

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

13-0169R

RESOLUTION AUTHORIZING LEASE AGREEMENT WITH NORTH SHORE SUP, LLC, FOR OPERATION OF A SEASONAL BUSINESS OFFERING PADDLEBOARD RENTALS, GUIDED TOURS AND A VARIETY OF INSTRUCTIONAL CLASSES AT A CITY OWNED PROPERTY LOCATED AT 45TH STREET AND MINNESOTA AVENUE.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. _____, with North Shore SUP, LLC, for the lease and operation of a seasonal business offering paddleboard rentals, guided tours and a variety of instructional classes at a city owned property located at 45th street and Minnesota Avenue. This is a one year agreement requiring written confirmation to continue the automatic renewal option of two additional years (ending August 31, 2015). All payments to the city will be deposited into 205 (Parks Fund), 130 (Community Resources), 1219 (Parks Operating), 4644 (Misc Fees, Sales & Services).

Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a lease agreement with North Shore SUP, LLC, for the operation of a seasonal business offering affordable paddleboard rentals, instructional services, guided tours and a variety of classes. Paddle board yoga, paddling with your child, and paddling with your pup are several of the classes to be held.

This lease is a one year lease with the option of an automatic two year renewal. The termination date of the contract is through August 31, 2013. Written confirmation stating neither party wishes to terminate and no changes need to be made to the agreement must be submitted within 90 days (on or before December 29, 2013) of the initial term. Upon written submittal the agreement will automatically renew for an additional two (2) year period, expiring on August 31, 2015.

A monthly rental fee of \$100 will be required for the initial term of this agreement. Upon continuation of the agreement (years two and three) a monthly fee of \$125 will be applicable for each operating season. All rent shall be due on or before the first day of each month.

VENDING SERVICE LEASE AGREEMENT

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the City of Duluth (City), and North Shore SUP, LLC, a limited liability company (Vendor).

WHEREAS, the City owns park property located at 45th Street and Minnesota Avenue, Duluth, MN 55805, City of Duluth, St. Louis County, Minnesota shown on Exhibit A attached to this Agreement (“Premises”); and

WHEREAS, Vendor desires to operate a seasonal business offering affordable paddleboard rentals, guided tours, and instruction along with offering a variety of classes: including paddle board yoga, paddling with your child, paddling with your pup, and more (the “Services”);

WHEREAS, Vendor desires to lease the Premises to provide its services to the community and tourists as set forth herein; and

WHEREAS, the City desires to allow the Vendor to use the Premises as described herein.

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

1. Administration. For purposes of administering this Agreement, the City shall act through its Manager of Parks & Recreation or designee (the “Manager”). The primary person(s) responsible for the administering the Agreement and the provision of Services shall be Kathleen Bergen, Manager.

2. Purpose and Use of Leased Premises.

a. During the Term of the Agreement, Vendor shall have the right to provide its Services, at a site designated by Manager or his/her designee, which site is identified on Exhibit A (the “Leased Premises”). Vendor is taking the Leased Premises in an “as is” condition and City has no obligation to make any improvements or alterations to the Leased Premises to prepare it for Vendor’s use.

b. Vendor shall operate his Services on a regular daily basis from a minimum of May 15 through August 31, weather permitting (the “Operating Season”). However, for calendar year 2013, the Operating Season shall not begin until after the effective date of a proposed ordinance scheduled to be heard by the Duluth City Council in March of 2013, which ordinance re-zones the Leased Premises as P-1. Vendor understands that if said ordinance is not passed, then the operation of his Services at the Leased Premises would not be allowed under the current zoning regulations, and this Agreement shall become immediately null and void. Vendor may extend the Operating Season by a one (1) month period on either side of the Operating

Season if Vendor determines in good faith that the extension of Services will benefit the seasonal tourists, the community and Vendor's business. Any extension beyond the forgoing 1 month period must have the prior written approval of the Manager.

c. Vendor agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth, and specifically including the Unified Development Chapter and all zoning and Airport Overlay District requirements.

d. Vendor acknowledges and agrees that all signage is subject to the Manager's prior approval and shall comply with all City Codes governing the use and placement of signs.

e. Vendor shall keep the Leased Premises in a neat, orderly condition and to perform all necessary and proper cleaning. Vendor shall be responsible for providing trash receptacles or utilizing a trash receptacle provided by the City, and picking up litter within 50 feet of Vendor's operation.

f. City shall have the right to inspect the Leased Premises at any time.

g. Vendor shall promptly notify the City in writing of any incident of injury or loss or damage to the property of City or Vendor's participants or invitees occurring within the Leased Premises or in connection with Vendor's Services during the Term of this Agreement. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's form of Incident Report is attached hereto as Exhibit B.

h. Vendor shall not create or permit any mortgage, encumbrance or lien or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Leased Premises or any part thereof.

i. The rights of Vendor to build, occupy, use, and maintain the above described Leased Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with strictly and promptly.

3. Term and Termination.

a. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on May 15, 2013 or the effective date of the ordinance referenced in paragraph 2.b., whichever is later, and shall continue through August 31, 2013 unless earlier terminated as provided for herein (the "Initial Term"). The parties shall meet and confer within ninety (90) days after the end of the Initial Term (on or before December 29th) to discuss the terms and conditions of the Agreement. If the parties agree that no changes are needed, which shall be confirmed in writing, and that neither party wishes to terminate the Agreement as

provided for herein, then this Agreement shall be automatically renewed for one additional two (2) year period and shall expire on August 31, 2015.

b. This Agreement may be terminated by either party by serving thirty (30) days written notice upon the other. Upon termination, Vendor agrees to surrender possession of said Leased Premises to City in as good condition and state of repair as said Leased Premises were in at the time Vendor took possession, reasonable wear and tear, and acts of God excepted. Vendor shall remove all Vendor equipment within ten (10) business days. Any Vendor equipment remaining after the expiration of said ten (10) day period shall become the property of the City.

c. Should Vendor be in default or violation of any of the provisions of this Agreement, City shall provide to Vendor written notice of such violation or default and shall allow Vendor thirty (30) days within which to cure or remedy any violations or defaults set forth therein. If such violation or default is not cured or remedied within thirty (30) days, City may terminate this Agreement immediately by serving notice to Vendor in the manner described.

d. In the event of default by Vendor, City, in addition to other rights or remedies it may have, shall have the immediate right of reentry in the Leased Premises, and after five (5) days prior written notice to Vendor, may remove all persons and property from the Leased Premises. The property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Vendor.

4. Rent. For the Initial Term of this Agreement, Vendor shall pay City a monthly fee of One Hundred and no/100th dollars (\$100.00) per month for each Operating Season, pro-rated for any partial months. For years two and three of this Agreement, Vendor shall pay City a monthly fee of One Hundred Twenty-five and no/100th dollars (\$125.00) for each Operating Season. All rent shall be due and payable on or before the first day of each month. Rent proceeds to be deposited in Fund 205-130-1219-4627-01.

All payments and monthly reports should be sent to:

City of Duluth

Attn: Manager – Parks & Recreation

411 W. 1st Street, Ground Floor

Duluth, MN 55802

Vendor shall maintain adequate books and records relating to the operation for Vendor's permitted business on the Leased Premises, which books and records shall be available to City for inspection and audit.

5. Insurance. Vendor shall maintain Commercial General Liability insurance on a claims made basis with limits of not less than One Million and No/100s Dollars (\$1,000,000) per

claim and One Million and No/100s Dollars (\$1,000,000) per occurrence for personal and bodily injury and, property damage liability. Current ISO additional insureds endorsement CG 20 10 is not acceptable. Insurance shall cover:

- a. Public liability, including premises and operations coverage.
- b. Personal injury.
- c. Contractual liability covering the indemnity obligations set forth herein.
- d. Products--completed operations.
- e. Professional liability insurance.

Vendor shall maintain Workers' Compensation Insurance in accordance with the laws of the State of Minnesota. Vendor agrees to provide a Certificate of Insurance to City prior to the beginning of each operating season, evidencing such coverage and naming the City of Duluth as additional insured on the Commercial General Liability insurance. The Certificates shall provide that the policies shall not be canceled during the life of this Agreement without at least thirty (30) days' advance written notice to the City. In the event that an "accord" form of certification is used, the words, "endeavor to" shall be stricken from the notification provisions thereof.

6. Indemnification. It is understood that the Vendor hereby agrees to indemnify, save harmless, and defend City from any and all claims, including a claim for contribution or indemnity, suits, losses, costs, damages, or expenses on account of injuries or death of any person, including employees of the said Vendor and on account of any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody and control of Vendor, or for any claim or cause of action arising or growing out of the use of the Leased Premises or the vending activity allowed herein.

7. The possession, use or sale of alcohol is permitted on the Premises only under the following conditions:

- a. Alcohol may be possessed, consumed or served only when the appropriate permit or license has been obtained from the City prior to the event and all application, fee and other requirements have been met.
- b. Alcohol may be sold only when the appropriate on-sale alcoholic beverage license has been obtained from the City prior to the event and all application, fee and other requirements have been met.
- c. At least thirty (30) day's written notice of a request to serve or sell alcohol shall be provided to the City before the event to give the City sufficient time to review the request. Requests that are not timely submitted may be denied.

d. Vendor must have adequate procedures in place to ensure that no one under the age of twenty-one (21) is served alcohol and to ensure that no one is served alcohol in an amount to cause intoxication.

e. Depending on the request, licensed peace officer(s) may be required to attend the event.

f. All state laws and Duluth City Code provisions shall be followed at all times.

g. The City reserves the right to prohibit the serving, sale or possession of alcohol on the Premises.

8. Assignment. Vendor shall not, in any way, assign or transfer any of his rights or interests under this Agreement in any way whatsoever without the prior written consent of the Manager. Further, Vendor shall not assign any other person as being primarily responsible for the operation of the vending activity hereunder without the prior written consent of Manager.

9. Independent Contractor. Any and all employees of Vendor or any other persons, while engaged in the performance of any service required by Vendor under this Agreement, 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 said employees or any other persons while so engaged, and any and all claims made by third parties as a consequence of any act or omission on the part of Vendor or its agents and employees, or any other persons, while so engaged in any of the services provided to be rendered herein, shall in no way be the obligation or responsibility of the City.

10. Notices. Unless otherwise provided herein, notice to the City or YMCA 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
Parks and Recreation Division
Attention: Parks Manager
411 West First Street
Duluth, MN 55802

Vendor
North Shore SUP, LLC
7805 Upper 145th Ct. W.
Apple Valley, MN 55124

11. General Terms and Conditions.

a. Vendor agrees to comply in all respects with all federal, state and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter promulgated pertaining to unlawful discrimination.

b. No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

c. 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.

d. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, 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 the Agreement did not contain the particular term or provision held to be invalid.

e. Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

f. This Agreement may be amended only by a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

g. This Agreement constitutes the entire Agreement between City and Vendor and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

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

CITY OF DULUTH

By: _____
Mayor

ATTEST:

City Clerk
Date: _____

VENDOR INFORMATION

By: _____
Its _____
Printed Name _____

By: _____
Its: _____
Printed Name _____

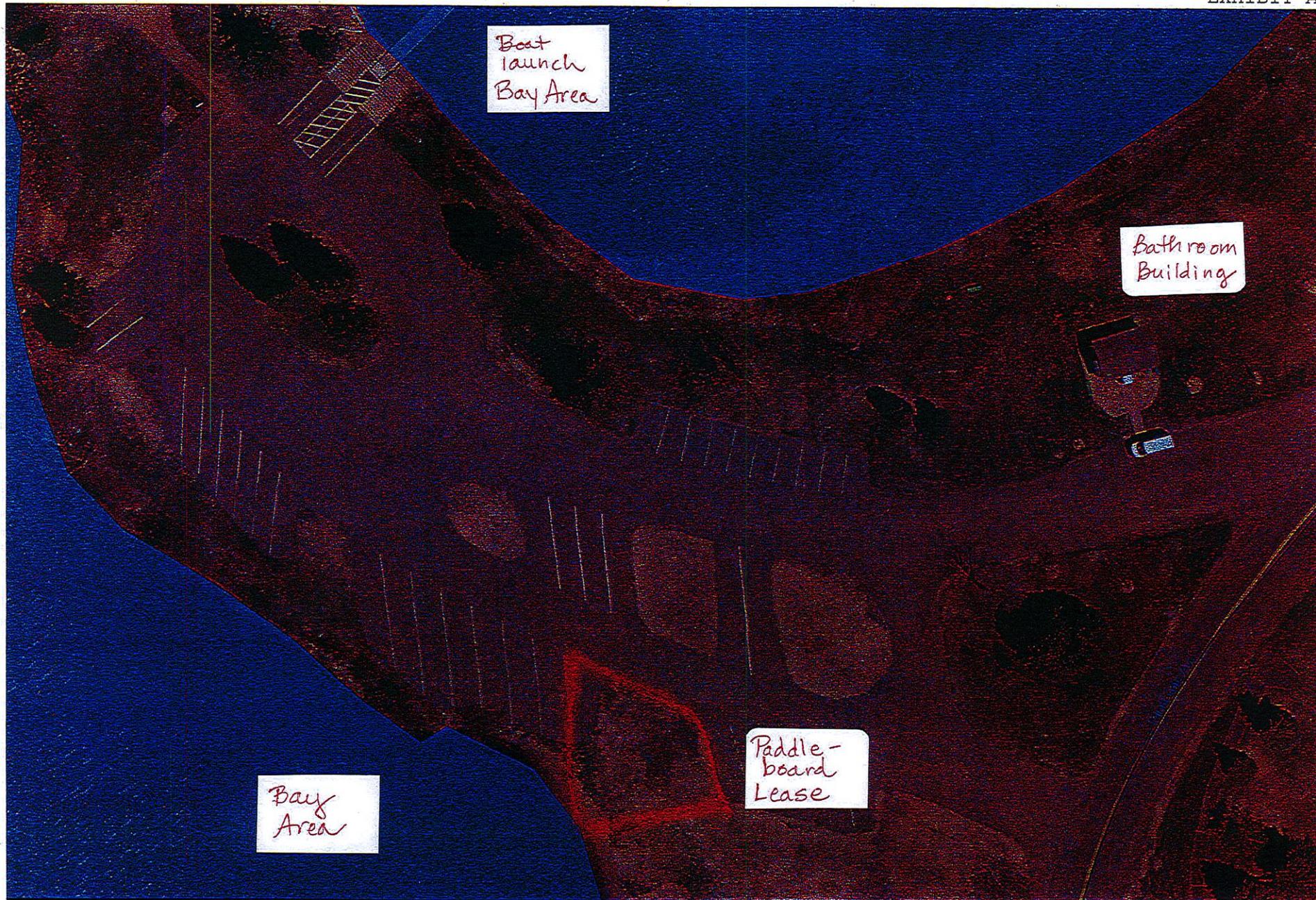
Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A
Leased Premises



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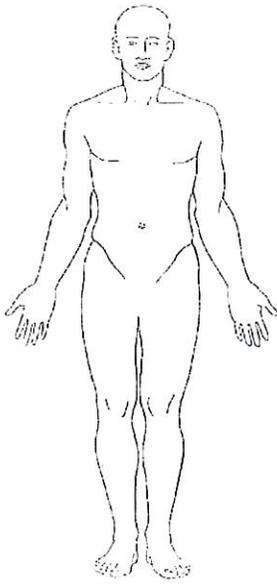
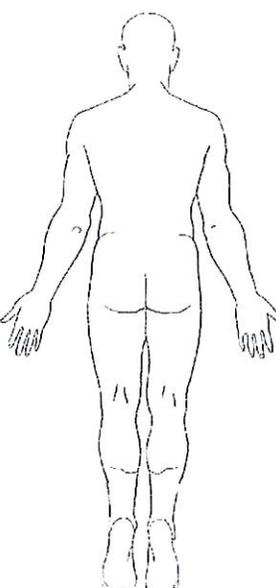
City of Duluth Parks, Trails and Bikeways

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EXHIBIT B
INCIDENT REPORT

CITY OF DULUTH
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? _____					
CAUSE <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		MARK AREAS OF INJURY BELOW <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> Front  </div> <div style="text-align: center;"> Back  </div> </div>			
TYPE OF INJURY <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

INCIDENT LOCATION:			
POLICE CALLED? <input type="checkbox"/> Yes <input type="checkbox"/> No		Police Traffic Accident Report ICR#:	
City Vehicle, Property, or Equipment Involved	Description: _____ Vehicle #, Make, Model, Year: _____ Describe Damage: _____		
Non-City Vehicle, Property, or Equipment	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: _____		
Weather Conditions		Roadway Conditions:	Light Conditions:
<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		<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	<input type="checkbox"/> Night <input type="checkbox"/> Day <input type="checkbox"/> Good <input type="checkbox"/> Poor
Other:			
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			
MISCELLANEOUS COMMENTS: _____			

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