

EXHIBIT 1

HORSE CARRIAGE LICENSE AGREEMENT

THIS HORSE CARRIAGE LICENSE AGREEMENT (this “Agreement”) is entered into by and between TOP HAT CARRIAGE SERVICES LLC, a Minnesota limited liability company, (“Top Hat”) and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the “City”). The parties acknowledge the following:

A. The City owns property located in the area of Duluth known as Canal Park, which is legally described as follows (the “City Property”):

All that part of Lots 270, 272, 274, 276, 278, 280, LAKE SHORE, UPPER DULUTH, lying easterly of the westerly line of St. Croix Avenue (as such west line is located by condemnation plat, filed November 24, 1896, in said Register of Deeds office, bearing Register’s number 5764) and also lying between the prolongation of the southerly line of Lot 270, Lake Shore, on the South and the prolongation of the center line of Morse Street in said plat of Upper Duluth on the North, to the low watermark on Lake Superior, together with the riparian rights belonging to said lands and lots above described.

B. Top Hat owns and operates a horse carriage service that provides the public with recreational horse drawn carriage rides through Canal Park.

C. Top Hat wishes to periodically and temporarily hitch its horses and carriages on that portion of the City Property depicted on the attached Exhibit A (the “Licensed Property”).

D. Top Hat and the City desire to enter into this Agreement to allow Top Hat to periodically and temporarily hitch its horses and carriages on the Licensed Property.

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

1. THE LICENSE. Subject to the terms and conditions set forth in this Agreement, the City grants to Top Hat a non-exclusive license to periodically and temporarily hitch its horses and carriages on the Licensed Property seven days a week during the following hours of operation: 7:00 a.m. to 10:00 p.m. (the “Hours of Operation”). Top Hat shall not store anything on the Licensed Property outside the Hours of Operation. Top Hat may use the Licensed Property only for the express purpose permitted by this Agreement and for no other purpose.

2. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall commence on May 1, 2018, and shall continue through October 31, 2020 (the “Term”). Notwithstanding the Term, Top Hat’s use of the Licensed Property shall be limited to the days between May 1 and October 31 during each year of the Term.

3. LICENSE FEE. Top Hat shall pay the City an annual license fee of \$500.00 per year (the “Fee”), which payment shall be made by May 1st each year of the Term. The funds received pursuant to this Agreement shall be deposited into Fund 110, Public Administration 121, Property and Facilities Management 1222, Rent for Land 4623. The Fee is non-refundable even if this Agreement is terminated prior to the end of the Term.

4. TERMINATION OR EXPIRATION.

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

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

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

D. Surrender Possession. Upon expiration of the Term or termination of this Agreement for any reason, Top Hat will surrender possession of the Licensed Property to the City in as good condition and state of repair as the Licensed Property was in at the time Top Hat took possession. Upon expiration of the Term or termination of this Agreement for any reason, Top Hat shall restore the Licensed Property to its original condition at the time of execution of this License Agreement or, upon demand, pay to the City the reasonable costs incurred by the City to repair any damage done to the Licensed Property by Top Hat, its employees, servants, agents, contractors, invitees, tenants and licensees.

5. MAINTENANCE. Top Hat will keep the Licensed Property clean and in an orderly condition and shall collect all paper, garbage, and other waste generated from its operations, including but not limited to feces, feed, and urine. Top Hat will arrange for proper disposal of garbage, recycling and other debris. Top Hat will not permit any mechanic’s or other liens to attach to the Licensed Property. The City will not provide any maintenance or any other services whatsoever with respect to the Licensed Property. In the event any hitching posts on the Licensed Property are removed by the City, the City shall have no obligation to replace the hitching posts. Top Hat shall not make any improvements to the Licensed Property without the prior written permission of the City’s Property and Facilities Manager, which permission may be granted or withheld in the City’s sole discretion.

6. CITY WARRANTY. The City makes no representation that the Licensed Property is suitable for any particular purpose or specific use and Top Hat accepts the Licensed Property in an “as is” condition without representations or warranties of any kind. The City shall have no duty to maintain or repair the Licensed Property. Top Hat acknowledges that the City intends to remove

the trees located adjacent to the Licensed Property and that the City has no obligation to replace the trees.

7. ALTERATIONS AND IMPROVEMENTS. Top Hat agrees to exercise reasonable care and best practices in utilizing the Licensed Property to minimize any permanent impacts to the Licensed Property. Top Hat shall not make any alterations or improvements to the Licensed Property without the prior written consent of the City and then upon the terms and conditions which may be imposed by the City. All such improvements and alterations shall become the property of the City. Prior to commencing any improvements or alterations, Top Hat shall submit to the City a Project Proposal Request along with detailed plans. A copy of the form of Project Proposal Request is attached to this Agreement as Exhibit C. The Project Proposal Request shall be submitted to the City at least forty-five (45) days before the planned commencement of the work.

8. HOLD HARMLESS. Top Hat agrees to defend, indemnify, and save harmless the City, 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 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 Top Hat's use or occupancy of the Licensed Property. On ten days' written notice from the City, Top Hat will appear and defend all lawsuits against the City growing out of such injuries or damages, using counsel acceptable to the City.

9. INSURANCE. During the Term, Top Hat shall have such insurance coverage as will protect Top Hat and the City against risk of loss or damage to the Licensed Property and any other property of the City located or used at the Licensed Property and against claims which may arise or result from the use of the Licensed Property during the Term. Top Hat 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 \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$1,500,000 for property damage liability. Insurance required in this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of Minnesota and licensed to do business in Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the obligations set forth herein, and products - completed operations. Top Hat shall provide the City with Certificate(s) of Insurance evidencing the required insurance coverage, with 30-day notice of cancellation, non-renewal, or material change provisions included. The City does not represent or guarantee that the types or limits of coverage required by this Agreement are adequate to protect Top Hat's interests and liabilities. The required insurance policies and certificates shall be in form acceptable to the City Attorney and shall name the City as an additional insured. The City reserves the right to require Top Hat to increase the coverages set forth above and to provide evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. §466.04, as amended from time to time. The City does not, by entering into this Agreement, intend to waive any legal immunities, defenses, or liability limits that maybe available.

10. INDEPENDENT CONTRACTOR. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting Top Hat or Top Hat personnel as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. Top Hat 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 Top Hat's employees or agents while so engaged, shall in no way be the responsibility of the City.

11. ASSIGNMENT. Top Hat 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 City's Chief Administrative Officer.

12. LAWS, RULES AND REGULATIONS. Top Hat agrees to conduct its activities related to the Licensed Property in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. Top Hat shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. Top Hat agrees to procure, at its own expense, all licenses and permits necessary for carrying out its operations and its obligations under this Agreement.

13. RECORDS RETENTION. Top Hat agrees to maintain all books, records, documents, and other evidence pertaining to this Agreement for six (6) years after termination or expiration of this Agreement for any reason.

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

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

16. SEVERABILITY. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

17. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which may be waived at any time by mutual agreement between the parties.

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

City of Duluth
Attn: Property and Facilities Manger
1532 W. Michigan Street
Duluth, MN 55806
(218) 730-4333

Top Hat Carriage Services LLC
51127 130th Street
Lyle, MN 55953
(507) 438-2164

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

19. COMPLIANCE WITH AGREEMENT. The rights of Top Hat to use the Licensed Property are subject to Top Hat's compliance with the undertakings, provisions, covenants, and conditions herein.

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

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

22. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the individuals who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said individuals will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions of this Agreement.

23. INCIDENT REPORTS. Top Hat shall promptly notify the City in writing of any incident of injury or loss or damage to the Licensed Property or to any Top Hat's employees, participants, or invitees occurring within the Licensed Property during its use of the Licensed Property. 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 as Exhibit B.

24. TAXES AND FEES. Top Hat agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Top Hat's operations and use of the Licensed Property, including sales taxes, if applicable. It is further agreed that the City may (i) pay the same on behalf of Top Hat and immediately collect the same from Top Hat, or (ii) reduce any amount owed to Top Hat by the City pursuant to this Agreement in an amount equal to the payment made by the City on Top Hat's behalf. Top Hat shall further be obligated to collect and/or 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. Top Hat shall be responsible for all

responsible for all expenses not specifically mentioned in this Agreement related to its operations and use of the Licensed Property.

25. ENTIRE AGREEMENT. This Agreement, including exhibits, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

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

TOP HAT CARRIAGE SERVICES LLC

CITY OF DULUTH, MINNESOTA

By: Timothy E Carroll

By: _____
Mayor

Printed Name: Timothy E. Carroll

Title: Owner

Attest: _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

436 Canal Park Dr

Canal Park Dr

Licensed Property

504 Canal Park Dr

DULUTH

Ave





Public Administration Department
Parks and Recreation Division

City Hall - Ground Floor • 411 West First Street • Duluth, Minnesota • 55802
218-730-4300 • www.duluthmn.gov/parks/index.cfm

EXHIBIT B



June 9, 2016

Dear Community Partner:

Thank you for your interest in proposing an improvement project for City property. We recognize that working closely with the community is an important way we can fulfill our responsibility to develop long-term strategies, plans and improvements that benefit the greatest number of constituents possible and effectively use limited resources.

Each year there are numerous requests for projects on City property. To better respond to the requests, the City has developed a system that will result in better communications, tracking and processing of project proposals. It establishes Property and Facilities Management as the City entity that will: (1) accept and review all submitted Project Proposal Forms; (2) direct proposals to appropriate City staff; and, (3) facilitate the process to project completion. Once your project proposal request is received, the reviewing process will start and you or your organization will receive a response with thirty (30) days.

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. At any point in the process, Property and Facilities Management can be contacted to respond to questions or concerns.

In past years, this process has seen a number of projects completed for the betterment of our community, including installation of park benches, playfield renovations and community beautification projects. Proposals may be submitted by individuals and community organizations, as well as City staff.

Please note that acquiring funds for a project through CDBG, a DNR grant, fundraising, donations or other means does not guarantee project acceptability. Any project on City property must also receive recommendation and approval by the appropriate City officials. It is strongly recommended that City approval should occur in advance of, or at least concurrent with, pursuing funding.

If you have any questions, please contact Danielle Erjavec at (218) 730-4333.

Sincerely,

Erik Birkeland
Property & Facilities Manager
City of Duluth
1532 West Michigan Street
Duluth, MN 55806



CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



Use this form to propose a City of Duluth improvement project. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests. You or your organization will receive a response to the project proposal request within thirty (30) days of submission.

APPLICANT CONTACT INFORMATION

Date of Application:

Name:

Organization:

Address:

City/State/Zip:

Neighborhood:

E-mail:

Primary Phone:

Secondary Phone:

IS YOUR PROJECT RELATED TO

PUBLIC

-ARTS-

-MEMORIALS-

-MONUMENTS-



IF SO, YOUR PROPOSAL WILL BE SHARED WITH THE DULUTH PUBLIC ARTS COMMISSION FOR REVIEW.

PROJECT PROPOSAL

Use additional sheets if more space is needed.

PROJECT LOCATION

Describe as best as possible the location of the proposed project. Give the address, name of street, neighborhood, intersection, GPS coordinates, etc. If the project is City-wide, please state "City-wide."

PROJECT DESCRIPTION

Describe the proposed project in as much detail as possible. Why is the project needed and necessary? What do you propose doing? Maps, sketches, diagrams, and/or schematic drawings are required so that the committee has a better understanding of your project. These may include location, sizes, wording, colors, etc. **Please attach any additional information about this project.**

Attached Not Applicable

PROJECT JUSTIFICATION

Describe the benefit of the proposed project. Is it a safety issue? Will it provide cost savings to the City? Is it a functional improvement? Does it provide aesthetic benefit to the City?



CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



PROJECT COST

Describe the approximate cost to complete the project. This can be a "guesstimate." This is only considered to be a rough guideline.

POTENTIAL SOURCE OF FUNDING

Describe potential funding sources for the project.

NEIGHBOR SUPPORT

Does this project have the support of neighbors living nearby?

Yes No Uncertain Not Applicable

Comments:

ENERGY USE

Will this project change the use of any energy type listed below?

Yes No Uncertain Not Applicable

If yes, check all energy types where use is expected to change.

ELECTRICITY (kWh) GAS (Therms) OIL (gallons) STEAM (Pounds) WATER and SEWER (CCF)

ADDITIONAL CONSIDERATIONS

The City of Duluth considers our long-term strategies, Master Plans, Accessibility Plan and Capital Improvement list, as well as legal requirements, in evaluating proposals. Please review the considerations below and add any comments you have.

CONSIDERATION (A): Project is compatible with Park Master Plan, systems plans, Strategic Plans, etc.

COMMENT (A):

CONSIDERATION (B): Project is compliant with ADA Accessibility Plans.

COMMENT (B):



CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



CONSIDERATION (C): Project is compatible with surrounding and adjoining uses.

COMMENT (C):

CONSIDERATION (D): Project will meet standards for materials and construction practices.

COMMENT (D):

CONSIDERATION (E): Project complies with zoning code and land uses.

COMMENT (E):

CONSIDERATION (F): Project does or does not require a permit.

COMMENT (F):

CONSIDERATION (G): Increases cost to maintain or operate. *(Note: If this is the case, and the project is approved, it may need to be incorporated into the Capital Improvement Plan and be approved by City Council.)*

COMMENT (G):

SUBMIT COMPLETED FORMS to:

**DANIELLE ERJAVEC
PROPERTY SERVICES SPECIALIST
CITY OF DULUTH
PROPERTY & FACILITIES MANAGEMENT
1532 W MICHIGAN STREET
DULUTH, MN 55806
projectproposal@duluthmn.gov
(218) 730-4333**

City of Duluth Incident/Injury Report

EXHIBIT C

Supervisor to complete within 24 hours of incident/injury. If injury required treatment by a medical provider, attach medical documentation. Completed forms should be emailed to accidentreporting@duluthmn.gov.

Date of incident/injury:	<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	Department/Division:
Choose one that best describes this claim: <input type="checkbox"/> Incident only, no medical care <input type="checkbox"/> Medical only, no lost time <input type="checkbox"/> Injury includes lost time		
Initial treatment sought:	<input type="checkbox"/> Hospital ER <input type="checkbox"/> Clinic <input type="checkbox"/> Refused to see MD / None	Doctor/clinic name, address, phone number:

Last name:	First name:	MI:	SSN:
Address:			
City:	State:	Zip code:	Phone:
Date of hire:	Occupation:	Date of birth:	
			Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female

Did injury occur on employer's premises? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name and address of the place of the occurrence:
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Time employee began work: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Time of injury: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Date employer notified of injury: _____	Date employer notified of lost time: _____
First date of any lost time: _____	Return to work date: _____
RTW with restrictions: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

Describe the nature of the illness or injury. Be specific. Include body parts affected.

Describe the activities when injury occurred with details of how it happened.

What tools, equipment, machines, objects and/or substances were involved?

Incident investigation conducted: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date supervisor notified: _____	Date report completed: _____
Supervisor name: _____	Supervisor phone number: _____	

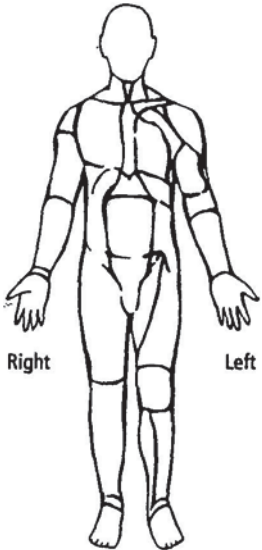
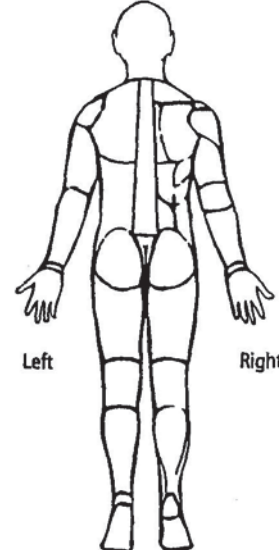
Names and phone numbers of witnesses:

Incident was a result of: safety violation machine malfunction product defect motor vehicle accident N/A

Supervisor comments:

What actions have been taken to prevent recurrence?

City of Duluth Incident/Injury Report

<p>CAUSE</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 (<input type="checkbox"/> Right <input type="checkbox"/> Left)</p> <p><input type="checkbox"/> Repetitive/overuse</p> <p><input type="checkbox"/> Other (specify): _____</p> <p>TYPE OF INJURY</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"/> No apparent injury</p> <p><input type="checkbox"/> Other (specify): _____</p>	<p style="text-align: center;">MARK AREAS OF INJURY BELOW:</p> <p style="text-align: center;">Areas can be marked by typing an "X" in the text box wherever needed.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Front</p>  </div> <div style="text-align: center;"> <p>Back</p>  </div> </div>
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COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE			
<p>For vehicle accidents: Attach sketch and additional information of how vehicle accident occurred. Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)</p>			
Incident Location: _____		Time of incident: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
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 involved	Owner full name: _____		<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other
	Owner address: _____		
	Owner phone number: _____	Vehicle license #: _____	
	Make/Model: _____	Color: _____	Year: _____
	Describe damage: _____		
Weather conditions:	Roadway conditions:	Light conditions:	Approximate temperature: _____ °F 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
<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	

The Incident/Injury Form should be printed and signed by supervisor and employee. Completed forms can be scanned to accidentreporting@duluthmn.gov.

Supervisor Signature: _____

Date: _____

Employee Signature: _____

Date: _____