

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

11-0477R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH NEIGHBORS OF LOWER CHESTER PARK, A MINNESOTA NON-PROFIT, FOR THE OPERATION OF THE LOWER CHESTER COMMUNITY RECREATION AREA.

CITY PROPOSAL:

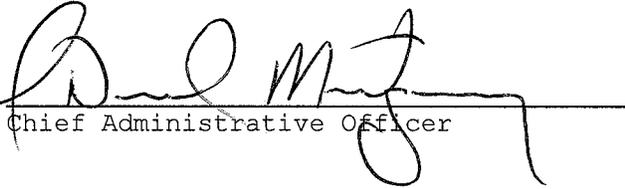
RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Neighbors of Lower Chester Park, a Minnesota non-profit, for the operation of the Lower Chester Community Recreation Area.

Approved:



Department Director

Approved for presentation to council:



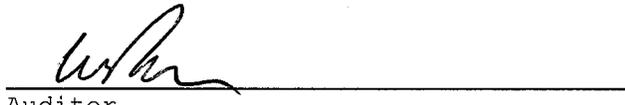
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS/TTY TLL:dma 09/06/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and Neighbors of Lower Chester Park ("NOLCP"), a newly formed Minnesota non-profit corporation, that will take over the operation and management of the Lower Chester Community Recreation Area. Under the terms of the agreement, NOLCP will operate and manage the Lower Chester Community Recreation Area at 15th Avenue East and 5th Street for recreational and community advancement programs, coordinate use of the building by other community-based groups and for occasional private rentals. The City will provide the building facility and adjoining grounds at no cost in exchange for year-round operation and maintenance.

AGREEMENT BETWEEN THE CITY OF DULUTH AND THE NEIGHBORS OF LOWER CHESTER PARK

THIS AGREEMENT, made and entered into this ____ day of _____, 2011, is by and between the **CITY OF DULUTH**, a municipal corporation under the laws of the State of Minnesota (hereinafter "City") and the **Neighbors of Lower Chester Park**, a Minnesota non-profit corporation (hereinafter "NOLCP"), collectively referred to as the "Parties". In consideration of the mutual covenants and conditions hereinafter contained, the Parties agree as follows:

I. Purpose

1.1 The City owns the Lower Chester Community Recreation Area together with the center building, various fixtures and personal property contained therein, located at 15th Avenue East and 5th Street, City of Duluth, St. Louis County, Minnesota (hereinafter the "premises"). Exhibit A is a map of the premises. The Parties agree that NOLCP shall have the right to operate, manage and use the Lower Chester Community Recreation Area for recreational and community advancement purposes as set forth herein.

II. Term

2.1 This Agreement shall be for a term of one year commencing September 15, 2011 and ending September 14, 2012 and shall thereafter automatically be renewed for successive one year (1) periods, unless earlier terminated as provided herein.

III. Maintenance and Operation

3.1 The City makes no warranty, either express or implied, that the premises or equipment thereon are suitable for any purpose and NOLCP takes and occupies the premises "as is."

3.2 NOLCP shall be responsible for daily routine cleaning of the premises and placing trash into the on-site dumpster. NOLCP shall provide, at its expense, all staff, equipment and cleaning supplies necessary to carry out this provision.

3.3 NOLCP shall be responsible for and provide, at its expense, those items required for daily operation and maintenance of the premises, including but not limited to, interior light bulbs, paper products, plastic products (e.g., garbage bags), program equipment and supplies, minor repairs, etc. so as to maintain the premises in a reasonable state of repair.

3.4 NOLCP shall be responsible for wireless internet service and any telephone lines and telephones over and above the single service telephone line provided by the City per paragraph 3.6.

3.5 The City shall be responsible for major repairs to the premises and equipment, including any repair work that requires a licensed or skilled trades person. If major repair work is required, NOLCP shall promptly provide sufficient written notice to the City so that the City can make the necessary repairs or arrange for a service provider of its choice to make the repairs.

3.6 The City shall be responsible for the following utilities and services: electric, heat, water and sewer, garbage pick-up and service for one telephone line.

3.7 NOLCP shall be responsible for snow removal (including the parking lot and the sidewalks) in a timely manner and in accordance with the Duluth City Code. NOLCP shall be responsible for mowing the grass.

3.8 NOLCP shall be solely responsible for managing the use of the premises to include scheduling recreational and community events and programs. NOLCP shall be solely responsible for overseeing and supervising such events and programs. NOLCP agrees that, subject to availability, it shall allow use of the premises by community-based groups and the City at no charge.

3.9 NOLCP may rent any portion of the premises to private groups, clubs or parties and may, at its discretion, charge a rental fee. NOLCP shall collect the rental fees hereunder and shall deposit them into a separate account and use the monies as set forth in paragraph 6.1 of this Agreement. NOLCP shall be solely responsible for overseeing and supervising these rentals and all user groups (including guests, invitees and agents thereof) of the premises and shall be responsible for ensuring compliance with all rules and laws.

IV. Alterations and Improvements

4.1 NOLCP may make suitable improvements or alterations to the premises upon advance written approval from the City. All such improvements shall become the property of the City. Prior to commencing any improvements or alterations, NOLCP shall submit to the City a Project Proposal Request along with detailed plans. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. NOLCP shall be solely responsible for the cost of such improvements or alterations. 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 Codes.

4.2 NOLCP agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said premises, NOLCP will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by the City Attorney before the commencement of any construction hereunder.

V. Alcohol

5.1 The possession, use or sale of alcohol is permitted on the premises only under the following conditions:

- * Alcohol may be possessed, consumed or served only when the appropriate permit or license has been obtained from the City prior to the event and all application, fee and other requirements have been met.
- * Alcohol may be sold 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.

- * At least thirty (30) day's written notice of a request to serve or sell alcohol shall be provided to the City before the event to give the City sufficient time to review the request. Requests that are not timely submitted may be denied.
- * NOLCP must have adequate procedures in place to ensure that no one under the age of twenty-one (21) is served alcohol and to ensure that no one is served alcohol in an amount to cause intoxication.
- * Depending on the request, licensed peace officer(s) may be required to attend the event.
- * All state laws and Duluth City Code provisions shall be followed at all times.
- * The City reserves the right to prohibit the serving, sale or possession of alcohol on the premises.

VI. Financial Accounting and Reporting

6.1 NOLCP agrees that all monies (paid admissions, rental fees, etc.) received or collected by NOLCP for usage of the premises shall be deposited by NOLCP into a separate account and used solely for the operation and maintenance of the premises. NOLCP further agrees that it shall keep this account in such a fashion that, at all times, an accurate accounting may be made by the City.

6.2 NOLCP agrees to file with the City Auditor and the Parks and Recreation Division an annual itemized statement accurately showing all NOLCP income and expenses related to the operation of the premises. The statement shall be filed no later than May 1 of each year this Agreement remains in effect and shall include all required information from the previous year.

6.3 The annual itemized statement required above shall also include a current listing of all of all officers, board members and the official local contact person responsible for the administration of this Agreement, together with addresses and telephone numbers. Also, a copy of NOLCP's current by-laws and articles of incorporation shall be provided to the City.

6.4 Pursuant to Minn. Stat. §16C.05, subd. 5, the books, records, documents and accounting procedures and practices of NOLCP relevant to this Agreement shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

VII. Insurance

7.1 During the entire term of this Agreement, NOLCP shall procure and maintain continuously in force public liability insurance with limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) Single Limit together with fire liability insurance with limits of not less than Two Hundred Thousand Dollars (\$200,000). The insurance company shall be authorized to do business in Minnesota.

7.2 The City of Duluth shall be named on the policy of insurance as an Additional Insured. NOLCP shall provide the City with a certificate of insurance showing the required coverage. NOLCP agrees that the policy of insurance cannot be cancelled or materially changed

without thirty (30) days advance written notice to the City.

VIII. City Access

8.1 NOLCP shall permit the City, its officials, employees or agents to access and inspect the premises at any time. NOLCP shall not change the locks or otherwise prohibit or inhibit the City access to any portion of the premises. Facility Management for the City shall be exclusively responsible for the design of keying systems, lock changes, key fabrication and key distribution and NOLCP agrees to abide by the Key Control Policy, a copy of which shall be provided to NOLCP.

8.2 The City may schedule activities and events on the premises on a priority basis when not in use by NOLCP. The City shall not be charged a fee for such use.

IX. Smoking and Tobacco

9.1 There shall be no smoking or use of tobacco whatsoever on the premises. "Tobacco" shall be defined as set forth in §609.685 of the Minnesota Statutes. This includes not only cigarettes, cigars and pipes, but also any product containing, made or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means or any component, part, or accessory of a tobacco product. Electronic-cigarettes shall not be allowed.

X. No Discrimination

10.1 NOLCP agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

XI. Relationship of Parties

11.1 It is agreed by the Parties that nothing contained herein is intended to be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto. NOLCP and its staff, officers, employees or volunteers shall not be construed as an agent, representative or employee of the City for any purpose or in any manner whatsoever.

XII. Termination

12.1 Upon termination of this Agreement, NOLCP agrees to surrender the possession of the premises to the City in as good condition and state of repair as at the time NOLCP took possession of the premises, except for reasonable wear and tear.

12.2 Either Party may terminate this Agreement upon ninety (90) days written notice. Notice shall be considered sufficient if delivered in person or mailed by regular United States mail, postage prepaid, addressed to the Parties at the addresses set forth in paragraph 22.1 or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time.

XIII. Indemnification

13.1 NOLCP shall defend, indemnify and hold harmless the City and its officials, employees and agents from any liabilities, judgments, losses, costs or charges (including attorneys' fees) incurred by the City or any of its officials, employees or agents as a result of any claim, demand, action or suit relating to any bodily injury (including death), loss or property damage caused by, arising out of, related to or associated with the use, management, maintenance or operation of the premises by NOLCP.

XIV. Waiver and Assumption of Risk

14.1 NOLCP knows, understands and acknowledges the risks and hazards associated with using the premises and hereby assumes any and all risks and hazards associated therewith. NOLCP hereby irrevocably waives any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by NOLCP as a result of its use, management, maintenance or operation of the premises and hereby irrevocably releases and discharges the City and any of its officials, employees or agents from any and all claims of liability.

XV. Immunity

15.1 Nothing in this Agreement is intended or should be construed as a waiver by the City of any immunities, defenses or other limitations on liability to which the City is entitled by law, including, but not limited to, the liability of limits under Minnesota Statutes Chapter 466.

XVI. Merger Clause

16.1 This Agreement constitutes the entire agreement between the parties and supercedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties. Any amendment, modification or supplementation 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.

XVII. Applicable Law

17.1 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.

XVIII. Third Parties

18.1 No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

XIX. Assignment

19.1 NOLCP shall not in any way assign or transfer any of its rights or interests under this Agreement without the prior written approval of the City.

XX. Waiver

20.1 The failure of the City to enforce any provision of this Agreement shall not be construed as, nor constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

XXI. Severability

21.1 The Parties agree that 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.

XXII. Notices

22.1 Notices required under the terms of this Agreement shall be addressed to the Parties as follows:

City of Duluth
Parks and Recreation Division
Attention: Kathy Bergen
12 East Fourth Street
Duluth, Minnesota 55805
telephone: (218) 730-4309

Neighbors of Lower Chester Park
Attention: Debra Filipovich
Co-Chair, NOLCP
1331 East 7th Street
Duluth, Minnesota 55805
telephone: (218) 393-0787

CITY OF DULUTH

Neighbors of Lower Chester Park

Mayor

Chairperson

Neighbors of Lower Chester Park

Secretary

ATTEST:

City Clerk

APPROVED AS TO FORM:

DULUTH PARKS & RECREATION
DIVISION

City Attorney

Manager

COUNTERSIGNED:

City Auditor

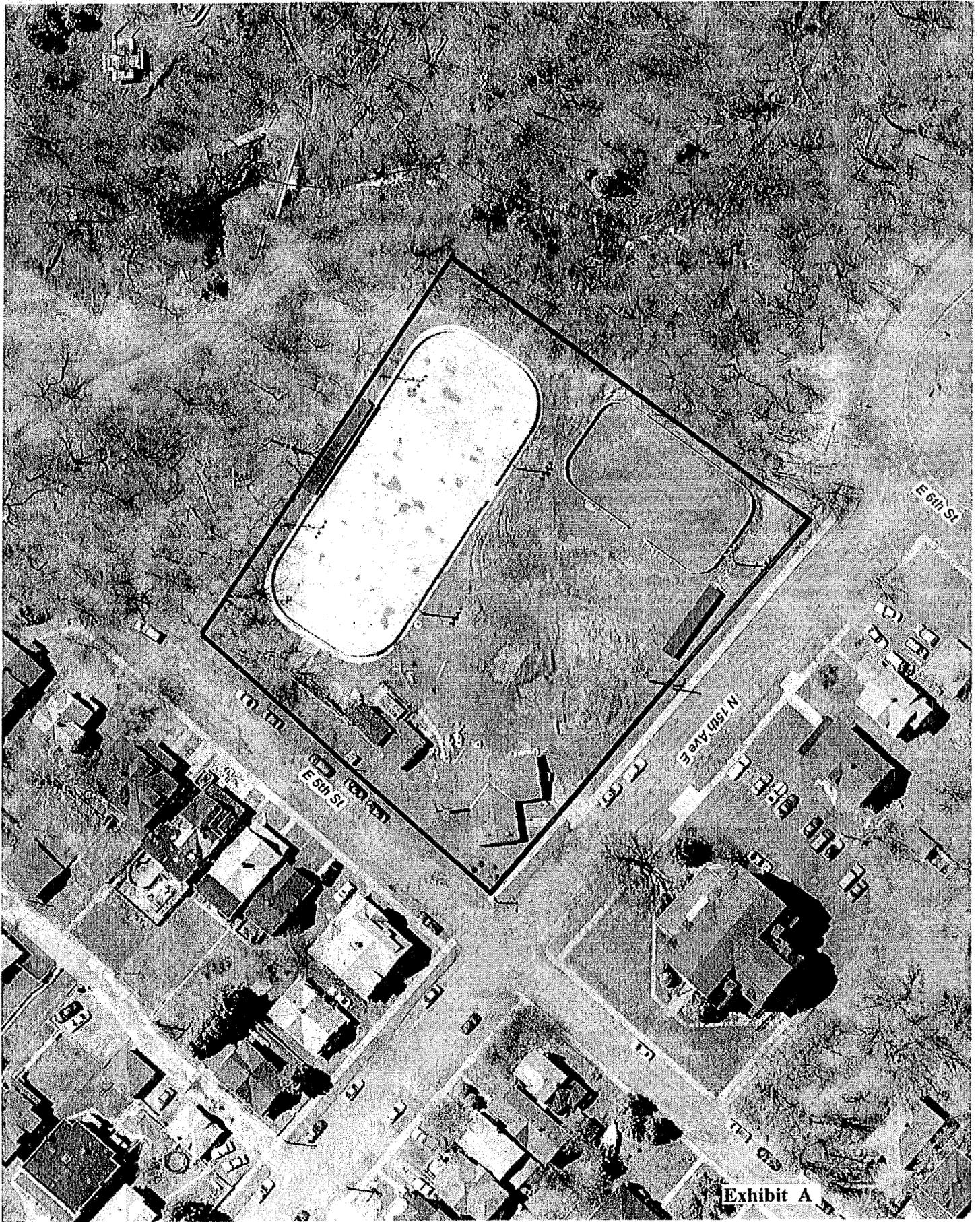


Exhibit A