

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

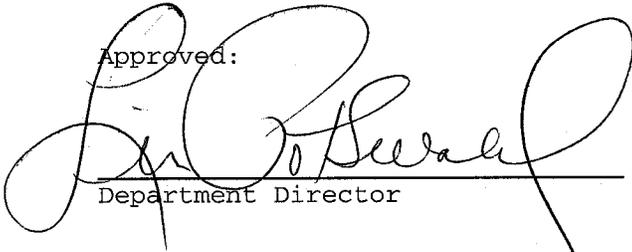
11-0224R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE WELSH CENTER, INC., D/B/A COPELAND VALLEY, A NON-PROFIT CORPORATION, FOR THE PROVISIONS OF YOUTH PROGRAMMING AND RELATED SERVICES.

CITY PROPOSAL:

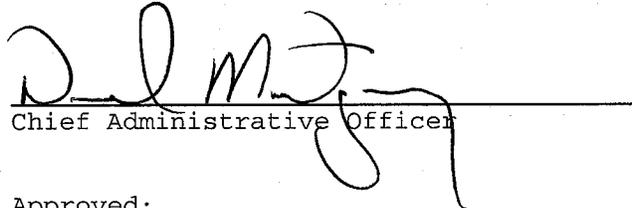
RESOLVED, that the proper city officials are hereby authorized and directed to enter into an Agreement, substantially in the form of that on file in the office of the City Clerk as Public Document No. _____, with the Welsh Center, Inc., d/b/a Copeland Valley, a Minnesota non-profit corporation, for the provision of youth programming and related services at the Memorial Community Recreation Center.

Approved:



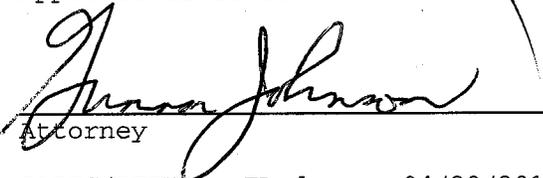
Department Director

Approved for presentation to council:



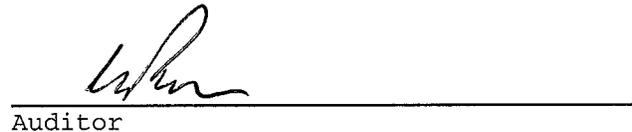
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS/ATTY TL:dma 04/29/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and the Welsh Center, d/b/a Copeland Valley, a Minnesota non-profit corporation. Under the terms of the agreement, Copeland Valley will provide youth programming and related services. These programs will be provided at the Memorial Community Recreation Center. The City will provide Copeland Valley non-exclusive use of this community center at no cost in exchange for Copeland Valley's agreement to provide this youth programming. Copeland Valley will be responsible for the cost of providing this programming.

AGREEMENT

PARTIES

1.1 THIS AGREEMENT, made and entered into this _____ day of _____, 2011, is by and between the CITY OF DULUTH, a municipal corporation of the County of St. Louis, State of Minnesota, hereinafter referred to as "City", and the WELSH CENTER INC d/b/a COPELAND VALLEY, a Minnesota non-profit corporation, hereinafter referred to as "Copeland Valley".

PURPOSE

2.1 The City is the owner of the Memorial Community Recreation Center located in Memorial Park. Copeland Valley wishes to use this center to provide youth programming and related services. In consideration of the mutual covenants contained herein, Copeland Valley agrees to use the said Premises on a shared basis for youth programming and related services, between the dates of June 1, 2011 and September 30, 2011, subject to the terms herein.

PREMISES

3.1 That in consideration of the mutual covenants as set forth herein, the City hereby grants to Copeland Valley permission to use, on a shared basis, the Memorial Community Recreation Center building, hereinafter referred to as "Premises" and all equipment contained therein, located 5315 Grand Ave., City of Duluth, St. Louis County, Minnesota.

CONDITIONS

4.1 The City makes no warranty, either express or implied, that the premises or equipment thereon are suitable for any purpose and Copeland Valley takes and occupies the Premises "as is."

4.2 Copeland Valley shall be responsible for daily routine cleaning of the premises and trash removal. Copeland Valley shall be responsible for providing, at Copeland Valley expense, all cleaning supplies, paper products, etc. necessary for the daily operation and routine cleaning of the Premises.

4.3 Except for basic utilities, Copeland Valley agrees to be responsible for all other expenses related to the usage and operational programs of said Premises.

4.4 This agreement is subject to the terms and conditions of a Joint Powers Agreement between the City and ISD 709 in effect at the time of the initial execution of this agreement or as may be amended.

TERM OF AGREEMENT

5.1 This Agreement shall commence June 1, 2011 and terminate on September 30, 2011.

MAINTENANCE AND OPERATION

6.1 Copeland Valley shall share the premises with the youth softball program. Copeland Valley may NOT rent the building to other user groups or private parties nor allow access to the Premises by any

group or user without the express written permission of the City. Any such unauthorized use permitted by Copeland Valley shall be grounds for immediate termination of this agreement.

6.2 Copeland Valley shall not discriminate in any manner prohibited by the United States Constitution, or the laws of the United States, State of Minnesota, County of St. Louis, or City of Duluth in the use of the building or in the delivery of the youth programming services provided.

ALTERATIONS OR IMPROVEMENT

7.1 Copeland Valley may not make any permanent alterations or improvements to the Premises without first obtaining the prior written approval of the City.

FACILITY SUPERVISION AND USE REQUIREMENTS

8.1 Copeland Valley shall be solely responsible for overseeing and supervising the activities and events at the Premises and further agrees that all such activities and events will be properly supervised by adult person(s) who is/are responsible to the Board of Directors of Copeland Valley.

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

UTILITIES

9.1 The City shall pay for basic monthly utility charges furnished to the Premises as they are incurred, including water, sewer, gas, electric and local telephone. Any and all hook-up charges, assessments, and monthly usage invoices related to utilities used and enjoyed solely by Copeland Valley shall be the sole responsibility of Copeland Valley.

9.2 The City shall pay for the regular garbage pick-up and service.

LIMITS OF USAGE

10.1 Copeland Valley agrees that the Premises shall be used solely for the delivery of youth programming and related services.

FINANCIAL ACCOUNTING AND REPORTING

11.1 Copeland Valley agrees to file with the City Auditor and the Parks and Recreation Division an annual itemized statement accurately showing all Copeland Valley income and expenses related to its operations/activities within the Premises. The statement shall be filed no later than May 1 and shall include all required financial information from the previous year. The statement shall also include a current listing of all officers, board members, and a designation of the official contact person responsible for the administration of this Agreement along with addresses and phone numbers. A current copy of Copeland Valley's By-Laws and Articles of Incorporation shall be provided to the City before this Agreement takes effect.

11.2 Copeland Valley agrees that, as provided in Minnesota Statutes section 16C.05, Subd. 5, all Copeland Valley books, records, documents, and accounting procedures and practices are subject to examination by the City and the State and/or Legislative Auditor, as appropriate, for six (6) years from the date of execution of this agreement. Upon reasonable advance notice by the City, Copeland Valley shall provide all requested financial information.

INSURANCE

12.1 During the entire term of this Agreement, Copeland Valley shall procure and maintain continuously in force public liability insurance with limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) Single Limit together with fire liability insurance with limits of not less than One Hundred Thousand dollars (\$100,000). The insurance company shall be authorized to do business in Minnesota.

12.2 The City of Duluth shall be named on the policy of insurance as an Additional Insured. Copeland Valley shall provide the City with a certificate of insurance showing the required coverages. Copeland Valley agrees that the policy of insurance cannot be canceled or materially changed without thirty (30) days advance written notice to the City.

HOLD HARMLESS

13.1 Copeland Valley shall defend, indemnify and hold harmless the City and its officials, employees and agents from any liabilities, judgments, losses, costs or charges (including attorney's 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 Copeland Valley's use of the premises or any activities arising under this Agreement.

WAIVER AND ASSUMPTION OF RISK

14.1 Copeland Valley knows, understands and acknowledges the risks and hazards associated with using the premises and hereby assumes any and all risks and hazards associated therewith. Copeland Valley hereby irrevocably waives any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by Copeland Valley as a result of its use, management, maintenance or operation of the premises and hereby irrevocably releases and discharges the City and any of its officials, employees or agents from any and all claims of liability.

ALCOHOLIC BEVERAGES

15.1 No alcoholic beverages may be served, possessed or consumed within or on the Premises.

TERMINATION OF AGREEMENT

16.1 Upon termination of this agreement, Copeland Valley agrees to surrender possession of said Premises to the City in as good condition and state of repair as said premises were in at the time Copeland Valley took possession, reasonable wear and tear excepted.

16.2 This Agreement may be terminated by either party by serving thirty (30) days written notice upon the other. Such notice shall be by certified mail. Any such notice to be given to the city shall be addressed to the identified City designee, and any such notice to be given to the Copeland Valley shall be directed to the current official contact person as identified at the end of this agreement.

CITY ACCESS

17.1 The City may schedule activities and events on said premises on a priority basis when not in use Copeland Valley.

17.2 The City shall have the right to inspect the premises at any time and Copeland Valley shall permit the City, it's officials, employees or agents to access the premises at any time. Copeland Valley shall not change locks or otherwise prohibit or inhibit City access to any portion of the Premises. The City shall be exclusively responsible for the upkeep of all door locking devices and the duplication and distribution of all keys. Copeland Valley 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 Copeland Valley.

RELATIONSHIP

18.1 It is agreed by both parties that nothing herein contained 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. Copeland Valley and its staff, officers, employees or volunteers shall not be construed as an agent, representative or employee of the City for any purpose or in any manner whatsoever.

IMMUNITY

19.1 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.

GENERAL PROVISIONS

20.1 The Premises are multi-use facilities requiring the cooperation of all users. This cooperation includes sharing parking, (including scheduling for special events), ingress and egress, amenities and related improvements. Copeland Valley acknowledges that the City shall ultimately determine the appropriate use of the site and improvements and shall prevail in any disputes between users groups.

20.2 Copeland Valley agrees to operate said premises in strict compliance with the United States Constitution, and with federal, state and local laws, rules and regulations. Copeland Valley agrees to procure at Copeland Valley expense all licenses and permits necessary for carrying out the provisions of this Agreement.

20.3 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.

20.4 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.

20.5 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.

20.6 Notices required under the terms of this Agreement shall be addressed to the parties as follows:

City contact: Kathy Bergen
Phone: 218-730-4309

Copeland Valley contact: Russ Salgy
Address: 727 N. Central Ave. Duluth, MN
Phone: 218-628-4896

CITY OF DULUTH

COPELAND VALLEY

By _____
Mayor

By _____
Executive Director

ATTEST:

City Clerk

COUNTERSIGNED:

APPROVED AS TO FORM:

City Auditor

Assistant City Attorney

Manager of Parks & Recreation