

USE AND MAINTENANCE AGREEMENT

THIS USE AND MAINTENANCE AGREEMENT (“Agreement”) is by and between Independent School District No. 709, Duluth Public Schools (the “District”), the Gary New Duluth Development Alliance (the “Alliance”), and the City of Duluth (the “City”), collectively referred to as “the Parties.”

WHEREAS, the District owns a set of bleachers, as pictured in the attached Exhibit A (the “Bleachers”) located on the District-owned property referred to as Stowe Elementary, located at 715 101st Avenue West Duluth, MN 55808 (“District Property”).

WHEREAS, the City owns the property directly adjacent to the District Property, located at 801 101st Avenue West Duluth, MN 55808 (“City Property”);

WHEREAS, the City Property includes recreational fields and other recreational facilities;

WHEREAS, the Alliance and the City are parties to a Use and Maintenance Agreement (“City Use Agreement”) relating to the City Property, which is set to expire on December 31, 2025, which governs the Alliance’s use of the City Property.

WHEREAS, the District recognizes that the Bleachers are currently underutilized by the District and may be better utilized to serve the interests of community, District students, and the public at large by being used as part of the Alliance’s programming.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE TO THE FOLLOWING:

I. TERM.

Notwithstanding the date of execution, this Agreement shall be deemed to commence on July 1, 2024, and shall expire at the end of the day on June 30, 2029, unless terminated earlier as set forth herein.

II. GRANT OF RIGHTS.

1. Subject to the terms and conditions of this Agreement, the District grants the Alliance the exclusive right to transport from the District Property to the City Property, use, and maintain the Bleachers, at no charge, for community-related purposes pursuant to the Alliance’s mission. Neither the Alliance nor the City may move the Bleachers from the City Property to a different location other than returning the Bleachers to the District Property.

2. The Alliance shall be responsible for transporting the Bleachers to and from the District Property to the City Property, and inspecting, maintaining, and repairing the Bleachers during the term of this Agreement.

3. The District makes no representations or warranties, express or implied, that the Bleachers are suitable for any reasons. The Alliance accepts the Bleachers in “as is” condition, without any representations or warranties.

4. The District shall not charge the Alliance a usage fee in relation to this Agreement. The consideration for this Agreement shall be the public benefits provided by the Alliance in maintaining and utilizing the Bleachers for public recreational purposes, and the mutual promises set forth in this Agreement.

5. The Alliance shall maintain the Bleachers in good order and condition and state of repair in compliance with all applicable laws, regulations and codes, all to be performed at the Alliance’s sole expense.

6. All parties expressly agree that at no point will the Bleachers, which are the personal property of the District, be owned by the Alliance, the City, or any entity other than the District. The Bleachers shall remain the sole property of the District through the life of this Agreement, and shall remain the sole property of District upon the return of the Bleachers to the District.

III. TERMINATION OR EXPIRATION OF AGREEMENT.

1. Abandonment, Disrepair, or Destruction.

A. The District may terminate this Agreement with fifteen (15) days’ written notice to the Alliance if the District determines the Alliance has abandoned its use of the Bleachers, failed to perform necessary maintenance or repairs of the bleachers, or the Bleachers are destroyed in whole or in part.

B. Furthermore, the expiration of the City Use Agreement without any subsequent written agreement between the City and Alliance allowing for the Alliance’s use of the City Property constitutes abandonment of the Bleachers. No later than 14 days after the expiration of the City Use Agreement, due to breach or expiration, the Alliance shall transport the Bleachers to the District Property.

2. For Convenience. Any party may terminate this Agreement without cause by providing at least forty-five (45) calendar days written notice to the other party.

IV. SURRENDER POSSESSION AND RETURN OF PROPERTY.

Upon termination or expiration of this Agreement, whichever occurs first, the Alliance shall surrender possession of the Bleachers to the District in as good condition and repair, normal wear and tear excepted. Alliance shall transport the Bleachers back to the District Property in the location from which Alliance first removed the Bleachers, unless directed by the District in writing to return the Bleachers to a different location.

V. 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 defend, indemnify, and hold harmless the District 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 District 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 use, maintenance or operation of the Bleachers by the Alliance or performance of its obligations under this Agreement. Promptly after receipt by the District of notice of the commencement of any action with respect to which the Alliance is required to indemnify the District, the District 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 District and the payment of expenses. This indemnification provision shall survive expiration or termination of this Agreement for any reason.

VI. INDEPENDENT RELATIONSHIP.

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 District 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.

VII. INCIDENT REPORTS.

The Alliance shall promptly notify the District in writing of any injury, loss, or damage to the Bleachers or any injury, loss, or damage arising out of or otherwise relating to the Bleachers during the Term.

VIII. GENERAL TERMS AND CONDITIONS.

1. 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.

2. The Alliance shall not assign or transfer any rights or obligations under this Agreement.

3. The waiver by the District 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

INDEPENDENT SCHOOL DISTRICT NO. 709, DULUTH PUBLIC SCHOOLS

By: _____
Its: _____

GARY NEW DULUTH DEVELOPMENT ALLIANCE

By: _____
Its: _____

CITY OF DULUTH

By: _____
Its: _____

EXHIBIT A

DEPICTION OF BLEACHERS