

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

14-0106R

RESOLUTION AUTHORIZING A THREE YEAR AGREEMENT WITH FUN TIME, LLC FOR THE USE OF THE PILOT HOUSE IN CANAL PARK.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a three year agreement substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with Fun Time, LLC for the use of the Pilot House in Canal Park for operating a bicycle rental business with rent payments payable to Fund 110-121-1222-4622 (general, public administration, facilities management, rent of buildings).

Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

FACS EB/SIW:bel 02/25/2014

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a three year agreement with Fun Time, LLC for the use of the Pilot House in Canal Park for operating a bicycle rental business. The agreement may be terminated by either party on 30 days' notice. In consideration, Fun Time, LLC will pay the city annual rent of twelve percent of net receipts or \$15,000, whichever is greater for the first year, twelve percent of net receipts or \$15,375, whichever is greater, for the second year and twelve percent of net receipts or \$15,760, whichever is greater, for year three.

## LEASE AGREEMENT

City of Duluth and Fun Time, LLC

THIS LEASE AGREEMENT effective as of the date of attestation by the City Clerk (“Effective Date”), by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City”, and Fun Time, LLC, a limited liability company under the laws of the State of Minnesota, hereinafter referred to as “Lessee”.

WHEREAS, the City is the owner of the Pilot House of the vessel George Hindmand in Canal Park located on property adjacent to the Marine Museum Parking Lot at the Lakewalk trailhead; and

WHEREAS, the City desires to lease the Pilot House to a private user whose use will complement the development and character of the Canal Park area and generate revenues for the City; and

Whereas, Lessee has proposed to establish a business on the Leased Premises as defined below to provide a bicycle rental business; and

WHEREAS, the City is willing to lease the Leased Premises to Lessee for said purposes.

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

**1. ADMINISTRATION.** For purposes of administering this Agreement, the City shall act through its Facilities & Property Manager or designee, Erik Birkeland (the “Manager”). Lessee shall act through its owner or designee, Rodney Knight (the “Owner”).

**2. LEASED PREMISES.** City agrees to lease to Lessee and Lessee agrees take from City under the terms and conditions of this Agreement the Leased Premises for the sole purpose of operating a bicycle rental business. By entering into this Lease Agreement, City is making no warranty or representation, either expressed or implied, as to the merchantability or fitness for any particular use of the Leased Premises or other representation or warranty, express or implied, with respect to the condition of the Leased Premises. The Leased Premised is described as the Pilot House of the vessel George Hindmand in Canal Park located on

property adjacent to the Marine Museum Parking Lot at the Lakewalk trailhead shown on the attached Exhibit A.

**3. TERM AND TERMINATION.**

- a. Term: This Agreement shall commence on the Effective Date and continue until October 31, 2016, during the periods set forth below, unless terminated earlier as provided for herein. Considering the seasonal nature and use of the Leased Premises, Lessee shall have possession of the Leased Premises between the approximate dates of April 1st and October 31st, weather permitting (the "Operating Season"). It shall be the sole obligation and responsibility of Lessee to remove non-fixtured Leasehold Improvements from the Leased Premises prior to October 31 of each year; and any damage occurring to any such non-fixtured Leasehold Improvements, including, but not limited to, counters and shelves, shall be the sole responsibility and obligation of Lessee and not that of City. Any non-fixtured Leasehold Improvements not removed by November 15 of the final year of this Agreement shall be deemed to have been abandoned to the City and the right of the Lessee to possession thereof shall cease.
- b. This Agreement may be terminated by either party by serving thirty (30) days written notice upon the other as described herein. Lessee shall remove all Lessee equipment not later than the expiration of the notice period and any such Lessee equipment remaining after this period shall become the property of the City. Should Lessee violate any of the provisions of this Agreement, City may terminate this Agreement immediately by serving written notice to Lessee and City shall be entitled to seek equitable relief (including without limitation injunctive relief, specific performance or other equitable remedies) in addition to all other remedies provided hereunder or available at law.
- c. Upon termination of this agreement, Lessee agrees to surrender possession of the Premises to City in as good condition and state of repair as said premises were in at the time Lessee took possession, reasonable wear and tear, and acts of God excepted.

**4. RENT PAYMENTS**

- a. 2014 Operating Season: Lessee shall pay to the City \$15,000 or twelve percent (12%) of Net Receipts (hereinafter defined) from all bicycle, vending or concession sales whichever is greater received during the 2014 Operating Season. (“Net Receipts” means all amounts actually collected by Lessee from bicycle rental or from vending and concession sales net of discounts, refunds, rebates, credits, credit card returns, credit card charges, uncollected checks and all applicable taxes).
- b. 2015 Operating Season: Lessee shall pay to the City \$15,375 or twelve percent (12%) of Net Receipts from all bicycle, vending or concession sales whichever is greater received during the 2015 Operating Season.
- c. 2016 Operating Season: Lessee shall pay to the City \$15,760 or twelve percent (12%) of Net Receipts from all bicycle, vending or concession sales whichever is greater received during the 2016 Operating Season.
- d. The payments shall be paid to the City on or before November 15th of each year and include an itemized financial report of all monies taken in and disbursed in the Leased Premises operations for the prior Operating Season. Payment shall be made to the City of Duluth and directed to: City Treasurer at 411 W. 1st Street, Duluth, MN 55802. All payments to be deposited into Fund 110-121-1217-2120-4622 (General Fund, Public Administration, Maintenance Operations, Architecture & Facilities Management, Rent of Buildings). All payments provided for in this Paragraph shall be in addition to any payments provided for elsewhere in this Paragraph or otherwise in this Agreement
- e. Lessee shall file with the City Auditor an annual itemized statement showing all Lessee’s income and expenses related to the use of the Leased Premises. The statement shall be filed not later than May 1 of each year this Agreement remains in effect and shall include all required financial information from the previous year.

**5. RECORD KEEPING AND TAXES.**

- a. Lessee agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all Lessee books, records, documents, and accounting procedures and practices related to

the operation of the Premises are subject to examination by the City or the State Auditor for six (6) years from the date of execution of this agreement. Upon seventy-two (72) hours advance notice by City, Lessee shall provide all requested financial information.

- b. Lessee shall pay or cause to be paid all lawful taxes and governmental charges in a timely manner. Lessee shall further be obligated to pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date; provided that nothing shall prevent Lessee from contesting in good faith, any such payment requirement except as such contest would negatively affect the City's rights under this Agreement.

**6. MISCELLANEOUS PAYMENTS AND SERVICES** Lessee shall be responsible for the following:

- a. Janitorial Services: Lessee shall keep the Leased Premises in a neat, clean, orderly and sanitary condition during the term of possession of the Lease. In the event that Lessee fails to do so, City may itself clean or cause to be cleaned the Leased Premises, and Lessee agrees to reimburse City for the direct and indirect costs incurred by City for the performance of said work immediately upon being billed therefore by City.
- b. Refuse and Garbage: Lessee assumes all responsibility for the disposal of refuse and garbage generated by its operations on the Leased Premises during the term of possession of the Lease and agrees to pay for all costs related thereto. Lessee agrees to comply with City's guidelines relating to recycling, energy efficiency and maintenance of the Premises. A copy of the guidelines will be provided to Lessee upon their execution of this Agreement.
- c. Maintenance: All ordinary maintenance and repair of the Leased Premises, including but not limited to maintenance or repair because of vandalism, shall be done by the party then in possession under the Lease and the costs thereof shall be borne entirely by said party. Painting of the Pilot House shall be the

responsibility of the Lessee. Structural maintenance to the Leased Premises shall be the responsibility of the City.

- d. Utilities: Lessee shall pay any and all charges for utilities furnished to the Leased Premises as they are incurred, including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, internet, cable TV and electrical power.
- e. Licenses, Fees and Taxes: Lessee hereby agrees to pay all license, fees, taxes and assessments of any kind whatsoever which arise because of, out of, or in the course of Lessee's operation including real property taxes, if applicable. It is further agreed that City may pay the same on behalf of Lessee and immediately collect the same from the Lessee, if necessary.
- f. Other Costs of Operating the Property In addition to the above costs and charges, Lessee shall bear and promptly pay on or before the date due all other costs, fees and charges of any kind whatsoever, arising out of the lease, use or occupancy of the Licensed Premises.
- g. Payment Obligations Unconditional The obligations of Lessee to pay any amounts due to City under this Lease Agreement in accordance with the terms hereof shall be absolute and unconditional, irrespective of any defense or rights of set off, recoupment or counterclaim which may at any time be available against City. Such payments shall be due without notice or demand therefore except as specifically provided for herein.

**7. LESSEE' OPERATIONAL RULES:** Lessee will operate its bicycle rental business in accordance with its established rules that are posted in each surrey bike as shown on the Attached Exhibit D. Lessee will modify its established rules upon the reasonable request of the Manager.

**8. PAYMENT BY CITY** Should Lessee fail to pay any such costs, fees or charges set forth above or otherwise necessary to the preservation and use of the Leased Premises or to Lessee's business thereon, City may, at its sole discretion and upon ten (10) days prior, written notice to Lessee, pay such costs, fees and charges and thereupon, Lessee shall promptly

reimburse City for the same and City may collect the same as it deems appropriate including exercising the remedies authorized under the Termination provisions of this Lease Agreement.

**9. ALTERATIONS OR IMPROVEMENTS:**

- a. Lessee may, at its sole cost and expense, make suitable improvements or alterations to the Premises upon advance written approval from the City Architect. All such improvements shall become the property of the City except as otherwise agreed upon in writing. Prior to commencing any improvements or alterations, Lessee shall submit to the City a Project Proposal Request along with detailed plans. A copy of the Project Proposal Request is attached to this Agreement as Exhibit B. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Codes. Lessee shall be responsible for operational costs and maintenance of such improvements, installations, and facilities and shall operate them in a safe manner.
- b. Lessee agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Premises, Lessee will provide the City with sufficient proof of required insurance, including worker's compensation.

**10. INCIDENT REPORTS:** Lessee shall promptly notify the City in writing of any incident of injury or loss or damage to the property of City or any Lessee's participants or invitees occurring within the Premises 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 C.

**11. SIGNAGE:** It is anticipated that Lessee will construct or erect signage on the Leased Premises to advertise its business. Lessee agrees that the design and construction or erection of such signage conform to the requirements of all applicable laws, ordinances, rules and regulations and, in addition, shall be subject to the approval of the Manager which approval shall not be reasonably withheld.

**12. SURRENDER OF POSSESSION:** Upon the expiration or other termination of this Agreement, Lessee's authority to use the Leased Premises, rights, facilities and equipment herein granted shall cease and Lessee shall, upon expiration or termination, promptly and in good condition subject, however, to ordinary wear and tear, surrender possession of the same to the City. In the event that Lessee has in any way changed, altered or modified the premises, Lessee covenants to return the same to the condition they were in at the time of the signing of this Lease Agreement or, in the alternative, to pay the City for the cost of returning them to said condition; provided, however, that the Manager may, at any time prior to the termination of this Agreement, consent to any such improvement remaining after such termination in which case this requirement shall be deemed to have been waived. Upon termination, any Leasehold Improvements which have become part of the realty, including but not limited to heating and lighting modifications, shall become the property of the City, and the same, together with the Leased Premises, shall be immediately returned to the control of the City. Any Leasehold Improvements not part of the realty shall be removed within fifteen (15) days after the termination of this Agreement or the same shall be deemed to have been abandoned to the City and the right of the Lessee to possession thereof shall cease.

**13. INDEMNITY AND INSURANCE**

- a. Generally Lessee shall to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:
  - i. Any injury to or death of any person or damage to Leased Premises in or upon the Leased Premises, or growing out of or in connection with the use or non-use, condition or occupancy of the Leased Premises or any part thereof during the term of possession and also, without limitation, any and all acts or operations related to the construction on any portion of the Leased Premises. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage,

compensation or benefits payable by or for the Lessee, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;

- ii. Any violation by Lessee of any provision of this Lease Agreement;
- iii. Any violation of any contract, agreement or restriction related to Lessee's use of the Leased Premises which shall have existed at the commencement of the Term of this Lease Agreement or shall have been approved by the Lessee; and
- iv. Any violation of any law, ordinance, court order or regulation by Lessee affecting the Leased Premises or the Leasehold Improvements or the ownership, occupancy or use thereof.

b. Environmental Indemnification In addition to the generality of the foregoing, Lessee hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Leased Premises arising out of Lessee's use and occupancy of the Leased Premises or the Leasehold Improvements or both which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence on the Leased Premises of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to Leased Premises and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before any court of law or administrative agency, including attorneys' fees, expenses, the

fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans, as defined by the foregoing agencies, as may be necessary to meet the requirements of said agencies and any other costs and expenses of any kind whatsoever arising out of conditions existing on the Leased Premises.

- c. Indemnification Procedures Upon ten (10) days' written notice from the City, Lessee shall appear and assume the defense of such action, including the employment of counsel satisfactory to the City and the payment of expenses. In so far as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against the Lessee, City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the Lessee.

**14. INSURANCE:** Lessee shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to Leased Premises arising in any way out of or as a result of Lessee's occupancy of or use of the Leased Premises, carried in the names of the Lessee, any subtenant and the City as their respective interests may appear, as follows:

- a. Property Insurance. During the term of possession, the Leased Premises and the Leasehold Improvements, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a commercially reasonable deductible amount; provided that such deductible amount shall not to exceed Fifty Thousand and No/100 Dollars (\$50,000) per occurrence without the prior written approval of the Director, which approval shall not be unreasonably withheld. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Lessee hereby waives any and all claims or causes of action against City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event

of such loss. In time of war in which the United States of America is a belligerent, the Lessee will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the Leasehold Improvements and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

- b. Liability Insurance. The Lessee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars for Leased Premises damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:
  - i. Public liability, including Leased Premises and operations coverage.
  - ii. Independent contractors--protective contingent liability.
  - iii. Personal injury.
  - iv. Owned, non-owned and hired vehicles.
  - v. Contractual liability covering the indemnity obligations set forth herein.
  - vi. Products--completed operations.
- c. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees' liability insurance shall be carried in limits meeting or exceeding the requirements of the State of Minnesota for such insurance.
- d. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

- e. Certifications. Lessee to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Lessee's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. **The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) – or equivalent, as approved by the Duluth City Attorney's Office.** Lessee shall be permitted to obtain the insurance required under this Lease Agreement on a "blanket" basis, and shall be entitled to satisfy any insurance requirements with a combination of primary liability and umbrella coverage.
- f. Uninsured Loss In the event the Leased Premises or any portion thereof is destroyed by fire or other casualty, the Lessee shall forthwith repair, reconstruct, and restore the Leased Premises to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction or to the condition thereof prior to the commencement of this Lease Agreement, and to the extent necessary to accomplish such repair, reconstruction, and restoration, the Lessee shall apply the proceeds of any insurance received by the Lessee to the payment or reimbursement of the costs thereof. The Lessee shall, however, complete the repair, reconstruction and restoration of any approved Leasehold Improvements and the Leased Premises whether or not the proceeds of any insurance received by the Lessee are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written consent of the Project Administrator,

Lessee may pay the entire proceeds of any insurance proceeds available to Lessee arising out of said damage or destruction to City and terminate this Lease Agreement.

**15. WAIVER:** The waiver by the City or Lessee 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.

**16. REMEDIES CUMULATIVE:** Except as specifically set forth herein, the remedies provided under this Lease Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

**17. Laws, Rules and Regulations:** Lessee agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota, the County of St. Louis, the City of Duluth, and their respective agencies which are applicable to its operations at the Leased Premises, including, but not limited to, all environmental laws and regulations.

**18. CIVIL RIGHTS ASSURANCES:** Lessee for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination as defined by applicable state and federal laws or ordinances in the use of said facilities.

**19. ASSIGNMENT, SUBLETTING AND SUBCONTRACTING:**

- a. Liens The Lessee shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Leased Premises, or any part thereof, provided that if Lessee shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Lessee may, in good faith, contest any such mechanics' or other liens filed or established as long as City does not deem its interest or rights in this Lease Agreement to be subject to foreclosure by reason of such contest.

b. Assignment. Lessee shall not assign, transfer, sublet or subcontract this Agreement or any rights, privileges or duties conferred thereby unless the written approval of the City has been secured and the insurance requirements of this Agreement are met by the third party receiving such interest. Such third party shall agree to be subject to all of the terms and conditions of this Agreement applicable to his agreement and shall be subject thereto. In addition, the approval of any such sublease shall not in any way relieve Lessee of any of its obligations under the Lease Agreement, whether or not such obligations are performed by such sublessee.

**20. AMENDMENT OR MODIFICATION:** This Agreement may be amended or modified by an instrument of equal formality signed by the duly authorized representatives of the respective parties.

**21. NOTICES:** Unless otherwise provided herein, notice to the City or Lessee 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  
Property & Facilities Manager  
1532 West Michigan Street  
Duluth, MN 55806  
218.730.4435 (Office)  
218.576.7396 (Cell)

Rodney Knight,  
Fun Time, LLC,  
3609 Heights Court,  
St. Cloud, MN 53301  
Cell: 320-266-1164

**22. APPLICABLE LAW:** This Agreement, together with all of its articles, terms and provisions, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota.

**23. ENTIRE AGREEMENT:** This Lease Agreement, including Exhibits, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

**24. SEVERABILITY:** 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.

**25. COUNTERPARTS:** 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.

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

**CITY OF DULUTH**

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

ATTEST:

\_\_\_\_\_ s \_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

Approved as to form:

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

Countersigned:

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

**FUN TIME, LLC**

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

Its \_\_\_\_\_

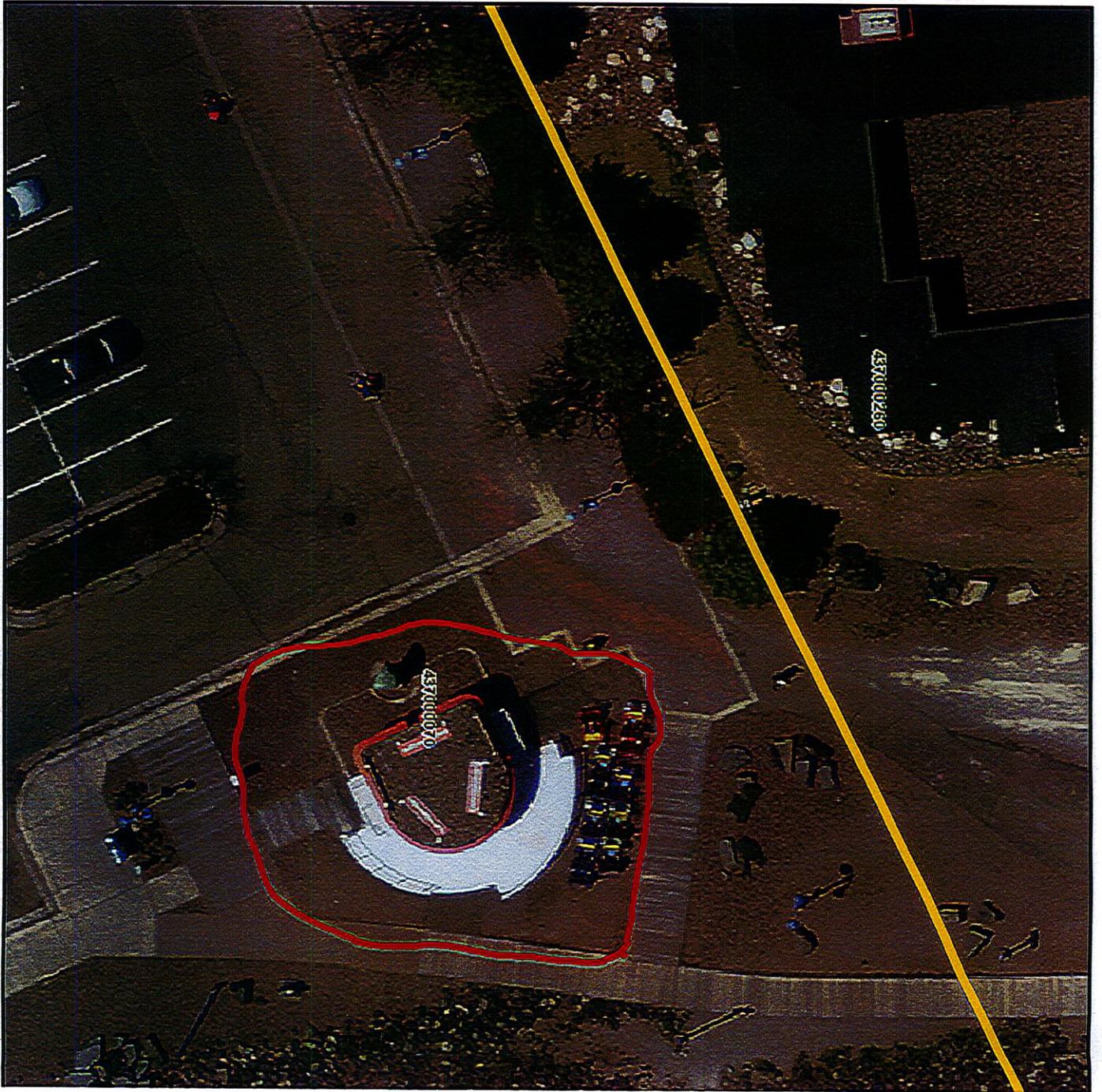
Printed Name \_\_\_\_\_



**EXHIBIT A**  
**LEASED PREMISES**

EXHIBIT A





**EXHIBIT B**

Project Proposal Request

# CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM

Use this form to propose improvement projects to any City facility. A City facility includes both building and grounds. It is intended to be used by external community groups, organizations and internally generated requests.

PROJECT (Brief Description) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LOCATION (Name of City Park, Building) \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Attach Sketch Diagram  yes, or Add Drawing on back of this form,  yes

NAME OF GROUP OR ORGANIZATION PROPOSING PROJECT: \_\_\_\_\_

Contact Person Name \_\_\_\_\_ Home Phone \_\_\_\_\_  
Address \_\_\_\_\_ Work Phone \_\_\_\_\_  
City, State, Zip \_\_\_\_\_ Cell Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

PROJECT FUNDING: Do you have funding for this project?

YES, indicated Funding Sources, Amounts and Total Project Cost \_\_\_\_\_  
\_\_\_\_\_

NO, COMMENTS \_\_\_\_\_

Total Project Cost \_\_\_\_\_

ENERGY USE: Do you think there will be a change in the use of energy for any energy type listed here because of this project?

YES  NO  Not Sure Check all energy types where use will change:

ELECTRICITY (kWh) \_\_\_\_\_ GAS (Therms) \_\_\_\_\_ OIL (gallons) \_\_\_\_\_

STEAM (Pounds) \_\_\_\_\_ WATER and SEWER (CCF) \_\_\_\_\_

Person completing and submitting this request: PRINT NAME: \_\_\_\_\_

Phone \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

SUBMIT COMPLETED FORM to: Tari Rayala; Architecture & Facility Management; 1532 West Michigan Street; Duluth, MN 55806; [trayala@duluthmn.gov](mailto:trayala@duluthmn.gov); (218) 730-4434

(For city use only) Action Taken:

Forward to: CCP committee - YES  NO

CCP (Cities for Climate Protection) Advisory Committee Review: \_\_\_\_\_

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

Project Review Team: Date \_\_\_\_\_

Accepted: \_\_\_\_\_ Rejected: \_\_\_\_\_ Comments: \_\_\_\_\_

Notifications sent to: Submitter \_\_\_\_\_ Date: \_\_\_\_\_ Dept. Director \_\_\_\_\_ Date \_\_\_\_\_



## CITY OF DULUTH

Department of Public Administration – Maintenance Operations  
Architecture, Facility Management Services and Street Light Utility

1532 West Michigan Street  
Duluth, Minnesota • 55806  
Phone: 218-730-4434 • Fax: 218-730-3560

Tari L. Rayala, AIA  
Facility Projects Specialist  
trayala@duluthmn.gov

### INTER-DEPARTMENT CORRESPONDENCE

DATE: March 27, 2012

TO: Department Directors & Division Managers  
Community Clubs and Organizations

FROM: Tari L. Rayala, AIA  
Facility Projects Specialist

SUBJECT: Project Request and Approval Process

Each year there are numerous requests for improvement projects on City Property. The projects and related funding are pursued through a variety of avenues such as additional capital requests not included in the City's 5-year Capital Improvement Program (CIP), requests to the City Facilities Management or Parks and Recreation Department, Community Development Block Grant Program (CDBG), and others. These avenues and the different people and requirements of each process have caused some confusion. The result has been delays and, on occasion, rejection of funded projects.

For example, acquiring funds for a project through CDBG, a DNR grant, fundraising, or donations does not guarantee project acceptability if the project is being considered on City property. It must also receive recommendation and approval by the appropriate City officials. There is no assurance that this will occur after the fact, and therefore, City approval should occur in advance of, or at least concurrent with pursuing funding.

The City departments most actively involved with projects have developed a system that will result in better communications, tracking, and processing of project requests. It establishes Facilities Management as the City entity that will initiate the process once a request has been received. Facilities Management (FM) is charged with identifying the responsible and accountable "Project Team" and facilitating the process. At any point in the process, FM can be contacted to respond to questions or concerns that are not being addressed by the Project Team.

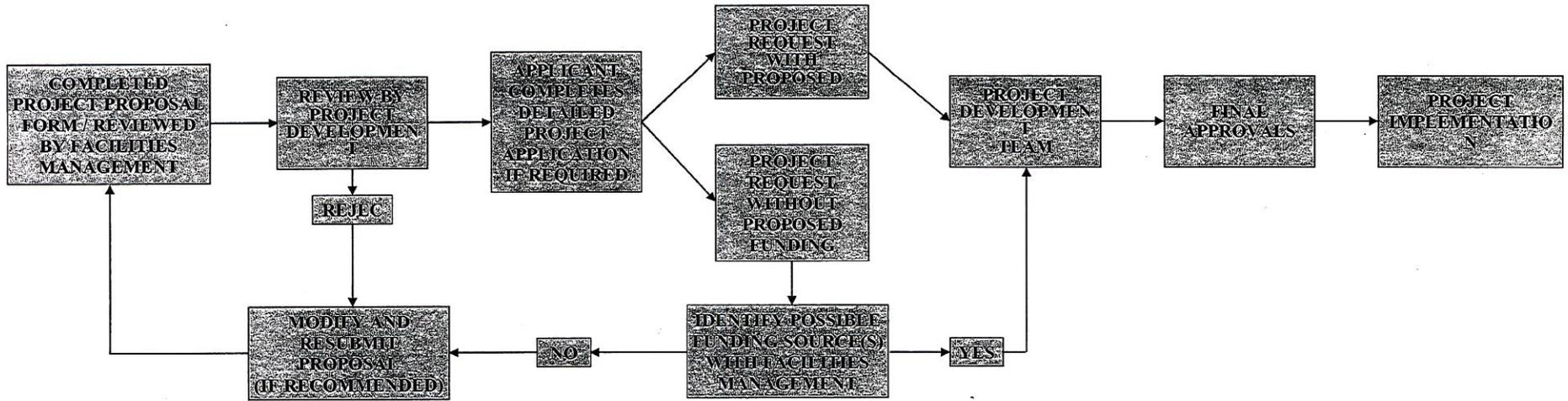
The intent of this process is to expedite decision making, clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns. This process may need modification to improve upon what has been developed. Your input will be critical in that sense.

Enclosed you will find two documents, 1) the City of Duluth Project Proposal Request Form and 2) the Project Request and Approval Process sheet. The Request Form activates the Request and Approval Process which is diagrammed to reflect how the process works. Implementation of this process is effective immediately.

Your cooperation and assistance is requested and much appreciated. If you have any questions, please contact me at 730-4434.

## PROJECT REQUEST AND APPROVAL PROCESS

### City Facilities (Buildings & Grounds): Process For Capital and/or Improvement Projects Which Propose To Make Any Physical, Non-Maintenance Improvement



**Project Form to be Completed By:**

- City Department
- Community Club
- Community Group
- Athletic Organization
- Check against existing plans, guidelines, restrictions, etc.

- Project Development Team Administration by Facilities Management Division

- Project Management Team Membership Based on Individual Project or Project Group
- Project Management Team to Meet as Needed to Review, Revise, etc. Project Information

- Project Development Team Determines Project Manager

- Project Development Team Determines Project Requirements

- Funding Sources with Special or Additional Requirements
- CDBG
- NMGF
- CIP
- PFCAC
- Park Improvement Fund

- Develop prioritized project list
- Administrative review of projects (as necessary)

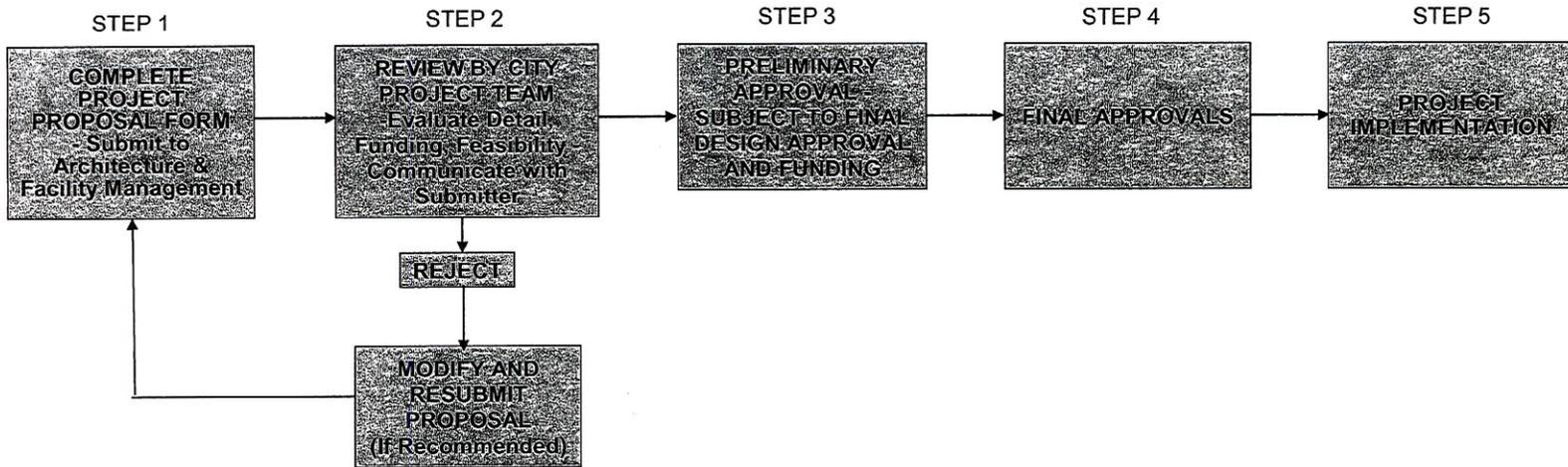
- Department
- Administration
- City Council
- Notify as necessary:
- Boards
- Commissions
- Other various parties

- Notification to all affected staff or other involved parties
- Identify Project Manager

Note: Once adopted, this process must be effectively communicated to all City in-house staff and external organizations.

**CITY OF DULUTH  
PROJECT REQUEST AND APPROVAL PROCESS**

**City Facilities (Buildings & Grounds): Process For New Capital and/or Improvement  
Projects Which Propose To Make Any Physical, Non-Maintenance Improvement**



Step 1: Project Proposal: Project Proposal Form to be completed by designated or authorized representative of City Department, Community Club, Community Group, Athletic Organization, etc. Include as much detail as possible. Submit completed Project Proposal Form to Tari Rayala in Architecture & Facility Management who will review your Project Proposal and consider any existing master plans, guidelines, restrictions, etc. to determine initial project feasibility.

Step 2: Project Review: Project evaluation by City's Internal Project Review Team. This team was established by Administrative Services based on project type and scope and will consist of City staff authorized to review specific projects. The Project Review Team will meet as needed to gather, review, and/or revise project information and requirements. Feasible projects without identified funding or with insufficient funding will receive further review to determine eligibility for funding sources such as CDBG, CIP, etc., and will proceed through the appropriate funding review and approval process. In addition, review by appropriate Boards and Commissions shall occur as needed. Projects are either approved, modified, or rejected at this step. Outcome of this step communicated back to submitter with notification of the next step of the process.

Step 3: Preliminary Approval: Projects with approved funding are returned to project submitter to proceed with final project design including detailed plans necessary for construction.

Step 4: Final Approval: Final review of completed project design. Final approvals as needed from Department, Administration, City Council.

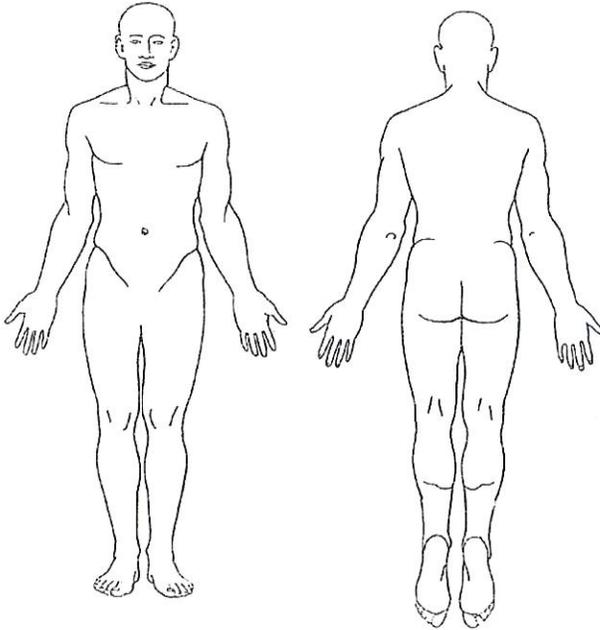
Step 5: Implementation: Notification to all involved parties, including City staff, with project "Notice to Proceed". Identification of Project Manager with responsibility for project oversight during project construction to completion and final acceptance.

**EXHIBIT C**  
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

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

**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**  
**Surrey Operational Rules**

# Duluth Waterfront

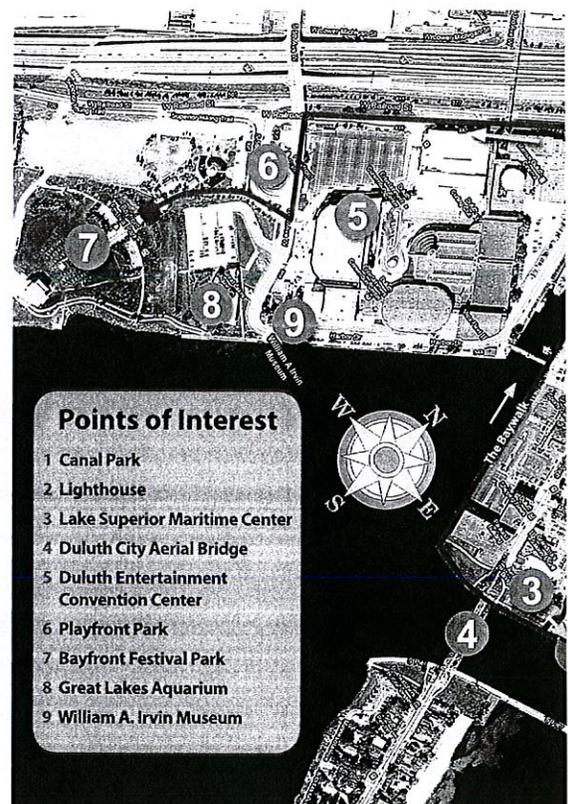
## Be Safe. Be Courteous. Have Fun.

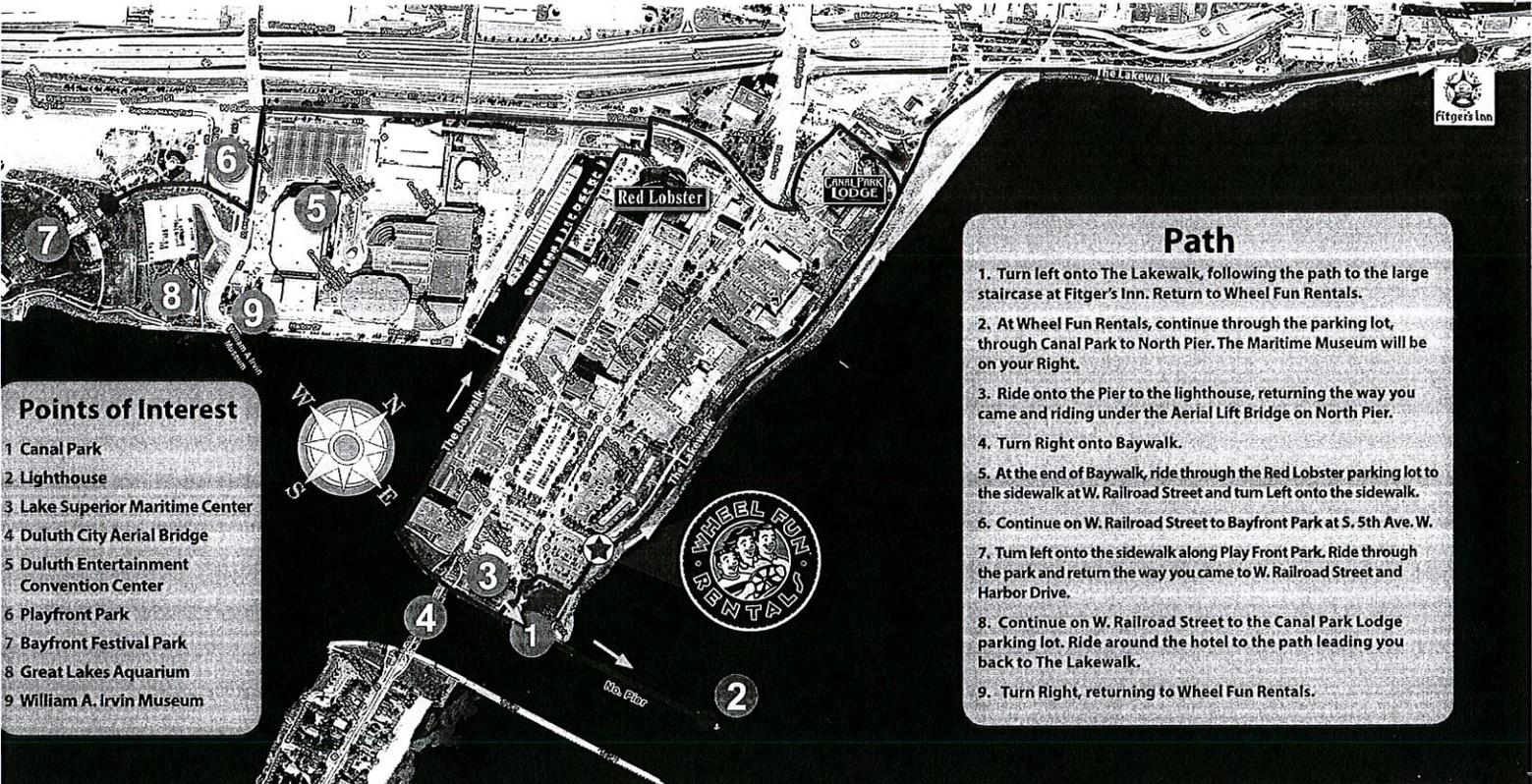
***Caution: use brake when going down hill***

- Ride on the black top path, please don't ride on the boardwalk or gravel path
- Always ride on the right side of the roadway.
- Yield to cars and pedestrians.
- Maximum 3 riders per seat, no sidesaddle, no standing and no hanging on the outside.
- When backing up, put your feet on the ground away from the pedals and cranks, (not on frame or chain-guard) and push backwards.
- The pedals rotate backwards and may hit your shins or pinch your foot!

[www.wheelfunrentals.com](http://www.wheelfunrentals.com)

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**Points of Interest**

- 1 Canal Park
- 2 Lighthouse
- 3 Lake Superior Maritime Center
- 4 Duluth City Aerial Bridge
- 5 Duluth Entertainment Convention Center
- 6 Playfront Park
- 7 Bayfront Festival Park
- 8 Great Lakes Aquarium
- 9 William A. Irvin Museum

**Path**

- 1. Turn left onto The Lakewalk, following the path to the large staircase at Fitger's Inn. Return to Wheel Fun Rentals.
- 2. At Wheel Fun Rentals, continue through the parking lot, through Canal Park to North Pier. The Maritime Museum will be on your Right.
- 3. Ride onto the Pier to the lighthouse, returning the way you came and riding under the Aerial Lift Bridge on North Pier.
- 4. Turn Right onto Baywalk.
- 5. At the end of Baywalk, ride through the Red Lobster parking lot to the sidewalk at W. Railroad Street and turn Left onto the sidewalk.
- 6. Continue on W. Railroad Street to Bayfront Park at S. 5th Ave. W.
- 7. Turn left onto the sidewalk along Play Front Park. Ride through the park and return the way you came to W. Railroad Street and Harbor Drive.
- 8. Continue on W. Railroad Street to the Canal Park Lodge parking lot. Ride around the hotel to the path leading you back to The Lakewalk.
- 9. Turn Right, returning to Wheel Fun Rentals.

