respect to the Licensed Premises, such third party agreements shall require that the third party indemnify LSCA and name LSCA as an additional insured on its commercial general liability insurance and, if appropriate, its automobile insurance policies.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2012, and shall continue until December 31, 2014.

5. LICENSE FEE. There shall be no license fee due under this Agreement.

6. TERMINATION. Either party may terminate this Agreement without cause upon one hundred thirty (130) days' written notice to the other party as provided for in Paragraph 16.

7. ALTERATIONS. LSCA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

8. MAINTENANCE. The City agrees to exercise reasonable care in the maintenance of the Licensed Premises during the term of this Agreement. The City shall surrender the Licensed Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement at no expense to LSCA, reasonable wear and tear excepted.

9. UTILITIES. The City shall be responsible for the cost of all utilities to the Licensed Premises.

10. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint venturers or associates between the parties hereto or as constituting the City as the employee of LSCA for any purpose or in any manner whatsoever.

11. THIRD PARTY SERVICE PROVIDERS. LSCA understands that the City contemplates entering into an Agreement with the DECC or another third party service provider to produce, promote, coordinate and manage special events held at Bayfront Festival Park to include the Licensed Premises. LSCA also understands that the City may enter into other agreements for the use of the Licensed Premises consistent with Bayfront Festival Park-related purposes. LSCA hereby consents to such agreements.

12. LAWS, RULES AND REGULATIONS. During the term of this Agreement, the City, agrees to operate or cause the operation of the Licensed Premises to be in compliance with the United States Constitution and with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County and City of Duluth.

13. WAIVER. The waiver by the City or LSCA 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.

14. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person 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 hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

15. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to City of Duluth, 402 City Hall, 411 West First Street, Duluth, Minnesota 55802, ATTN: Chief Administrative Office ; and addressed to Lake Superior Center Authority, 353 Harbor Drive, Duluth, MN 55802, ATTN: Executive Director or to such other persons or addresses as the parties may designate to each other in writing from time to time.

16. APPLICABLE LAW AND VENUE. 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. All proceedings related to this Agreement shall be venued in St. Louis County, Minnesota.

17. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

18. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their 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 thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

19. COUNTERPARTS AND DELIVERY. This Agreement may be executed in separate counterparts with the same effect as if all signatures were on the same Agreement. Delivery of an executed counterpart of this Agreement by electronic file or facsimile shall be as effective as delivery of an original executed counterpart hereof.

20. ENTIRE AGREEMENT. This Agreement, including Exhibit A, 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.

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

LAKE SUPERIOR CENTER AUTHORITY

CITY OF DULUTH

By: \_\_\_\_\_  
Its President

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its Secretary

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Countersigned:

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

Date: \_\_\_\_\_

Approved as to form:

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

