

EXHIBIT 1

DEVELOPMENT AGREEMENT BETWEEN HARTLEY NATURE CENTER CORPORATION AND THE CITY OF DULUTH

This DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”), and HARTLEY NATURE CENTER CORPORATION, a non-profit corporation under the laws of the State of Minnesota (the “Corporation”). The City and the Corporation are collectively referred to in this Agreement as the “Parties.”

WHEREAS, the City is the fee owner of certain real estate in the City of Duluth, County of St. Louis, State of Minnesota that is outlined in red on Exhibit A and is commonly known as “Hartley Park.” Hartley Park is used by the general public for park, trail, and open space purposes.

WHEREAS, a portion of Hartley Park is subject to a lease agreement between the Parties dated July 22, 2002, City Contract No. 19253 (the “Amended and Restated Agreement”), as amended by Amendment to Agreement dated October 17, 2012, City Contract No. 19253-01 (the “Amendment to Agreement”). The Amended and Restated Agreement, as amended by the Amendment to Agreement, is referred to in this Agreement as the “Lease Agreement.” The portion of Hartley Park leased to the Corporation for its exclusive use in the Lease Agreement is referred to in this Agreement as the “Leased Premises” and outlined in blue on Exhibit A. The Leased Premises contains a 7,500 square foot building owned by the City (the “Building”).

WHEREAS, the Corporation is dedicated to inspiring life-long connections to nature through education, play, and exploration (its “Mission”). The Corporation carries out its Mission at Hartley Park through the provision of field trips, camps, preschool, special events, public programming, and recreational opportunities.

WHEREAS, the Parties applied for and the City was awarded a grant in the amount of \$1,293,975.00 from the Minnesota Historical and Cultural Heritage Grants Program (the “Legacy Grant”) to partially fund construction of a 5,200 square foot addition to the Building, including sidewalks, utilities, storm water, landscaping, and associated site work (collectively, the “Project”) and to fund other projects. The portion of the Legacy Grant that will be allocated to the Project is \$1 million (the “Grant Funds”). The Project will add two new classrooms, a second restroom, an updated exhibit hall, a parent/family gathering area, an expanded office, and a public meeting room for organizational partners and the broader community. A proposed floorplan for the building addition is outlined in black on the attached Exhibit B (the “Building Addition”).

WHEREAS, the Parties desires to formalize the goals and respective roles and responsibilities of the Project through this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and agreements hereinafter contains, the Parties agree as follows:

I. ADMINISTRATION

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

II. TERM

Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on November 1, 2019 and expire on June 30, 2022, unless earlier terminated as provided for herein (the “Term”).

III. PROJECT COSTS AND FUNDING SOURCES

A. Based on estimates provided by the Corporation, it is anticipated that the Project will cost approximately \$2.5 million. However, the exact cost of the Project (the “Total Project Cost”) will not be known until the Project is complete or the Project fails to proceed. The “Total Project Cost” as used in this Agreement shall include all costs incurred relating to the Project, whether or not the Project is completed, including but not limited to design services, construction costs, permitting, testing, construction management, sidewalks, utilities, storm water, landscaping, and associated site work but shall not include costs incurred by the Corporation as of the date of this Agreement as further described in Section V.B. below.

B. The Total Project Cost, minus the Grant Funds actually received by the City, shall be paid by the Corporation. The City shall contribute to the Project through its project management services, but will not provide any funds to pay for the Project. In the event the Building Addition is not constructed for any reason or is only partially completed, the Corporation shall pay the City for all costs incurred relating to the Project upon receipt of a written itemization of those costs. In the event there are sufficient funds available, the City may pay itself for these costs using the Corporation Contribution (defined below). The rights and obligations of the Parties set forth in this subparagraph shall survive termination of this Agreement for any reason.

IV. TIMELINE OF THE PROJECT

Below is a summary of the task items for the Project and estimated completion dates (the “Timeline”):

Date	Task
Spring 2018 – December 2020	Corporation’s Capital Campaign for Project
Fall 2019	Concept Designs Prepared
November 2019	Legacy Grant Finalized
January 2020 – March 2020	Schematic Designs Prepared

Date	Task
April 2020 – June 2020	Permitting and Design Development
July 2020 – September 2020	Construction Documents Prepared
December 2020	Advertise Project
January 2021	Project Open for Bids
February 2021	Award Construction Contracts
Spring 2021	Construction Begins
Winter 2021/2022	Project Complete

V. PRE-CONSTRUCTION OF THE PROJECT

A. Conceptual Drawings. The conceptual designs for the Project are attached as Exhibit C (the “Conceptual Drawings”). The Parties will use the Conceptual Drawings to design the plans and specifications for the Project. Upon the execution of this Agreement, the Corporation shall transfer and assign all work product related to the Project to the City and such work product shall become the property of the City, whether or not the Project is actually constructed. The Corporation shall obtain all third-party releases and assignments necessary to transfer such work product free and clear from all third-party rights and interests, so the City can use the work product without restriction.

B. Corporation Costs Thus Far. The Corporation has incurred certain professional services costs related to the Project, including for the Conceptual Drawings, site survey work, and wetland delineation, which costs are not included in the Total Project Cost. The Corporation will not be reimbursed for these costs, whether or not the Building Addition is constructed.

VI. PROJECT

A. Joint Responsibilities.

1. The Parties will use their best efforts to work together in a collaborative manner on the Project. Subject to applicable law, the Corporation shall be invited to attend and participate in all meetings conducted by the City related to the planning and design of the Project.

2. To the extent practical, the City will work in partnership with the Corporation on the Project, provided that the City shall have sole discretion with regard to all final decisions regarding the Project, including the Final Project Budget (defined below). The failure of the City to work in partnership with the Corporation shall not invalidate any decision made by the City with regard to the same or give the Corporation a cause of action against the City or cause the City to be in breach of this Agreement.

B. City Responsibilities. The City shall be responsible for the following:

1. Project and Grant Management. The City shall (i) manage the Project throughout the Term or until completion, whichever occurs first; and (ii) administer the Legacy Grant.

2. Construction Plans and Project Budget.

a. Prior to the commencement of construction of the Project, the City shall provide construction drawings, plans, and specifications for the Project (the “Preliminary Construction Plans”) to the Corporation for review and comment. Within 10 days of receipt of the Preliminary Construction Plans, the Corporation shall provide the PFM Manager with written comments and any requests for modification of the Preliminary Construction Plans, along with the reason or justification for such request. If the Corporation requests changes to the Preliminary Construction Plans, the City may either (i) make the requested changes, or (ii) explain why the requested changes were not made. At the conclusion of this consulting process with the Corporation, the Preliminary Construction Plans shall be finalized by the City and shall become the “Final Construction Plans.” Any subsequent proposed modifications to the Final Construction Plans that will increase the Final Project Budget or the Total Project Cost, including authorized change orders, shall be presented to the Corporation in the same manner for their consideration and comment, except that the Corporation shall have 48 hours from receipt of the proposed modification to provide the PFM Manager with comments and requests for modification. The City reserves the final decision-making authority regarding the Preliminary Construction Plans and the Final Construction Plans. The Final Construction Plans shall be in accordance with the requirements of the Legacy Grant.

b. Prior to the commencement of construction of the Building Addition, the City shall provide an itemized budget for the Project (the “Preliminary Project Budget”) to the Corporation for review and comment. Within 10 days of receipt of the Preliminary Project Budget, the Corporation shall provide the PFM Manager with written comments and any requests for modification of the Preliminary Project Budget, along with the reason or justification for such request. If the Corporation requests changes to the Preliminary Project Budget, the City may either (i) make the requested changes, or (ii) explain why the requested changes were not made. At the conclusion of this consulting process with the Corporation, the Preliminary Project Budget shall be finalized by the City and shall become the “Final Project Budget.” Any subsequent proposed modifications to the Final Project Budget that will increase the Total Project Cost, including authorized change orders, shall be presented to the Corporation in the same manner for their consideration and comment, except that the Corporation shall have 48 hours from receipt of the proposed modification to provide the PFM Manager with comments and requests for modification. The City reserves the final decision-making authority regarding the Preliminary Project Budget and the Final Project Budget.

c. In addition to all other elements of design, (i) the design of the Building Addition shall include the use of the City’s master door locking system for use on all lockable doors, windows, and other openings equipped with locks, and (ii) the cylinders in all locks shall be keyed in accordance with the PFM Manager’s direction.

d. The Final Construction Plans shall be in conformity with this Agreement and with all applicable laws, rules, regulations, and ordinances of the City, State, and United States of America.

e. The City shall obtain the proper permits, licenses, or other permissions needed from various local, state, and/or federal agencies and entities to construct the Project.

f. The City shall submit the Final Construction Plans for bid in accordance with the City's regular bidding process, but only after deposit of the Corporation Contribution required by Section VI.C.1.b. below.

3. Construction.

a. Upon the deposit by the Corporation of the Corporation Contribution in the amount required by Section VI.C.1.below), the City, through its regular bidding process, shall award and enter into a construction contract with a contractor selected by the City for the construction of the Project in accordance with the Final Construction Plans (the "Construction Contract"). The City will not enter into the Construction Contract until the entirety of the Corporation Contribution required by Section VI.C.1. below is deposited with the City. The Construction Contract shall require completion of the Building Addition by June 30, 2022. The City shall administer the Construction Contract in its sole discretion.

b. The City shall promptly pay the amounts due under the Construction Contract and all other costs of the Project using: (i) the Grant Funds actually received by the City, and (ii) the Corporation Contribution. The City may use the Corporation Contribution to pay costs incurred for the Project whether or not the Project is actually constructed.

c. At the sole discretion of the PFM Manager, during construction of the Project: (i) portions of the Leased Premises may be closed to the public and the Corporation; and (ii) the Building, or portions of the Building, may be closed to the public and the Corporation.

C. Corporation Responsibilities. The Corporation shall be responsible for the following:

1. Responsibility for Project Cost.

a. The Corporation shall be responsible to pay the Total Project Cost, minus the amount of Grant Funds actually received by the City. In the event the Project is not constructed for any reason, the Corporation will still be responsible to pay to the City all costs incurred by the City with respect to the Project. This requirement will survive termination of this Agreement for any reason.

b. On or before January 2, 2021, the Corporation shall deposit \$1.5 million with the City (the "Corporation Contribution"). The Corporation Contribution shall be deposited into Fund 205-130-1220-4220-01 (Parks Fund, Community Resources, Parks Capital, State of Minnesota Capital, Project: CM205-HARTLE-LGCY18) and shall be accounted for in accordance with generally accepted accounting practices and with accounting practices approved by the Minnesota State Auditor related to the accounting of public funds. As of November 1, 2019, the Corporation has approximately \$600,000 cash and \$123,000 in donor pledges, which funds are earmarked for and shall be deposited with the City as a portion of the Corporation

Contribution to be paid on or before January 2, 2021. In their sole discretion, the PFM Manager may, in writing, extend the deadline for deposit of the Corporation Contribution required by this subparagraph. If the Corporation fails to deposit the Corporation Contribution funds required by this subparagraph by January 2, 2021, or such later date as permitted in writing by the PFM Manager, it will be a default under this Agreement. On April 1, 2020, July 1, 2020 and October 1, 2020, the Corporation shall submit a written report to the PFM Manager outlining the Corporation's current cash and donor pledge totals earmarked for the Corporation Contribution.

c. As soon as practicable after the amount of the Construction Contract has been determined by the City (based on the construction bidding, selection and negotiation process), the City shall notify the Corporation of the amount of the Construction Contract. On or before the Construction Contract is present to the Duluth City Council for approval, the Corporation shall make an additional deposit with the City towards the Corporation Contribution equal to: (i) the difference between the amount of the Construction Contract and the amount of the then-current Corporation Contribution plus the Grant Funds; PLUS (ii) an amount equal to fifteen percent of the amount of the Construction Contract. For example, if the Construction Contract is \$2.8 million and then-current Corporation Contribution is \$1.5 million, the Corporation shall make an additional payment toward the Corporation Contribution in the amount of (i) \$300,000 (\$2.8 million minus (\$1.5 million plus \$1 million) = \$300,000); PLUS (ii) \$420,000 (\$2.8 million x 15% = \$420,000). If the Corporation fails to deposit the additional funds required by this subparagraph c. on or before the Construction Contract is presented to the Duluth City Council for approval, the City shall have no obligation to proceed with the Project and this Agreement shall automatically terminate.

d. If at any time and from time to time during the Term the Final Project Budget increases so that the Corporation Contribution is deemed by the City to be insufficient to pay the anticipated Total Project Cost, minus the Grant Funds to be received, the Corporation shall increase the amount of the Corporation Contribution by depositing additional funds with the City in the amount requested by the City. If the Corporation fails to deposit the requested additional funds within 10 days of a request by the City, it shall be a default under this Agreement.

e. If any portion of the Corporation Contribution remains unexpended after payment in full of the Total Project Cost, the remaining Corporation Contribution shall be returned to the Corporation.

2. Prompt Review and Cooperation. The Corporation shall promptly (i) respond to any requests by the City regarding the Project and the Legacy Grant; and (ii) review the Preliminary Construction Plans, the Final Construction Plans and any modifications thereto; and (iii) review the Preliminary Project Budget, the Final Project Budget and any modifications thereto. Failure to respond within the required time period to opportunities to review the Preliminary Construction Plans, the Final Construction Plans, the Preliminary Project Budget and the Final Project Budget shall be deemed a waiver of the Corporation's opportunity to comment and request changes.

3. Liens. The Corporation shall not permit any mortgage or encumbrance to be filed or established against the Building, the Building Addition, or its interest as Tenant in the Lease Agreement or in the Leased Premises.

D. Post-Construction. Upon completion of construction of the Project, the Parties shall amend the Lease Agreement by entering into a Second Amendment to Agreement substantially in the form attached as Exhibit D (the "Second Amendment to Agreement"). The Corporation shall not use or occupy the Building Addition until the Second Amendment to Agreement has been fully executed by the Parties.

VII. TITLE TO BUILDING ADDITION

The Parties acknowledge that the City will own the Building Addition and all plans, reports and all other information and documents gathered and prepared in relation to this Agreement and the Project.

VIII. DEFAULT

A. By City

If the City defaults in the performance of its obligations under this Agreement due to no fault of the Corporation, then the Corporation may, after at least thirty (30) days prior written notice to the City and the City's failure to cure the default within said notice period, declare this Agreement terminated. Termination pursuant to this Section is the sole and exclusive remedy afforded to the Corporation and in no event shall the City be liable for any actual, general, specific, punitive, incidental, speculative, consequential or other damages of any kind or nature. In the event of such termination, all funds remaining from the Corporation Contribution shall be refunded to the Corporation within 30 days, EXCEPT any of said funds necessary to pay already incurred costs of the Project.

B. By Corporation

If the Corporation defaults in the performance of its obligations under this Agreement due to no fault of the City, then the City may, after at least ten (10) days prior written notice to the Corporation and the Corporation's failure to cure the default within said notice period, declare this Agreement terminated. In the event that the Corporation defaults on its obligations under this Agreement, the City shall be entitled to any and all costs accrued by the City which it may incur in the course of enforcing the Corporation's obligations, including but not limited to court cost and legal costs, which shall include the value of the City's staff attorneys and other staff time, and shall further be entitled to the cost of borrowing funds at commercial bank rates to fund any portion of the Total Project Cost that the Corporation fails to pay, in the event the City elects to incur such costs. In the event there are sufficient funds available, the City may pay itself for all costs incurred due to a default by the Corporation using the Corporation Contribution. The City may also use the Corporation Contribution funds to pay any costs incurred for the Project.

IX. COMMUNICATIONS AND REPORTING

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 regard to this Agreement and the Project.

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

City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, Minnesota 55806
(218) 730-4430

Hartley Nature Center Corporation
Attn: Executive Director
3004 Woodland Avenue
Duluth, MN 55803
(218) 724-6735

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

D. The Corporation agrees to maintain all records relating to this Agreement during the Term and for six (6) years after this Agreement's termination, cancellation, or expiration.

X. INDEPENDENT RELATIONSHIP

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

XI. THIRD PARTY BENEFICIARIES

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

XII. GOVERNMENT DATA PRACTICES

A. The Corporation 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 Corporation under this Agreement.

B. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Corporation. If the Corporation receives a request to release the data referred to in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, the Corporation shall immediately notify the City and consult with the City as to how the Corporation should respond to the request. The Corporation agrees to hold the City, its officers, and employees harmless from any claims resulting from the Corporation's unlawful disclosure or use of data protected under state and federal laws.

XIII. SEVERABILITY

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.

XIV. FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

XV. INDEMNIFICATION

A. Generally. The Corporation shall indemnify, defend (with counsel reasonably satisfactory to the City), and hold the City and its officers, agents, servants and employees harmless for, from and against any claims, damages, costs, liabilities, losses, mechanic's, materialmen's or other liens, arising out of or in any way related to:

- (i) any violation of this Agreement; and
- (ii) any violation of any law, ordinance, court order or regulation affecting the Leased Premises or the ownership, occupancy or use thereof.

B. Indemnification Procedures. Promptly after receipt by the City of notice of the commencement of any action with respect to which the Corporation is required to indemnify such person under this Section, the City shall notify the Corporation in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the Corporation shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. Insofar as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against the Corporation, the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the Corporation.

XVI. GENERAL PROVISIONS

A. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.

B. The Corporation shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.

C. 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 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.

D. Any amendments to this Agreement shall be in writing and shall be executed by the same officers who executed this Agreement or their successors in office.

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

F. 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. 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. The exhibits to this Agreement are as follows:

- Exhibit A Map of Hartley Park and the Leased Premises
- Exhibit B Floorplan of the Building and the Building Addition
- Exhibit C Conceptual Drawings of the Project
- Exhibit D Second Amendment to Lease

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

CITY OF DULUTH

HARTLEY NATURE CENTER
CORPORATION

By: _____
Mayor

By: _____

Attest: _____
City Clerk

Printed Name: _____

Its: _____

Dated: _____

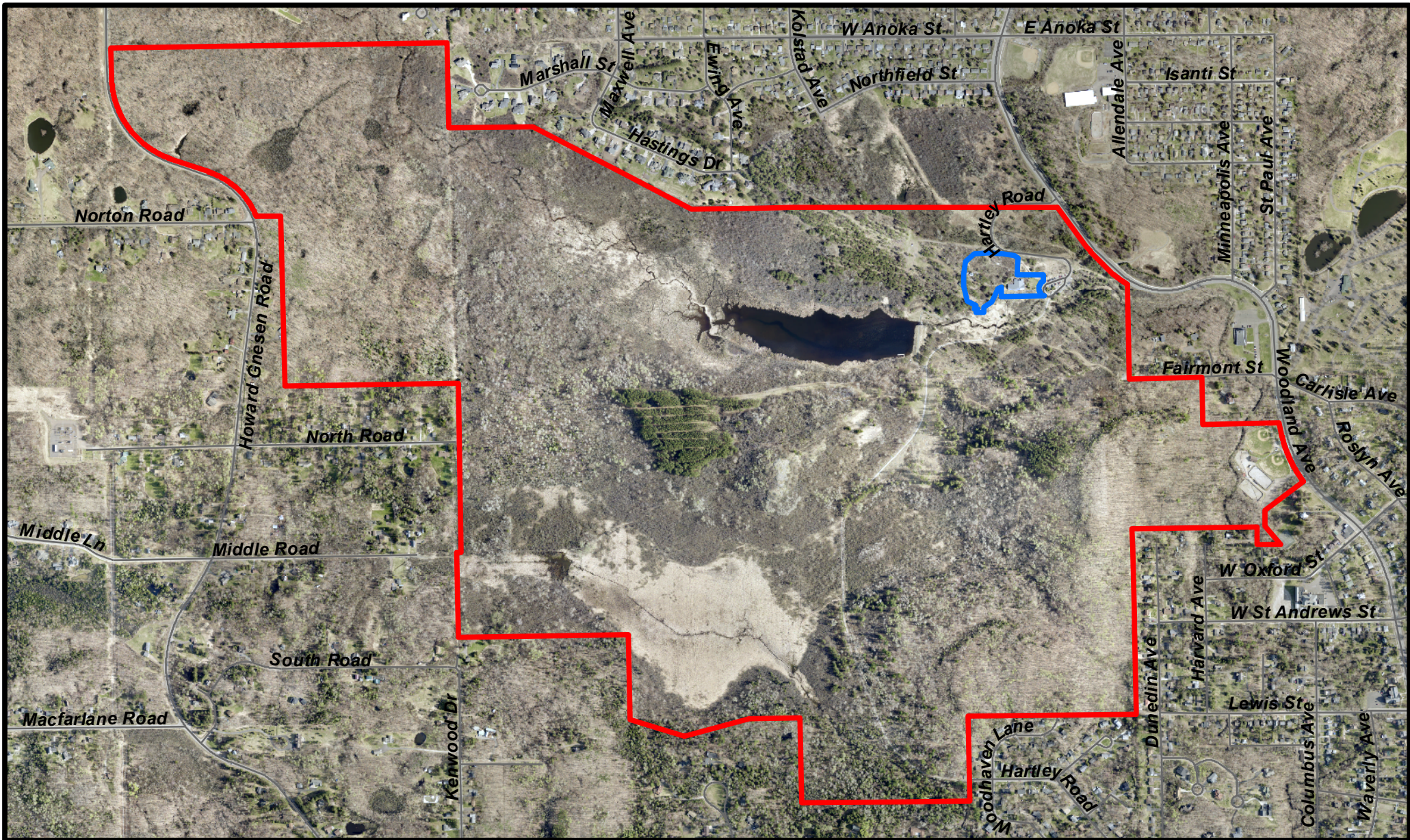
Dated: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney



Printed Date: 12/11/2019

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



EXHIBIT A

- Leased Premises
- Hartley Park

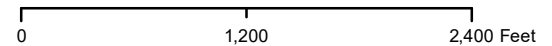
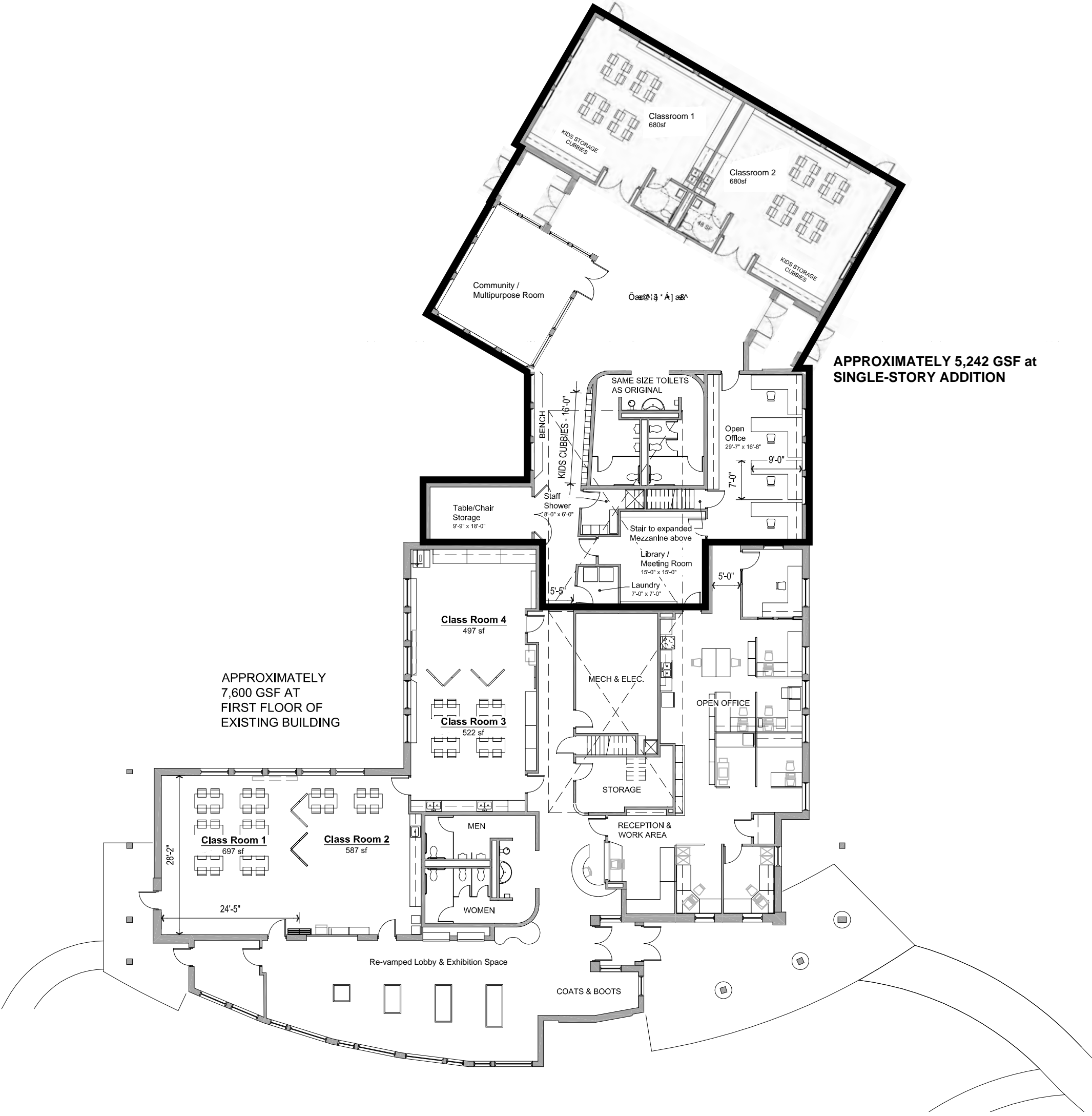


EXHIBIT B



APPROXIMATELY
7,600 GSF AT
FIRST FLOOR OF
EXISTING BUILDING

APPROXIMATELY 5,242 GSF AT
SINGLE-STORY ADDITION

EXHIBIT C













Exhibit D

SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT BETWEEN CITY OF DULUTH AND HARTLEY NATURE CENTER CORPORATION

THIS SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT (this "Second Amendment") is entered into this _____ day of _____, 20____, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota ("City"), and HARTLEY NATURE CENTER CORPORATION, a Minnesota non-profit corporation ("Lessee"). City and Lessee are collectively referred to in this Second Amendment as the "Parties."

WHEREAS, City, as landlord, and Lessee, as lessee, entered into an Amended and Restated Lease Agreement dated July 22, 2002, for City-owned park property known as Hartley Park to allow Lessee to operate environmental educational and recreational programs (the "Original Lease").

WHEREAS, on or about October 17, 2012, the Parties amended the Original Lease by entering into an Amendment to Agreement (the "First Amendment") (the Original Lease, as amended by the First Amendment, is hereinafter referred to as the "Lease Agreement"). Capitalized terms used in this Second Amendment, but not defined herein, shall have the same meaning ascribed to them as in the Lease Agreement.

WHEREAS, the City has recently completed an addition to the Building, including sidewalks, utilities, storm water, landscaping, and associated site work (collectively, the "Building Addition").

WHEREAS, the Parties wish to amend the Lease Agreement to formalize the addition of the Building Addition to the Leased Premises and make certain additional modifications as further described herein.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the Parties agree to amend the Lease Agreement as follows:

1. The definition of "Building" in Article I., paragraph B. of the Lease Agreement and the definition of "Leased Premises" in Article I., paragraph K. of the Lease Agreement are amended and completely replaced with the following definitions:

B. Building: shall refer to the building on the Leased Premises, including the addition constructed in 20____.

K. Leased Premises: shall refer to that portion of Hartley Park leased to Lessee for its exclusive use outlined in _____ on Exhibit C attached hereto and made a part hereof, which shall include the Building.

Exhibit D

2. Exhibit B to the Lease Agreement is deleted in its entirety and replaced with the attached Exhibit B.

3. Amended Exhibit C is deleted in its entirety and replaced with the attached Exhibit C.

4. Article XII., paragraph H. of the Lease Agreement is amended and completely replaced with the following:

H. Data Practices

Lessee shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as may be amended from time to time (the "Act"), 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 Lessee 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 Lessee. If Lessee receives a request to release the data referred to in this clause, Lessee must immediately notify City and consult with City as to how Lessee should respond to the request. Lessee shall hold City, its officers, agents, servants and employees harmless from any claims arising out of, resulting from or in any manner attributable to any violation of any provision of the Act, including legal fees and disbursements.

5. Except as specifically amended pursuant to this Second Amendment, the Lease Agreement shall remain in full force and effect. In the event of a conflict between the provisions of this Second Amendment and the provisions of the Lease Agreement, the provisions of this Second Amendment shall govern.

6. The Parties represent to each other that the execution of this Second Amendment has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Second Amendment on their behalf are fully authorized to do so, and that this Second Amendment 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.

[Remainder of this page is intentionally left blank.]

Exhibit D

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

CITY OF DULUTH

HARTLEY NATURE CENTER CORPORATION

By: _____
Mayor

By: _____

Attest: _____
City Clerk

Its: _____

Printed Name: _____

Dated: _____

By: _____

Countersigned:

Its: _____

City Auditor

Printed Name: _____

Approved as to form:

City Attorney

Exhibit D

EXHIBIT B

TO BE FINALIZED BEFORE EXECUTION

Exhibit D

EXHIBIT C

TO BE FINALIZED BEFORE EXECUTION