

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

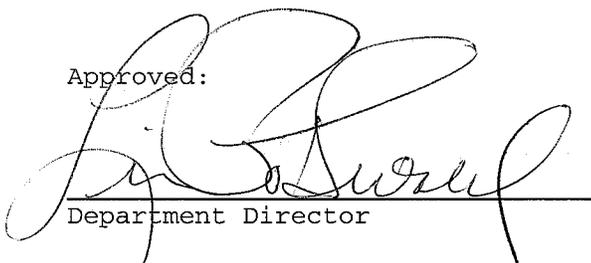
11-0060R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE ARROWHEAD ECONOMIC OPPORTUNITY AGENCY FOR THE PROVISION OF THE SENIOR DINING AND MEALS ON WHEELS PROGRAMS.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the Arrowhead Economic Opportunity Agency for the provision of the senior dining and meals on wheels programs.

Approved:



Department Director

Approved for presentation to council:



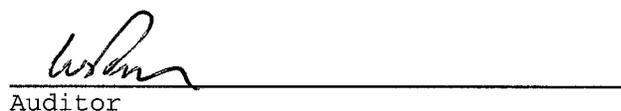
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

P&R/ATTY TL:dma 01/27/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and the Arrowhead Economic Opportunity Agency, a Minnesota non-profit corporation. Under the terms of the agreement, AEOA will provide meals and support services to area seniors. These programs will be provided at the following community centers: Morgan Park Community Recreation Center, Evergreen Senior Center (located within the City Center West) and Portman Community Recreation Center. The City will provide AEOA limited and non-exclusive use of these community centers at no cost in exchange for AEOA's agreement to operate these programs. AEOA will be responsible for the cost of operating these programs.

AGREEMENT

CITY OF DULUTH AND ARROWHEAD ECONOMIC OPPORTUNITY AGENCY SENIOR DINING AND HOME DELIVERY MEALS

ARTICLE 1 - PARTIES

THIS AGREEMENT, made and entered into this ____ day of _____, 2011, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as "City," and the ARROWHEAD ECONOMIC OPPORTUNITY AGENCY, a Minnesota non-profit organization, hereinafter referred to as "AEOA," and collectively referred to as the "Parties."

ARTICLE II - PREMISES

2.1 WHEREAS, City is the owner of community centers known as Morgan Park Community Recreation Center, Evergreen Senior Center (located within City Center West) and Portman Community Recreation Center, hereinafter referred to as "community centers" unless otherwise expressly indicated.

2.2 WHEREAS, AEOA wishes to use the community centers for the provision of congregate meals (Senior Dining) and home delivered meals (Meals on Wheels).

2.3 NOW, THEREFORE, City, upon the terms and conditions set forth below, hereby grants to AEOA permission to use limited areas of the community centers on a shared basis for the programs listed in paragraph 2.2 during the days and times set forth herein.

ARTICLE III - TERM OF AGREEMENT

3.1 This Agreement shall be deemed to have commenced on the date first set forth above and shall thereafter automatically renew for successive one-year periods beginning on the first day of each calendar year, unless earlier terminated as provided herein.

ARTICLE IV - OPERATION AND MAINTENANCE

4.1 The City agrees to provide AEOA limited and shared use of the community centers, at no charge, for the purpose of operating congregate and home delivery meal programs to area seniors. This use involves giving AEOA primary, but not exclusive, access to the kitchen and dining areas, Monday through Friday, between the hours of 8:00 a.m to 1:00 p.m. AEOA will also be provided access to a storage area for storage of its food and other supplies in each community center. However, AEOA shall be solely responsible for securing the storage areas that it uses and AEOA agrees that it assumes all risk in leaving its supplies at the community centers. AEOA understands and agrees that it is being granted limited use of the

community centers on a shared basis with other users and the City retains the exclusive right to determine who may use any or all of the space in each community center.

4.2 AEOA agrees that it shall not assign or transfer any right or obligation under this agreement without the prior written approval of the City.

4.3 The City agrees to issue appropriate keys to designated AEOA staff.

4.4 The City agrees to be responsible for the following utilities and services: electric, heat, water & sewer, garbage pick-up and service for one telephone line and voice messaging system.

4.5 The City agrees to be responsible for mowing of the green space and snow removal from the sidewalks and parking areas. In addition, the City agrees to be responsible for snow removal of the driveway to the back kitchen door of the Morgan Park Community Recreation Center. The City shall have the exclusive right to determine when the mowing and snow removal will be completed based on city priorities and availability of resources.

4.6 The City agrees to provide all necessary repairs to the structural and mechanical components of the buildings. AEOA agrees to promptly notify the City of any necessary repairs. The City retains the right to determine what repairs are necessary and how they should be undertaken.

4.7 The City agrees that AEOA may use the kitchen utensils, equipment and appliances that are available. However, AEOA agrees that it shall provide whatever equipment, small appliances or utensils that it requires over and above what is available at the community centers. In addition, AEOA agrees to replace with a like item of comparable value, whatever utensils, equipment or small appliances that it damages.

4.8 AEOA shall provide congregate and home delivery meal programs to area seniors at no cost to the City.

4.9 AEOA agrees that it shall coordinate its activities with a designated City staff support person. The current designated person is Theresa Mellinger, Senior Center Coordinator.

4.10 AEOA agrees that it shall reimburse the City for the cost of repairing or replacing any large appliances or equipment that it uses under the terms of this agreement. AEOA agrees to promptly notify the City when any large appliance or equipment item needs repair or replacement. The Parties agree to discuss the cost of such repairs and replacements, to the extent reasonably possible, before the expenses are incurred, and to reach an agreement regarding reimbursement. The City retains the right to determine whether to repair or replace the appliance or equipment item along with the right to authorize any necessary repair or replacement.

4.11 AEOA agrees to be responsible for cleaning the spaces, equipment, appliances, utensils and anything else it uses following each use. AEOA will provide, at its expense, the necessary cleaning supplies and materials to carry out this provision. If AEOA believes that it is not responsible for a specific cleaning task because the mess was created by another user of the community center, AEOA agrees to promptly notify the City of the need for cleaning services. The City retains the right to determine how to address the need based upon availability of resources.

4.12 AEOA shall provide, at its expense, the necessary foodstuffs and products it requires for the programs set forth herein. AEOA shall also provide, at its expense, the staff required to operate these programs.

4.13 AEOA agrees to be financially responsible for damage to City property arising out of or caused as a result of AEOA activities whether such damage is caused by the employees,

agents or volunteers of AEOA or by the participants of AEOA sponsored activities. AEOA agrees to promptly report such damage to the City.

4.14 AEOA shall be responsible, at its expense, for obtaining and maintaining all licenses and/or permits necessary to lawfully operate congregate and home delivery meal programs. AEOA agrees to be solely responsible for the compliance of all laws, rules and regulations regarding the operation of such programs.

V. SMOKING AND TOBACCO

5.1 There shall be no smoking or use of tobacco whatsoever in the community center buildings or within twenty-five feet of the entrances thereof. "Tobacco" shall be defined as set forth in §609.685 of the Minnesota Statutes. This includes not only cigarettes, cigars and pipes, but also any product containing, made or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means or any component, part, or accessory of a tobacco product. Electronic-cigarettes shall not be allowed.

ARTICLE VI - RELATIONSHIP OF PARTIES

6.1 Nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures or associates between the Parties hereto or as constituting AEOA's employees, agents or volunteers as the employees or agents of the City for any purpose or in any manner whatsoever.

ARTICLE VII - INDEMNIFICATION

7.1 AEOA shall defend, indemnify and hold harmless the City and its officials, employees and agents from any liabilities, judgments, losses, costs or charges (including attorneys' fees) incurred by the City or any of its officials, employees or agents as a result of any claim, demand, action or suit relating to any bodily injury (including death), loss or property damage caused by, arising out of or as a result of AEOA's activities arising under this Agreement.

ARTICLE VIII - INSURANCE

8.1 AEOA shall procure and maintain during the life of this Agreement a Public Liability Insurance Policy, in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00), single limit, and Fire Liability Insurance in an amount not less than Two Hundred Thousand (\$200,000.00), single limit coverage. Such coverages shall include all AEOA activities on city premises. The City of Duluth shall be named as an Additional Insured

on all policies of insurance. All policies shall contain a condition that they may not be canceled without thirty (30) days written notice to the City.

8.2 Certificates showing that AEOA is carrying the insurance required by this Agreement shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be filed with the City during the term of this Agreement.

ARTICLE IX - TERMINATION

9.1 This Agreement may be terminated by either party upon ninety (90) days written notice. Notice shall be considered sufficient if delivered in person or mailed by regular United States mail, postage prepaid, addressed to the Parties at the addresses set forth in paragraph 11.8 or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time.

9.2 Upon termination of this Agreement, AEOA agrees to surrender the possession of premises to the City and to timely turn in all keys. AEOA agrees to pay, upon demand, for any damage it caused to the premises as a result of its activities.

X. NO DISCRIMINATION

10.1 AEOA agrees to comply with all applicable requirements of federal, state and local laws, rules and regulations pertaining to unlawful discrimination.

XI. GENERAL PROVISIONS

11.1 Nothing in this Agreement is intended or should be construed as a waiver by the City of any immunities, defenses or other limitations on liability to which the City is entitled by law, including but not limited to, the liability limits under Minnesota Statutes Chapter 466.

11.2 This Agreement constitutes the entire agreement between the Parties and supercedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties. Any amendment, modification or supplementation to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

11.3 This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder will be those courts in St. Louis County.

11.4 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.

11.5 AEOA shall not in any way assign or transfer any of its rights or interests under this Agreement without the prior written approval of the City.

11.6 The failure of the City to enforce any provision of this Agreement shall not be construed as, nor constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

11.7 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.

11.8 Notices required under the terms of this Agreement shall be addressed to the Parties as follows:

City of Duluth
Parks and Recreation Division
Attention: Theresa Mellinger
12 East Fourth Street
Duluth, MN 55805
telephone: (218) 730-4307

AEOA
Senior Services
Attention: Marilyn Ocepek
702 Third Avenue South
Virginia, Minnesota 55792
telephone: (218) 748-7325 or
800-662-5711, ext. 225

CITY OF DULUTH

ARROWHEAD ECONOMIC
OPPORTUNITY AGENCY

Mayor

AEOA Executive Director

ATTEST

AEOA Director of Senior Services

City Clerk

APPROVED AS TO FORM

City Attorney

COUNTERSIGNED

City Auditor