

## PARKING LICENSE AGREEMENT

THIS PARKING LICENSE AGREEMENT (this "Agreement") is entered into by and between TEMPLE ISRAEL OF DULUTH, a Minnesota non-profit religious corporation ("Temple Israel"), 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 certain real property located between 16th and 17th Avenues East lying between Second Street and First Street that is more commonly known as Endion Park (the "City Property").

B. Temple Israel owns a partial interest and leases a partial interest in property adjacent to the City Property (the "Temple Israel Property").

C. The parties have a long-standing history of collaborating with each other and using each party's respective property. Since 1966 and pursuant to other agreements, Temple Israel has invested in recreational facilities and related improvements within the City Property.

D. In 1975, the City paid for construction of an addition to the building on the Temple Israel Property (the "Addition") so that the City could use the space for recreational programming. The City used the Addition for recreational programming and as a police substation from 1976 until 2008, during which time the City did not pay rent for such use. The City abandoned the Addition in 2008 and turned it over to Temple Israel so it did not continue to pay operating costs of the Addition.

E. For a number of years, Temple Israel's congregation has parked vehicles on a portion of the City Property on Friday evenings, Saturday mornings, and special events, including High Holiday Services. The parking of vehicles occurs on the basketball and tennis courts located on the City Property. As consideration for its use, Temple Israel has maintained the basketball and tennis courts, including performing snow plowing services during the winter months.

F. Temple Israel wishes to continue to periodically and temporarily park cars on a portion of the City Property during religious services and special events. The portion of the City Property that Temple Israel wishes to use is depicted on the attached Exhibit A and legally described as Lots 12-16, Block 69, ENDION DIVISION OF DULUTH (the "Licensed Premises").

G. The parties desire to enter into this Agreement to allow Temple Israel to periodically and temporarily park cars on the Licensed Premises during religious services and special events, with such usage governed by the terms of this License Agreement.

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:

I. INCORPORATION OF RECITALS. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.

II. THE LICENSE.

A. Subject to the terms and conditions set forth in this Agreement, the City grants to Temple Israel a non-exclusive license to periodically and temporarily park vehicles on the Licensed Premises during the following periods:

1. All religious services, including:
  - a. Friday evenings between 5:00 and 10:00 \_\_\_\_ p.m.
  - b. Saturday mornings between \_8:00 a.m. \_\_\_\_ and \_2:00 p.m. \_\_\_\_\_
  - c. High Holiday Services (dates vary each year)
    - o Rosh Hashanah – two days in the Fall
    - o Yom Kippur – one day in the Fall
    - o Sukkot – two days in the Fall
    - o Purim – one day in late Winter
    - o Passover – one day in early Spring
    - o Occasional Thursday afternoon services
2. Funerals
3. Other Temple Israel-sponsored events, such as:
  - a. Hebrew school – Wednesdays after school
  - b. Zumba – Tuesday mornings
  - c. Depression support group –Wednesdays from 9:00 a.m. – 1:00 p.m.
  - d. Learner's Lunch – Wednesdays once a month during the academic year

b. Temple Israel acknowledges and understands that the Licensed Premises is public property, and the cooperation of all users and coordination of activities is required. This cooperation includes ingress and egress and use of amenities and related improvements. Temple Israel agrees that the City's Property and Facilities Manager (the "PFM Manager") shall, subject to this Agreement, ultimately determine the appropriate use of the Licensed Premises and shall decide any disputes between Temple Israel and any other users of the Licensed Premises.

C. Temple Israel's use of the Licensed Premises shall in no way limit or restrict City's or the public's use of the Licensed Premises, except during those times listed in

Section II.A. above. City and the general public shall continue to enjoy unlimited access to the Licensed Premises during the Term (defined below).

III. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall commence on or about January 1, 2020, and shall continue through December 31, 2029 (the "Term").

IV. LICENSE FEE. There shall be no fee due from Temple Israel for the use authorized under this Agreement. The consideration for use of the Licensed Premises shall be the maintenance duties performed by Temple Israel, the prior investments by Temple Israel into recreational improvements, and the City's previous use of the Temple Israel property.

V. TERMINATION OR EXPIRATION.

A. For Cause. The City may terminate this Agreement for the material breach by Temple Israel of any provision of this Agreement if such breach is not cured to the satisfaction of the City within fourteen (14) 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.

B. Suspension and Termination. The City may suspend this Agreement immediately on notice to Temple Israel if the City believes in good faith that the health, welfare, or safety of occupants or neighbors of the Licensed Premises would be placed in immediate jeopardy by the continuation of this Agreement. Such suspension shall remain in place until such time as the situation giving rise to the suspension is remedied to the full satisfaction of the City. The City may terminate this Agreement on 150 calendar days' written notice to Temple Israel if the City concludes in good faith that substantial City interests require such termination.

C. Surrender Possession. Upon expiration of the Term or termination of this Agreement for any reason, Temple Israel will surrender possession of the Licensed Premises to the City in as good condition and state of repair as the Licensed Premises was in at the time Temple Israel took possession or better. Upon expiration of the Term or termination of this Agreement for any reason, Temple Israel shall restore the Licensed Premises 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 Premises by Temple Israel, its employees, servants, agents, contractors, invitees, tenants and licensees.

VI. CITY WARRANTY. The City makes no representation that the Licensed Premises is suitable for any particular purpose or specific uses and Temple Israel accepts the Licensed Premises in an "as is" condition without representations or warranties of any kind. The City shall have no duty to maintain or repair the Licensed Premises or to remove snow from the Licensed Premises.

## VII. TEMPLE ISRAEL RESPONSIBILITIES.

A. Generally. Temple Israel agrees to exercise reasonable care and best practices in utilizing the Licensed Premises to minimize any permanent impacts to the Licensed Premises. Temple Israel shall be responsible for any losses or damages to the Licensed Premises resulting from the use authorized by this Agreement.

B. Alterations and Improvements. Temple Israel shall not make any alterations or improvements to the Licensed Premises without the prior written consent of the City and then upon the terms and conditions which may be imposed by the City.

C. Snow Removal. Temple Israel shall be responsible for all snow and ice removal necessary for Temple Israel's use of the Licensed Premises.

D. Maintenance. Temple Israel shall maintain the Licensed Premises in a safe and clean order, condition, and state of repair.

E. Incident Reports. Temple Israel shall notify the PFM Manager in writing of any incident of injury or loss or damage to the Licensed Premises or any of Temple Israel's participants or invitees occurring within the Licensed Premises during the Term, except for damage to Temple Israel's personal property. Such written report shall be in a form acceptable to City's Claims Investigator and Adjuster. A copy of City's current form of Incident Report is attached as Exhibit B.

VIII. HOLD HARMLESS. Temple Israel 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 Temple Israel' use or occupancy of the Licensed Premises, except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of the City and its officers, agents, servants or employees or any pre-existing environmental conditions. On ten days' written notice from the City, Temple Israel will appear and defend all lawsuits against the City growing out of such injuries or damages, using counsel reasonably acceptable to the City. Notwithstanding anything to the contrary contained herein, the City and Temple Israel shall each be responsible for their own respective acts and the results thereof and shall not be responsible for the acts of the other party.

IX. INSURANCE. During the Term, Temple Israel shall have such insurance coverage as will protect Temple Israel and the City against risk of loss or damage to the Licensed Premises against claims which may arise or result from Temple Israel's use of the Licensed Premises during the Term. Temple Israel 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 \$1,500,000 for property damage liability. Temple Israel shall procure and maintain continuously in force automobile liability insurance with limits not less than \$1,500,000 single limit. 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. Temple Israel 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 Temple Israel' 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 Temple Israel 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.

X. INDEPENDENT CONTRACTOR. It is agreed that 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 Temple Israel or Temple Israel personnel as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. Temple Israel 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 Temple Israel' employees or agents while so engaged, shall in no way be the responsibility of the City.

XI. ASSIGNMENT. Temple Israel 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.

XII. LAWS, RULES AND REGULATIONS. To the extent that such compliance under this Section 11 does not require Temple Israel to make any alterations or improvements to the Licensed Premises, Temple Israel agrees to conduct its activities related to the Licensed Premises 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. With respect to its use of the Licensed Premises, Temple Israel shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. Temple Israel agrees to procure, at its own expense, all licenses and permits necessary for carrying out its obligations under this Agreement.

XIII. RECORDS RETENTION. Temple Israel 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.

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

XV. WAIVER. The waiver by the City or Temple Israel 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.

XVI. 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.

XVII. 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.

XVIII. NOTICES. Notices pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to Temple Israel, LLC, Attn: President, 1602 E. Second Street, Duluth, Minnesota 55812, and to City of Duluth, Attn: Property and Facilities Manager, 1532 W. Michigan Street, Duluth, MN 55806, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

XIX. COMPLIANCE WITH AGREEMENT. The rights of Temple Israel to use the Licensed Premises are subject to Temple Israel's compliance with the undertakings, provisions, covenants, and conditions herein.

XX. 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.

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

XXII. 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.

XXIII. 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.

CITY OF DULUTH, MINNESOTA

TEMPLE ISRAEL OF DULUTH

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

By: Mark S. Weitz

ATTEST:

Printed Name: Mark S. Weitz

\_\_\_\_\_  
City Clerk

Title: First Vice President & Treasurer

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

Date: December 3, 2019

COUNTERSIGNED:

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

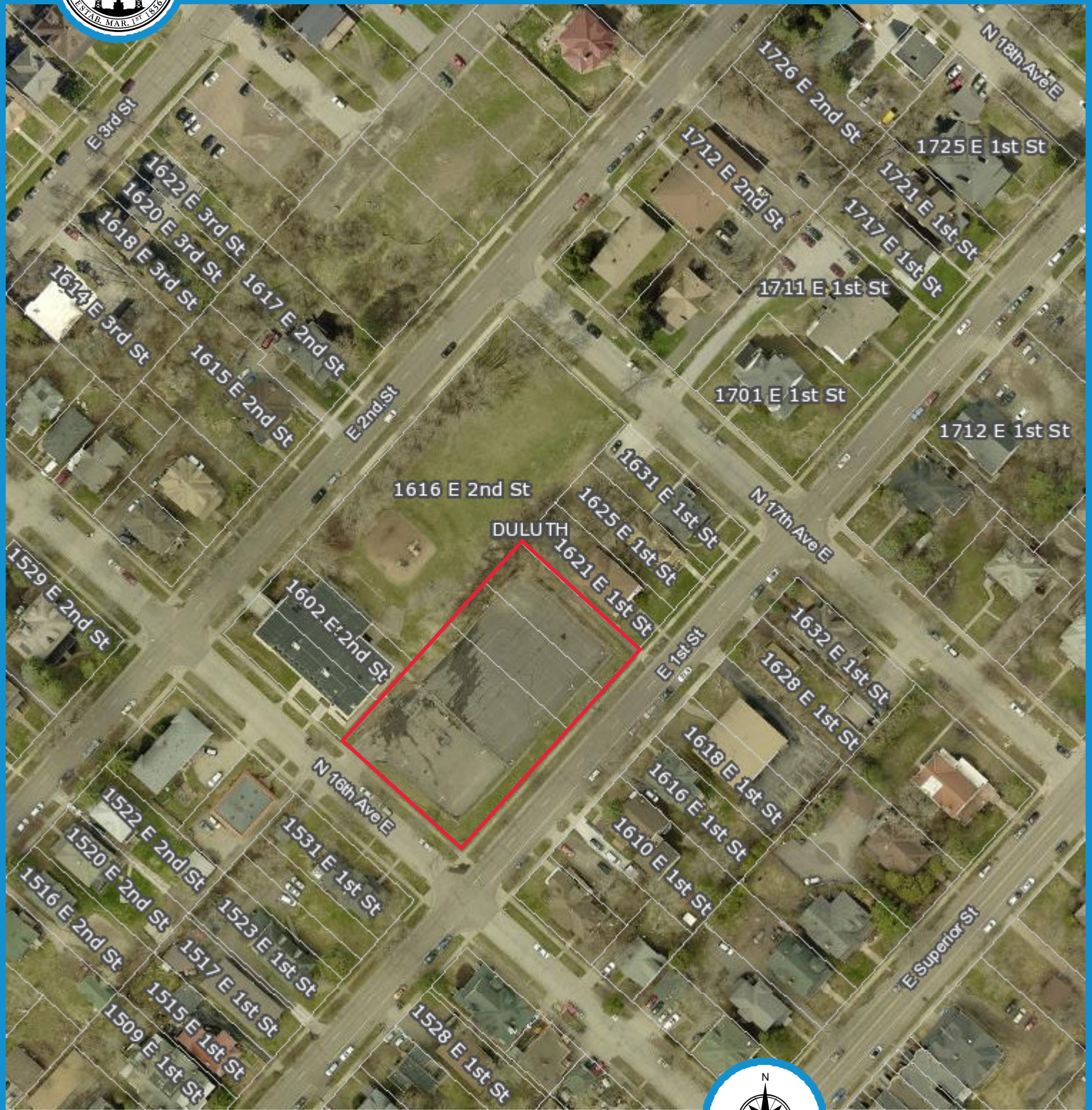
APPROVED AS TO FORM:

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





# EXHIBIT A



Licensed Premises



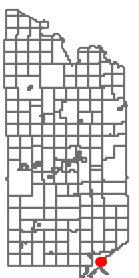
County Land Explorer  
St. Louis County [www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer) Minnesota

### Disclaimer

This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein

Map created using County Land Explorer  
[www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer)

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## EXHIBIT B City of Duluth Incident/Injury Report

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](mailto:accidentreporting@duluthmn.gov).

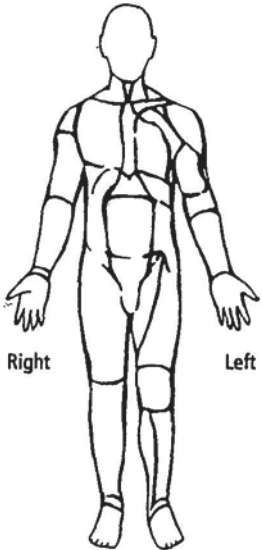
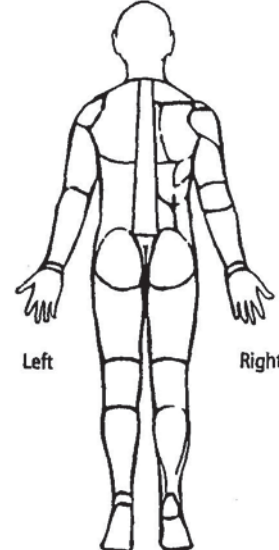
Date of incident/injury:	<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	Department/Division:
Choose one that best describes this claim: <input type="checkbox"/> Incident only, no medical care <input type="checkbox"/> Medical only, no lost time <input type="checkbox"/> Injury 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:
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: <input type="checkbox"/> safety violation <input type="checkbox"/> machine malfunction <input type="checkbox"/> product defect <input type="checkbox"/> motor vehicle accident <input type="checkbox"/> N/A		
Supervisor comments:		
What actions have been taken to prevent recurrence?		

# City of Duluth Incident/Injury Report

<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 (<input type="checkbox"/> Right <input type="checkbox"/> Left)</p> <p><input type="checkbox"/> Repetitive/overuse</p> <p><input type="checkbox"/> Other (specify): _____</p> <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"/> No apparent injury</p> <p><input type="checkbox"/> Other (specify): _____</p>	<p style="text-align: center;"><b>MARK AREAS OF INJURY BELOW:</b></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><b>Front</b></p>  </div> <div style="text-align: center;"> <p><b>Back</b></p>  </div> </div>
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COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE				
<p><b>For vehicle accidents:</b> 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 #:		
<b>City vehicle, property, or equipment involved</b>	Description:			
	Vehicle #:	Make/Model:	Year:	
	Describe damage:			
<b>Non-city vehicle, property, or equipment involved</b>	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:			
<b>Weather conditions:</b>	<b>Roadway conditions:</b>	<b>Light conditions:</b>	Approximate temperature: _____ °F	
<input type="checkbox"/> Clear <input type="checkbox"/> Wind	<input type="checkbox"/> Dry <input type="checkbox"/> Mud	<input type="checkbox"/> Night	Estimated speed: _____ mph	
<input type="checkbox"/> Rain <input type="checkbox"/> Cloudy	<input type="checkbox"/> Wet <input type="checkbox"/> Paved	<input type="checkbox"/> Day	Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty	
<input type="checkbox"/> Fog <input type="checkbox"/> Sleet	<input type="checkbox"/> Snow <input type="checkbox"/> Unpaved	<input type="checkbox"/> Good	What was load: _____	
<input type="checkbox"/> Snow	<input type="checkbox"/> Ice	<input type="checkbox"/> Poor	Drug and/or alcohol test? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

The Incident/Injury Form should be printed and signed by supervisor and employee. Completed forms can be scanned to [accidentreporting@duluthmn.gov](mailto:accidentreporting@duluthmn.gov).

Supervisor Signature: \_\_\_\_\_

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

Employee Signature: \_\_\_\_\_

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