

**QUARRY PARK ICE FARMING
DEVELOPMENT AND OPERATION AGREEMENT
BETWEEN THE CITY OF DULUTH
AND DULUTH CLIMBERS COALITION
FIRST AMENDMENT**

THIS FIRST AMENDMENT (the “Amendment”), effective as of the date of attestation thereto by the city clerk (“Effective Date”) is entered into by and between the CITY OF DULUTH, a Minnesota municipal corporation (the “City”), and the Duluth Ice Climbers Coalition, a Minnesota non-profit corporation (“DCC”). The City and DCC shall collectively be referred to as the “Parties.”

WHEREAS, on May 1, 2020, City and DCC entered into a development and operation agreement (the “Agreement”), attached as Exhibit A, in which City and DCC agreed to jointly construct an Ice Farming system, including necessary infrastructure, at Quarry Park; and

WHEREAS, the Agreement specified ownership rights and duties and operations rights and duties for each of the Parties; and

WHEREAS, the Agreement may, by its terms, be amended by written agreement and upon approval by resolution of city council; and

WHEREAS, the Term of the Agreement is currently set to expire on May 31, 2023; and

WHEREAS, both of the Parties desire to extend the Term for an additional three (3) years and neither of the Parties is in default of any obligation under the Agreement; and

WHEREAS, City’s engineers and DCC have both taken steps to upgrade infrastructure and equipment, rendering an existing Ice Farming time constraint in the Agreement unnecessary.

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

1. Article II, Term, is hereby amended as follows:

Notwithstanding the date of execution, this Agreement shall be deemed to commence on May 1, 2020, and shall expire at the end of the day on May 31, 2026, ~~May 31, 2023~~, unless terminated earlier as set forth herein (the “Term”).

2. Section D. 1. of Article VI, Development of Cycles, is hereby amended as follows:

Each Cycle will typically take around eight hours to complete, ~~and mostly occur at night when there are no Quarry Park visitors present. There may be a necessity to perform Ice Farming during the daytime, however DCC shall make its best efforts to perform Ice Farming at night.~~

3. This Amendment 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 Amendment 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 Amendment, shall have the same effect as physical delivery of the paper document bearing the original signature.
4. Except as provided in this Amendment, all terms and conditions of the Agreement shall remain in force and effect.

CITY OF DULUTH

By:

Mayor

Attest:

City Clerk

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

DULUTH CLIMBERS COALITION

By:

Company Representative

Its:

Title of Representative

Date: