

RECREATION, LIB & AUTHORITIES COMMITTEE

13-0284R

RESOLUTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO THE CITY OF DULUTH-DULUTH SOFTBALL PLAYERS ASSOCIATION, INC. WHEELER FIELD SOFTBALL COMPLEX CONCESSION BUILDING AGREEMENT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute a first amendment to the agreement between the city of Duluth and the Duluth softball players association for the operation of the Wheeler Field softball complex concessions building whereby the Duluth softball players association is allowed to apply for an annual 3.2 malt liquor license for use by the association in conjunction with its concession operation; said first amendment substantially in the form of that on file in the office of the city clerk as Public Document No. _____.

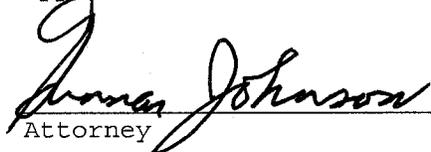
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

PARKS/ATTY TLL:db 05/21/2013

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute a first amendment to the City of Duluth-Duluth Softball Players

Association, Inc. Wheeler Field Softball Complex Concession Building Agreement. Under this Agreement, the Duluth Softball Players Association operates and maintains the concessions building during recreational activities at Wheeler Field. The state legislature recently granted the city the authority to issue an annual license authorizing the sale of alcohol at the Wheeler Field concession. This amendment allows the softball players association to apply for the 3.2 annual malt liquor license.

**FIRST AMENDMENT TO
CITY OF DULUTH – DULUTH SOFTBALL PLAYERS ASSOCIATION, INC.
WHEELER FIELD SOFTBALL COMPLEX CONCESSION BUILDING
AGREEMENT**

THIS FIRST AMENDMENT is made and entered into this _____ day of June, 2013, by and between the CITY OF DULUTH, a municipal corporation of the County of St. Louis, State of Minnesota ("CITY"), and Duluth Softball Players Association, Inc., a Minnesota non-profit corporation ("DSPA").

WHEREAS, the City has an Agreement with the DSPA identified as City of Duluth – Duluth Softball Players Association, Inc. Wheeler Field Softball Complex Concession Building Agreement dated April 30, 2010 and identified as City Contract #21095 (the "Agreement"); and

WHEREAS, the state legislature has authorized the City to issue an annual license for the sale of alcohol at the Wheeler Field Concession; and

WHEREAS, the City is willing to allow the DSPA to apply for an annual 3.2 malt liquor license for the concession at Wheeler Field; and

WHEREAS, the City and the DSPA are willing to amend the Agreement as stated below.

THEREFORE, the City and the DSPA agree as follows:

In this Amendment to Agreement, the deleted terms will be struck out and the added terms will be underlined.

AMENDMENT 1. Article 19-Intoxicating Beverages shall be amended as follows:

ARTICLE 19 – INTOXICATING BEVERAGES

~~19. No beverages regulated by Section 8 of the Duluth City Code or Chapter 340 of the Minnesota Statutes may be served, sold, present, or consumed within the BUILDING except as in accordance with Duluth City Code and Minnesota law.~~

19. The possession, use or sale of alcohol is permitted at Wheeler Field only under the following conditions:

1. The state legislature has recently authorized the city of Duluth to issue an annual liquor license for the concession at Wheeler Field. The City agrees to issue a 3.2 malt liquor license to DSPA for use by it in conjunction with its concession operation, subject to the approval of the Duluth City Council. The possession, use

or sale of alcohol shall be limited to the Licensed Premises identified as the area circled in red on the map attached as Exhibit No. 1. The DSPA agrees to apply for the license, pay the appropriate fee and meet all other requirements. Alcohol may not be possessed, consumed or served until the liquor license has been issued.

2. DSPA shall at all times maintain in full force and effect a “dram shop” insurance policy meeting the requirements of the state of Minnesota for an on-sale 3.2 beer license, written by a company licensed to do business in the state of Minnesota and shall name the City as an additional insured thereon. DSPA shall provide a Certificate of Insurance evidencing the required coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect DSPA’s interests and liabilities. The Certificate of Insurance provided shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverage ineffective as against the City. The use of an “Accord” form as a certificate of insurance shall be accompanied by two forms -1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney’s Office. Certificates showing that DSPA is carrying the above-described insurance 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.

3. City officials are granted the authority to refuse to execute this Agreement upon default by DSPA of the requirements herein.

4. DSPA shall be fully responsible and liable for preventing any rowdy, boisterous or disorderly conduct at the premises and shall be responsible for denying sale of alcohol to persons who are obviously intoxicated. Further, DSPA agrees that if it receives notice from the Director that the Director considers an event to be of such a nature as to cater primarily to persons under the age at which it is legal to purchase alcoholic beverages, DSPA agrees that it will not sell, nor permit the sale of, alcohol during such event.

5. DSPA shall be responsible for ensuring 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.

6. All applicable state laws and Duluth City Code provisions shall be followed at all times.

Except as amended herein, the terms and conditions of the Agreement and all previous amendments remain in full force and effect.

CITY OF DULUTH

DULUTH SOFTBALL PLAYERS ASSOCIATION, INC.

By: _____
Mayor

President/Authorized Representative

Department Director

Attest: _____
City Clerk

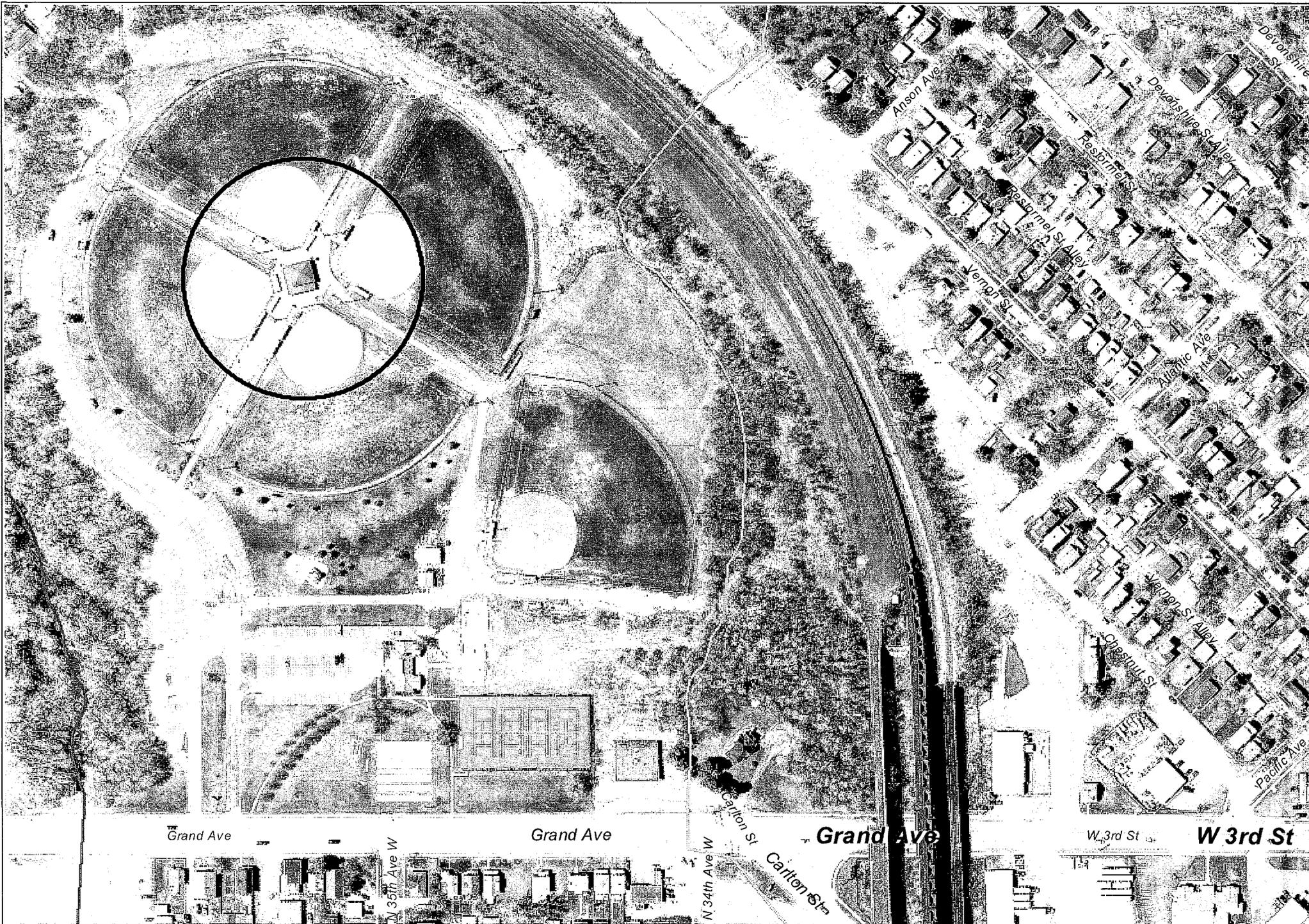
Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney



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.



Duluth GIS Mapping

EXHIBIT NO. 1



0 100 200 Feet
1 inch = 200 feet

photo date: 2011

Printed: 6/4/2013

