

**SECOND AMENDED AND RESTATED
LEASE AGREEMENT
BETWEEN
CITY OF DULUTH AND
CRABBY OL' BILLS, INC.**

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (this "Agreement") is by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City," and Crabby Ol' Bills, Inc., a corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "Lessee."

WHEREAS, City is the owner of certain property located in Canal Park in Duluth, Minnesota, which property is near the Lakewalk entry and adjacent to the Lighthouse Lot parking lot (the "City Property"); and

WHEREAS, Lessee and City entered into a Lease Agreement dated May 15, 2017 (the "Original Lease") permitting Lessee to operate its vending business as hereinafter described on a portion of the City Property, which Original Lease was amended and restated in its entirety by an Amended and Restated Lease Agreement between the parties dated June 11, 2019 (the "2019 Lease"); and

WHEREAS, a series of storms have caused severe damage to the shoreline and infrastructure along the Lakewalk, including the area in front of and surrounding the portion of the City Property leased by Lessee under the 2019 Lease (referred to in the 2019 Lease and in this Agreement as the "Premises").

WHEREAS, as a result of the storm damage, City is preparing to undertake a major rebuild of the Lakewalk sections within Canal Park (the "Construction Project"), which will (i) disrupt Lessee's operations on the Premises causing Lessee to miss the Operating Season (defined below) in 2020, and (ii) require that the Structure (defined below) currently located on the Premises be removed from the Premises during the Construction Project.

WHEREAS, in consideration for Lessee agreeing (i) not to operate during the Operating Season in 2020, and (ii) to allow City to remove the Structure from the Premises during the Construction Project, City has agreed to modify the 2019 Lease to provide, among other things: (a) for certain payments to Lessee; (b) an extension of the term of the 2019 Lease; and (iii) modified rent requirements.

WHEREAS, the parties wish to amend and restate the 2019 Lease in its entirety to reflect a change in the structure of Lessee's business and other amendments to the 2019 Lease.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

ARTICLE I
2019 LEASE

This Agreement amends, restates and completely replaces the 2019 Lease in its entirety.

ARTICLE II
USE OF PREMISES

A. Use of Premises.

1. Subject to the terms and conditions set forth in this Agreement, City demises and leases to Lessee that portion of the City Property depicted on the attached Exhibit A (the "Premises"). Lessee may place a vending wagon or another structure, either of which shall not exceed three hundred twenty-five square feet in size, on the Premises (the "Structure"). The Structure may be firmly but not permanently attached to the Premises, and shall not become a part thereof. Lessee may use the Structure for the purpose of operating its vending business, as described in Paragraph B below, between the hours of 9:00 A.M. and 10:00 P.M., seven days a week, during the period from May 1st through October 31st of each year (the "Operating Season") of the Term (defined below), EXCEPT that Lessee may not use the Premises for any purpose during the Operating Season for the year 2020 due to the Construction Project. Upon the written approval of City's Property and Facilities Manager, or his/her designee (the "Manager"), granted in the exercise of his or her reasonable discretion and in advance of any such extension, the dates or times or both during which Lessee may use the Premises for its vending business may be expanded.

2. Lessee shall have use of the Premises for the purposes set forth in this Agreement, subject to the terms and conditions of this Agreement. Unless authorized by this Agreement, City will take no action which will prevent Lessee from the quiet and peaceful possession of the Premises. Use of the Premises for any other purpose or activity shall be grounds for immediate termination of this Agreement.

3. City makes no representations or warranties, either expressed or implied, as to the merchantability or fitness of the Premises for any particular use or other representation or warranty, express or implied, with respect to the condition of the Premises. City is not obligated to make any alterations or improvements on or to the Premises or any surrounding property owned by City. Lessee accepts the Premises in as-is condition. Lessee acknowledges that the Construction Project will impact public access to the Premises and Lessee's income to be derived from the Premises. Further, Lessee acknowledges that the use of the land nearby the Premises may change from time to time during the Term, and City has no obligation to maintain the status quo or prevent changing uses of the land nearby the Premises.

4. Lessee is solely responsible for storage of all personal property and shall bear the risk of loss due to theft, vandalism or other damage to its personal property on the Premises, including personal property contained in the Structure and the Structure itself.

5. Lessee shall maintain its equipment in a safe and lawful manner at Lessee's sole expense. Lessee shall prohibit the use of any unsafe, illegal, or otherwise deficient equipment on the Premises or within the Structure.

6. City and its representatives shall have the right to inspect the Premises at any time with at least one (1) day advance written notice, so long as such inspection does not unduly interfere with the conduct of Lessee's operations on the Premises.

B. Lessee's Vending Business. Lessee shall have the right to sell at retail the following items on the Premises: food, beverages, and novelty items such as shirts and hats.

C. Alcohol, Tobacco and Drug Use. Lessee shall not permit smoking or use of tobacco or illegal drugs whatsoever on the Premises. The possession, use, or sale of alcohol is permitted on the Premises only under the following conditions:

1. Alcohol may be sold, possessed, consumed or served only when the appropriate permit or license has been obtained from City and all application, fee and other requirements have been met.

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

D. 2020 Construction Project. The City shall undertake the following actions due to the disruption of Lessee's business on the Premises during the Operating Season for the year 2020:

1. On or before May 1, 2020, pay to Lessee the amount of \$10,000.00.

2. On or before April 15, 2020, refund Lessee's liquor license payment dated September 1, 2019 in the amount of \$3,127.00. Lessee acknowledges that this will result in the cancellation of Lessee's liquor license and that Lessee will need to re-apply for a liquor license, at Lessee's expense, prior to serving alcohol on the Premises.

3. Coordinate and pay for the removal, outside storage and reinstallation of the Structure on the Premises on or before May 1, 2021, including the disconnection and reconnection of utilities. The City's plans and specifications with its contractor shall include the following requirements: (i) documentation of the condition of the Structure prior to its removal from the Premises; and (ii) a detailed move plan for the Structure.

4. Share the City's plans and specifications for the Construction Project, as they affect the Premises, with Lessee and provide Lessee with an opportunity to provide input on the City's plans and specifications. In the event the City desires to adjust the boundaries of the Premises due to the Construction Project, the Manager may substitute a new Exhibit A to this Agreement by written notice to Lessee. The adjusted boundaries of the Premises may not (i) decrease the size of the Premises; or (ii) relocate the Premises away from the current location adjacent to the Lakewalk and the Lighthouse Lot parking lot.

5. In the sole discretion of the Manager, permit Lessee to access the Structure while it is in storage during the Construction Project. Lessee acknowledges that the City cannot guarantee access to the Structure while it is in storage.

ARTICLE III **RENT PAYMENTS**

A. Gross Receipts. For purposes of this Agreement, “Gross Receipts” shall mean any direct or indirect revenue of any kind whatsoever, whether or not actually collected by Lessee, arising in any way out of the permitted use of the Premises.

B. Rent Payments. On or before the fifteenth (15th) day of each month during the Term, Lessee shall pay to City rent in an amount equal to ten percent (10%) of the Gross Receipts for the immediately preceding month. Such payments shall be “net” of all costs, charges or other amounts owed by Lessee to City and shall not be subject to any delay, reduction, deduction, credit or set-off of any kind whatsoever except as specifically authorized in this Agreement. Payment of rent, together with the financial reports required by Article IV.A. below, shall be sent to the City Treasurer, 411 W. First Street, Room 105, Duluth, Minnesota 55802. Rent payments shall be deposited into 110-121-1222-4627 (General Fund, Public Admin, Facilities Management, Concessions and Commissions). Notwithstanding the above, there shall be no rent payments due for the following portion of the Term: January 1, 2020 through December 31, 2022.

ARTICLE IV **RECORDING KEEPING AND TAXES**

A. Financial Reports. On or before the fifteenth (15th) day of each month of the Term, Lessee shall deliver to City a full and complete report of the Gross Receipts for the preceding month, certified by an officer of Lessee to be true and correct. Such reports shall be in a form acceptable to the Manager and shall contain all information reasonably requested by the Manager. Such reports shall be required whether or not there is a rent payment due for that month.

B. Books and Records.

1. All of Lessee’s books and records shall be kept at a location within the City of Duluth and shall be maintained in accordance with generally accepted accounting principles. Upon demand by the Manager, Lessee shall make all books and records that are relevant to Gross Receipts available for inspection, review, and copying during ordinary business hours. Lessee will at all times provide current notice to City as to the location of its books and records.

2. As provided in Minnesota Statutes § 16C.05, Subd. 5, all of Lessee’s books, records, documents, and accounting procedures and practices related to its operations on the Premises are subject to examination by City and the State Auditor for six (6) years from the expiration or termination of this Agreement, whichever occurs first.

C. Taxes. Lessee shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Lessee’s use of the Premises, including

real property and sales taxes, if applicable. It is further agreed that City may pay the same on behalf of Lessee and immediately collect the same from Lessee. Lessee shall 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 shall file all required reports and forms in proper form related thereto on or before their due date.

ARTICLE V
MISCELLANEOUS PAYMENTS AND OTHER OBLIGATIONS

A. Maintenance. Lessee shall maintain the Premises, the Structure and any other improvements on the Premises in a neat, clean, orderly and, where applicable, sanitary condition and shall provide full maintenance, replacement and repair to the Premises and to the Structure and to all equipment and systems located thereon and as necessary maintain them in good and orderly condition.

B. Refuse and Garbage. Lessee shall provide adequate trash receptacles to contain all refuse and garbage generated by Lessee's vending business, and that likely to result from access by the general public to the Premises, and that generated within fifty (50') feet of the Premises. Lessee shall, at its expense, collect and dispose of (i) all refuse and garbage generated by its operations on the Premises and (ii) all refuse and garbage generated within fifty (50') feet of the Premises.

C. Utilities. Lessee shall pay any and all charges for utilities furnished to the Structure and to the Premises, including but not limited to hook-up charges and assessments related to all utilities, including but not limited to fuel oil, heat, air conditioning, if any, water, sewer, gas, telephone, cable TV and electrical power. City shall be solely responsible, at Lessee's expense, for turning the water service on prior to May 1st and off after October 31st of each year of the Term, subject to weather conditions.

D. Other Costs. In addition to the costs and charges specifically set forth elsewhere in this Agreement, 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 occupancy of the Structure or of the Premises; provided that nothing shall prevent Lessee from contesting in good faith, any such payment requirement, except as such contest would negatively affect City's rights under this Agreement and except for payments due to City.

E. Payment by City. Should Lessee fail to pay any costs, fees or charges it is required to pay under this Agreement, or otherwise necessary to the preservation and use of the Structure or of the 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 Article XII of this Agreement.

F. Payment Obligations Unconditional. The obligation of Lessee to pay any amount due to City under this Agreement in accordance with the terms hereof shall be absolute and unconditional, irrespective of any defense or right 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.

G. Time for Payment and Manner of Payment. All payments under Article III.B. above shall be due and payable on the fifteenth (15th) day of the month on which they are due. All other payments and reimbursements to City called for by this Agreement shall be due and payable within 15 days of demand by City. Time is of the essence in all provisions of this Agreement.

ARTICLE VI **TERM AND TERMINATION**

A. Term.

1. Notwithstanding the date of execution, the term of this Agreement shall be deemed to have commenced on May 1, 2019, and expire on October 31, 2024, unless sooner terminated as hereinafter provided for (the "Term").

2. By written notification to the other party at least ninety (90) days prior to Agreement expiration on October 31, 2024, the parties may extend this Agreement to October 31, 2027. Both parties must agree in writing to extend this Agreement no later than thirty (30) days prior to Agreement expiration on October 31, 2024. If both parties have not agreed to extend this Agreement in writing by the time period allotted, then this Agreement automatically terminates on October 31, 2024.

B. Termination.

1. For Cause. Should Lessee violate any of the provisions of this Agreement, City may terminate this Agreement in accordance with the procedures and provisions described in Article XII below.

2. Immediately By City. City may terminate this Agreement immediately on written notice to Lessee if City believes in good faith that the health, welfare, or safety of the Premises, occupants, users or neighbors would be placed in immediate jeopardy by the continuation of Lessee's operations on the Premises.

3. Surrender Possession. Upon the expiration or other termination of this Agreement, Lessee's right to use the Premises shall cease and Lessee shall promptly and in good condition surrender the Premises to City. In the event that Lessee has in any way changed, altered or modified the Premises, other than those improvements approved in writing by City, Lessee shall return the Premises to the condition they were in at the time of the signing of this Agreement or, in the alternative, pay City for the cost of returning the Premises to the same condition they were in at the time of the signing of this Agreement. Upon expiration or termination of this Agreement, any improvements on the Premises which have become part of the realty shall become the property of City, and the same, together with the Premises, shall be immediately returned to the control of City. Any improvements not part of the realty, including the Structure, shall be removed from the

Premises within thirty (30) days after the expiration or termination of this Agreement, or the same shall be deemed to have been abandoned by Lessee and shall become the property of City. In the event Lessee fails to remove the Structure or any other improvements or personal property from the Premises, City may remove the Structure, other improvements and personal property and Lessee shall immediately reimburse City for all costs incurred by City in relation to such removal. Upon termination or expiration of this Agreement, Lessee will waive any and all rights, if any, to relocation benefits under the Uniform Acquisition Assistance and Relocation Act of 1974, as amended, and any laws or regulations promulgated with regard thereto which might arise out of this Agreement.

ARTICLE VII
LAWS, RULES, REGULATIONS AND LICENSES

A. Civil Rights Assurances. Lessee, for itself and its officers, agents, servants and employees, as part of the consideration under this Agreement, does hereby covenant and agree that:

1. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the use of the Premises.

2. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

B. Rules and Regulations. Lessee shall observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City of Duluth and their respective agencies which are applicable to its activities under this Agreement.

C. Licenses. Lessee shall be exclusively responsible for securing and maintaining, at its sole cost, all licenses required by any licensing authority, including but not limited to City, St. Louis County and the State of Minnesota necessary to carry out or prosecute any and all parts of its business on the Premises.

ARTICLE VIII
CONSTRUCTION OR ALTERATION

Lessee may, at its sole cost and expense, make suitable improvements or alterations to the Premises only with advance written approval from the Manager, granted or denied in the exercise of his or her discretion. Such written consent, if granted, shall include such conditions as the Manager shall determine are reasonably necessary to protect the interests of City and of the Premises and shall include requirements that Lessee and any persons or entities working under Lessee's control indemnify City and provide such insurance as the Manager shall reasonably determine to be appropriate. Proof of all required insurance must be approved by the City Attorney in writing before the commencement of any construction. All such improvements shall become

the property of City if not removed by Lessee at the expiration or termination of this Agreement as required by Article VI.B.4. above. Prior to commencing any improvements or alterations, Lessee shall submit to City a Project Proposal Request in the form attached as Exhibit B along with detailed plans. The Project Proposal Request shall be submitted to City at least forty-five (45) days before the planned commencement of the proposed alteration or improvement. 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 Code, and shall be completed in a professional and prompt manner.

ARTICLE IX

ASSIGNMENTS AND LIENS

A. Assignments Prohibited Without Consent. Lessee will not (i) assign, transfer, mortgage or encumber this Agreement, or (ii) sublet or rent or permit occupancy or use of the Premises, or any part of the Premises by any third party, nor shall any assignment or transfer of this Agreement be effectuated by operation of law or otherwise (any of the foregoing referred to in this Agreement as an “Assignment”), without obtaining the prior written consent of City, which consent may be given or withheld in City’s sole discretion. The consent by City to any Assignment shall not be construed as a waiver or release of Lessee from the terms of any covenant or obligation under this Agreement, nor shall the collection or acceptance of rent from any third party under an Assignment constitute an acceptance of the Assignment or a waiver or release of Lessee or any transferee of any covenant or obligation contained in this Agreement, nor shall any Assignment be construed to relieve Lessee from the requirement of obtaining the consent in writing of City to any further Assignment .

B. Requesting Consent. If Lessee desires to make an Assignment, it shall first notify City of its desire to do so and shall submit in writing to City: (i) the name of the proposed assignee, mortgagee, subtenant or other transferee (any of the forgoing hereinafter referred to as an “Assignee”), (ii) a copy of the proposed Assignment agreement and any other agreements to be entered into between Lessee and the proposed Assignee, including full disclosure of all financial terms, (iii) any other information, including but not limited to financial information, as City may reasonably request concerning Lessee and/or the proposed Assignee. Lessee shall pay City a reasonable fee (not to exceed \$250) for City’s expenses in reviewing such proposed Assignment and related information. Neither the furnishing of such information nor the payment of such fee shall limit City’s rights or alternatives under this Article IX. City’s written consent, if granted, shall include such conditions as the Manager shall determine are reasonably necessary to protect the interests of City and of the Premises.

C. Liens. 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 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 Agreement to be subject to foreclosure by reason of such contest.

ARTICLE X
INDEMNIFICATION

A. Generally. Lessee will 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 judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Premises, or growing out of or in connection with the use or non-use, condition or occupancy of the Premises or any part thereof and also, without limitation, any and all acts or operations related to any construction or installation on any portion of the 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 Lessee, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;

2. Any violation by Lessee of any provision of this Agreement;

3. Any violation of any contract, agreement or restriction related to Lessee's use of the Premises which shall have existed at the commencement of the Term of this Agreement or shall have been approved by the Lessee; and

4. Any violation of any law, ordinance, court order or regulation affecting the Premises or the ownership, occupancy or use thereof.

B. Indemnification Procedures. Promptly after receipt by City of notice of the commencement of any action with respect to which Lessee is required to indemnify such person under this Article, City shall notify Lessee in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Lessee shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. Insofar as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against 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 Lessee.

ARTICLE XI
INSURANCE

A. Insurance. Lessee shall procure and maintain continuously in force public liability insurance, insuring itself, City and any subtenants, against all risks of injury to or death of persons or damage to the Premises arising in any way out of or as a result of the occupancy of or use of the Premises. Such insurance shall be written on an "occurrence" basis under a commercial general liability form, with limits of not less than One Million Five Hundred Thousand and No/100s dollars (\$1,500,000.00) aggregate per occurrence for personal bodily injury and death, and limits of not less than One Million Five Hundred Thousand and No/100s dollars (\$1,500,000.00) for damage

liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and No/100s dollars (\$1,500,000.00) per person and be for the same coverages. City shall be named as an additional named insured therein. Insurance shall cover:

- a. Public liability.
- b. Independent contractors--protective contingent liability.
- c. Personal injury.
- d. Product liability.
- e. Contractual liability covering the indemnity obligations set forth herein.

2. City reserves the right to require Lessee to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.

3. City does not represent or guarantee that these types or limits of coverage are adequate to protect Lessee's interests and liabilities.

4. City shall not be liable to Lessee for any injury or damage resulting from any defect in the construction or condition of the Structure or the Premises nor for any damage that may result from the negligence of any other person whatsoever.

5. Lessee shall procure and maintain continuously in force Workers' Compensation insurance 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.

B. Requirements for All Insurance. All insurance required in this Article XI shall be in a form acceptable to City. All insurance required in this Article XI 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. City shall be named as an "additional named insured" on each liability policy other than Workers' Compensation policies of Lessee.

C. Certifications. Lessee shall provide City with Certificates of Insurance evidencing the required insurance coverages, which shall (i) be in a form acceptable to the City Attorney's Office; (ii) contain an unconditional requirement that the insurer notify 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 (iii) provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against City. Lessee shall be permitted to obtain the insurance required under this Agreement on a "blanket" basis, and shall be entitled to satisfy any insurance requirements with a combination of primary liability and umbrella coverage.

ARTICLE XII

LESSEE DEFAULTS AND REMEDIES

A. General Defaults and Remedies.

1. The following shall be deemed to be general events of default by Lessee under this Agreement, to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement:

a. Lessee shall fail to pay any payment due to City under Article III above within ten (10) days of the date said payment is due.

b. Lessee shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it, or any successors or assigns of Lessee, pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Lessee of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

2. Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Lessee:

a. Terminate this Agreement and, at its discretion, retake the Premises from Lessee.

b. Seek and be entitled to monetary damages, including consequential damages from Lessee for any damages, including consequential damages incurred by City as a result of Lessee's default.

c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Lessee's violation of the terms and conditions of this Agreement or to compel Lessee's performance of its obligations hereunder.

d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

B. Non-Waiver. The waiver by City of any default on the part of Lessee or the failure of City to declare default on the part of Lessee of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Lessee of the same or of any other obligation of Lessee hereunder. And, to be effective, any waiver of any default by Lessee hereunder shall be in writing by City.

C. Remedies Cumulative. Except as specifically set forth herein, the remedies provided under this 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.

D. Force Majeure. Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions or labor disputes. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. The failure of a third party to perform under any Assignment shall not excuse the performance of Lessee.

ARTICLE XIII
REPRESENTATIONS BY CITY

A. City Representations. City represents and warrants that as of the date hereof:

1. It is a lawfully constituted municipal corporation under the laws of the State of Minnesota and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.

2. City has investigated and has no knowledge that a City Council member or other member, official, or employee of City is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

3. City shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XIV
DATA PRACTICES

Lessee shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Lessee under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Lessee. If Lessee receives a request to release the data referred to in this clause, Lessee must immediately notify City and consult with City as to how Lessee should respond to the request. Lessee shall hold City, its officers, and employees harmless from any claims resulting from the Lessee's unlawful disclosure or use of data protected under state and federal laws.

ARTICLE XV
NOTICES

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City: City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, MN 55806

In the case of Lessee: Crabby Ol' Bills, Inc.
Attn: Jim Goodman
2507 Branch Street
Duluth, Minnesota 55812
(218)260-0483

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

ARTICLE XVI
INDEPENDENT RELATIONSHIP

Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Lessee as agents, representatives or employees of the City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement. Lessee and its employees shall not be considered employees of City and any claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Lessee's employees or agents while so engaged shall in no way be the responsibility of City.

ARTICLE XVII
APPLICABLE LAW

The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under those state and federal courts located within St. Louis County, Minnesota.

ARTICLE XVIII
AMENDMENTS

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

ARTICLE XIX
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 the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XX
AUTHORITY AND BINDING EFFECT

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 officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

ARTICLE XXI
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, including the Original Lease and the 2019 Lease. The recitals above are true and correct and are incorporated into this Agreement by reference.

ARTICLE XXII
COUNTERPARTS AND SIGNATURES

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

IN WITNESS WHEREOF, the parties have executed this Second Amended and Restated Lease Agreement as indicated below.

CITY OF DULUTH

Crabby Ol' Bills, Inc.

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Dated: _____

Dated: _____

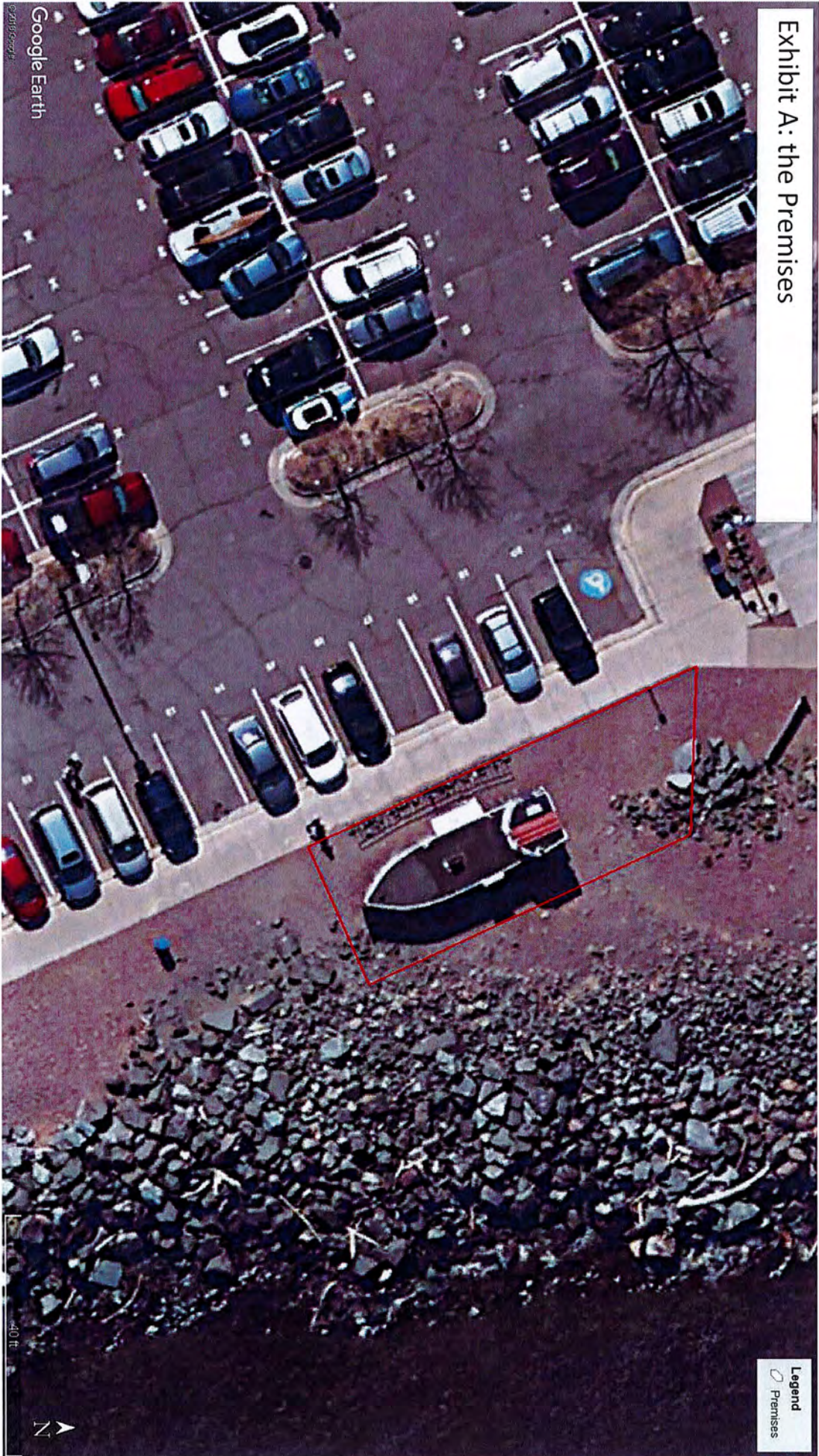
Countersigned:

City Auditor

Approved as to form:

City Attorney

Exhibit A: the Premises



25192-01



EXHIBIT B
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



April 9, 2019

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 Parks and Recreation as the City entity that will: (1) accept and review all submitted parks related Project Proposal Forms; (2) conduct an internal review to determine compatibility with all parks planning documents, industry best practices, and standards set by the Division, (3) pending preliminary approval by parks review staff, forward to appropriate city staff in other divisions, (4) if approved, facilitate the process to project completion. Once your project proposal request is received, staff will initiate the review process, with the intent to provide a response within sixty (60) days.

The intent of this process is to expedite decision making, properly evaluate proposals against existing plans, standards, and uses; 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, Parks and Recreation 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 Jessica Schoonover at (218) 730-4325.

Sincerely,

Jessica Peterson
Parks and Recreation Manager
City of Duluth
411 W First Street
Duluth, MN 55802



Use this form to propose a City of Duluth improvement project on park property. 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 sixty (60) days of submission. **Please submit completed form, along with attached map to: projectproposal@duluthmn.gov.**

APPLICANT CONTACT INFORMATION

Date of Application:

Name:

Organization:

Address:

City/State/Zip:

Park Location:

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 park name, location within park, and GPS coordinates. 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 those reviewing the proposal have 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 park?



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):



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:

JESSICA SCHOONOVER
ADMINISTRATIVE CLERICAL SPECIALIST
CITY OF DULUTH
PARKS AND RECREATION
411 WEST FIRST STREET
DULUTH, MN 55802
projectproposal@duluthmn.gov
(218) 730-4325