

**CITY OF DULUTH - BENTLEYVILLE TOUR OF LIGHTS, INC.,
PIEDMONT HEIGHTS HOCKEY ASSOCIATION, INC.,
AND GLEN AVON HOCKEY CLUB
HOCKEY DAY MINNESOTA 2016
2015-2016 SHARED USE PERMIT
FOR BAYFRONT FESTIVAL PARK**

ARTICLE 1 – PARTIES

1. This Shared Use Permit Agreement, hereinafter referred to as “PERMIT AGREEMENT”, is by and between the **CITY OF DULUTH**, a Minnesota municipal corporation, hereinafter referred to as the “CITY,” **BENTLEYVILLE TOUR OF LIGHTS, INC.**, a Minnesota non-profit corporation, hereinafter referred to as “BENTLEYVILLE”, **PIEDMONT HEIGHTS HOCKEY ASSOCIATION, INC.**, a Minnesota non-profit corporation and **GLEN AVON HOCKEY CLUB**, a Minnesota non-profit corporation, (both hockey associations are collectively referred to as “HOCKEY CLUB”).

ARTICLE 2 – PREMISES

2. The term “Shared Use” shall mean shared use of that portion of the Bayfront Festival Park as delineated on Exhibit A (“VENUE”), attached hereto and incorporated herein. The VENUE excludes, unless otherwise provided in this PERMIT AGREEMENT, the playground area commonly known as Playfront Park, the Family Center, the Family Center Ice Rink, and any First Amendment area established by the City. In consideration of the mutual covenants as set forth herein, and except as otherwise provided in this PERMIT AGREEMENT, the CITY hereby agrees to permit the HOCKEY CLUB to share the VENUE with BENTLEYVILLE, and BENTLEYVILLE hereby consents to the shared use of the VENUE by HOCKEY CLUB for the sole purpose of producing, promoting and managing the Hockey Day Minnesota 2016 event with related concession activities (“EVENT”). Said VENUE is generally defined as located between 5th Avenue West and abandoned Slip No. 2 and between Railroad Street and the waterfront, but specifically excluding properties owned and controlled by the Lake Superior Aquarium, the Duluth Entertainment and Convention Center (DECC), and the Duluth Economic Development Authority (DEDA). This PERMIT includes permission to construct and maintain a temporary ice rink as well as install temporary seating, temporary lighting and tents, under the terms and conditions set forth in this PERMIT AGREEMENT, for use by the HOCKEY CLUB for the EVENT. The CITY makes no representations that the VENUE is suitable for this specific use.

ARTICLE 3 – TERM OF OCCUPANCY

3.1. Except as provided in this PERMIT AGREEMENT, HOCKEY CLUB is permitted shared use of the VENUE for a period commencing at 6:00 a.m. on December 28, 2015 and concluding no later than 11:59 p.m. on February 16, 2016. The EVENT activities may commence on January 25, 2016, with the final EVENT activities occurring on February 6, 2016. Daily activities shall conclude at a time which will allow EVENT patrons to exit the premises no

later than 11:00 p.m. on Sunday through Thursday of any week and no later than 11:59 p.m. on Friday and Saturday of any week during the term of HOCKEY CLUB'S occupancy. HOCKEY CLUB shall conduct and complete all EVENT activities only during the time periods set forth in this paragraph, except for set up, take down, clean up and site restoration of the PREMISES as further described below and in Exhibit B attached hereto and incorporated herein, which set up, take down and site restoration services shall be completed on the following schedule:

A. HOCKEY CLUB will, at its sole expense, construct a temporary ice rink in front of the Bayfront Festival Park stage, with the dimensions being 85 feet by 200 feet. HOCKEY CLUB will install the base for their ice rink between September 21, 2015 and October 1, 2015, weather permitting. HOCKEY CLUB agrees to work with BENTLEYVILLE to avoid inconvenience to or interference with BENTLEYVILLE'S use of the VENUE during this time period. However, installation of the ice rink base shall not begin until this PERMIT AGREEMENT is properly approved and fully executed by all parties. The base work will consist of hauling in laser level class 5 to level the footprint of the rink and installing Geo Textile fabric. When this phase of the work is completed, HOCKEY CLUB shall install a temporary fence around this base to prevent damage. HOCKEY CLUB shall remove this fence prior to the day BENTLEYVILLE opens to the public. HOCKEY CLUB agrees to conduct its set up activities in such a manner as to minimize any visual or operational impact on BENTLEYVILLE.

B. HOCKEY CLUB will commence installing the boards for their temporary ice rink on December 28, 2015 and commence flooding the rink as soon as the boards are erected. The CITY agrees that its Parks and Recreation staff will conduct the initial flooding only of the rink. Thereafter, HOCKEY CLUB shall be responsible for flooding the rink and maintaining it.

C. On or after January 15, 2016, HOCKEY CLUB will begin installing the remainder of their EVENT amenities, including but not limited to, bleachers, warming tents, vendor tents, locker room tents and temporary lighting. BENTLEYVILLE agrees to exercise good faith efforts to remove the BENTLEYVILLE holiday light display and related equipment as soon as possible following the conclusion of the 2015 BENTLEYVILLE event so that the VENUE will be available for the HOCKEY CLUB EVENT. HOCKEY CLUB acknowledges that the removal of the BENTLEYVILLE holiday light display will be subject to weather conditions.

D. The parties agree to conduct a walk-through inspection of Bayfront Festival Park on December 28, 2015 at a mutually agreeable time to assess the condition of the VENUE. The CITY'S representative for purposes of this walk-through will be a CITY employee from Parks and Recreation and/or Property Facilities Management. Both BENTLEYVILLE and HOCKEY CLUB agree to send an authorized representative to attend this walk-through with the CITY.

E. On or before February 16, 2016, HOCKEY CLUB shall remove all of its equipment and amenities from the VENUE with the exception of the hockey ice rink, boards, fabric and fill, which items shall be removed from the VENUE as soon as possible in the spring, weather permitting. HOCKEY CLUB agrees to work with the CITY'S Park Maintenance staff to remove these final items and complete the site restoration work, including but not limited to potential sod replacement, as soon as possible while minimizing damage to the VENUE.

F. CITY and HOCKEY CLUB agree to conduct a walk-through inspection of the VENUE on February 16, 2016 to determine the condition of the VENUE and discuss restoration activities.

G. In the spring of 2016, upon removal of the temporary hockey rink boards, rink fill and fabric, CITY and HOCKEY CLUB agree to conduct a walk-through inspection of the VENUE to determine the extent of the damage to the VENUE and discuss needed restoration and timelines for completion of the restoration.

3.2. HOCKEY CLUB may enjoy non-exclusive use of the Family Center from January 25, 2016 through February 6, 2016 provided such use does not substantially interfere with the public's ability to utilize the Family Center.

3.3. HOCKEY CLUB shall enjoy non-exclusive use of the Ice Rink located outside the Family Center on February 5, 2016 and February 6, 2015. Outside of these two days, the Family Center Ice Rink will continue to be supervised, maintained and controlled by the CITY.

3.4. HOCKEY CLUB shall be permitted, during the time period of January 25, 2016 through February 6, 2016, to sublet or rent out a reasonable amount of space in the VENUE area to lawful and appropriate vendors, concessionaires or other business ventures. It shall be the responsibility of HOCKEY CLUB to verify that each vendor, concessionaire, or sub-lessee possesses a valid City of Duluth Sales Tax Permit before allowing them to set up or engage in sales activities. The HOCKEY CLUB shall provide satisfactory evidence to the CITY that all such vendors, concessionaires, or sub-lessees meet all minimum St. Louis County Health Department requirements or any other requirements as may be imposed by any applicable laws, codes, or ordinances in force at the time of the EVENT.

ARTICLE 4 – FEES

4.1 HOCKEY CLUB shall not be required to pay a permit fee for the use of this VENUE as specified herein.

4.2. HOCKEY CLUB agrees to provide to CITY a Guarantee or Pledge from Sinnott Blacktop, LLC under which Sinnott Blacktop, LLC agrees to ensure that all necessary site restoration work will be completed in a satisfactory and timely fashion. Satisfactory documentation of such Guarantee or Pledge shall be provided by HOCKEY CLUB to CITY prior to the commencement of any site preparation work hereunder. Notwithstanding this pledge, HOCKEY CLUB agrees that all expenses incurred to restore the VENUE shall be the responsibility of HOCKEY CLUB. If HOCKEY CLUB does not timely restore the VENUE to its pre-EVENT condition, the CITY may conduct the site restoration at HOCKEY CLUB'S expense. HOCKEY CLUB shall pay such restoration costs to the CITY within 30 days of receipt of CITY'S invoice.

ARTICLE 5 – PARKING

5. The use of Parking Lots is subject to a license agreement between City and the Duluth Economic Development Authority (DEDA) (City Auditor Doc. No. 22551) and an agreement between the City and the Duluth Entertainment and Convention Center Authority (DECC) (City Auditor Doc. No. 22371). HOCKEY CLUB understands Parking Lots are not subject to this PERMIT AGREEMENT; the use of the parking lots shall be negotiated with the DECC.

ARTICLE 6 – HOCKEY CLUB RESPONSIBILITIES

6.1. HOCKEY CLUB is responsible for providing a sufficient quantity of portable toilet units, complete with ongoing cleaning and servicing throughout the EVENT to provide safe, minimum standards of sanitation and public convenience. The actual number of portable toilet units may be adjusted at the direction of the applicable governing agency or the CITY at any time throughout the event.

6.2. Vehicular access to the VENUE shall be limited to the "Vehicle Access" roadway from Railroad Street as designated and labeled on Exhibit A. At no time shall any vehicle of any kind be parked, operated, or permitted except upon those areas of the VENUE labeled "Vehicle Access" unless approved in writing by CITY. HOCKEY CLUB shall be responsible for the enforcement of this provision for all vehicles on the VENUE whether said vehicles are owned by HOCKEY CLUB, HOCKEY CLUB's employees, volunteers, sub-lessees, contractors, agents of HOCKEY CLUB, or its patrons. The CITY reserves the right to order the immediate removal of any vehicle used or parked in violation of this provision.

6.3. HOCKEY CLUB agrees that it shall be responsible, as determined by the CITY, for any and all damage to the VENUE caused by and arising out of the occurrence of the EVENT, including but not limited to, set up and take down activities and site restoration expenses including, but not limited to, potential replacement of sod. HOCKEY CLUB shall return the VENUE to its original condition within the time periods set forth herein.

6.4. HOCKEY CLUB, its agents, or assigns shall not store hazardous waste, transfer hazardous waste, or participate in refueling operations at VENUE (other than equipment owned or controlled by it) and all of Bayfront Festival Park. For purposes of this Section, hazardous waste is defined as waste that poses substantial or potential threats to public health or the environment and generally exhibits one or more of these characteristics: ignitable, reactive, corrosive, or toxic.

6.5. HOCKEY CLUB shall provide at its expense additional trash collection receptacles above and beyond what is provided by the city if necessary, and attendant services in sufficient quantity to maintain the VENUE in a reasonable state of cleanliness during and through the conclusion of the final cleanup following the EVENT. If required by the St. Louis County Health Department, HOCKEY CLUB shall provide specialized disposal receptacles and related pick up services through a competent vendor, for the handling of liquid, oil, fatty, or other materials disposed of and requiring special and/or separate handling before, during, or after its

event. HOCKEY CLUB shall provide, at its expense, for the separation of recyclable plastic bottles, aluminum cans and cardboard boxes that is created at the EVENT and for its removal from the site to the appropriate collection site.

6.6. HOCKEY CLUB shall be responsible for all snow removal in the VENUE area and all VENUE pathways and shall provide salt and/or sand on VENUE pathways during any period of HOCKEY CLUB's use of the VENUE.

6.7. HOCKEY CLUB shall provide traffic control personnel, barricades, and cones for traffic control as determined necessary by the City of Duluth Police Department. City of Duluth Police personnel required by the City shall be reimbursed pursuant to the City's extra-duty policy.

ARTICLE 7 – CITY RESPONSIBILITIES

7.1. CITY shall maintain and provide appropriate cleaning services to the Bayfront Family Center.

7.2. CITY shall provide and maintain the heated public restroom at Playfront during the term of HOCKEY CLUB's occupancy.

ARTICLE 8 – COMMERCIAL ACTIVITIES

8.1. HOCKEY CLUB and all third-party vendors or contractors hired or permitted by HOCKEY CLUB shall not advertise, sell, or offer alcoholic beverages whether intoxicating or nonintoxicating, during EVENT or at VENUE.

8.2. HOCKEY CLUB agrees to defend, indemnify, and save harmless the CITY and its officers, agents, employees and servants, from any and all liens, claims, suits, demands, liability, judgments, costs, damages and expenses, including attorney's fees, which may accrue against or be charged to or may be recovered from the CITY by reason of or account of or in any way related to the goods sold by HOCKEY CLUB or any of its third-party vendors during EVENT. Upon ten (10) days written notice, HOCKEY CLUB will appear and defend all claims and lawsuits against the CITY and growing out of any action with respect to goods sold by HOCKEY CLUB or third-party vendors during EVENT.

ARTICLE 9 – ALTERATIONS OR IMPROVEMENTS

9.1. HOCKEY CLUB shall not drive stakes, excavate, or otherwise undertake any underground actions without first securing approval from the CITY and further having all underground utilities properly located by One Call or identified by the CITY prior to proceeding with said underground actions. HOCKEY CLUB agrees to secure the presence of a CITY parks maintenance employee on site at Bayfront Park before commencing any work so that the CITY employee can assist with identifying underground utilities, drain tile, irrigation lines, etc.

9.2. HOCKEY CLUB shall limit the on-ground use of wires, hoses, etc. to only those areas which are not accessible to normal pedestrian traffic. In the event HOCKEY CLUB needs to allow the installation of on-ground utilities, HOCKEY CLUB shall first secure the permission of CITY and shall ensure that any such installation complies with all applicable codes and laws.

9.3. HOCKEY CLUB may make temporary improvements to the grounds such as bringing in temporary fill material, installing a temporary hockey rink, the erection of temporary fencing, scaffolding, seating, special platforms, water tanks, rigging, or other apparatus necessary to ensure the success of the EVENT or the safety of staff, performers, and the general public. HOCKEY CLUB shall submit plans to the CITY showing the proposed location of all such apparatus upon the grounds at least ten (10) days in advance for the CITY's review and approval. No construction, alteration, or improvement shall begin until approved by the CITY and all building permits required by law are secured. All construction or apparatus installed on said premises shall conform to any and all applicable laws or building codes governing such installations.

9.4. HOCKEY CLUB agrees that prior to commencing any construction, erection, alteration, or improvement on said premises that HOCKEY CLUB will provide the CITY with a Certificate of Insurance evidencing that all persons, whether in the direct employ of HOCKEY CLUB or agents hired by HOCKEY CLUB, are covered by Worker's Compensation Insurance as required by Minnesota Statutes and Public Liability and Automobile Liability Insurance with limits as set forth in paragraph 13.1 herein. HOCKEY CLUB shall submit such Certificates of Insurance at least ten (10) days prior to the commencement of any construction, erection, alteration or improvement. No construction, erection, alteration, or improvement shall be commenced until such time as said Certificates of Insurance are reviewed and approved by the CITY's attorney.

ARTICLE 10 – FACILITY SUPERVISION AND SECURITY

10. HOCKEY CLUB agrees that at all times during permitted use of the VENUE under this PERMIT AGREEMENT the VENUE will be properly supervised and overseen by an employee or agent of HOCKEY CLUB with sufficient empowerment and decision-making authority to act on behalf of HOCKEY CLUB. HOCKEY CLUB shall provide CITY with a list of employees or agents, properly identified, complete with dates, times, and cell phone numbers, when said employees or agents shall be on-duty before, during, or after each daily event. The CITY will provide to HOCKEY CLUB a list of CITY employees or agents, properly identified, with sufficient empowerment and decision-making authority, to act on behalf of CITY, complete with dates, times, and cell phone numbers who shall be on-duty before, during, or after each separate event.

ARTICLE 11 – LIMITS OF USAGE

11.1. HOCKEY CLUB agrees that the VENUE shall be used only for the EVENT and related support services and for no other purpose.

11.2. HOCKEY CLUB and its third-party vendors, contractors, or sub-lessees shall not advertise, sell, or offer alcoholic beverages whether intoxicating or non-intoxicating during EVENT or at VENUE.

ARTICLE 12 – FACILITY LIAISON

12. CITY designates the Property Services Supervisor as the CITY employee to serve as staff liaison and primary contact between HOCKEY CLUB and CITY.

ARTICLE 13 – INSURANCE

13.1. HOCKEY CLUB shall provide Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit and shall provide for the following: Commercial General Liability, Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. The CITY does not represent or guarantee that these types or limits of coverage are adequate to protect HOCKEY CLUB's interests and liabilities.

13.2. The CITY and BENTLEYVILLE shall be named as Additional Insureds under the Public Liability Policy, or as an alternate, HOCKEY CLUB may provide an Owners-Contractors Protective policy, naming itself, and the CITY and BENTLEYVILLE. HOCKEY CLUB shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. HOCKEY CLUB shall provide Certificates of Insurance evidencing the required insurance coverage. The certificates shall provide 30 day notice of cancellation, non-renewal or material change provisions, and shall further provide that failure to give such notice to CITY will render any such change or changes in said policy or coverage ineffective as against the CITY.

ARTICLE 14 – INDEMNIFICATION

14. To the fullest extent permitted by law, HOCKEY CLUB agrees to defend, indemnify and hold harmless CITY and BENTLEYVILLE, and their officers, employees, and volunteers, from and against all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from the EVENT; but only to the extent caused in whole or in part by the negligent acts, errors or omissions of HOCKEY CLUB, HOCKEY CLUB's employees, volunteers, sub-lessees, contractors, agents, or anyone for whose acts HOCKEY CLUB may be liable. HOCKEY CLUB agrees this indemnity obligation shall survive the completion or termination of this PERMIT AGREEMENT.

ARTICLE 15 – LICENSEE

15. It is agreed that this PERMIT is not intended nor should it be construed in any manner as creating or establishing the relationship of partners or joint ventures between the parties hereto, or creating a joint enterprise, or as constituting HOCKEY CLUB as an agent, representative, employee, or independent contractor of the CITY for any purpose. HOCKEY CLUB and its 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 HOCKEY CLUB's employees or agents and arising out of employment shall in no way be the responsibility of the CITY. HOCKEY CLUB's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from the CITY including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay and PERA.

ARTICLE 16 – TERMINATION OF AGREEMENT

16. This PERMIT AGREEMENT may be terminated by the CITY upon breach of any of the terms and conditions of this PERMIT AGREEMENT by HOCKEY CLUB and the failure to rectify or correct any such breach within thirty (30) days of the transmission of written notice of the breach, or by mutual consent of the parties.

ARTICLE 17 – GENERAL PROVISIONS

17.1. The rights of HOCKEY CLUB to occupy, use, and maintain the VENUE shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with strictly and promptly.

17.2. HOCKEY CLUB agrees to operate the EVENT and all activities conducted at the VENUE in strict compliance with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth. HOCKEY CLUB agrees to procure, at its expense, all licenses and permits necessary for carrying out the provisions of this PERMIT AGREEMENT.

17.3. Upon termination of occupancy, HOCKEY CLUB agrees to surrender possession of said premises to the CITY in as good condition and state of repair as said premises were in at the time HOCKEY CLUB took possession, normal wear and tear excepted.

17.4. The CITY reserves the right to the unlimited access at all times to the VENUE for authorized personnel and for the purposes of inspection and ensuring that the provisions of this PERMIT are complied with. The CITY shall provide its employees or authorized agents, Bayfront Festival Park all-event access passes, as needed, for access by authorized personnel. All on-duty law enforcement personnel, acting in their official capacity, shall be authorized to enter the VENUE without regard to this paragraph.

17.5. The waiver by the CITY or HOCKEY CLUB 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.

17.6. Except as provided for in this PERMIT AGREEMENT, HOCKEY CLUB shall not assign or transfer any of its rights or interests under this PERMIT AGREEMENT in any way whatsoever.

17.7. This PERMIT 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 shall have the right to make claim that she or he is a third party beneficiary of this PERMIT AGREEMENT or of any of its terms and conditions.

17.8. Any amendment to this PERMIT AGREEMENT shall be in writing, approved with the same legal formalities as required by the original PERMIT AGREEMENT, and shall be executed by the same parties who executed the original PERMIT AGREEMENT or their successors in office.

17.9. This PERMIT AGREEMENT, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

17.10. Notice to the CITY provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to Duluth Parks and Recreation Department, 411 W. First Street, Duluth, Minnesota, 55802 with a copy to Facility Liaison, 1532 W. Michigan Street, Duluth, Minnesota 55806. Notices to HOCKEY CLUB shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to Jeremy Downs, Director, Duluth Organizing Committee for Hockey Day Minnesota 2016, 306 West Superior Street, Suite 200, Duluth, Minnesota 55802, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

17.11. This PERMIT AGREEMENT may be executed in separate counterparts with the same effect as if all signatures were on the same PERMIT AGREEMENT.

17.12. For purposes of this PERMIT AGREEMENT a telecopy or facsimile document and signature shall be deemed as, and shall serve as, an original PERMIT AGREEMENT and signature.

17.13. This PERMIT AGREEMENT, along with the attached exhibits, embodies the entire understanding of the parties and there are no further or other agreements, permits, or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This understanding shall also extend to any uncommunicated expectations HOCKEY CLUB may have of the CITY and not specifically mentioned in this Agreement. Any HOCKEY CLUB expectations of the CITY for the provision of any CITY materials, supplies, or services which are over and above those specifically mentioned in this PERMIT AGREEMENT will not be honored by the CITY except by written authorization from the CITY.

[Remainder of this page intentionally left blank.]

CITY OF DULUTH

Mayor

ATTEST:

City Clerk

Date: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

Assistant City Attorney

BENTLEYVILLE TOUR OF LIGHTS, INC.

Board Chairperson of Board of Directors

Legal Committee Representative

**PIEDMONT HEIGHTS HOCKEY ASSOC.,
INC.**

By: _____

Its: _____

GLEN AVON HOCKEY CLUB:

By: _____

Its: _____

EXHIBIT A



BAYFRONT

Hockey Day Minnesota Site Plan

Site Plan

October 1 - 16 2015

Begin 85 x 200 Rink Imprint.

- Install GeoTextile Fabric.
- ~~Install 2" x 6" Ribbon Footing.~~
- Laser Level Class 5 to grade.

LEAVE SITE UNTIL 12/27

Dec 27th - Feb 6th

- Snow removal on rink Imprint.
- Install boards on rink Imprint.
- Flood / Zamboni rink daily.
- January 29th Bleacher Install.
- January 29th Vendor Set Up.
- January 29th Locker Rooms.

March - Early April

- Boards removal from rink.
- Careful removal of class five.
- Careful removal of footings.
- Remove GeoTextile Fabric.
- Restoration of grass.



Site Plan

The timeline and general site plan (left) listed has been developed with the expertise of two local long-standing landscaping companies and a Western Minnesota rink company. The primary goal of this plan is to minimize any visual impact of Bentleyville Tour of Lights.

HDM Duluth is also coordinating with a major regional construction company to coordinate ground thawing equipment for careful removal of lighting displays if needed.



EXHIBIT B

85' x 200' Ice Rink

Stage

365 Railroad St

