

## **EXHIBIT 1**

# **2016 PARK POINT BEACH HOUSE AND ADJOINING PROPERTY OPERATION AND MANAGEMENT AGREEMENT BETWEEN THE CITY OF DULUTH AND THE DULUTH AREA FAMILY Y.M.C.A.**

THIS AGREEMENT is by and between the CITY OF DULUTH, a municipal corporation organized and existing under the laws of the State of Minnesota (“City”), and the Duluth Area Family Y.M.C.A., a Minnesota non-profit corporation (“YMCA”). The City and YMCA are hereinafter collectively referred to as the “Parties.”

### **RECITALS**

WHEREAS, the City owns park property located on Minnesota Point, also known as Park Point. A portion of the Park Point park subject to this Agreement is located at 5000 Minnesota Avenue, Duluth, Minnesota, 55802, and is depicted on the attached Exhibit A (the “Premises”). The Premises is legally described as Lot 1, known as Parcel 5 of Referees Plat of Minnesota Point as recorded in the office of the Register of Deeds in Book G, Page 38, including riparian rights, all in section 31, Township 49, Range 14 West. The Premises includes the Park Point Beach House (hereinafter defined), the Recreation Facilities (hereinafter defined), the adjoining grounds and fields, and all related equipment contained therein.

WHEREAS, the YMCA has operated and maintained the Premises since 2009;

WHEREAS, the YMCA provides critical services to the community through its operation and management of the Premises;

WHEREAS, the YMCA desires to continue to operate and maintain the Premises by providing certain services as described in this Agreement; and

WHEREAS, City would like to continue its contractual relationship with YMCA for the operation and management of the Premises.

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

#### **I. Administration**

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

## II. Purpose

The YMCA agrees to operate the Premises by providing and operating life guarding services, managing rentals of the Park Point Beach House building on the Premises, retail vending, and concession services. Such services include, but are not limited to scheduling events and other rentals, collection of fees, issuing of permits, and supervision of building rentals to private parties. YMCA agrees to be responsible for all other expenses not specifically mentioned in this Agreement related to the operation and maintenance of said Premises.

## III. Premises

A. The YMCA, at its sole expense and subject to the provisions of this Agreement, shall manage and operate the Park Point Beach House building and immediately adjoining grounds, exterior walkways, exterior stairways, exterior access ramps, and deck areas, and all equipment contained therein (collectively the “Park Point Beach House”).

B. YMCA shall also be responsible for managing the rental and usage of the Premises and Park Point Recreation Facilities (hereinafter defined), including scheduling events, collecting rental fees, and assisting with rental agreements and permits. The Park Point Recreation Facilities include, but are not limited to, the picnic pavilions, ball fields, and sand volleyball courts as shown on Exhibit A (collectively the “Recreation Facilities”).

C. 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 express or implied, that the premises or equipment thereon are suitable for any purpose.

## IV. Term

Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on May 1, 2016 and shall continue through September 30, 2016, unless earlier terminated as provided for herein.

## V. Termination

### A. Generally

1. Upon expiration or early termination of this Agreement for any reason, YMCA shall remove all of its personal property from the Premises pursuant to Section V.C. below. YMCA agrees to surrender possession of Premises to City in as good condition and state of repair as said Property were in at the time YMCA took possession, acts of God and normal wear and tear excepted. All personal property remaining on Premises after YMCA surrenders possession to City shall become exclusive property of City.

2. Upon termination, YMCA shall remit to City within thirty (30) days, the following:
  - a. Calendar that lists all future events, rentals, permits, uses, authorized by YMCA at Premises;
  - b. Organization names, contact person(s), and contact information for said future uses;
  - c. Copies of any agreements or documents evidencing fee arrangements for said future uses;
  - d. Accounting of all fees collected for uses that have not yet occurred at Premises; and
  - e. Check reimbursing City in full for all fees collected for uses that have not yet occurred at Premises.

**B. Mutual Agreement**

This Agreement may be terminated at any time by mutual written agreement of the Parties. Upon termination, YMCA shall remit to City within thirty (30) days, the following:

1. Calendar that lists all future events, rentals, permits, uses, authorized by YMCA at Premises;
2. Organization names, contact person(s), and contact information for said future uses;
3. Copies of any agreements or documents evidencing fee arrangements for said future uses;
4. Accounting of all fees collected for uses that have not yet occurred at Premises; and
5. Check reimbursing City in full for all fees collected for uses that have not yet occurred at Premises.

**C. For Cause**

1. City may unilaterally terminate or suspend this Agreement immediately if City believes in good faith that the health, welfare or safety of Premises occupants or neighbors would be placed in immediate jeopardy by the continuation YMCA's operations. The 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. All personal property remaining on Premises shall become exclusive property of City.

2. City may terminate this Agreement immediately by serving written notice to YMCA if City determines YMCA has or is violating any term 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, then the City may terminate this Agreement immediately by serving notice to YMCA. 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. All personal property remaining on Premises shall become exclusive property of City. Should City elect to reenter, this Agreement shall be deemed terminated.

3. Upon termination for cause, YMCA shall remit to City within thirty (30) days, the following:

- a. Calendar that lists all future events, rentals, permits, uses, authorized by YMCA at Premises;
- b. Organization names, contact person(s), and contact information for said future uses;
- c. Copies of any agreements or documents evidencing fee arrangements for said future uses;
- d. Accounting of all fees collected for uses that have not yet occurred at Premises; and
- e. Check reimbursing City in full for all fees collected for uses that have not yet occurred at Premises.

## VI. Operation of the Premises

A. Considering the seasonal nature and use of the Premises, YMCA shall staff and operate the Premises from May 5, 2016 and September 30, 2016, weather permitting (the "Summer Season"). Such dates of operation shall closely coincide with the period when the Park Point Recreation Area beach area is open to the general public, said period is determined by the Manager.

B. General daily hours of concession operation/services shall be 11:00 a.m. – 4:00 p.m. to coincide with the Park Point Recreation beach area open hours. The YMCA will provide at least one (1) staff person to operate the concession stand during hours of operation. The YMCA shall be responsible to determine on a daily basis whether the Park Point Recreation Area beach area shall open based on weather conditions. It is generally expected that the concession operation shall be open and functional each day, or portion thereof, that the beach area is open and staffed with lifeguards.

C. YMCA understands and acknowledges that any party or special event held on the Premises must not begin earlier than 10:00 a.m. on the date(s) of each party or special event, except as otherwise agreed in writing. All parties or special events held: (1) Sunday through Thursday must end at 11:00 p.m. and (2) Friday and Saturday must end at 11:59 p.m.

D. YMCA shall provide the City with the name(s) and contact information of any on-site manager provided by the YMCA who will be responsible for the daily operation and maintenance of the Premises.

E. YMCA shall provide retail in-person vending and/or concession services for the use and convenience of the general public.

F. YMCA shall provide the lifeguard services as described in Section VII.A.

G. YMCA shall be solely responsible for managing the rental and use of the Premises to private groups or parties. YMCA's responsibilities shall include:

1. Scheduling private parties, recreational and/or community events and programs during the Term of this Agreement that are scheduled to occur both during the Term of this Agreement and after the Term of this Agreement. YMCA may rent any portion of the Premises to private groups, clubs or parties and may, at its discretion, charge a rental fee. YMCA may charge and collect a rental fee during the Term of this Agreement for private parties, recreational and/or community events and programs that are scheduled to occur after the Term of this Agreement.

a. YMCA may, at its discretion, charge a fee to groups, clubs, or organizations requiring regular scheduled use of the Premises. The rental fee for each event shall be similar to rental prices charged for under similar circumstance in the community.

b. A current schedule of fees for the use of the Premises shall be submitted to, and approved by, the City prior to becoming effective, and such approval shall not be unreasonably withheld or delayed. All such rentals shall be documented by a written rental agreement.

c. YMCA shall be responsible for overseeing and supervising these rentals and user groups and shall be responsible for ensuring compliance with all rules and laws.

2. Maintaining a master calendar ("Master Calendar") of all such rentals. The Master Calendar shall be provided to the City's Parks Manager on or before the 1st day of each month, and upon expiration or early termination of this Agreement.

3. Collecting the rental fees and deposits, if applicable. All such fees and deposits shall be separately managed and/or accounted for by YMCA in order to identify funds received or expended in the operation and maintenance of the Premises.

4. Managing, overseeing, and supervising these rentals and all user groups (including guests, invitees and agents thereof) of the Premises and ensuring compliance with all

rules and laws. This includes, but is not limited to, ensuring that the renter/user group has obtained the appropriate alcohol permit from the City if the rental activity will include the consumption of alcoholic beverages, and further ensuring that all such consumption occurs in compliance with all laws regulating such consumption.

5. Both parties agree to recognize the Premises as a long-standing venue for large-scale special events and activities such as the Park Point Art Fair and Park Point Five Miler. The Park Point Art Fair and Park Point Five Miler events are specifically excluded from the YMCA's operation and management of the Premises, except that YMCA is entitled to one-half (1/2) of the fee collected by the City for the Park Point Art Fair. After the City collects the Park Point Art Fair event fee from the Art Fair organization, City shall remit one-half (1/2) of the fee to the YMCA as part of the YMCA's operation and management of the Premises. Both parties further agree to honor all prior commitments to large-scale special events and to make every effort to mutually coordinate the use of the Recreation Facilities for any new or added events desiring to use this area. YMCA understands that such existing or new special events may cause temporary disruption of YMCA programs during such times. City shall provide notice to YMCA in advance of any special activities.

H. A copy of the 2016 Beach House Rental Information and Policies is attached as Exhibit B.

I. A copy of the 2016 Pavilion and Field Application is attached as Exhibit C.

## VII. Life Guard and Recreation Facilities Services

### A. Life Guard Services

1. YMCA shall provide, at no cost to the City, lifeguard services for the Park Point Beach within the life guard area identified on Exhibit A. Lifeguard services shall be provided during the summer beach season (June 1 to August 31) and/or other dates agreed upon in writing by both parties in advance. YMCA shall provide not less than two (2) (3) on-duty lifeguards at all times when the beach is designated as "open," seven (7) days per week (weather and water conditions permitting), daily from 11:00 a.m. – 4:00 p.m. Life guards shall be trained and hold the required certification and licenses necessary to perform his or her job duties. The YMCA shall be responsible for hiring, screening, and supervising the life guards and ensuring that competent, certified lifeguards are present in sufficient number to safely and sufficiently serve the Park Point Beach and its patrons.

2. It is acknowledged that under prior Agreements, the City provided appropriate lifeguarding or beach-related equipment, and YMCA may continue to use such equipment. YMCA shall be responsible for the replacement of any necessary equipment during the term of this Agreement.

3. YMCA shall determine beach closing procedures based on the Duluth Fire Department flag warning. Once said system is invoked by the Duluth Fire Department, YMCA shall take those steps necessary to properly close the Park Point Beach and notify beach users.

**B. Recreational Facilities and Premises Events**

1. YMCA shall be responsible for all scheduling of all events at the Premises and Recreation Facilities and the issuance of any permits related thereto, except for the Park Point Art Fair and Park Point Five Miler. It is fully understood by both parties that the Recreation Facilities shall be open and available for the use and enjoyment of the general public at no cost when not previously reserved by a user group.

2. YMCA may charge fees generated from the scheduled, reserved use of the Premises or Recreation Facilities as identified herein. YMCA shall be entitled to retain one hundred percent (100%) all of the fees for events and/or parties scheduled at the Premises or Recreation Facilities.

3. YMCA agrees to staff and operate recreational and related programs offered to the general public on the Premises. Such programs shall be properly scheduled and advertised similar to existing YMCA programs. YMCA may charge fees for said program and retain said fees. A listing of all YMCA programs scheduled on the Premises, complete with dates, times, and fees to be charged, shall be provided to City at least thirty (30) days prior to the commencement of such programming.

**C. Supervision**

1. YMCA agrees that at all times the Premises are in use, except when it is occupied by another permitted party or under the supervision of authorized City staff, it will be supervised by an adult person who is employed by or otherwise responsible to the YMCA.

2. YMCA agrees that it will not relinquish temporary occupancy and control of any portion of the Premises under its control to a third party rental unless a responsible adult representing the rental party completes and signs a separate Temporary Lease Agreement. A copy of each executed Temporary Lease Agreement shall be submitted to Manager within ten (10) days of its execution. YMCA is still responsible for fulfilling its duties under this Agreement during a third party rental.

3. Except as provided in Section VII.C.2. above, YMCA shall not sublet any space(s) on the Premises without first securing prior written approval of the City.

**VIII. Marketing and Advertising of Premises**

A. YMCA shall be diligent in the marketing and advertising of the services and amenities available on the Premises. YMCA agrees to utilize appropriate marketing and advertising outlets such as inclusion of the Premises information on the YMCA website and in its YMCA member brochure/pamphlet. All marketing and advertising shall be at YMCA's cost and expense.

B. All marketing efforts must comply with all applicable laws, rules, and guidelines governing such activities.

## IX. Maintenance

A. YMCA shall provide, at its expense, all daily cleaning, minor repairs (defined as repairs with total documented value of less than \$500.00 per repair, including materials and labor), and routine maintenance necessary to properly operate and maintain the Premises in a safe and reasonable state of repair, including but not limited to the following:

1. Providing those items required for the daily operation, maintenance, and routine cleaning of the Premises, including but not limited to, cleaning supplies, interior light bulbs, garbage bags, paper products, plastic products, and program equipment and supplies.
2. Maintaining the Premises in good order and condition and state of repair, normal wear and tear excepted.
3. Removing all litter or other waste and properly disposing of same into the proper disposal containers provided within the Premises, including the beach within the designated lifeguarding area and extending two hundred (200) feet in either direction and maintaining the Premises in a neat and clean fashion.
4. Providing all staff, equipment, and cleaning supplies necessary to carry out this provision.
5. Complying with the City's guidelines relating to recycling, energy efficiency, and maintenance of the Premises, a copy of which will be provided to the YMCA.
6. Daily cleaning (including the emptying and maintaining of all trash containers) on the Premises, including washrooms (mens/ladies), for use by both YMCA's patrons and general public.
7. Maintaining the handicap access ramp leading to the Beach House Building and keeping all hard surfaces clear of sand and debris.
8. Securing the Beach House Building when not in use.

B. Providing necessary day-to-day janitorial cleaning and other minor maintenance not requiring a licensed or skilled tradesperson (e.g., plumber, electrician, carpenter, etc.)

C. YMCA shall promptly notify the City of necessary major repair work, including any repair work that requires a licensed or skilled tradesperson, so that the City can make the necessary repairs or arrange for a service provider of the City's choice to make the repairs.

## X. City's Responsibilities

City agrees to provide the following:

A. Local telephone service, electricity, water, garbage pick-up, and sewer utilities for the Park Point Beach House building.

B. Necessary major repairs and non-routine maintenance to the structural and mechanical components of all existing buildings and plumbing and electrical systems. Non-routine maintenance shall be defined as major system replacement repair items or replacement of whole systems, major building and/or assembly, or upgrade of any fixed asset, road repair, locks and key changes, and winterizing water systems.

C. Basic cable internet to the Park Point Beach House building, plus payment of the cost of installing the necessary hardware for wireless service to the Park Point Beach House building.

## XI. Alterations or Improvements

A. YMCA may, at its sole cost and expense, make suitable improvements or alterations to the Premises upon advance written approval from the City's Architect. All such improvements (excluding appliances and equipment plugged into an electricity source) shall become the property of the City. Prior to commencing any improvements or alterations, YMCA shall submit to the City a Project Proposal Request along with detailed plans. A copy of the Project Proposal Request is attached to and incorporated by reference into this Agreement as Exhibit D. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Code.

B. YMCA agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Premises, YMCA will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by the City Attorney before the commencement of any construction hereunder.

## XII. Incident Reports

YMCA shall promptly notify the Manager and City's Property and Facilities Manager in writing of any incident of injury or loss or damage to the property of City or any YMCA's participants or invitees occurring on or within the Premises during 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 and incorporated by reference into this Agreement as Exhibit E.

### XIII. Communications

A. 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.

B. YMCA agrees to provide the City with a summary report identifying all activities held on the Premises during the Sumner Season. The report will include statistics about the activity including date of the activity, name of activity, number of people in attendance, and brief description of the activity.

C. The parties agree to meet during the Term of this Agreement to jointly inspect the Premises to determine whether the Premises are in all respects in proper condition and, if necessary, to review the terms and conditions of this Agreement.

D. For general questions about the terms of this Agreement or day-to-day questions about operations of the Premises, the Parties agree that the following named persons to be the primary contact:

City of Duluth  
Attn: Josh Abraham  
Recreation Specialist  
411 W. First Street, Ground Floor  
Duluth, Minnesota 55802  
(218) 730-4314  
[jabraham@duluthmn.gov](mailto:jabraham@duluthmn.gov)

Duluth Area Family YMCA  
Attn: Executive Director  
302 W. First Street  
Duluth, Minnesota 55802  
(218) 722-4745 X161  
[JKatchuba@duluthymca.org](mailto:JKatchuba@duluthymca.org)

Parties agree that they may designate other respective persons from time to time in writing. Such writing shall be communicated to the persons listed in Section XXIV below.

### XIV. Financials, Reporting, and Taxes

A. The City will not pay a fee to the YMCA for its operation and management of the Premises under this Agreement. Nor will the City charge a fee to the YMCA for its use and occupancy of the Premises. In return for the YMCA's services, the YMCA will retain one hundred percent (100%) of total Net Receipts (hereinafter defined) from all Premises rentals, vending, and concession sales (except the Park Point Art Fair and Park Point Five Miler as discussed in Section VI.G.5. above). "Net Receipts" means all amounts collected by YMCA from building rental or from vending and concession sales net of discounts, refunds, rebates, credits, credit card returns, credit card charges, uncollected checks and all applicable taxes).

B. YMCA shall file with the City Auditor an itemized statement showing all YMCA income and expenses related to the operation of the Premises for the term of this Agreement. The statement shall be filed not later than December 31, 2016 and shall include all required financial information from the year 2016. 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.

C. 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 Premises 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.

D. YMCA shall pay 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.

## XV. Insurance

A. 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 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. The City shall be named as an additional insured on said policy of insurance required by this paragraph.

B. YMCA shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

C. YMCA shall also provide evidence of casualty loss insurance coverage for the Park Point Beach House Building on the Premises in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) ("Casualty Loss Insurance Coverage"). The City shall be named as an additional insured on the Casualty Loss Insurance Coverage.

C. 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.

D. 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. § 466.04 are increased.

E. The City does not intend to waive any legal immunities, defenses, or liability limits that maybe available.

F. When using the "Accord" 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.

G. The 2004 edition of ISO Additional Insured Endorsement CG 20 10is not acceptable. If the CG 20 10 is used, then it must be a pre-2004 edition.

## XVI. Hold Harmless and Indemnification

A. YMCA hereby 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 use, management, maintenance or operation of the premises by YMCA or performance of its obligations under this Agreement.

B. YMCA will indemnify the City for any damage to any City property on the Premises and Center caused by YMCA, its agents, volunteers, employees, and invitees.

## XVII. Alcohol, Tobacco, and Drug Use

A. The possession, use, or sale of alcohol is permitted on the Premises only under the following conditions:

1. Alcohol may be possessed, consumed or served only when the appropriate permit or license has been obtained from the City prior to the event and all application, fee and other requirements have been met.

2. Alcohol may be sold only when the appropriate on-sale alcoholic beverage license has been obtained from the City prior to the event and all application, fee and other requirements have been met.

3. At least thirty (30) days' written notice of a request to serve or sell alcohol shall be provided to the City before the event to give the City sufficient time to review the request. Requests that are not timely submitted may be denied.

4. YMCA must have adequate procedures in place to ensure 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.

5. Depending on the request, licensed peace officer(s) may be required to attend the event.

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

7. The City reserves the right to prohibit the serving, sale or possession of alcohol on the Premises.

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

## XVIII. City Access

A. City may schedule activities and events on said Premises when not in use by YMCA and shall not be charged any fee for such use.

B. 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 only to those individuals as may be designated by City or the current official contact person of YMCA.

## XIX. Independent Relationship

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting YMCA as an agent, representative, or employee of the 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. YMCA's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of YMCA's employees while so engaged and any and all claims whatsoever on behalf of YMCA arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the 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 from or on behalf of the City.

**XX. Third Party Beneficiaries**

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.

**XXI. Government Data Practices**

YMCA shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by YMCA under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by YMCA. If YMCA receives a request to release the data referred to in this clause, YMCA must immediately notify the City and consult with the City as to how YMCA should respond to the request. YMCA agrees to hold the City, its officers, and employees harmless from any claims resulting from the YMCA's unlawful disclosure or use of data protected under state and federal laws.

**XXII. 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 Premises.

B. YMCA shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Premises.

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

D. YMCA's Services conducted on the Premises shall be in compliance with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth.

**XXIII. Severability**

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.

#### XXIV. Notices

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  
Attn: Manager of Parks and Recreation  
411 W. First Street, Ground Floor  
Duluth, Minnesota 55802

Duluth Area Family YMCA  
Attn: Executive Director  
302 W. First Street  
Duluth, Minnesota 55802

#### XXV. General Provisions

A. 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.

B. 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.

C. YMCA agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.

D. 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.

E. YMCA shall have the right to use appropriate signs bearing "YMCA" and/or "Y" identification and logos on the Premises. Such signs shall be in compliance with applicable sign ordinances and regulations. Nothing in this Agreement shall be construed as YMCA licensing its name, the name "YMCA", its logos or any other names, trademarks, service marks or intellectual property rights to the City, either during the term of this Agreement or after the termination of this Agreement. However, YMCA shall not be allowed to use, erect, and/or attach signage indicating "Young Men's Christian Association" at the Premises.

E. 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.

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

**CITY OF DULUTH**

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk  
Date Attested: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Countersigned:

\_\_\_\_\_  
City Auditor

**DULUTH AREA FAMILY Y.M.C.A**

By:   
\_\_\_\_\_  
Printed Name Chris Francis

Its: President/CEO  
Title

Dated: 5/13/16



## Exhibit A - Premises

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 recognized 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.

0      100      200 Feet

1 inch = 200 feet      ph      Pr

photo date: 2013  
Printed: 4/8/2016





## EXHIBIT B

FOR YOUTH DEVELOPMENT®  
FOR HEALTHY LIVING  
FOR SOCIAL RESPONSIBILITY

# ENJOY THE WORLD'S LARGEST FRESHWATER SANDBAR

## 2016 Rental Information and Policies PARK POINT BEACH HOUSE

The Duluth Area Family YMCA has acquired the operation of the Park Point Recreation Area from the Parks and Recreation Department of the City of Duluth. The Duluth YMCA is dedicated to putting the principles of caring, honesty, respect and responsibility into practice through programs that build healthy spirit, mind and body for all. The Duluth Area Y operates the Beach House concession stand, manages the rental of the Beach House, Pavilions, and Fields for parties, wedding receptions and other gatherings, as well as provides the lifeguards. Please contact Park Point Manager Cheryl Podtburg at the Y for additional information or to book your event.

DULUTH AREA FAMILY YMCA  
302 W 1st Street  
Duluth, MN 55802  
218.722.4745 ext. 164  
[cpodtburg@duluthymca.org](mailto:cpodtburg@duluthymca.org)





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FOR HEALTHY LIVING  
FOR SOCIAL RESPONSIBILITY

This collection of information is your main reference tool for the rental process please be familiar with its contents when using the Park Point Recreation Area for your event. (Keep on hand until completion of your event.)

#### **Park Point Recreation Area**

##### **45th Street and Minnesota Avenue**

**Pavilions (2), grills, tables, electrical outlets, restrooms, playground, ball field, soccer fields, sand volleyball courts, fishing pier, boat launch, trails, beach house (6,000 square feet).... Good for picnics for a group up to 300; parking for 385 cars. Photos, and maps available at [www.duluthymca.org/locations/parkpoint](http://www.duluthymca.org/locations/parkpoint). Site visits available upon request.**

**The Park Point Recreation Area is open to the public 6 am to 10 pm daily.**

**The Park Point Beach House is open to the public 11 am to 4 pm daily during the months of June, July, and August, weather permitting.**

**The Beach House is available for rent outside public hours May 1st through September 30th.**

**Please note that if your event is early or late in the season, you may be expected to bring in your own toilet facilities, as the City-owned public restrooms may not be operational.**

- Park Rules, page 3
- Additional Beach House Guidelines, page 4
- Alcohol Consumption Rules, page 5
- Insurance Requirements, page 5
- Restroom Information, page 5
- Application and Rental Agreement, page 6 & 7
- Optional Services information available by request



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## PARK POINT RECREATION AREA RULES

**Park Rules apply to public use as well as rentals.. Sections of the policies are enforceable by City Ordinances and State Statutes: Duluth City Code: Chapter 8 Article I Sec. 35-8, 9; MN State Statute: 340A101, 340A.414**

- A permit does not give "exclusive" use of the park; only the picnic shelter or specific area you have requested. The park will still be open to the public. Permit must be in the permittee's possession at the event to enforce its privileges, including asking individuals to move from the designated reserved space.
- The permit includes use of the shelter or reserved space (i.e. ball field), and amenities (picnic tables, water, electricity, and grills, where available).
- Your reservation will automatically be canceled if payment and insurance certificate are not received in advance.
- Reservations are made for specific time periods – the space is not yours until the reservation time begins, so please plan accordingly. If one time period does not allow enough time for set-up, you may need to reserve the entire day, if both time periods are available. The park closes at 10 PM, unless you have reserved the Beach House and have been granted permission for extended use of the park.
- The group or person reserving the shelter is held responsible for the safe conduct of all participants attending the event.
- The area must be left in an orderly condition when you leave at the end of the time period; all trash and decorating items must be disposed of properly in existing containers and left clean for the next group using the park. Damage deposit will be withheld if failing to do so. A dumpster is located in the parking lot of disposal properly bagged trash.
- All motorized vehicles must remain in the parking lot and are not allowed on any off-road areas such as park pathways, grass, fields, etc. (see exception below).
- A key is available to allow vehicle entry for unloading of supplies into the Beach House.. Vehicles cannot remain inside the gate, and the gate must remain locked during your event.
- **ALCOHOLIC BEVERAGES:** An alcohol consumption permit must be obtained to consume alcohol in a City park. For information and forms on obtaining this permit, please call 218.730.4320 or email [tcastonguay@duluthmn.gov](mailto:tcastonguay@duluthmn.gov).
- **ELECTRICITY:** The Pavilions and Beach House are equipped with 110 volt electrical outlets. 220-volt outlets are not available. Multiple items may cause overload; please be careful.
- **FOOD:** You may use existing grills or bring additional grills. Coals, hot water, or cooking oil/grease cannot be dumped on lawns, turf, landscaped areas, catch basins or sewers, and must be disposed of properly. Grease and food waste should be composted or thrown in the garbage. For safety reasons, glass containers are prohibited. (For additional grease-disposal information, Chris Kleist at 218.355.0598 or 218.730.4063.)
- **FIRE/BONFIRES:** Bringing in your own fire ring or pit is not allowed. Fire must not extend outside of existing grills and permittee shall burn only wood that is brought into the park for the purpose of a recreation fire – no burning of materials from the park. Fire must be attended to at all times and shall be completely extinguished before leaving; removing all burned and unburned material. Fires are NOT allowed on the beach.
- **VENDORS:** All vendors selling food or products at your event must have: 1) current applicable licenses, issued by the State of Minnesota, 2) all necessary sales tax permits, and 3) product liability insurance. *This does not apply to private events, such as weddings.*
- **PORTABLE TOILETS:** When additional toilet facilities are needed beyond what is already available at the park, they will be arranged and paid for by the permittee. Consult directly with provider of choice on recommended amounts.
- **GARBAGE DISPOSAL/RECYCLING:** When additional garbage and recycling receptacles are needed beyond what is already available at the park, they will be arranged and paid for by the permittee. Consult directly with provider of choice on what is recommended for the size and type of event.
- Staked tents are not allowed in the park. Canopies are allowed if they are free standing.
- Reservations will be automatically cancelled if deposit is not received within 10 days.
- All reservations are final after the reservation has been confirmed; please be sure of your date and time. If you make changes to your reservation and a new permit must be issued, you may be asked to pay an additional \$25 processing fee.
- The person or group reserving the shelter, field or facility is held responsible for the safe conduct of all participants attending the event.
- Permittee must comply with any and all applicable city ordinances.

## 2016 RENTAL INFORMATION AND POLICIES PARK POINT BEACH HOUSE





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## ADDITIONAL BEACH HOUSE GUIDELINES AND INFORMATION

The Beach House is open to the public 7 days a week from 11 AM to 4 PM June through Labor Day. These hours are subject to change, and weather permitting. The beach is always open to the public. Your rental cannot interfere with public use of city owned property. Call the City of Duluth for more information at 218.723.3337.

- For daytime and evening events (such as birthday parties, graduation parties, etc.), ending by 8 PM, the Beach House rental fee is \$50 per hour (\$54.19 with tax).
- The rental fee for a standard wedding or other reception, and all other events from 5 PM – 12:30 AM, at the Beach House is \$650 (\$704.47 with tax). A \$150 non-refundable security deposit will reserve your requested date for your event. This deposit counts towards your rental fee. The remainder of the rent is due one month prior to the event.
- A refundable damage deposit is also due one month prior to your event. For hourly rentals, this deposit amount will be \$100. For longer rentals, this deposit amount will be \$200. This amount will be reserved for any damages that occur during the event. If no damage or incidents have occurred to the Beach House, The Duluth Area Family Y will send a refund to the address listed on the check within two weeks following the event. You are responsible for any and all damages that arise out of your use of the Beach House, even if they exceed the amount of the damage deposit.
- You gain exclusive access to the Beach House at 4 PM. Your activities shall not extend later than 12:30 AM. Lock up must occur no later than 1 AM.
- You are responsible for setting up all tables, chairs, and decorations for your event (tables and chairs are provided by the Beach House for up to 200 people). You can begin setting up at 4:00 PM the day of your event. Additional tables and chairs may not be brought in without permission from the Beach House Manager.
- You may not remove or alter the existing decorations in the Beach House. To do so will result in the forfeiture of your damage deposit. Nothing can be nailed to the walls. Nothing will be added to the walls without approval of the Beach House staff.
- You are responsible for throwing away all trash after your event is finished. Everything must be clean by 11:00 AM the following day. Clean up can resume the morning after the event (at 10 AM), with manager approval. All trash must be bagged and brought to the dumpster located in the parking lot adjacent to the Beach House. All tables and chairs need to be wiped down and put away. The floor needs to be swept, and if needed, mopped. Non-compliance with this stipulation will result in the forfeiture of your entire damage deposit.
- Set up service is available for \$100. (\$108.38 with tax)/ Clean up service is available for \$150. (\$162.57 with tax). These services are available upon request only, and must be requested at least one month prior to your event, and may be denied based on availability of staff.
- You must deliver a copy of the liquor permit to the staff of the Beach House before any alcohol is brought onto the premises. Email copies are acceptable. Anyone found without a permit or security guard, at any time, will be removed immediately from the building. See page 5 for alcohol policy information.
- **ELECTRICITY:** The Beach House is equipped with 110 volt electrical outlets. 220-volt outlets are not available. Multiple items may cause overload; please be careful.
- **FIRE/BONFIRES:** Bringing in your own fire ring or pit is not allowed. Fires and tiki torches are not allowed on the Beach. The Beach House fireplace is **not** functional.
- The Beach House bathrooms will be cleaned by Beach House staff after the Beach House closes to the public at 4 PM. Paper towels and toiletries will be provided for your rental.
- Heavy Duty garbage bags will be provided free of charge for you to use at clean up.
- **No confetti, glitter, or rice allowed. No tiki torches or Chinese lanterns.**
- You are allowed to bring in a caterer of your choice, provided they meet the requirements listed under Park rules.
- You must comply with any and all applicable city ordinances. **The beach and the outside grounds are public areas; you are only renting the inside corridor.** Alcoholic beverages are not allowed on the beach per City of Duluth Ordinance.
- All personal items must be removed at the end of your event. Anything left behind will be discarded or donated to charity.
- **Non compliance with any part of the policies and procedures will result in the forfeiture of your entire damage deposit. We reserve the right to bill you for damages that exceed your deposit amount.**

## 2016 RENTAL INFORMATION AND POLICIES PARK POINT BEACH HOUSE





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## ALCOHOL CONSUMPTION RULES

### ALCOHOL PERMIT CONTACT INFORMATION

An alcohol consumption permit must be obtained to consume alcohol in a City Park. For information and forms on obtaining this permit, please call 218.730.4320 or email [tcastonguay@duluthmn.gov](mailto:tcastonguay@duluthmn.gov).

Sections of the policies are enforceable by City Ordinances and State Statutes: Duluth City Code: Chapter 8; MN State Statute: 340A.101, 340A.414.

### ONCE A PERMIT IS SECURED

A copy of the secured permit should be emailed to: [cpodtburg@duluthymca.org](mailto:cpodtburg@duluthymca.org). You may also mail proof to: Duluth Y, attn: Cheryl Podtburg; 302 W 1st Street; Duluth, MN 55802.

## INSURANCE REQUIREMENTS

The City requires all organizations using city property to obtain event insurance for the time city property is occupied. Prior to the permit being issued, the following must be provided:

The minimum amount of a commercial general liability policy shall be \$2,000,000 each occurrence (as per State Legislature requirement).

A "Certificate of Insurance" listing the Duluth Area Family YMCA as additional insured should be emailed to: [cpodtburg@duluthymca.org](mailto:cpodtburg@duluthymca.org). You may also mail proof to: Duluth Y, attn: Cheryl Podtburg; 302 W 1st Street; Duluth, MN 55802.

**THIS IS NOT REQUIRED FOR PRIVATE EVENTS, SUCH AS WEDDINGS,, GRAD PARTIES, AND CLASS REUNIONS.**

Your event may be denied park usage without proper insurance.

The physical address for the Park Point Beach House is 5000 Minnesota Avenue; Duluth, MN 55802.

## RESTROOMS

Beach House restrooms are available to the public during public hours only.

Restrooms near the boat launch are operated by the City of Duluth, and are open seasonally. Hours are approximately 8 am—8 pm.

A limited number of portable toilets are also located in the park. For problems with portable toilets, call the number listed on the receptacle.

Depending on the size of your event and the time of the season in which it occurs, you may be asked to bring in additional toilet facilities. Consult directly with providers for recommendations.



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**The Duluth Area Family Y will provide the following under the Standard Rental Agreement:**

1. Signage to notify the public that the Beach House is closed and only open for your special event.
2. Private usage to the Beach House from 4 pm—12:30 am. Lock-up must occur no later than 1 am.
3. Cleaning of the Beach House bathrooms after they close to the public at 4 pm. Paper towels and toiletries will be provided.
4. Tables and chairs for up to 200 people. No additional tables or chairs allowed without Beach House Manager approval.
5. Heavy duty garbage bags will be provided free of charge for you to use at clean-up.
6. Other stipulations as listed in this document.

**The Renter agrees the following under the Standard Rental Agreement:**

1. Return pages 6 and 7 of this document, along with initial non-refundable deposit of \$150.
2. Comply with all applicable city ordinances.
3. Comply with all items listed within this document.
4. Provide accurate information and proof of proper permits, if necessary and/or requested.
5. Provide prompt payment and damage deposit.
6. If damages are accrued above the damage deposit amount, pay the difference.
7. Forfeits the entire amount of the damage deposit for non compliance with any portion of the Park Point Recreation Area and Beach House policies and/or City of Duluth Ordinances.

**Name(s):** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Date of Rental:** \_\_\_\_\_

**Type of Event:** \_\_\_\_\_

**Time of Event:** \_\_\_\_\_

**Liquor at Event\* (yes/no):** \_\_\_\_\_

**Estimated attendance:** \_\_\_\_\_

\*If you choose to have liquor at your event, you must apply for the proper permit from the Park and Recreation Department of the City of Duluth, and comply with all required ordinances. See page 5 for additional information.

Return pages 6 and 7 of this contract, along with the \$150 deposit, to save your date. Send to:

Cheryl Podburg  
Park Point Manager  
Duluth Area Family Y  
302 W 1st Street  
Duluth, MN 55802

The deposit counts toward the rental fee and is non-refundable. **CHECKS PAYABLE TO THE DULUTH AREA FAMILY YMCA.**

The Beach House is in high demand for the summer months. Be sure to return your deposit as soon as possible to reserve

**2016 RENTAL INFORMATION AND POLICIES  
PARK POINT BEACH HOUSE**





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### PARK POINT RECREATION AREA

#### HOLD HARMLESS AGREEMENT

Permittee agrees to defend, indemnify, and save harmless the Duluth Area Family YMCA from any and all liens, claims, suits, demands, liability, judgment costs, damages, and expenses which may accrue against or be charged or may be recovered from the Duluth Area Family YMCA by reason of or account of any claim or damage arising from Permittee's use or occupancy of the premises whether or not person or persons including Permittee, its members, Permittee's employees, agents, volunteers, invitees, or tenants, whomsoever occasioned or caused by the contact, acts, or omission of Permittee, its members, volunteers, invitees, or tenants, or by reason of the use, development, operation or maintenance of said premises by Permittee under this agreement. Upon ten (10) days written notice, Permittee will appear and defend all claims and lawsuits against the Duluth Area Family YMCA growing out of any such injury or damage resulting from any defect in the construction or condition of all the interior and exterior premises of the site. The Duluth Area Family YMCA does not waive its immunities under state or federal law.

---

Permittee Signature

Date

---

Name of Organization Permittee is Representing

Date

#### OFFICE USE ONLY

##### DOCUMENTS RECEIVED

- Application
- Alcohol permit
- Security Agreement
- Proof of insurance
- Payment in Full
- Optional Services agreement
- Deposit refunded within 2 weeks of event

##### PAYMENT RECEIVED

- \$150 non-refundable deposit
- Hourly Rate of \$50/hour  hours
- Event Rate of \$650
- Set-up Service of \$100
- Clean-up Service of \$150
- \$200 refundable deposit
- \$100 refundable deposit
- Deposit refund requested on :

## EXHIBIT C



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- A permit allows you the exclusive use of the shelter—the park is still open to the public.
- Staking is not allowed in the park. Canopies may be used if they are stand-alone.
- We do not provide any additional items needed for your event.
- **Your reservation will be cancelled if payment is not received within two weeks.**
- The area must be left in an orderly condition when you leave at the end of the time period; all trash and decorating items must be disposed of properly and in existing containers and left clean for the next group using the park. Applicable damage deposit will be withheld if failing to do so. A dumpster is located in the parking lot for disposal of properly bagged trash.

- Available sites are:  
Pavilion 1 is closest to the Volleyball Courts.  
Pavilion 2 is closest to the Playground.  
Fields
- Available time slots/fees are:  
10 am—3 pm (0-100 persons): \$55 (with tax \$59.61)  
4 pm—9 pm (0-100 persons): \$55 (with tax \$59.61)  
10 am—9 pm (0-100 persons): \$110 (with tax \$119.22)  
  
10 am—3 pm (100-150 persons): \$75 (with tax \$81.29)  
4 pm—9 pm (100-150 persons): \$75 (with tax \$81.29)  
10 am—9 pm (100-150 persons): \$150 (with tax \$162.57)

*Permits will be emailed when application and payment have been received.*

Contact: \_\_\_\_\_ Private Host      Business      Club  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Date of Rental: \_\_\_\_\_ Type of Event: \_\_\_\_\_  
Site: \_\_\_\_\_ Time Slot: \_\_\_\_\_ Liquor at Event\* (yes/no): \_\_\_\_\_  
Estimated attendance: \_\_\_\_\_ Type of Event: \_\_\_\_\_

\*If you choose to have liquor at your event, you must apply for the proper permit from the Park and Recreation Department of the City of Duluth, and comply with all required ordinances, email Cheryl a copy of the permit obtained from the City, and have the permit with you in the park on the day of your event. See page 3 of the park rules for additional information.

Return both pages of this application to reserve your date. Send to:

Cheryl Podtburg  
Park Point Manager  
Duluth Area Family Y  
302 W 1st Street  
Duluth, MN 55802

**CHECKS PAYABLE TO THE DULUTH AREA FAMILY YMCA.** Be sure to return your payment within two weeks to avoid cancellation of your reservation.

### 2016 RENTAL INFORMATION AND POLICIES PARK POINT REC AREA PAVILIONS/FIELDS





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**PARK POINT RECREATION AREA**

**HOLD HARMLESS AGREEMENT**

Permittee agrees to defend, indemnify, and save harmless the Duluth Area Family YMCA from any and all liens, claims, suits, demands, liability, judgment costs, damages, and expenses which may accrue against or be charged or may be recovered from the Duluth Area Family YMCA by reason of or account of any claim or damage arising from Permittee's use or occupancy of the premises whether or not person or persons including Permittee, its members, Permittee's employees, agents, volunteers, invitees, or tenants, whomsoever occasioned or caused by the contact, acts, or omission of Permittee, its members, volunteers, invitees, or tenants, or by reason of the use, development, operation or maintenance of said premises by Permittee under this agreement. Upon ten (10) days written notice, Permittee will appear and defend all claims and lawsuits against the Duluth Area Family YMCA growing out of any such injury or damage resulting from any defect in the construction or condition of all the interior and exterior premises of the site. The Duluth Area Family YMCA does not waive its immunities under state or federal law.

---

Permittee Signature

Date

---

Name of Organization Permittee is Representing

Date

**OFFICE USE ONLY**

**DOCUMENTS RECEIVED**

- Application
- Alcohol permit
- Payment in Full
- Deposit refunded within 2 weeks of event

**PAYMENT RECEIVED**

- 10 am—3 pm (0-100 persons): \$55
- 4 pm—9 pm (0-100 persons): \$55
- 10 am—9 pm (0-100 persons): \$110
- 10 am—3 pm (100-150 persons): \$75
- 4 pm—9 pm (100-150 persons): \$75
- 10 am—9 pm (100-150 persons): \$150
- \$100 refundable deposit
- applicable taxes



## EXHIBIT D

### Public Administration Department Parks and Recreation Division

City Hall - Ground Floor • 411 West First Street • Duluth, Minnesota • 55802  
218-730-4300 • [www.duluthmn.gov/parks/index.cfm](http://www.duluthmn.gov/parks/index.cfm)



October 20, 2015

Dear Community Partner:

Thank you for your interest in proposing an improvement project for City property. We recognize that working closely with the community is an important way we can fulfill our responsibility to develop long-term strategies, plans and improvements that benefit the greatest number of constituents possible and effectively use limited resources.

Each year there are numerous requests for projects on City property. To respond to requests, the City has developed a system that will result in better communications, tracking and processing of project proposals. It establishes Property and Facilities Management as the City entity that will: 1) accept and review all submitted Project Proposal Forms; 2) direct proposals to appropriate City staff; and, 3) facilitate the process to project completion. At any point in the process, Property and Facilities Management can be contacted to respond to questions or concerns.

The intent of this process is to expedite the decision making process, clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns.

In past years, this process has seen a number of projects completed for the betterment of our community, including installation of park benches, playfield renovations and community beautification projects. Proposals may be submitted by individuals and community organizations, as well as City staff.

Please note that acquiring funds for a project through CDBG, a DNR grant, fundraising, donations or other means does not guarantee project acceptability. Any project on City property must also receive recommendation and approval by the appropriate City officials. It is strongly recommended that City approval should occur in advance of, or at least concurrent with, pursuing funding.

If you have any questions, please contact Tari Rayala at 218-730-4434.

Sincerely,

Erik Birkeland  
Property & Facilities Manager  
City of Duluth  
1532 West Michigan Street  
Duluth, MN 55806



# CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



Use this form to propose a City of Duluth improvement project. This form is to be used by external community groups, organizations and individuals, as well as internally generated requests.

## APPLICANT CONTACT INFORMATION

Date of Application:

Name:

Organization:

Address:

City/State/Zip:

Neighborhood:

Email:

Primary Phone:

Secondary Phone:

## PROJECT PROPOSAL

**Use additional sheets if more space is needed.**

### **PROJECT LOCATION**

*Describe as best as possible the location of the proposed project. Give the address, name of street, neighborhood, intersection, GPS coordinates, etc. If the project is City-wide, please state "City-wide."*

### **PROJECT DESCRIPTION**

*Describe the proposed project in as much detail as possible. Why is the project needed and necessary? What do you propose doing? Maps, sketches, diagrams, and/or schematic drawings are required so that the committee has a better understanding of your project. These may include location, sizes, wording, colors, etc. **Please attach any additional information about this project.***

Attached

Not Applicable

### **PROJECT JUSTIFICATION**

*Describe the benefit of the proposed project. Is it a safety issue? Will it provide cost savings to the City? Is it a functional improvement? Does it provide aesthetic benefit to the City?*



## CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



### **PROJECT COST**

*Describe the approximate cost to complete the project. This can be a "guesstimate." This is only considered to be a rough guideline.*

### **POTENTIAL SOURCE OF FUNDING**

*Describe potential funding sources for the project.*

### **NEIGHBOR SUPPORT**

*Does this project have the support of neighbors living nearby?*

Yes      No      Uncertain      Not Applicable

*Comments:*

### **ENERGY USE**

*Will this project change the use of any energy type listed below?*

Yes      No      Uncertain      Not Applicable

*If yes, check all energy types where use is expected to change.*

ELECTRICITY (kWh)      GAS (Therms)      OIL (gallons)      STEAM (Pounds)      WATER and SEWER (CCF)

### **ADDITIONAL CONSIDERATIONS**

The City of Duluth considers our long-term strategies, Master Plans, Accessibility Plan and Capital Improvement list, as well as legal requirements, in evaluating proposals. Please review the considerations below and add any comments you have.

**CONSIDERATION (A):** Project is compatible with Park Master Plan, systems plans, Strategic Plans, etc.

**COMMENT (A):**

**CONSIDERATION (B):** Project is compliant with ADA Accessibility Plans.

**COMMENT (B):**



## CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM



**CONSIDERATION (C):** Project is compatible with surrounding and adjoining uses.

**COMMENT (C):**

**CONSIDERATION (D):** Project will meet standards for materials and construction practices.

**COMMENT (D):**

**CONSIDERATION (E):** Project complies with zoning code and land uses.

**COMMENT (E):**

**CONSIDERATION (F):** Project does or does not require a permit.

**COMMENT (F):**

**CONSIDERATION (G):** Increases cost to maintain or operate. *(Note: If this is the case, and the project is approved, it may need to be incorporated into the Capital Improvement Plan and be approved by City Council.)*

**COMMENT (G):**

**SUBMIT COMPLETED FORMS to:**

TARI RAYALA  
CITY OF DULUTH - ARCHITECT  
PROPERTY & FACILITIES MANAGEMENT  
1532 W MICHIGAN STREET  
DULUTH, MN 55806  
[TRAYALA@DULUTHMN.GOV](mailto:TRAYALA@DULUTHMN.GOV)  
(218) 730-4434



## CITY OF DULUTH – PROJECT PROPOSAL REQUEST FORM (cont'd/add'l information)





## CITY OF DULUTH – PROJECT PROPOSAL REQUEST FORM (cont'd/add'l information)



**EXHIBIT E**  
**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](mailto: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:
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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.
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Describe the activities when injury occurred with details of how it happened.
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What tools, equipment, machines, objects and/or substances were involved?
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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:
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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?
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# City of Duluth Incident/Injury Report

## CAUSE

- Slip and fall
- Struck by equipment
- Lifting or moving
- Caught (in, on, or between)
- Needle puncture
- Object in eye ( Right  Left)
- Repetitive/overuse
- Other (specify): \_\_\_\_\_

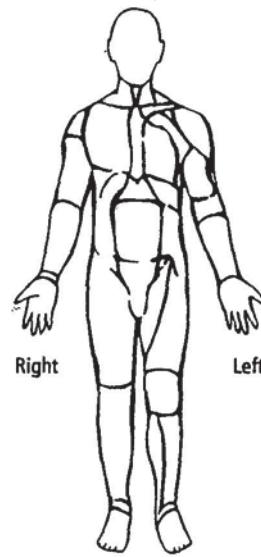
## TYPE OF INJURY

- Scrape/bruise
- Sprain/strain
- Puncture wound
- Cut/laceration
- Concussion
- Bite
- Chemical burn/rash/breathing difficulties
- No apparent injury
- Other (specify): \_\_\_\_\_

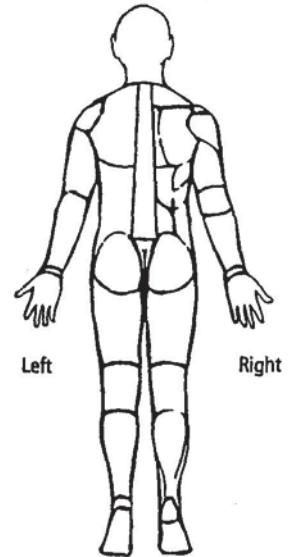
## MARK AREAS OF INJURY BELOW:

Areas can be marked by typing an "X" in the text box wherever needed.

**Front**



**Back**



## COMPLETE FOR VEHICLE, EQUIPMENT, OR PROPERTY DAMAGE

**For vehicle accidents:** Attach sketch and additional information of how vehicle accident occurred.  
Include street names, direction of travel, locations of vehicles, objects and traffic control devices (↑ North)

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: _____		
	Owner address: _____		
	Owner phone number:	Vehicle license #:	
	Make/Model:	Color:	Year:
	Describe damage: _____		
Weather conditions:	Roadway conditions:	Light conditions:	Approximate temperature: _____ °F
<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	<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	<input type="checkbox"/> Night <input type="checkbox"/> Day <input type="checkbox"/> Good <input type="checkbox"/> Poor	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](mailto:accidentreporting@duluthmn.gov).

Supervisor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_