

# Exhibit 1

## **2022-2023 EXCLUSIVE USE PERMIT FOR BAYFRONT FESTIVAL PARK BETWEEN THE CITY OF DULUTH AND BENTLEYVILLE TOUR OF LIGHTS, INC.**

### **ARTICLE 1 – PARTIES**

1.1 This Exclusive Use Permit Agreement, hereinafter referred to as “PERMIT AGREEMENT,” is by and between the CITY OF DULUTH, a municipal corporation organized and existing under the laws of the State of Minnesota, hereinafter referred to as the “CITY,” and Bentleyville Tour of Lights, Inc., a Minnesota non-profit corporation, hereinafter referred to as “PROMOTER.” This PERMIT AGREEMENT supersedes any other agreement between the parties and all such earlier agreements shall be terminated upon approval of this PERMIT AGREEMENT.

### **ARTICLE 2 – VENUE**

2.1 In consideration of the mutual covenants as set forth herein, and except as otherwise provided in this PERMIT AGREEMENT, the CITY hereby issues its PERMIT to the PROMOTER for the exclusive use of the Bayfront Festival Park, including grounds and structures, but excluding, unless otherwise provided in this PERMIT AGREEMENT, the playground area commonly known as Playfront Park, the Ice Rink, and any First Amendment area established by the City (“VENUE”), for the sole purpose of conducting a walk-through holiday lighting display with related concession activities (“EVENT”). Notwithstanding the previous sentence, PROMOTER may use the Ice Rink prior to flooding by the CITY, subject to the conditions set forth in Section 3.5 below. The VENUE is generally illustrated in EXHIBIT A, attached hereto and incorporated by reference. The VENUE is generally defined as located between 5th Avenue West and abandoned Slip No. 2 and between Railroad Street and the waterfront, but specifically excluding properties owned and controlled by the Lake Superior Center, the Duluth Entertainment and Convention Center (“DECC”), and the Duluth Economic Development Authority (“DEDA”). This PERMIT includes permission to illuminate the walkways and trees located around the perimeter of Bayfront Festival Park and portions of Railroad Street and Fifth Avenue West adjacent to Bayfront Festival Park. The CITY makes no representations that the VENUE is suitable for this specific use. PROMOTER is responsible to obtain permission from owners of property outside of the VENUE if additional areas are necessary for the EVENT.

### **ARTICLE 3 – TERM OF OCCUPANCY**

3.1. Except as provided in this PERMIT AGREEMENT, PROMOTER is permitted exclusive use of the VENUE for a period commencing at 6:00 a.m. on September 19, 2022, and concluding no later than 12:00 a.m., January 31, 2023 (“TERM”). The permission granted by this PERMIT AGREEMENT is for the sole purpose of conducting the EVENT. PROMOTER agrees that it shall conduct and complete the EVENT, including all set up, take down and site restoration, only during such period. The parties acknowledge that the ability to complete site restoration may be

delayed by weather conditions, and in that event the parties agree that site restoration may be completed when weather conditions make restoration practicable.

3.2. The City reserves the right, in cooperation with PROMOTER, to permit other events utilizing the Park Entry and Entry Walkway, Entry Plaza, and Courtyard and Walkway at the VENUE prior to the opening night of the EVENT. The City shall provide at least seven (7) day's notice to PROMOTER of other events utilizing the Park Entry and Entry Walkway, Entry Plaza, and Courtyard and Walkway at the VENUE prior to the opening night of the EVENT.

3.3. The parties agree to conduct a walk-through inspection of the VENUE prior to the beginning of the EVENT season at a mutually agreeable date and time to assess the condition of the VENUE. Following the conclusion of the EVENT season and removal of the lighting display and structures, the parties agree to again conduct a walk-through inspection of the VENUE to assess whether any damage has occurred and what restoration is required. The restoration required under this Agreement shall be performed to the scope of work and in the methods specified by the CITY'S Property and Facilities Manager or their designee ("MANAGER").

3.4 PROMOTER shall have exclusive use of the Bayfront Family Center from September 19, 2022 through December 31, 2022.

3.5. CITY shall not flood the Ice Rink until on or after December 29, 2022. In the event that (i) PROMOTER is still occupying any portion of the Ice Rink on December 29 or 30, 2022; and (ii) due to such occupation, CITY incurs employee overtime costs to flood the Ice Rink, then PROMOTER shall pay, within 10 days of a written request by CITY, an amount equal to the employee overtime costs incurred by CITY to flood the Ice Rink, calculated at a rate of \$50 per hour per employee, not to exceed 20 hours (the amount requested by CITY shall not exceed \$1,000).

3.6 The public restroom at Playfront Park will be closed during the TERM.

## **ARTICLE 4 – FEES**

4.1 PROMOTER shall not be required to pay a permit fee for the use of the VENUE as specified herein. Instead, consideration shall be the public benefit and purpose provided by PROMOTER.

4.2. PROMOTER agrees to the payment of a restoration deposit of Two Thousand Dollars (\$2,000.00). Such deposit shall be payable to the CITY at the time of permit issuance. The deposit shall be returned to PROMOTER, once the VENUE has been restored to its condition at the start of the TERM by PROMOTER as required by Section 6.3 below, and accepted by the CITY in the sole discretion of the MANAGER. If PROMOTER fails to return the VENUE to its condition at the start of the TERM, the CITY shall retain the entire amount of said deposit. Notwithstanding the above, the City agrees to be responsible for the first Ten Thousand Dollars (\$10,000.00) in damages to the VENUE. All expenses over Ten Thousand Dollars (\$10,000.00) required to fully restore the VENUE shall be the responsibility of PROMOTER. CITY will

provide PROMOTER, via regular United States mail, written notice of the complete list of all itemized damages with the estimated repair cost of each item. PROMOTER will have forty-five (45) days from receipt of the notice, weather permitting, to repair the damages that are PROMOTER'S responsibility hereunder. The PROMOTER is not responsible for any item of damage not included on the CITY'S itemized damage list. If PROMOTER does not make such repairs within the forty-five-day repair period, then CITY may make the repairs and invoice PROMOTER for all repair costs in excess of \$10,000.00. PROMOTER shall pay all such costs to the CITY within 30 days of receipt of the CITY's invoice for all costs that are the PROMOTER'S responsibility and that exceed the amount of the restoration deposit.

## **ARTICLE 5 – PARKING**

5.1 The use of certain parking lots in the area surrounding the VENUE is subject to a license agreement between CITY and DEDA (City Contract No. 24161) and an agreement between CITY and the DECC (City Contract No. 24352). PROMOTER understands its use of parking lots is not subject to this PERMIT AGREEMENT and the use of parking lots must be negotiated with parties controlling the parking lots.

## **ARTICLE 6 – PROMOTER RESPONSIBILITIES**

6.1. PROMOTER is responsible for providing a sufficient quantity of portable toilet units, complete with ongoing cleaning and servicing throughout the EVENT to provide safe, minimum standards of sanitation and public convenience. PROMOTER shall maintain and provide appropriate cleaning services to the Bayfront Family Center.

6.2. Vehicular access to the VENUE shall be limited to the "Vehicle Access" roadway from Railroad Street as designated and labeled on EXHIBIT A. At no time shall any vehicle of any kind be parked, operated, or permitted on the VENUE unless in an area expressly permitted in writing by the MANAGER. PROMOTER shall be responsible for the enforcement of this provision for all vehicles on the VENUE whether said vehicles are owned by PROMOTER, PROMOTER's employees, volunteers, subletees, contractors, agents of PROMOTER, or its patrons. The CITY reserves the right to order the immediate removal of any vehicle used or parked in violation of this provision.

6.3. PROMOTER agrees that it shall be responsible for repairing any and all damage to the VENUE caused by and arising out of the occurrence of the EVENT, provided such damage was the result of the actions or omissions of PROMOTER, its agents, assigns or patrons. Such responsibility for damages includes, but is not limited to, set up and take down activities. PROMOTER's responsibility for damage to the VENUE does not include criminal acts of third parties over whom PROMOTER does not exercise supervision or control. PROMOTER shall restore the VENUE to its condition at the start of the TERM, and if it fails to do so, pay the costs to repair the damage as provided in Section 4.2 above. PROMOTER shall comply with requests by the MANAGER for further measures, as necessary, during event set-up and after the event has commenced.

6.4. PROMOTER, its agents, or assigns shall not store hazardous waste, transfer hazardous waste, or participate in refueling operations at the VENUE (other than equipment owned or controlled by it) and all of Bayfront Festival Park. For purposes of this Section, hazardous waste is defined as waste that poses substantial or potential threats to public health or the environment and generally exhibits one or more of these characteristics: ignitable, reactive, corrosive, or toxic.

6.5. PROMOTER shall submit a safety and operations plan (“OPERATIONS PLAN”) to the CITY’S Parks and Recreation Manager for approval, which plan shall outline specific processes and procedures to ensure the health, safety, and welfare of all users of the VENUE during the entire TERM, including but not limited to cleaning and sanitization of the Bayfront Family Center and all bathroom facilities. Notwithstanding the start date of the TERM, PROMOTER shall not enter the VENUE until it has received written approval of the OPERATIONS PLAN. The OPERATIONS PLAN shall be updated from time to time during the TERM at the request of the CITY, and PROMOTER shall follow the OPERATIONS PLAN at all times in its operation of the VENUE.

6.6. PROMOTER shall be responsible for all snow removal on all VENUE pathways and shall apply salt or sand on VENUE pathways during any period of exclusive use, or within any area of exclusive use. PROMOTER shall also be responsible for all snow removal for any non-paved parking areas within the VENUE.

6.7. PROMOTER shall provide traffic control personnel, barricades, and cones for traffic control at the EVENT site as determined necessary by the City of Duluth Police Department in its sole discretion. PROMOTER shall be responsible to pay for City of Duluth Police personnel costs pursuant to CITY’S extra-duty policy, but shall receive a 50% discount on the total amount due.

6.8. PROMOTER is responsible to organize, contract for, and pay for any fireworks display or show during the TERM.

6.9. PROMOTER agrees that no person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to its operations pursuant to this PERMIT AGREEMENT.

6.10. PROMOTER shall observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City of Duluth and their respective agencies which are applicable to its activities under this PERMIT AGREEMENT.

6.11. PROMOTER shall comply with the terms of the Consent Decree and Judgment rendered and filed September 16, 2013, City of Duluth Resolution No. 11-3392, a copy of which is attached hereto to as Exhibit B and incorporated herein.

## **ARTICLE 7 – CITY RESPONSIBILITIES**

7.1. CITY shall provide sufficient electrical services to the EVENT, including the parking lots used in conjunction with the EVENT. However, the CITY is not required to provide electrical services to the west entrance/exit to Parking Lot B.

7.2. As the CITY’S budget allows and in the MANAGER’S sole discretion, the CITY agrees to provide salt and/or sand to PROMOTER for EVENT pathways.

7.3 CITY shall pay all electricity costs billed by Minnesota Power and incurred during the TERM. CITY receives the lighting rebate from Minnesota Power for LED lights purchased by PROMOTER, but acknowledges that the rebate belongs to the PROMOTER as an incentive to convert to LED lighting. The CITY shall remit the entire rebate amount from Minnesota Power to PROMOTER within fourteen (14) days of receiving such rebate, if any.

7.4. CITY shall comply with the terms of the Consent Decree and Judgment rendered and filed September 16, 2013, City of Duluth Resolution No. 11-3392, a copy of which is attached hereto to as Exhibit B and incorporated herein.

7.5 CITY shall provide water access between the Bayfront Family Center and the Bentleyville Cookie House.

7.6 CITY shall be responsible for all snow removal within the paved parking lot within the VENUE that is more commonly known as “Parking Lot A.”

7.7 During periods of exclusive use, CITY shall provide, at CITY’S expense, trash collection receptacles and attendant services in sufficient quantity to maintain the VENUE in a reasonable state of cleanliness during any period of exclusive use. Such cleanup area shall include all of Bayfront Festival Park and shall not be limited to the VENUE area. If required by the St. Louis County Health Department, CITY shall provide specialized disposal receptacles and related pick up services through a competent vendor, for the handling of liquid, oil, fatty, or other materials disposed of and requiring special and/or separate handling before, during, or after its event. CITY shall provide, at its expense, for the separation of recyclables plastic bottles, aluminum cans and cardboard boxes generated at the EVENT and for their removal from the site to the appropriate collection site.

## **ARTICLE 8 – COMMERCIAL ACTIVITIES**

8.1. PROMOTER and all third-party vendors or contractors hired or permitted by PROMOTER shall not advertise, sell, or offer alcoholic beverages whether intoxicating or non-intoxicating, during the EVENT or at the VENUE.

8.2. PROMOTER agrees to defend, indemnify, and save harmless the CITY and its officers, agents, employees and servants, from any and all liens, claims, suits, demands, liability, judgments, costs, damages and expenses, including attorney’s fees, which may accrue against or be charged to or may be recovered from the CITY by reason of or account of or in any way related to the goods sold by PROMOTER or any of its third-party vendors during the EVENT.

Upon ten (10) days written notice, PROMOTER will appear and defend all claims and lawsuits against the CITY growing out of any action with respect to goods sold by PROMOTER or third-party vendors during the EVENT.

## **ARTICLE 9 – ALTERATIONS OR IMPROVEMENTS**

9.1. PROMOTER shall not proceed with any underground actions without first securing approval from the CITY and further having all underground utilities properly located by One Call or identified by the CITY prior to proceeding with said underground actions.

9.2. PROMOTER shall limit the on-ground use of wires, hoses, etc. to only those areas that are not accessible to normal pedestrian traffic. PROMOTER shall ensure that any installation of on-ground utilities shall comply with all applicable codes and laws pertaining to said installations.

9.3. PROMOTER 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 the EVENT or the safety of staff, performers, and the general public. PROMOTER shall submit plans to the CITY showing the proposed location of all such apparatus upon the grounds at least ten (10) days in advance of said EVENT for the CITY's review and approval. No construction, alteration, or improvement shall begin until approved by the CITY and all building permits required by law are secured. All construction or apparatus installed on the VENUE shall conform to any and all applicable laws or building codes governing such installations.

9.4. PROMOTER agrees that prior to commencing any construction, erection, alteration, or improvement on the VENUE that PROMOTER will provide the CITY with a Certificate of Insurance evidencing that all persons, whether in the direct employ of PROMOTER or agents hired by PROMOTER, are covered by Worker's Compensation Insurance as required by Minnesota Statutes. PROMOTER shall submit such Certificate of Insurance at least ten (10) days prior to the EVENT. No construction, erection, alteration, or improvement shall be commenced until such time as said Certificate of Insurance is reviewed and approved by the CITY's attorney.

## **ARTICLE 10 – FACILITY LIAISON**

10.1 CITY designates the Property Services Supervisor ("PS SUPERVISOR") as the CITY employee to serve as staff liaison and primary contact between PROMOTER and CITY.

## **ARTICLE 11 – INSURANCE**

11.1. PROMOTER shall provide Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit and shall provide for the following: Commercial

General Liability, Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. The CITY does not represent or guarantee that these types or limits of coverage are adequate to protect PROMOTER's interests and liabilities.

11.2. The CITY shall be named as an Additional Insured under the Public Liability Policy, or as an alternate, PROMOTER may provide Owners-Contractors Protective policy, naming itself, and the CITY. PROMOTER shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. PROMOTER shall provide Certificates of Insurance evidencing the required insurance coverage. The certificates shall provide 30 days' notice of cancellation, non-renewal or material change provisions, and shall further provide that failure to give such notice to CITY will render any such change or changes in said policy or coverage ineffective as against the CITY.

## **ARTICLE 12 – INDEMNIFICATION**

12.1 To the fullest extent permitted by law, PROMOTER agrees to defend and indemnify CITY, and its officers, employees, and volunteers, from and against all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from the EVENT; but only to the extent caused in whole or in part by the negligent acts, errors or omissions of PROMOTER, PROMOTER'S employees, volunteers, subletees, contractors, agents, or anyone for whose acts PROMOTER may be liable. PROMOTER agrees this indemnity obligation shall survive the completion or termination of this PERMIT AGREEMENT. This Indemnification shall not extend to third-party claims against the City for death or injury arising out of the CITY's negligence. Further, this indemnification shall not extend to or apply to other events authorized by the City pursuant to Section 3.2 of this PERMIT AGREEMENT.

## **ARTICLE 13 – INDEPENDENT RELATIONSHIP**

13.1 It is agreed that this PERMIT is not intended nor should it be construed in any manner as creating or establishing the relationship of partners or joint ventures between the parties hereto, or creating a joint enterprise, or as constituting PROMOTER as an agent, representative, employee, or independent contractor of the CITY for any purpose. PROMOTER and its agents, volunteers, and 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 PROMOTER's employees or agents and arising out of employment shall in no way be the responsibility of the CITY. PROMOTER's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from the CITY including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay and PERA.

## **ARTICLE 14 – TERMINATION OF AGREEMENT**

14.1 This PERMIT AGREEMENT may be terminated by either party upon breach of any of the terms and conditions of this PERMIT AGREEMENT by another party and the failure to

rectify or correct any such breach within twenty (20) days of the transmission of written notice of the breach, or by mutual consent of the parties.

14.2 The CITY may terminate this PERMIT AGREEMENT immediately on written notice to PROMOTER if the CITY believes in good faith that the health, welfare, or safety of the VENUE, or occupants, users or neighbors would be placed in immediate jeopardy by the EVENT or by the continuation of PROMOTER'S activities at the VENUE.

14.3 CITY may terminate this PERMIT AGREEMENT immediately on notice to PROMOTER if City believes in good faith that the health, welfare, or safety of the VENUE, its patrons, and neighbors would be placed in immediate jeopardy by the continuation of the EVENT.

## **ARTICLE 15 – FORCE MAJEURE**

15.1 Under the terms of this PERMIT AGREEMENT, neither the CITY nor PROMOTER shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations under this PERMIT AGREEMENT in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of contractors or subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this PERMIT AGREEMENT shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

## **ARTICLE 16 - GENERAL PROVISIONS**

16.1 The rights of PROMOTER to occupy, use, and maintain the VENUE shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with strictly and promptly.

16.2 PROMOTER agrees that the VENUE shall only be used for the EVENT and related support services and for no other purpose.

16.3. PROMOTER agrees to operate the EVENT and all activities conducted at the VENUE in strict compliance with the OPERATIONS PLAN (hereinafter defined), the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth. PROMOTER agrees to procure, at its expense, all licenses and permits necessary for carrying out the provisions of this PERMIT AGREEMENT.

16.4. Upon termination of occupancy, PROMOTER agrees to surrender possession of the VENUE to the CITY in as good condition and state of repair as the VENUE was in at the start of the TERM.

16.5. The CITY reserves the right to the unlimited access at all times to the VENUE for authorized personnel and for the purposes of inspection and ensuring that the provisions of this



PERMIT AGREEMENT are complied with. The CITY shall provide its employees or authorized agents, Bayfront Festival Park all-event access passes, as needed, for access by authorized personnel. All on-duty law enforcement personnel, acting in their official capacity, shall be authorized to enter the VENUE without regard to this paragraph.

16.6. The waiver by the CITY or PROMOTER 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.

16.7. Except as provided for in this PERMIT AGREEMENT, PROMOTER shall not assign or transfer any of its rights or interests under this PERMIT AGREEMENT in any way whatsoever.

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

16.9 PROMOTER acknowledges that, as provided in Minn. Stat. § 16C.05, Subd. 5, all of PROMOTER'S books, records, documents, and accounting procedures and practices related to the use of the VENUE are subject to examination by the CITY and the State Auditor for six (6) years from the date of termination or expiration of this PERMIT AGREEMENT. Upon twenty-four (24) hours advance written notice by the CITY, PROMOTER shall provide all requested books, records, documents, and accounting procedures and practices related to the use of the VENUE. PROMOTER shall maintain all of its records relating to this PERMIT AGREEMENT and the VENUE during the Term and for six (6) years after the termination or expiration of this PERMIT AGREEMENT.

16.10. This PERMIT 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, except to the extent PROMOTER is obligated to perform terms and conditions that benefit a third-party venue and/or entertainment management company. No person, other than a third-party venue and/or entertainment management company shall have the right to make claim that she or he is a third party beneficiary of this PERMIT AGREEMENT or of any of its terms and conditions.

16.11. Any amendment to this PERMIT AGREEMENT shall be in writing, approved with the same legal formalities as required by the original PERMIT AGREEMENT, and shall be executed by the same parties who executed the original PERMIT AGREEMENT or their successors in office.

16.12. This PERMIT 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.

16.13. Notice to the parties provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to:

CITY:

City of Duluth  
Property and Facilities Management  
1532 W. Michigan Street  
Duluth, Minnesota 55806

PROMOTER:

Bentleyville Tour of Lights, Inc.  
4313 Haines Road  
Duluth, Minnesota 55811

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

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

16.15. This PERMIT AGREEMENT, along with the attached exhibits, embodies the entire understanding of the parties and there are no further or other agreements, permits, or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This understanding shall also extend to any uncommunicated expectations PROMOTER may have of the CITY and not specifically mentioned in this PERMIT AGREEMENT. Any PROMOTER expectations of the CITY for the provision of any CITY materials, supplies, or services which are over and above those specifically mentioned in this PERMIT AGREEMENT will not be honored by the CITY except by written authorization from the CITY.

## **ARTICLE 17 – COVID-19**

17.1 Due to unforeseen circumstances related to COVID-19, mandates enacted by the State of Minnesota and/or CITY may require the EVENT to be modified or cancelled. In such an event, CITY retains the ability to require PROMOTER to modify the EVENT to comply with any mandates required by the State of Minnesota or CITY. If the EVENT needs to be modified, the following conditions shall occur unless otherwise waived by the PFM MANAGER:

(a) The EVENT shall change from walk-through to drive-through. Vehicular access to the VENUE shall be permitted only with written approval, in advance, by the MANAGER.

At no time shall any vehicle of any kind be parked, operated, or permitted on the VENUE unless in an area expressly permitted in writing by the MANAGER. PROMOTER shall be responsible for the enforcement of this provision for all vehicles on the VENUE whether said vehicles are owned by PROMOTER, PROMOTER's employees, volunteers, subletees, contractors, agents of PROMOTER, or its patrons. The CITY reserves the right to order the immediate removal of any vehicle used or parked in violation of this provision.

(b) PROMOTER may charge its patrons a fee for the EVENT and retain the fees collected (except to the extent necessary to pay the CITY amounts due as required by this PERMIT AGREEMENT).

(c) PROMOTOR shall not hold the Bayfront Family Center open to the public at any time.

(d) PROMOTER shall properly install and utilize laminated 3-ply hardwood mats in all areas required by the MANAGER.

(e) PROMOTER shall submit a safety and operations plan ("OPERATIONS PLAN") to the CITY'S Parks and Recreation Manager for approval, which plan shall outline specific processes and procedures to ensure the health, safety, and welfare of all users of the VENUE during the entire TERM, including but not limited to cleaning and sanitization of the Bayfront Family Center and all bathroom facilities. Notwithstanding the start date of the TERM, PROMOTER shall not enter the VENUE until it has received written approval of the OPERATIONS PLAN. The OPERATIONS PLAN shall be updated from time to time during the TERM at the request of the CITY, and PROMOTER shall follow the OPERATIONS PLAN at all times in its operation of the VENUE.

(f) CITY shall not be responsible for the first Ten Thousand Dollars (\$10,000.00) in damages to the VENUE. All expenses to fully restore the VENUE shall be the responsibility of PROMOTER.

(g) During periods of exclusive use by PROMOTER, PROMOTER shall provide, at PROMOTER'S expense, trash collection receptacles and attendant services in sufficient quantity to maintain the VENUE in a reasonable state of cleanliness during any period of exclusive use. Such cleanup area shall include all of Bayfront Festival Park and shall not be limited to the VENUE area. If required by the St. Louis County Health Department, PROMOTER shall provide specialized disposal receptacles and related pick up services through a competent vendor, for the handling of liquid, oil, fatty, or other materials disposed of and requiring special and/or separate handling before, during, or after its event. PROMOTER shall provide, at its expense, for the separation of recyclables plastic bottles, aluminum cans and cardboard boxes generated at the EVENT and for their removal from the site to the appropriate collection site.

*[Remainder of this page is intentionally left blank.]*

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

**CITY OF DULUTH**

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

Attest: \_\_\_\_\_  
City Clerk

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


Countersigned:

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

Approved as to form:

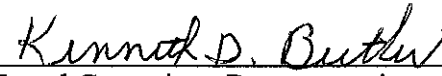
\_\_\_\_\_  
City Attorney

**BENTLEYVILLE TOUR OF  
LIGHTS, INC.**

By:   
Its: Board Chairperson of Board of Directors

Name: Regina Fodness

Dated: 08.05.2022

  
Legal Committee Representative

## **EXHIBIT A – VENUE**

## EXHIBIT A



# BAYFRONT FESTIVAL PARK

## BAYFRONT PARK and BAYFRONT FAMILY CENTER

**EXHIBIT B - Consent Decree and Judgment dated September 16, 2013**  
**City of Duluth Resolution No. 11-3392**

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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STEVE JANKOWSKI and PETER  
SCOTT,

File No.: 11-3392 MJD/LIB

Plaintiffs,

vs.

**CONSENT DECREE  
AND JUDGMENT**

CITY OF DULUTH,

Defendant.

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WHEREAS, the parties now wish to settle all issues involved in the above-captioned matter in accordance with the terms of the Consent Decree set forth herein:

NOW THEREFORE, on the joint motion of Plaintiffs and Defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. During Bentleyville, Plaintiffs Jankowski and Scott will be allowed to engage in their desired First Amendment activity (via signs, literature and speech in compliance with all applicable state laws and city codes) in a portion of the Bentleyville event as agreed upon by the parties during their April 26, 2013 mediated settlement conference in the above-captioned matter, which is outlined on the map attached hereto and made a part hereof as **Exhibit A** in bold blue marker, and generally described as follows:

The sidewalks and public right-of-ways surrounding Bayfront Festival Park, and the walkways leading into Bayfront and up to, but not including, the steel structure (archway) and gate marking the entrance to "Area 1" indicated on Exhibit A.



referred to hereinafter as the “Free Speech Zone”;

2. While engaged in First Amendment activity in the area identified as “Area 2” on Exhibit A, Plaintiffs may not yell or shout and shall limit any oral/verbal communications to a conversational volume.

3. The “Free Speech Zone” does not extend into or inside Area 1, the steel structure and gate marking the entrance to Area 1, or any of the fences surrounding Area 1.

4. Plaintiffs Jankowski and Scott do not enjoy exclusive use of the Free Speech Zone;

5. While engaging in expressive activities within the Free Speech Zone, Plaintiffs Jankowski and Scott may not engage in conduct that violates other city ordinances or state laws;

6. While Plaintiffs’ First Amendment activities are confined to the Free Speech Zone, Plaintiffs are allowed to attend the Bentleyville event (assuming satisfaction of all event organizer requirements for admission) when they are not engaging in said activities;

7. The Free Speech Zone agreed to by the parties applies only to the Bentleyville event;

8. Plaintiffs are allowed to engage in First Amendment activities in the Free Speech Zone at the Bentleyville event regardless of whether Bentleyville subsequently becomes a ticketed event;

9. In full, final and complete satisfaction of any and all claim for attorneys' fees in the above-captioned matter now and in the future, the city agrees to a one-time payment in the amount of \$177,500. The city agrees to make best efforts to issue payment within 30 days after entry of this Decree and receipt from Plaintiffs' counsel of instructions for preparation of the payee section of the draft.

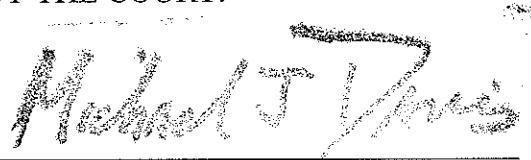
10. This Consent Decree and Judgment is a settlement and compromise between the parties and shall not be construed as an admission of liability on the part of the City of Duluth, its agents, officers, or employees, all of whom expressly deny liability.

11. This Consent Decree And Judgment, along with the attached exhibit, embodies the entire understanding of the parties and there are no further or other agreements, permits, or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

NOW, THEREFORE, LET JUDGMENT BE ENTERED pursuant to all the terms and conditions above.

SO ORDERED this 16<sup>th</sup> day of September, 2013.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Michael J. Davis", written over a horizontal line.

Michael J. Davis  
Chief Judge  
United States District Court

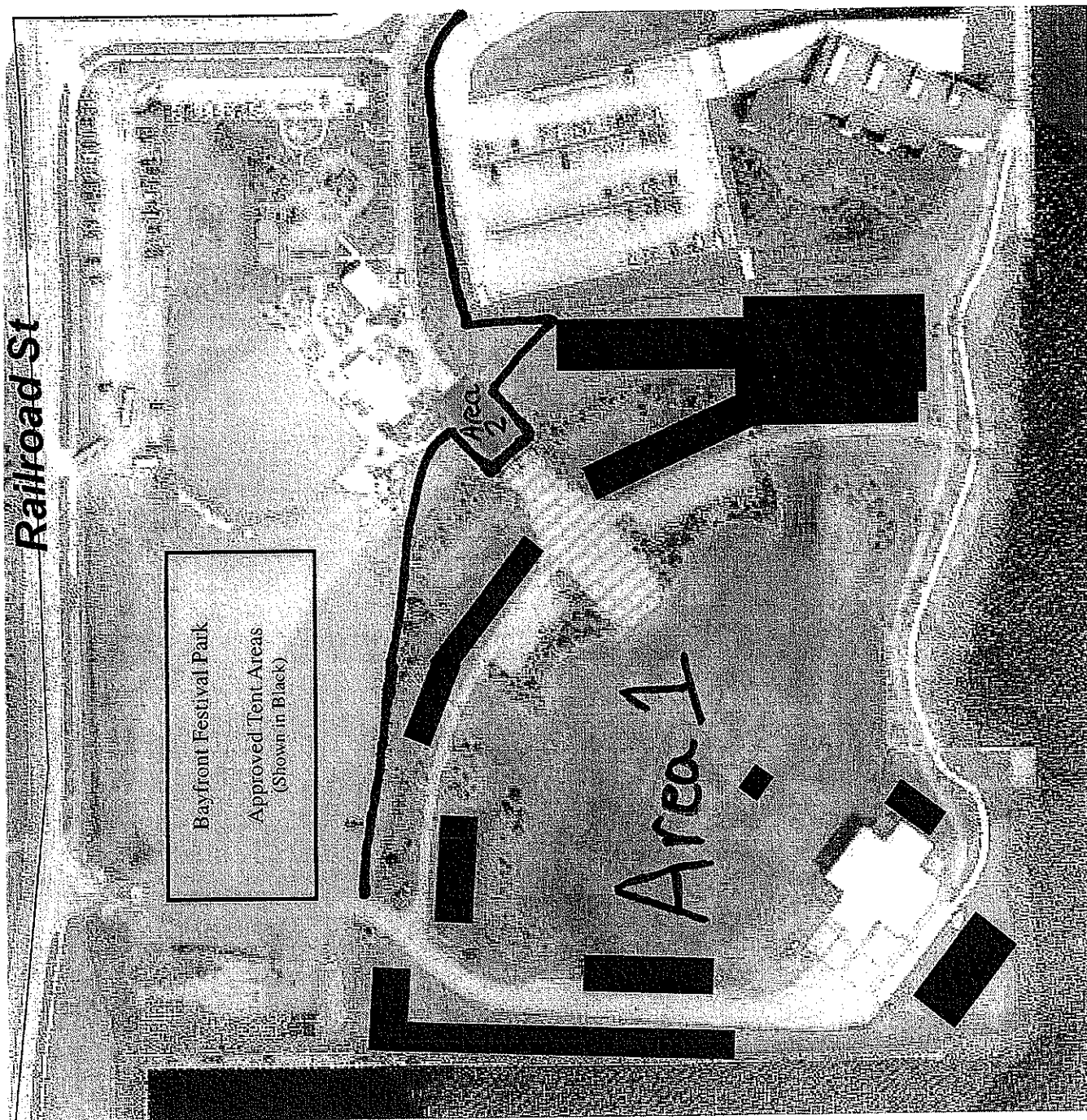


EXHIBIT A