

**CITY OF BIWABIK
SPECIAL MEETING**

AGENDA

**THURSDAY FEBRUARY 24, 2022
6:00PM SPECIAL MEETING**

**BIWABIK CITY HALL
321 N MAIN STREET
BIWABIK, MN**

1. Call to Order/Roll Call/Approve Agenda
2. Discussion and Approval of Campground Host Contract
3. Adjourn

DATE: February 24, 2022

AGENDA ITEM: Discussion and Approval of Campground Host Contract

BACKGROUND: The City Council voted at the January 31 Special Meeting to approve Peter Senarighi as an independent contractor to be the campground host in 2022. Staff was directed to look at the contract and correct shortfalls. Compensation was to be negotiated with the City Council.

The contract that was in place for 2021 is attached, as well as an edited contract that was reviews and tabled at the February 14th City Council meeting.

ATTACHMENTS:

- A. 2021 Campground Host Contract
- B. Edited Campground Host Contract from February 14 Meeting

STAFF RECOMMENDATION: Discussion and Council Decision

As Reviewed at February 14th City Council Meeting
VERMILION TRAIL PARK CAMPGROUND OPERATION AND MANAGEMENT
AGREEMENT

THIS AGREEMENT is made by and between Peter Senarighi, an independent contractor, hereinafter referred to as "Contractor," and the CITY OF BIWABIK, 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 6040 State Hwy 135 and legally described as:

Section 1, Township 58, Range 16, Lot 8 Ex Ry R/W & Ex Part Lying N Of Hwy R/W Surface Only, and:

Section 12, Township 58, Range 16, Lot 3 Ex That Part Platted As Vermilion Trail Estates & Ex Part Comm At The NW Cor Of Sec 12 Thence S01deg35'32"E Assumed Bearing Along W Line Of Sec 12 651.39 Ft To N Line Of The Plat Of Vermilion Trail Estates & The Pt Of Beg Thence N01deg35'32"W Along Said W Line 29.80 Ft Thence N64deg01'03"E 284.76 Ft Thence S48deg55'07"E 88.12 Ft Thence S22deg50'00"E 119.90 Ft To The Intersection With The N Line Of Said Plat Thence N87deg50'31"W 368.36 Ft To Pt Of Beg (the "City Property").

B. A portion of the City Property is more commonly known as "Vermilion Trail Park Campground" (hereinafter referred to as "Premises" or "Campground") whereby users rent campsites and other amenities, such as, but not limited to, bicycles, kayaks, and boats, and use the Campground for recreational purposes.

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

I. PREMISES

City hereby grants to Peter Senarighi, 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 6040 Hwy 135, Biwabik, Minnesota 55708. 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 _____, and shall continue through the end of the day on _____.

III. OPERATION AND MAINTENANCE

A. Contractor agrees to be diligent in the operation and maintenance of the Campground to provide its services in the best interest of the City and the camping public.

B. Contractor agrees to operate the Campground with the following schedule:

“Camping Season” shall commence on May 1 and end with the close of business based on the City Administrator's determination. The contractor 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 to achieve a high level of customer service. During the Summer Season, the Campground office will be open daily for camper check-in and checkouts, general assistance as requested or needed, along with performing all routine maintenance, as required. The following office hours shall be in effect for the summer season:

2:00PM to 8:00PM Monday - Thursday

10:00AM to 9:00PM Friday- Saturday

10:00AM to 7:00PM Sunday

Spring shoulder season shall consist of May 1st to the Thursday before Memorial Day Weekend. Fall shoulder season shall consist of the time from the end of Labor Day Weekend until campers are no longer present. The campground office shall be open/available from 3:00 PM to 7:00 PM daily during the shoulder seasons.

C. The contractor shall be responsible for the routine maintenance of the campground, including but not limited to the ongoing daily regular cleaning/maintenance of all indoor and outdoor spaces, washrooms, showers, lawn areas, campsites, picnic tables, campfire rings, campground office, portable toilets. Must also abide by all applicable cleanliness guidelines released by Federal and State Agencies

The contractor agrees to maintain all grass or turf areas in the Campground in a properly mowed condition, plumbing, electrical, and carpentry repairs when no building or other permit is required.

D. The contractor shall not remove any tree without written permission from the City. It does not include trees that have substantial damage or fallen due to wind or storm damage.

E. The contractor agrees to provide adequate security at the Campground, enforce campground regulations, and notify law enforcement when necessary.

IV. CITY ACCESS

A. Contractor shall permit the City, its officials, employees, or agents to access and inspect the Premises at any time. The City Administrator shall be exclusively responsible for the design of keying systems, lock changes, key fabrication, and key distribution. The contractor shall not change the locks or otherwise prohibit or inhibit the City access to any portion of the Premises. The contractor shall promptly return all keys to the City Administrator upon the termination of this Agreement.

V. CONCESSIONS

- A. The contractor shall have the right to sell items. At no time shall there be sold on the premises by the Contractor, or with its knowledge, acquiescence, or consent, any articles, the sale of which may be prohibited by law, local ordinance, or prohibited without proper license or permit.
- B. The contractor shall have the right to rent bicycles, canoes, or other watercraft on the Premises to the general public throughout each Summer Season. The contractor shall provide maintenance and repairs of all the rental equipment.

VI. PAYMENTS TO CONTRACTOR

- A. The city agrees to pay the contractor, as and for such services according to this contract as follows:

1. \$20,000 - Base Pay (~~plus 10% of Revenue~~)
2. 10% - Incentive Sales Pay on all sales if campground exceeds \$125,000 for the 2022 camping season)
3. One Campsite Provided to Host at No Charge
4. Compensation will be made in 6 equal payments.
5. Payments will begin in May.
6. Final payment will be given upon submitting all required paperwork and proper end-of-season winterization of the campground by the Contractor.

VII. MARKETING AND ADVERTISING

- A. City shall be responsible for marketing and advertisement of campground.

VIII. CAMPING RATES AND RESERVATIONS

- A. The contractor agrees to charge camping rates approved by the City. Camping fees shall be laid out in the City fee schedule. Any campsite reservations not made through the credit card processing vendor shall be paid via check or money order payable only to the City of Biwabik.
- B. The contractor will respond as soon as possible and within 24 hours to requests for reservation or additional customer service questions during Summer Season and within 48 business hours during the Winter Off-Season.
- C. The contractor is required to adopt and enforce a campground policy approved by the City ("Campground Policy") before the start of each Camping Season that outlines the camping patron's responsibilities. The Campground Policy shall include actions taken if the policy is violated. The parties acknowledge that any amendments to the Campground Policy shall be submitted to the City Administrator for review and approval by the City

- D. The City shall provide a business telephone number, Internet Access & online reservations system.
- E. The contractor acknowledges and agrees that all reservations and all reservation data collected during the Term of this Agreement are the property of the City, and the Contractor will uphold the City's data privacy and security.

IX. RECORDS

- A. The contractor agrees to maintain detailed, accurate, and complete records of all monies received and disbursed, all usage reports in the Campground operation, and the Contractor's related activities in a mutually agreed form. Such books and records shall be available to the City for inspection and audit upon request. The City agrees to provide a minimum of 24 hours notice of such appeal.
- B. The contractor agrees to provide to the City a monthly and end of season summary report which includes, but is not limited to the following: inventory of sales and merchandising, inventory of city property, maintenance and upkeep logs, lodging reservations, list of needed maintenance, an after-action report addressing continuing problems, and successes., list of required care, an after-action report addressing continuing issues, successes, improvements suggested for next season and lessons learned.

X. ALTERATIONS OR IMPROVEMENTS

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

- A. At its sole cost and expense, the contractor may make suitable improvements or alterations to the Premises upon advance written approval from the City Administrator and detailed plans. If not removed by the host at the end of the term (excluding appliances and equipment plugged into an electricity source), all such improvements shall become the City's property.

XI. INSURANCE

- A. During the term of this Agreement, Contractor shall procure and maintain continuously in force, Public Liability Insurance written on an "occurrence" basis under a Comprehensive Liability Form in limits of not less than \$1,000,000 aggregate per occurrence for personal bodily injury and death and limits of \$1,000,000 for property damage liability. Said insurance shall cover liability to 3rd parties and shall include premises and operations coverage, personal injury, and cover the indemnity obligations of Contractor set forth herein. The contractor shall also maintain coverage to protect the City against loss or damage to the Premises and property permanently located or exclusively used on the premises, against

claims that may arise from the Contractor's maintenance during this agreement.

The contractor shall provide Certificates of Insurance to City evidencing the existence of said coverage. Such insurance policy shall contain a condition that it may not be canceled without thirty days' written notice to the City. All such policies shall name the city as an additional insured.

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

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

XII. HOLD HARMLESS AND INDEMNIFICATION

- A. As a result, the Contractor agrees to indemnify, save harmless, and defend the City and its officers, agents, and employees from and against any claims, suits, losses, judgments, and expenses by any person because of injury or death. The contractor also agrees to indemnify and defend City from all damages to property to whomsoever belonging, arising out of the Premises' management, maintenance, or operation.
- B. The contractor will indemnify the City for any damage to any City property on the Premises caused by Contractor, its agents, volunteers, employees, and invitees.

XIII. TAXES

The contractor agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of the Contractor'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 the Contractor and immediately collect the same from Contractor. The contractor shall manage and pay any sales and use taxes imposed.

XIV. INCIDENT REPORTS

- A. Contractor shall notify the City Administrator in writing of any incident of injury or loss or damage to the Premises or any of Contractor's participants or invitees occurring within the Premises during the term of this Agreement, except for damage to Contractor'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 to be provided by City Administrator.
- B. The contractor shall notify the City Administrator in writing when law enforcement has been requested or responded to an incident on the Premises.

XV. TERMINATION AND/OR EXPIRATION OF AGREEMENT

A. Generally

1. The contractor agrees to surrender possession of the Premises to the City in as good condition and state of repair as the Premises were in when Contractor took control, normal wear and tear excepted.
2. Upon expiration or termination of this Agreement for any reason, Contractor 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 rentals, permits, and uses of the Premises or any portion of the Premises authorized by Contractor;
 - b. Copies of any permits, agreements, or other documents relating to all future rentals, receipts, and uses of the Premises or any portion of the Premises authorized by Contractor;
 - c. Accounting of all fees collected relating to all future rentals, permits, and uses of the Premises or any portion of the Premises authorized by Contractor;
 - d. Reimburse 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 expenses relating to all future rentals, permits, and uses of the Premises.

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 of this Agreement. In the event of immediate termination of this Agreement, the City may remove all persons and property from the Premises. In addition to other rights or remedies, the City shall have the immediate right of reentry to 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 Contractor fails promptly to pay to the City any amount due under the terms of this Agreement. Or (ii) for the material breach by Contractor of any provision of this Agreement, including its exhibits. Suppose a violation 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 Contractor seven (7) days to cure or remedy any violations or defaults set forth therein. Suppose such violation or default is not cured or remedied to the satisfaction of the City within seven (7) days. In that case, the City may immediately terminate this Agreement by serving written or personal notice to the Contractor. In the event of default by Contractor, the City shall have the immediate right of reentry to the Premises in addition to other rights or remedies it may have. According to this paragraph, the City may remove all persons and property from the Premises in the event of termination of this Agreement. All personal property remaining on the Premises after the five (5) days written notice shall become the exclusive property of the City.

2. The contractor acknowledges and agrees that a default of this Agreement includes the receipt by City of Significant Service Complaints 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 Contractor 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.

XVI. 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 Contractor 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. Contractor 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 Contractor's employees or agents while so engaged shall in no way be the responsibility of City.

XVII. NOTICES

Unless otherwise provided herein, notice to the City or Contractor 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 Biwabik Attention: City Administrator, P.O. Box 529, 321 N. Main St., Biwabik, MN 55708

Contractor: Peter Senarighi, PO Box 335, Biwabik, MN 55708

XVIII. GENERAL PROVISIONS

- A. The city agrees to provide one (1) RV campsite to the Contractor at no cost for Contractor's personnel to be designated and marked as the Host site.
- B. A final walkthrough will be completed with the Contractor, a member of the Public Works Department, and the City Administrator in order to approve turnover of the campground back to the City for the winter season after the final camping weekend and no later than the 15th of November. The date of the walkthrough will be scheduled with the City Administrator.
- C. The contractor agrees to operate the Campground in strict compliance with the laws, rules, and regulations of the United States, of Minnesota, St. Louis County, and the City of Biwabik.
- D. The contractor agrees to procure at its own expense all licenses and permits necessary to carry out the provisions of this Agreement.
- E. Contractor accepts total financial responsibility for any operating deficit they incur during operation of the Campground according to this Agreement.
- F. The contractor 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 City Administrator and any such assignment entered into without such consent shall be void.
- G. The waiver by the City or by Contractor 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.
- H. This contract can be amended or modified only by an instrument of equal formality, signed by all duly authorized representatives of the parties.
- I. The City shall not be responsible to Contractor for any injury or damage resulting from any defect in the construction or condition of the herein described Premises.
- J. This Agreement shall be governed by and construed under 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 Minnesota.
- K. 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.
- L. 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.

- M. 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.
- N. 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.
- O. 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.

City of Biwabik:

Mayor Date

City Administrator Date

Contractor:

Date

VERMILION TRAIL PARK CAMPGROUND OPERATION AND MANAGEMENT
AGREEMENT

THIS AGREEMENT, is made by and between Peter Senarighi an independent contractor, hereinafter referred to as “Contractor,” and the CITY OF BIWABIK, 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 6040 State Hwy 135 and legally described as:

Section 1, Township 58, Range 16, Lot 8 Ex Ry R/W & Ex Part Lying N Of Hwy R/W Surface Only, and:

Section 12, Township 58, Range 16, Lot 3 Ex That Part Platted As Vermilion Trail Estates & Ex Part Comm At The NW Cor Of Sec 12 Thence S01deg35'32"E Assumed Bearing Along W Line Of Sec 12 651.39 Ft To N Line Of The Plat Of Vermilion Trail Estates & The Pt Of Beg Thence N01deg35'32"W Along Said W Line 29.80 Ft Thence N64deg01'03"E 284.76 Ft Thence S48deg55'07"E 88.12 Ft Thence S22deg50'00"E 119.90 Ft To The Intersection With The N Line Of Said Plat Thence N87deg50'31"W 368.36 Ft To Pt Of Beg

(the “City Property”).

B. A portion of the City Property is more commonly known as “Vermilion Trail Park Campground” (hereinafter referred to as “Premises” or “Campground”) whereby users rent campsites and other amenities, such as, but not limited to, bicycles, kayaks, and boats, and use the Campground for recreational purposes.

C. City would like to have Peter Senarighi operate and manage the Campground, and Peter Senarighi has represented himself 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 Peter Senarighi, 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 6040 Hwy 135, Biwabik, Minnesota 55708. 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 May 28, 2021, and shall continue through the end of the day on December 13, 2021.

III. OPERATION AND MAINTENANCE

A. Contractor 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. Contractor agrees to operate the Campground with the following schedule:

“Camping Season” shall commence on May 1, 2021 and end with the close of business on October 1st, which dates are approximate based on determination of the City’s Public Works Department and/or City Administrator. Contractor 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 to achieve a high level of customer service determined by the City. During the Summer Season, the Campground office will be open daily for camper check-in and checkouts, general assistance as requested or needed, along with performing all routine maintenance, as required. The following office hours shall be in effect for the summer season:

2:00PM to 8:00PM Monday - Thursday

10:00AM to 9:00PM Friday- Saturday

10:00AM to 7:00PM Sunday

During the shoulder seasons, the campground office shall be open from 3:00PM to 7:00PM daily. Spring shoulder season shall consist of May 1st to the Thursday before Memorial Day Weekend. Fall shoulder season shall consist of the period of time from the end of Labor Day Weekend until campers are no longer present.

City will provide a cellphone to be carried by contractor (or designee) on a 24 hour/day basis for late night check-in and to provide assistance to campground patrons in need of emergency services. Host’s site shall be clearly marked, and its location shall be posted at the campground office.

Contractor must submit a staffing list to City Hall with contact information for all staff. City Administrator should be notified of staffing changes on a regular basis.

C. Contractor 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, beach, docks, beach shower house, portable toilets, etc. Contractor must also abide by all applicable cleanliness guidelines released by Federal and State Agencies

Contractor agrees to maintain all grass or turf areas in the Campground in a properly mowed condition, not to exceed four inches (4") in height in the Ajax Loop and 3 inches (3") in height in all other areas at any time while the campground is in operation. City shall assist with mowing beach area and group campsites. City shall provide two walk behind mowers for the camping season. Gasoline for mowers can be procured from City inventory.

Contractor is also responsible for yearly extermination of bugs, spiders, rodents, removal of other pests that may be required. Contractor shall make minor plumbing, electrical and carpentry repairs when no building or other permit is required. A request can be made for Public Works to assist with non-routine maintenance repairs upon written submittal of a work order. A work order form will be provided by the City Administrator to the Contractor.

- D. 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. Contractor 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.
- E. Contractor shall not remove any tree without the written permission from the City. This does not include trees that have substantial damage or fallen down due to wind or storm damage.
- F. During the camping season the Contractor agrees to keep all washroom facilities cleaned and maintained a minimum of once each day and more often as needed. Washroom facilities will have their first daily cleaning prior to 10:00 am. The washroom facilities will also be checked prior to office closing and cleaned 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.
- G. Contractor may utilize the City's central purchasing process to obtain supplies necessary in maintaining safe and sanitary conditions including but not limited to 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. Requests may be made to City Hall staff.
- H. Contractor agrees that it is responsible for providing written notification to the City's Administrator about any problems relating to the above City

responsibilities in a timely manner so identified problems can be addressed.

- I. Contractor agrees to provide adequate security at the Campground, enforce campground regulations, and notify law enforcement when necessary.
- J. Contractor agrees to use best efforts to recycle. City will provide a pick-up location at campground for all materials that are currently accepted at the City's main recycling station.
- K. Contractor acknowledges and agrees that there shall be no smoking or use of tobacco whatsoever in any building on the Premises.
- L. The City shall be responsible for snow removal on the Premises as it sees fit.

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. Contractor shall permit the City, its officials, employees, or agents to access and inspect the Premises at any time. Contractor shall not change the locks or otherwise prohibit or inhibit the City access to any portion of the Premises. The City Administrator shall be exclusively responsible for the design of keying systems, lock changes, key fabrication and key distribution. Contractor shall promptly return all keys to the City Administrator upon termination of this Agreement.
- B. In addition, Contractor shall permit the City full access to the Premises for maintenance, repairs, and upgrades to the Premises.

VI. CONCESSIONS

- A. Contractor 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 City Administrator. At no time shall there be sold on the premises by the Contractor, or with its knowledge, acquiescence, or consent, any articles, the sale of which may be prohibited by law, local ordinance, or prohibited without proper license or permit.
- B. Contractor shall have the right to rent bicycles, canoes, or other watercraft on the Premises to the general public throughout each Summer Season. Contractor shall be responsible to provide maintenance and repairs of all the rental equipment. Contractor shall be required to carry insurance to cover such rental operations, and the hold-harmless and indemnification provisions of Section XVI below shall

apply to all aspects of such rental operation.

Contractor shall secure all necessary permits and licenses as required by law from the applicable governing agency including but not limited to the State Minnesota, Department of Natural Resources for any watercraft, Department of Health for food items served, and from the City Deputy Clerk 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 Contractor and remitted to the City and State.

VII. PAYMENTS TO CITY

- A. Contractor agrees to pay to the City, on a monthly basis, the following percentages each year this Agreement remains in effect:
 - 1. One hundred percent (100%) 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;
- B. Contractor shall have first right of refusal to provide the following additional, on-site services.:
 - 1. Non-coin concession sales;
 - 2. Rental of canoes, bikes, kayaks, small fishing and pontoon boats by registered Campground patrons through Vermilion Trail Park Campground; and
 - 3. Coin-operated vending equipment.
- C. Contractor shall keep track of all revenue and expenses related to providing these services, although no revenue split shall apply at this time. These numbers shall be included in the monthly report to the City Council.

VIII. PAYMENTS TO CONTRACTOR

- A. City agrees to pay the contractor, as and for such services pursuant to this contract as follows:
 - 1. \$27,000 - Base Pay (On First \$50,000 of Revenue)
 - 2. \$10% - Incentive Sales Pay on Next \$50,000 of Revenue - Not to Exceed \$5000)
 - 3. \$32,000 - Max Earnings (If \$100,000 of Revenue Obtained)
 - 4. Any Additional Revenue Obtained Above \$100,000 - No Revenue Sharing (All to the City of Biwabik)
 - 5. One Campsite Provided to Host at No Charge (if Host Decides Not to Use it City reserves the right to rent that site for that season with no revenue sharing) Host cannot sublet or allow others to use the site.
 - 6. Compensation will be made in 6 equal payments.
 - 7. The first payment will begin in the month of May.
 - 8. Final payment will be given upon final submission of all required payments, paperwork, and proper end of season winterization of campground by the Contractor.

- B. A final walkthrough will be completed with Contractor, a member of the Public Works Department, and the City Administrator in order to approve turnover of the campground back to the City for the winter season after the final camping weekend and no later than the 15th of November. Date of walkthrough will be scheduled by the City Administrator.

IX. MARKETING AND ADVERTISING

- A. Contractor shall be diligent in the marketing and advertising of the services available on the Premises. Contractor will utilize appropriate marketing and advertising outlets, such as electronic/web based media, magazine advertising, brochures, quarterly local tourism publication, etc. to maximize the Campground's exposure and rental potential.
- B. All marketing and advertising shall be at Contractor cost and expense. Contractor can work with City in sharing of expenses. Minimum Biwabik's Vermilion Trail Park Campground advertising, at Contractor expense, shall include:
 - 1. Listing in the Explore Minnesota Guide and on its website for statewide campground listings;
 - 2. Listing in Woodall's Campground Directory and/or similar directory of equal status;
 - 3. Develop and print in sufficient quantity of a Biwabik's Vermilion Trail Park Campground brochure detailing the services and amenities available at Vermilion Trail Park Campground, along with current rate pricing information and directions to the campground. All print marketing must be preapproved by the City prior to distribution. The brochures shall be distributed throughout the city and other locations; and
 - 4. Inclusion on at least one social media outlet, such as Facebook, Twitter, e-mail marketing, etc. The social media outlets and all content is the property of the City.
- 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 Contractor must be provided to the City Administrator.
- E. In addition, Contractor will be responsible for maintaining and updating as necessary the Biwabik's Vermilion Trail Park Campground's website (www.biwabikcampground.com). All content placed on the website must be pre-approved by the City Administrator. 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.

X. CAMPING RATES AND RESERVATIONS

- A. Contractor agrees to charge camping rates approved by the City. Camping fees shall be laid out in the City fee schedule. Any campsite reservations not made through the credit card processing vendor, shall be paid via check or money order payable only to the City of Biwabik.
- B. Contractor will respond as soon as possible and within 24 hours to requests for reservation and/or additional customer service questions during Summer Season, and within 48 business hours during the Winter Off Season.
- C. Contractor is required to adopt and enforce a campground policy approved by the City (“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 City Administrator 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. The City shall provide online reservations, the City 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. The City shall maintain a reputable vendor to provide an internet credit card transaction gateway.
- E. Contractor acknowledges and agrees that all reservations and all reservation data collected during the Term of this Agreement are the property of the City and Contractor shall hold all information associated with the reservations in strict confidence and all such information shall not be used by Contractor except to fulfill its obligations under this Agreement. Contractor shall not utilize reservation information stored by Contractor and provided by City to communicate with any individual except to provide stay related information to the individual.

XI. SPECIAL EVENTS

- A. All requests for special events to be held at the Premises shall be directed to the City. The City shall be responsible for approving or denying 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. The City shall notify Contractor of the approved special events.
- B. All special events requiring insurance shall name the City and Contractor as additional insureds. The City shall be responsible for obtaining a copy of the Certificate of Insurance evidencing such coverage.
- C.

XII. UTILITIES

- A. The City shall be responsible for all necessary utilities to the Premises, including but not limited to electric service, gas, City water service, sewage, and trash collection. During the Winter Season, seasonal water will be discontinued for all campsites.
- B. The City shall also be responsible for landline telephone, internet services, and/or other utilities or services not specifically mentioned in this Agreement. The City shall provide no less than one business telephone line to be used exclusively for the Campground. Said telephone line shall also be listed in the current white business pages and yellow pages. With respect to telephone and internet services, the accounts will remain in the name of the City. The City shall provide one cellphone for use by Contractor. Contractor shall be responsible for loss or damage any damages to phones. All applicable laws and regulations shall apply to City phone use by contractor.

XIII. RECORDS

- A. Contractor agrees to maintain detailed, accurate, and complete records of all monies received and disbursed, and all usage reports in the operation of the Campground and Contractor's related activities in a form mutually agreed upon between the parties. Such books and records shall be available to the City for inspection and audit upon request. The City agrees to provide a minimum of 24 hours' notice of such request. In addition, Contractor shall prepare an itemized monthly financial report of all monies taken in and disbursed in the Campground operations and shall submit such detailed report to the City, together with all payments provided in Section VII.
- B. Contractor agrees to provide to the City a monthly report which includes, but is not limited to the following: inventory of sales and merchandising, inventory of city property, maintenance and upkeep logs, lodging reservations, list of needed maintenance, and after action report addressing continuing problems, and successes.
- C. Contractor agrees to maintain all records relating to the Services and the Premises during the term of the Agreement and for seven (7) years after its termination, cancellation, or expiration, and to provide such records to the City upon request.
- D. Contractor agrees to keep a daily record of sales and to submit to the City weekly and monthly sales reports.
- E. Upon completion of the camping season and prior to turnover to the City for the winter season Contractor agrees to provide to the City a detailed written report, which includes, but is not limited to the following: inventory of sales and merchandising, inventory of city property, maintenance and upkeep logs, lodging reservations, list of needed maintenance, and after action report addressing continuing problems, successes, improvements suggested for next season and

lessons learned.

XIV. ALTERATIONS OR IMPROVEMENTS

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

- A. Contractor may, at its sole cost and expense, make suitable improvements or alterations to the Premises upon advance written approval from the City Administrator. All such improvements if not removed by host at the end of the term (excluding appliances and equipment plugged into an electricity source) shall become the property of the City. Prior to commencing any improvements or alterations, Contractor shall submit to the City a Project Proposal Request along with detailed plans. These documents shall be submitted to the Contractor at least thirty (30) 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 all applicable building codes.
- B. Contractor agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Premises, Contractor will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be filed with the City Administrator before the commencement of any construction hereunder.

XV. INSURANCE

- A. During the term of this Agreement, Contractor shall procure and maintain continuously in force, Public Liability Insurance written on an "occurrence" basis under a Comprehensive Liability Form in limits of not less than \$1,000,000 aggregate per occurrence for personal bodily injury and death and limits of \$1,000,000 for property damage liability. Said insurance shall cover liability to 3rd parties and shall include premises and operations coverage, personal injury, and cover the indemnity obligations of Contractor set forth herein. Contractor shall also maintain coverage as will protect the City against loss or damage to the Premises and property permanently located or exclusively used on the premises, against claims which may arise from Contractor's maintenance during this agreement.

Contractor shall provide Certificates of Insurance to City evidencing the existence of said coverage. Such policy of insurance shall contain a condition that it may not be cancelled without thirty day's written notice to the City. All such policies shall name the city as an additional insured.

- B. City reserves the right to require Contractor 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 Contractor's interests and liabilities.
- D. The City shall not be liable to Contractor 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.

XVI. HOLD HARMLESS AND INDEMNIFICATION

- A. Contractor hereby agrees to indemnify, save harmless, and defend the City and its officers, agents, and employees from and against any and all claims, suits, loss, judgments, and expenses by any person by reason of injury or death. Contractor also agrees to indemnify and defend City from all damages to property to whomsoever belonging, arising out of the management, maintenance or operation of the Premises by Contractor or performance of the obligations under this agreement.
- B. Contractor will indemnify the City for any damage to any City property on the Premises caused by Contractor, its agents, volunteers, employees, and invitees.

XVII. TAXES

Contractor 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 Contractor'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 the Contractor and immediately collect the same from Contractor. Contractor 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.

XVIII. GOVERNMENT DATA PRACTICES

If Contractor receives a request for data under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, Contractor will immediately notify City of said request, consult with City and allow City to respond to such data request.

XIX. INCIDENT REPORTS

- A. Contractor shall notify the City Administrator in writing of any incident of injury or loss or damage to the Premises or any of Contractor's participants or invitees occurring within the Premises during the term of this Agreement, except for damage to Contractor'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 to be provided by City Administrator.

- B. Contractor shall notify the City Administrator in writing when law enforcement have been requested or responded to an incident on the Premises.

XX. TERMINATION AND/OR EXPIRATION OF AGREEMENT

A. Generally

1. Upon expiration or early termination of this Agreement for any reason, Contractor shall remove all of its personal property from the Premises pursuant to this section. Contractor 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 Contractor took possession, normal wear and tear excepted. All personal property remaining on the Premises after Contractor surrenders possession to the City shall become the exclusive property of the City.
2. Upon expiration or termination of this Agreement for any reason, Contractor 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 rentals, permits and uses of the Premises or any portion of the Premises authorized by Contractor;
 - b. Copies of any permits, agreements or other documents relating to all future rentals, permits and uses of the Premises or any portion of the Premises authorized by Contractor;
 - c. Accounting of all fees collected relating to all future rentals, permits and uses of the Premises or any portion of the Premises authorized by Contractor;
 - 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 rentals, permits and uses of the Premises or any portion of the Premises authorized by Contractor; and
 - e. Such other information reasonably requested by the City.
3. In the event this Agreement is terminated by the City during the Winter Season, Contractor shall be entitled to a reduction in the amount due under Section XX.3.d. above equal to Contractor's total documented, out of pocket expenses incurred during the then-current Winter Season with respect to its activities under Section VIII above, but not including wages

or employment benefits. However, City is not responsible to reimburse Contractor in the event that Contractor's total documented, out-of-pocket expenses under Section VIII are greater than the amounts due to the City under Section XX.3.d. If this Agreement is terminated by the City during the Summer Season, there shall be no reduction in the amount due under Section XX.3.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 Contractor fails promptly to pay to the City any amount due under the terms of this Agreement or (ii) for the material breach by Contractor 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 Contractor seven (7) 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 seven (7) days, then the City may immediately terminate this Agreement by serving written or personal notice to Contractor. In the event of default by Contractor, 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. Contractor 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 Contractor 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 Contractor 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. Contractor 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 Contractor’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 Contractor 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 Biwabik Attention: City Administrator, P.O. Box 529, 321 N. Main St., Biwabik, MN 55708

Contractor: Peter Senarighi, PO Box 335, Biwabik, MN 55708

XXIII. GENERAL PROVISIONS

- A. City agrees to provide one (1) RV campsite, to be designated and clearly marked, to Contractor at no cost for Contractor’s personnel.
- B. Contractor 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 Biwabik.
- C. Contractor agrees to procure at its own expense all licenses and permits necessary for the carrying out of the provisions of this Agreement.
- D. Contractor accepts total financial responsibility for any operating deficit they

incur during operation of the Campground pursuant to this Agreement.

- E. Contractor 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 City Administrator, and any such assignment entered into without such consent shall be void.
- F. The waiver by the City or by Contractor 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 Contractor 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.

