

OPERATION AGREEMENT

FOR OUT-OF-SCHOOL TIME YOUTH PROGRAMS

FAMILY FREEDOM CENTER and CITY OF DULUTH

THIS AGREEMENT, effective as of August 1, 2022 ("Effective Date") is by and between the CITY OF DULUTH, a municipal corporation of the State of Minnesota, hereinafter referred to as "City", and FAMILY FREEDOM CENTER, a Minnesota nonprofit corporation (FFC).

1. RECITALS

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

WHEREAS, up until its unexpected closure on July 2, 2021, The Hills Youth and Family Services d/b/a Neighborhood Youth Services (NYS) had an operation agreement with the City to provide out-of-school time youth programing in Duluth.

WHEREAS, Life House provided short-term fiscal agent services to ensure program continuity immediately following the unexpected closure of The Hills Youth and Family Services while a request for proposals process was developed to identify to new program operator.

WHEREAS, FFC responded to a request for proposals and was selected to provide the out-of-school time youth programing previously provided by NYS.

WHEREAS, FFC'S recreational programming aligns 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

City Parks and Recreation Division Manager shall administer this agreement on behalf of the City and FFC Executive Director shall administer this Agreement on behalf of FFC.

3. SERVICES/PROGRAM

- 3.1** The following services will be provided by FFC: facilitate out-of-school time youth recreational programming in the City's Central Hillside 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, FFC shall be responsible for the following:
- 3.2** Complying with the performance measurements as outlined in Exhibit A ("Performance Measurements");

- 3.3 Providing a sufficient number of properly trained and licensed staff to adequately deliver the Program; and
- 3.4 Providing those items including equipment and supplies required for the recreational activities of the Program.

4. LOCATION OF SERVICES

The Program takes place in Duluth, MN. Out-of-School Time Youth programs will be held at the Washington Center and any location that FFC provides youth services.

5. FEES, REPORTING AND TAXES

- 5.1 It is agreed between the parties that FFC's maximum annual fee for this Agreement shall not exceed the sum of \$8,883.08 inclusive of all expenses associated with the Program, payable from Fund 205-130-1219-5310 (Park Fund, Community Resources, Parks Operating, Contract Services) in year 2022. FFC shall submit invoices for services to the attention of the City Parks and Recreation Manager as outlined in Exhibit A. Payment of this Agreement shall be made as outlined in Exhibit A and 5.2 of this Agreement.
- 5.2 City will pay FFC \$8,883.08 as of the effective date of this Agreement or as soon thereafter as is feasible. Provided, however, that FFC shall provide the City with a current copy of FFC's Bylaws and Articles of Incorporation before the City makes any payment under this Agreement. After termination of this Agreement, FFC shall file with the City Auditor an annual itemized statement showing all FFC's income and expenses related to the operation of the Program for the prior year. The statement shall be filed not later than February 1, 2023 or within 30 (thirty) days of termination if the Agreement is terminated before December 31, 2022, and shall include all required financial information from the effective date of the Agreement. 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. FFC agrees that any portion of the funds not used during the Initial Term of the Agreement shall be returned to the City no later than February 1, 2023 or within 30 (thirty) days of termination if the Agreement is terminated before December 31, 2022.
- 5.3 FFC agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all FFC's books, records, documents, and other data 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, FFC shall provide all requested financial information.
- 5.4 FFC shall pay or cause to be paid all lawful taxes and governmental charges related to this agreement in a timely manner. FFC 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 FFC 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 August 1, 2022 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.

6.2 This Agreement may be terminated without cause by either party by serving ninety (90) days written notice upon the other.

6.3 Should FFC be in default or violation of any of the provisions of this Agreement, City shall provide to FFC written notice of such violation or default and shall allow FFC 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 FFC in the manner described.

7. COMMUNICATIONS

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 FFC 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 FFC 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 FFC activities occurring during the Program or on or within the Premises whether said activities are performed by employees or agents under contract to FFC. 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 FFC shall also provide evidence of Statutory Minnesota Workers Compensation Insurance.

8.3 FFC 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 FFC's interests and liabilities.

8.4 The City reserves the right to require FFC 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 FFC 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

FFC 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 FFC, and including any and all damages to property to whomsoever belonging, including property control of FFC, arising out of, related to or associated with the operation of the Program or use of the Premises by FFC or performance of its obligations under this Agreement.

10. CITY ACCESS

City shall have the right to request access to monitor or observe the Program, with written notice of no less than 48 hours.

11. RELATIONSHIP

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 FFC 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. FFC'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. FFC'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

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

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

Unless otherwise provided herein, notice to the City or FFC 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

FFC
Attn: Jacob Bell
Executive Director
2024 W Superior St
Suite #204
Duluth, MN 55806

15. GENERAL PROVISIONS

- 15.1** FFC agrees to procure at FFC's expense all licenses and permits necessary for carrying out the provisions of this agreement. FFC agrees to operate 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.
- 15.2** FFC agrees that it shall neither assign nor transfer any rights or obligations under this Agreement.
- 15.3** The waiver by the City or FFC 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.
- 15.4** 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 executed this Agreement as indicated below.

CITY OF DULUTH

FFC

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Date: _____

Dated: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A
OUT-OF-SCHOOL TIME YOUTH PROGRAMING 2021 CITY OF DULUTH PARK FUND
ALLOCATIONS FY 2022

Project: Youth Programming by FFC at Washington Community Center in the Central Hillside neighborhood.

Scope of Service: FFC will provide out-of-school time programing to youth living in the Central Hillside neighborhood at their site located at the Washington Community Center.

Performance Measurement 1: Facilitate daily/weekly out-of-school time youth recreational programming in the City's Central Hillside Neighborhood for 212 youth between date of signing and December 31, 2022. 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 one recreation programming activity 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 FFC each month/year (# of participants, demographics, activity, location, etc. using provided reporting template).

Budget in 2022:

\$5,000.00	Direct Service Staff Salary and/or Program Related Independent Contractors/Instructors
\$3,883.08	Program Equipment, Food, and Supplies
\$8,883.08	Total Expenditures

Payment Formula:

2022 payment of \$8,883.08 will be made upon effective date of Agreement or as soon thereafter as is feasible.

Income Verification: Does not apply to this program.