

**LEASE AGREEMENT BETWEEN THE  
CITY OF DULUTH AND  
DULUTH AMATEUR HOCKEY ASSOCIATION**

THIS LEASE AGREEMENT (this “Agreement”) is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City,” and the DULUTH AMATEUR HOCKEY ASSOCIATION, a Minnesota non-profit corporation, hereinafter referred to as “DAHA.”

WHEREAS, City is the owner of an arena located off of Woodland Avenue, near the intersection of Woodland Avenue and Isanti Street, more commonly known as the “Fryberger Arena,” that is depicted on the attached Exhibit A;

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 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 (its “Services”); and

WHEREAS, DAHA has leased the Fryberger Arena for decades and desires to continue to lease the Fryberger Arena for advancement of its Mission and provision of its Services to the community as set forth herein; and

WHEREAS, City desires to allow DAHA to lease the Fryberger Arena as provided herein for DAHA’s provision of an indoor ice facility in relation to providing its Services.

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 Facilities & Property Manager or designee (the “PFM Manager”). DAHA shall act through its Executive Director or designee.

II. Definitions.

For purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

A. Arena: shall mean the Fryberger Arena building used primarily for playing ice hockey and similar uses located on City-owned property adjacent to the Woodland Community Club at 3211 Allendale Avenue.

B. Leased Premises: shall mean the Arena and that portion of City-owned property outlined in red on Exhibit A and the Leasehold Improvements (defined below) located thereon. In addition, during such times when DAHA or its officers, members, agents, employees, guests and contractors are using any City-owned or City-controlled property (including the Parking Area), that property shall be deemed to be a part of the Leased Premises for the purposes of Articles IX and XI below.

C. Leasehold Improvements: shall mean City-owned equipment that is a part of the Leased Premises, fixtures, counters, cabinets, moveable dividers and other personal property purchased and installed by DAHA that are or become affixed to the real estate.

D. Parking Area: shall mean the parking lot depicted on Exhibit A as outlined in blue.

III. Use of Leased Premises and Grant of Rights.

A. City leases to DAHA and DAHA leases from City, upon the terms and conditions set forth in the Agreement, the Leased Premises.

B. Subject to the terms and conditions set forth in this Agreement, City grants to DAHA and its officers, members, agents, employees, guests, and contractors the non-exclusive use of the Parking Area during the Term to temporarily park motor vehicles when there are available spaces. DAHA's use of the Parking Area shall not in any way impede City's access to any portion of the Arena.

C. DAHA is permitted to leave its personal property on the Leased Premises during the entirety of the Term (defined below). DAHA is solely responsible for the proper storage of any of its personal property on the Leased Premises. However, DAHA is not allowed to store or allow long-term storage of vehicles, equipment, or construction materials on the Leased Premises in such a manner as to constitute a visual blight on the neighborhood, in the sole determination of the PFM Manager. DAHA shall ensure that Zambonis and any other motorized vehicle to be stored within the Arena or any other structure on the Leased Premises 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 of DAHA's personal property on the Leased Premises.

D. Notwithstanding the term of this Agreement, DAHA's use of the Leased Premises to provide its Services shall be between the dates of October 1 and March 31 during each year this Agreement remains in effect (the "Winter Season"). Except as specifically permitted by this Agreement, DAHA may not use the Leased Premises outside of the Winter Season without securing prior written authorization from the PFM Manager.

E. DAHA may only utilize the Leased Premises to provide its Services.

F. DAHA may operate concessions on the Leased Premises. If DAHA operates concessions, then it must comply with all applicable licensing requirements. DAHA is responsible for all costs relating to the operation of the concessions, including paying all taxes and applicable license or 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.

G. City makes no representation or warranty, either express or implied, that the Leased Premises or the Parking Area are suitable for specific uses, and DAHA accepts the Leased Premises and the Parking Area in “as is” condition without representations or warranties of any kind. City is not obligated to make any alterations or improvements on or to the Leased Premises or the Parking Area, or to provide any maintenance to the Leased Premises or the Parking Area, except as may be expressly required by Article VII.

H. DAHA acknowledges that the Parking Area is used by multiple user groups and therefore use of the Parking Area requires the cooperation of all users. DAHA acknowledges that the PFM Manager shall ultimately determine the appropriate use of the Parking Area and shall prevail in any disputes between user groups.

I. DAHA shall not sublet any space(s) within the Leased Premises or assign any part of this Agreement without obtaining prior written approval of the PFM Manager, and then only under the conditions required by City.

#### IV. Lease Payments and Other Costs.

A. Rent. Monthly rent during the term shall be \$0. The consideration for the lease of the Leased Premises shall instead be (i) the public benefit provided by DAHA through the provision of its Services; and (ii) payment of all taxes, charges, costs and expenses that DAHA assumes or agrees to pay under this Agreement, including but not limited to maintenance costs, together with all interest and penalties that may accrue thereon in the event of the failure of DAHA to pay those items.

#### B. Additional Rent.

1. Utilities. Subject to the provisions of this Agreement, DAHA shall pay any and all charges for electricity, steam, water, sewer and gas utilities furnished to the Leased Premises between October 1, 2018 and March 31, 2019, including but not limited to hook-up charges and assessments. In addition, DAHA shall pay any and all charges for the following utilities furnished to the Leased Premises during the entirety of 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. All utilities servicing the Leased Premises shall be in the name of DAHA, except for electricity, steam, water, sewer and gas utilities. For all utilities in the name of City, DAHA shall promptly reimburse City following receipt of an invoice from City. DAHA shall not receive any credit, offset or reduction in its utility bills based on City’s Community Solar Garden credits.

2. 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 of the Leased Premises, including real property and sales taxes, if applicable. City may pay the same on behalf of DAHA and immediately collect the same from DAHA. DAHA shall collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and shall file all required reports and forms in proper form related thereto on or before their due date.

3. Other Costs of Leased Premises. In addition to the foregoing, DAHA shall bear and promptly pay, on or before the due date, all other costs, fees, and charges of any kind whatsoever arising out of the use or occupancy of the Leased Premises; provided that nothing shall prevent DAHA from contesting in good faith any such payment requirement except as such contest would negatively affect City's rights under this Agreement and except for payments to City.

V. Term and Termination.

A. Term. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on September 1, 2018 and expire on August 31, 2019, 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 and may re-enter the Leased Premises.

3. Immediately By City. City may terminate this Agreement immediately on notice to DAHA and re-enter the Premises if City believes in good faith that the health, welfare, or safety of the Leased Premises, occupants, or neighbors would be placed in immediate jeopardy by the continuation of DAHA's operations.

C. Surrender Possession.

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

as the Leased Premises were in at the time DAHA took possession, reasonable wear and tear excepted. The Leased Premises shall be immediately returned to the control of City.

2. Upon expiration or termination of this Agreement, whichever occurs first, DAHA shall restore the Leased Premises to its original condition at the time of execution of this Agreement, reasonable wear and tear excepted, or, upon demand, pay to City the reasonable costs incurred by City to restore the Leased Premises to its original condition at the time of execution of this Agreement, reasonable wear and tear excepted.

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 Leased Premises. The removed personal property shall remain exclusive property of DAHA. All personal property remaining on the Leased Premises (i) upon expiration of this Agreement, or (ii) fourteen (14) days after early termination of this Agreement, shall become the exclusive property of City.

4. Upon termination or expiration of this Agreement, DAHA waives any and all rights, if any, to relocation benefits under the Uniform Acquisition Assistance and Relocation Act of 1974, as amended, and any laws or regulations promulgated with regard thereto that might arise out of this Agreement.

D. Other Remedies. In addition to the remedies set forth elsewhere in this Agreement, City shall have the following remedies in the event of a default by DAHA:

1. Terminate this Agreement and, in its discretion, retake the Leased Premises.
2. Seek and be entitled to monetary damages, including consequential damages.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent DAHA's violation of the terms and conditions of this Agreement, or to compel DAHA's performance of its obligations under this Agreement.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

E. Remedies Cumulative. Except as may be specifically set forth in this Agreement, the remedies provided under this Agreement shall be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default under this Agreement.

## VI. Maintenance and Operation.

A. DAHA shall maintain the Leased Premises and Parking Area in good order and condition and state of repair, reasonable wear and tear excepted, including but not be limited to the following maintenance activities, all to be performed at DAHA's sole expense:

1. Provide those items required for daily operation and maintenance of the Leased Premises, including but not limited to, interior light bulbs, paper products, plastic products (e.g., garbage bags).
2. Perform minor repairs so as to maintain the Leased Premises in a reasonable state of repair.
3. Provide proper waste disposal and recycling containers on the Leased Premises and remove all litter and other waste from the Leased Premises, the Parking Area and other outdoor spaces.
4. Remove snow and ice and provide appropriate treatment on the Leased Premises, including the Parking Area, sidewalks around the Leased Premises, and all walkways to the Arena and within the Arena to insure the safety of all users.
5. Ensure cleanliness and building shut-down procedures (lights off, doors securely locked, etc.) on a daily basis during the Winter Season following conclusion of programs and events.
6. Undertake routine repair of the electrical and mechanical systems, floors, and ceilings, and replace all glass within the Arena.
7. Operate the Arena's ventilation system on a year-round basis to prevent the formation of mold or other damage to the Arena caused by lack of sufficient air exchange.
8. Keep the Leased 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.
9. Comply with City's verbal and written guidelines and instructions relating to recycling, energy efficiency, and maintenance applicable to the Leased Premises. DAHA may have appliances on the Leased Premises only with the PFM Manager's prior written approval. Any appliance on the Leased Premises must be energy star certified.
10. Maintain its own equipment in a safe, legal, and properly maintained manner. DAHA shall prohibit the use of any unsafe, illegal, or deficient equipment on the Leased Premises.
11. Provide, at DAHA's sole expense, all staff, equipment, and cleaning supplies necessary to carry out the provisions of this Agreement and provide its Services.

B. DAHA shall promptly notify the PFM Manager of proposed major or non-routine repair work needed at the Leased Premises, including any repair work that requires a licensed or skilled tradesperson.

C. DAHA shall follow City's established 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 PFM Manager.

D. DAHA shall provide the PFM Manager with the name(s) and contact information of any on-site supervisors and rink managers responsible for the operation of the programming and supervision of the activities on the Leased Premises. However, DAHA acknowledges and agrees that it is solely responsible to supervise its activities, programs, events and participants.

## VII. City Responsibilities.

A. In City's sole discretion, City shall perform necessary major repairs and non-routine maintenance to the structural and mechanical components of the Leased Premises and the Arena's plumbing and electrical systems. Non-routine maintenance shall be defined as major system replacement or repair items or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset and key changes.

B. City shall pay any and all charges for electricity, steam, water, sewer and gas utilities furnished to the Leased Premises between April 1 and September 31, excluding hook-up charges and assessments, and shall pay for garbage and recycling services for the Leased Premises throughout the entirety of the Term.

## VIII. Alterations or Improvements.

A. DAHA may, at its sole cost and expense, make suitable improvements or alterations to the Leased Premises upon advance written approval from City. This provision includes the delivery, installation, and/or storage of any temporary or permanent containers or structures on the Leased Premises. All improvements or alterations to the Leased Premises (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 required form of Project Proposal Request is attached as Exhibit B. These documents 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.

B. Not less than thirty (30) days prior to commencement of any construction, alteration or improvement on the Leased Premises, DAHA will provide City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by City's Claims Investigator and Adjuster before the commencement of any construction hereunder.

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

IX. Provision Against Liens and Other Encumbrances.

DAHA shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Leased Premises, or any part thereof, provided that if DAHA shall first notify City of its intention to do so and post such security as City reasonably deems necessary, DAHA may, in good faith, contest any such mechanics' or other liens filed or established as long as City does not deem its interest or rights in this Agreement or in the Leased Premises to be subject to foreclosure by reason of such contest.

X. Communications.

A. The parties shall communicate openly and regularly with one another regarding the obligations under this Agreement.

B. The parties will meet before the Winter Season begins and after the Winter Season concludes to jointly inspect the condition of the Leased Premises and, if necessary, to review the terms and conditions of this Agreement.

XI. Insurance and Indemnification.

A. DAHA, at its sole cost and expense, shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than \$2,000,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$2,000,000 for damage liability, including limits of not less than \$100,000 for damage to rented premises (each occurrence). If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. Insurance required by this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products - completed operations. DAHA shall provide Certificates of Insurance to City evidencing the required insurance coverage. The required insurance policies are subject to approval by the City Attorney and shall contain a condition that they may not be cancelled without thirty (30) days' advance written notice to City. The Certificates of Insurance shall name City as an additional insured.

B. City reserves the right to require DAHA to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.



C. City does not represent or guarantee that the types or limits of insurance coverage required by this Agreement are adequate to protect DAHA's interests and liabilities.

D. City shall not be liable to DAHA for any injury or damage resulting from any defect in the construction or condition of the Leased Premises or the Parking Area, nor for any damage that may result from the negligence of any other person whatsoever.

E. DAHA shall be responsible for any losses or damages whatsoever caused by the acts of DAHA, or its employees, agents, participants, volunteers, or invitees. DAHA agrees to indemnify, save harmless, and defend City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damages and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of City or DAHA, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of DAHA, arising out of, related to or associated with the lease, use, maintenance or operation of the Leased Premises or the Parking Area by DAHA or performance of its obligations under this Agreement. Promptly after receipt by City of notice of the commencement of any action with respect to which DAHA is required to indemnify City, City shall notify DAHA in writing of the commencement thereof, and, subject to the provisions of this Agreement, DAHA shall assume the defense of such action, including the employment of counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against DAHA, 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 DAHA. This indemnification provision shall survive expiration or termination of this Agreement for any reason.

## XII. Financials, Reporting, and Records Retention.

A. DAHA shall comply with the Reporting Requirements outlined in Exhibit C attached hereto and incorporated herein by reference.

B. As provided in Minn. Stat. § 16C.05, Subd. 5, all DAHA books, records, documents, accounting procedures and practices related to the operation of the Leased 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 to the Leased Premises during the Term and for six (6) years after termination, cancellation, or expiration of this Agreement.

## XIII. 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 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 & Facilities Manager  
1532 West Michigan Street  
Duluth, MN 55806  
(218) 730-4430

DAHA  
Attn: Executive Director  
120 S. 30th Ave. West  
Duluth, MN 55806  
(218) 728-8000

XIV. Access and Keys.

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

B. The PFM 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 this Agreement.

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

D. DAHA shall provide the PFM Manager with a current list of all key holders to the Leased Premises including contact information. DAHA will update the list whenever there is a change and at any time upon the request of the PFM Manager.

XV. 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 Leased Premises.

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

C. DAHA shall operate the Leased Premises and provide its Services 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 Leased Premises.

XVI. Smoking, Tobacco, & Alcohol Use.

DAHA acknowledges and agrees that there shall be no smoking or use of tobacco, alcohol, or illegal drugs whatsoever on the Leased Premises or as otherwise prohibited by state or local laws.

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 clause by DAHA. If DAHA receives a request to release the data referred to in this clause, 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 PFM Manager in writing of any incident of injury or loss or damage to the Leased Premises or to any of DAHA's participants or invitees occurring within the Leased Premises or the Parking Area 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 form of Incident Report is attached hereto 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. By this Agreement the parties do not create a principle/agent relationship. DAHA will not be deemed as acting as an agent of City nor will it be deemed as acting in an official capacity. DAHA is a tenant of the Leased Premises and shall not represent itself as an agent of City.

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

D. 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.

E. 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.

F. 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.

G. Prior to execution of this Agreement by City, DAHA shall provide evidence that it is an entity legally capable of entering into obligations of a contract and it is a non-profit organization currently in good standing with the Minnesota Secretary of State.

H. 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.

I. 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.

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

K. 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.

L. The terms, covenants and conditions of this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

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

N. 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.

O. The following are the exhibits to this Agreement:

Exhibit A	Depiction of Leased Premises
Exhibit B	Project Proposal Request
Exhibit C	Reporting Requirements
Exhibit D	Incident Report

[Remainder of this page is intentionally left blank.]

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

CITY OF DULUTH

DULUTH AMATEUR HOCKEY  
ASSOCIATION

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

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

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

Printed Name: \_\_\_\_\_

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

Its: \_\_\_\_\_

Countersigned:

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

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

Approved as to form:

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



Printed Date: 10/5/2018

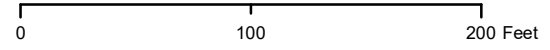
The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used 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 Fryberger Arena

- Leased Premises
- Parking Area
- Parcel



## Exhibit B 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:

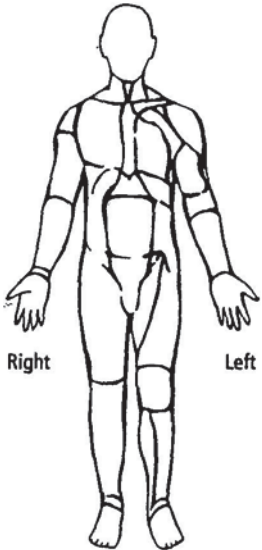
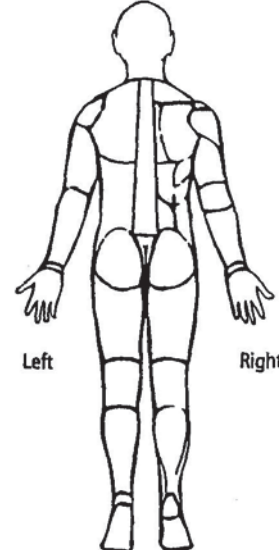
Last name:	First name:	MI:	SSN:
Address:			
City:	State:	Zip code:	Phone:
Date of hire:	Occupation:	Date of birth:	
			Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female

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?		



# Exhibit B 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> <p style="text-align: center;">Areas can be marked by typing an "X" in the text box wherever needed.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><b>Front</b></p>  </div> <div style="text-align: center;"> <p><b>Back</b></p>  </div> </div>
---	---

COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE				
<p><b>For vehicle accidents:</b> 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: \_\_\_\_\_

## **EXHIBIT C REPORTING REQUIREMENTS**

- A. On or before October 1st 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 1st 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 the use of the Leased Premises as the City may request from time to time.



Public Administration Department  
Parks and Recreation Division

City Hall - Ground Floor • 411 West First Street • Duluth, Minnesota • 55802  
218-730-4300 • [www.duluthmn.gov/parks/index.cfm](http://www.duluthmn.gov/parks/index.cfm)



August 7, 2018

Dear Community Partner:

Thank you for your interest in proposing an improvement project for City property. We recognize that working closely with the community is an important way we can fulfill our responsibility to develop long-term strategies, plans and improvements that benefit the greatest number of constituents possible and effectively use limited resources.

Each year there are numerous requests for projects on City property. To better respond to the requests, the City has developed a system that will result in better communications, tracking and processing of project proposals. It establishes Parks and Recreation as the City entity that will: (1) accept and review all submitted parks related Project Proposal Forms; (2) conduct an internal review to determine compatibility with all parks planning documents, industry best practices, and standards set by the Division, (3) pending preliminary approval by parks review staff, forward to appropriate city staff in other divisions, (4) if approved, facilitate the process to project completion. Once your project proposal request is received, staff will initiate the review process, with the intent to provide a response within sixty (60) days.

The intent of this process is to expedite decision making, properly evaluate proposals against existing plans, standards, and uses; clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns. At any point in the process, Parks and Recreation can be contacted to respond to questions or concerns.

In past years, this process has seen a number of projects completed for the betterment of our community, including installation of park benches, playfield renovations and community beautification projects. Proposals may be submitted by individuals and community organizations, as well as City staff.

Please note that acquiring funds for a project through CDBG, a DNR grant, fundraising, donations or other means does not guarantee project acceptability. Any project on City property must also receive recommendation and approval by the appropriate City officials. It is strongly recommended that City approval should occur in advance of, or at least concurrent with, pursuing funding.

If you have any questions, please contact Jessica Schoonover at (218) 730-4325.

Sincerely,

A handwritten signature in cursive script that reads "William Roche".

William Roche  
Parks and Recreation Manager  
City of Duluth  
411 W First Street  
Duluth, MN 55802

Use this form to propose a City of Duluth improvement project on park property. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests. You or your organization will receive a response to the project proposal request within sixty (60) days of submission.

### APPLICANT CONTACT INFORMATION

Date of Application:

Name:

Organization:

Address:

City/State/Zip:

Park Location:

E-mail:

Primary Phone:

Secondary Phone:

IS YOUR PROJECT RELATED TO

**PUBLIC**

-ARTS-

-MEMORIALS-

-MONUMENTS-



IF SO, YOUR PROPOSAL WILL BE  
SHARED WITH THE DULUTH PUBLIC  
ARTS COMMISSION FOR REVIEW.

### PROJECT PROPOSAL

Use additional sheets if more space is needed.

### PROJECT LOCATION

Describe as best as possible the location of the proposed project. Give the park name, location within park, and GPS coordinates. If the project is City-wide, please state "City-wide."

### PROJECT DESCRIPTION

Describe the proposed project in as much detail as possible. Why is the project needed and necessary? What do you propose doing? Maps, sketches, diagrams, and/or schematic drawings are required so those reviewing the proposal have a better understanding of your project. These may include location, sizes, wording, colors, etc. **Please attach any additional information about this project.**

Attached

Not Applicable

### PROJECT JUSTIFICATION

Describe the benefit of the proposed project. Is it a safety issue? Will it provide cost savings to the City? Is it a functional improvement? Does it provide aesthetic benefit to the park?

**PROJECT COST**

*Describe the approximate cost to complete the project. This can be a “guesstimate.” This is only considered to be a rough guideline.*

**POTENTIAL SOURCE OF FUNDING**

*Describe potential funding sources for the project.*

**NEIGHBOR SUPPORT**

*Does this project have the support of neighbors living nearby?*

Yes    No    Uncertain    Not Applicable

*Comments:*

**ENERGY USE**

*Will this project change the use of any energy type listed below?*

Yes    No    Uncertain    Not Applicable

*If yes, check all energy types where use is expected to change.*

ELECTRICITY (kWh)    GAS (Therms)    OIL (gallons)    STEAM (Pounds)    WATER and SEWER (CCF)

**ADDITIONAL CONSIDERATIONS**

The City of Duluth considers our long-term strategies, Master Plans, Accessibility Plan and Capital Improvement list, as well as legal requirements, in evaluating proposals. Please review the considerations below and add any comments you have.

**CONSIDERATION (A):** Project is compatible with Park Master Plan, systems plans, Strategic Plans, etc.

**COMMENT (A):**

**CONSIDERATION (B):** Project is compliant with ADA Accessibility Plans.

**COMMENT (B):**



**CONSIDERATION (C):** Project is compatible with surrounding and adjoining uses.

**COMMENT (C):**

**CONSIDERATION (D):** Project will meet standards for materials and construction practices.

**COMMENT (D):**

**CONSIDERATION (E):** Project complies with zoning code and land uses.

**COMMENT (E):**

**CONSIDERATION (F):** Project does or does not require a permit.

**COMMENT (F):**

**CONSIDERATION (G):** Increases cost to maintain or operate. *(Note: If this is the case, and the project is approved, it may need to be incorporated into the Capital Improvement Plan and be approved by City Council.)*

**COMMENT (G):**

**SUBMIT COMPLETED FORMS to:**

**JESSICA SCHOONOVER  
ADMINISTRATIVE CLERICAL SPECIALIST  
CITY OF DULUTH  
PARKS AND RECREATION  
411 WEST FIRST STREET  
DULUTH, MN 55802  
[projectproposal@duluthmn.gov](mailto:projectproposal@duluthmn.gov)  
(218) 730-4325**