

**FUNDING AGREEMENT FOR CONSTRUCTION OF A SKATE
PARK AT THE GARY NEW DULUTH RECREATION AREA
BETWEEN THE CITY OF DULUTH
AND THE GND DEVELOPMENT ALLIANCE**

THIS FUNDING AGREEMENT, is entered into by and between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”), and the GND Development Alliance, a Minnesota 501(c)(3) non-profit corporation (the “Alliance”). The City and the Alliance are hereinafter referred to as a “Party” or collectively as the “Parties.”

WHEREAS, the City owns a tract of land located at 801 101st Avenue West, Duluth, Minnesota 55808 (the “Gary New Duluth Recreation Area”) containing a community center building, soccer fields, pavilions, multi-use sport court, community garden, dog park, parking, sidewalks, green stormwater infrastructure, a partially-completed skatepark, and other amenities yet to be constructed; and

WHEREAS, the Alliance is an organization created to revitalize and transform the Gary New Duluth Recreation Area through capital improvement projects and facility operations. The Alliance uses, maintains, and manages certain portions of the Gary New Duluth Recreation Area under a separate agreement between the Parties dated July 31, 2020 (City Contract No. 23943); and

WHEREAS, the Alliance designed plans to construct a public skate park (the “Skate Park”) at the Gary New Duluth Recreation Area and has completed initial phases of work on the Skate Park; and

WHEREAS, the Parties wish to complete the final phase of construction of the Skate Park (the “Project”). The Parties will jointly fund the Project with their respective amounts and desire to memorialize their respective financial and administrative commitments for the Project through this agreement; and

WHEREAS, the City has been awarded \$250,000 as a result of a successful grant application by the Alliance from St. Louis County’s economic development fund for the purposes of completing the Project (City Contract No. 24507); and

WHEREAS, the Alliance has been awarded \$40,000 of 2024 hotel-motel and food and beverage tourism taxes from the City; and

WHEREAS, the City has allocated \$300,000 in Athletic Venue Reinvestment Initiative funding through City bonding for the purpose of supporting implementation of the Project; and

WHEREAS, the Alliance desires to provide the remaining Project costs and 10% contingency to the City, in an amount not to exceed \$300,000, using donations, pledges, and other grant funds awarded to the Alliance;

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

1. Administration.

For the purpose of administering this Agreement, the City shall act through its Property and Facilities Manager or their designee (the “PFM Manager”) and the Alliance shall act through its Board Chairperson or their designee (“Chairperson”).

2. Term.

This Agreement shall commence upon execution by both parties, effective as of the date of attestation by the City Clerk (the “Effective Date”), and shall continue through the completion of the Project, unless earlier terminated as provided for herein (the “Term”).

3. City Responsibilities.

- A. The City shall, in accordance with the City’s bidding process, award and enter into a construction contract with a contractor selected by City, and agreed upon by the Alliance, for the construction of the Project (the “Construction Contract”). The Construction Contract shall be with a contractor experienced and knowledgeable with skate park construction. The Construction Contract shall require substantial completion of the Project work no later than July 19, 2024 with final completion no later than December 31, 2024. The City shall administer the Construction Contract in its sole discretion.
- B. The City shall promptly pay the amounts due under the Construction Contract, using both funds managed by the City, including St. Louis County economic development funds, 2024 hotel-motel and food and beverage tourism tax funds, and Athletic Venue Reinvestment Initiative funds, which total \$590,000, and funds paid to the City by the Alliance, an amount not to exceed \$300,000, to cover costs in excess of said funds managed by the City.

4. Alliance Responsibilities.

- A. The Alliance shall be provided the bid documents received by the City upon opening and, at that time, the Alliance shall confirm or decline the Alliance’s willingness to proceed with the Project and the associated costs prior to the City entering into the Construction Contract.
- B. The Alliance shall pay the City for all costs to complete the Project, including contingency costs equal to 10% of the Construction Contract, that are in excess of the \$590,000 managed by the City. Project costs and contingency costs in excess of \$590,000 shall be paid to the City prior to the start of construction. The Alliance shall promptly pay the City for additional costs associated with change orders under the Construction Contract in an amount not to exceed a total project contribution of \$300,000. Funds paid by the Alliance to the City in excess of final payments made under the Construction Contract shall be refunded to the Alliance.
- C. Funds paid to the City by the Alliance in association with this agreement shall be deposited into Fund 205-130-1220-4660-CM205-GARYND-MMPIMP (Parks

Fund – Community Resources – Parks Capital – Gifts and Donations – Capital Maintenance Fund 205 – Gary New Duluth – Plan Implementation).

5. Title to Project.

The Parties acknowledge that the City will own the improvements constructed and/or installed during the Project.

6. Default.

In the event that the Alliance shall be in default of its obligations under this Agreement, the full amount owed to the City shall be immediately due. In addition, the City shall be entitled to any and all costs accrued by the City which it may incur in the course of enforcing the Alliance's obligations, including but not limited to court costs and legal costs, which shall include the value of City attorney staff and other staff time, and shall further be entitled to the cost of borrowing funds at commercial bank rates to fund that portion of the Project that the Alliance was obligated to cover.

7. Records Retention.

- A. The Alliance acknowledges that, as provided in Minnesota Statutes Section 16C.05, Subd. 5, all of the Alliance's books, records, documents, and accounting procedures and practices related to this Agreement are subject to examination by the City or the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance written notice by the City, the Alliance shall provide all requested books, records, documents, and accounting procedures and practices related to this Agreement.
- B. The Alliance agrees to maintain all records relating to this Agreement during the Term and for six (6) years after its termination, cancellation, or expiration.

8. Independent Relationship.

It is agreed that nothing contained in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties or of constituting the Alliance as an agent, representative, or employee 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. The Alliance's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the Alliance's employees while so engaged and any and all claims whatsoever arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the City. The Alliance and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay from or on behalf of the City.

9. Third Party Beneficiaries.

This Agreement is to be construed and understood solely as an agreement between the Parties regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third-party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the Parties, may be waived at any time by mutual agreement of the Parties.

10. Minnesota Government Data Practices Act.

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

11. Assignment.

The Parties will not assign or transfer any right or obligation under this Agreement without the prior written approval of the other party.

12. Choice of Law and Venue.

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 will be those courts located in St. Louis County.

13. Entire Agreement and Amendment.

This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

14. Notices.

Notice to City or Contractor provided for herein shall be sent via email and by the 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
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, MN 55806
(218) 730-4430
parks@duluthmn.gov

GND Development Alliance
Attn: Mark Boben
2630 West Superior Street
Duluth, MN 55806
(218) 355-1349
gnddevelopmentalliance@gmail.com

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

15. Severability.

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the Parties to this Agreement.

16. Counterparts.

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

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

CITY OF DULUTH

GND DEVELOPMENT ALLIANCE

By: _____
Emily Larson, Mayor

By: _____
Mark Boben, GND Development
Alliance

Dated: _____

Dated: _____

Attest: _____
Ian B. Johnson, City Clerk

Dated: _____

Countersigned:

Josh Bailey, City Auditor

Approved as to form:

Rebecca St. George, City Attorney