

**OPERATION AGREEMENT
FOR OUT-OF-SCHOOL TIME YOUTH PROGRAMS**

DULUTH AREA FAMILY YMCA

THIS AGREEMENT, effective as of the date of attestation by the City Clerk ("Effective Date") is 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 1st Street, Duluth, MN 55802 hereinafter referred to as "YMCA".

1. RECITALS

WHEREAS, City wishes to support free, out-of-school time recreational programming for youth.

WHEREAS, YMCA serves youth in an out-of-school time capacity with the ability and interest in providing recreational programming aligned with the City's Parks and Recreation Division Mission.

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 Executive Director or designee.

3. SERVICES/PROGRAM

3.1. The following services will be provided by YMCA : facilitate out-of-school time youth recreational programming in the City's Gary New Duluth Neighborhood. Recreational programming may include a combination of indoor and outdoor recreation, both onsite and off-site including but not limited to City Parks, Trails, and other recreational locations to help youth enjoy safe, structured, healthy recreation. 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. Providing properly trained and licensed staff in sufficient numbers to adequately provide the Program.
- 3.1.3. Providing those items including equipment and supplies required for the recreational activities of the Program.

4. LOCATION OF SERVICES

4.1. The Program will be held at the Gary New Duluth Community Center (the "Premises"). YMCA is responsible for securing the Premises and paying all expenses related to use of the Premises.

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 Fifteen Thousand and 00/100th dollars (\$15,000) inclusive of all expenses associated with the Program, payable from Fund 205-130-1219-5310 (Park Fund, Community Resources, Parks Operating, Contract Services). YMCA shall submit invoices for services not more than one (1) time per year to the attention of the Manager of Parks and Recreation. Payment in year one of this Agreement will be made upon written request in the first quarter of the calendar year with supporting documentation to follow at the conclusion of the year. Subsequent annual payment will be made upon written request in the first quarter of that year and receipt of and satisfactory review of the prior year's annual reporting requirements as outlined in Exhibit A and 5.2 of this Agreement.
- 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 for the prior year. The statement shall be filed not later than February 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 termination 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 related to this agreement in a timely manner. YMCA shall further be obligated to pay any real property, 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, 2020 and shall continue through December 31, 2022 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 ninety (90) days written notice upon the other.
- 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.

7. COMMUNICATIONS

- 7.1. 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.

8. INSURANCE

- 8.1. YMCA shall procure and maintain continuously in force a policy of insurance coverage 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 One Million Five Hundred Thousand Dollars (\$1,500,000.00) 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.
- 8.2. YMCA shall also provide evidence of Statutory Minnesota Workers Compensation Insurance,
- 8.3. 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.

- 8.4. 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.
- 8.5. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.
- 8.6. 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.
- 8.7. 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.

9. HOLD HARMLESS

- 9.1. 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.

10. CITY ACCESS

- 10.1. City shall have the right to monitor or observe the Program at any time.

11. RELATIONSHIP

- 11.1. 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.

12. THIRD PARTY BENEFICIARIES

- 12.1. 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.

13. SEVERABILITY

- 13.1. 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.

14. NOTICES

14.1. Unless otherwise provided herein, notice to the City or YMCA 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
Attention: Melissa Fanning
302 W 1st Street
Duluth, MN 55802

15. GENERAL PROVISIONS

15.1. 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 here in contained are on its part complied with strictly and promptly.

15.2. 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.

15.3. YMCA agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the Manager of Parks and Recreation.

15.4. 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.

15.5. 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 herof.

CITY OF DULUTH

Mayor: _____

Date: _____

Attest:

City Clerk: _____

Date: _____

Countersigned:

City Auditor

Date: _____

DULUTH AREA FAMILY YMCA

BY:

Its Chief Professional Officer

Printed Name: _____

Its: _____

Board Officer

Printed Name: _____

**OUT-OF-SCHOOL TIME YOUTH PROGRAMMING
2020 CITY OF DULUTH PARK FUND ALLOCATIONS
FY 2020 EXHIBIT A**

Project: Youth Programming at Duluth Area Family YMCA at Gary New Duluth Community Center.

Scope of Service: Duluth Area Family YMCA (YMCA) will provide out-of-school time programming to youth living in the City's Gary New Duluth neighborhood in the Gary New Duluth Community Center. Note: FY2020 is the first of a three-year contract.

Performance Measurement 1: Facilitate daily/weekly out-of-school time youth recreational programming in the City's Gary New Duluth Neighborhood for 55 youth annually. Recreational programming may include a combination of indoor and outdoor recreation, both onsite and off-site including but not limited to City Parks, Trails, and other recreational locations that provide youth safe, structured, healthy recreation.

Performance Measurement 2: Coordinate up to four recreation programming activities with City of Duluth Parks and Recreation Division annually and report # of participants.

Performance Measurement 3: Document and report on youth recreation programs facilitated by Duluth Area Family YMCA each month/year (# of participants, demographics, activity, location, etc. using provided reporting template).

Budget:

\$15,000	Direct Service Staff Salary/Fringe
\$0	Program Equipment and Supplies

\$ 15,000	Total Expenditures
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Payment Formula: Annually, with payment upfront in first quarter of each calendar year. Year 1 payment upon written request from agency. Year 2 and 3 payment will be made upon written request in the first quarter of that year and receipt of satisfactory prior year's annual reporting requirements.

Income Verification: Does not apply to this program.