

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

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

1. RECITALS

WHEREAS, City working in cooperation with the Duluth Youth Agency Coalition requested a budget for YMCA to operate youth services programming in the Gary New Duluth neighborhood.

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

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

2. ADMINISTRATION

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

3. SERVICES/PROGRAM

- 3.1. The following services will be provided by YMCA: facilitate an out of school time youth program in the City’s far west neighborhood which provides a safe, structured environment and provides youth with educational opportunities as well as development of health and life skills, and recreation activities.
- 3.2. In addition, YMCA shall be responsible for the following:
- 3.2.1. Follow all established policies and procedures regarding safe and supervised building usage and security, including, but not limited to, securing exterior doors after hours, monitoring YMCA’s participants in the shared hallways and bathroom spaces, and immediately reporting any concerns to the Manager of Parks and Recreation.
 - 3.2.2. Complying with the performance measurements as outlined in Exhibit A (“Performance Measurements”).
 - 3.2.3. Adequately provide the Program with properly trained and licensed staff in sufficient numbers.
 - 3.2.4. Providing those items, including equipment and supplies, required for the daily operation of the Program
 - 3.2.5. Maintaining the Premises (hereinafter defined) in good order and condition and state of repair including but not limited to cleaning recreation rooms, restrooms and office, normal wear and tear excepted while providing the Program.
 - 3.2.6. Removing all litter or other waste and properly disposing of same into the proper disposal containers provided within the Premises.
 - 3.2.7. Complying with the City’s guidelines relating to recycling, energy efficiency and maintenance of the Premises.
 - 3.2.8. Promptly notifying 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.
 - 3.2.9. Providing internet access if determined by YMCA to be necessary for the Program.
 - 3.2.10. Securing prior.

4. PREMISES/LOCATION OF SERVICES

- 4.1. The Program will be held at the City’s Gary New Duluth Recreation Building (the “Premises”).
- 4.2. YMCA hereby accepts the Premises “as is”, in its present physical condition, without representations or warranties of any kind. The City makes no warranty, either expressed or implied, that the Premises, or equipment thereon, are suitable for any purpose.

- 4.3. YMCA acknowledges and agrees that the Premises is a multi-use facility, requiring the cooperation of all users. This cooperation includes sharing parking, (including scheduling for special events), ingress and egress, amenities and related improvements. YMCA acknowledges that the City shall ultimately determine the appropriate use of the site and improvements and shall prevail in any disputes between user groups.
- 4.4. YMCA's use of the Premises is not exclusive except as specifically set forth in Paragraph 7.

5. FEES, REPORTING AND TAXES

- 5.1. It is agreed between the parties that YMCA's maximum fee for this Agreement shall not exceed the sum of Forty Thousand and 00/100th dollars (\$20,000) inclusive of all expenses associated with the Program, payable from Fund 205-130-1219-5310 (Parks, Community Resources, Parks Operating, Contract Services). YMCA shall submit invoices for services not more than two (2) times per year to the attention of Lindsay Dean, Manager of Parks and Recreation. Payments will be made upon review and completion of the Performance Measurements by the Manager of Parks and Recreation and receipt of reasonable substantiation as required by the Manager of Parks and Recreation.
- 5.2. YMCA shall file with the City Auditor an annual itemized statement showing all YMCA income and expenses related to the operation of the Program. The statement shall be filed not later than September 1 of each year this Agreement remains in effect and shall include all required financial information from the previous year. The statement shall also include a designation of the official contact person responsible for the administration of this Agreement along with addresses and phone numbers. A current copy of YMCA's By-Laws and Articles of Incorporation shall be provided to the City before this Agreement takes effect.
- 5.3. YMCA agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all YMCA books, records, documents, and accounting procedures and practices related to the operation of the Program are subject to examination by the City or the State Auditor for six (6) years from the date of execution of this agreement. Upon twenty-four (24) hours advance notice by City, YMCA shall provide all requested financial information.
- 5.4. YMCA shall pay or cause to be paid all lawful taxes and governmental charges in a timely manner. YMCA shall further be obligated to pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date; provided that nothing shall prevent YMCA from contesting in good faith, any such payment requirement except as such contest would negatively affect the City's rights under this Agreement.

6. TERM AND TERMINATION OF AGREEMENT

- 6.1. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on July 1, 2016 and shall continue through December 31, 2017 unless earlier terminated as provided for herein (the "Initial Term").
- 6.2. This Agreement may be terminated by either party by serving ninety (90) days written notice upon the other. Upon termination, YMCA agrees to surrender possession of said Premises to City in as good condition and state of repair as said Premises were in at the time YMCA took possession, reasonable wear and tear, and acts of God excepted. YMCA shall remove all YMCA property within ten (10) business days. Any YMCA equipment remaining after the expiration of said ten (10) day period shall become the property of the City.
- 6.3. Should YMCA be in default or violation of any of the provisions of this Agreement, City shall provide to YMCA written notice of such violation or default and shall allow YMCA thirty (30) days within which to cure or remedy any violations or defaults set forth therein. If such violation or default is not cured or remedied within thirty (30) days, City may terminate this Agreement immediately by serving notice to YMCA in the manner described.
- 6.4. In the event of default by YMCA, City, in addition to other rights or remedies it may have, shall have the immediate right of reentry in the Premises, and after five (5) days prior written notice to YMCA, may remove all persons and property from the Premises. The property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, YMCA.

7. INCIDENT REPORTS

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

8. COMMUNICATIONS

- 8.1. The parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement.
- 8.2. YMCA agrees to provide the City with a summary report within thirty (30) days of the last day of each Program term identifying all activities held. 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.

9. INSURANCE

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

10. HOLD HARMLESS

- 10.1. YMCA agrees to indemnify, save harmless, and defend the City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damage and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or YMCA, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of YMCA, arising out of, related to or associated with the operation of the Program or use of the Premises by YMCA or performance of its obligations under this Agreement.

11. CITY ACCESS

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

12. RELATIONSHIP

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

13. THIRD PARTY BENEFICIARIES

- 13.1. No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

14. SEVERABILITY

- 14.1. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. NOTICES

- 15.1. Unless otherwise provided herein, notice to the City or 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
Attn: Jeremy Katchuba
302 W 1st Street
Duluth, MN 55802

16. GENERAL PROVISIONS

- 16.1. The rights of YMCA to build, occupy, use, and maintain the above described Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with strictly and promptly.
- 16.2. YMCA agrees to operate the Premises in compliance with the United States Constitution, and with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth. YMCA agrees to procure at YMCA expense all licenses and permits necessary for carrying out the provisions of this agreement.
- 16.3. YMCA agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.
- 16.4. The waiver by the City or YMCA of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.
- 16.5. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

CITY OF DULUTH

By: _____
Mayor

ATTEST:

City Clerk
Date: _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

YMCA

By: _____
Its Executive Director
Printed Name _____

Its: _____
Board Officer
Printed Name _____