

**DULUTH TRACK WHEELCHAIR MANAGEMENT AGREEMENT
BETWEEN
THE CITY OF DULUTH
AND
HARTLEY NATURE CENTER CORPORATION**

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 Hartley Nature Center Corporation, a Minnesota nonprofit corporation (“HNC”). The City and HNC are hereinafter referred to as a “Party” or collectively as the “Parties.”

WHEREAS, the City is the owner of certain real estate and related facilities located at 3001 Woodland Avenue, Duluth, MN 55803, and known as Hartley Park.

WHEREAS, HNC has an existing Lease Agreement with the City, City contract number 19253, for exclusive use and lease of a portion of the land and the building at Hartley Park where HNC provides environmental education programming and recreational equipment.

WHEREAS, the City owns a track power wheelchair (the “Trackchair”) and wishes to coordinate with HNC to make the Trackchair available for use by individuals free of cost at Hartley Park, or by transportation off site by an authorized partner organization or the City of Duluth Parks and Recreation Staff.

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

1. ADMINISTRATION

For purposes of administering this Agreement, the City shall act through its Manager of Parks and Recreation, or their designee, and HNC shall act through its Executive Director, or their designee.

2. TERM AND TERMINATION

This Agreement is effective upon the date of attestation by the City Clerk and shall expire on June 30, 2029. Either Party may terminate this Agreement upon 30 days’ written notice.

3. HNC RESPONSIBILITIES

- a. HNC shall ensure the Trackchair is stored securely in the interior of the building in a location where it can be charged and readily available for users.
- b. The Trackchair will be available when HNC is open to the public, which is typically between 9:00 a.m. – 4:00 p.m. Monday through Friday. Hours may vary seasonally and HNC will update the reservation system with known closures as needed. If an unanticipated closure occurs, HNC will utilize the online registration system to communicate any necessary reservation cancellations to users.

- c. HNC shall provide City staff with an option for afterhours returns if needed due to the timing of Parks and Recreation programming.
- d. HNC shall facilitate the reservation process by making it available to users or partner organizations and providing an introduction to the Trackchair's controls. The City shall provide information about the Trackchair operation to users and partner organizations during the reservation process. HNC shall ensure its staff and volunteers that facilitate the reservation process understand the safe operation of the Trackchair and can provide necessary instruction on its operation to users.
- e. HNC shall ensure a waiver has been completed by any user of the Trackchair prior to their use, such as through a confirmed reservation and/or the list of approved user group(s). If a user requests use of the Trackchair without a prior reservation, HNC staff shall provide the user with the waiver and/or inform them of the reservation process. Waivers that are not completed through the online reservation system shall be retained by HNC and provided to the City upon request.
- f. HNC will be the primary contact for users for the duration of their reservation. The phone number for HNC will be affixed to the Trackchair. If the Trackchair gets stuck or ceases operation, users will be directed to contact emergency services and notify HNC staff for support. HNC staff will coordinate with the City to request Trackchair retrieval.
- g. When the Trackchair is returned after use, HNC shall perform a visual inspection to ensure it is clean, is in good condition, and is plugged in and charging properly. If the Trackchair is returned by a user with dirt or debris on the equipment, HNC staff shall clean it.
- h. HNC shall perform periodic inspections of the Trackchair, including operating the controls and comfort adjustments, and visually inspecting the condition of the seat, seatbelt, tracks, and batteries. If there are any problems identified during an inspection or otherwise reported to HNC that affects the Trackchair's operation, HNC shall communicate the problems to the City in a timely manner.
- i. HNC shall inform groups or organizations attending HNC educational programming of the Trackchair's availability. If an attendee requests use of the Trackchair, HNC shall provide the requestor with information about the reservation process.

4. CITY RESPONSIBILITIES

- a. The City shall be responsible for any maintenance needs associated with the Trackchair including replacement of damaged parts or supportive components, and replacement of batteries or components that reach the end of their useful life. All costs associated with the Trackchair maintenance will be the sole responsibility of the City, except those caused by HNC's intentional or negligent damage of the Trackchair, damage resulting from HNC's failure to follow manufacturer instructions, or HNC's failure to store the Trackchair in accordance with the terms of this Agreement.

- b. The City shall provide a web-based reservation system for users and partner organizations to make reservations for use of the Trackchair. The reservation process shall include a waiver of liability that the users will be required to sign, and the waiver will incorporate both the City and HNC. The City shall provide HNC with access to the reservation system to ensure HNC staff are able to see information about the reservations including when the Trackchair has been reserved, the name of the user, and status of waiver completion.
- c. The City shall manage the reservation process and coordinate with HNC, partner organizations, Duluth Parks and Recreation programming staff, and any Greater Minnesota Regional Parks and Trails Commission facilities that borrow the Trackchair or use it for their respective programs. Coordination will include ensuring that the reservation calendar is up to date and availability is accurately conveyed.
- d. If the Trackchair ceases to function while a user is out on the trails at Hartley, HNC staff will coordinate with the City for assistance retrieving the chair. Response times will vary based on City staff workloads. The City will be responsible for securing necessary user group agreements with partner organizations and maintaining necessary documentation. The City will provide HNC with a list of approved user groups that have successfully completed the agreement process and are permitted to remove the Trackchair from the Hartley Park premises.

5. INDEPENDENT RELATIONSHIP

This Agreement is not intended nor should it be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures, or associates between the parties hereto or as constituting HNC as the employee of the City for any purpose or in any manner.

6. NOTICES

Unless otherwise provided herein, notice to City or HNC 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: Parks and Recreation Manager
411 West First Street, Ground Floor
Duluth, Minnesota 55802
(218) 730-4300

Hartley Nature Center
Attn: Executive Director
3001 Woodland Avenue
Duluth, Minnesota 55803
(218) 724-6735

7. THIRD PARTY CLAIMS

Each party will be responsible for its own acts and behavior and the results thereof. If any claim or cause of action is asserted against a party in connection with the performance of this Agreement, that party will promptly notify the other party of the claim or cause of action. The parties will reasonably cooperate with each other in the defense of claims and causes of action arising out of the performance of this Agreement. The liability of the City is limited to the extent set forth in Minnesota Statutes Chapter 466.

8. INSURANCE

- a. HNC shall comply with the following insurance obligations and shall provide the minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota and comply:
 - i. Workers' compensation insurance in accordance with the laws of the State of Minnesota;
 - ii. Commercial General and Automobile Liability Insurance with limits not less than \$1,000,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provision may be utilized to meet the required minimum amount states above. Such insurance shall indemnify HNC and City from all liability described in the Indemnification paragraphs above;
 - iii. City of Duluth shall always be named as Additional Insured under the Commercial General and Automobile Liability Policies;
 - iv. HNC to provide Certificate of Insurance evidencing all coverages required above. Such Certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than 30 days prior to any cancellation, or 10 days prior to any non-renewal of the policy or coverages evidenced by said certificate, and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect HNC, its employees, agents, and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by HNC, its employees, agents, and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that HNC is carrying the above-described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- d. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect HNC's interest and liabilities. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

9. ASSIGNMENT

The Parties shall not assign or transfer any right or obligation under this Agreement without the prior written approval of the other party.

10. DATA PRACTICES

All data collected, created, received, maintained, or disseminated for any purpose by the Parties because of this Agreement is governed by the Minnesota Government Data Practices Act.

11. CIVIL RIGHTS COVENANT OF CONTRACTOR

No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, or disability shall be excluded from any participation in, denied any benefits of, or otherwise subject to discrimination with regard to work to be done pursuant to this Agreement. This Agreement shall be conducted in compliance with the Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

12. AMERICANS WITH DISABILITIES ACT

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., HNC understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this Agreement, HNC agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the City of Duluth through contracts with outside contractors.
- b. HNC shall be responsible for and agrees to indemnify and hold harmless the City of Duluth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the City as a result of HNC’s failure to comply with the provisions of subparagraph a. above.

13. CHOICE OF LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located in St. Louis County.

14. ENTIRE AGREEMENT AND AMENDMENT

This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

15. SEVERABILITY

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

16. COUNTERPARTS

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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY OF DULUTH

HARTLEY NATURE CENTER
CORPORATION

By: _____
City Administrator with delegated authority

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Dated: _____

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney