

# **EXHIBIT 1**

## **ICE RINK USE AND OPERATIONS AGREEMENT BETWEEN THE CITY OF DULUTH AND DULUTH AMATEUR HOCKEY ASSOCIATION, INC.**

THIS ICE RINK USE AND OPERATIONS AGREEMENT (this “Agreement”) is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota (“City”) and the DULUTH AMATEUR HOCKEY ASSOCIATION, INC. a Minnesota non-profit corporation (“DAHA”).

WHEREAS, DAHA’s mission is to promote and inspire in youth the ideals of health, citizenship, and character; to bring area youth together through the common interest in sportsmanship, fair play, and fellowship; to impart to the game elements of safety, sanity, and intelligent supervision; and to keep the welfare of the player first and foremost, and entirely free of adult lust for glory (its “Mission”); and

WHEREAS, DAHA carries out its Mission by: (i) organizing and providing youth an opportunity to participate and excel through the sport of hockey through its hockey program while building and developing sportsmanship, self-esteem, confidence, and respect for others and (ii) providing and maintaining ice skating opportunities to the general public (its “Services”); and

WHEREAS, DAHA has nine rink member associations (hereinafter collectively referred to as the “Hockey Associations”): Duluth Girl’s Hockey Association, Duluth Heights Amateur Hockey Association, Duluth Denfeld Hockey Association, Duluth East Youth Hockey Club, Gary-Morgan Park Hockey Association, Glen Avon Hockey Club, Piedmont Heights Amateur Hockey Association, Portman Recreation Association, and Woodland Amateur Hockey Association and annually DAHA has approximately 750 players; and

WHEREAS, DAHA has operated its Services for more than 50 years and estimates that its Services provide a \$9 million economic benefit to Duluth based upon an economic impact statement produced by the University of Minnesota-Duluth; and

WHEREAS, City owns various outdoor ice rinks, together with adjoining real property, various fixtures, and personal property contained therein that have been used by DAHA to fulfill its Mission and provide its Services; and

WHEREAS, DAHA volunteers an estimated 35,000 hour of labor per year to maintain the outdoor ice rinks for its members and the general public; and

WHEREAS, DAHA desires to continue using City’s ice rinks and related facilities for advancement of its Mission and provision of its Services to the community during the winter seasons as set forth herein; and

WHEREAS, City desires to allow DAHA to use City’s ice rinks and related facilities as provided herein.

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

I. Administration.

For purposes of administering this Agreement, City shall act through its Property and Facilities Manager, or their designee (the “Manager”) and DAHA shall act through its Executive Director, or their designee (the “DAHA Representative”).

II. Use of the Premises and Grant of Rights.

A. Subject to the terms and conditions of this Agreement, City grants to DAHA the use of those portions of City-owned real property, buildings, and ice rinks depicted and described on the attached Exhibit A, and all related City-owned equipment located thereon (collectively, the “Premises”), for the time periods and under the terms further set forth on Exhibit A as to each of the locations described on Exhibit A. The Manager may, in their sole discretion, re-locate the rinks and related amenities on any portion of the Premises to other comparable locations or sites during the Term (defined below) upon written notice to DAHA, and unilaterally amend Exhibit A accordingly. Upon written agreement between the Manager and the DAHA Representative, the parties may amend Exhibit A, which shall be attached to this Agreement in substitute for the then-current version of Exhibit A. City, in its sole discretion, may require that DAHA use a liner prior to flooding in any location, with the liner paid for by City.

B. In the event DAHA makes the decision not to use a location or locations listed in Exhibit A for its Services during a Winter Season (defined below), DAHA shall notify City in writing, with delivery of notice no later than the prior September 1<sup>st</sup>. Upon delivery of the notice, this Agreement shall terminate as to the location(s) listed in the notice, and DAHA shall no longer have the right to use that location(s) pursuant to this Agreement.

C. DAHA is permitted to leave its personal property within the indoor portions of the Premises throughout the Term. DAHA shall not permit individuals or other organizations to store personal property on the Premises. DAHA is solely responsible for the proper storage of any of its personal property on the Premises, and shall not store its personal property in areas that it is not permitted to use under this Agreement. DAHA is not allowed to store or allow long-term storage of vehicles, equipment, or construction materials on the Premises in such a manner as to constitute a visual blight on the neighborhood, in the sole determination of the Manager. DAHA shall ensure that zambonis and any other motorized vehicles stored within any structure complies with all building, fire, and other codes applicable to the storage of such vehicles in such structure. City is not responsible for any damage, theft, and/or vandalism to DAHA’s personal property.

D. Notwithstanding the Term, DAHA’s use of the Premises shall be between the dates of October 1 and March 31 during each year of the Term (the “Winter Season”). DAHA may not use the Premises outside of the Winter Season without securing prior written authorization from the Manager or City-issued permits, except for the storage of its personal property as described in the preceding paragraph.

E. All of DAHA's activities on the Premises shall be concluded by 10:00 p.m. each day, except for flooding of the rinks and special events. Special events may be held only with the Manager's written approval. All lights, including outdoor lights, shall be turned off by 10:00 p.m. each day, except for minimal usage as necessary during flooding or other maintenance activities.

F. DAHA may utilize the Premises only to provide its Services and to provide skating opportunities to the general public.

G. DAHA may operate concessions on the Premises. If DAHA operates concessions, it shall comply with all licensing requirements from the health departments of the State of Minnesota and County of St. Louis. DAHA shall absorb all costs relating to the operation of the concessions, including paying all applicable taxes, license and permit fees. If required to do so, DAHA 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 operation of the concessions.

H. City makes no representation or warranty, either express or implied, that the Premises are suitable for specific uses, and DAHA accepts the Premises in an "as is" condition without representations or warranties of any kind so far as the Premises is safe for public use.

I. Except for Exclusive Use of certain portions of the Premises as set forth in Exhibit A, DAHA shall share in the use of the Premises with the public, community-based groups, clubs, and other organizations. Except during the Winter Season, the booking of the Premises for use by the public will be handled by City. Any use by DAHA of any portion of the Premises that is not expressly permitted by this Agreement must be reserved by DAHA in advance by contacting City's Recreation Specialist liaison, including DAHA's use of additional space for jamborees. DAHA may reserve each of the shared community centers listed on Exhibit A, at no cost, up to three weekends (Friday-Sunday) per Winter Season for use for DAHA-sponsored events. DAHA may reserve a location listed on Exhibit A, at no cost, for its monthly board meeting during the months of April-September of each year of the Term (one hour per month total). Reservations shall be made as early as possible and are not guaranteed. Reservations are subject to applicable fees, except as set forth in this Agreement. The parties shall coordinate their scheduling so as not to create unnecessary conflicts and to maximize the use of the Premises.

J. DAHA acknowledges that the Premises are multi-use facilities that require the cooperation of all users and coordination of activities. This cooperation includes shared parking, ingress and egress, amenities, and related improvements. DAHA acknowledges that the Manager shall ultimately determine the appropriate use of the site and improvements and shall decide any disputes between user groups.

K. DAHA shall not assign any part of this Agreement without obtaining written approval of the Manager.

L. No advertising or signage of any kind (“Signage”) may be installed by DAHA within the Premises until a request for approval of Signage has been submitted to the City’s Parks and Recreation Manager or his or her designee (the “Parks Manager”). DAHA shall wait for Signage approval prior to fabrication and installation of the Signage. All Signage is subject to the approval of the Parks Manager, including as to size, content and location within the Premises, which approval shall not be unreasonably withheld. DAHA shall: (i) be entitled to revenues generated by the sale of Signage, and (ii) ensure that all Signage complies with all applicable codes and laws. Tobacco products may not be advertised at the Premises. Adult bookstores, as defined by Section 5-17(a) of the Duluth City Code, and adult entertainment establishments, as defined by Section 5-17(b) of the Duluth City Code, may not be advertised at the Premises. Notwithstanding the foregoing, the City reserves the right to install its own Signage within the Premises.

III. License Fees and Utilities.

A. City shall permit DAHA to use and occupy the Premises for the purposes set forth in this Agreement at no cost, except as otherwise set forth herein. The consideration for the Premises shall instead be (i) the public benefit provided by DAHA through its Services and related activities, and (ii) the repair and maintenance responsibilities assigned to DAHA under this Agreement.

B. City shall pay any and all charges for the following utilities furnished to the Premises during the Term: electricity, steam, water, sewer and gas, including water and sewer charges relating to flooding the ice rinks on the Premises. DAHA shall pay any and all charges for the following utilities furnished to the Premises during the Term, including but not limited to hook-up charges and assessments: telephone, cable TV, satellite, internet and any other utilities deemed necessary or desirable by DAHA. For any utilities in the name of City to be paid by DAHA under this Agreement, DAHA shall promptly reimburse City following receipt of an invoice from City.

IV. Term and Termination.

A. Term. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on November 1, 2023 and expire on September 30, 2026 unless earlier terminated as provided for herein (the “Term”).

B. Termination.

1. Without Cause. Either party may terminate this Agreement without cause by providing at least ninety (90) days’ written notice upon the other.

2. For Cause. Should DAHA violate any of the provisions of this Agreement, City shall provide to DAHA written notice of such violation or default and shall allow DAHA thirty (30) days within which to cure or remedy any violations or defaults set forth therein. The notice shall identify the violation or default and the necessary actions to remedy the violation or default. If such violation or default is not cured or remedied within thirty (30) days, City may terminate this Agreement immediately by serving notice to DAHA in the manner described.



3. Immediately By City. The City may terminate or suspend this Agreement immediately if (i) the City believes in good faith that the health, welfare or safety of the Premises, or occupants, users or neighbors would be placed in immediate jeopardy by the continuation of DAHA's operations on the Premises; or (ii) if repairs or equipment replacement at the Premises is necessary, in the City's sole discretion, and the City declines to undertake such repairs or replacement.

C. Surrender Possession.

1. Upon expiration or termination of this Agreement, whichever occurs first, DAHA shall surrender possession of the Premises to City in as good condition and state of repair as the Premises were in at the time DAHA took possession.

2. Prior to expiration of this Agreement or within fourteen (14) days of early termination, whichever occurs first, DAHA shall restore the Premises to its original condition at the time of execution of this Agreement, or, upon demand, pay to City the reasonable costs incurred by City to repair any damage done to the Premises by DAHA, its employees, servants, agents, contractors, invitees, and licensees during the Term.

3. Prior to expiration of this Agreement or within fourteen (14) days of early termination, whichever occurs first, DAHA may remove its personal property from the Premises. The removed personal property shall remain exclusive property of DAHA. All personal property remaining on the Premises upon expiration of this Agreement or fourteen (14) days after early termination, whichever occurs first, shall become the exclusive property of City.

V. Maintenance and Operation.

The obligations of DAHA to provide youth hockey programming and public skating opportunities and to maintain the Premises shall include, but not be limited to: (i) the obligations listed on below, and (ii) the following obligations at each location listed on Exhibit A, as applicable:

A. Create rules and regulations for the Premises to be implemented and enforced by DAHA (the "Rules and Regulations"). The Rules and Regulations are subject to the Manager's review and approval, which approval shall not be unreasonably withheld.

B. Establish and maintain, subject to weather conditions, a public skating rink at each location listed on Exhibit A, and further to provide public skating opportunities, at no cost, to anyone so desiring to participate in such activity and willing to follow the Rules and Regulations.

C. Maintain the Premises in good order and condition and state of repair, all at DAHA's expense, including cleaning the Premises at the end of each Winter Season. DAHA shall not be responsible for major or non-routine maintenance that requires a licensed or skilled tradesperson (e.g., plumber, electrician, carpenter, etc.). DAHA shall be responsible to:

1. Provide those items required for daily operation and maintenance of the Premises, including but not limited to, interior light bulbs, paper products, plastic products (e.g., garbage bags), program equipment and supplies, minor repairs, etc., so as to maintain the Premises in a reasonable state of repair.
2. Remove all litter or other waste from the Premises, including the parking areas and other outdoor spaces, and properly disposing and recycling of same into the proper waste disposal and recycling containers provided by City within the Premises.
3. Remove snow and ice from the walkways to the ice rinks, buildings and around hockey-related spaces to insure the safety of all users.
4. Ensure cleanliness and building shut-down procedures (lights off, doors securely locked, etc.) on a daily basis following conclusion of programs and events.
5. Keep the Premises free from rodents, insects, and other pests. City may require DAHA to contract with a pest exterminating contractor to exterminate as may be necessary and as may be directed by City. The sole cost and expense of this service shall be the responsibility and obligation of DAHA. It is further agreed that City may pay a pest exterminating contractor on behalf of DAHA and immediately collect the same from DAHA, or reduce any amount owed to DAHA by City pursuant to this Agreement.
6. Work cooperatively in sharing any shared spaces within the Premises with other community groups and the public, as applicable.
7. Include City as a partner of programs held at the Premises on all marketing and promotional materials and signs.
8. Comply with City's verbal and written guidelines and instructions relating to recycling, energy efficiency, and maintenance applicable to the Premises. DAHA shall obtain the Manager's approval prior to installation of any appliance on the Premises. DAHA acknowledges that all appliances on the Premises must be energy star certified.
9. Maintain its own equipment in a safe, legal, and properly maintained manner. DAHA shall prohibit the use of any unsafe, illegal, or deficient equipment.
10. Provide all staff, equipment, and cleaning supplies necessary to carry out the provisions of this Agreement and to provide the Services on the Premises.
11. DAHA shall promptly notify City of necessary major or non-routine maintenance work needed at each location, including any maintenance that requires a licensed or skilled tradesperson, so that City can decide whether to perform the maintenance or arrange for a service provider of City's choice to perform the maintenance. DAHA understands that the City is not obligated to undertake any major or non-routine maintenance work and any work performed shall be in the sole discretion of the City. DAHA may not perform major or non-routine

maintenance work at the Premises except pursuant to an approved Project Proposal Request, as set forth below.

D. DAHA shall be responsible for any losses or damages whatsoever caused by the negligence or intentional act of DAHA, or its employees, agents, participants, volunteers or invitees to the Premises.

E. DAHA shall follow all established City verbal and written policies, procedures, and instructions regarding premises and/or building safety and security, including, but not limited to, securing exterior doors. DAHA shall immediately report any safety or security issues or concerns to City's Police Department and the Manager.

F. DAHA shall provide the Manager with a current list of all key holders to the Premises including contact information. DAHA will update the list upon any changes or upon the request of the Manager.

G. On or before December 1 of each year of the Term, DAHA shall develop and submit rink schedules to the Parks Manager for review and approval for each rink listed on Exhibit A (the "Rink Schedules"). The Rink Schedules must include at least twenty-five (25) hours of supervised rink time per week per rink, including at least one day on the weekend, where each rink listed on Exhibit A is open and the buildings at each rink are open and operational for skate changing and bathroom access throughout the Winter Season. The Rink Schedules shall include expanded hours of operation during school breaks. After approval of the Rink Schedules by the Manager, DAHA shall post the Rink Schedules on its website and in one or more conspicuous locations (inside and outside) on the applicable Premises. DAHA shall notify the Manager of any changes to the Rink Schedules. DAHA must continue to operate each location listed on Exhibit A as required by this subparagraph through the end of each Winter Season unless it receives advance written permission from the Manager to discontinue operations prior to the end of the Winter Season.

H. Twice a year during the Term, DAHA shall contact the Manager and schedule a walk-through at each location listed on Exhibit A, such walk-throughs to occur: (i) no less than 10 days before the start of each Winter Season, and (ii) no less than 10 days after the conclusion of each Winter Season. The purpose of the walk-throughs shall be to (i) identify the need for repairs and maintenance, (ii) to address minimizing utility usage, and (iii) at the conclusion of each Winter Season, to insure the Premises have been thoroughly cleaned, trash removed and all personal property stored. Following each walk-through, DAHA shall promptly: (i) take all actions identified by City necessary to comply with this Agreement, and (ii) take all actions recommended by City, but not required by this Agreement (except by this paragraph), that would not result in out-of-pocket costs for DAHA. In the event DAHA fails to thoroughly clean and remove trash and all personal property at any location listed on Exhibit A at the conclusion of any Winter Season, the Manager may, in their discretion, impose a fine of \$500.00 on DAHA for each location that it has failed to put in the condition required by this Agreement. DAHA shall pay the fine promptly upon receipt of written notice from City.

I. DAHA shall provide adult supervision at all times while the Premises are open to the general public or its users. DAHA shall provide the Manager with the name(s) and contact information of all on-site supervisors and rink managers responsible for the operation of the programming and supervision of the activities on the Premises. DAHA shall keep the Manager apprised of all scheduling issues or concerns to ensure that the Premises are properly supervised and the Rules and Regulations enforced. However, DAHA acknowledges that it is solely responsible to provide supervision for activities, programs, events and participants at the Premises.

J. DAHA shall obtain all required permits for any outdoor fire rings utilized at the Premises. For special events at which alcohol may be consumed, DAHA shall obtain all applicable permits from City in advance of the event and must comply with all requirements of the permit(s). The permit(s), if approved, shall be issued at no cost. DAHA shall not allow the sale of alcohol on the Premises under any circumstances.

K. DAHA shall manage, oversee, and supervise the rental of the Premises during the Winter Season, which duties include:

a. Schedule recreational and community events and programs (each an “Event”). DAHA may rent any portion of the Premise to private groups, clubs or parties and may, at its discretion, charge a rental fee and/or require a deposit. The rental fee for each Event shall be comparable to rental prices charged under similar circumstances in the community. DAHA shall have the right to retain all rental fees. All rentals shall be documented by a written rental agreement, which form of rental agreement must be in form acceptable to the City Attorney and approved prior to its use by DAHA. A schedule of rental fees for the use of the Premises shall be created by DAHA and submitted to the Manager for approval prior to becoming effective, which approval shall not be unreasonably withheld or delayed.

b. Maintain a master calendar (“Master Calendar”) of all scheduled Events. An up to date version of the Master Calendar shall be provided to the Manager upon request.

c. Collect the rental fees and deposits, if applicable. All fees and deposits shall be separately managed and/or accounted for by DAHA in order to identify funds received or expended in the operation and maintenance of the Premises.

d. Ensure renters and user groups’ compliance with all rules and laws, including the Rules and Regulations.

## VI. City Responsibilities.

City shall be responsible for the following:

A. Payment of charges for trash collection services.

B. Except as otherwise provided for in Exhibit A and in the City's sole discretion, performing necessary major repairs and non-routine maintenance to the structural and mechanical components of all existing buildings and plumbing and electrical systems. Non-routine maintenance shall be defined as major system replacement repair items or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset, road repair, locks and key changes, and winterizing water systems.

C. Providing reasonable access to water for making ice.

D. Assisting with snow removal, upon request by DAHA and in accordance with City's Snow and Ice Control Policy, as amended in City's sole discretion from time to time. The frequency of City's assistance under this section shall be in City's sole discretion and will depend on work force and equipment availability.

## VII. Alterations or Improvements.

A. DAHA may, at its sole cost and expense, make improvements or alterations to the Premises (including the delivery, installation, and/or storage of any temporary or permanent structures) only with the advance written approval from City, which approval shall be granted or withheld in City's sole discretion. All such improvements (excluding appliances and equipment plugged into an electricity source) shall become the property of City. Prior to commencing any improvements or alterations, DAHA shall submit to City a Project Proposal Request along with detailed plans. A copy of the current form of Project Proposal Request is attached as Exhibit B. The Project Proposal Request and plans shall be submitted to City at least forty-five (45) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Code. DAHA shall pay to City upon demand the reasonable costs incurred by City to remove any alterations or improvements to the Premises made by DAHA without prior written permission as required by this section.

B. Project Proposal Requests may be submitted by (i) the DAHA Representative, or (ii) by a representative of one of the Hockey Associations, on behalf of DAHA, by copying the DAHA Representative on the Project Proposal Request.

C. Not less than thirty (30) days prior to commencement of any approved construction, alteration or improvement project on the Premises, DAHA will provide City with sufficient proof of required insurance, including worker's compensation. Construction cannot commence until City's Claims Investigator has approved DAHA's proof of insurance.

D. DAHA shall be responsible for operational costs and maintenance of any approved improvements, installations, and facilities and shall operate them in a safe manner.

VIII. Communications.

A. The parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regarding services or other activities contemplated under this Agreement.

B. All communications between City, DAHA and the Hockey Associations shall be directly between the Manager and the DAHA Representative.

IX. Duty to Defend, Indemnification and Hold Harmless and Indemnification.

To the fullest extent permitted by law, DAHA shall defend, indemnify, and hold City and its employees, officers and agents harmless 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 itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of DAHA or that of its agents, employees, or contractors, or of DAHA's use or occupancy of the Premises. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless City in all matters where claims of liability against City are alleged to be or could be found to arise out of acts or omissions of DAHA, or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of DAHA, or arise out of or relate to the services in this Agreement or DAHA's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this Agreement by DAHA. The 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 City, DAHA will appear and defend all lawsuits against City growing out of such injuries or damages using counsel acceptable to City. This Section shall survive the termination of this Agreement for any reason. DAHA shall not have the obligation to indemnify City for City's intentional, willful or wanton acts. DAHA understands this provision may affect its rights and may shift liability.

X. Insurance. DAHA shall provide and maintain in full force and effect during the Term the following minimum amounts of insurance:

A. Workers compensation insurance in accordance with applicable law.

B. Commercial general and automobile liability insurance with limits not less than \$1,500,000 Single Limit that shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. DAHA may meet the minimum amount of insurances as required above by obtaining an umbrella policy with a "form following" provision. Insurance coverage shall include premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products – completed operations. City does not represent or guarantee that these types or limits of coverage are adequate to protect DAHA's interests and liabilities.

C. City shall always be named as an Additional Insured under the Commercial General and Automobile Liability Policies, and DAHA will provide Certificate(s) of Insurance evidencing such coverage with 30-days' notice of cancellation provision included.

D. DAHA shall provide City with the following: (i) upon execution of this Agreement, Certificate(s) of Insurance evidencing the required insurance coverage - with 30-day notice of cancellation, non-renewal, or material change provisions included; and (ii) a certificate showing continued maintenance of such insurance shall be on file with City during the Term. City reserves the right to require DAHA to increase the coverages set forth above and to provide evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. § 466.04, as amended from time to time.

XI. Financials, Reporting, and Records Retention.

A. DAHA shall comply with the Reporting Requirements outlined in the attached Exhibit C.

B. As provided in Minn. Stat. § 16C.05, Subd. 5, all DAHA books, records, documents, and accounting procedures and practices related to the use and operation of the Premises are subject to examination by 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 notice by City, DAHA shall provide all requested financial information.

C. DAHA shall maintain all records relating to its Services and the Premises during the Term and for six (6) years after termination, cancellation, or expiration of this Agreement.

XII. Notices.

Unless otherwise provided herein, notice to City or DAHA 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:

City of Duluth	DAHA
Attn: Property & Facilities Manager	Attn: Executive Director
1532 West Michigan Street	120 S. 30th Ave. West
Duluth, MN 55806	Duluth, MN 55806
(218) 730-4430	(218) 728-8000

XIII. Access and Keys.

A. City may schedule activities and events on or at the Premises when not in use by DAHA and shall not be charged any fee for such use.

B. City shall have unlimited access to the Premises for any purpose. DAHA shall not change the locks or otherwise prohibit or inhibit City's access to any portion of the Premises.

C. The Manager shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution. DAHA shall comply with

City's Key Control Policy, a copy of which shall be provided to DAHA, and is subject to unilateral change by City during the Term.

D. DAHA shall not make copies of keys to the Premises. All keys shall be promptly returned to the Manager upon termination or expiration of this Agreement.

XIV. Compliance with Laws.

A. DAHA shall make its 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 use of the Premises.

B. DAHA shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Premises.

C. DAHA shall operate the Premises and its Services and related activities in compliance with the United States Constitution, and with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth.

D. DAHA shall procure at its sole expense all licenses and permits necessary for carrying out the provisions of this Agreement and providing its Services on the Premises.

XV. Tobacco, Alcohol & Illegal Drug Use.

DAHA shall prohibit the use of tobacco, alcohol, and illegal drugs on the Premises, except for consumption of alcohol pursuant to a City-issued permit.

XVI. Taxes.

DAHA shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of DAHA's use or operations of the Premises, including real property and sales taxes, if applicable. It is further agreed that City may, at its option, pay the same on behalf of DAHA and immediately collect the same from DAHA, or reduce any amount owed to DAHA by City pursuant to this Agreement. DAHA shall further be obligated to collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

XVII. Government Data Practices.

A. DAHA shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by DAHA under this Agreement.



B. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this section by DAHA. If DAHA receives a request to release the data referred to in this section, DAHA must immediately notify City and consult with City as to how DAHA should respond to the request. DAHA agrees to hold City, its officers, and employees harmless from any claims resulting from DAHA 's unlawful disclosure or use of data protected under state and federal laws.

#### XVIII. Incident Reports.

DAHA shall notify the Manager in writing of any incident of injury or loss or damage to the Premises or any participants, users, or invitees occurring within the Premises during the Term, except for damage to DAHA's personal property. Such written report shall be in a form acceptable to City's Claims Investigator and Adjuster. A copy of City's current form of Incident Report is attached as Exhibit D.

#### XIX. Independent Relationship.

A. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting DAHA as agents, representatives or employees of City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

B. DAHA and its employees shall not be considered employees of City and any claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of DAHA's employees or agents while so engaged shall in no way be the responsibility of City.

#### XX. General Provisions.

A. Nothing in this Agreement is intended to or should be construed as a waiver by City of any immunities, defenses or other limitations on liability to which City is entitled by law, including, but not limited to, the liability limits under Minnesota Statutes Chapter 466.

B. The waiver by City or DAHA of any breach of any term, covenant, or condition in this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition.

C. The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under those courts located within St. Louis County, Minnesota.

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 the 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 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 hereto.

F. This Agreement may be amended only by a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

G. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their 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 said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

H. The rights of DAHA to occupy and use the Premises are subject to DAHA's compliance with the undertakings, provisions, covenants, and conditions herein.

I. This Agreement, including exhibits, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

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

K. The following are the exhibits to this Agreement:


Exhibit A	Depiction and description of the Premises and Use
Exhibit B	Project Proposal Request
Exhibit C	Reporting Requirements
Exhibit D	Incident Report

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

CITY OF DULUTH

DULUTH AMATEUR HOCKEY ASSOCIATION, INC.

By: \_\_\_\_\_  
Mayor

By:  \_\_\_\_\_

Printed Name: ROBERT NYGAARD

Attest: \_\_\_\_\_  
City Clerk

Its: EXECUTIVE DIRECTOR

Dated: \_\_\_\_\_

Dated: 2/16/24

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney

## **EXHIBIT A**

### **Duluth Heights 33 West Mulberry Street**

#### **Indoor Space**

Lower Level of Community Center (Exclusive Use in Winter Season, Non-Exclusive Use for Storage Purposes Only in Summer Season)

Remaining portions of Community Center are closed and cannot be used for any reason

#### **Outdoor Space**

Outlined in red on the attached Duluth Heights map

### **Gary/Morgan Park 1242 88<sup>th</sup> Avenue West**

#### **Indoor Space**

1/3 of Community Center-portion outlined in attached Gary/Morgan map (Exclusive Use in Winter Season, Non-Exclusive Use for Storage Purposes Only in Summer Season)

Zamboni garage/storage shed (Exclusive Use)

#### **Outdoor Space**

Outlined in red on the attached Gary/Morgan Park map

### **Glen Avon 2401 Woodland Avenue**

#### **Indoor Space**

Concession Building (Exclusive Use)

Zamboni garage/storage shed (Exclusive Use)

#### **Outdoor Space**

Outlined in red on the attached Glen Avon map

**Piedmont**  
**2302 West 23<sup>rd</sup> Street**

**Indoor Space**

Downstairs of Community Center (Exclusive Use in Winter Season, Non-Exclusive Use for Storage Purposes Only in Summer Season)  
Zamboni garage/storage shed (Exclusive Use)

**Outdoor Space**

Outlined in red on the attached Piedmont map

**Portman**  
**4601 McCulloch Street**

**Indoor Space**

Downstairs of Community Center (Exclusive Use in Winter Season, Non-Exclusive Use for Storage Purposes Only in Summer Season)  
Two zamboni garages/storage sheds (Exclusive Use)

**Outdoor Space**

Outlined in red on the attached Portman map

**Woodland**  
**3211 Allendale Avenue**

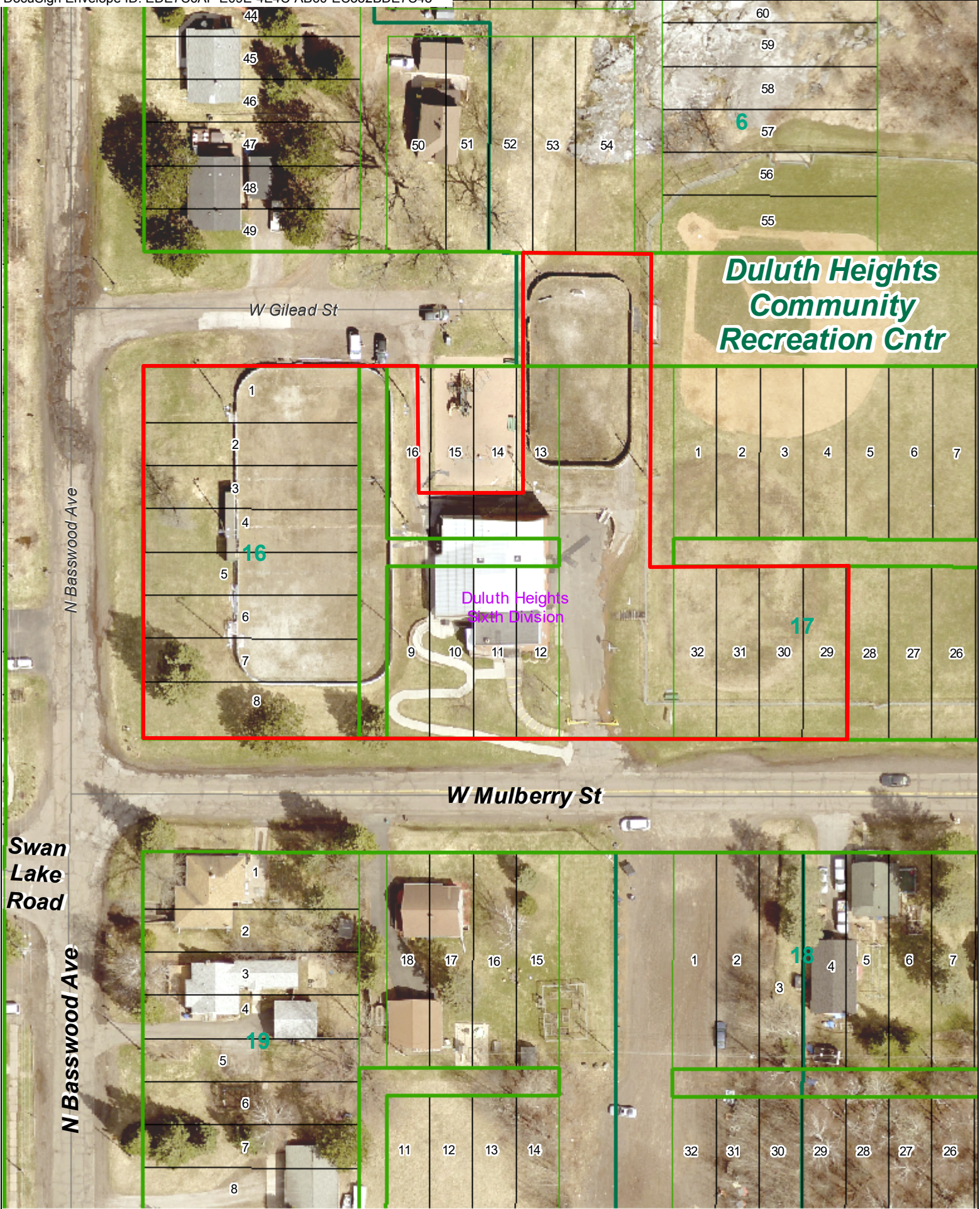
**Indoor Space**

Lower Level of Community Center (Exclusive Use in Winter Season, Non-Exclusive Use for Storage Purposes Only in Summer Season)  
Zamboni garage/storage shed (Exclusive Use)

**Outdoor Space**

Outlined in red on the attached Woodland map



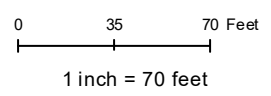


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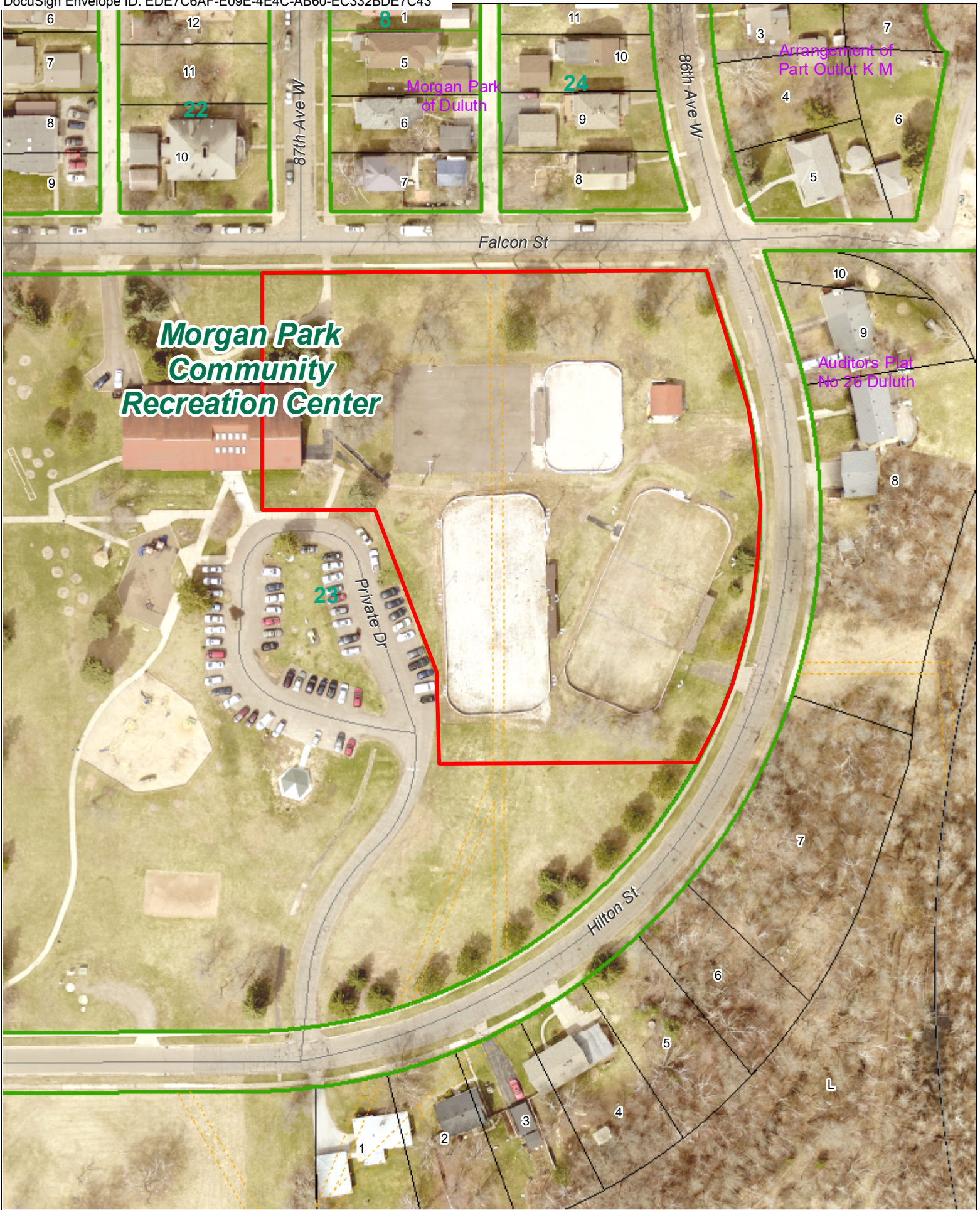
**DAHA**  
**Duluth Heights**



photo date: 2016  
Printed: 9/21/2017





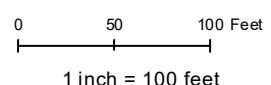


**Morgan Park  
Community  
Recreation Center**

**DAHA  
Gary/Morgan Park**



photo date: 2016  
Printed: 9/21/2017



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**Hartley Park**

Tischer Creek

Woodland Ave

Hunters Park 1st Division Dulu

Auditor's Plat of Samuel B. Sh

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**DAHA  
Glen Avon**



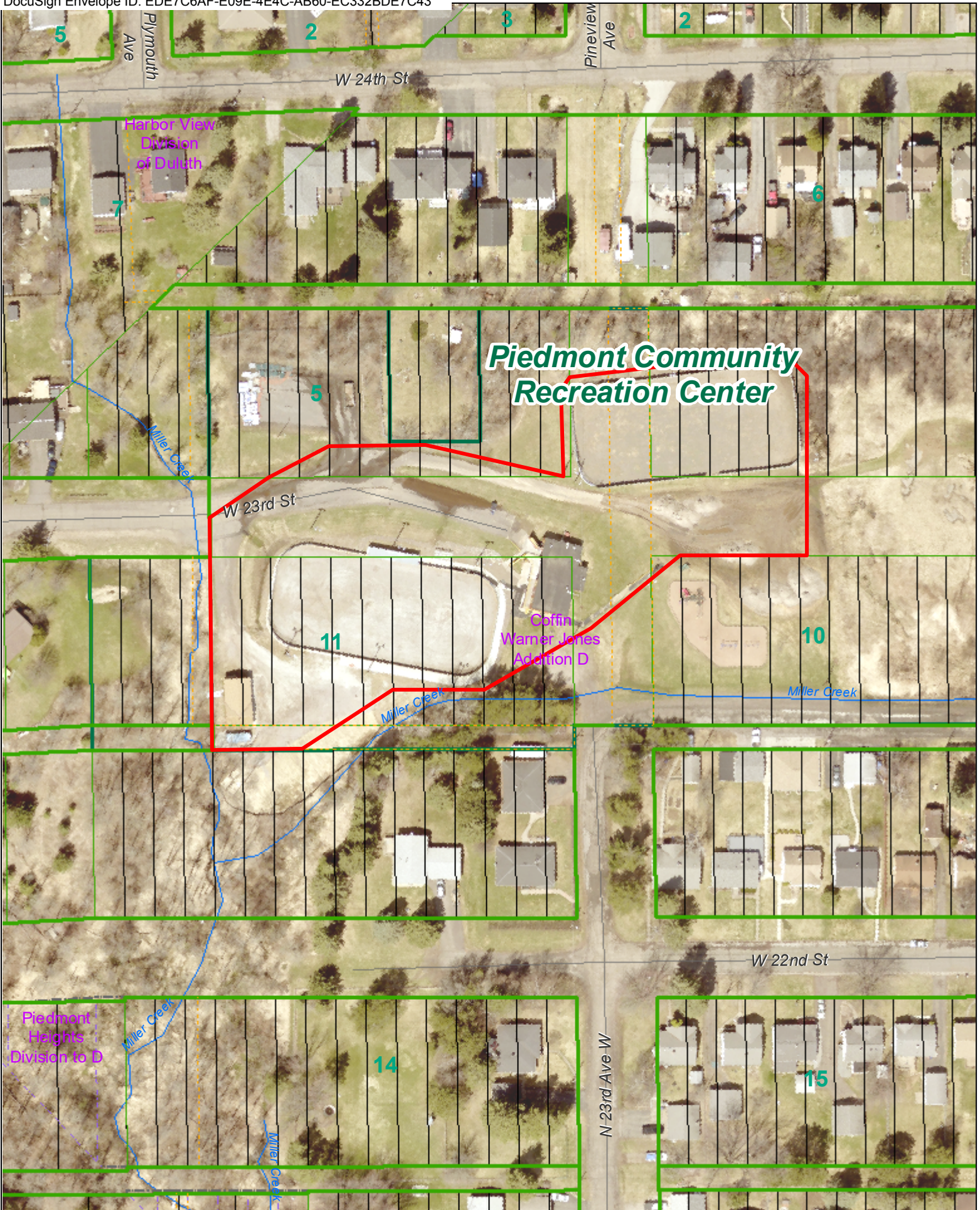
photo date: 2016  
Printed: 9/21/2017

0 50 100 Feet

1 inch = 100 feet





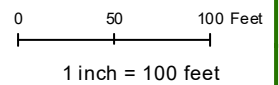


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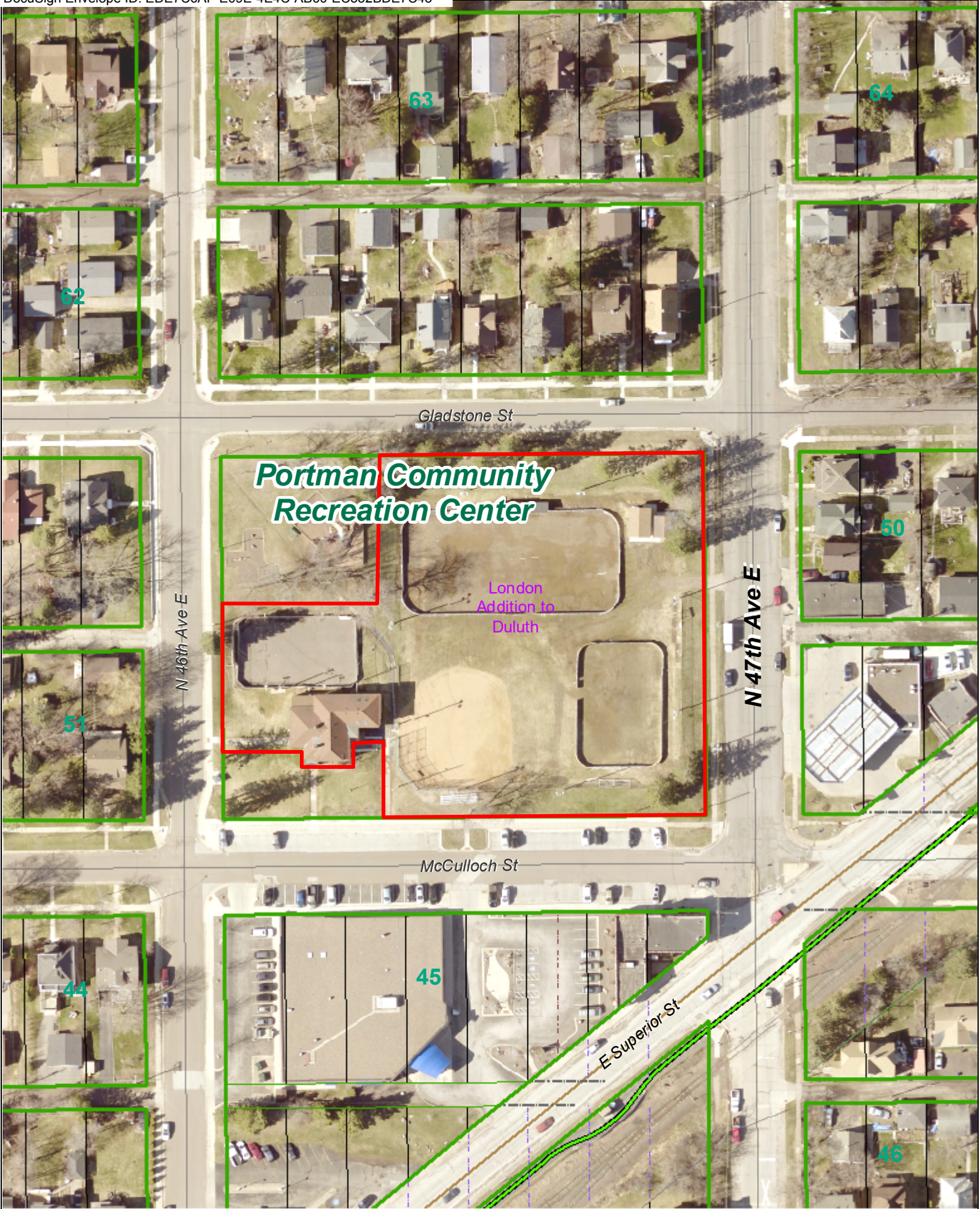
# DAHA Piedmont



photo date: 2016  
Printed: 9/21/2017







**Portman Community  
Recreation Center**

London  
Addition to  
Duluth

**DAHA  
Portman**

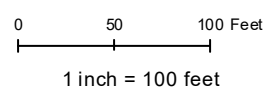


photo date: 2016  
Printed: 9/21/2017



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**Hartley Field**

Allendale Ave

Isanti St

Osakis St

Wadena St

Woodland Ave

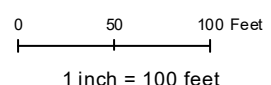
Woodland Park  
7th Division

Mendenhall  
Division

**DAHA  
Woodland**



photo date: 2016  
Printed: 9/21/2017



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# EXHIBIT B

## 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](mailto: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.** 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.
- 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?

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...)?

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?

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.

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?

**For Temporary Art Installations:**

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

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.

**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.

**Additional Information:**



**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

	<b>Y</b>	<b>N</b>	<b>N/A</b>
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](mailto:projectproposal@duluthmn.gov)  
**(218) 730-4300**

## **EXHIBIT C**

### **REPORTING REQUIREMENTS**

- A. On or before October 1<sup>st</sup> of each year, a current listing of all DAHA 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 addresses and phone numbers.
- B. On or before October 1<sup>st</sup> of each year, a current copy of DAHA's By-Laws, Articles of Incorporation, Constitution, or other document which defines DAHA as a viable Minnesota non-profit organization.
- C. Current /updated Certificate of Insurance for each year of this Agreement, including any insurance provided by USA Hockey Association.
- D. Provide a Form 990 (informational return) filed annually with the IRS.
- E. Any other information regarding use of the Premises as the City may request from time to time.



## EXHIBIT D 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](mailto:accidentreporting@duluthmn.gov).

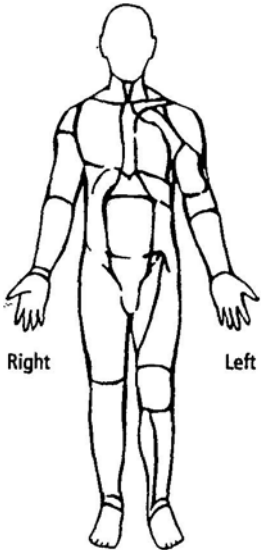
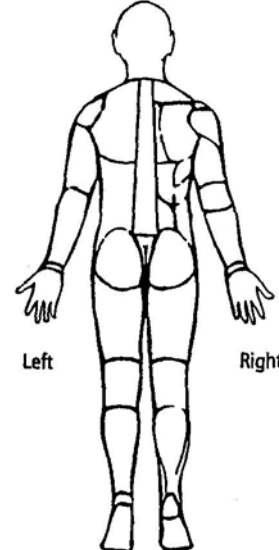
Date of incident/injury:	<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	Department/Division:
Choose one that best describes this claim: <input type="checkbox"/> Incident only, no medical care <input type="checkbox"/> Medical only, no lost time <input type="checkbox"/> Injury 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: <input type="checkbox"/> safety violation <input type="checkbox"/> machine malfunction <input type="checkbox"/> product defect <input type="checkbox"/> motor vehicle accident <input type="checkbox"/> N/A		
Supervisor comments:		
What actions have been taken to prevent recurrence?		

# City of Duluth Incident/Injury Report

<p><b>CAUSE</b></p> <p><input type="checkbox"/> Slip and fall</p> <p><input type="checkbox"/> Struck by equipment</p> <p><input type="checkbox"/> Lifting or moving</p> <p><input type="checkbox"/> Caught (in, on, or between)</p> <p><input type="checkbox"/> Needle puncture</p> <p><input type="checkbox"/> Object in eye (<input type="checkbox"/> Right <input type="checkbox"/> Left)</p> <p><input type="checkbox"/> Repetitive/overuse</p> <p><input type="checkbox"/> Other (specify): _____</p> <p><b>TYPE OF INJURY</b></p> <p><input type="checkbox"/> Scrape/bruise</p> <p><input type="checkbox"/> Sprain/strain</p> <p><input type="checkbox"/> Puncture wound</p> <p><input type="checkbox"/> Cut/laceration</p> <p><input type="checkbox"/> Concussion</p> <p><input type="checkbox"/> Bite</p> <p><input type="checkbox"/> Chemical burn/rash/breathing difficulties</p> <p><input type="checkbox"/> No apparent injury</p> <p><input type="checkbox"/> Other (specify): _____</p>	<p style="text-align: center;"><b>MARK AREAS OF INJURY BELOW:</b></p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><b>Front</b></p>  <p>Right      Left</p> </div> <div style="text-align: center;"> <p><b>Back</b></p>  <p>Left      Right</p> </div> </div>
---	--

COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE				
<p><u>For vehicle accidents:</u> Attach sketch and additional information of how vehicle accident occurred. Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)</p>				
Incident Location: _____		Time of incident: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.		
Police called: <input type="checkbox"/> Yes <input type="checkbox"/> No		Police Traffic Accident Report ICR #: _____		
<b>City vehicle, property, or equipment involved</b>	Description:			
	Vehicle #: _____	Make/Model: _____	Year: _____	
	Describe damage: _____			
<b>Non-city vehicle, property, or equipment involved</b>	Owner full name: _____		<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other	
	Owner address: _____			
	Owner phone number: _____		Vehicle license #: _____	
	Make/Model: _____		Color: _____	Year: _____
	Describe damage: _____			
<b>Weather conditions:</b>	<b>Roadway conditions:</b>	<b>Light conditions:</b>	Approximate temperature: _____ °F	
<input type="checkbox"/> Clear <input type="checkbox"/> Wind	<input type="checkbox"/> Dry <input type="checkbox"/> Mud	<input type="checkbox"/> Night	Estimated speed: _____ mph	
<input type="checkbox"/> Rain <input type="checkbox"/> Cloudy	<input type="checkbox"/> Wet <input type="checkbox"/> Paved	<input type="checkbox"/> Day	Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty	
<input type="checkbox"/> Fog <input type="checkbox"/> Sleet	<input type="checkbox"/> Snow <input type="checkbox"/> Unpaved	<input type="checkbox"/> Good	What was load: _____	
<input type="checkbox"/> Snow	<input type="checkbox"/> Ice	<input type="checkbox"/> Poor	Drug and/or alcohol test? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

The Incident/Injury Form should be printed and signed by supervisor and employee. Completed forms can be scanned to [accidentreporting@duluthmn.gov](mailto:accidentreporting@duluthmn.gov).

Supervisor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_