

EXHIBIT 1

CHESTER PARK NON-EXCLUSIVE USE AGREEMENT

THIS AGREEMENT, is by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota, hereinafter known as “City,” and Duluth Area Family Y.M.C.A., a Minnesota non-profit corporation, hereinafter referred to as “YMCA.”

WHEREAS, City is the fee owner of certain real estate in the City of Duluth, County of St. Louis, and State of Minnesota that is used for park and open space purposes and known as Chester Park.

WHEREAS, YMCA operates a summer day camp program known as Camp Kitchigami that serves youth between the ages of five and fourteen. Camp Kitchigami offers programs designed to develop self-esteem, life-long skills, acceptance of all people and an appreciation for the environment. YMCA’s Camp Kitchigami is hereinafter referred to as its “Services.”

WHEREAS, YMCA desires to use a portion of Chester Park for its Services. The portion of Chester Park subject to this Agreement is referred to in this Agreement as the “Licensed Premises” and is outlined in red on the attached Exhibit A.

WHEREAS, City desires to allow YMCA the non-exclusive right to use the Licensed Premises to provide its Services to the community as set forth herein.

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

1. ADMINISTRATION.

For purposes of administering this Agreement, City shall act through its Manager of Parks and Recreation or designee (the “Manager”). YMCA shall act through its Executive Director or designee.

2. GRANT OF RIGHTS.

a. Subject to the terms and conditions of this Agreement, City grants to YMCA the non-exclusive use of the Licensed Premises between June 1 and August 31 each year during the Term (defined below) of this Agreement (the “Operating Period”) for the purpose of providing its Services as further set forth in this Agreement. Use of the Licensed Premises during the Operating Period is limited to Monday through Friday of each week, and shall not include Saturday or Sunday without the prior written approval of the Manager.

b. Subject to the terms and conditions of this Agreement, City also grants to YMCA the exclusive use of the storage shed currently located on the Licensed Premises, which storage shed is depicted on the attached Exhibit A. City shall not be responsible to repair or replace shed should damage or destruction to it occur.

c. City makes no representations or warranties, either express or implied, that the Licensed Premises is suitable for any specific uses, including YMCA's Services. YMCA accepts the Licensed Premises in "as is" condition without representations or warranties of any kind. City is not obligated to make any alterations or improvements on or to the Licensed Premises, including but not limited to the storage shed.

d. YMCA acknowledges that the Licensed Premises is a public park that requires the cooperation of all users and coordination of activities. This cooperation includes ingress and egress and use of amenities and related improvements. YMCA acknowledges that the Manager shall ultimately determine the appropriate use of the Licensed Premises consistent with its design as a recreational facility and shall decide any disputes between YMCA and any other users of the Licensed Premises.

3. USE AND MAINTENANCE OF LICENSED PREMISES.

a. YMCA may only use the Licensed Premises to provide its Services and related activities. Use of the Licensed Premises for any other activities shall be grounds for immediate termination of this Agreement unless approved in advance by the Manager in writing. YMCA understands and agrees that its non-exclusive right to use and occupy the Licensed Premises is specifically conditioned upon YMCA's continuation of its Services and related activities throughout the Term.

b. YMCA shall provide adequate supervision of its programs, program participants and spectators by a competent, trained and qualified adult representative of YMCA.

c. YMCA shall maintain its equipment in a safe and lawful manner at YMCA's sole expense. YMCA shall prohibit the use of any unsafe, illegal, or otherwise deficient equipment on the Licensed Premises.

d. YMCA is solely responsible for storage of all personal property and shall bear the risk of loss due to theft, vandalism or other damage to the personal property on the Licensed Premises, including personal property contained in the storage shed.

e. YMCA specifically agrees that, in its use of the playing field and related areas, it will follow best practices to appropriately utilize said facilities and, in particular, will use its best efforts to minimize or prevent any damage to the field and surrounding areas.

f. YMCA shall keep the Licensed Premises in a clean and orderly condition and shall pick up all paper, garbage, and other debris generated from its use of the Licensed Premises and deposit it in the appropriate receptacles.

g. YMCA shall promptly notify City in writing of any incident of loss or damage to the Licensed Premises or injury to any YMCA employee, agent, volunteer, participant, or invitee occurring on the Licensed Premises during its use thereof pursuant to this Agreement. Such written report shall be in a form acceptable to City's Claims Investigator and Adjuster. A copy of City's form of Incident Report is attached as Exhibit B.

h. YMCA shall be solely responsible for any losses or damages to the Licensed Premises caused by YMCA, or its employees, agents, volunteers, participants, or invitees.

4. USAGE FEE.

a. City shall not charge YMCA a usage fee in relation to this Agreement. The consideration for this Agreement shall instead be the public benefit provided by YMCA through the provision of its Services and related activities, and the mutual promises set forth in this Agreement.

b. Although there is no usage fee charged to the YMCA for the use and occupancy of the Licensed Premises, YMCA agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of YMCA's use of the Licensed Premises, including real property and sales taxes, if applicable. It is further agreed that City may pay the same on behalf of YMCA and immediately collect the same from YMCA. YMCA shall further be obligated to collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

5. TERM.

Notwithstanding the date of execution, this Agreement shall be deemed to commence on May 1, 2017, and expire on September 30, 2019, unless sooner terminated as provided for herein (the "Term").

6. TERMINATION.

a. **WITHOUT CAUSE.** City may terminate this Agreement without cause by providing at least ninety (90) calendar days' written notice to YMCA, but City agrees not to terminate this Agreement pursuant to this Section 6.a. in the ninety (90) calendar days immediately preceding the Operating Period during each year of the Term.

b. **FOR CAUSE.** City may terminate this Agreement for the material breach by YMCA of any provision of this Agreement if such breach is not cured to the satisfaction of City within fourteen (14) days of delivery to YMCA of a written notice by City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach. If YMCA fails to cure the breach as required by the notice prior to the expiration of the fourteen (14) day notice, this Agreement shall automatically terminate.

c. **IMMEDIATELY BY CITY.** City may terminate this Agreement immediately on written notice to YMCA if City believes in good faith that the health, welfare, or safety of the Licensed Premises, occupants, users or neighbors would be placed in immediate jeopardy by the continuation of YMCA's operations on the Licensed Premises.

d. **SURRENDER POSSESSION.** Upon termination or expiration of this Agreement, whichever occurs first, YMCA agrees to surrender possession of Licensed Premises to City in as good condition and state of repair as the Licensed Premises were in at the time

YMCA took possession, normal wear and tear and damage from the elements excepted. YMCA agrees to restore the Licensed Premises to its original condition at the time of execution of this Agreement, normal wear and tear and damage from the elements excepted, or, upon demand, pay to City the reasonable costs incurred by City to restore the Licensed Premises as required by this Agreement.

7. INSURANCE.

a. During the Term, YMCA shall maintain such insurance coverage as required by this Agreement and as will protect YMCA and City against risk of loss or damage to the Licensed Premises and against claims that may arise or result from the maintenance and use of the Licensed Premises during the Term. YMCA shall procure and maintain continuously in force Public Liability Insurance written on an “occurrence” basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$1,500,000 for Licensed Premises damage liability. Insurance required by this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products – completed operations. By May 1 of each year of the Term (or more frequently as reasonably requested by City), YMCA shall provide City with Certificates of Insurance evidencing the coverage required by this Agreement. The Certificates of Insurance shall name City as an additional insured and shall provide for at least 15 days’ written notice to City prior to the cancellation of the policy. YMCA shall provide certified copies of all insurance policies required by this Agreement within 10 days of City’s written request.

b. City reserves the right to require YMCA to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.

c. City does not represent or guarantee that these types or limits of coverage are adequate to protect YMCA’s interests and liabilities.

d. City shall not be liable to YMCA for any injury or damage resulting from any defect in the condition of the Licensed Premises nor for any damage that may result from the negligence of any other person whatsoever.

8. HOLD HARMLESS AND INDEMNIFICATION.

a. YMCA shall indemnify, save harmless, and defend City and its officers, agents, servants, and employees from and against any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of City or YMCA, 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 YMCA arising out of, related to or associated with the use, management,

maintenance or operation of the Licensed Premises by YMCA or performance of its obligations under this Agreement.

b. YMCA shall indemnify City for any damage to the Licensed Premises or any City property at the Licensed Premises caused by YMCA, employees, agents, volunteers, participants or invitees.

c. To the extent permitted by Minnesota law, City agrees to indemnify, save harmless, and defend YMCA from and against any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of YMCA, 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 YMCA arising out of, related to or associated with negligent acts of the City.

9. INDEPENDENT RELATIONSHIP.

a. 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 YMCA as agents, representatives or employees of City 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.

b. YMCA's employees, agents and representatives shall not be considered employees of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota while so engaged and any and all claims whatsoever arising out of employment or alleged employment, including without limitation, claims of discrimination against City, or its officers, agents, contractors or employees shall in no way be the responsibility of City. YMCA and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers Compensation, Unemployment Insurance, disability pay or severance pay.

10. RECORDS RETENTION.

YMCA agrees to maintain, for six (6) years after the termination or expiration of this Agreement, all records relating to this Agreement and its use of the Licensed Premises during the Term.

11. GOVERNMENT 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, Minnesota Statutes Chapter 13. YMCA shall comply with the Minnesota Government Data Practices Act. YMCA agrees to hold City, its officers, and employees harmless from any claims resulting from YMCA's failure to comply with applicable law.

12. COMPLIANCE WITH LAWS.

a. YMCA shall make its Services available to all users and shall not discriminate on the basis of race, color, creed, national origin, sexual orientation, disability, sex, religion, or status with regard to public assistance, and shall not violate any federal, state or local civil rights law, rule or regulation in the use of the Licensed Premises.

b. YMCA shall comply with all Minnesota Workers' Compensation laws with respect to all of its employees assigned to work at the Licensed Premises, if any.

c. YMCA shall procure at its sole expense all licenses and permits necessary for carrying out the provisions of this Agreement.

d. The Services shall be conducted in compliance with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City.

13. ALCOHOL, TOBACCO, AND DRUG USE.

YMCA acknowledges and agrees that there shall be no alcohol, smoking or use of tobacco or illegal drugs whatsoever on the Licensed Premises or as otherwise prohibited by state or local laws.

14. NOTICES.

Unless otherwise provided herein, notice to City or YMCA shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses 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 W. First Street, Ground Floor
Duluth, Minnesota 55802
(218) 730-4300

Duluth Area Family YMCA
Attn: Executive Director
302 W. First Street
Duluth, Minnesota 55802
(218) 722-4745 ext. 161

15. CITY ACCESS.

a. YMCA shall permit City, and its designees, to access and inspect the Licensed Premises at any time. YMCA shall not change the locks or otherwise prohibit or inhibit City access to any portion of the Licensed Premises.

b. City shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution, if applicable. YMCA shall comply with City's Key Control Policy, a copy of which shall be provided to YMCA, and is subject to unilateral change by City during this Agreement.

c. YMCA shall not make copies of Licensed Premises keys. All keys shall be promptly returned to City upon termination or expiration of this Agreement.

16. GENERAL TERMS AND CONDITIONS.

a. YMCA agrees that it will obey all laws, rules, and regulations applicable to its use of or occupancy of the Licensed Premises and to use its best efforts to insure that its employees, agents, volunteers, participants and invitees so conform to such requirements.

b. YMCA agrees that it will not sublet the Licensed Premises, or any part thereof, and shall not assign or transfer this Agreement or any interest herein, nor permit such assignment to become transferred by operation of law or otherwise, and that no act or acts will be done or suffered whereby the same may be or become sublet or assigned in whole or in part.

c. 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.

d. The waiver by City or YMCA 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.

e. 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.

f. 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 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 hereto.

g. This Agreement and 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 negotiations, understandings, or agreements.

h. There are no representations, warranties, or stipulations, either oral or written, other than as set forth in this Agreement.

i. 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.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first shown below.

CITY OF DULUTH

DULUTH AREA FAMILY Y.M.C.A

By: _____
Mayor

By: _____

Attest: _____
City Clerk

Printed Name _____

Dated: _____

Its: _____
Title

Countersigned:

Dated: _____

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 areas 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.

Exhibit A Licensed Premises

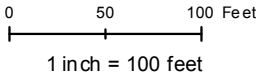


photo date: 2016
Printed: 4/13/2017



EXHIBIT B
City of Duluth Incident/Injury Report

Supervisor to complete within 24 hours of incident/injury. If injury required treatment by a medical provider, attach medical documentation. Completed forms should be emailed to accidentreporting@duluthmn.gov.

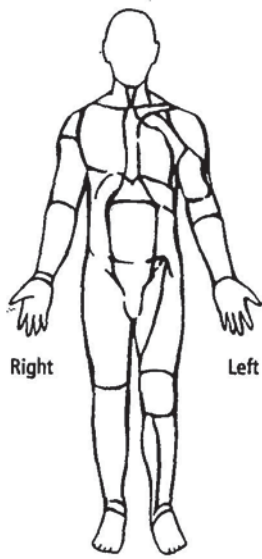
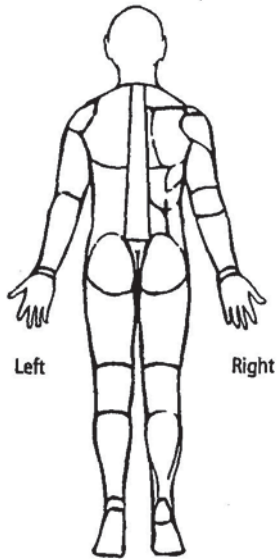
Date of incident/injury:	<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	Department/Division:
Choose one that best describes this claim: <input type="checkbox"/> Incident only, no medical care <input type="checkbox"/> Medical only, no lost time <input type="checkbox"/> Injury includes lost time		
Initial treatment sought: <input type="checkbox"/> Hospital ER <input type="checkbox"/> Clinic <input type="checkbox"/> Refused to see MD / None	Doctor/clinic name, address, phone number:	

Last name:	First name:	MI:	SSN:
Address:			
City:	State:	Zip code:	Phone:
Date of hire:	Occupation:		Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female

Did injury occur on employer's premises? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name and address of the place of the occurrence:
Time employee began work: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. Time of injury: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
Date employer notified of injury: _____ Date employer notified of lost time: _____	
First date of any lost time: _____ Return to work date: _____ RTW with restrictions: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Describe the nature of the illness or injury. Be specific. Include body parts affected.	
Describe the activities when injury occurred with details of how it happened.	
What tools, equipment, machines, objects and/or substances were involved?	

Incident investigation conducted: <input type="checkbox"/> Yes <input type="checkbox"/> No Date supervisor notified: _____ Date report completed: _____	
Supervisor name: _____ Supervisor phone number: _____	
Names and phone numbers of witnesses:	
Incident was a result of: <input type="checkbox"/> safety violation <input type="checkbox"/> machine malfunction <input type="checkbox"/> product defect <input type="checkbox"/> motor vehicle accident <input type="checkbox"/> N/A	
Supervisor comments:	
What actions have been taken to prevent recurrence?	

City of Duluth Incident/Injury Report

<p>CAUSE</p> <p><input type="checkbox"/> Slip and fall</p> <p><input type="checkbox"/> Struck by equipment</p> <p><input type="checkbox"/> Lifting or moving</p> <p><input type="checkbox"/> Caught (in, on, or between)</p> <p><input type="checkbox"/> Needle puncture</p> <p><input type="checkbox"/> Object in eye (<input type="checkbox"/> Right <input type="checkbox"/> Left)</p> <p><input type="checkbox"/> Repetitive/overuse</p> <p><input type="checkbox"/> Other (specify): _____</p> <p>TYPE OF INJURY</p> <p><input type="checkbox"/> Scrape/bruise</p> <p><input type="checkbox"/> Sprain/strain</p> <p><input type="checkbox"/> Puncture wound</p> <p><input type="checkbox"/> Cut/laceration</p> <p><input type="checkbox"/> Concussion</p> <p><input type="checkbox"/> Bite</p> <p><input type="checkbox"/> Chemical burn/rash/breathing difficulties</p> <p><input type="checkbox"/> No apparent injury</p> <p><input type="checkbox"/> Other (specify): _____</p>	<p style="text-align: center;">MARK AREAS OF INJURY BELOW:</p> <p style="text-align: center; font-size: small;">Areas can be marked by typing an "X" in the text box wherever needed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <p>Front</p>  <p>Right Left</p> </div> <div style="text-align: center;"> <p>Back</p>  <p>Left Right</p> </div> </div>
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COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE						
<p>For vehicle accidents: Attach sketch and additional information of how vehicle accident occurred.</p> <p>Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)</p>						
Incident Location: _____			Time of incident: _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.			
Police called: <input type="checkbox"/> Yes <input type="checkbox"/> No		Police Traffic Accident Report ICR #:				
City vehicle, property, or equipment involved	Description:					
	Vehicle #:		Make/Model:		Year:	
	Describe damage:					
Non-city vehicle, property, or equipment involved	Owner full name:			<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other		
	Owner address:					
	Owner phone number:		Vehicle license #:			
	Make/Model:		Color:		Year:	
	Describe damage:					
Weather conditions: <input type="checkbox"/> Clear <input type="checkbox"/> Wind <input type="checkbox"/> Rain <input type="checkbox"/> Cloudy <input type="checkbox"/> Fog <input type="checkbox"/> Sleet <input type="checkbox"/> Snow		Roadway conditions: <input type="checkbox"/> Dry <input type="checkbox"/> Mud <input type="checkbox"/> Wet <input type="checkbox"/> Paved <input type="checkbox"/> Snow <input type="checkbox"/> Unpaved <input type="checkbox"/> Ice		Light conditions: <input type="checkbox"/> Night <input type="checkbox"/> Day <input type="checkbox"/> Good <input type="checkbox"/> Poor		Approximate temperature: _____ °F Estimated speed: _____ mph Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty What was load: _____ Drug and/or alcohol test? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

The Incident/Injury Form should be printed and signed by supervisor and employee. Completed forms can be scanned to accidentreporting@duluthmn.gov.

Supervisor Signature: _____

Date: _____

Employee Signature: _____

Date: _____