

**GARY NEW DULUTH RECREATION
CENTER USE AND MAINTENANCE
AGREEMENT BETWEEN THE CITY OF
DULUTH AND
GND DEVELOPMENT ALLIANCE**

THIS USE AND MAINTENANCE AGREEMENT (this "Agreement") is by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota, (the "City") and the GND Development Alliance, a Minnesota non-profit corporation (the "Alliance").

WHEREAS, the City owns a tract of land located at 801 101st Avenue West, Duluth, Minnesota 55808 (the "Land"). The Land includes a community center building (the "Building") and surrounding green space, a community garden area (the "Garden"), a storage shed (the "Storage Shed"), parking lot(s), a pavilion (the "Pavilion"), sport courts (the "Sport Courts"), concrete skatepark, dog park, soccer fields with adjoining grounds (the "Soccer Fields"), various fixtures, and personal property (except the Building, the Garden and the Soccer Fields, the preceding areas are collectively referred to in this Agreement as the "Outdoor Space"). The Building, Garden, and the Outdoor Space are collectively referred to in this Agreement as the "Recreation Center" and are depicted on the attached **Exhibit A**.

WHEREAS, the City recognizes the Alliance's efforts at the Recreation Center and desires to continue the relationship between the City and the Alliance.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

I. ADMINISTRATION.

For purposes of administering this Agreement, the City shall act through its Property Services Supervisor or their designee (the "Supervisor") and the Alliance shall act through its Board Chairperson or their designee.

II. TERM.

Notwithstanding the date of execution, this Agreement shall be deemed to commence on January 1, 2026, and shall expire at the end of the day on December 31, 2035, unless terminated earlier as set forth herein (the "Term").

III. GRANT OF RIGHTS.

A. Subject to the terms and conditions of this Agreement, the City grants to the Alliance the non-exclusive right to use the Outdoor Space during the council-approved hours of operation for the Recreation Center. The Alliance acknowledges and understands that the Outdoor Space may also be used at any time by the general public (unless reserved by another party) and the Alliance cannot charge for such use, except as expressly permitted by this Agreement.

B. Subject to the terms and conditions of this Agreement, the City grants to the Alliance the exclusive right to use the Building and the Storage Shed,

at no charge, for community-related purposes. The Alliance's use of the Building must be during the council-approved hours of operation for the Recreation Center.

C. The right of the Alliance to use the Recreation Center is subject to the Alliance's compliance with the undertakings, provisions, covenants, and conditions set forth in this Agreement.

D. The City makes no representations or warranties, either express or implied, that the Recreation Center is suitable for any specific uses. The Alliance accepts the Recreation Center in "as is" condition without representations or warranties of any kind. The City is not obligated to make any alterations or improvements on or to the Recreation Center or to maintain it, except as may be stated explicitly in this Agreement.

E. The Alliance acknowledges and understands that the Outdoor Space is a multi-use facility requiring the cooperation of all users and coordination of activities. This cooperation includes ingress and egress and use of amenities and related improvements. The Supervisor shall ultimately determine the appropriate use of the Recreation Center and shall decide any disputes between the Alliance and any other users of the Recreation Center.

F. The Alliance acknowledges and understands that the uses and amenities and/or areas designated for certain uses or amenities at the Recreation Center are fluid and may change from time to time.

IV. USAGE FEES.

The City shall not charge the Alliance with a usage fee in relation to this Agreement. The consideration for this Agreement shall instead be the public benefit provided by the Alliance through the cleaning and maintenance of the Recreation Center and management of the rentals of the Building (as described in Section V below) and the mutual promises set forth in this Agreement.

V. THE ALLIANCE'S RESPONSIBILITIES.

A. The Alliance shall maintain the Recreation Center in good order and condition and state of repair in compliance with all applicable laws, regulations and codes, including but not be limited to the following maintenance activities, all to be performed at the Alliance's sole expense:

1. Provide all staff, equipment, and cleaning supplies necessary to carry out the provisions of this Agreement. Provide janitorial services for the Building and provide those items required for daily use, operation and maintenance of the Building, including but not limited to, cleaning supplies, interior light bulbs, paper products, plastic products (e.g., garbage bags). The Alliance shall stock or replace all paper and other supplies within the Building on a regular basis.

2. Pay to City quarterly \$1,250, for a total fixed amount of \$5,000 annually, for water and sewer, electric and gas utilities. Payment due net thirty (30) days from receipt of invoice. Additionally, Alliance shall pay for any and all services to the Building, the Sign (defined below) and, as applicable, the Storage Shed. Services include but are not limited to garbage and recycling removal, snow and ice removal not already provided by City, janitorial duties, pest control, or other maintenance duties as included herein.

3. Provide proper waste disposal and recycling containers and deposit all litter and other waste from the Building into outdoor garbage and recycling containers and arrange for removal by garbage and recycling hauling providers.

4. Remove snow and ice and provide appropriate anti-slip treatment on all steps, sidewalks, and walkways servicing the Building to ensure the safety of all users.

5. Ensure cleanliness and building shut-down procedures (lights off, doors securely locked, etc.) on a daily basis following conclusion of programs and events.

6. Maintain and replace, as necessary, all elements of the Building, the Storage Shed and any other improvements to the Recreation Center, in good, functional condition including but not limited to, heating systems, electrical systems, plumbing systems, drains, sanitary sewer system, doors, floors, ceilings and windows and shall repair or replace any such building systems or elements which become worn, damaged or broken, unless the Supervisor determines, in their sole discretion and in writing, that such repair or replacement is unnecessary and waives this requirement for the system or element in question.

7. Keep the Building and the Storage Shed free from rodents, insects, and other pests. The City may require the Alliance to contract with a pest exterminating contractor to exterminate as may be necessary and as may be directed by the City. The sole cost and expense of this service shall be the responsibility and obligation of the Alliance. It is further agreed that the City may pay a pest exterminating contractor on behalf of the Alliance and immediately collect the same from the Alliance, or reduce any amount owed to the Alliance by the City pursuant to this Agreement.

8. Comply with the City's written guidelines and instructions relating to recycling, energy efficiency, and maintenance applicable to the Building and the Storage Shed, which written guidelines and instructions may be electronically provided by the City. The Alliance may have appliances in the Building or the Storage Shed only with the PFM Manager's prior written approval. All appliances installed in the Building or the Storage Shed after the start date of the Term must be energy star certified.

9. Maintain its own equipment in a safe, legal, and properly maintained manner. The Alliance shall prohibit the use of any unsafe, illegal, or deficient equipment within the Building and the Storage Shed.

10. If desired by the Alliance, provide internet service and telephone lines and telephones. Installation of such services shall not require the permission of the Supervisor under Section XVI below. The Alliance shall allow the City to access its internet service so that it can electronically transmit information regarding electricity usage.

B. The Alliance shall be solely responsible for managing public use of the Building, the Pavilion, and the Sport Courts as outlined on the attached **Exhibit A** (collectively, the "Rental Space"). The Alliance's responsibilities shall include, but not be limited to, the following:

1. Scheduling recreational and community events and programs for the Rental Space (each an "Event"). The Alliance may rent any portion of the Rental Space to private groups, clubs or parties for an Event and may, at its discretion, charge a rental fee

and collect a deposit. The rental fee and deposit for an Event shall be comparable to rental prices charged under similar circumstances. A schedule of rental fees shall be created by the Alliance and submitted to the Supervisor for written approval prior to becoming effective, which approval shall not be unreasonably withheld or delayed. The Alliance shall have the right to retain all rental fees. All rentals of the Rental Space shall be documented by a written rental agreement, which form of rental agreement shall be subject to the approval of the City Attorney prior to its use by the Alliance.

2. Maintaining a master calendar (the "Master Calendar") of all rentals for the Rental Space. The Master Calendar shall be provided to the Supervisor, or their designee, upon request.

3. Collecting the rental fees and deposits, if applicable, for all Events. Said fees and deposits shall be separately managed and/or accounted for by the Alliance in order to identify funds received or expended in the operation and maintenance of the Building. Such accounting details shall be provided to the City on request.

4. Managing, overseeing and supervising rentals of the Rental Space and all user groups (including guests, invitees and agents thereof) of the Rental Space.

5. Ensuring renters' and user groups' of the Rental Space compliance with all rules and laws.

6. Ensuring that each renter/user group of the Rental Space has obtained the appropriate alcohol permit from the City, if the rental activity will include the consumption of alcoholic beverages and that all such consumption occurs in compliance with all laws regulating such consumption.

C. The Alliance shall promptly notify the Supervisor of proposed major or non-routine repair work needed at the Recreation Center, including work required that may affect the structural, mechanical or electrical integrity of the Recreation Center. In the event the Alliance desires to complete any major or non-routine repair work at its own expense, it may do so only with the prior written permission (which may be transmitted electronically) of the Supervisor, and then in accordance with the terms and conditions set forth by the Supervisor, and all relevant law and code.

D. The Alliance shall follow the City's established policies, procedures, and instructions regarding premises and/or building safety and security, including, but not limited to, securing exterior doors. The Alliance shall immediately report any safety or security issues or concerns to the City's Police Department and the Supervisor.

E. The Alliance shall be responsible for any losses or damages whatsoever caused by the negligence or intentional acts of the Alliance, or its employees, agents, participants, volunteers, and invitees to the Recreation Center or to any of the City personal property or fixtures.

F. The Alliance has previously installed an electronic sign on the Land in the location identified on **Exhibit A** (the "Sign"). The Sign must comply with all applicable laws and regulations. The Alliance must use the Sign to display the City's messages as requested by the City from time to time.

G. No exterior signage may be installed or naming rights promised by the

Alliance within the Recreation Center or the Soccer Fields until a request for approval of signage installation or naming request has been submitted to the Supervisor. Signage and naming will be subject to the city Sponsorship Policy as it may be amended from time to time. The Alliance shall wait for written signage and/or naming approval prior to fabrication of signage. Approved signage must (in the Supervisor's sole discretion): (i) adhere to the City's Gate, Wayfinding, and Signage Design Plan and written Sponsorship Policy, as amended from time to time, and (ii) be consistent with existing sign design at the Recreation Center. Notwithstanding the foregoing, the City reserves the right to install its own signage within the Recreation Center. The Alliance may seek the City's approval to install advertising banners within the Building and fences of the dog park, sport court, and Soccer Fields pursuant to the terms and conditions set forth in this paragraph. All advertising banners must be temporary in nature and are subject to the approval of the Supervisor, including as to size, content and location within the allowed areas, which approval shall not be unreasonably withheld. The Alliance shall: (i) be entitled to revenues generated by the sale of advertising via advertising banners hung within the Recreation Center, and (ii) ensure that all advertising banners comply with all applicable codes and laws. Tobacco products and cannabis products may not be advertised at the Recreation Center. Adult bookstores, as defined by Section 5-1 7(a) of the Duluth City Code, and adult entertainment establishments, as defined by Section 5-1 7(b) of the Duluth City Code, may not be advertised at the Recreation Center.

H. The Alliance may fly the following flags on the flag poles installed at the Recreation Center: United States of American flag, State of Minnesota flag, City of Duluth flag and POW/MIA flag. With the prior written permission of the Supervisor (which may be granted via email communication), additional flags may be flown from time to time. All flags must be flown in accordance with all applicable regulations and laws, including but not limited to U.S.C. Title 4, Chapter I and upon proclamation or executive order made by the President of the United State of America and/or the Governor of the State of Minnesota.

VI. CITY'S RESPONSIBILITIES.

A. As the City's budget allows and in accordance with the City's schedule for parks and green space ground maintenance, the City will perform mowing and related grounds maintenance at the Recreation Center. The frequency of the City's mowing and ground maintenance at the Recreation Center shall be in the City's sole discretion.

B. The parking lot on 101st Avenue West across from the Building, will be plowed in accordance with City's Snow and Ice Control Policy, as amended from time to time, which policy depends on work force and equipment availability.

C. Between the months April through October, the City will provide and maintain porta-potties within the Outdoor Space for use by the public, in quantity and location determined by the City in its sole discretion.

D. The City will contract for the following utilities and services to the Building, the Sign and, as applicable, the Storage Shed: electric, heating, water, and sewer (collectively, the "City's Contracted Utilities"). The City shall bill the Alliance \$1,250 for the costs of the City's Contracted Utilities on a quarterly basis, based on an annual fixed fee of \$5,000, and such funds to be deposited into Fund: ###-###-###-###

VII. TERMINATION OR EXPIRATION OF AGREEMENT.

A. Abandonment or Destruction. The City may terminate this Agreement with thirty (30) days' written notice to the Alliance if the City determines that the Alliance has abandoned its use of the Recreation Center or if the Building is destroyed in whole or in part.

B. For Cause. The City may terminate this Agreement for the material breach by the Alliance 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 the Alliance 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 the Alliance 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.

C. Without Cause. Either party may terminate this Agreement without cause by providing at least ninety (90) calendar days' written notice to the other party.

D. Immediately. The City may terminate this Agreement immediately on written notice to the Alliance if the City believes in good faith that the health, welfare, or safety of the Recreation Center, or occupants, users or neighbors would be placed in immediate jeopardy by the continuation of the Alliance's activities at the Recreation Center.

E. Surrender Possession.

1. Upon termination or expiration of this Agreement, whichever occurs first, the Alliance shall surrender possession of the Recreation Center to the City in good condition, normal wear and tear excepted.

2. The City has not required nor has Alliance paid any deposit for use of the Recreation Center.

3. Prior to expiration of the Term or within fourteen (14) days of early termination, whichever occurs first, the Alliance shall remove its personal property from the Recreation Center. The removed personal property shall remain exclusive property of the Alliance.

4. All personal property remaining at the Recreation Center upon expiration of the Term or fourteen (14) days after early termination, whichever occurs first, shall become exclusive property of the City, or, at the option of the City, the Recreation Center shall pay the City upon demand for any costs associated with disposal of said personal property.

VIII. ACCESS.

A. The City, and/or its designees, shall have unlimited access to the Recreation Center during the Term. The Alliance shall not change the locks or otherwise prohibit or inhibit the City's access to any portion of the Recreation Center.

B. The Supervisor shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution. The Alliance shall comply with the City's Key Control Policy (a copy of which shall be provided to the Alliance) which is subject to unilateral change by the City during the Term.

C. The Alliance is allowed a maximum of three keys for the Building. The

Alliance shall not make copies of the Recreation Center's keys. All keys shall be promptly returned to the Supervisor upon termination or expiration of this Agreement.

D. Notwithstanding anything contained herein, during such times when City-wide voting or elections are held, the Alliance shall make available those portions of the Recreation Center designated by the City Clerk to be used for election purposes. Generally, elections are held the second Tuesday in August and the first Tuesday of November. The City shall provide the Alliance with notice of any non-scheduled or special election. The Alliance acknowledges that use of the Recreation Center by the City as a voting place takes precedence over any conflicting commitment the Alliance may have scheduled for such election dates. The Alliance shall not hinder, obstruct, or interfere in any way with the City's access or use of the Recreation Center for election purposes.

IX. INSURANCE.

A. The Alliance, at its sole cost and expense, 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:

B. Workers' compensation insurance in accordance with the laws of the State of Minnesota;

C. 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 Alliance and City from all liability described in the Indemnification paragraphs above;

D. City of Duluth shall always be named as Additional Insured under the Commercial General, and Automobile Liability Policies;

E. For any new building construction or new building addition for which the value exceeds \$100,000, the Alliance shall provide proof of Builders Risk Insurance on an "All-Risk" basis, which includes theft of material not installed and glass breakage, to the full value of the new building. Alliance is liable for losses within deductible coverage; and

F. Alliance 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 30-days prior to any cancellation, or 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.

G. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Alliance, 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 Alliance, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

H. Certificates showing that Alliance is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Contract.

The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect Alliance's interests and liabilities. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

X. HOLD HARMLESS AND INDEMNIFICATION.

To the fullest extent permitted by law, the Alliance 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 Alliance 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 Alliance, 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 Alliance, its employees, or its 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 days' written notice from the City of Duluth, the Alliance shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Alliance 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 omission of the City. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Alliance. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466. Alliance understands this provision may affect its rights and may shift liability and specifically agrees to the same.

XI. INDEPENDENT RELATIONSHIP.

A. 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.

B. It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Alliance as an agent, representative or employee of City for any purpose or in any manner whatsoever. Alliance and any officers or employees thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Alliance arising out of employment or alleged employment, including without limitation, claims of discrimination against City, its officers, agents, contractors and employees shall in no way be the responsibility of City. Alliance and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless Alliance from liability or judgments arising out of the intentional or negligent acts or omissions of Consultant or any Team member while performing the work specified by this Agreement..

XII. REPORTING AND RECORDS RETENTION.

A. Reporting Requirements. The Alliance shall comply with the Reporting Requirements outlined in the attached **Exhibit B.**

B. Records Retention. The Alliance acknowledges that, as provided in Minn. Stat. § 16C.05, Subd. 5, all of the Alliance's books, records, documents, and accounting procedures and practices related to the use and maintenance of the Recreation Center are subject to examination by the City and 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 the use and maintenance of the Recreation Center. The Alliance shall maintain all of its records relating to this Agreement and the Recreation Center during the Term and for six (6) years after the termination or expiration of this Agreement.

C. Waiver. The waiver by either party of any breach or failure to comply with any provision of the Agreement by the other party will not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach or failure to comply with any other provision of this Agreement.

D. Standing with Secretary of State. Tenant's status as a Nonprofit Corporation under the laws of the State of Minnesota shall remain active and in good standing while this Agreement is in effect. Tenant shall notify City immediately if the Tenant's standing changes.

XIII. GOVERNMENT DATA PRACTICES.

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. 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.

XIV. NOTICES.

Unless otherwise provided herein, notice to the City or the Alliance shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

To City:

City of Duluth
Attn: Property Services
Supervisor
1532 W. Michigan Street
Duluth, MN 55806

To Alliance:

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

XV. TAXES.

The Alliance shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of the Alliance's use of the Recreation Center, including real property and sales taxes, if applicable. The City may pay the same on behalf of the Alliance and immediately collect the same from the Alliance. The Alliance shall 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.

XVI. ALTERATIONS AND IMPROVEMENTS

A. The Alliance may, at its sole cost and expense, make suitable improvements or alterations to the Recreation Center only with the advance written approval of the Supervisor, in their sole discretion. This provision includes the delivery, installation, and/or storage of any temporary or permanent containers or structures on the Recreation Center. All improvements and alterations to the Recreation Center shall become the property of the City. Prior to commencing any improvements or alterations, the Alliance shall submit to the City a project proposal request along 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.

B. Not less than ten (10) days prior to commencement of construction of an alteration or improvement on the Recreation Center, the Alliance will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance is subject to approval by the City Attorney before the commencement of construction of the alteration or improvement.

C. The Alliance shall be responsible for operational costs and maintenance of improvements, installations, and facilities installed pursuant to this Article XVI. and shall operate them in a safe manner.

D. In accordance with this Section XVI., the Alliance submitted a project proposal providing for the purchase and installation of playground equipment on the Recreation Center, such proposal is attached to this Agreement as **Exhibit D**.

XVII. COMPLIANCE WITH LAWS.

A. The Alliance shall make its activities and services available to all users and shall not discriminate on the basis of race, color, creed, national origin, sexual orientation, disability, sex, religion, or status with regard to public assistance, and shall not violate any federal, state or local civil rights law, rule or regulation in the maintenance or use of the Recreation Center.

B. The Alliance shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Recreation Center.

C. The Alliance will (1) obey all laws, rules, and regulations applicable to its use of and maintenance of the Recreation Center, (2) use its best efforts to ensure that its members, employees and invitees so conform to such laws, rules, and regulations, and (3) procure at its expense all licenses and permits necessary for carrying out the provisions of this Agreement.

XVIII. ALCOHOL, CANNABIS, TOBACCO, AND DRUG USE.

A. Alcohol may be sold or used at the Recreation Center only when the appropriate on-sale alcoholic beverage license has been obtained from the City prior to the event and all application, fee, and other requirements have been met.

B. The City reserves the right to prohibit certain groups, persons, and/or organizations from serving, selling, possessing, and/or consuming alcohol at the Recreation Center.

C. The City reserves the right to prohibit serving, selling, possessing, and/or consuming alcohol in specific rooms and/or portions of the Recreation Center.

D. There shall be no smoking or electronic delivery of tobacco, cannabis, illegal drugs, or any other substance whatsoever at the Recreation Center or as otherwise prohibited by state or local laws.

XIX. INCIDENT REPORTS.

The Alliance shall promptly notify the City in writing of any incident of injury or loss or damage to the City's property or to any employee, agent, user, participant or invitee occurring on or within the Recreation Center during the Term. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of City's current form of Incident Report is attached hereto as **Exhibit E**.

XX. GENERAL TERMS AND CONDITIONS.

A. This Agreement, together with all of its terms, covenants, and conditions is made in the State of Minnesota and is to be interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those courts located within St. Louis County, Minnesota.

B. The Alliance shall not assign or transfer any rights or obligations under this Agreement unless proposed to the City in writing and written approval is issued by the City, subject to any terms and conditions set by the City.

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

D. 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 this Agreement did not contain the particular term or provision held to be invalid.

E. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. 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 hereto, may be waived at any time by mutual agreement between the parties.

F. This Agreement and its exhibits are the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon. This Agreement shall supersede all prior written and oral negotiations, understandings or agreements between the parties relating to the subject matter hereof.

G. There are no representations, warranties or stipulations, either oral or written, not herein contained.

H. Time is of the essence in all provisions of this Agreement.

I. No amendments to this Agreement shall be binding unless such amendment is in writing and executed with the same formality and approvals as this Agreement. This Agreement may be amended only by a written instrument signed by both parties.

J. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by the officers of the parties will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

K. 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.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated below.

CITY OF DULUTH

GND DEVELOPMENT ALLIANCE

By _____
Mayor

By: _____
Mark Boben

Attest: _____
City Clerk

Its: _____

Dated: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney



Printed Date: 5/20/2026



- | | | | | | |
|--|------------|--|----------|--|--------------|
| | Playground | | Building | | Soccer Field |
| | Skate Park | | Garden | | Sport Court |
| | Dog Park | | Parking | | Storage Shed |
| | Sign | | Pavilion | | |

EXHIBIT A Gary Recreation Center

0 180 360 Feet



EXHIBIT B

REPORTING REQUIREMENTS

- A. The Alliance shall file the following items with the City on an annual basis:
1. Certificate of Insurance per Section IX;
 2. Annual Report; and
 3. Form 990 (informational return) filed with the IRS.
- B. Upon request, the Alliance shall submit the following items to the City:
1. Itemized statement showing all income and expenses related to the operation and maintenance of the Recreation Center during the Term or for a specific period during the Term;
 2. Current copy of the Alliance's Bylaws and Articles of Incorporation;
 3. Current listing of all of the Alliance's officers, board members, and a designation of the official contact person responsible for the administration of this agreement (including day-to-day scheduling and maintenance duties) along with contact information;
 4. Master Calendar (as defined in the Agreement);
 5. Any other information regarding the use of the Recreation Center as the City may request from time to time, including but not limited to data on attendance, volunteers, expenses, in-kind services, etc.; and
 6. Other information required under the Agreement but not listed in Exhibit B.

EXHIBIT C

PROJECT PROPOSAL APPLICATION FORM

Use this form to propose a City of Duluth improvement project on park property. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests.

Once a project proposal request is received, the Parks & Recreation Division will initiate the review process, with the intent to provide a response within sixty (60) days. Other Departments/Divisions may apply different parameters, review criteria, and/or timelines that are not within Parks' purview. Please note that acquiring funds for a project through grants, fundraising, donations, or other means does not guarantee project approval. It is highly recommended that groups submit a project proposal in advance of pursuing funds, even if a preliminary and an additional project proposal review ends up being necessary.

Please submit completed application materials to: projectproposal@duluthmn.gov.

APPLICANT CONTACT INFORMATION - REQUIRED

Date of Application

Name

Organization

Email

Phone

Organization Description (length operating, membership, formal/informal, non-profit status, mission, etc.)

Proposed Project Name

Proposed Project Location

PROJECT PROPOSAL FORM - APPLICATION QUESTIONS

Please submit responses to the following questions regarding your proposed project.

- 1. Describe, with as much detail as possible, the location(s) of the proposed project.** Give the park/trail name(s), location within park/trail, GPS coordinates, and/or attach an image clearly identifying the location(s).

- 2. Describe the proposed project in as much detail as possible.** What do you propose doing? Include information on size(s), placement, layout, wording, colors, etc. as applicable. Maps, sketches, diagrams, and/or schematic drawings are required for any physical improvements. Attach these to application when you submit.

- 3. Describe the proposed timeline for this project.** Are there deadlines or time constraints you wish the City to be aware of? Please specify.

EXHIBIT C

4. Describe the approximate cost to complete the project and the funding sources. Are funding sources planned, pending, or secured? Is the proposer seeking City funding or resources to support the project? If so, what resources and how much (time, materials, cash contribution, etc.)?

5. Identify the potential impacts of implementing this project. Is it expected to add or reduce costs for the City or a user group? Is it a functional or aesthetic improvement? Are there potential safety concerns? Indicate all potential impacts and describe whether park/trail management or visitor use will be affected.

6. Long-term maintenance. What is the long-term maintenance plan for the proposed project? Who will be involved, what are their proposed roles/responsibilities, and how will it be funded?

7. Does the project have the support of neighbors living nearby and/or other groups who may be regularly using the space? How have you communicated the proposed project to them?

8. Does the project require any specific permitting? Please list all applicable permits (construction permits, land use, etc.)

NOTE: Applicants should be aware of permit requirements but not pursue these until approval of the project is granted.

9. If a special event is intended to coincide with the project, or if there are park or trail closures associated with the project, you must coordinate with the Parks Permit Coordinator. Please share details (exclusive use requests, special event, park or trail closures, etc.)

EXHIBIT C

For Temporary Art Installations:

10. Describe the envisioned timeline and duration of the installation. Dates, length of time, etc. from installation to removal.

11. Who is the designated point of contact for the installation? To respond to vandalism, damage, request for removal, etc. on short notice if needed. Please provide contact information: phone number and email, if different from contact information listed above.

Additional Information:

EXHIBIT C

FOR OFFICE USE ONLY

The following criteria will be used to evaluate project proposals:

- Impacts to any of the following energy types? Electricity, Gas, Oil, Steam, Water and Sewer.
- Alignment and compatibility with plans: Comprehensive Plan, Parks and Recreation Master Plan, system plans, strategic plans, mini-master plans, etc.
- Compliance with ADA and/or ABA standards for accessibility
Compatibility with surrounding and adjoining uses
- Compatibility with current licenses, agreements, contracts between City and applicable third-party organizations
- Compliance with zoning and land use
- Permit requirements identified and able to be obtained

	Y	N	N/A
1. Is the proposed location(s) available and safe for proposed project?			
2. Will the proposed project ensure that current users or park use have limited negative impact or interference? (Safety, enjoyment of space...)			
3. Will the proposed project ensure that the physical nature of the site and its surroundings—short and long-term—are not negatively impacted? <i>Turf damage, modifications creating safety concerns, tree damage, litter, disintegration or detachment of installation materials...</i>			
4. If the park has an established theme or style, will the proposed project complement that theme or style?			
5. Is the proposer or their approved appointee available to respond to, address, repair, and/or remove the proposed project materials within a reasonable notice period if requested by City? <i>Graffiti, vandalism, weather impacts, broken parts, etc.</i>			
6. Will private/special/public events in the vicinity of the proposed project remain unaffected?			
a. If affected, is artist willing to adjust or mitigate?			
7. Might private/special/public events benefit from the proposed project?			
8. Temporary Art: Is this truly a Temporary Art Installation? <i>Not a permanent installation, permanent mural, nor a special/private event. Consult permitting as appropriate.</i>			


CITY OF DULUTH
PARKS AND RECREATION
411 WEST FIRST STREET DULUTH, MN 55802
projectproposal@duluthmn.gov
(218) 730-4300




Exhibit D

Parks & Recreation

Ground Floor
411 West First Street
Duluth, Minnesota 55802

 218-730-4300

 parks@duluthmn.gov

July 1, 2022

Dear Community Partner:

Thank you for your interest in proposing an improvement project on City property. We recognize that working closely with the community is an important way 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. Proposals may be submitted by individuals and community organizations, as well as City Divisions/Departments. Please note that acquiring funds for a project through grants, fundraising, donations, or other means does not guarantee project approval. It is strongly recommended that organizations seek City approval in advance of, or at least concurrent with, pursuing funding.

In responding to project proposal submissions, Parks and Recreation, as the City entity receiving completed project proposals, will:

1. Accept and review all Project Proposal Forms;
 - a. Should project proposals be submitted that do not apply to park property, our Division will route that project proposal onward to the appropriate City Division for review and processing.
2. For Parks-related Project Proposal Forms:
 - a. Conduct an internal review to evaluate project proposals.
 - b. Use general criteria included with the Project Proposal Application Form for reference.
 - c. Consult across departments/divisions as appropriate.
 - d. Communicate with proposer with questions, requests for additional information, and/or requests or suggestions for proposal modifications.
 - e. Provide notice of Project Proposal status as approved or denied.
 - i. If approved, facilitate the process with the proposer to project completion.

Once a project proposal request is received, Parks will initiate the review process, with the intent to provide a response within sixty (60) days. Other Departments/Divisions may apply different parameters, review criteria, and/or timelines that are not within Parks' purview.

The intent of this process is to streamline review, evaluation, and decision making against existing plans, standards, and uses. Please contact our mainline at 218-730-4300 for additional information.

Thank you for proposing projects that improve and enhance our City!

Jessica Peterson
Parks and Recreation Manager



PROJECT PROPOSAL APPLICATION FORM

Use this form to propose a City of Duluth improvement project on park property. Responses should be attached to your submission. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests.

Once a project proposal request is received, Parks will initiate the review process, with the intent to provide a response within sixty (60) days. Other Departments/Divisions may apply different parameters, review criteria, and/or timelines that are not within Parks' purview.

Please submit completed application materials to: projectproposal@duluthmn.gov.

APPLICANT CONTACT INFORMATION - REQUIRED

Date of Application April 23, 2025

Name Mark Boben

Organization GND Development Alliance

Email greysolon2010@gmail.com

Phone 218-355-1349

Organization Description (length operating, membership, formal/informal, non-profit status, mission, etc.)

GND Development Alliance is a 501 (c)3 non-profit that was incorporated in 2014 that was created to revitalize and transform the Gary New Duluth recreation area that was shutdown by the City in 2009 due to budget shortfalls. Since inception more that \$3.5 million has been raised for the project resulting in creation of a community hub with a community center, two soccer fields, dog park, multi-activity sport court, concrete skatepark, outdoor performance pavilion, gazebo, two parking lots, improved drainage, landscaping and more. Mission: We are dedicated to creating a welcoming space for our community and regional neighbors to connect, learn, play, and grow. The GND REC is a hub for social, cultural, educational, and recreational activities—and a destination for skateboarding, soccer, and tourism.

Proposed Project Name Playground for pre-K to age 12

Proposed Project Location GND REC adjacent to outdoor performance pavilion

PROJECT PROPOSAL FORM - APPLICATION QUESTIONS

Please submit responses to the following questions regarding your proposed project.

1. **Describe, with as much detail as possible, the location(s) of the proposed project.** Give the park/trail name(s), location within park/trail, GPS coordinates, and/or attach an image clearly identifying the location(s).

The playground will be a new amenity in the overall GND REC (Gary New Duluth recreation area) development. See attached drawing of the GND REC.

2. **Describe the proposed project in as much detail as possible.** Why is the project needed and necessary? What is the timeline? What do you propose doing? Maps, sketches, diagrams, and/or schematic drawings are required for any physical improvements. These may include location, sizes, wording, colors, etc. Include or attach any additional information about this project.

The playground will be built by Flagship Recreation, a Minnesota company, that both the City of Duluth and ISD 709 utilize to build state of the art youth playgrounds. The playground equipment is built in Minnesota by Landscape Structures. This is a commercial playground. See attached project estimate with drawings.

3. **Describe the benefits of the proposed project.** Is it expected to add to or reduce costs for the City or a user group? Is it a functional improvement? Does it provide aesthetic benefit to the park? Are there potential safety concerns or does it resolve safety concerns?

The playground is an amenity that is not currently available to the community. It is a minimum maintenance playground with annual inspections being provided by Flagship Recreation for the first three years. The colors used for the equipment will fit it with the overall look of the GND REC.

4. **Describe the approximate cost to complete the project and the funding sources.** Are funding sources planned, pending, or secured? Is the proposer seeking City funding or resources to support the project? If so, what resources and how much (time, materials, cash contribution...)?

The cost is estimated at \$225,000 with a 12% contingency. Funding is secured. We do not need funding or resources from the city.

5. **Does this project have the support of neighbors living nearby and/or other groups who may be regularly using the space?** How have you communicated the proposed project to them?

The project is supported by the community.

6. **Does the project require any specific permitting?** If so, have permits been secured? (Park space reservations for exclusive use, construction permits, land use, etc.)

NOTE: It is generally advised that applicants be aware of permit requirements, but not pursue these until approval of the project is granted.

Permits are not required

7. **Long-term maintenance.** If applicable, what is the long-term maintenance plan for the proposed project? Who will be involved and what are their proposed roles/responsibilities? Timeline?

The project is expected to be maintenance free. Annual inspections will be conducted to determine if there is any damage to equipment.

For Temporary Art Installations:

8. **Describe the envisioned timeline and duration of the installation.** Dates, length of time, etc. from installation to removal.

NA21

9. **Does the project have a designated point of contact** to respond to vandalism, damage, etc. on short notice if needed? Please provide contact information.

Mark Boben
218-355-1349

10. If an event is intended to coincide with the installation, have you or will you be coordinating this with the Parks Permit Coordinator or another City staff person? Please share details.

NA

Additional Information:

Attachments should answer any questions. If not, please contact Mark Boben

FOR OFFICE USE ONLY

The following criteria will be used to evaluate project proposals:

- Impacts to any of the following energy types? Electricity, Gas, Oil, Steam, Water and Sewer.
- Alignment and compatibility with plans: Comprehensive Plan, Parks and Recreation Master Plan, system plans, strategic plans, mini-master plans, etc.
- Compliance with ADA and/or ABA standards for accessibility
Compatibility with surrounding and adjoining uses
- Compatibility with current licenses, agreements, contracts between City and applicable third-party organizations
- Compliance with zoning and land use
- Permit requirements identified and able to be obtained

	Y	N	N/A
1. Is the proposed location(s) available and safe for proposed project?			
2. Will the proposed project ensure that current users or park use have limited negative impact or interference? (Safety, enjoyment of space...)			
3. Will the proposed project ensure that the physical nature of the site and its surroundings—short and long-term—are not negatively impacted? <i>Turf damage, modifications creating safety concerns, tree damage, litter, disintegration or detachment of installation materials...</i>			
4. If the park has an established theme or style, will the proposed project complement that theme or style?			
5. Is the proposer or their approved appointee available to respond to, address, repair, and/or remove the proposed project materials within a reasonable notice period if requested by City? <i>Graffiti, vandalism, weather impacts, broken parts, etc.</i>			
6. Will private/special/public events in the vicinity of the proposed project remain unaffected?			
a. If affected, is artist willing to adjust or mitigate?			
7. Might private/special/public events benefit from the proposed project?			
8. Temporary Art: Is this truly a Temporary Art Installation? <i>Not a permanent installation, permanent mural, nor a special/private event. Consult permitting as appropriate.</i>			

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Parks & Recreation
Ground Floor
411 West First Street
Duluth, Minnesota 55802

218-730-4300
parks@duluthmn.gov

May 1, 2026

Dear GND Development Alliance,

Thank you for submitting a project proposal for the addition of a playground at GND Recreation Area. As presented and understood by the City of Duluth, the project is proposed to include the following elements:

1. A playground to be built by Flagship Recreation and located as indicated in park layout provided with project proposal form.
2. GND Development Alliance shall inform the City of Duluth of the playground installation at least 48 hours in advance.
3. Installation and maintenance of the playground shall be the responsibility of GND Development Alliance, to include any and all permits required. Upon installation, the playground shall become the property of the City of Duluth.
 - a. The City reserves the right to remove all or some of the playground at any time, for any reason, either temporarily or permanently, and will notify GND Development Alliance as soon as possible if this occurs to discuss next steps.
 - b. GND Development Alliance may remove all or some of the playground only with advance written approval from the City.
4. Project funding shall be the responsibility of GND Developmental Alliance.
5. The City entities involved in the playground shall include:
 - a. Property & Facilities Management Division
 - b. Parks and Recreation Division
 - c. Park Maintenance Division

This approval is contingent upon the following:

1. GND Development Alliance work with Rob Hurd to review all design specifications and ensure they conform with approved commercial-grade standards.
 - a. Contact: rhurd@duluthmn.gov
2. GND Development Alliance work with Abbie Hopper to determine what maintenance is required at the playground and who is responsible.
 - a. Contact: ahopper@duluthmn.gov
3. No reference to naming of playground can occur until formal approval from the City.

Thank you for your vision for improving GND Recreation Area. We appreciate the opportunity to work with you on this project.

Sincerely,



Erik Birkeland
Property, Parks and Libraries Director

Date: 5/1/2026

ACKNOWLEDGED AND AGREED:

I hereby agree and accept the terms and conditions
for this Project Proposal.

By: 

Date: 1 May 2026

EXHIBIT E

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.

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: safety violation machine malfunction product defect motor vehicle accident N/A

Supervisor comments:

What actions have been taken to prevent recurrence?