

# EXHIBIT 1

## INDIAN POINT PARK AND CAMPGROUND OPERATION AND MANAGEMENT AGREEMENT

THIS AGREEMENT, is made by and between SPIRIT LAKE DEVELOPMENT, LLC, doing business as Spirit Lake Marina & RV Park., a Minnesota limited liability company, hereinafter referred to as “Spirit Lake,” and the CITY OF DULUTH, a municipal corporation organized and existing under the laws of the State of Minnesota, hereinafter referred to as “City.”

The parties acknowledge the following:

A. The City owns real property located at 7000 Pulaski Street and legally described as:

Lots Five (5) through Eleven (11), inclusive, Block Twenty-one (21); Lots One (1) through Thirty-two (32), inclusive, Block Twenty-two (22); and Lots One (1) through Ten (10), inclusive, Block Twenty-three (23), HUNTER’S GRASSY POINT ADDITION TO DULUTH SECOND DIVISION; and

Lots Fourteen (14) through Twenty (20), inclusive, Block Twenty-seven (27); Lots One (1) through Sixteen (16), inclusive, Block Twenty-nine (29); Lots One (1) through Thirty-two (32), inclusive, Block Thirty (30); and Outlots K, L, M, and N, Block Forty-two (42), HUNTER AND MARKELL’S GRASSY POINT ADDITION TO DULUTH

(the “City Property”).

B. A portion of the City Property is more commonly known as “Indian Point Park and Campground” (hereinafter referred to as “Premises” or “Campground”) whereby users rent campsites and other amenities, such as bicycles, kayaks, and boats, and use the Campground for recreational purposes.

C. Spirit Lake has operated and managed the Campground since 2012 when the City issued a Request for Proposal for the operation and maintenance of the City’s Indian Point Park and Campground (“Services”).

D. City would like to continue to have Spirit Lake operate and manage the Campground, and Spirit Lake has represented itself as qualified and willing to perform the Services.

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

## I. PREMISES

City hereby grants to Spirit Lake, subject to all provisions of this Agreement, the right to the full access and operation of the Campground or Premises, including all buildings and related site facilities and amenities located at 7000 Pulaski Street, Duluth, Minnesota 55807. The Campground or Premises is outlined in red and depicted on Exhibit A attached hereto and incorporated into this Agreement.

## II. TERM

Notwithstanding the date of execution of this Agreement, this Agreement shall commence on January 1, 2018, and shall continue through the end of the day on December 31, 2020.

## III. OPERATION AND MAINTENANCE

A. Spirit Lake agrees to be diligent in the operation and maintenance of the Premises and to provide its Services in the best interest of the City and the camping public.

B. Spirit Lake agrees to operate the Campground with the following schedule:

1. "Summer Season" shall commence on the second weekend in May (For 2018, the date shall be Friday, May 11, 2018), and ending with the close of business on the third Sunday in October (For 2018, the date shall be Sunday, October 21, 2018), which dates are approximate based upon the determination of the City's Parks Maintenance Department. Spirit Lake agrees to keep open for business and to operate and maintain the Campground on a 24/7 basis, with on-site staff in sufficient numbers. The Campground office will be open daily from 9:00 a.m. to 9:00 p.m. for camper check-in and checkouts, general assistance as requested or needed, along with performing all routine maintenance, as required. In addition, Spirit Lake must be available on site on a 24 hour/day basis for late night check-in and to provide assistance to campground patrons in need of emergency services.

2. Spirit Lake's staffing schedule is attached hereto as Exhibit B and incorporated into this Agreement by reference.

C. Spirit Lake shall be responsible for the routine maintenance of the Campground, including but not limited to the ongoing daily routine cleaning/maintenance of all indoor and outdoor spaces, washrooms, showers, lawn areas, campsites, picnic tables, campfire rings, Campground office, etc. Spirit Lake agrees to maintain all grass or turf areas in the Campground in a properly mowed condition, not to exceed two inches (2") in height at any time while the campground is in operation. Spirit Lake is also responsible for yearly extermination for bugs, spiders, rodents, removal of other pests that may be required, minor plumbing, electrical, carpentry, and repairs.

D. During the Summer Season Spirit Lake agrees to keep washroom facilities cleaned and maintained a minimum of once each day and more often as needed. During the Winter Season washroom facilities shall be closed. The “Winter Season” is defined as that portion of the year exclusive of the Summer Season.

E. Spirit Lake agrees to furnish all supplies necessary in maintaining safe and sanitary conditions including but not limited to toilet tissue, paper towels, floor detergents, sanitizing solutions, and all other supplies necessary for maintaining the washroom facilities, the remainder of the wash building and the office building in a clean and sanitary manner.

F. City agrees to provide all necessary major repairs and non-routine maintenance to the structural and mechanical components of all existing buildings and plumbing and electrical systems and subject to availability of City staff, to maintain all road surfaces into, within, and out of the Campground. Spirit Lake agrees to make all minor repairs incidental to normal reasonable maintenance. Non-routine maintenance shall be defined as repair or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset, road repair, locks and key changes, and winterizing water systems. If budget allows and upon request, City may deliver fill to the Premises to be used for low areas that pool with water during times of rain. However, the City cannot guarantee that fill will be available and, if available, cannot guarantee a specific quantity.

G. Spirit Lake agrees that it is responsible for providing notification to the City’s Manager of Parks and Recreation (“Manager”) about any problems relating to the above City responsibilities in a timely manner so identified problems can be addressed.

H. Spirit Lake agrees to provide adequate security at the Campground.

I. Spirit Lake agrees to use best efforts to comply with the City’s recycling efforts including the recycle guidelines established by the City’s garbage hauler and the Western Lake Superior Sanitary District.

J. Spirit Lake acknowledges and agrees that there shall be no smoking or use of tobacco whatsoever in any building on the Premises.

K. Neither party shall be responsible for snow removal on the Premises because the Campground is only open during the Summer Season.

#### IV. 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 regard to any services or other activities contemplated under this Agreement.

## V. CITY ACCESS

A. Spirit Lake shall permit the City, its officials, employees, or agents to access and inspect the Premises at any time. Spirit Lake shall not change the locks or otherwise prohibit or inhibit the City access to any portion of the Premises. The City's Property and Facilities Manager or designee ("Facilities Manager") shall be exclusively responsible for the design of keying systems, lock changes, key fabrication and key distribution, and Spirit Lake agrees to abide by the City's Key Control Policy, a copy of which shall be provided to Spirit Lake. Spirit Lake shall promptly return all keys to the Facilities Manager upon termination of this Agreement.

B. In addition, Spirit Lake shall permit the Facilities Manager full access to the Premises for maintenance, repairs, and upgrades to the Premises.

## VI. CONCESSIONS

A. Spirit Lake shall have the right to sell ice, soda, firewood, confections, ice cream, coffee, laundry detergent, recreational vehicle supplies, liquid propane and similar items associated with the operation of the Campground, and any other item that is approved for sale by the Manager. At no time shall there be sold on the premises by Spirit Lake, or with its knowledge, acquiescence, or consent, any articles, the sale of which may be prohibited by law or prohibited without proper license or permit.

B. Spirit Lake shall have the right to rent bicycles, canoes, or other watercraft on the Premises to the general public throughout each Summer Season. Spirit Lake shall be responsible to provide maintenance and repairs of all the rental equipment. Spirit Lake shall be required to carry insurance to cover such rental operations, and the hold-harmless and indemnification provisions of Section XV below shall apply to all aspects of such rental operation.

C. Spirit Lake shall secure all necessary permits and licenses as required by law from the applicable governing agency including but not limited to the State of Minnesota, Department of Natural Resources for any watercraft, Department of Health for food items served, and from the City Treasurer for collection of sale taxes. The current City and State tax on all gross revenues shall be applied to the sale of all concession items and shall be collected by Spirit Lake and remitted to the City and State.

## VII. PAYMENTS TO CITY

A. Spirit Lake agrees to pay to the City, on a monthly basis, the following percentages each year this Agreement remains in effect:

1. Thirty percent (30%) of the total gross revenues from all camping fees received, including deposits for any Summer Season after the expiration or early termination of this Agreement;

2. Fifteen percent (15%) of the total gross revenues from non-coin concession sales;
3. Fifteen percent (15%) of the total gross revenues from the rental of canoes, bikes, kayaks, small fishing and pontoon boats by registered Campground patrons through Spirit Lake Marina & RV Park; and
4. Twenty-five percent (25%) of Spirit Lake's total gross profits from third party coin operated vending equipment.

B. The payments specified above shall be paid to the City on or before the twentieth (20th) day of the month and will cover all sales for the preceding month. Payment shall be made to the City of Duluth and directed to: City Parks Department at 411 W. First Street, Ground Floor, Duluth, Minnesota 55802. All payments shall be deposited into Fund No. 205-130-1219-4626 (Parks Fund, Community Resources, Parks Operating, Indian Point Campground Fees).

#### VIII. MARKETING AND ADVERTISING

A. Spirit Lake shall be diligent in the marketing and advertising of the services available on the Premises. Spirit Lake will utilize appropriate marketing and advertising outlets, such as electronic/web based media, magazine advertising, brochures, quarterly Duluth publication, etc. to maximize the Campground's exposure and rental potential.

B. All marketing and advertising shall be at Spirit Lake's cost and expense. Minimum Spirit Lake advertising, at Spirit Lake's expense, shall include:

1. Listing an ad in the current annual published Visit Duluth brochure;
2. Listing in the Explore Minnesota Guide and on its website for statewide campground listings;
3. Ad placement in at least one of the quarterly published Duluth publications, such as Lake Superior Magazine's Travel Directory;
4. Booth space at recreational show(s);
5. Listing in Woodall's Campground Directory;
6. Develop and print in sufficient quantity of an Indian Point Campground brochure detailing the services and amenities available at Indian Point Campground, along with current rate pricing information and directions to the campground. The brochures shall be distributed throughout the city and other locations; and
7. Inclusion on at least one social media outlets, such as Facebook, Twitter, e-mail marketing, etc.

C. All marketing efforts must comply with all applicable laws, rules and guidelines governing such activities.

D. Advertising documentation and any other marketing and advertising in other sources chosen by Spirit Lake must be provided to the Manager.

E. In addition, Spirit Lake will be responsible for maintaining and updating as necessary the Indian Point Campground's website ([www.duluthindianpointcampground.com](http://www.duluthindianpointcampground.com)). All content placed on the website must be pre-approved by the Manager. The website shall be limited to Campground information only; placement of any non-Campground related information is prohibited. The website and all content is the property of the City.

#### IX. CAMPING RATES AND RESERVATIONS

A. Spirit Lake agrees to charge camping rates which, considering operating costs and a reasonable profit, are reasonable, appropriate, and comparable to campgrounds with similar facilities and services. Camping fees for the 2018 season shall be as follows:

<b>Campsites With:</b>	<b>Daily Rate</b>	<b>Weekly Rate</b>	<b>Monthly Rate</b>
Water, Electric & Sewer	\$48.00	\$288.00	\$1,152.00
Water & Electric	\$43.00	\$258.00	\$1,032.00
Electric Only	\$38.00	\$228.00	\$912.00
Tent only – no hook-up	\$34.00	\$204.00	\$816.00
Each extra tent	\$17.00	\$102.00	\$408.00

B. Spirit Lake shall require and collect a deposit equal to one night's camping to hold reservations. The deposit will be applied to the camping fees at time of check-in.

C. Spirit Lake is required to adopt and enforce a campground policy ("Campground Policy") prior to the start of each Summer Season that outlines the camping patron's responsibilities including, but not limited to pet owner responsibilities. The Campground Policy shall include actions taken if policy is violated. The parties acknowledge that any amendments to the Campground Policy shall be submitted to the Manager for review and approval by the City. A copy of the Campground Policy in effect at the time of execution of this Agreement is attached as Exhibit C.

D. If Spirit Lake provides online reservations, then Spirit Lake shall provide a secure socket layer website for on-line reservations and shall be in compliance with all applicable laws, rules and guidelines governing such transactions. Spirit Lake shall maintain a reputable vendor to provide an internet credit card transaction gateway.

E. Spirit Lake acknowledges and agrees that all reservations and all reservation data collected during the Term of this Agreement are the property of the City and Spirit Lake shall hold all information associated with the reservations in strict confidence and all such information shall not be used by Spirit Lake except to fulfill its obligations under this Agreement. Spirit

Lake shall not utilize reservation information stored by Spirit Lake and provided by City to communicate with any individual except to provide stay related information to the individual.

#### X. SPECIAL EVENTS

A. All requests for special events to be held at the Premises shall be directed to Spirit Lake. Spirit Lake shall be responsible for approving any special event requests and coordinating all aspects of the special event including ensuring that the necessary permits and insurance are obtained in accordance with the City's standard operating procedures.

B. All special events requiring insurance shall name the City and Spirit Lake as additional insureds. Spirit Lake shall be responsible for obtaining a copy of the Certificate of Insurance evidencing such coverage. Spirit Lake shall be responsible to provide, at least two working days prior to the commencement of the special event, copies of said Certificates of Insurance to the Manager.

#### XI. UTILITIES

A. Spirit Lake shall be responsible for, at its own expense, all necessary utilities to the Premises, including but not limited to electric service, gas, City water service, sewage, and trash collection. Spirit Lake shall, upon request, provide monthly evidence of the timely payment of all utility bills. During the Winter Season, seasonal water will be discontinued and discharge of grey water is limited to the main dump station. Except with respect to telephone and internet services (addressed in paragraph XI.B. below), all utility and service accounts shall be in the name of Spirit Lake.

B. Spirit Lake shall also be responsible for, at its own expense, telephone, internet services, and/or other utilities or services not specifically mentioned in this Agreement. Spirit Lake shall provide no less than one business telephone line (218-628-4977) and one toll free number (1-855-777-0652) to be used exclusively for the Campground. Said telephone line shall also be listed in the current Qwest directory white business pages and yellow pages. With respect to telephone and internet services, the accounts will remain in the name of the City and the City will invoice Spirit Lake on a quarterly basis for reimbursement of the expense. Spirit Lake shall pay the City invoices within 15 days of receipt.

#### XII. RECORDS

A. Spirit Lake agrees to maintain detailed, accurate, and complete records of all monies received and disbursed in the operation of the Campground and Spirit Lake's related activities. Such books and records shall be available to the City Auditor for inspection and audit upon request. The City agrees to provide a minimum of 24 hours' notice of such request. In addition, Spirit Lake shall prepare an itemized monthly financial report of all monies taken in and disbursed in the Campground operations and shall submit such detail report in the form

attached as Exhibit D to the City, together with all payments provided in Section VII. Upon request, Spirit Lake shall provide to the City a copy of the Schedule C Federal Income Tax form as filed with the Internal Revenue Service, which shall include all applicable campground financial information from the previous year. Spirit Lake shall also provide to City a monthly occupancy report in a form mutually agreed upon between the parties.

B. Spirit Lake agrees to maintain all records relating to the Services and the Premises during the term of the Agreement and for six (6) years after its termination, cancellation, or expiration, and to provide such records to the City upon request.

### **XIII. ALTERATIONS OR IMPROVEMENTS**

A. Spirit Lake shall not make any alterations or improvements to the Property that are not herein described without the prior written consent of the Facilities Manager and upon the terms and conditions which may be imposed by the Facilities Manager. Spirit Lake agrees to pay to the City upon demand the reasonable costs incurred by City to repair any damage done to the Premises by Spirit Lake, its employees, volunteers, servants, agents, contractors, invitees, and licensees during the term of this Agreement.

B. Spirit Lake may, at its sole cost and expense, make suitable improvements or alterations to the Premises upon advance written approval from the Facilities Manager. All such improvements (excluding appliances and equipment plugged into an electricity source) shall become the property of the City. Prior to commencing any improvements or alterations, Spirit Lake shall submit to the City a Project Proposal Request along with detailed plans. A copy of the Project Proposal Request is attached to and incorporated by reference into this Agreement as Exhibit E. These documents shall be submitted to the Facilities Manager at least forty-five (45) 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 state law and the Duluth City Code.

C. Spirit Lake agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Premises, Spirit Lake will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by the City's Claims Investigator and Adjuster before the commencement of any construction hereunder.

### **XIV. INSURANCE**

A. During the term of this Agreement, Spirit Lake shall have such coverage as will protect Spirit Lake and the City against risk of loss or damage to the Premises and any other property permanently located or exclusively used at the Premises and against claims that may arise or result from the maintenance and use of the Premises during the term of the Agreement. Spirit Lake shall procure and maintain continuously in force Automobile and Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in



limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of \$1,500,000 for property damage liability. Insurance required in 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. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products – completed operations. Spirit Lake shall provide Certificates of Insurance to City evidencing said insurance coverage. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days' written notice to the City. The Certificates of Insurance shall name City as additional insured.

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

C. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Spirit Lake's interests and liabilities.

D. The City shall not be liable to Spirit Lake for any injury or damage resulting from any defect in the construction or condition of the Premises, nor for any damage that may result from the negligence of any other person whatsoever.

#### XV. HOLD HARMLESS AND INDEMNIFICATION

A. Spirit Lake hereby agrees to indemnify, save harmless, and defend the City and its officers, agents, servants, and employees from and against any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or Spirit Lake, 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 Spirit Lake arising out of, related to or associated with the use, management, maintenance or operation of the Premises by Spirit Lake or performance of its obligations under this Agreement.

B. Spirit Lake will indemnify the City for any damage to any City property on the Premises caused by Spirit Lake, its agents, volunteers, employees, and invitees.

#### XVI. TAXES

Spirit Lake hereby agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Spirit Lake's operations of the Premises, including but not limited to real property and sales taxes, if applicable. It is further agreed that City may pay the same on behalf of Spirit Lake and immediately collect the same from Spirit Lake. Spirit Lake 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.

## **XVII. GOVERNMENT DATA PRACTICES**

Spirit Lake must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Spirit Lake under this contract. Spirit Lake agrees to hold the City, its officers, and employees harmless from any claims resulting from Spirit Lake's failure to comply with this law. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Spirit Lake. If Spirit Lake receives a request to release the data referred to in this clause, Spirit Lake must immediately notify the City and consult with the City as to how Spirit Lake should respond to the request. Spirit Lake's response to the request must comply with applicable law.

## **XVIII. INCIDENT REPORTS**

Spirit Lake shall notify the Manager in writing of any incident of injury or loss or damage to the Premises or any of Spirit Lake's participants or invitees occurring within the Premises during the term of this Agreement, except for damage to Spirit Lake's personal property. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's form of Incident Report is attached hereto as Exhibit F.

## **XIX. TERMINATION AND/OR EXPIRATION OF AGREEMENT**

### **A. Generally**

1. Upon expiration or early termination of this Agreement for any reason, Spirit Lake shall remove all of its personal property from the Premises pursuant to this section. Spirit Lake 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 Spirit Lake took possession, normal wear and tear excepted. All personal property remaining on the Premises after Spirit Lake surrenders possession to the City shall become the exclusive property of the City.

2. Immediately upon expiration or early termination of this Agreement for any reason, Spirit Lake shall terminate or, upon the prior written approval of the Manager, transfer all utility and service accounts that are in the name of Spirit Lake under Section XI.A. of this Agreement. All telephone and internet utility costs shall be prorated as of the date of expiration or termination of this Agreement.

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

a. Dates, organization names, contact person(s), and contact information relating to all future events, rentals, permits and uses of the Premises or any portion of the Premises authorized by Spirit Lake;

b. Copies of any permits, agreements or other documents relating to all future events, rentals, permits and uses of the Premises or any portion of the Premises authorized by Spirit Lake;

c. Accounting of all fees collected relating to all future events, rentals, permits and uses of the Premises or any portion of the Premises authorized by Spirit Lake;

d. Check reimbursing the City in full for all fees collected and other amounts due to the City under this Agreement, including but not limited to deposits and fees relating to all future events, rentals, permits and uses of the Premises or any portion of the Premises authorized by Spirit Lake, except that Spirit Lake may retain \$5.00 per reservation for any future rental of the Premises; and

e. Check reimbursing the City for any telephone, internet, and/or utility costs for which Spirit Lake is responsible based on the proration of utilities as of the date of expiration or termination of this Agreement.

f. Such other information reasonably requested by the City.

4. In the event this Agreement is terminated by the City during the Winter Season, Spirit Lake shall be entitled to a reduction in the amount due under Section XIX.2.d. above equal to Spirit Lake's total documented, out of pocket expenses incurred during the then-current Winter Season with respect to its activities under Section VII above, but not including wages or employment benefits. However, City is not responsible to reimburse Spirit Lake in the event that Spirit Lake's total documented, out-of-pocket expenses under Section VII are greater than the amounts due to the City under Section XIX.2.d. If this Agreement is terminated by the City during the Summer Season, there shall be no reduction in the amount due under Section XIX.2.d.

B. Without Cause

This Agreement may be terminated without cause: (1) by either Party by serving at least ninety (90) days' written notice of termination upon the other or (2) immediately upon mutual written agreement of the Parties.

C. Immediately

The City may unilaterally terminate or suspend this Agreement immediately if the City believes in good faith that the health, welfare or safety of the Premises, its occupants, users or neighbors would be placed in immediate jeopardy by the continuation this Agreement. The City, in addition to other rights or remedies it may have, shall have the immediate right of reentry to the Premises. In the event of immediate termination of this Agreement, the City may remove all persons and property from the Premises. All personal property remaining on the Premises after the five (5) days written notice shall become the exclusive property of the City.

D. For Cause

1. The City may terminate this Agreement: (i) if Spirit Lake fails promptly to pay to the City any amount due under the terms of this Agreement or (ii) for the material breach by Spirit Lake of any provision of this Agreement, including its exhibits, if such breach is not cured to the satisfaction of the City within thirty (30) 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. The City shall allow Spirit Lake 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 to the satisfaction of the City within thirty (30) days, then the City may immediately terminate this Agreement by serving written or personal notice to Spirit Lake. In the event of default by Spirit Lake, the City, in addition to other rights or remedies it may have, shall have the immediate right of reentry to the Premises. In the event of termination of this Agreement pursuant to this paragraph, the City may remove all persons and property from the Premises. All personal property remaining on the Premises after the five (5) days written notice shall become the exclusive property of the City.

2. Spirit Lake acknowledges and agrees that a default of this Agreement includes the receipt by City of Significant Service Complaints (as hereinafter defined) from campers. For purposes of this Agreement, "Significant Service Complaints" means, in connection with any Summer Season, the receipt by City of complaints regarding the quality, nature, or performance by Spirit Lake and/or its agents, vendors, contractors, subcontractors or employees of any services described in the Agreement from more than ten percent [10%] of the registered campers. In the case of Significant Service Complaints, City shall have the right to terminate this Agreement. In no event shall Significant Service Complaints relate to the costs/rates for camping, concessions, or items sold on-site.

XXI. INDEPENDENT RELATIONSHIP

A. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Spirit Lake as agents, representatives or employees of the City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

B. Spirit Lake and its employees shall not be considered employees of the City and any claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Spirit Lake's employees or agents while so engaged shall in no way be the responsibility of City.

## XXII. NOTICES

Unless otherwise provided herein, notice to the City or Spirit Lake 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  
Parks and Recreation Division  
Attention: Manager  
411 W. First Street, Ground Floor  
Duluth, MN 55805  
(218) 730-4300

Spirit Lake Development, LLC  
Attn: Charlie Stauduhar  
121 Spring Street  
Duluth, MN 55808  
(218) 349-3807

## XXIII. GENERAL PROVISIONS

A. City agrees to provide two (2) campsites to Spirit Lake at no cost for Spirit Lake's personnel.

B. Spirit Lake agrees to operate the Campground in strict compliance with the laws, rules, and regulations of the United States, of the State of Minnesota, St. Louis County and the City of Duluth.

C. Spirit Lake agrees to procure at its own expense all licenses and permits necessary for the carrying out of the provisions of this Agreement.

D. Spirit Lake accepts total financial responsibility for any operating deficit incurred during its operation of the Campground pursuant to this Agreement.

E. Spirit Lake shall not assign this agreement, nor any of the rights given to it hereunder to any person, association, partnership, or corporation, without first obtaining the written consent of the Manager, and any such assignment entered into without such consent shall be void.

F. The waiver by the City or by Spirit Lake of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained.

G. This instrument may be amended or modified only by an instrument of equal formality, signed by all duly authorized representatives of the parties.

H. The City shall not be responsible to Spirit Lake for any injury or damage resulting from any defect in the construction or condition of the herein described Premises.

I. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

J. Any terms of this Agreement which by their nature extend beyond termination of this Agreement shall survive and bind the parties and their successors and assigns.

K. Nothing in this Agreement shall 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 maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

L. 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.

M. No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

N. 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.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized.

**CITY OF DULUTH**

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

ATTEST:

\_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

Approved as to form:

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

Countersigned:

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

**SPIRIT LAKE DEVELOPMENT, LLC,  
doing business as Spirit Lake Marina &  
RV Park**

By: 

Its   
Authorized Representative

Printed Name Charles Staudaher





The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the areas shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

# Exhibit A

## Indian Point Park & Campground

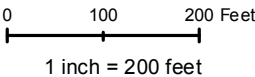


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Printed: 3/6/2017



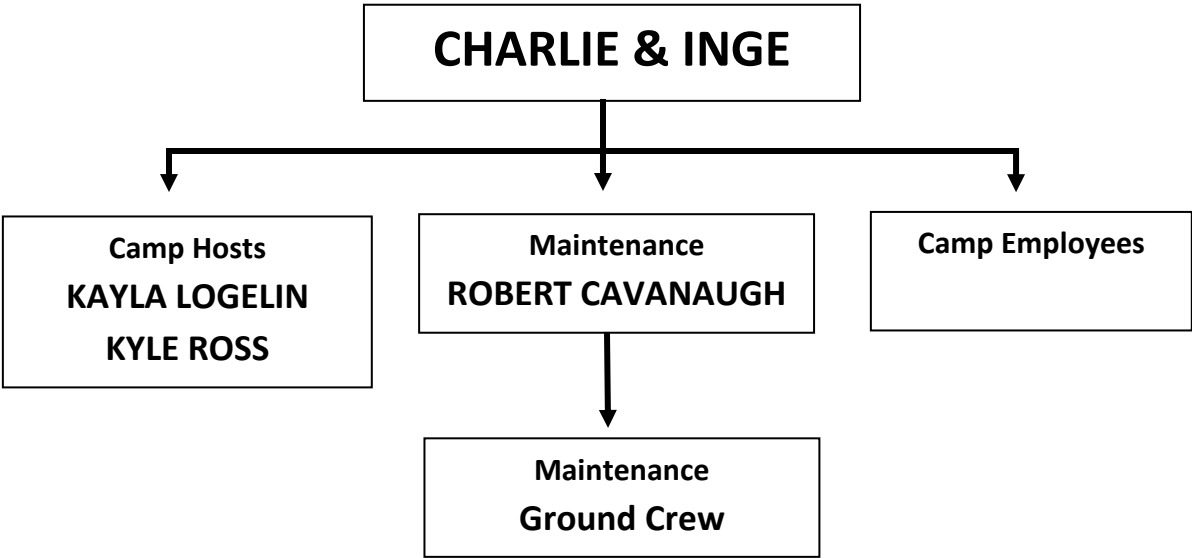
PlotHouse



**EXHIBIT B**



**2018 - STAFFING**



## **EXHIBIT B**



## **HOURS of OPERATIONS**

**1<sup>st</sup> of May to 3<sup>rd</sup> Weekend of October**

**Mondays to Thursdays: 09:00 a.m. to 09:00 p.m.**

**Fridays & Saturdays: 08:00 a.m. to 10:00 p.m.**

**Sundays: 08:00 a.m. to 09:00 p.m.**

**After Office Hours (on emergency): Camp Hosts are available**

## **EXHIBIT C**

### **DULUTH INDIAN POINT CAMPGROUND POLICIES**

1. ALL guests must register (Minnesota State Law).
2. ONE Camper, or tent, and one towed vehicle per site.  
Each additional vehicle, or tent, is subject to additional charges.
3. QUIET TIME: 10:00 p.m. -- 08:00 a.m.
4. No trespassing through other guest's campsites.
5. Guests coming with pets must read and sign Pet Policy -- two pets maximum; additional pet is subject to additional charge.
6. NO cutting tress/branches. Firewood is available for sale at the office.
7. CAMPFIRES inside fire ring only. Do not move fire ring.
8. Place all trash inside recycling or dumpsters.  
Do not burn trash in fire ring, do not leave your trash behind. Additional charge will be imposed.
9. DO NOT wash dishes in the bathroom sink, do not leave your personal trash in the bathroom trash can. Dumpsters are available by the entrance.
10. NO fireworks, ATVs, or motorized scooters.
11. FIVE-MILE/hour speed limit within the campground.
12. Disorderly conduct will not be tolerated.

**13. NO REFUNDS** on deposit and unused reserved nights.

**14. CANCELLATION** needs to be done minimum two weeks prior to arrival → reservation can be rescheduled and deposit forwarded to the new reservation within the same camping season.

Last-minute cancellation may cause Guests to cover the whole stay if the site cannot be re-sold.

# EXHIBIT D

## INDIAN POINT CAMPGROUND MONTHLY FINANCIAL REPORT

Month/Year \_\_\_\_\_

	<u>Total Revenue</u>		<u>City Lease Fee</u>
Camping Fees and Deposits			
30% fee to City	\$ _____	30%	\$ _____
Section VII(A)(1)			
Non-Coin Concessions			
15% fee to City	\$ _____	15%	\$ _____
Section VII (A)(2)			
Boat Rentals at Spirit Lake Marina			
15% fee to the City	\$ _____	15%	\$ _____
Section VII(A)(3)			
Monthly Coin Operated Vending Equipment			
Gross Profits	\$ _____	25%	\$ _____
25% fee to City			
Section VII(A)(4)			
TOTALS	\$ _____		\$ _____

Report is due to the City by the 20th day of each month  
Please attach an itemized monthly profit/loss statement

**Please remit to:**

City of Duluth  
Parks Department  
411 W. First Street, Ground floor  
Duluth, MN 55802



## EXHIBIT E

### Public Administration Department Parks and Recreation Division

City Hall - Ground Floor • 411 West First Street • Duluth, Minnesota • 55802  
218-730-4300 • [www.duluthmn.gov/parks/index.cfm](http://www.duluthmn.gov/parks/index.cfm)



June 9, 2016

Dear Community Partner:

Thank you for your interest in proposing an improvement project for City property. We recognize that working closely with the community is an important way we can fulfill our responsibility to develop long-term strategies, plans and improvements that benefit the greatest number of constituents possible and effectively use limited resources.

Each year there are numerous requests for projects on City property. To better respond to the requests, the City has developed a system that will result in better communications, tracking and processing of project proposals. It establishes Property and Facilities Management as the City entity that will: (1) accept and review all submitted Project Proposal Forms; (2) direct proposals to appropriate City staff; and, (3) facilitate the process to project completion. Once your project proposal request is received, the reviewing process will start and you or your organization will receive a response with thirty (30) days.

The intent of this process is to expedite decision making, clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns. At any point in the process, Property and Facilities Management can be contacted to respond to questions or concerns.

In past years, this process has seen a number of projects completed for the betterment of our community, including installation of park benches, playfield renovations and community beautification projects. Proposals may be submitted by individuals and community organizations, as well as City staff.

Please note that acquiring funds for a project through CDBG, a DNR grant, fundraising, donations or other means does not guarantee project acceptability. Any project on City property must also receive recommendation and approval by the appropriate City officials. It is strongly recommended that City approval should occur in advance of, or at least concurrent with, pursuing funding.

If you have any questions, please contact Danielle Erjavec at (218) 730-4333.

Sincerely,

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



## CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



Use this form to propose a City of Duluth improvement project. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests. You or your organization will receive a response to the project proposal request within thirty (30) days of submission.

### APPLICANT CONTACT INFORMATION

Date of Application:

Name:

Organization:

Address:

City/State/Zip:

Neighborhood:

E-mail:

Primary Phone:

Secondary Phone:

IS YOUR PROJECT RELATED TO

**PUBLIC**

-ARTS-

-MEMORIALS-

-MONUMENTS-



IF SO, YOUR PROPOSAL WILL BE  
SHARED WITH THE DULUTH PUBLIC  
ARTS COMMISSION FOR REVIEW.

### PROJECT PROPOSAL

Use additional sheets if more space is needed.

#### PROJECT LOCATION

Describe as best as possible the location of the proposed project. Give the address, name of street, neighborhood, intersection, GPS coordinates, etc. If the project is City-wide, please state "City-wide."

#### PROJECT DESCRIPTION

Describe the proposed project in as much detail as possible. Why is the project needed and necessary? What do you propose doing? Maps, sketches, diagrams, and/or schematic drawings are required so that the committee has a better understanding of your project. These may include location, sizes, wording, colors, etc. **Please attach any additional information about this project.**

☐ Attached ☐ Not Applicable

#### PROJECT JUSTIFICATION

Describe the benefit of the proposed project. Is it a safety issue? Will it provide cost savings to the City? Is it a functional improvement? Does it provide aesthetic benefit to the City?



## CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



### **PROJECT COST**

*Describe the approximate cost to complete the project. This can be a "guesstimate." This is only considered to be a rough guideline.*

### **POTENTIAL SOURCE OF FUNDING**

*Describe potential funding sources for the project.*

### **NEIGHBOR SUPPORT**

*Does this project have the support of neighbors living nearby?*

☐ Yes ☐ No ☐ Uncertain ☐ Not Applicable

*Comments:*

### **ENERGY USE**

*Will this project change the use of any energy type listed below?*

☐ Yes ☐ No ☐ Uncertain ☐ Not Applicable

*If yes, check all energy types where use is expected to change.*

☐ ELECTRICITY (kWh) ☐ GAS (Therms) ☐ OIL (gallons) ☐ STEAM (Pounds) ☐ WATER and SEWER (CCF)

### **ADDITIONAL CONSIDERATIONS**

The City of Duluth considers our long-term strategies, Master Plans, Accessibility Plan and Capital Improvement list, as well as legal requirements, in evaluating proposals. Please review the considerations below and add any comments you have.

**CONSIDERATION (A):** Project is compatible with Park Master Plan, systems plans, Strategic Plans, etc.

**COMMENT (A):**

**CONSIDERATION (B):** Project is compliant with ADA Accessibility Plans.

**COMMENT (B):**





## CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



**CONSIDERATION (C):** Project is compatible with surrounding and adjoining uses.

**COMMENT (C):**

**CONSIDERATION (D):** Project will meet standards for materials and construction practices.

**COMMENT (D):**

**CONSIDERATION (E):** Project complies with zoning code and land uses.

**COMMENT (E):**

**CONSIDERATION (F):** Project does or does not require a permit.

**COMMENT (F):**

**CONSIDERATION (G):** Increases cost to maintain or operate. *(Note: If this is the case, and the project is approved, it may need to be incorporated into the Capital Improvement Plan and be approved by City Council.)*

**COMMENT (G):**

**SUBMIT COMPLETED FORMS to:**

**DANIELLE ERJAVEC  
PROPERTY SERVICES SPECIALIST  
CITY OF DULUTH  
PROPERTY & FACILITIES MANAGEMENT  
1532 W MICHIGAN STREET  
DULUTH, MN 55806  
[projectproposal@duluthmn.gov](mailto:projectproposal@duluthmn.gov)  
(218) 730-4333**

**EXHIBIT F****City of Duluth Incident/Injury Report**

Supervisor to complete within 24 hours of incident/injury. If injury required treatment by a medical provider, attach medical documentation. Completed forms should be emailed to [accidentreporting@duluthmn.gov](mailto:accidentreporting@duluthmn.gov).

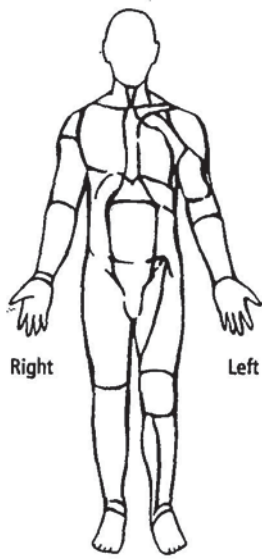
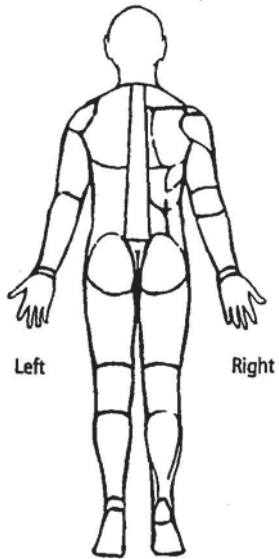
Date of incident/injury:	<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	Department/Division:
Choose one that best describes this claim: <input type="checkbox"/> Incident only, no medical care <input type="checkbox"/> Medical only, no lost time <input type="checkbox"/> Injury includes lost time		
Initial treatment sought: <input type="checkbox"/> Hospital ER <input type="checkbox"/> Clinic <input type="checkbox"/> Refused to see MD / None	Doctor/clinic name, address, phone number:	

Last name:	First name:	MI:	SSN:
Address:			
City:	State:	Zip code:	Phone:
Date of hire:	Occupation:	Date of birth:	
		Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	

Did injury occur on employer's premises? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name and address of the place of the occurrence:
Time employee began work: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.      Time of injury: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
Date employer notified of injury: _____      Date employer notified of lost time: _____	
First date of any lost time: _____      Return to work date: _____      RTW with restrictions: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Describe the nature of the illness or injury. Be specific. Include body parts affected.	
Describe the activities when injury occurred with details of how it happened.	
What tools, equipment, machines, objects and/or substances were involved?	

Incident investigation conducted: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date supervisor notified: _____	Date report completed: _____
Supervisor name: _____	Supervisor phone number: _____	
Names and phone numbers of witnesses:		
Incident was a result of: <input type="checkbox"/> safety violation <input type="checkbox"/> machine malfunction <input type="checkbox"/> product defect <input type="checkbox"/> motor vehicle accident <input type="checkbox"/> N/A		
Supervisor comments:		
What actions have been taken to prevent recurrence?		

# City of Duluth Incident/Injury Report

<p><b>CAUSE</b></p> <p><input type="checkbox"/> Slip and fall</p> <p><input type="checkbox"/> Struck by equipment</p> <p><input type="checkbox"/> Lifting or moving</p> <p><input type="checkbox"/> Caught (in, on, or between)</p> <p><input type="checkbox"/> Needle puncture</p> <p><input type="checkbox"/> Object in eye (<input type="checkbox"/> Right <input type="checkbox"/> Left)</p> <p><input type="checkbox"/> Repetitive/overuse</p> <p><input type="checkbox"/> Other (specify): _____</p> <p><b>TYPE OF INJURY</b></p> <p><input type="checkbox"/> Scrape/bruise</p> <p><input type="checkbox"/> Sprain/strain</p> <p><input type="checkbox"/> Puncture wound</p> <p><input type="checkbox"/> Cut/laceration</p> <p><input type="checkbox"/> Concussion</p> <p><input type="checkbox"/> Bite</p> <p><input type="checkbox"/> Chemical burn/rash/breathing difficulties</p> <p><input type="checkbox"/> No apparent injury</p> <p><input type="checkbox"/> Other (specify): _____</p>	<p style="text-align: center;"><b>MARK AREAS OF INJURY BELOW:</b></p> <p style="text-align: center;">Areas can be marked by typing an "X" in the text box wherever needed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <p><b>Front</b></p>  <p>Right      Left</p> </div> <div style="text-align: center;"> <p><b>Back</b></p>  <p>Left      Right</p> </div> </div>
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COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE						
<p><b>For vehicle accidents:</b> Attach sketch and additional information of how vehicle accident occurred.</p> <p>Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)</p>						
Incident Location: _____			Time of incident: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.			
Police called: <input type="checkbox"/> Yes <input type="checkbox"/> No		Police Traffic Accident Report ICR #:				
<b>City vehicle, property, or equipment involved</b>	Description:					
	Vehicle #:		Make/Model:		Year:	
	Describe damage:					
<b>Non-city vehicle, property, or equipment involved</b>	Owner full name:			<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other		
	Owner address:					
	Owner phone number:		Vehicle license #:			
	Make/Model:		Color:		Year:	
	Describe damage:					
<p><b>Weather conditions:</b></p> <p><input type="checkbox"/> Clear <input type="checkbox"/> Wind</p> <p><input type="checkbox"/> Rain <input type="checkbox"/> Cloudy</p> <p><input type="checkbox"/> Fog <input type="checkbox"/> Sleet</p> <p><input type="checkbox"/> Snow</p>		<p><b>Roadway conditions:</b></p> <p><input type="checkbox"/> Dry <input type="checkbox"/> Mud</p> <p><input type="checkbox"/> Wet <input type="checkbox"/> Paved</p> <p><input type="checkbox"/> Snow <input type="checkbox"/> Unpaved</p> <p><input type="checkbox"/> Ice</p>		<p><b>Light conditions:</b></p> <p><input type="checkbox"/> Night</p> <p><input type="checkbox"/> Day</p> <p><input type="checkbox"/> Good</p> <p><input type="checkbox"/> Poor</p>		<p>Approximate temperature: _____ °F</p> <p>Estimated speed: _____ mph</p> <p>Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty</p> <p>What was load: _____</p> <p>Drug and/or alcohol test? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>

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

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

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

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

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