

## Exhibit 1

### **AGREEMENT TO PRODUCE, PROMOTE, COORDINATE, AND MANAGE EVENTS AT BAYFRONT FESTIVAL PARK BETWEEN THE CITY OF DULUTH AND DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY**

THIS OPERATION AND MANAGEMENT AGREEMENT (this “Agreement”) is by and between the CITY OF DULUTH, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota (the “City”), and DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY, an authority of the State of Minnesota, created and existing under laws of Minnesota, 1963, Chapter 305, as amended (“DECC”). The City and DECC are collectively referred to in this Agreement as the “Parties.”

WHEREAS, the City owns, has an easement interest in, or otherwise has the right to use certain real property more commonly known as “Bayfront Festival Park.” Bayfront Festival Park contains amenities that include but are not limited to green space, structures, playground area (referred to in this Agreement as “Playfront Park”), a bathroom building near Playfront Park (referred to in this Agreement as the “Bathroom Building”), a community building with bathrooms, gathering space and storage for recreational equipment (referred to in this Agreement as the “Family Center”) and parking areas. Bayfront Festival Park is depicted on the attached Exhibit A. The portion of Bayfront Festival Park that is owned by the City is referred to in this Agreement as the “City Property” and is depicted in green on Exhibit A.

WHEREAS, the Duluth Economic Development Authority (“DEDA”) owns certain real property located within or near Bayfront Festival Park that is used for parking purposes, which property is referred to in this Agreement as “Lot B,” and is outlined in yellow on Exhibit A. DEDA also owns certain real property located within Bayfront Festival Park that is adjacent to Lot B (the “Adjacent Property”), which is outlined in red on Exhibit A. Lot B and the Adjacent Property are depicted on Exhibit A and are collectively referred to in this Agreement as the “DEDA Property.”

WHEREAS, the City and DEDA entered into a license agreement to allow the City to operate: (i) Lot B for vehicular parking and other purposes, and (ii) the Adjacent Property for park related purposes (as previously amended, the “DEDA License Agreement”). DECC acknowledges having received a copy of the DEDA License Agreement.

WHEREAS, the Lake Superior Center Authority (“LSCA”) owns certain real property located within or near Bayfront Festival Park, of which a portion is depicted on Exhibit A with black hashing and referred to in this Agreement as the “LSCA Property.”

WHEREAS, the City and LSCA, and LSCA’s predecessors in interest, have entered into several easement agreements to allow the City to use the LSCA Property for certain purposes as stated therein (the “LSCA Easement Agreements”). DECC acknowledges having received a copy of the LSCA Easement Agreements.

WHEREAS, DECC and the City have previously entered into an agreement obligating DECC to manage events at Bayfront Festival Park, and the City desires to continue to have DECC

manage events at a portion of Bayfront Festival Park pursuant to this Agreement, which completely replaces all previous agreements between the City and DECC regarding management of events at Bayfront Festival Park.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

**I. ADMINISTRATION**

For purposes of administering this Agreement, the City shall act through its Property and Facilities Manager or his or her designee (the “PFM Manager”), and DECC shall act through its Executive Director or his or her designee.

**II. PURPOSE AND PREMISES**

A. DECC shall provide certain services relating to Events (defined below) on the Premises (defined below) under the terms and conditions contained in this Agreement. The portion of Bayfront Festival Park subject to this Agreement includes the DEDA Property, the LSCA Property and a portion of the City Property and is outlined in orange on Exhibit A (collectively, the “Premises”). The Premises specifically excludes Playfront Park, as shown on Exhibit A outlined in blue.

B. DECC accepts the Premises “as is,” in its present physical condition, without representations or warranties of any kind. The City makes no warranty, either express or implied, that the Premises are suitable for any purpose.

C. DECC’s use of the Premises shall be limited to the purposes set forth in this Agreement.

D. DECC acknowledges that the Premises are multi-use facilities that require the cooperation of all users and coordination of activities. This cooperation includes shared parking, ingress and egress, amenities, and related improvements. DECC acknowledges that the PFM Manager shall ultimately determine the appropriate use of the Premises and shall prevail in any disputes between user groups.

E. DECC is permitted to leave its personal property on the Premises throughout the Term (defined below) only in areas designated by the City. DECC is solely responsible for the proper storage of its personal property on the Premises. The City is not responsible for any damage, theft, and/or vandalism of DECC’s personal property.

**III. TERM AND TERMINATION**

A. Term. Notwithstanding the date of execution, this Agreement shall commence on January 1, 2019, and shall continue through December 31, 2021, unless earlier terminated as provided for herein (the “Term”).

B. Termination

1. Generally. In the event of expiration or termination of this Agreement for any reason, DECC shall remain responsible for all outstanding expenses and/or fees due the City or others from DECC relating to this Agreement and/or Events. Upon expiration or early termination of this Agreement for any reason, DECC shall remove all of its personal property from the Premises pursuant to this section or other applicable sections. To the extent of DECC's maintenance responsibilities under this Agreement, DECC agrees to surrender possession of the Premises to the City in as good condition and state of repair as the Premises were in at the time DECC took possession, normal wear and tear excepted. All of DECC's personal property remaining on the Premises after DECC surrenders possession to the City shall become the exclusive property of the City.

2. Obligations. Upon expiration or termination of this Agreement for any reason, DECC shall remit to the City within five (5) business days the following:

- a. The Master Calendar (defined below);
  - b. Organization names, contact person(s), and contact information relating to all future Events;
  - c. Copies of any permits, agreements or other documents relating to all future Events, which, at the City's option, shall be assigned to the City;
  - d. Accounting of all fees collected relating to all future Events;
  - e. Check reimbursing the City in full for all fees collected relating to all future Events;
- and
- f. Such other information and documents reasonably requested by the City.

3. With Cause. The City may terminate this Agreement for the material breach by DECC 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 necessary actions to remedy the breach. If such violation or default is not cured or remedied to the satisfaction of the City within fourteen (14) days, then the City may terminate this Agreement immediately by serving written notice to DECC. In the event of default by DECC, the City, in addition to other rights or remedies it may have, shall have the immediate right of reentry to the Premises.

4. Without Cause. This Agreement may be terminated without cause by either Party by serving at least one hundred twenty (120) days' written notice upon the other.

#### IV. DECC RESPONSIBILITIES

A. DECC shall provide the following operation and management services for the Premises, as further described in this Section IV and elsewhere in this Agreement (collectively, the “Services”): (i) produce, promote, coordinate, and manage City Sponsored Events (defined below), (ii) as requested by the City, assist with Third Party Sponsored Events (defined below), (iii) book, produce, coordinate, and manage DECC Events (defined below), and (iv) manage and control parking on Lot A (as depicted on Exhibit A) and Lot B. A single City Sponsored Event, Third Party Sponsored Event, or DECC Event is referred to in this Agreement individually as an “Event” and collectively as the “Events.”

B. City Sponsored Events. A “City Sponsored Event” is an Event operated by, sponsored by, or otherwise supported by the City through financial or in-kind support that is free to the public to attend (*i.e.*, no gate admission fee is charged). For City Sponsored Events, DECC shall act as solicitor, promoter, manager, and producer of all components of the Event as agreed to from time to time by the City and DECC. The Parties may meet on or before October 1 of each year, if requested by the City, to determine (i) the City Sponsored Events to be held during the following calendar year; (ii) the specific Services to be provided by DECC in relation to each City Sponsored Event; and (iii) the expenses to be incurred by DECC and the City in relation to each City Sponsored Event. Additional City Sponsored Events may be agreed to throughout the year by the City and DECC. The Services to be provided by DECC for City Sponsored Events may include, without limitation, the following:

1. Act as the overall coordinator.
2. Solicit sponsors to financially underwrite the Event activities.
3. Secure entertainment, food, and craft vendors including entering into contracts to license space to such vendors (the “Licensees”).
4. Provide, arrange for, and/or coordinate supplemental services as necessary (*e.g.*, catering, electrical, security, and janitorial) (collectively, the “DECC Services”).
5. Coordinate communications and activities with participating volunteers and organizations.
6. Prepare a master “floor” plan and coordinate and assign all space.
7. Coordinate and supervise all set up, take down, clean up, and site restoration of the Premises.
8. Implement and coordinate marketing efforts.
9. Insure that all participants abide by regulations, statutes, and ordinances applicable to the Premises.
10. Provide on-site supervision and control of all activities.
11. Provide the appropriate number of staff, based on the size of the Event and the related features, to manage each Event, including a staff person who shall have overall responsibility for such obligations, who shall serve as the Event liaison and who shall have day-to-day decision-making authority with respect to carrying out such obligations, including serving as the contact person with whom the City may communicate any issues that may require consent or cooperation with DECC.

12. Provide all accounting services, including but not limited to, collecting all applicable use fees and deposits, billing, and collection.
13. Actively promote each Event including, but not limited to, placement of advertisements in local newspaper, on DECC's website and in other media venues, including social media.
14. Ensure that all marketing and promotion arranged by DECC includes the Bayfront Festival Park logo to acknowledge Bayfront Festival Park as a City of Duluth-owned park.

C. Third Party Sponsored Events. A "Third Party Sponsored Event" is an Event in which the City and a third party have entered into a written agreement for an Event(s) on the Premises. A list of the "Third Party Sponsored Events" is attached as Exhibit C, which may be amended by City from time to time as additional Third Party Sponsored Events are added to the calendar. However, City may only schedule additional Third Party Sponsored Events on a day and time that will not conflict with an Event that has already been booked. DECC shall assist with Third Party Sponsored Events as requested by the City, which Services may include, without limitation, the following:

1. Coordinate scheduling of dates.
2. Assist third party sponsor with on-site coordination.
3. Provide all accounting services including, but not limited to, collecting all applicable use fees and deposits, billing, and collection.

D. DECC Events. A "DECC Event" is an Event sponsored and promoted by DECC or where DECC contracts with a third party promoter to hold an Event. DECC shall use its best efforts to book DECC Events that will enhance the use of the Premises by adding entertainment and cultural value to the City and draw visitors to the City. The Services to be provided by DECC relating to a DECC Event shall include, without limitation, the following:

1. Secure and contract with third party promoters to hold DECC Events. DECC will use a form of agreement approved by the City Attorney and shall include language indemnifying the City and the then-current fee owners of the DEDA Property and the LSCA Property and naming them as additional insureds.
2. Provide the Services listed in Section IV.C. above on behalf of the City.
3. Provide the Services listed in Section IV.B. above, or contract with one or more third parties to provide the Services listed in Section IV.B., in which case DECC shall fully enforce those third party contracts and shall ultimately be responsible, as between the City and DECC, to make sure all Services listed in Section IV.B. are completed.

E. Events Schedule and Website: DECC shall create and maintain a master schedule of all Events (the "Master Calendar") and, upon request, shall provide the Master Calendar to the City. In addition, DECC will be responsible to maintain and update as necessary the website for Bayfront Festival Park that can be found at [www.bayfrontfestivalpark.com](http://www.bayfrontfestivalpark.com). All content placed on the website is subject to review and or removal at the written or electronic request of the City's Manager of Parks and Recreation or his/her designee (the "Parks Manager"). The content on the

website shall be limited to information related to Bayfront Festival Park, and the placement of any non-Bayfront Festival Park related information is prohibited. [www.bayfrontfestivalpark.com](http://www.bayfrontfestivalpark.com) and all of its content are and shall remain the property of the City.

F. Licensee Requirements: It shall be the responsibility of DECC to verify that each Licensee possesses a valid City of Duluth Sales Tax Permit before allowing for the set up or subsequent sales activities of any Licensee. DECC shall provide evidence to the City that all Licensees meet the minimum applicable licensing requirements from the health departments of the State of Minnesota and County of St. Louis and other requirements including without limitation insurance as may be required by any applicable laws, codes, or ordinances in force at the time of each City Sponsored Event or DECC Event.

G. Alcohol: Alcohol may be sold, possessed, consumed or served on the Premises only when the appropriate permit or license has been obtained from the City prior to the Event and all application, fee and other requirements have been met. DECC shall have the sole exclusive right to vend alcohol at City Sponsored Events and DECC Events. Notwithstanding the foregoing, DECC shall have the right to subcontract its right to vend alcohol to qualified alcohol distributors or sponsors. If DECC subcontracts its right to vend alcohol, then it shall ensure that each vendor has the appropriate insurance coverage naming the City and DECC as additional insureds. Sales of alcoholic beverages shall comply with all applicable local ordinances and state laws.

H. Parking Lots.

1. Except as may otherwise be provided in the DEDA License Agreement or in agreements between the City and a third party governing a Third Party Sponsored Event, during Events DECC shall be responsible for parking lot management for all parking lots included in the Premises as shown on Exhibit A (the "Parking Lots"), including collecting fees for use of the Parking Lots (the "Parking Fees"). The Parking Fees charged shall be in the amounts established by the City Council and shall be posted on that year's fee schedule, which can be found on the City's website. In the event the Parking Fees are not included in the schedule established by the City Council, the Parking Fees amounts shall be determined by DECC. DECC shall either (i) retain the Parking Fees, which shall be used for the promotion, management and production of Events; or (ii) in the case of DECC Events in which a third-party promoter is involved, DECC may negotiate to share Parking Fees in total or in part with the third-party promoter.

2. DECC may collect Parking Fees (i) during Events, (ii) during events in close proximity to Bayfront Festival Park (including events at the Duluth Entertainment and Convention Center), and (iii) when DECC's primary parking lot/ramp overflows. The Parking Lots will remain free and open to the public for recreational usage at all other times. In addition, DECC will allow free parking in Lot A for members of the public utilizing Playfront Park at all times.

3. Notwithstanding paragraph IV.H.1. above, the City shall determine, at the time the list of City Sponsored Events is finalized pursuant to Section IV.B. above, whether parking at each City Sponsored Event shall be free or at a reduced rate.

I. Hours of Operation and Emergencies. Events at the Premises can begin no earlier than 10:00 a.m. Except as otherwise agreed in writing, all Events shall end no later than 11:00 p.m. Sundays through Thursdays, and 11:59 p.m. on Fridays and Saturdays. All Events will be scheduled within these hours. Following City Sponsored Events and DECC Events, DECC shall ensure that all persons, including vendors, have exited the Premises by the designated closing time for Bayfront Festival Park. DECC, in consultation with public safety professionals, shall be solely responsible for the cancellation or termination of any Event necessitated by inclement weather.

J. Intentionally Omitted.

K. Maintenance and Operation.

1. For City Sponsored Events and DECC Events, unless otherwise agreed in writing by the Parties, DECC is responsible, at its sole cost and expense, for set-up and take-down activities and restoration of the Premises to its original condition, normal wear and tear excepted, within a reasonable amount of time (not to exceed forty-eight (48) hours from the end of an Event) and in all cases prior to the start of the next-scheduled Event. DECC agrees that it shall be responsible, at its sole cost and expense, for all damage caused as a result of any City Sponsored Event or DECC Event and repairs needed from said damage. Following each City Sponsored Event and DECC Event, the City shall promptly determine the extent of any damage and needed repairs on the Premises. If DECC fails to return the Premises to its original condition within the time specified for herein, the City reserves the right restore the Premises or contract with others to restore the Premises and will deduct such costs from the payments to DECC provided for in Section VII.

2. Unless otherwise agreed in writing by the Parties, DECC, at its sole cost and expense, shall provide all equipment necessary for the presentation of City Sponsored Events and DECC Events, including trash collection receptacles in sufficient quantity to maintain the Premises in a reasonable state of cleanliness, including but not limited to the removal of garbage from the trash collection receptacles to the dumpsters and removal of said dumpsters. To the extent possible, DECC shall separate recyclables, such as plastic bottles, aluminum cans, and cardboard boxes, that are generated at City Sponsored Events and DECC Events and arrange for the removal of recycling from the Premises to the appropriate collection site.

3. For City Sponsored Events and DECC Events, unless otherwise agreed in writing by the Parties, DECC, at its sole cost and expense, shall provide a sufficient quantity of portable toilet units, including a minimum of two (2) handicap accessible units, complete with ongoing cleaning and servicing throughout City Sponsored Events and DECC Events to provide safe, minimum standards of sanitation and public convenience. The number of portable toilet units may be adjusted at the direction of the St. Louis County Health Department or the Parks Manager. DECC shall be responsible to clean and maintain the Family Center and the Bathroom Building during and immediately after each City Sponsored Event and DECC Event and shall provide the necessary staff and supplies to carry out this responsibility. The City will be responsible to maintain/clean the Family Center and the Bathroom Building during non-Event times and supply proprietary items that work in various dispensers at the Family Center and the Bathroom Building, such as paper towels, toilet paper and trash bags. DECC shall be responsible for re-filling the

various dispensers at the Family Center and the Bathroom Building during Events with the proprietary items provided by the City. Upon request from DECC, the City will be responsible to remove items such as benches and other equipment and provide a “bare floor” in the Family Center for Event days, as well as reinstate benches and City equipment.

4. DECC agrees that vehicular access to the Premises shall be strictly limited to the “Vehicle Access” roadway from Railroad Street that is specifically designated and labeled on Exhibit A. At no time shall any vehicle be parked, operated, or permitted on the Premises except upon those areas of Premises labeled “Vehicle Access” or “Parking” unless approved by the DECC. DECC shall not allow any vehicles on any grass area within the Premises in relation to an Event or in carrying out its duties under this Agreement, except with the use of plywood boards to protect the turf. DECC shall be responsible for the enforcement of this provision for all vehicles on the Premises in relation to an Event or in carrying out its duties under this Agreement, whether the vehicles are owned by DECC, DECC employees, agents of DECC, concessionaires, or the general public. The City reserves the right to order the immediate removal of any vehicle used or parked in violation of this provision and shall not be responsible for any costs associated with the removal of any vehicle used or parked on grass areas within the Premises.

L. Premises Supervision and Security.

1. At all times during permitted uses of the Premises under this Agreement, the Premises will be properly supervised and overseen by an employee or agent of DECC with sufficient empowerment and decision making authority to act on behalf of DECC. DECC shall provide the City with contact information for its Operations Director, or his or her designee, who shall be the primary point of contact during each Event.

2. DECC, at its sole cost and expense, shall be responsible to provide an adequate number of security personnel based on the expected attendance of each City Sponsored Event and DECC Event. In the event that the attendance projected by DECC or a third party is substantially inaccurate, or a City Sponsored Event or DECC Event is conducted by DECC or any third-party in such a manner as to create a risk of disorder, the City may at any time, including during the course of the Event, provide such additional security service as the City’s Chief of Police, or his or her designee (the “Police Chief”) deems necessary. In such event, DECC or the third party shall be liable for the cost of the additional security service provided. DECC agrees to employ appropriate security that meets all applicable laws of the State of Minnesota. The City prohibits the use of armed security personnel unless specifically agreed to in writing in advance by the Police Chief, who may approve or deny any such request in his or her sole discretion. The City’s law enforcement officers may remove any person from the Premises who they believe is a threat to public health or safety.

M. Subcontractors. DECC may use non-employees or subcontractors (collectively, the “Subcontractors”) to perform the Services; provided, however, that: (i) DECC shall notify the City of the identity of each Subcontractor if requested; (ii) City may at any time request the immediate replacement of any Subcontractor, without stating a cause thereof; and (iii) the cost of any Subcontractor retained by DECC for the Services shall be borne solely by DECC. Prior to retaining a Subcontractor, DECC shall require each Subcontractor to agree to be bound by DECC’s



obligations under this Agreement, including but not limited to insurance and indemnification requirements. DECC agrees to cause all Subcontractors to observe the terms of this Agreement and will be responsible for any breach of this Agreement by any Subcontractor.

N. Incident Reports. DECC shall promptly notify the Parks Maintenance Supervisor, or his or her designee, in writing of any incident of loss or damage to the Premises or property belonging to the City or to any DECC employee, agent, Subcontractor, Licensee and/or user, participant, or invitee occurring on or within the Premises during the Term, except for damage to DECC's personal property. DECC shall promptly notify the PFM Manager in writing of any incident of injury to any DECC employee, agent, Subcontractor, Licensee and/or user, participant, or invitee occurring on or within the Premises during the Term. All incidents shall be reported using the form of Incident Report attached as Exhibit D, which form may be amended by the City from time to time in its sole discretion.

O. Limits of Usage. The Premises may only be used for the Events, provision of the Services, and related support services and for no other purpose. Use of the Premises pursuant to this Agreement is subject to the terms of (i) any agreements between the City and third parties for Third Party Sponsored Events, (ii) the DEDA License Agreement, and (iii) the LSCA Easement Agreements. The right of DECC to occupy, use, and maintain the Premises shall continue only for so long as all of the undertakings, provisions, covenants, and conditions contained in this Agreement are complied with strictly and promptly by DECC.

P. Compliance with Laws.

1. DECC shall make the City Sponsored Events and DECC Events available to all users and shall not discriminate on the basis of race, color, creed, national origin, sexual orientation, disability, sex, religion, or status with regard to public assistance, and shall not violate any federal, state or local civil rights law, rule or regulation in the operation, maintenance, or use of the Premises.

2. DECC shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Premises.

3. DECC agrees to operate the City Sponsored Events and DECC Events in strict compliance with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and the City.

4. DECC agrees to procure, at its sole cost and expense, all licenses and permits necessary for carrying out the provisions of this Agreement.

Q. Licensing and Royalty Payments. DECC agrees that all City Sponsored Events and DECC Events are and shall be covered by current and valid ASCAP or BMI licenses (collectively, the "Licenses"). DECC acknowledges that the City Sponsored Events and DECC Events are DECC functions and are being performed under the Licenses. DECC shall insure that all applicable licensing and/or royalty payments are made under the Licenses. DECC shall insure that all DECC Events promoted by third-parties are covered by current and valid Licenses.

R. Noise Level. DECC agrees that any amplified sound produced on the Premises during a City Sponsored Event or a DECC Event shall not exceed an approved noise level established by Minnesota Pollution Control Agency. DECC shall be responsible for reducing the noise level during a City Sponsored Event or a DECC Event when it is not in compliance with the Minnesota Pollution Control Agency approved noise level.

S. Drug Use. DECC acknowledges and agrees that there shall be no illegal drugs whatsoever on the Premises or as otherwise prohibited by state or local laws.

V. CITY RESPONSIBILITIES

A. If budget allows and upon availability and request, the City shall allow DECC to use its portable fencing units, as well as additional fencing material (the "City Fences") during Events. If used, it shall be the responsibility of DECC at its sole cost and expense, to put-up and take-down the City Fences for each City Sponsored Event and DECC Event. It shall be the responsibility of DECC to make sure that City Fences are repaired or replaced following damage (other than normal wear) or theft, at DECC's expense). In the event the City Fences are not available for use when requested, DECC shall be responsible to obtain such supplies and material at its sole cost and expense.

B. The City shall permit DECC the use of the stage on the Premises for City Sponsored Events and DECC Events. The City shall be financially responsible for the put-up, take-down, delivery, and storage of the stage, but the DECC shall be responsible to coordinate the dates and times for the set-up, take-down, delivery, and storage of the stage with the appropriate parties. The dates that the stage is put-up and taken down shall be determined in consultation with DECC based on the date of scheduled Events. It shall be the responsibility of DECC to make sure that any damage to the stage (other than normal wear) that occurs during City Sponsored Events or DECC Events is repaired by the DECC at DECC's expense. If DECC fails to return the stage to its original condition, the City reserves the right to repair or replace the stage or contract with others to provide such services and deduct the repair or replacement costs from the payments to DECC provided for in Section VII.

C. The City shall provide grounds maintenance to the Premises, including regular mowing of all grassy areas and snow removal from sidewalks. The City shall maintain and repair all sidewalks and parking areas within the Premises (except as may otherwise be provided in the DEDA License Agreement) and shall be responsible for snow removal from Lot A. Except in the case of an emergency, the City shall notify DECC in advance of any repair or maintenance activities that could interfere with DECC's use of the Premises.

D. The City shall, at its own expense, subscribe to internet service for the Family Center throughout the Term. The City does not guarantee a minimum speed of internet service and shall not be held liable should the internet service be suspended in any way. The City shall have sole discretion to determine the provider and type of internet service provided to the Family Center.

**VI. COMMUNICATIONS AND NOTICES**

A. The Parties agree that a full and complete exchange of information is necessary for a successful relationship, and each Party agrees to communicate openly and regularly with the other with regard to this Agreement.

B. DECC shall keep a written list of all contractually booked and/or cancelled Events that will be available to the City upon request. DECC will promote all Events on DECC’s website. Except for City Sponsored Events, the City shall not issue any media releases regarding Events without prior approval from the DECC.

C. DECC shall provide the Parks Manager a report on or before the first day of each month identifying the Events to be held during the following month and such additional information as may be reasonably requested by the Parks Manager.

D. DECC shall provide the Parks Manager a summary report by October 31st of each year identifying all Events held during the current year. The report shall include statistics about the Event, including the date of the Event, name of the Event, estimated number of people in attendance, and brief description of the Event.

E. Unless otherwise provided herein, notice to the City or DECC shall be sufficient only if (i) hand delivered to the Parties at the addresses set forth below, or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time; or (ii) sent by regular United States mail, postage prepaid, addressed to the Parties at the addresses set forth below, or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time:

City of Duluth  
Attn: Property and Facilities Manager  
1532 W. Michigan Street  
Duluth, Minnesota 55806

Duluth Entertainment Convention Center  
Authority  
Attn: Executive Director  
350 Harbor Drive  
Duluth, Minnesota 55802

**VII. FINANCIALS, REPORTING, AND TAXES**

A. Compensation. For satisfactory performance of DECC’s duties required under this Agreement, and in addition to all fees and revenues retained by DECC pursuant to this Agreement, the City shall pay to DECC an annual base fee each year of the Term as follows (the “Base Fee”):

2019: \$67,200.00  
2020: \$69,216.00  
2021: \$71,292.00

The Base Fee shall be payable from Fund 258-030-5310 (Tourism Taxes, Finance, Contract Services). Upon the City’s receipt of an invoice from DECC, the Base Fee shall be due and payable

in equal quarterly installments on January 15, April 15, July 15, and October 15 of each year during the Term. In the event that this Agreement is terminated during the Term: (i) the Base Fee for the then-current year shall be prorated for that year as of the termination date; and (ii) the Base Fee for any remaining years during the Term shall not be due.

B. Other Fees and Charges

1. All DECC Events shall be charged all applicable facility use fees and applicable deposits (collectively, the “Event Fees”). The Event Fees shall be established by the City Council and shall be posted on that year’s fee schedule, which can be found on the City’s website.

2. DECC shall collect and deposit the Event Fees and shall maintain an accurate accounting of the Event Fees. DECC shall provide the City Auditor with a monthly financial report detailing all Event Fees collected during the previous month, together with a check to the City for the Event Fees collected for that month (except refundable returned or retained deposits). The format of the financial report must be approved by the City Auditor. The monthly report and Event Fees due to the City shall be remitted on the 15th day of the month.

3. The Event Fees shall be deposited in Fund 237-015-4623 (Bayfront Festival Park, Public Administration, Rent of Land). Upon request by DECC and subject to the approval of the City’s Chief Administrative Officer (the “CAO”), DECC can use monies from the Event Fees for the promotion, marketing and production of Events.

4. As applicable, DECC will be responsible for returning refundable deposits to the payee following a DECC Event after its inspection of the Premises, less any amount retained for unpaid Event Fees or damages.

5. DECC may retain all fees it collects in return for providing the DECC Services to third parties.

6. As applicable, DECC may retain all proceeds from sponsorship sales, concession sales, vendor sales, alcohol sales, and tickets sales relating to DECC Events and City Sponsored Events.

C. Reporting

1. DECC acknowledges that, as provided in Minnesota Statutes Section 16C.05, Subd. 5, all of DECC’s books, records, documents, and accounting procedures and practices related to its activities pursuant to this Agreement are subject to examination by the City or the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance written notice by the City, DECC shall provide all requested books, records, documents, and accounting procedures and practices related to DECC’s activities pursuant to this Agreement.

2. DECC agrees to maintain all records relating to its activities pursuant to this Agreement during the Term and for six (6) years after termination, cancellation, or expiration of this Agreement.

D. Taxes. DECC agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of DECC's activities pursuant to this Agreement, including real property and sales taxes, if applicable. It is further agreed that the City may (i) pay the same on behalf of DECC and immediately collect the same from DECC, or (ii) reduce any amount owed to DECC by the City pursuant to this Agreement in an amount equal to the payment made by the City on DECC's behalf. DECC 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.

### **VIII. ASSIGNABILITY**

Except as provided for in Section IV above, DECC shall not assign or transfer any of its rights or interests under this Agreement in any way whatsoever without the express written approval of the CAO.

### **IX. ALTERATIONS AND IMPROVEMENTS**

A. DECC shall not excavate or otherwise install any underground apparatus into any of the grounds on the Premises without first providing a detailed, precise map to the PFM Manager of all proposed underground locations at least thirty (30) days in advance of the planned action. DECC shall not proceed with any underground actions without first (i) securing written approval from the PFM Manager, or the City's Director of Public Administration in the PFM Manager's absence, and (ii) having all underground utilities properly located by One Call or identified by the City prior to proceeding with said underground actions.

B. DECC shall not drive stakes into the ground on the Premises, except within the areas depicted in black on the attached Exhibit B. DECC shall limit the on-ground use of wires, hoses, and other such items to only those areas which are not accessible to normal pedestrian traffic. In the event DECC needs to allow the installation of on-ground utilities, DECC shall comply with all applicable codes and laws pertaining to said installations.

C. DECC may make temporary improvements to the grounds, such as the erection of fencing, scaffolding, special platforms, water tanks, rigging, or other apparatus necessary to ensure the success of an Event or the safety of staff, performers, and the general public (the "Temporary Improvements"). All Temporary Improvements installed on the Premises shall conform to any and all applicable laws or building codes governing such installations. DECC shall remove all temporary improvements following each Event.

D. DECC shall not make any long-term temporary (defined as improvements or structures that remain on the Premises for more than one Event) or permanent improvement to any part of the Premises without securing advanced, written approval of the PFM Manager. DECC

may, at its sole cost and expense, make suitable improvements or alterations to the Premises only with advance written approval from the PFM Manager. All such improvements shall be at DECC's sole cost and expense and shall become the property of the City. Prior to commencing any improvements or alterations, DECC shall submit to the City a Project Proposal Request in the form attached as Exhibit E along with detailed plans. The Project Proposal Request shall be submitted to the 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. DECC shall be responsible for any and all operational costs and maintenance of such improvements, installations, and facilities installed or constructed by DECC and shall operate them in a safe and lawful manner.

E. DECC agrees that prior to commencing any construction, erection, alteration, or improvement on the Premises, whether temporary or permanent in nature, that it will provide the City with a Certificate of Insurance evidencing that all persons, whether in the direct employ of DECC or agents hired by DECC, are covered by Workers' Compensation Insurance as required by Minnesota Statutes. DECC shall submit such Certificate of Insurance in advance of any work being done. No construction, erection, alteration, or improvement shall be commenced until such time as the required Certificate of Insurance is reviewed and approved by the City Attorney in writing.

## **X. INSURANCE**

A. DECC shall procure and maintain continuously in force the insurance policies required by this Agreement to cover all activities on the Premises pursuant to this Agreement. DECC shall procure and maintain in force Commercial General Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form with limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injuries and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage or One Million Five Hundred Thousand Dollars (\$1,500,000.00) single limit coverage per occurrence.

B. DECC shall procure and maintain in force an Automobile Liability Insurance policy with a combined single limit of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) covering owned, non-owned and hired vehicles.

C. DECC shall procure and maintain in force Statutory Minnesota Workers' Compensation Insurance and provide evidence thereof to the City.

D. If DECC conducts the sale of any product or service through any third party vendor or contractor on the Premises during a City Sponsored Event or a DECC Event, DECC will be required to secure Product Liability Insurance coverage with the same limits as stated in paragraph X.A. above. If DECC or any third party vendor or contractor sells, serves, or otherwise dispenses alcoholic beverages of any kind during a City Sponsored Event or a DECC Event, DECC shall provide evidence of Liquor Liability Insurance coverage for the dispensing of such beverages with the same limits as stated in paragraph X.A. above.

E. Insurance required by this Agreement 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. DECC shall provide Certificates of Insurance to the City evidencing the required insurance coverage. The insurance policies must be acceptable to the City Attorney and must include a 30-day written notice of cancellation, non-renewal, or material change provision in favor of the City. Except for worker's compensation insurance and professional liability insurance policies (if any), the Certificates of Insurance shall name the City, and the then-current fee owners of the DEDA Property and the LSCA Property as additional insureds. Certificates showing that DECC is carrying the required insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and certificates of insurance showing continued maintenance of all required insurance shall be provided to the City during the Term. The insurance policies shall provide that the policies shall not be changed or canceled during the Term without at least 30 days' advance notice being given to the City and the then-current fee owners of the DEDA Property and the LSCA Property.

F. The City reserves the right to require additional types of insurance and to increase the coverage limits of any required insurance, in its reasonable discretion, based on the types of activities being conducted on the Premises during Events.

G. The City does not, by entering into this Agreement, intend to waive any legal immunities, defenses, or liability limits that maybe available.

H. The City does not represent or guarantee that the required types or limits of coverage are adequate to protect DECC's interests and liabilities.

## **XI. HOLD HARMLESS AND INDEMNIFICATION**

A. DECC agrees to indemnify, save harmless, and defend (with counsel acceptable to the indemnified party) the City, the then-current fee owners of the DEDA Property and the LSCA Property, and their respective officers, officials, agents, servants, and employees (collectively, the "Indemnified Parties" and individually, an "Indemnified Party") from and against any and all claims, suits, loss, judgments, costs, damages, and expenses asserted by any person or persons by reason of injury to or death of any and all persons, including employees or agents of the Indemnified Parties or DECC, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of DECC arising out of, related to or associated with the use, management, maintenance or operation of the Premises by DECC or its performance of or failure to perform its obligations under this Agreement. Promptly after receipt by an Indemnified Party of notice of the commencement of any action with respect to which DECC is required to indemnify the Indemnified Party, the Indemnified Party shall notify DECC in writing of the commencement thereof, and, subject to the provisions of this Agreement, DECC shall assume the defense of such action, including the employment of counsel satisfactory to the Indemnified Party and the payment of expenses. In so far as such action shall relate to any alleged liability of the Indemnified Party with respect to which indemnity may be sought against DECC, the Indemnified Party 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 DECC. This indemnification provision shall survive expiration or termination of this Agreement for any reason.

B. To the extent permitted by law, the City agrees to indemnify, save harmless, and defend DECC and its officers, agents, servants, and employees from and against any and all claims, suits, loss, judgments, costs, damages, and expenses asserted by any person or persons by reason of injury to or death of any and all persons, including employees or agents of the City, DECC, or the then-current fee owners of the DEDA Property and the LSCA Property, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of the City arising out of, related to or associated with the use, management, maintenance or operation of the Premises by the City or its performance of or failure to perform its obligations under this Agreement. Promptly after receipt by DECC of notice of the commencement of any action with respect to which the City is required to indemnify DECC, DECC shall notify the City in writing of the commencement thereof, and, subject to the provisions of this Agreement, the City shall assume the defense of such action. In so far as such action shall relate to any alleged liability of DECC with respect to which indemnity may be sought against the City, DECC shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the City. This indemnification provision shall survive expiration or termination of this Agreement for any reason.

## **XII. INDEPENDENT RELATIONSHIP**

It is agreed that nothing contained in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties or of constituting DECC as an agent, representative, or employee of the City, DEDA, or the LSCA 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. DECC's employees shall not be considered employees of the City, DEDA or the LSCA and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of DECC's employees while so engaged and any and all claims whatsoever arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the City, DEDA, or the LSCA. DECC and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay from or on behalf of the City.

## **XIII. CITY/DEDA ACCESS**

A. To the extent permitted by law, City expressly reserves unlimited access to the Premises at any time and at its sole discretion. As needed or requested, DECC shall provide the PFM Manager, Parks Manager, and/or their designees with access passes for each DECC Event for access by authorized personnel. DECC acknowledges and agrees that the City or DEDA may each use their respective properties and such use will not interfere with the allowed DECC uses as set forth herein.



B. DECC shall not change the locks or otherwise prohibit or inhibit the City's access to any portion of the Premises. The City shall be exclusively responsible for the upkeep of all door locking devices and the duplication and distribution of all keys for the Premises. DECC is prohibited from duplicating any key provided by the City. DECC agrees to abide by the Key Control Policy, a copy of which shall be provided to DECC. DECC will promptly return all keys to the PFM Manager upon expiration or termination of this Agreement.

C. DECC shall not interfere with public access to and lawful use of Premises and its facilities.

#### **XIV. FORCE MAJURE**

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, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits. 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.

#### **XV. GENERAL PROVISIONS.**

A. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.

B. This Agreement is to be construed and understood solely as an agreement between the Parties 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, organization, or business 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, as between the Parties, may be waived at any time by mutual agreement of the Parties.

C. 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.

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

E. The waiver by the City or DECC of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition of this Agreement.

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

G. 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. The exhibits to this Agreement are as follows:

- Exhibit A Depiction of Bayfront Festival Park and Premises
- Exhibit B Depiction of Stake-Permitted Areas within Bayfront Festival Park and Premises
- Exhibit C Third Party Sponsored Events
- Exhibit D Incident Report Form
- Exhibit E Project Proposal Request Form

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

CITY OF DULUTH, MINNESOTA

DULUTH ENTERTAINMENT CONVENTION  
CENTER AUTHORITY

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

By: Rochele L. Townsend

Its: Executive Director

ATTEST:

Printed Name: Chelly Townsend

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

Dated: 3/1/19

Dated: \_\_\_\_\_

COUNTERSIGNED:

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

APPROVED AS TO FORM:

City Attorney

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