

BEACH HOUSE MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (“Agreement”) is made as of this 1st day of January 2025 (the “Effective Date”) by and between the City of Duluth (“City”), a municipal corporation of the State of Minnesota, and [CONTRACTOR] (“Contractor”), having an address at [ADDRESS].

WHEREAS, City is a municipal corporation located in St. Louis County with an address of 411 West. 1st Street; and

WHEREAS, City is the owner of Park Point, a public recreation area, that contains a structure known as Beach House; and

WHEREAS, City desires [CONTRACTOR] to manage Beach House as an event space and venue for private and public events, with the intention of balancing private and public access to the space;

NOW, THEREFORE, in consideration of their mutual promises, the Parties agree as follows:

- I. ADMINISTRATION. For purposes of administering this Agreement, the City shall act through its Parks and Recreation Assistant Manager or designee (the “Assistant Manager”).
- II. PREMISES. Premises shall mean the real property and facility located in Park Point and known as Beach House, as identified in the attached Exhibit A (the “Premises”). The Premises includes all buildings, structures, improvements, and fixtures as set forth in Exhibit B, which exhibit is current as of the date of execution of this Agreement.
- III. [CONTRACTOR]’S REPSONSIBILITIES.
 - a. Contractor shall provide management services of the Beach House as detailed in Exhibit #. Contractor agrees that it will provide its services at the direction of the City’s Parks and Recreation Assistant Manager, or their designee. In the event of a conflict between this Agreement and any exhibit attached hereto, the terms and conditions of this Agreement shall control.
 - b. Contractor shall be responsible for all aspects of Beach House operations, including but not limited to the following: Booking, scheduling, and staffing events; developing and distributing promotional material for Beach house; completing and submitting facility rental permit applications with all necessary documentation and fees; ensure all food, beverage, and alcohol vendors secure required permits and meet all applicable licensing laws, codes, ordinances, and standards; [OTHER OPERATION RESPONSIBILITIES].

- c. Contractor shall be responsible for janitorial services of the Premises. Janitorial services include after event deep cleaning, restroom cleaning, etc. Contractor will have access to floor scrubber. Contractor will be trained in on Janitorial procedures and equipment operations. Contractor is responsible for any damages to equipment.
- d. Contractor shall not be responsible for the major or non-routine maintenance that requires a licensed or skilled tradesperson (e.g., plumber, electrician, carpenter, etc.)
- e. Contractor is responsible for removal of all litter or other waste from the Premise, and properly disposing and recycling into the proper waste disposal dumpsters provided by the City within the parking lot.
- f. Contractor responsible for contracting with any pest extermination necessary to keep the premises free from rodents, insects, and other pests. The sole cost of this expense of this service shall be the responsibility of the Contractor.
- g. Contractor shall work cooperatively in sharing any shared spaces within the Premises with other groups and the public, as applicable.
- h. Contractor shall maintain its own equipment in a safe, legal, and properly maintained manner.
- i. Contractor shall promptly notify City of necessary major or non-routine maintenance work needed, including any maintenance that requires a licensed or skilled tradesperson, so that City can decide whether to perform the maintenance or arrange for a service provider of City's choice to perform the maintenance. Contractor understands that the City is not obligated to undertake any major or non-routine maintenance work and any work performed shall be in the sole discretion of the City.
Contractor shall follow all established City verbal and written policies, procedures, and instructions regarding premises and/or building safety and security.

IV. CITY'S RESPONSIBILITIES.

- a. The City will have exclusive responsibility for winterizing the Premises.
- b. The City will contract and pay for the following utilities and services to the Premises: electric, heating, water, sewer, and garbage and recycling dumpsters located in large parking lot.
- c. The City shall be responsible for regular maintenance of the premises.
- d. City's sole discretion, performing necessary major repairs and nonroutine maintenance to the structural and mechanical components of all existing buildings

and plumbing and electrical systems. Nonroutine maintenance shall be defined as major system replacement repair items 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.

- e. City is responsible for the removal of sand from the patio and sidewalks.

V. FEES.

- a. Rental Fees. Site rental fees and deposits shall be according to the fee schedule approved by the City Council for 2025:

- i. 2025.

- 1. Duluth Residents: \$130/hr
 - 2. Non-Residents: \$185/hr
 - 3. Damage Deposit (Refundable): \$500
 - 4. Full-Service Cleanup Fee: \$500
 - 5. Mobile Vendor Fee: \$25/vendor

VI. PAYMENT TERMS.

- a. City to pay Contractor quarterly net thirty (30) days from receipt and acceptance of invoice.

VII. TERM AND TERMINATION.

- a. Term. Notwithstanding the date of execution of this Agreement, This Agreement shall be deemed to commence on January 1, 2025, and expire on December 31, 2027, unless earlier terminated as provided for herein.
- b. Without Cause. Either party may terminate this Agreement without cause by providing ninety (90) days' written notice to the other party.
- c. For Cause. The City may terminate this Agreement for the material breach by the Contractor of any provision of this Agreement if such breach is not cured to the satisfaction of the City within fourteen (14) days of delivery to Contractor of a written notice by the City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach. If Contractor fails to cure the breach as required by the notice prior to the expiration of the fourteen (14) day notice, this Agreement shall automatically terminate.
- d. Immediately By City. The City may terminate or suspend this Agreement immediately if (i) the City believes in good faith that the health, welfare or safety of the Premises, or occupants, users or neighbors would be placed in immediate jeopardy by the continuation of Contractor operations on the Premises; or (ii) if

repairs or equipment replacement at the Premises is necessary, in the City's sole discretion, and the City declines to undertake such repairs or replacement.

- e. Surrender Possession. Upon termination of this Agreement, Contractor agrees to surrender possession of the Premises to City in as good condition and state of repair as said Premises were in at the time Contractor took possession, reasonable wear and tear excepted. Contractor shall remove all its personal property no later than the expiration of the notice period. Any such personal property remaining after this period shall become the property of the City.

VIII. ACCESS.

- a. The City, and/or its designees, shall have unlimited access to the Premises during the Term. Contractor shall not change the locks or otherwise prohibit or inhibit the City's access to any portion of the Premises.
- b. The City shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication, and key distribution. Contractor shall comply with the City's Key Control Policy (a copy of which shall be provided to Contractor) which is subject to unilateral change by the City during the Term. All keys shall be promptly returned to the Manager upon termination or expiration of this Agreement.
- c. Contractor must share space with other City contracted operators to provide services in this space for the Beach Safety program. City will determine shared use spaces.
- d. City reserves the rights to schedule Parks and Recreation programming in the space throughout the term. City designee will work with Contractor on dates and reservations needed.

IX. ALTERATIONS AND IMPROVEMENTS.

- a. Contractor may, at its sole cost and expense, make suitable improvements or alterations to the Premises only with advance written approval of the Assistant Manager. This provision includes the delivery, installation, and/or storage of any temporary or permanent items on the Premises. All improvements and alterations to the Premises shall become the property of the City.
- b. Prior to commencing any improvements or alterations, Contractor shall submit to the City a Project Proposal Request with detailed plans in the form required by the City. A copy of the City's current form of **Project Proposal Request is attached to this Agreement as Exhibit C**. The Project Proposal Request shall be submitted to the City at least sixty (60) 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.

- c. Not less than thirty (30) days prior to commencement of construction of an alteration or improvement on the Premises, Contractor shall provide to the City with sufficient proof of required insurance, including workers' compensation. Such proof of insurance is subject to approval by the City Attorney before the commencement of construction of the alteration or improvement.
 - d. Contractor shall be responsible for operational costs and maintenance of improvements, installations, and facilities installed pursuant to this Section, and shall operate them in a safe manner.
- X. INDEMNIFICATION. To the fullest extent permitted by law, Contractor agrees that it shall defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all costs or expenses, claims or liabilities, including but not limited to reasonable attorney's fees and expenses, whether asserted by Contractor or any third party. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of the Contractor, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Contractor, its employees, agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten (10) days' written notice from the City of Duluth, the Contractor shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Contractor shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the intentional, willful, or wanton acts or omissions of the City. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Contractor. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

The Contractor understands that this provision may affect its rights and may shift liability and specifically agrees to the same.

XI. INSURANCE.

- a. Contractor shall comply with the following insurance obligations and shall provide the minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota and comply:

- i. Workers' compensation insurance in accordance with the laws of the State of Minnesota;
 - ii. Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provision may be utilized to meet the required minimum amount stated above. Such insurance shall indemnify Contractor and City from all liability described in the Indemnification paragraphs above;
 - iii. City of Duluth shall always be named as Additional Insured under the Commercial General and Automobile Liability Policies;
 - iv. Contractor to provide Certificate of Insurance evidencing all coverages required above. Such Certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than thirty (30) days prior to any cancellation, or ten (10) days prior to any non-renewal 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. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms — 1) ISO Additional Insured Endorsement (CG 2010 pre-2004); and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents, and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents, and representatives in the negligent performance of work covered by this Agreement.
 - c. Certificates showing that Contractor is carrying the above-described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
 - d. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interest and liabilities. Nothing

in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

- XII. NOTICES. Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

To City Attorney: City of Duluth
Room 402 City Hall
411 West First Street
Duluth, MN 55802

With copy to: City of Duluth
Parks and Recreation
411 West First Street
Duluth, MN 55802

To Contractor: [Attn:]
[Address]
[City, State Zip]

XIII. GENERAL TERMS AND CONDITIONS.

- a. Immunity. Nothing in this Agreement will be construed as a waiver by the City of any immunity, 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.
- b. Assignment. Contractor shall not assign or transfer any of its rights or interests under this Agreement in any way whatsoever.
- c. No Relationship. This Agreement is not intended nor should it be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures, or associates between the parties hereto or as constituting Contractor as the employee of the City for any purpose or in any manner.
- d. Choice of Law and Jurisdiction. 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 those courts located in St. Louis County.

- e. Entire Agreement. This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- f. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- g. Amendment. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written instrument signed by the parties.
- h. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- i. Attorney Fees. In the event a lawsuit of any kind is instituted on behalf of the City to collect any payment due under this Agreement or to obtain performance of any kind under this Agreement, Contractor agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.
- j. Force Majeure. Neither party shall be responsible for any failure to comply with the terms of this Agreement where such failure is due to force majeure, which shall include, without limitation, fires, floods, explosions, strikes, labor disputes, labor shortages, picketing, lockouts, transportation embargoes, curtailment of transportation, strikes or labor disputes affecting supplies, acts of God, acts of nature, civil riot or insurrection, acts of any government or agency thereof, and judicial action. Specifically excluded from this definition are government and judicial actions which could have been avoided by compliance with publicly available laws, rules, and regulations of which either party had knowledge or should have reasonably had knowledge.
- k. Severability. 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.

- l. Waiver. The failure of the City to enforce any provisions of this Agreement shall not constitute a waiver by the City of that or any other provision.
- m. Civil Rights Covenant of Contractor. 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, or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to work to be done pursuant to this Agreement. This Agreement shall be conducted in compliance with the Minnesota Humana Rights Act, Minnesota Statutes Chapter 363A.
- n. Access to Records. The City and its duly authorized representative shall have access to the books, documents, papers, and records of the Contractor that are related to this Agreement.
- o. Data Practices. All data collected, created, received, maintained, or disseminated for any purpose by the parties because of this Agreement is governed by the Minnesota Data Practices Act.

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

CITY OF DULUTH

[CONTRACTOR]

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Date Attested: _____

By: _____

Printed Name: _____

Countersigned:

Its: _____

City Auditor

Approved as to form:

City Attorney

DRAFT