

**AGREEMENT BETWEEN THE
CITY OF DULUTH AND
CLAYTON JACKSON McGHIE MEMORIAL, INC.**

THIS AGREEMENT, by and between the **CITY OF DULUTH**, a municipal corporation in the State of Minnesota, hereinafter referred to as "City", and the **CLAYTON JACKSON McGHIE MEMORIAL, INC.**, a Minnesota non-profit corporation, hereinafter referred to as "CJMM".

WHEREAS, on June 15, 1920, a mob lynched Elias Clayton, Elmer Jackson, and Isaac McGhie in downtown Duluth. Wrongly accused and abducted from the city jail, the three African-American men were beaten, tortured and hanged from a lamppost on the corner of Second Avenue East and First Street. Thousands of people witnessed, encouraged and participated in the riot surrounding the murder of the three young men. Their bodies were placed in unmarked graves at a local cemetery. Although labeled as the most heinous lynching of 1920, the event was largely forgotten for many decades. Forgotten also were the three young men who had been violently murdered.

WHEREAS, as the decades passed an awareness of this event began to manifest in the consciousness of our community. Duluth community members began to recognize the need to acknowledge the historical significance of the lynching and to honor the memory of the three men who were the victims of this horrendous crime. In 1991, the community located and marked the graves of the victims of the lynching. Around the same time, vigils began to be held at the intersection where the lynching occurred. Eventually, a grassroots committee was established to marshal efforts to honor the victims of the lynching. Meetings began to be held on a regular basis as people came together as a community to address the need for a Memorial to commemorate the three young African-Americans.

WHEREAS, the grassroots committee lead the effort to finance and construct the Memorial. This committee commenced fundraising efforts and secured donations from several community organizations, businesses, and local citizens. In addition, in 2001 a sub-committee met with the Public Arts Commission to learn about public art and to create a Request for Proposal ("RFP") which was sent out nationwide utilizing the Public Arts Commission's standard mailing list as well as other artistic venues. Simultaneously, in 2002 the City entered into a written agreement to acquire a vacant lot across the street from the lynching site, which lot would be used as the memorial site. The Duluth City Council approved the acquisition of the property on August 26, 2002, by Resolution No. 02-0557. The City is the owner in fee simple of the property without any deed restrictions.

WHEREAS, in the spring of 2003 the City requested bids for the site preparation and accepted a bid of \$35,600 for site preparation and footings. On April 28, 2003, the City entered into a loan agreement with the Duluth Public Arts Fund, Inc. ("Public Arts Fund"), to help pay for the commission of the artwork at the site. The City Council approved the loan agreement with the Public Arts Fund on April

28, 2003, by Resolution No. 03-0280. Artist Carla Stetson was selected to design the Memorial plaza and walls and to sculpt the bronze figures. Anthony Porter, a Minneapolis editor, publisher and writer, was selected to choose the quotations for the Memorial and to write the story for the wall. Two CJMM representatives agreed to undertake the challenging task of project management for the Memorial. There were weekly meetings with the artist, Carla Stetson, and countless community meetings to identify and resolve issues and maintain forward progress on the project. The CJMM representatives travelled to Osceola, Wisconsin where the bronze figures were cast and to New Ulm, Minnesota, where the walls were cast. June 3, 2003, was the groundbreaking for the site preparation. On July 8, 2003, the Memorial walls were installed at the site. In September of 2003, volunteers donated countless hours laying thousands of pavers and otherwise assisting in the installation of the Memorial. The gardens were created with the assistance of the City and local garden shops who contributed plants and trees.

WHEREAS, the Clayton Jackson McGhie Memorial (“Memorial”) was dedicated on October 10, 2003, a historically significant event that marked the end of a decades-long and deafening silence;

WHEREAS, the Memorial is both a public display of acknowledgement and hallowed ground. It is dedicated to the memory of the three men: Elias Clayton, Elmer Jackson and Isaac McGhie. Accordingly, the Memorial is a place of contemplation, atonement and reverence--a place for quiet reflection and introspection. It is a place that compels us to remember the past and sheds light on the events that unfolded on June 15, 1920, so we may gain understanding and heal as a community. It is a place that inspires reconciliation and the desire to end racial violence wherever it may occur. In this respect, the Memorial offers a place of belonging through connection with our past, our present and our future as well as connection with each other;

WHEREAS, on April 22, 2014, the Heritage Preservation Commission (“DHPC”) held a public meeting at which time the DHPC unanimously approved a motion to nominate the Memorial for Duluth Historic Landmark status. On April 30, 2014, the City of Duluth Planning Commission voted unanimously to recommend that the Memorial be designated as a local Historic Preservation Landmark. On June 9, 2014, the Duluth City Council passed Ordinance No. 14-027 designating the Memorial as a Duluth Historic Preservation Landmark;

WHEREAS, the grass roots committee that was instrumental in the creation of the Memorial recognized the need for the long-term preservation of the Memorial. To address this need, Clayton Jackson McGhie Memorial, Inc, was formed. This is a nonprofit corporation dedicated to the long-term stewardship of the Memorial and fostering racial justice in our community through education, reconciliation and healing;

WHEREAS, CJMM desires to operate and provide stewardship and guidance of the Memorial;
and

WHEREAS, the City recognizes the value of CJMM stewardship of the Memorial and the importance of the educational and related racial equity services provided by CJMM. The City recognizes that from the beginning CJMM has provided a significant role and on-going contribution of volunteer hours of time and talent of CJMM Board members and volunteers. Thus, the City desires to allow CJMM to operate and provide stewardship and guidance of the Memorial.

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

1. **ADMINISTRATION.** For purposes of administering this Agreement, the City shall act through its Facilities & Property Manager or designee (the "Manager"). CJMM shall act through its Co-chairs or designee ("CJMM Representative").
2. **PREMISES.** Premises shall mean the real property and Memorial as identified in Exhibit A, located at 29/31 North Second Avenue East, and depicted in photographs in Exhibit B, all of which are located in the City of Duluth, St. Louis County, Minnesota.
3. **USE OF PREMISES:**
 - a. City grants to CJMM non-exclusive use of the Premises for the purpose of maintaining and operating the Memorial and providing tours and educational activities. CJMM agrees that it is taking the Premises "as is," in its present physical condition, without representations or warranties of any kind, either express or implied, as to merchantability or fitness for any particular purpose or use;
 - b. CJMM acknowledges that the Manager, in consultation with CJMM, shall ultimately determine the appropriate use of the site;
 - c. CJMM further acknowledges that the Manager, in consultation with CJMM, shall ultimately determine the appropriate improvements consistent with the purpose of the Memorial; and
 - d. CJMM agrees that the Premises shall be used only for programs and activities related to the Memorial.
4. **DUTIES OF CJMM:**

For the purposes of this Agreement, the phrase "operate and maintain" means that CJMM shall be responsible for the following:

 - a. Perform the functions of a responsible steward including, but not limited to, performing the following duties on a year-round basis:
 - i. Conduct annual spring cleanup, to include planting and maintaining the gardens and vegetation;
 - ii. Conduct educational tours;
 - iii. Host an annual Day of Remembrance in June of each year;
 - iv. Perform other activities approved by the City in keeping with the Memorial's contemplative and reverential purpose;
 - v. Conduct annual inspections to identify maintenance and repair needs of the Memorial;
 - vi. Work with the Manager to arrange for annual surface cleaning of the bronze figures and the walls or other projects.
 - vii. Monitor the Premises for damage caused by vandalism, graffiti or other activities and notify the Manager of any such damage. CJMM may repair minor damage. However, the CJMM does not have authority hereunder to incur any debt on behalf of the City.

Further, the CJMM shall not undertake any major repairs without the written consent of the City.

- b. Payment of all expenses incurred by CJMM for CJMM sponsored activities and events, including maintenance functions.
- c. Co-create with the City a Rules and Regulations policy. The Rules and Regulations are subject to the Manager's approval, which approval must be in writing. The parties agree to coordinate efforts to implement and enforce the Rules and Regulations policy.
- d. CJMM may, with the written consent of the City, apply for grants or other monies to be used to maintain, repair or enhance the Premises.
- e. CJMM shall promptly notify the City if CJMM receives any communication or information relating to the possible development of any neighboring properties, which development may impact the Memorial or the Memorial view shed.
- f. CJMM shall procure all licenses and permits necessary for carrying out the provisions of this Agreement and its operations.
- g. Perform routine day-to-day maintenance of the Premises such as cleaning or other tasks not requiring a licensed or skilled tradesperson in order to maintain the Premises in a reasonable state of repair.
- h. Provide adequate supervision and security for CJMM activities and events.
- i. Ensure cleanliness following conclusion of CJMM led tours, events and other activities.
- j. Invite the City of Duluth to collaborate on events held at the Premises; and on all marketing and promotional materials and signs as new materials are created.
- k. Promptly notify the City in writing of any incident of injury or loss or damage to the property of City or any CJMM invitees occurring within the Premises during the Term of this Agreement. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster and sent to the Manager. A copy of the City's form of Incident Report is attached hereto as Exhibit C.
- l. Operate all events and activities on the Premises in compliance with all applicable laws, rules and regulations.

5. TERM AND TERMINATION OF AGREEMENT:

- a. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on February 1, 2016 and expire on January 31, 2026 unless earlier terminated as provided for herein.
- b. This Agreement may be terminated by either party, and without cause, by serving forty-five (45) days' written notice upon the other.
- c. Upon termination of this Agreement, the CJMM rights to use the Premises shall cease and CJMM shall promptly remove all of its personal property, if any, no later than the expiration of the notice period. Any such personal property remaining after this period shall become the property of the City.
- d. Should CJMM violate any of the provisions of this Agreement, City shall provide to CJMM written notice of such violation or default and shall allow CJMM thirty (30) days within which to cure or remedy any violations or defaults set forth therein. If such violation or default is not cured or remedied within thirty (30) days, City may terminate this Agreement immediately by serving notice to CJMM in the manner described.

6. ALTERATIONS OR IMPROVEMENTS:

- a. CJMM may, at its sole cost and expense, make suitable improvements or alterations to the Memorial upon advance written approval of the City. All alterations or improvements must be completed in accordance with the approved Preservation Plan on file with the City of Duluth Community Planning Office. Further, all alterations or improvements must receive a Certificate of Appropriateness from the Heritage Preservation Commission. Except as

provided herein, all capital improvements shall become the property of the City. Prior to commencing any capital improvements or alterations, CJMM shall submit to the City's Property and Facilities Manager, a Project Proposal Request along with detailed plans. These documents shall be submitted to the City at least twenty (20) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to all applicable laws and the Duluth City Codes.

- b. CJMM agrees that not less than twenty (20) days prior to commencement of any construction, alteration or improvement on said Premises, CJMM shall provide the City with sufficient proof of required insurance, including worker's compensation in accordance with applicable law. Such proof of insurance must be approved by the City Attorney before the commencement of any construction hereunder.

7. CITY RESPONSIBILITIES:

City shall be responsible for the following:

- a. Perform all maintenance and operational duties not performed by CJMM that the City determines, in the exercise of its sole discretion, should be performed.
- b. Payment of a reasonable level of basic utilities to include that required to operate the existing and future lighting.
- c. Perform necessary major repairs and non-routine maintenance to the structural components of the Memorial.
- d. Assist to the extent allowed by available manpower, equipment and other snow removal priorities, with snow removal from the Memorial and sidewalks due to snow events of 12 inches or more.

8. COMMUNICATIONS:

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 regarding services or other activities contemplated under this Agreement.

9. INSURANCE:

- a. During the entire term of this Agreement, CJMM shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) aggregate per occurrence for personal bodily injury and death, and limits of Two Hundred Thousand Dollars (\$200,000) for Leased Premises damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand Dollars (\$1,500,000) per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:

- i. Public Liability, including premises and operations coverage.
- ii. Independent contractors - protective contingent liability, if applicable.
- iii. Personal injury.
- iv. Owned, non-owned and hired vehicles, if applicable.
- v. Contractual liability covering the indemnity obligations set forth herein.

- b. CJMM shall provide to City a Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types of limits of coverage are adequate to protect CJMM's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any

such change or changes in said policy or coverages ineffective as against the City.

c. CJMM shall comply with all Minnesota Worker's Compensation laws in the utilization of all employees employed on the Premises.

d. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

- 10. NOTICES.** Unless otherwise provided herein, notice to the City or CJMM shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

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

CJMM
Co-chairs
222 E. Superior St., Ste. 322
Duluth, MN 55806

- 11. CITY ACCESS.** CJMM will not prohibit or inhibit the City access to any portion of the Premises.

- 12. NON-DISCRIMINATION.** CJMM shall make its program and services, as applicable, 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 use of the Premises.

- 13. DATA PRACTICES.** This Agreement is subject to the Minnesota Government Data Practice Act, Minnesota Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practice Act Section 13.02, Subd. 7, which is created, collected, received, stored, used, maintained, or disseminated by CJMM in performing any of the functions of the City during performance of this Agreement is subject to the requirements of the Data Practice Act and CJMM shall comply with those requirements as if it were a government entity.

14. GENERAL PROVISIONS:

- a. It is agreed by both parties that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting CJMM or any of its officers, agents, servants, employees or volunteers as an officer, agent, servant, representative, employee or volunteer of the City for any purpose or in any manner whatsoever. CJMM's officers, agents, servants, employees or volunteers shall not be considered as employees or volunteers of the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota, and any claims whatsoever on behalf of said officers, agents, servants, employees or volunteers arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. CJMM's officers, agents, servants, employees and volunteers shall not be entitled to any compensation or right or benefits from the City of any kind whatsoever, including but not limited to, vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, severance pay, etc.
- b. Nothing in this Agreement is intended to or should be construed as a waiver by the City of any immunities, defenses or other limitations on liability to which the City is entitled

by law, including, but not limited to, the liability limits under Minnesota Statutes Chapter 466.

- c. By entering into this agreement the parties do not create a principle/agent relationship. CJMM will not be deemed as acting as an agent of the City nor will it be deemed as acting in an official capacity. CJMM is a user of the Premises and shall not represent itself as an agent of the City.
- d. The waiver by the City or CJMM of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.
- e. 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.
- f. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. 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, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.
- g. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.
- h. This Agreement may be amended only by a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.
- i. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

[Remainder of page intentionally left blank. Signature page to follow.]

CITY OF DULUTH

By: _____
Mayor

ATTEST:

City Clerk
Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

**CLAYTON JACKSON McGHIE MEMORIAL,
INC.**

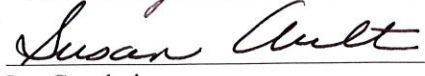
By: 

Its Co-chairs

Exhibit A

Map of Memorial Premises



Legend

CJMM

The City of Duluth has tried to ensure that the information contained in this map is accurate and reliable. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability of this information. The City of Duluth is not responsible for any errors or omissions in this information. The City of Duluth is not responsible for any damages or losses resulting from the use of this information. The City of Duluth is not responsible for any damages or losses resulting from the use of this information.

Clayton Jackson McGhie Memorial

photo date: 2013
 Printout: 1/26/2016

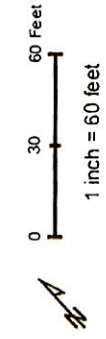


Exhibit B

Photos of Memorial







THE WORLD IS A DANGEROUS PLACE,
NOT BECAUSE OF THOSE WHO DO
EVIL, BUT BECAUSE OF THOSE WHO
LOOK ON AND DO NOTHING.

ALBERT EINSTEIN

...AND GENDER JOKE
ANOTHER GENERATION
WILL PASS ON THE POISON
ADULTS STILL HAVE NOT
HAD THE COURAGE TO
SNUFF OUT.

MARTIN WRIGHT ELLIOT

LOV



Exhibit C
Incident Report

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.

Date of incident/injury:	☐ Employee ☐ Non-Employee	Department/Division:
Choose one that best describes this claim: ☐ Incident only, no medical care ☐ Medical only, no lost time ☐ Injury includes lost time		
Initial treatment sought:	☐ Hospital ER ☐ Clinic ☐ 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: ☐ Male ☐ Female	

Did injury occur on employer's premises? ☐ Yes ☐ No	Name and address of the place of the occurrence:
---	--

Time employee began work: _____ ☐ a.m. ☐ p.m.	Time of injury: _____ ☐ a.m. ☐ 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: ☐ Yes ☐ No ☐ 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: ☐ Yes ☐ No	Date supervisor notified: _____	Date report completed: _____
Supervisor name: _____	Supervisor phone number: _____	

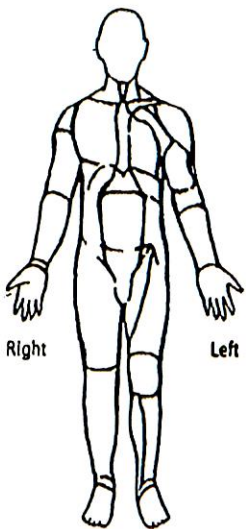
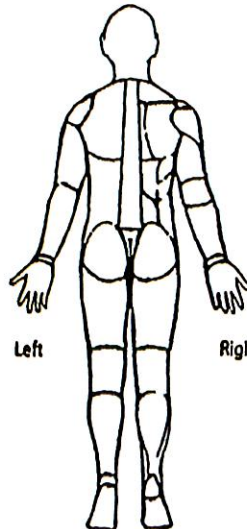
Names and phone numbers of witnesses:

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

Supervisor comments:

What actions have been taken to prevent recurrence?

City of Duluth Incident/Injury Report

CAUSE ☐ Slip and fall ☐ Struck by equipment ☐ Lifting or moving ☐ Caught (in, on, or between) ☐ Needle puncture ☐ Object in eye (☐ Right ☐ Left) ☐ Repetitive/overuse ☐ Other (specify): _____	MARK AREAS OF INJURY BELOW: Areas can be marked by typing an "X" in the text box wherever needed. Front  Right Left Back  Left Right
TYPE OF INJURY ☐ Scrape/bruise ☐ Sprain/strain ☐ Puncture wound ☐ Cut/laceration ☐ Concussion ☐ Bite ☐ Chemical burn/rash/breathing difficulties ☐ No apparent injury ☐ Other (specify): _____	

COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE							
For vehicle accidents: Attach sketch and additional information of how vehicle accident occurred. Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)							
Incident Location: _____		Time of incident: _____ ☐ a.m. ☐ p.m.					
Police called: ☐ Yes ☐ No		Police Traffic Accident Report ICR #: _____					
City vehicle, property, or equipment involved	Description: _____						
	Vehicle #: _____	Make/Model: _____	Year: _____				
	Describe damage: _____						
Non-city vehicle, property, or equipment involved	Owner full name: _____		☐ Driver ☐ Passenger ☐ Other				
	Owner address: _____						
	Owner phone number: _____		Vehicle license #: _____				
	Make/Model: _____	Color: _____	Year: _____				
	Describe damage: _____						
<table style="width: 100%; border: none;"> <tr> <td style="width: 25%; vertical-align: top;"> Weather conditions: ☐ Clear ☐ Wind ☐ Rain ☐ Cloudy ☐ Fog ☐ Sleet ☐ Snow </td> <td style="width: 25%; vertical-align: top;"> Roadway conditions: ☐ Dry ☐ Mud ☐ Wet ☐ Paved ☐ Snow ☐ Unpaved ☐ Ice </td> <td style="width: 25%; vertical-align: top;"> Light conditions: ☐ Night ☐ Day ☐ Good ☐ Poor </td> <td style="width: 25%; vertical-align: top;"> Approximate temperature: _____ °F Estimated speed: _____ mph Vehicle: ☐ Loaded ☐ Empty What was load: _____ Drug and/or alcohol test? ☐ Yes ☐ No ☐ N/A </td> </tr> </table>				Weather conditions: ☐ Clear ☐ Wind ☐ Rain ☐ Cloudy ☐ Fog ☐ Sleet ☐ Snow	Roadway conditions: ☐ Dry ☐ Mud ☐ Wet ☐ Paved ☐ Snow ☐ Unpaved ☐ Ice	Light conditions: ☐ Night ☐ Day ☐ Good ☐ Poor	Approximate temperature: _____ °F Estimated speed: _____ mph Vehicle: ☐ Loaded ☐ Empty What was load: _____ Drug and/or alcohol test? ☐ Yes ☐ No ☐ N/A
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The Incident/Injury Form should be printed and signed by supervisor and employee. Completed forms can be scanned to accidentreporting@duluthmn.gov.

Supervisor Signature: _____

Date: _____

Employee Signature: _____

Date: _____