

# EXHIBIT 1

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

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

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

WHEREAS, the City implemented a publicly vetted mini-master plan for the Recreation Center that produced conceptual plans for the re-investment and development of the Recreation Center (the “Mini Master Plan”).

WHEREAS, the Alliance, under a separate agreement, previously completed approximately 80% of the Mini Master Plan.

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

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

### I. ADMINISTRATION.

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

### II. TERM.

Notwithstanding the date of execution, this Agreement shall be deemed to commence on August 1, 2020, and shall expire at the end of the day on December 31, 2025, unless terminated earlier as set forth herein (the “Term”).

### III. GRANT OF RIGHTS.

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

B. Subject to the terms and conditions of this Agreement, the City grants to the Alliance the exclusive right to use the Building and the Storage Shed, at no charge, for community-related purposes. The Alliance's use of the Building must be during the council-approved hours of operation for the Recreation Center.

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

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

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

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

### IV. USAGE FEES.

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

### V. THE ALLIANCE'S RESPONSIBILITIES.

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

1. Provide all staff, equipment, and cleaning supplies necessary to carry out the provisions of this Agreement. Provide janitorial services for the Building and provide those items required for daily use, operation and maintenance of the Building, including but not limited to, cleaning supplies, interior light bulbs, paper products, plastic products (e.g., garbage bags). The Alliance shall stock or replace all paper and other supplies within the Building on a regular basis.
2. Pay for all utilities and services to the Building, the Sign (defined below) and, as applicable, the Storage Shed, including but not limited to electric, heating, water, sewer, and garbage/recycling pick-up.
3. Provide proper waste disposal and recycling containers and deposit all litter and other waste from the Building into outdoor garbage and recycling containers and arrange for removal by garbage and recycling hauling providers.
4. Remove snow and ice and provide appropriate anti-slip treatment on all steps, sidewalks, and walkways servicing the Building to ensure the safety of all users.
5. Ensure cleanliness and building shut-down procedures (lights off, doors securely locked, etc.) on a daily basis following conclusion of programs and events.
6. Maintain and replace, as necessary, all elements of the Building, the Storage Shed and any other improvements to the Recreation Center, in good, functional condition including but not limited to, heating systems, electrical systems, plumbing systems, drains, sanitary sewer system, doors, floors, ceilings and windows and shall repair or replace any such building systems or elements which become worn, damaged or broken, unless the PFM Manager determines, in their sole discretion and in writing, that such repair or replacement is unnecessary and waives this requirement for the system or element in question.
7. Keep the Building and the Storage Shed free from rodents, insects, and other pests. The City may require the Alliance to contract with a pest exterminating contractor to exterminate as may be necessary and as may be directed by the City. The sole cost and expense of this service shall be the responsibility and obligation of the Alliance. It is further agreed that the City may pay a pest exterminating contractor on behalf of the Alliance and immediately collect the same from the Alliance, or reduce any amount owed to the Alliance by the City pursuant to this Agreement.
8. Comply with the City's written guidelines and instructions relating to recycling, energy efficiency, and maintenance applicable to the Building and the Storage Shed, which written guidelines and instructions may be electronically provided by the City. The Alliance may have appliances in the Building or the Storage Shed only with the PFM Manager's prior written approval. All appliances installed in the Building or the Storage Shed after the start date of the Term must be energy star certified.
9. Maintain its own equipment in a safe, legal, and properly maintained manner. The Alliance shall prohibit the use of any unsafe, illegal, or deficient equipment within the Building and the Storage Shed.

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

11. Comply with the Operation Plan (defined below).

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

1. Scheduling recreational and community events and programs for the Rental Space (each an "Event"). The Alliance may rent any portion of the Rental Space to private groups, clubs or parties for an Event and may, at its discretion, charge a rental fee and collect a deposit. The rental fee and deposit for an Event shall be comparable to rental prices charged under similar circumstances. A schedule of rental fees shall be created by the Alliance and submitted to the City's Manager of Parks and Recreation (the "Parks Manager") for approval prior to becoming effective, which approval shall not be unreasonably withheld or delayed. The Alliance shall have the right to retain all rental fees. All rentals of the Rental Space shall be documented by a written rental agreement, which form of rental agreement shall be subject to the approval of the City Attorney prior to its use by the Alliance.

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

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

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

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

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

C. The Alliance shall promptly notify the PFM Manager of proposed major or non-routine repair work needed at the Recreation Center, including any repair work that requires a licensed or skilled tradesperson. In the event the Alliance desires to complete any major or non-routine repair work at its own expense, it may do so only with the prior written permission

(which may be transmitted electronically) of the PFM Manager, and then in accordance with the terms and conditions set forth by the PFM Manager.

D. The Alliance shall follow the 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. The Alliance shall immediately report any safety or security issues or concerns to the City's Police Department and the PFM Manager.

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

F. The Alliance has previously installed an electronic sign on the Land in the location identified on Exhibit A (the "Sign"). The Sign must comply with all applicable laws and regulations. The Alliance must use the Sign to display the City's messages as requested by the City from time to time. In the event that the Alliance abandons or discontinues its use of the Recreation Center for any reason, including termination or expiration of this Agreement, the City may, in its sole discretion, require that the Alliance remove the Sign from the Land. In the event the Alliance fails to do so within 30 days of written notice from the City, the City may remove the Sign on behalf of the Alliance and immediately collect the cost of the removal and disposal of the Sign from the Alliance, or reduce any amount owed to the Alliance by the City pursuant to this Agreement.

G. No exterior signage may be installed by the Alliance within the Recreation Center or the Soccer Fields until a request for approval of signage installation has been submitted to the Parks Manager and approved through the City's Commemorative Naming Policy. The Alliance shall wait for signage approval prior to fabrication of signage. Subject to the foregoing, the Alliance may seek naming rights for the Sport Courts, the Soccer Fields and the future skateboard park. Approved signage must either (in the Parks Manager's sole discretion): (i) adhere to the City's Gate, Wayfinding, and Signage Design Plan, as amended from time to time, or (ii) be consistent with existing sign design at the Recreation Center. Notwithstanding the foregoing, the City reserves the right to install its own signage within the Recreation Center. The Alliance may not sell or install advertising banners within the Soccer Fields, but may seek the City's approval to install advertising banners within the Recreation Center pursuant to the terms and conditions set forth in this paragraph. All advertising banners must be temporary in nature and are subject to the approval of the Parks Manager, including as to size, content and location within the Recreation Center, which approval shall not be unreasonably withheld. The Alliance shall: (i) be entitled to revenues generated by the sale of advertising via advertising banners hung within the Recreation Center, and (ii) ensure that all advertising banners comply with all applicable codes and laws. Tobacco products may not be advertised at the Recreation Center. 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 Recreation Center.

H. Notwithstanding the start date of the Term, the Alliance shall submit a safety and operations plan (the “Operation Plan”) to the Parks Manager for approval prior to re-opening the Recreation Center (which has been closed due to the COVID-19 pandemic), which plan shall outline specific processes and procedures to ensure the health, safety, and welfare of all users of the Recreation Center, including but not limited to cleaning and sanitization of the Recreation Center. The Operation Plan shall be updated from time to time during the Term at the request of the City.

I. The Alliance may fly the following flags on the flag poles installed at the Recreation Center: United States of American flag, State of Minnesota flag, City of Duluth flag and POW/MIA flag. With the prior written permission of the PFM Manager (which may be granted via email communication), additional flags may be flown from time to time. All flags must be flown in accordance with all applicable regulations and laws, including but not limited to U.S.C. Title 4, Chapter 1 and upon proclamation or executive order made by the President of the United State of America and/or the Governor of the State of Minnesota.

## VI. CITY’S RESPONSIBILITIES.

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

B. In the event that a parking lot is constructed on 101<sup>st</sup> Avenue West across from the Building, the City will plow it in accordance with its Snow and Ice Control Policy, as amended from time to time, which policy depends on work force and equipment availability.

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

D. The City will contract for the following utilities and services to the Building, the Sign and, as applicable, the Storage Shed: electric, heating, water, and sewer (collectively, the “City’s Contracted Utilities”). The City shall bill the Alliance for the costs of the City’s Contracted Utilities on a quarterly basis, subject to the following:

1. The Alliance shall not be responsible to pay for: (i) the electrical costs to the Outdoor Space, except for the electrical cost of the Sign, or (ii) water within the Outdoor Space. The City has or will install an e-gauge energy monitor that measures the amount of electricity used in the Outdoor Space (except the Sign) and will subtract the cost of that electricity from the Alliance’s electricity bill.

2. The Alliance shall pay \$58.08 per month for the costs of water service, subject to an annual 4% increase each year during the Term.

VII. TERMINATION OR EXPIRATION OF AGREEMENT.

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

B. For Cause. The City may terminate this Agreement for the material breach by the Alliance of any provision of this Agreement if such breach is not cured to the satisfaction of the City within fourteen (14) days of delivery to the Alliance of a written notice by the City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach. If the Alliance fails to cure the breach as required by the notice prior to the expiration of the fourteen (14) day notice, this Agreement shall automatically terminate.

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

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

E. Surrender Possession.

1. Upon termination or expiration of this Agreement, whichever occurs first, the Alliance shall surrender possession of the Recreation Center to the City in as good condition and state of repair as the Recreation Center was in at the time the Alliance took possession, normal wear and tear excepted. Prior to the termination or expiration of this Agreement, the Alliance shall restore the Recreation Center to its original condition at the time of execution of this Agreement, or, upon demand, pay to the City the reasonable costs incurred by the City to restore the Recreation Center as required by this Agreement.

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

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

VIII. ACCESS.

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

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

C. The Alliance is allowed a maximum of three keys for the Building. The Alliance shall not make copies of the Recreation Center's keys. All keys shall be promptly returned to the PFM Manager upon termination or expiration of this Agreement.

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

#### IX. INSURANCE.

A. The Alliance, at its sole cost and expense, shall procure and maintain continuously in force Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$1,500,000 for property damage liability, including limits of not less than \$100,000 for damage to rented premises (each occurrence). Insurance required in 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. Each year of the Term (or more frequently as reasonably requested by the City), the Alliance shall provide the City with Certificates of Insurance evidencing the required insurance coverage. The required insurance policies are subject to approval by the City Attorney, shall name the City as an additional insured and shall provide for at least 30 days' written notice to the City prior to the cancellation or modification of the policy. The Alliance shall provide copies of all insurance policies required by this Agreement within 10 days of the City's written request. The City reserves the right to require the Alliance 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.

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

C. The City shall not be liable to the Alliance for any injury or damage resulting from any defect in the construction or condition of the Recreation Center nor for any damage that may result from the negligence of any other person whatsoever.



X. HOLD HARMLESS AND INDEMNIFICATION.

The Alliance shall be responsible for any losses or damages whatsoever caused by the acts of the Alliance, or its employees, agents, participants, volunteers, or invitees. The Alliance agrees to indemnify, save harmless, and defend the 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 the City or the Alliance, 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 the Alliance, arising out of, related to or associated with the lease, use, maintenance or operation of the Recreation Center by the Alliance or performance of its obligations under this Agreement. Promptly after receipt by the City of notice of the commencement of any action with respect to which the Alliance is required to indemnify the City, the City shall notify the Alliance in writing of the commencement thereof, and, subject to the provisions of this Agreement, the Alliance shall assume the defense of such action, including the employment of counsel satisfactory to the City and the payment of expenses. In so far as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against the Alliance, 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 Alliance. This indemnification provision shall survive expiration or termination of this Agreement for any reason.

XI. 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 the Alliance or its members or employees as agents, representatives or employees 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.

B. The Alliance'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 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 Alliance 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.

XII. REPORTING AND RECORDS RETENTION.

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

B. Records Retention. The Alliance acknowledges that, as provided in Minn. Stat. § 16C.05, Subd. 5, all of the Alliance's books, records, documents, and accounting procedures and

practices related to the use and maintenance of the Recreation Center are subject to examination by the City and the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance written notice by the City, the Alliance shall provide all requested books, records, documents, and accounting procedures and practices related to the use and maintenance of the Recreation Center. The Alliance shall maintain all of its records relating to this Agreement and the Recreation Center during the Term and for six (6) years after the termination or expiration of this Agreement.

XIII. GOVERNMENT DATA PRACTICES.

The Alliance shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the Alliance under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Alliance. If the Alliance receives a request to release the data referred to in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, the Alliance must immediately notify the City and consult with the City as to how the Alliance should respond to the request. The Alliance agrees to hold the City, its officers, and employees harmless from any claims resulting from the Alliance's unlawful disclosure or use of data protected under state and federal laws.

XIV. NOTICES.

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

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

GND Development Alliance  
Attn: Mr. Mark Boben  
2630 West Superior Street  
Duluth, MN 55806  
(218) 355-1349  
[gnddevelopmentalalliance@gmail.com](mailto:gnddevelopmentalalliance@gmail.com)

XV. TAXES.

The Alliance shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of the Alliance's use of the Recreation Center, including real property and sales taxes, if applicable. The City may pay the same on behalf of the Alliance and immediately collect the same from the Alliance. The Alliance shall collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

XVI. ALTERATIONS AND IMPROVEMENTS

A. The Alliance may, at its sole cost and expense, make suitable improvements or alterations to the Recreation Center only with the advance written approval of the PFM Manager, in their sole discretion (including improvements or alterations pursuant to the Mini-Master Plan). This provision includes the delivery, installation, and/or storage of any temporary or permanent containers or structures on the Recreation Center. All improvements and alterations to the Recreation Center shall become the property of the City. Prior to commencing any improvements or alterations (except for improvements and alterations pursuant to the Mini-Master Plan), the Alliance shall submit to the City a project proposal request along with detailed plans in the form required by the City. A copy of the City's current form of Project Proposal Request is attached to this Agreement as Exhibit C. The Project Proposal Request shall be submitted to the City at least sixty (60) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to all applicable laws.

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

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

XVII. COMPLIANCE WITH LAWS.

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

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

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

XVIII. ALCOHOL, TOBACCO, AND DRUG USE.

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

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

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

D. There shall be no smoking or use of tobacco products or illegal drugs whatsoever at the Recreation Center or as otherwise prohibited by state or local laws.

**XIX. INCIDENT REPORTS.**

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

**XX. GENERAL TERMS AND CONDITIONS.**

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

B. The Alliance shall not assign or transfer any rights or obligations under this Agreement, except that the Alliance may subcontract its management responsibilities for the Rental Space under paragraph V.B. above to the Duluth Area Family Y.M.C.A., a Minnesota non-profit corporation (the "YMCA") after the prior written approval by the PFM Manager of a written agreement between the Alliance and the YMCA. The Alliance shall require the YMCA to abide by all insurance and indemnification provisions set forth in this Agreement.

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

D. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

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

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

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

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

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

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

K. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

*[Remainder of this page is intentionally left blank.]*

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

CITY OF DULUTH

GND DEVELOPMENT ALLIANCE

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

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

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

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

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

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

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

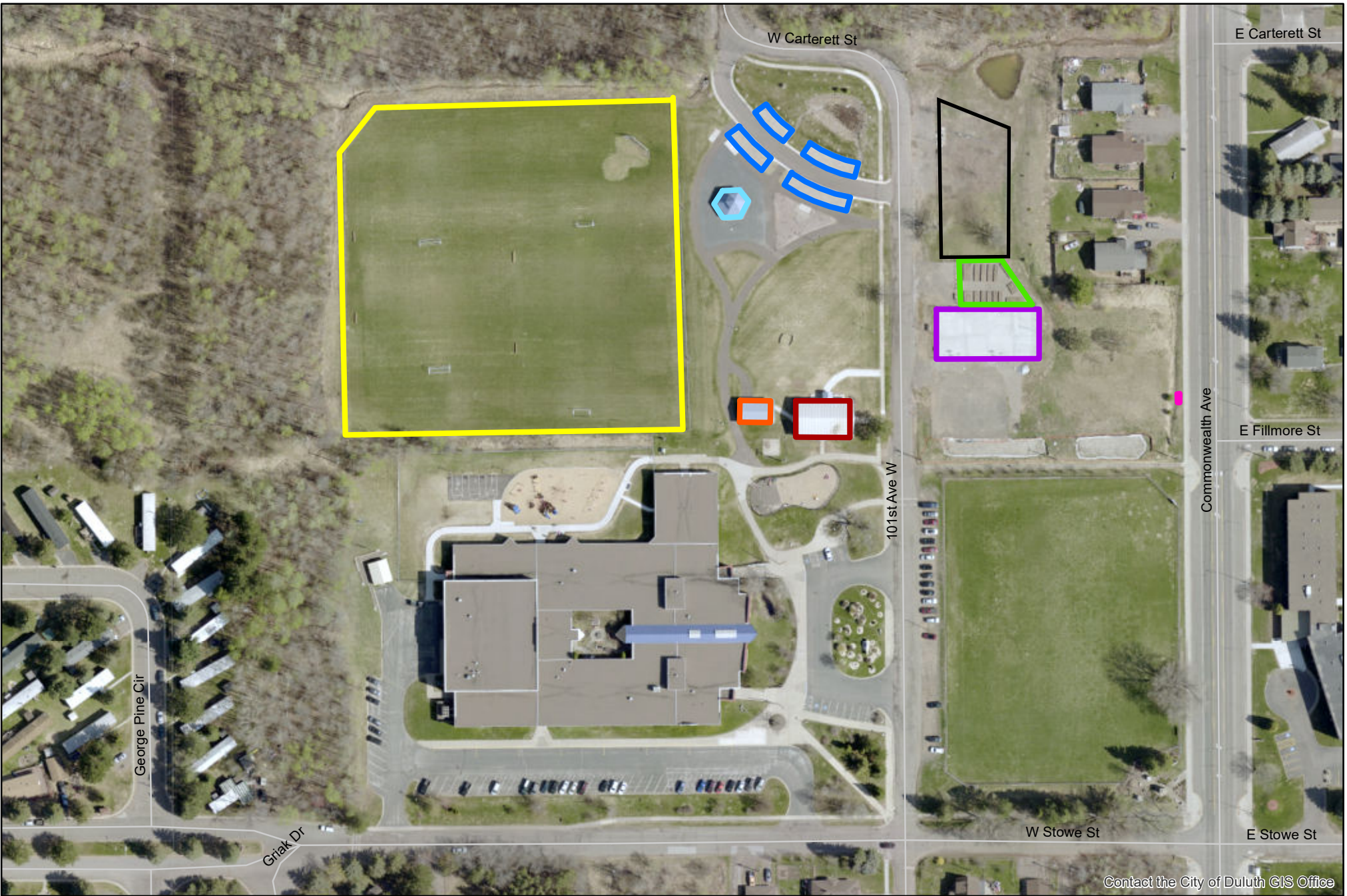
Countersigned:

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

Approved as to form:

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

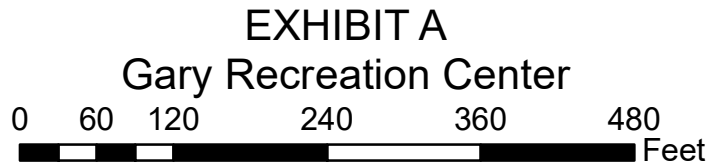




Contact the City of Duluth GIS Office



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



## **EXHIBIT B**

### **REPORTING REQUIREMENTS**

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





## EXHIBIT C

### 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)



April 9, 2019

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,

Jessica Peterson  
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. **Please submit completed form, along with attached map to: projectproposal@duluthmn.gov.**

**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

## 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).

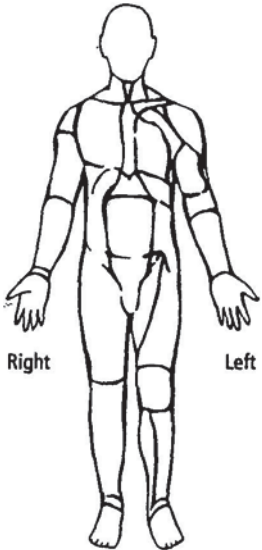
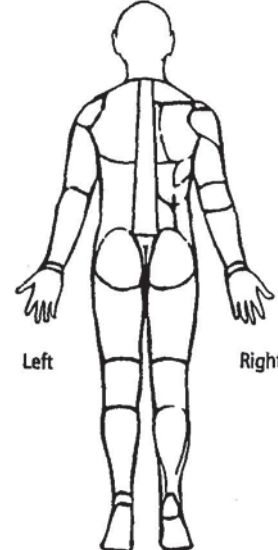
Date of incident/injury:	<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	Department/Division:
Choose one that best describes this claim: <input type="checkbox"/> Incident only, no medical care <input type="checkbox"/> Medical only, no lost time <input type="checkbox"/> Injury 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> <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>
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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: \_\_\_\_\_