

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

11-0289R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH JUNGLE BOY BOXING GYM, A MINNESOTA NON-PROFIT CORPORATION, FOR THE OPERATION OF THE OBSERVATION COMMUNITY RECREATION CENTER.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized 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 Jungle Boy Boxing Gym, a Minnesota non-profit corporation, for the operation of the Observation 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 06/01/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and Jungle Boy Boxing Gym, a Minnesota non-profit corporation. Under the terms of the agreement, Jungle Boy Boxing Gym will operate an instructional boxing program at the Observation Community Recreation Center at 914 West 3<sup>rd</sup> Street. The City will provide the building facility at no cost in exchange for year-round operation, routine maintenance and cleaning of the facility by Jungle Boy Boxing Gym.

## **AGREEMENT BETWEEN THE CITY OF DULUTH AND JUNGLE BOY BOXING GYM**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, is by and between the **CITY OF DULUTH**, a municipal corporation under the laws of the State of Minnesota (hereinafter "City") and **Jungle Boy Boxing Gym**, a Minnesota non-profit corporation (hereinafter "JBBG"), collectively referred to as the "Parties". In consideration of the mutual covenants and conditions hereinafter contained, the Parties agree as follows:

### **I. Purpose**

1.1 The City owns the Observation Community Recreation Center building located at 914 W. 3<sup>rd</sup> Street, City of Duluth, St. Louis County, Minnesota. JBBG wishes to use this community center to provide recreational programming to the community as set forth herein.

1.2 JBBG is hereby granted exclusive use of the Observation Community Recreation Center building, along with a 25-foot perimeter around the building on an shared-use basis (hereafter the "premises"), upon the terms and conditions set forth below.

### **II. Term**

2.1 This Agreement shall be for a term of three years commencing on the date set forth above and ending June 30, 2014 and may thereafter be renewed for successive one (1) year periods, unless earlier terminated as provided herein. To renew, the Parties agree to meet and confer within ninety (90) days before this agreement is to end to discuss the terms and conditions of the agreement. If both Parties consent to the renewal, the consent shall be put in writing, and the Agreement will be renewed subject to the termination rights in paragraph 12.2.

### **III. Maintenance and Operation**

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

3.2 JBBG agrees to operate an instructional boxing program according to established and accepted training, coaching and safety standards. The primary hours of operation will be from 3:30 p.m. to 5:30 p.m., with additional hours and programming to be added subject to the approval of the Parks and Recreation Division Manager.

3.3 JBBG agrees that the public will be welcome at the facility and a "viewing area" will be made available. Further, JBBG agrees that, during the hours the building is open, the public will be allowed reasonable access to the bathroom facilities. JBBG will ensure that appropriate precautions are taken so that the public is not exposed to risk of injury while in the

building.

3.4 JBBG agrees to make its instructional programs available to all users and further agrees to comply with all applicable requirements of federal, state and local laws, rules and regulations pertaining to unlawful discrimination.

3.5 JBBG agrees that at all times the building is in use, it will be properly supervised by a competent adult boxing instructor who is responsible to the Board of Directors of JBBG.

3.6 JBBG agrees that it will not relinquish or allow any third party to use the premises without the express written permission of the Parks and Recreation Division Manager.

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

3.8 JBBG shall be responsible for daily routine cleaning of the premises and placing trash into the appropriate receptacle. JBBG shall provide, at its expense, all staff, equipment and cleaning supplies necessary to carry out this provision.

3.9 JBBG shall be responsible for and provide, at its expense, those items required for daily operation and maintenance of the premises, including but not limited to, interior light bulbs, paper products, plastic products (e.g., garbage bags), program equipment and supplies, minor repairs, etc. so as to maintain the premises in a reasonable state of repair.

3.10 JBBG shall be responsible for all expenses related to its programs and activities and the City shall not be responsible for any such expenses.

3.11 JBBG shall be responsible for wireless internet service and any telephone service and telephones. JBBG shall also be responsible for all utilities and services, including but not limited to: electric, heat, water & sewer and garbage pick-up. JBBG shall promptly apply for all such utilities and services and shall present, within thirty days of move-in, proper documentation to the City showing JBBG as the applicant/account holder of all such utilities.

3.12 The City may, at its discretion, undertake major repairs to the building and/or fixtures or repairs requiring a trades person. JBBG agrees to promptly notify the City, utilizing proper notification protocol, when such a repair is requested.

3.13 JBBG shall be responsible for snow removal from the sidewalks in a timely manner and in accordance with the Duluth City Code.

3.14 The City agrees to be responsible for snow removal from the parking lot and mowing the grass.

3.15 The parties agree that there shall be no rent charged to JBBG for the use of the premises in exchange for its promise to operate the premises as set forth herein.

#### **IV. Alterations and Improvements**

4.1 JBBG may make suitable improvements or alterations to the premises upon advance written approval from the City. All such improvements shall become the property of the City. Prior to commencing any improvements or alterations, JBBG shall submit to the City a Project Proposal Request along with detailed plans. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. JBBG shall be solely responsible for the cost of such improvements or alterations. 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 Codes.

4.2 JBBG agrees that not less than thirty (30) days prior to commencement of any

construction, alteration or improvement on said premises, JBBG 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.

## **V. Alcohol**

5.1 The possession, use or sale of alcohol is permitted on the premises only under the following conditions:

- \* 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.
- \* 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.
- \* At least thirty (30) day's 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.
- \* JBBG 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.
- \* Depending on the request, licensed peace officer(s) may be required to attend the event.
- \* All state laws and Duluth City Code provisions shall be followed at all times.
- \* The City reserves the right to prohibit the serving, sale or possession of alcohol on the premises.

## **VI. Financial Accounting and Reporting**

6.1 JBBG agrees to file with the City Auditor and the Parks and Recreation Division an annual itemized statement accurately showing all JBBG income and expenses related to the operation of the premises. The statement shall be filed no later than May 1 of each year this Agreement remains in effect and shall include all required information from the previous year.

6.2 The annual itemized statement required above shall also include a current listing of all of all officers, board members and the official local contact person responsible for the administration of this Agreement, together with addresses and telephone numbers. Also, a copy of JBBG's current by-laws and articles of incorporation shall be provided to the City.

6.3 Pursuant to Minn. Stat. §16C.05, subd. 5, the books, records, documents and accounting procedures and practices of JBBG relevant to this Agreement shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

## **VII. Insurance**

7.1 During the entire term of this Agreement, JBBG 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.

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

### **VIII. City Access**

8.1 JBBG shall permit the City, its officials, employees or agents to access and inspect the premises at any time. JBBG shall not change locks or otherwise prohibit or inhibit City access to any portion of the building. Facility Management for the City shall be exclusively responsible for the design of keying systems, lock changes, key fabrication and key distribution and JBBG agrees to abide by the Key Control Policy, a copy of which shall be provided to JBBG.

### **IX. Smoking and Tobacco**

9.1 There shall be no smoking or use of tobacco whatsoever on the premises. "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.

### **X. No Discrimination**

10.1 JBBG agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

### **XI. Relationship of Parties**

11.1 It is agreed by the Parties that nothing contained herein is intended to be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto. JBBG 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.

### **XII. Termination**

12.1 Upon termination of this Agreement, JBBG agrees to surrender the possession of the premises to the City in as good condition and state of repair as at the time JBBG took possession of the premises, except for reasonable wear and tear.

12.2 Either Party may terminate this Agreement 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 22.1 or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time.

### **XIII. Indemnification**

13.1 JBBG 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, related to or associated with the use, management, maintenance or operation of the premises by JBBG.

### **XIV. Waiver and Assumption of Risk**

14.1 JBBG knows, understands and acknowledges the risks and hazards associated with using the premises and hereby assumes any and all risks and hazards associated therewith. JBBG 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 JBBG 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.

### **XV. Immunity**

15.1 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 of limits under Minnesota Statutes Chapter 466.

### **XVI. Merger Clause**

16.1 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.

### **XVII. Applicable Law**

17.1 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 located in St. Louis County.

## **XVIII. Third Parties**

18.1 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.

## **XIX. Assignment**

19.1 JBBG 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.

## **XX. Waiver**

20.1 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.

## **XXI. Severability**

21.1 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.

## **XXII. Notices**

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

City of Duluth  
Parks and Recreation Division  
Attention: Kathy Bergen  
12 East Fourth Street  
Duluth, Minnesota 55805  
telephone: (218) 730-4309

Jungle Boy Boxing Gym  
Attention: Zachary Walters  
4 Chester Parkway  
Duluth, Minnesota 55805  
telephone: (218) 940-8927  
zacharywalters81@gmail.com

CITY OF DULUTH

Jungle Boy Boxing Gym

\_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Zachary Walters

Its: \_\_\_\_\_

Jungle Boy Boxing Gym

By \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

DULUTH PARKS & RECREATION  
DIVISION

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

\_\_\_\_\_  
Kathy Bergen, Manager

COUNTERSIGNED:

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