

**OPERATION AGREEMENT
FOR OUT-OF-SCHOOL TIME YOUTH PROGRAMS
DULUTH AREA FAMILY YMCA – GARY NEW DULUTH RECREATION BUILDING**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (“Effective Date”) by and between the **CITY OF DULUTH**, a municipal corporation of the County of St. Louis, State of Minnesota, hereinafter referred to as “City”, and the **DULUTH AREA FAMILY YMCA**, located at 302 West First Street, Duluth, MN 55802 hereinafter referred to as “YMCA”.

1. RECITALS

WHEREAS, City requested a budget for YMCA to operate youth services programming in the Western-most neighborhood.

WHEREAS, YMCA submitted a budget to the City to operate a youth services program as shown on Attachment A.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

2. ADMINISTRATION

2.1 For purposes of administering this Agreement, the City shall be defined as the Manager of Parks and Recreation or designee and the YMCA shall be defined as the Branch Executive Director or designee.

3. SERVICES/PROGRAM

3.1. The following services will be provided by YMCA: facilitate outside of school time youth programming in the City’s far west neighborhood which provides a safe, structured environment and provides youth with educational opportunities as well as development of health and life skills, and recreation activities. In addition, YMCA shall be responsible for the following:

3.1.1. Complying with the performance measurements as outlined in Exhibit A (“Performance Measurements”)

3.1.2. Adequately provide the Program with properly trained and licensed staff in sufficient numbers.

3.1.3. Provide those items, including equipment and supplies, required for the daily operation of the Program.

4. PREMISES/LOCATION OF SERVICES

4.1. The Program will be held at the City’s Gary New Duluth Recreation Building (the “Premises”).

4.2. YMCA hereby accepts the Premises “as is”, in its present physical condition, without representations or warranties of any kind. The City makes no warranty; either expressed or implied, that the Premises or equipment thereon are suitable for any purpose.

4.3. YMCA acknowledges and agrees that the Premises is a multi-use facility, requiring the cooperation of all users. This cooperation includes sharing parking, (including scheduling for special events), ingress and egress, amenities and related improvements. YMCA acknowledges that the City shall ultimately determine the appropriate use of the site and improvements shall prevail in any disputes between user groups.

4.4. YMCA’s use of the Premises is not exclusive except as specifically set forth in Paragraph 7.

5. FEES, REPORTING AND TAXES

5.1. It is agreed between the parties that YMCA’s maximum annual fee for this Agreement shall not exceed the sum of Twenty Thousand and 00/100th dollars (\$20,000) inclusive of all expenses associated with the Program, payable from Fund 205-130-1219-5310 (Parks Fund, Community Resources, Parks Operating,

Contract Services). YMCA shall submit invoices for services not more than two (2) times per year to the attention of the Manager of Parks and Recreation. Payments will be made upon review and completion of the Performance Measurements by the Manager of Parks and Recreation and receipt of reasonable substantiation as required by the Manager of Parks and Recreation.

- 5.2. YMCA shall file with the City Auditor an annual itemized statement showing all YMCA income and expenses related to the operation of the Program. The statement shall be filed not later than September 1 of each year this Agreement remains in effect and shall include all required financial information from the previous year. The statement shall also include a designation of the official contact person responsible for the administration of this Agreement along with addresses and phone numbers. A current copy of YMCA's By-Laws and Articles of Incorporation shall be provided to the City before this Agreement takes effect.
- 5.3. YMCA agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all YMCA books, records, documents, and accounting procedures and practices related to the operation of the Program are subject to examination by the City or the State Auditor for six (6) years from the date of execution of this agreement. Upon twenty-four (24) hours advance notice by City, YMCA shall provide all requested financial information.
- 5.4. YMCA shall pay or cause to be paid all lawful taxes and governmental charges in a timely manner. YMCA shall further be obligated to 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; provided that nothing shall prevent YMCA from contesting in good faith, any such payment requirement except as such contest would negatively affect the City's rights under this Agreement.

6. TERM AND TERMINATION OF AGREEMENT

- 6.1. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2018 and shall continue through December 31, 2018 unless earlier terminated as provided for herein (the "Initial Term"). The parties shall meet and confer within ninety (90) days before the end of the Initial Term to discuss the terms and conditions of the Agreement. If the parties agree that no changes are needed, which shall be confirmed in writing, and that neither party wishes to terminate the agreement as provided for herein, then this Agreement shall be automatically renewed for an additional one (1) year period thereafter.
- 6.2. This Agreement may be terminated by either party by serving sixty (60) days written notice upon the other. Upon termination, YMCA agrees to surrender possession of said Premises to City in as good condition and state of repair as said Premises were in at the time YMCA took possession, reasonable wear and tear, and acts of God excepted. YMCA shall remove all YMCA property within ten (10) business days. Any YMCA equipment remaining after the expiration of said ten (10) day period shall become the property of the City.
- 6.3. Should YMCA be in default or violation of any of the provisions of this Agreement, City shall provide to YMCA written notice of such violation or default and shall allow YMCA thirty (30) days within which to cure or remedy any violations or defaults set forth therein. If such violation or default is not cured or remedied within thirty (30) days, City may terminate this Agreement immediately by serving notice to YMCA in the manner described.
- 6.4. In the event of default by YMCA, City, in addition to other rights or remedies it may have, shall have the immediate right of reentry in the Premises, and after five (5) days prior written notice to YMCA, may remove all persons and property from the Premises. The property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, the YMCA.

7. INCIDENT REPORTS

- 7.1. YMCA shall promptly notify the City in writing of any incident of injury of City Program participants or invitees occurring within the Premises during the Term of this Agreement. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's form of Incident Report is attached hereto as Exhibit B.

8. COMMUNICATIONS

- 8.1. The parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement.

9. INSURANCE

- 9.1. YMCA shall procure and maintain continuously in force a policy of insurance covering all of its activities on the Premises. A Comprehensive General Liability Insurance policy shall be maintained in force by YMCA throughout the life of this agreement in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injuries and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage or One Million Five Hundred Thousand Dollars (\$1,500,000.00) single limit coverage per occurrence. Such coverage shall include all YMCA activities occurring during the Program or on or within the Premises whether said activities are performed by employees or agents under contract to YMCA. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days written notice to the City of Duluth. The City of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph.
- 9.2. YMCA shall also provide evidence of Statutory Minnesota Workers Compensation Insurance.
- 9.3. YMCA shall provide to City Certificates of Insurance evidencing such coverage with 30-day 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 the YMCA's interests and liabilities.
- 9.4. The 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. Sec. 466.04 are increased.
- 9.5. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.
- 9.6. When using the Acord Certificate form cancellation provisions, the words endeavor to on Line 2 must be deleted. As an additional insured under the contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage." The City of Duluth is an additional insured not subject to the other insurance condition or other policy terms which conflict with the agreement between the named insured and the City of Duluth.
- 9.7. The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, it must be a pre-2004 edition.
- 9.8. The City shall not be liable to YMCA for any injury or damage resulting from any defect in the construction or condition of the Premises, nor for any damage that may result from the negligence of any other person whatsoever.

10. HOLD HARMLESS

- 10.1. YMCA agrees to indemnify, save harmless, and defend the 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 the 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 operation of the Program or use of the Premises by YMCA or performance of its obligations under this Agreement.

11. CITY ACCESS

- 11.1. City shall have the right to inspect the Premises at any time. YMCA shall not change locks or otherwise prohibit, or inhibit, City access to any portion of the building. City shall be exclusively responsible for the upkeep of all door locking devices and the duplication and distribution of all keys. YMCA is prohibited from duplicating any building key. Keys shall be distributed to only those individuals as may be designated by the City or the current official contact person of YMCA.

12. RELATIONSHIP

- 12.1. It is agreed by both parties that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting YMCA or any of its officers, agents, servants, employees, sublessees, and renters as an officer, agent, servant, representative or employee of the City for any purpose or in any manner whatsoever. YMCA's officers, agents, servants, employees, volunteers, sublessees, and renters shall not be considered as employees of the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota, and any claims whatsoever on behalf of said officers, agents, servants, employees, volunteers, sublessees, and renters arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. YMCA's officers, agents, servants, employees, volunteers, sublessees, and renters shall not be entitled to any compensation or right or benefits from the City of any kind whatsoever, including but not limited to, vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, severance pay, etc.

13. THIRD PARTY BENEFICIARIES

- 13.1. 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.

14. SEVERABILITY

- 14.1. 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.

15. NOTICES

- 15.1. Unless otherwise provided herein, notice to the City or B&GCN shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth 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
Parks and Recreation Division
Attention: Parks Manager
411 West First Street
Duluth, MN 55802

Duluth Area Family YMCA
Attn: Jeramy Katchuba
302 W 1st Street
Duluth, MN 55802

16. GENERAL PROVISIONS

- 16.1. The rights of YMCA to build, occupy, use, and maintain the above described Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with strictly and promptly.
- 16.2. YMCA agrees to operate the Premises in compliance with the United States Constitution, and with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth. YMCA agrees to procure at YMCA expense all licenses and permits necessary for carrying out the provisions of this agreement.
- 16.3. YMCA agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.
- 16.4. The waiver by the 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.

16.5. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

CITY OF DULUTH

DULUTH AREA FAMILY YMCA

By: _____
Mayor
Date: _____

By: _____
Its Chief Professional Officer
Printed Name _____

Attest: _____
City Clerk
Date: _____

Its: _____
Board Officer
Printed Name _____

Approved as to form:

City Attorney
Date: _____

Countersigned:

City Auditor
Date: _____

Budget Report - 2018 GENERAL FUND

DULUTH AREA FAMILY YMCA

01/01/2018 - 12/31/2018

Account Number	Account Name	Annual	GENERAL FUND
Revenue			
01-20-53-0420	GARY NEW DULUTH DEVELOPMENT ALLIANCE	35,500.00	35,500.00
01-20-53-1056	CITY OF DULUTH	20,000.00	20,000.00
01-20-53-1310	PROGRAM FEES	300.00	300.00
01-20-53-1310-000570	PROGRAM FEES-Tot Time	101.25	101.25
01-20-53-1310-000700	GND Fitness Punch Passes	1,440.00	1,440.00
01-20-53-1340	USE OF FACILITIES	1,200.00	1,200.00
	Total Revenue	58,541.25	58,541.25
Expense			
01-20-53-2110	SALARIES-ADMINISTRATIVE	23,400.00	23,400.00
01-20-53-2120	SALARIES-PROGRAMS	8,662.50	8,662.50
01-20-53-2120-000700	SALARIES-PROGRAMS - FITNESS Classes	2,402.40	2,402.40
01-20-53-2160	SALARIES-Housekeeping	3,120.00	3,120.00
01-20-53-2220	RETIREMENT PLAN	2,808.00	2,808.00
01-20-53-2250	EMPLOYEE BENEFITS	200.00	200.00
01-20-53-2310	SOCIAL SECURITY TAXES	2,875.16	2,875.16
01-20-53-2330	WORKERS COMPENSATION	589.99	589.99
01-20-53-2440	CONTRACT SERVICE FEES	300.00	300.00
01-20-53-2440-300700	CONTRACT SERVICE FEES-AmeriCorps Member	3,500.00	3,500.00
01-20-53-2510	OFFICE SUPPLIES	300.00	300.00
01-20-53-2520	MAINTENANCE SUPPLIES	732.24	732.24
01-20-53-2530	MEDICAL SUPPLIES	50.00	50.00
01-20-53-2540	PROGRAM SUPPLIES	600.00	600.00
01-20-53-2540-000610	Community Event Expenses	300.00	300.00
01-20-53-2550	FOOD SUPPLIES	840.00	840.00
01-20-53-2570	MERCHANDISE FOR RESALE	120.00	120.00
01-20-53-2880	INSURANCE	4,431.00	4,431.00
01-20-53-2930-000700	Fitness small equipment	150.00	150.00
01-20-53-3120	PRINTING	200.00	200.00
01-20-53-3510	National YMCA Dues	647.50	647.50
01-20-53-3510-000570	National YMCA Dues	1.77	1.77
01-20-53-3510-000700	National YMCA Dues	25.20	25.20
01-20-53-3511	YUSA DUES 50% Rate	175.00	175.00
01-20-53-3760	CREDIT CARD PROCESSING FEES	41.06	41.06
01-20-53-4800	INTRA ALLOCATION EXP-ADMN	7,980.00	7,980.00
01-20-53-4800-000570	INTRA ALLOCATION EXP-ADMN	14.18	14.18
01-20-53-4800-000700	INTRA ALLOCATION EXP-ADMN	201.60	201.60
	Total Expenses	64,667.60	64,667.60
	Change in Net Assets	(6,126.35)	(6,126.35)

**OUT-OF-SCHOOL TIME YOUTH PROGRAMMING
2018 CITY OF DULUTH PARK FUND ALLOCATIONS
FY 2018 EXHIBIT A**

Project: Youth Programming at Gary New Duluth Recreation Center

Scope of Service: YMCA will provide out-of-school time and summer programming to youth living in the western-most neighborhood at their site located at the City’s Gary New Duluth Recreation Center. Note: FY2018 is the first of a two-year contract.

Performance Measurement 1: Serve 30 youth by providing a spectrum of services to include; provision of food, time with positive adult role models, positive social interaction and skill development, and academic assistance.

Performance Measurement 2: 75% of youth will spend a minimum of 10 hours with a positive adult role model

Performance Measurement 3: 75% of youth will receive a minimum of 3 hours learning and participating in activities that increase an understanding of developing a healthy life style

Performance Measurement 4: YMCA will participate in a community engagement event with the City of Duluth’s Parks and Recreation division tentatively scheduled for May 2018 and May 2019 and will report # of youth participants.

Performance Measurement 5: YMCA will document and report on youth engagement efforts (# of participants, activity, location) in City of Duluth parkland.

Budget:

<u>Amount</u>	<u>Program Activity Costs</u>
\$	Staff
\$	Program Directors/Coordinators
\$	Fringe Benefits
\$ 20,000.00	Total Expenditures

Reimbursement Formula: Twice yearly payments which are based on performance measurements as noted above.

Income Verification: Does not apply to this program.