

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

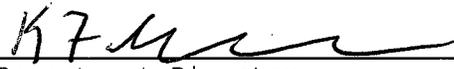
12-0244R

RESOLUTION AUTHORIZING A THREE-YEAR AGREEMENT WITH THE DULUTH AREA FAMILY YMCA FOR THE OPERATION AND MANAGEMENT OF THE CITY'S PARK POINT BEACH HOUSE AND RECREATION AREA.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute and implement a three-year agreement with the Duluth Area Family YMCA, substantially the same as that on file with the city clerk as Public Document No. _____, for the operation and management of the Park Point beach house and recreation area, located at 5000 Minnesota Avenue, with all payments to the city to be deposited into General Fund 110, Dept./Agency 121 (Public Administration), 1219 (Parks Operation), 4627 (Concessions & Commissions).

Approved:



Department Director

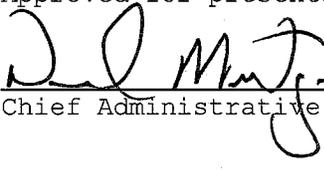
Purchasing Agent DTB

Approved as to form:



Attorney

Approved for presentation to council:



Chief Administrative Officer

Approved:



Auditor

PARKS/PUB ADMIN/PRCH DS:SW:le 05/02/2012

STATEMENT OF PURPOSE: This resolution authorizes a three-year operation and management agreement with the Duluth Area Family YMCA (YMCA) for the Park Point Beach house and recreation area. The agreement may be renewed for one additional two-year term. The YMCA will be responsible for managing all rentals of the Park Point beach house and recreation area to the public, the daily concession operation, routine maintenance, and providing life guard services.

The agreement provides the city with fifteen percent of net receipts from all building rentals and five percent of net receipts from all vending and concession sales. All payments to the city will be deposited in the general fund.

The purchasing division posted a request for proposals (RFP) December 20, 2011, and mailed RFPs to many local vendors. Purchasing staff received two responses by the January 24, 2012, closing date and turned these proposals over to parks staff. A committee of experts conducted interviews February 9, 2012. Based on interviews and scoring of points, the group determined that the YMCA presented the best option for running the beach house.

Park Point Beach House Bid File No. 11-45DS Closing Date January 24, 2012	
Proposer	City in Minnesota
Duluth Area Family YMCA	Duluth
VCAP (Volunteers Caring and Patrolling, Inc.)	Duluth

OPERATION AND MANAGEMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation by the City Clerk ("Effective Date") 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 **Duluth Area Family YMCA**, located at 302 W 1st Street, Duluth, MN 55802 hereinafter referred to as "**YMCA**".

1. RECITALS

WHEREAS, City issued a Request for Proposal (the "RFP") for the operation and maintenance of the City's Park Point Beach House ("Services" or "Project");

WHEREAS, YMCA submitted a Proposal in response to the RFP (the "Proposal") and has represented itself as qualified and willing to perform the services set forth in the RFP;

WHEREAS, based on the Proposal the City has selected YMCA's services for the Project;

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 Executive Director or designee.

3. PURPOSE

3.1. The YMCA agrees to operate that portion of the Premises defined herein by providing and operating retail vending, concession services, life guarding services and managing rental of the Park Point Beach House building on the Premises (hereinafter defined) as described in YMCA's Proposal attached hereto as Exhibit A and as described in more detail herein. Such services to include the scheduling, collection of all fees, and oversight of building rentals to private parties. YMCA agrees to be responsible for all other expenses, not specifically mentioned in this Agreement, related to the operation and maintenance of said Premises.

4. PREMISES

4.1. The YMCA, at its expense and subject to the provisions of this Agreement, shall manage and operate the Park Point Beach House building and immediately adjoining grounds, exterior walkways, exterior stairways, exterior access ramps, and deck areas, located at 5000 Minnesota Ave and as shown on Exhibit B, and all equipment contained therein (collectively the "Park Point Beach House").

4.2. YMCA shall also be responsible for managing the rental and usage of the Park Point Recreation Facilities, including scheduling events, collecting rental fees and assisting with issuance of a rental agreement. The Park Point Recreation Facilities include, but are not limited to, the picnic pavilions, ball fields, and sand volleyball courts as shown on Exhibit B (collectively the "Recreation Facilities").

4.3. The Park Point Beach House and the Recreation Facilities are collectively referred to as "Premises".

4.4. An inventory identifying City equipment and YMCA equipment within or on the Premises is attached as Exhibit C. Exhibit C is subject to change upon mutual agreement between the City and YMCA.

4.5. 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 express or implied, that the premises or equipment thereon are suitable for any purpose.

5. TERM AND TERMINATION OF AGREEMENT

5.1. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on January 1, 2012 and shall continue through December 31, 2015 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. If the parties agree that no changes are needed, which shall be confirmed in writing, and that neither party wishes to terminate the agreement as provided for herein, then this Agreement shall be automatically renewed for an additional two (2) year period thereafter.

- 5.2. 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 equipment as identified in Exhibit C 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.
- 5.3. 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.
- 5.4. 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.

6. OPERATION OF THE PREMISES

- 6.1. Considering the seasonal nature and use of the Premises, YMCA shall annually staff and operate the Premises between the approximate dates of May 5 and September 30, weather permitting (the "Summer Season"). Such dates of operation shall closely coincide with the period when the Park Point Recreation Area beach area is open to the general public. Notwithstanding the seasonal nature and use of the premises, YMCA shall respond to building rental inquiries and process reservations on a year-round basis.
- 6.2. General daily hours of concession operation/services shall be 11:00 am - 5:00 pm to coincide with beach open hours. The YMCA shall be responsible to determine on a daily basis whether the beach shall open based on weather conditions. It is generally expected that the concession operation shall be open and functional each day, or portion thereof, that the beach area is open and staffed with lifeguards.
- 6.3. YMCA understands and acknowledges that any party or special event held on the Premises must not begin earlier than 10:00 a.m. on the date(s) of each party or special event and, except as otherwise agreed in writing, all parties or special events held Sunday through Thursday must end at 11:00 p.m. and 11:59 p.m. for those held on Friday and Saturday.
- 6.4. YMCA shall provide the City with the name(s) and contact information of any on-site manager provided by the YMCA who will be responsible for the daily operation and maintenance of the Premises.
- 6.5. YMCA shall provide retail vending and concession services for the use and convenience of the general public.
- 6.6. YMCA shall provide the lifeguard services as described in paragraph 7.
- 6.7. YMCA shall be solely responsible for managing the rental and use of the Premises to private groups or parties. YMCA's responsibilities shall include:
 - a. Scheduling private parties, recreational and/or community events and programs (each an "Event"). YMCA may rent any portion of the Premises to private groups, clubs or parties and may, at its discretion, charge a rental fee. YMCA may, at its discretion, charge a fee to groups, clubs, or organizations requiring regular scheduled use of the Premises. The rental fee for each event shall be similar to rental prices charged for under similar circumstance in the community. A current schedule of fees for the use of the Premises shall be submitted to, and approved by, the City prior to becoming effective. All such rentals shall be documented by a written rental agreement substantially in the same form as Exhibit D as attached to this Agreement. YMCA shall be responsible for overseeing and supervising these rentals and user groups and shall be responsible for ensuring compliance with all rules and laws.
 - b. Maintaining a master calendar ("Master Calendar") of all such rentals. The Master Calendar shall be provided to the City's Parks Manager on or before the 1st day of each month.
 - c. Collecting the rental fees and deposits, if applicable. All such fees and deposits shall be separately managed and/or accounted for by YMCA in order to identify funds received or expended in the operation and maintenance of the Premises.
 - d. Managing, overseeing and supervising these rentals and all user groups (including guests,

invitees and agents thereof) of the Premises and ensuring compliance with all rules and laws. This includes, but is not limited to, ensuring that the renter/user group has obtained the appropriate alcohol permit from the City if the rental activity will include the consumption of alcoholic beverages and, further, ensuring that all such consumption occurs in compliance with all laws regulating such consumption.

- 6.8. Both parties agree to recognize the Premises as a long-standing venue for large-scale special events and activities such as the Park Point Art Fair. Both parties further agree to honor all prior commitments to large-scale special events and to make every effort to mutually coordinate the use of the Recreation Facilities for any new or added events desiring to use this area. YMCA understands that such existing or new special events may cause temporary disruption of YMCA programs during such times. City shall provide notice to YMCA in advance of any special activities

7. JUNE 8, 2009 AGREEMENT: LIFE GUARD AND RECREATION FACILITIES SERVICES

- 7.1. The parties acknowledge and agree that under a June 8, 2009 agreement between the parties (the "2009 Agreement"), the YMCA has certain obligations to provide services relating to the Recreation Facilities (the "2009 Park Point Obligations"). The 2009 Agreement is attached hereto as Exhibit E. The parties desire to transfer the 2009 Park Point Obligations into this Agreement. The parties further agree that the following terms relating to the life guard and Recreation Facilities services will amend and supercede the 2009 Park Point Obligations and will be governed by and continue under the terms of this Agreement. All other terms and conditions of the 2009 Agreement (relating to the Woodland Community Center and the Chester Bowl Recreation Area) will remain in full force and effect through December 31, 2012 and any renewal thereof as set forth in that Agreement.
- 7.2. YMCA shall provide, at no cost to the City, lifeguard services for the Park Point Beach within the life guard area identified on Exhibit B. Lifeguard services shall be provided during the summer beach season (June 1 – August 31) and/or other dates agreed upon in writing by both parties in advance. The YMCA shall be responsible for hiring, screening and supervising the life guards and ensuring that competent, certified lifeguards are present in sufficient number to safely and sufficiently serve the Park Point Beach and its patrons. Life guards shall be trained and hold the required certification and licenses necessary to perform his or her job duties. Life guards shall be on duty at all times when the beach is designated "open", seven (7) days per week (weather and water conditions permitting), daily from 11:00 a.m. – 5:00 p.m.
- 7.3. It is acknowledged that under the 2009 Agreement, City provided appropriate lifeguarding or beach-related equipment and YMCA may continue to use such equipment. YMCA shall be responsible for the replacement of any necessary equipment during the term of this Agreement.
- 7.4. YMCA shall determine beach closing procedures based on the Duluth Fire Department flag warning. Once said system is invoked by the Duluth Fire Department, YMCA shall take those steps necessary to properly close the Park Point Beach and notify beach users.
- 7.5. YMCA shall be responsible for all scheduling of the Recreation Facilities. It is fully understood by both parties that the Recreation Facilities shall be open and available for the use and enjoyment of the general public at no cost when not previously reserved by a user group. YMCA may charge fees and retain revenues generated from the scheduled, reserved use of the Recreation Facilities as identified herein. YMCA shall be entitled to all of the fees for events and/or parties scheduled at the Recreation Facilities prior to December 31, 2012. On January 1, 2013, YMCA shall be entitled to its fee share as described in Paragraph 14.

8. MARKETING AND ADVERTISING OF PREMISES

- 8.1. YMCA shall be diligent in the marketing and advertising of the services available on the Premises. YMCA agrees to utilize appropriate marketing and advertising outlets such as inclusion of the Beach House information on the YMCA website and in its YMCA member brochure/pamphlet. All marketing and advertising shall be at YMCA's cost and expense.
- 8.2. All marketing efforts must comply with all applicable laws, rules and guidelines governing such activities.

9. MAINTENANCE

- 9.1. YMCA shall provide, at its expense, all daily cleaning, minor repairs and routine maintenance necessary to properly operate and maintain the Premises in a safe and reasonable state of repair, including but not limited to the following:

- a. Providing those items required for the daily operation and maintenance of the concession area, including but not limited to, interior light bulbs, paper products, plastic products, program equipment and supplies, etc.
- b. Maintaining the Premises in good order and condition and state of repair, normal wear and tear excepted.
- c. Removing all litter or other waste and properly disposing of same into the proper disposal containers provided within the Premises.
- d. Providing all staff, equipment and cleaning supplies necessary to carry out this provision.
- e. Complying with the City's guidelines relating to recycling, energy efficiency and maintenance of the Premises.
- f. Daily cleaning (including the emptying and maintaining of all trash containers) on the Premises washrooms (mens/ladies) for use by both YMCA's patrons and general public.
- g. Picking up all litter daily, including the beach within the designated lifeguarding area and extending two hundred (200) feet in either direction and maintaining the Premises in a neat and clean fashion.
- h. Maintaining the handicap access ramp leading to the Beach House Building and keeping all hard surfaces it clear of sand and debris.
- i. Securing the Beach House Building when not in use.
- l. Providing necessary day-to-day janitorial cleaning and other minor maintenance not requiring a licensed or skilled tradesperson (e.g., plumber, electrician, carpenter, etc.)

9.2. YMCA shall promptly notify 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.

10. CITY'S RESPONSIBILITIES

- 10.1. City agrees to provide the following:
 - a. Cleaning supplies, paper products, and garbage bags necessary for the daily operation and routine cleaning of the Premises.
 - b. Local telephone service, electricity, water, garbage pick-up and sewer utilities for the Park Point Beach House building.
 - c. Necessary major repairs and non-routine maintenance to the structural and mechanical components of all existing buildings and plumbing and electrical systems. Non-routine maintenance shall be defined as major system replacement repair items or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset, road repair, locks and key changes, and winterizing water systems.
 - d. Basic cable internet to the Park Point Beach House building plus payment of the cost of installing the necessary hardware for wireless service to the Park Point Beach House building.

11. ALTERATIONS OR IMPROVEMENTS

- 11.1. YMCA may, at its sole cost and expense, make suitable improvements or alterations to the Premises upon advance written approval from the City's Facility Projects Specialist. All such improvements (excluding appliances and equipment plugged into an electricity source) shall become the property of the City. Prior to commencing any improvements or alterations, YMCA shall submit to the City a Project Proposal Request along with detailed plans. A copy of the Project Proposal Request is attached to this Agreement as Exhibit F. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. 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. YMCA shall be responsible for operational costs and maintenance of such improvements, installations, and facilities and shall operate them in a safe manner.
- 11.2. YMCA agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Premises, YMCA will provide the City with sufficient proof of required insurance, including worker's compensation.

12. INCIDENT REPORTS

- 12.1. 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 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 YMCA's form of Incident Report approved by the City's Claims Investigator and Adjuster is attached hereto as Exhibit G.

13. COMMUNICATIONS

- 13.1. 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.
- 13.2. YMCA agrees to provide the City with a summary report identifying all activities held on the Premises during the Summer Season. 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.
- 13.3. The parties agree to meet on an annual basis to jointly inspect the Shared Premises to determine whether the Shared Premises are in all respects in proper condition and, if necessary, to review the terms and conditions of this Agreement.

14. FINANCIALS, REPORTING AND TAXES

- 14.1. YMCA shall pay to the City fifteen percent (15%) of total Net Receipts (hereinafter defined) from all building rentals and five percent (5%) of Net Receipts from all vending and concession sales. ("Net Receipts" means all amounts actually collected by YMCA from building rental or from vending and concession sales net of discounts, refunds, rebates, credits, credit card returns, credit card charges, uncollected checks and all applicable taxes). The payments shall be paid to the City on or before the November 15th of each year and include an itemized financial report of all monies taken in and disbursed in the Premises operations for the prior Beach Season. Payment shall be made to the City of Duluth and directed to: City Treasurer at 411 W. 1st Street, Duluth, MN 55802. All payments to be deposited into Fund110-121-1219-4627 (General Fund, Public Administration, Parks Operation, Concessions & Commissions).
- 14.2. YMCA shall file with the City Auditor an annual itemized statement showing all YMCA income and expenses related to the operation of the Premises. The statement shall be filed not later than May 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.
- 14.3. 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 Premises 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.
- 14.4. 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.

15. INSURANCE

- 15.1. 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 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.

- 15.2. YMCA shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- 15.3. 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.
- 15.4. 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.
- 15.5. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.
- 15.6. 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.
- 15.7. 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.
- 15.8. 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.

16. HOLD HARMLESS

- 16.1. 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 use, management, maintenance or operation of the Premises by YMCA or performance of its obligations under this Agreement.

17. ALCOHOLIC BEVERAGES AND TOBACCO USE

- 17.1. The possession, use or sale of alcohol is permitted on the Premises only under the following conditions:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. YMCA 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.
 - e. Depending on the request, licensed peace officer(s) may be required to attend the event.
 - f. All state laws and Duluth City Code provisions shall be followed at all times.
 - g. The City reserves the right to prohibit the serving, sale or possession of alcohol on the Premises.

17.2. YMCA acknowledges and agrees that there shall be no smoking or use of tobacco whatsoever in any building on the Premises or as otherwise prohibited by state or local laws.

18. CITY ACCESS

18.1. City may schedule activities and events on said Premises when not in use by YMCA and shall not be charged any fee for such use.

18.2. 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.

19. RELATIONSHIP

19.1. 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 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.

20. THIRD PARTY BENEFICIARIES

20.1. 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.

21. 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.

22. NOTICES

22.1. 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: Executive Director
302 W. 1st Street
Duluth, MN 55802

23. GENERAL PROVISIONS

23.1. 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.

23.2. 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.

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

23.4. 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.

23.5. 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

DULUTH AREA FAMILY YMCA

By: _____
Mayor

By: _____
Its Executive Director
Printed Name _____

ATTEST:

_____ s _____
City Clerk
Date: _____

Its: _____
Board Officer
Printed Name _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

Exhibit A = YMCA's Proposal
Exhibit B = Premises
Exhibit C = Equipment
Exhibit D = Form of Rental Agreement
Exhibit E = 2009 Agreement
Exhibit F = Project Proposal
Exhibit G = Incident Report
Exhibit H = Form of Financial Report

EXHIBIT A

To: Jeff Anderson, Operations Coordinator-Parks
From: Jeramy Katchuba, Branch Executive Director-Duluth YMCA
Re: Park Point R.F.P.

The Duluth YMCA would like to submit a formal request for proposal to enter a lease agreement for the operation and maintenance of the Park Point Beach House with the City of Duluth. We have been providing lifeguards and managing the rental of the pavilions and field space for the past three years as part of an agreement reached with the City of Duluth in 2009.

The Duluth YMCA has the capabilities of meeting all requirements that are contained in the request for proposal. We also have many ideas to expand the programming that is currently being offered. We look forward to the opportunity to provide recreational, educational and healthy opportunities at the Park Point Beach House. We have outlined a plan to operate the Beach House for the next three years and put measures in place to ensure that it is sustainable for years to come.

1. General business and marketing plan(s) for the operation of the Park Point Beach House, including staffing plans.

- The YMCA business plan for the Beach House would not only be for the next three years, but a plan that will be sustainable for years to come.

In year one, we would enhance current rentals and concessions through strategic marketing and by providing healthy options at the concession stand that follow the YMCA Activate America guidelines. We would utilize the fields and volleyball pits for both one-time tournaments and leagues. We would use the Beach House, and surrounding area, to hold group exercise classes that would either be free or low cost to the community. The Beach House would also be used as a general meeting space for day trips to the point by our Day Camp and School's Out participants.

In years two and three, we would provide specialty camps out of the Beach House. We would also add additional rentals that would include stand up paddle boarding and sea kayak rentals. The other possibility would be to have video game opportunities in the Beach House that would include a small fee.

- The marketing plan will be maintained by our Communications Director. Section 4 of this proposal outlines the plan that we will use to market and promote the Beach House.
- The staffing model would include program supervision from Chenoa Golat-Programs Director, Emily Marshall-Aquatics Director, Bridgit Maruska-Camping Services Executive Director and Brock Olson-Sports Coordinator. The day to day operations of the concession stand will be maintained by a lead staff and the lifeguards on duty. Cleaning would be maintained daily by

lifeguards at the end of their shifts and a YMCA building services staff member, a minimum of twice per week.

2. Resume of all candidate partners identifying past experience in concession, catering, or closely related business.

- We operate concessions and merchandise sales at the downtown branch of the YMCA in excess of \$20,000 per year. At this point, we are not considering offering catering. If we progress in that area, we would bring in an expert to oversee that area of the operation.

3. Names of all individual or partners to be involved in the business operation complete with addresses and phone numbers.

- Chris Francis
C.E.O./President Duluth YMCA
302 West First Street
Duluth, MN 5802
218-722-4745 ext. 104
- Jeramy Katchuba
Downtown Branch Executive Director
302 West First Street
Duluth, MN 55802
218-722-4745 ext. 161
- Emily Marshall
Downtown Branch Aquatics Director
302 West First Street
Duluth, MN 55802
218-722-4745 ext. 131
- Chenoa Golat
Downtown Branch Programs Director
302 West First Street
Duluth, MN 55802
218-722-4745 ext. 144

4. Description of past marketing and promotional experience.

- Park Point Beach House information will be included in all marketing and promotional pieces that the Duluth Area Family YMCA utilizes. This will include news stories, press releases, program guides, school flyers, posters and maintaining information on our website. All marketing and promotion is overseen by the association Communications Director, Machel Kendrick.

5. Proposed form of rental agreement as described in section IIH.

- We will utilize the same format that we use when renting the field and pavilions located next to the Park Point Beach House. The document that we

currently use, and would use for the Beach House, is attached with this request.

6. Three financial references.

- Not needed per a conversation with the City of Duluth Operations Director, Jeff Anderson.

7. Three professional references per partner.

- Not needed per a conversation with the City of Duluth Operations Director, Jeff Anderson

8. Other relevant information not specifically mentioned here but which may be helpful or essential in assessing the capabilities of candidates to successfully and satisfactorily operate the Park Point Beach House.

- The Duluth YMCA is dedicated to putting the principles of caring, honesty, respect and responsibility into practice through programs that build healthy spirit, mind and body for all.

The YMCA of Duluth, established in 1882, has offered programs designed to meet individual and family needs for physical, mental, social and spiritual health. We strive to meet the goals in our three focus areas; Social Responsibility, Healthy Living and Youth Development. Management of the Park Point Beach House would provide us with a great facility that would help us to meet the goals of both our mission and focus areas.

We look forward to the opportunity to further discuss management of the Park Point Beach House. If you have any questions, or concerns, please don't hesitate to call me at 722-4745 ext. 161, or send me and e-mail at jkatchuba@duluthymca.org

Cordially,

Jeremy Katchuba
Downtown Branch Executive Director



Duluth Area Family YMCA
 Application for Use of a Park Point Pavilion
 302 West 1st Street Duluth, MN 55802
 (218) 723-3616



Contact	Private Host	Business	Club
Organization			
Address			
City/State/Zip			
Approximate Attendance	Primary Phone		
Date of Event	Alternate Phone		
Type of Event	Email		

Site	Time Slot
Pavilion #1 _____	10am-3pm _____
Pavilion #2 _____	4pm-9pm _____
Fields _____	10am-9pm _____

Alcohol Permit
 Please review included alcohol policies

- A permit allows you the exclusive use of the shelter – the park is still open to the public.
- Tents are not allowed in the park. Canopies may be used if they are stand-alone. A \$100 damage deposit is required.
- Deposits must be issued in a separate check.
- We do not provide any additional items needed for your event.
- If your permit requires a security officer for alcohol, you must provide a copy of the contract before your permit will be issued.

Your reservation will be canceled if payment is not received within two weeks.

You must also read and sign the hold harmless form on the second page of this application.

Applicant signature	Date
----------------------------	-------------

For Office Use Only

Shelter Fee \$	Date Received	By
	Amount Paid \$	
Deposit \$	Check #	Cash
	Receipt #	
	Deposit(s) Returned	

PAVILION RENTAL PERMIT HOLD HARMLESS FORM

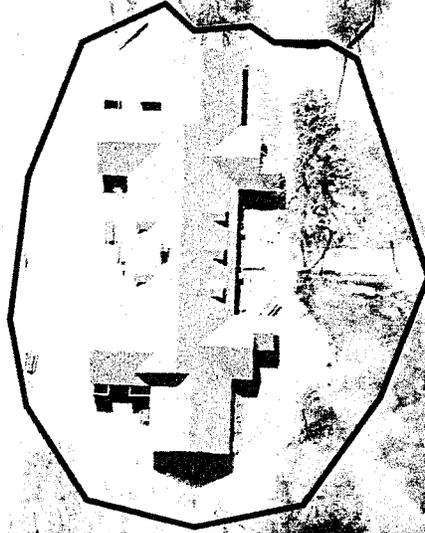
Permittee agrees to defend, indemnify, and save harmless the Duluth Area Family YMCA from any and all liens, claims, suits, demands, liability, judgment costs, damages, and expenses which may accrue against or be charged or may be recovered from the Duluth Area Family YMCA by reason of or account of any claim or damage arising from Permittee's use or occupancy of the premises whether or not person or persons including Permittee, its members, Permittee's employees, agents, volunteers, invitees, or tenants, whomsoever occasioned or caused by the contact, acts, or omission of Permittee, its members, volunteers, invitees, or tenants, or by reason of the use, development, operation or maintenance of said premises by Permittee under this agreement. Upon ten (10) days written notice, Permittee will appear and defend all claims and lawsuits against the Duluth Area Family YMCA growing out of any such injury or damage resulting from any defect in the construction or condition of all the interior and exterior premises of the site. The Duluth Area Family YMCA does not waive its immunities under state or federal law.

Permittee Signature

Name of Organization Permittee is Representing

Date

2750-00080
CITY OF DULUTH,
4500 MINNESOTA AVE



Print Date: 12/16/2011
Photo Date: May 2011

1:900

1 inch = 75 feet

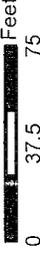


EXHIBIT B

EXHIBIT C

Beach House Inventory

4	Electrical strips
24	6 foot round tables (plastic)
150	Metal folding chairs
8	8 foot rectangle tables (wooden)
1	coffee pot
1	hot dog cooker
1	crook pot cooker
2	pizza ovens
1	trellis (wedding arch)
1	stainless steel salad bar
1	music system (sony receiver and 6 speakers)
1	steel wheel barrow
2	watering cans
2	box fans
4	25 foot electrical extension cords
1	refrigerator
1	pop refrigerator (6 foot with sliding door)
1	stand up freezer
2	nacho machines
1	pizza warmers
1	hamburger cooker
1	3 shelve bakers rake
2	pizza cutters
3	measuring cups
1	strainer with handle
1	paring knife
1	slow cooker-inside only
1	stainless steel gas grill(480 square inch cooking surface) with side burner
3	shish ka bob skewers
1	tall stool
2	cash registers
12	water bottles
16	water noodles
35	neck holders
24	ear plugs
8	nose plugs
1	sand sifter
1	frizbee
9	sandals
3	sand pails
9	arm inflatables
6	beach balls

- 1 rubber ball
- 2 spongy balls
- 2 bouncy balls
- 2 water balls
- 4 bubbles
- 1 bubbles

Sweat Shirts-Adult-Hoodies

- 1 small
- 1 medium
- 2 large
- 5 x-large
- 2 xx-large

Sweat Shirts-Adult-Zip up

- 1 large
- 2 x-large
- 1 xx-large

Tee Shirts-Blue

- 3 medium
- 3 x-large
- 1 xx-large

Tee Shirts-Red

- 3 medium
- 5 large
- 4 x-large
- 1 xx-large

Kids Zip Hoodie

- 2 small
- 2 medium
- 1 large

Kids Sweat Shirt

- 1 small
- 2 medium
- 2 large

Assorted suntan lotions

7 total bottles

EXHIBIT D

TEMPORARY LEASE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20__, by and between _____ [insert name] hereinafter called "Lessor" and _____ hereinafter called "Lessee".

WITNESSETH, that the Lessor, in consideration of rents and covenants hereinafter mentioned, does hereby demise, lease and let onto Lessee, and said Lessee does hereby hire and take from Lessor that portion of the _____ Community Center building on the ____ day(s) of _____, 20__, from _____ am/pm to _____ am/pm as is described as follows, to-wit:

Space(s) to be leased by Lessee: _____

But excluding the following: _____

The purpose of Lessee's use will be as follows: _____

TO HAVE AND TO HOLD, the premises just as they are, without any liability or obligation on the part of said Lessor or the City of Duluth of making any alterations, improvements, or repairs of any kind on or above the said premises for the term as stated above Lessee yielding and paying the rent of \$ _____ dollars. **The Lessee may not access the premises for deliveries, decorating, etc. before or after the following dates and times:**

Not Before _____ am/pm, ____ day of _____, 20__.

Not After _____ am/pm, ____ day of _____, 20__.

THE LESSEE has herewith agreed to make a damage/clean-up deposit of \$ _____, which must be paid by the ____ day of _____, 20__ to assure that the premises are maintained in as good order and condition and state of repairs, reasonable wear and tear excepted as the same now are or may be put into by Lessor. All deposits shall be cashed and deposited by Lessor upon receipt. The damage/clean-up deposit shall be returned to the Lessee provided the premises are maintained in good order, there are no damage/cleaning claims by the Lessor, and the Lessee has paid in full all rents and covenants herein mentioned.

THE LESSEE must abide by all laws of the United States, State of Minnesota, St. Louis County, City of Duluth, and especially the rules and regulations of the City of Duluth Parks & Recreation Department. Lessor acknowledges receipt of a down payment of \$ _____ and the balance of \$ _____ to be paid to Lessor not later than ____ day of _____, 20__.

AS PART OF THIS LEASE, The Lessee hereby fully releases the City of Duluth; Lessor, and Lessor's servants, agents, employees, contractors, or sub-contractors from any liability whatsoever in any way arising from any claim for damage to any person and/or property sustained or received on or about said _____ Community Center during the term of this lease. Additionally, the Lessee agrees to save harmless and indemnify the Lessor and the City of Duluth from any and all expenses arising because of any claim which may hereafter be presented by anyone for loss or damage or personal injury as a result of the use of _____ Community Center.

THE LESSEE shall provide a copy of their insurance policy for the above disclosed activity not later than ____ day of _____, 20__ indicating that Lessee has secured Personal Liability coverage at a minimum level of One Hundred Thousand Dollars (\$100,000.00) per occurrence. The Lessor and the City of Duluth shall be named as additional insured on all insurance policies covering the above activity.

EXHIBIT D

Temporary Lease Agreement

IF LESSEE intends to serve alcoholic beverages at any time during the above activity, Lessee shall obtain from the Parks & Recreation Dept office, and provide to Lessor, an Alcohol Consumption Permit. The cost of said permit shall be at Lessee expense. Lessee understands that said Alcohol Consumption Permit does not permit the sale of any alcoholic beverages. If Lessee intends to sell any alcoholic beverages, Lessee must secure a Temporary On-Sale Liquor License from the City Clerk's Office along with the required insurance coverage at Lessee expense.

AT ALL TIMES while alcoholic beverages are served, Lessee shall hire and secure the services of one or more uniformed security officers as may be required to oversee Lessee's function during those times when alcoholic beverages are being served. Such security officer(s) shall continue their oversight for a reasonable period after such alcoholic beverage serving period has ended to properly assist in clearing and securing said community club facility at the conclusion of Lessee's event.

IF the balance of payments due under this agreement are not paid by the date set forth herein, this agreement shall become null, and void, and the Lessor shall keep the down payment as liquidated damages.

IF any of the representations, including residence, made at the time entering into this agreement are no longer accurate within twenty (20) days of the date of the event, _____ Community Club shall have the sole discretion to declare this agreement null and void.

IN TESTIMONY WHEREFORE, the Lessee has hereunto set his/her hand(s) and seal(s) the day and year first written above.

[INSERT NAME] "LESSOR"

LESSEE

Authorized agent

Lessee

Date: _____

Date: _____

Lessee

Date: _____

EXHIBIT E

AGREEMENT

PARTIES

- 1.1 THIS AGREEMENT, made and entered into this 8th day of June, 2009, 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 DULUTH AREA FAMILY YMCA, a Minnesota non-profit corporation, hereinafter referred to as "YMCA".

~~ADMINISTRATION~~

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

PREMISES

- 3.1 That in consideration of the mutual covenants as set forth herein, City and YMCA agree to the shared use of the upper level of the Woodland Community Center building and all equipment contained therein, including attic storage area but excluding the lower building level, located at 3211 Allendale Ave (Exhibit A); the shared use of the Park Point Recreation Area and Beach House building and adjoining grounds located at 5000 Minnesota Ave (Exhibit B); and the shared use of a portion of the Chester Bowl Recreation Area building and grounds at 1800 East Skyline Parkway (Exhibit C), all located in the City of Duluth, St. Louis County, Minnesota. Collective hereinafter referred to as the "Premises".

CONDITIONS

- 4.1 YMCA agrees to accept the Premises "as is", in its present physical condition, without representations or warranties of any kind.
- 4.2 YMCA shall be responsible for daily routine cleaning and trash removal from the Premises. YMCA shall be responsible for providing, at YMCA expense, all light bulbs, cleaning supplies, paper products, etc. necessary for the daily operation and routine cleaning of the Premises.

TERM OF AGREEMENT

- 5.1 This Agreement shall be for a three (3) year period through December 31, 2012, and may be renewed for successive three year periods as provided herein. The parties shall meet and confer within ninety (90) days before this agreement is to end to discuss the terms and conditions of the agreement. If the parties agree that no changes are needed, which shall be confirmed in writing, and that neither party wishes to terminate the agreement as provided in Paragraph # 34, then this agreement shall be automatically renewed for an additional three (3) year period thereafter. The parties shall meet and confer in a similar manner each subsequent three (3) year period within ninety (90) days of expiration, unless either party gives written notice of its intent not to renew this agreement. If the parties fail to confirm continuation of this agreement in writing as provided by this paragraph, then this agreement shall automatically terminate at the end of the term and YMCA shall vacate the Premises as provided in Paragraph 17.2.

MAINTENANCE AND OPERATION

- 6.1 YMCA agrees to operate said Premises' buildings and/or adjoining grounds on a non-exclusive basis as further described in Paragraph #10 below. The operation of said Premises shall include, but not limited to the following:
- a) Usage scheduling, as outlined below in Paragraph 6.5.
 - b) All needed day-to-day janitorial cleaning or other light maintenance tasks, not requiring a licensed or skilled tradesperson including but not limited to, plumbing, electrical, carpentry, etc..
 - c) All general litter pick-up from parking areas and other outdoor spaces including but not limited to ballfields and tennis courts.

- d) Snow and ice removal from the entrances and connecting walkways at the Woodland Community Center. All materials required for the performance of janitorial cleaning tasks, light maintenance or litter pick-up shall be provided by YMCA at YMCA expense.
- e) YMCA shall coordinate trash collection days with the contract trash hauler when possible.

- 6.2 City agrees to provide all snow plowing, grass cutting, and related grounds maintenance to the same level as currently provided.
- 6.3 Both parties agree to recognize and honor prior commitments made to youth athletic leagues for priority usage of the Woodland Community Center ballfields. YMCA may utilize the ballfields at Woodland Community Center when not in use for organized practices or league play. Said fields shall be open and available for use by the general public when not in use by youth athletic leagues or YMCA.
- 6.4 YMCA agrees to be responsible for all expenses related to YMCA activities, rentals, maintenance and functions, and to perform all routine maintenance of the Premises related to such activities in order to maintain the Premises building, and adjoining grounds if applicable, in a reasonable state of repair.
- 6.5 YMCA shall not have exclusive use of the Premises. YMCA shall, subject to its own scheduling and facility usage requirements, permit community based groups, clubs, or organizations to use the Premises for a reasonable amount of time on an occasional basis at no cost or minimal cost for recreational or community advancement purposes when said Premises are not in use by YMCA. YMCA may rent the Woodland Community Center building to private groups or parties and for any such use there shall be paid to YMCA a fee prescribed and agreed upon by YMCA and City. For all rentals to private groups or parties, YMCA shall cause to be executed a separate Temporary Lease Agreement in the same form as Exhibit D to this agreement. One copy of each executed Temporary Lease Agreement shall be submitted to the Parks & Recreation office within ten (10) days of its execution. YMCA may, at its discretion, charge a fee to groups, clubs, or organizations requiring regular scheduled use of any of the Premises facilities and may require additional responsibilities of said groups such as set-up, take down, and clean-up. YMCA shall not discriminate in a 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 rental or use of the Premises. A current schedule of fees for the use of the Premises shall be submitted to, and approved by, City prior to becoming effective. YMCA shall collect and retain all fees collected from rentals or related building usage for which a fee is charged. For those rentals booked by the City prior to the effective date of this agreement, City shall remit up to 50% of the rental fees collected upon receipt of proper invoice from YMCA.
- 6.6 YMCA shall provide, at no cost to City, lifeguard services for the Park Point Beach in the immediate vicinity of the Park Point Beach House, within the designated lifeguarding area, during the summer beach season (June 1 - August 31) or other dates agreed upon by both parties in advance. YMCA shall provide not less than three (3) on-duty, Red Cross certified lifeguards at all times when the beach is designated as "open", ~~seven (7) days per week (weather permitting), daily hours shall be 11:00 am - 4:00 pm.~~ In addition, YMCA shall take those steps necessary to daily pick up all litter from the beach within the designated lifeguarding area and extending two hundred (200) feet in either direction from the designated lifeguarding area, and thereby maintain the beach area in a clean and safe condition. City shall provide the appropriate lifeguarding or beach related equipment at the start of this agreement and shall allow YMCA the use of any existing City lifeguarding or beach related equipment. City shall not be responsible for the replacement of any necessary equipment deemed to be unusable or absent from the Park Point Beach or Beach House after this initial startup time frame. City agrees to provide local telephone service within the lifeguard station office of the Park Point Beach House. City and YMCA shall determine beach closing procedure based on the Duluth Fire Department flag warning system. Once said system is invoked by the Duluth Fire Department, YMCA shall take those steps necessary to properly close the Park Point Beach and notify beach users.
- 6.7 YMCA shall be responsible for all scheduling of the Park Point Recreation Area facilities including, but not limited to, picnic pavilions, ballfields, and sand volleyball courts, and the issuance of any permits related thereto, but excluding the Park Point Beach House. Said facilities schedule shall be routinely reviewed and approved by the City prior to implementation. It is fully understood by both parties that the Park Point Recreation Area, when not scheduled by YMCA, shall be open and available for the use and enjoyment of the general public at no cost. YMCA may charge fees and retain all revenues generated from the scheduled, reserved use of the Park Point Recreation Area facilities as identified in this paragraph. Any permits issued by City prior to the effective date of this agreement, City shall remit up to 50% of any fees collected to

YMCA upon receipt of proper invoice.

- 6.8 Both parties agree to recognize the Park Point Recreation Area as a long standing venue for large scale events such as the Park Point Art Fair. Both parties further agree to honor all prior commitments to large scale special events and to make every effort to mutually coordinate the use of the Park Point Recreation Area for any new or added events desiring to use this area. YMCA understands that such existing or new events may cause temporary scheduling disruption of YMCA programs during such times. City shall provide notice to YMCA in advance of any special activities or events scheduled for the Park Point Recreation Area and coordinate use of the building and/or grounds between YMCA and the special event user.

CAMP KITCHIGAMI

- 7.1 City agrees to allow YMCA non-exclusive use of Chester Bowl Park, at no cost, but subject to the following provisions, for the purpose of operating Camp Kitchigami, a youth day camp program. This agreement shall supercede any earlier agreements between the parties for the operation of Camp Kitchigami at Chester Bowl Park. YMCA shall be allowed to charge and retain a participant fee for Camp Kitchigami. Said fee shall be annually reviewed and approved by the City prior to its implementation.
- 7.2 YMCA agrees that Camp Kitchigami shall operate weekdays from mid-June to mid-August of each year. Daily camp hours shall be 9:30 am - 3:00 pm, Monday - Friday. In addition, City shall allow YMCA the extended use of Chester Bowl Park for the holding of parents' nights every other Thursday evening from 6:00 pm - 7:00 pm. In the event of inclement weather, City agrees to allow YMCA to reschedule alternate dates for parents' night activities.
- 7.3 YMCA agrees to provide to City, not later than May 15 of each year this agreement remains in effect, a complete schedule of activities for Camp Kitchigami. Such schedule shall identify dates and times for all activities. Such schedule shall be submitted to the City.
- 7.4 YMCA agrees to provide sufficient staffing, supervision, and administrative support (with a minimum staff to participant ratio of 1:10) as may be necessary and at all times to properly conduct Camp Kitchigami.
- 7.5 YMCA agrees that the Camp Kitchigami site director shall be present at all times at Chester Bowl Park while Camp Kitchigami activities are taking place.
- 7.6 City shall not be responsible to YMCA, or any Camp Kitchigami participant, for any injury or damage resulting from any defect in the construction or condition of Chester Bowl Park.
- 7.7 YMCA agrees to provide portable toilets, in sufficient quantity and with routine servicing, in the playfield area of Chester Bowl Park for use by Camp Kitchigami participants and staff. Such cost shall be borne by YMCA.
- 7.8 City agrees to allow YMCA access to quonset hut garage in Chester Bowl Park for the purpose of storing program supplies during the Camp Kitchigami season only. Except for the Camp Kitchigami sign and wall mounted storage bins, all supplies and equipment shall be removed at the camp's conclusion each year. YMCA may install a telephone within the quonset hut. All costs for the installation and operation of such telephone shall be borne by YMCA.

ALTERATIONS OR IMPROVEMENTS

- 8.1 YMCA may make suitable permanent improvements to the Premises only upon approval of City. Permanent improvements such as fencing, turf installation, bituminous surfaces, storage structures, structural improvements or modifications to a main building structure, lighting, or flagpoles, will become the permanent property of the City upon satisfactory completion and acceptance by both YMCA and the City. Prior to commencing any improvements or alterations, YMCA shall submit to the City a Project Proposal Request along with detailed plans at least forty-five (45) days in advance for review. YMCA shall be responsible for operational costs and maintenance of such improvements, installations, and facilities and shall operate them in a safe manner. No construction, alteration, or improvement shall begin until approved by the City and all necessary building permits are secured. All construction shall conform to the State Building Code.

20880

- 8.2 YMCA agrees that not less than thirty (30) days prior to commencing any construction, alteration, or improvement on said premises that YMCA will provide City with a Certificate of Insurance evidencing that all persons are covered by Worker's Compensation insurance. Such Certificate of Insurance shall be approved by the City before the commencement of any construction.

FACILITY SUPERVISION

- 9.1 YMCA agrees to staff and operate recreational and related programs offered to the general public. Such programs shall be properly scheduled and advertised similar to existing YMCA programs. YMCA may charge fees for said programs and retain said fees. A listing of all YMCA programs scheduled to be held on the Premises complete with dates, times, and fees to be charged, shall be provided to City at least thirty (30) days prior to the commencement of such programming.
- 9.2 YMCA agrees that at all times the Premises are in use, except when it is occupied by another permitted party or under the supervision of authorized City staff, it will be properly supervised by an adult person who is employed by or otherwise responsible to YMCA..
- 9.3 YMCA agrees that it will not relinquish temporary occupancy and control of any portion of the Premises, under its control, to a third party rental unless a responsible adult representing the rental party completes and signs a separate Temporary Lease Agreement in the same form as Exhibit D to this agreement. One copy of each executed Temporary lease Agreement shall be submitted to the Parks & Recreation office within ten (10) days of its execution
- 9.4 Except as provided in Paragraph 9.3, YMCA shall not sublet any space(s) anywhere in or on the building or on the Premises without first securing prior written approval of the City.

UTILITIES

- 10.1 City agrees to be responsible for the routine payment of all basic utilities (water, gas, sewer, electric) including local telephone and trash collection services but excluding separately metered utilities. For any special events requiring additional or extra utilities usage, YMCA shall determine an additional fee for utilities based on estimated usage with the special event user and said fee shall be remitted to City to aid in the recovery of said utilities usage required by the special event user.
- 10.2 YMCA agrees that any additional utilities or services, such as internet or cable television services, beyond those basic utilities provided by City needed or required by YMCA, a rentee or sublettee shall be the sole responsibility of YMCA.

LIMITS OF USAGE

- 11.1 YMCA agrees that said Premises shall only be used for recreational and community advancement purposes.

REPORTING

- 12.1 YMCA shall submit to the City Auditor a copy of the YMCA annual financial non-profit report including disclosure of all income and expenses related to the operation and maintenance of said Premises, including IRS Form 990 (if required by IRS), by June 1 of each year this agreement is in effect. Such report shall cover the previous fiscal or calendar year. The report shall also include a current listing of all YMCA officers, board members, and a designation of the official contact person responsible for the administration of this agreement (including day-to-day scheduling and maintenance duties) along with addresses and phone numbers.
- 12.2 YMCA agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all YMCA books, records, documents, and accounting procedures and practices 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 advanced notice by City, YMCA shall provide all requested financial information.

INSURANCE

13.1 During the entire term of this Agreement, YMCA shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Two Million Dollars (\$2,000,000) aggregate per occurrence for personal bodily injury and death, and limits of Two Hundred Thousand Dollars (\$200,000) for Premises damage liability. If person limits are specified, they shall be for not less than Two Million Dollars (\$2,000,000) per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:

- A. Public Liability, including premises and operations coverage.
- B. Independent contractors - protective contingent liability.
- C. Personal injury.
- D. Owned, non-owned and hired vehicles.
- E. Contractual liability covering the indemnity obligations set forth herein.
- F. Dram Shop Insurance, if applicable.

13.2 YMCA shall provide to City a Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types of limits of coverage are adequate to protect YMCA's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as approved by the Duluth City Attorney's Office.

13.3 All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

HOLD HARMLESS

14.1 YMCA agrees to defend, indemnify, and save harmless the City from any and all liens, claims, suits, demands, liability, judgment costs, damages and expenses which may accrue against or be charged or may be recovered from City by reason of or account of any claim for damage arising from YMCA's use or occupancy of the Premises whether of any person or persons including YMCA, its members, employees, agents, volunteers, invitees, or tenants, whomsoever occasioned or caused by the contact, acts, or omission of YMCA, its members, volunteers, invitees, or tenants, or by reason of the use, development, operation, or maintenance of said Premises by YMCA under this agreement. Upon ten (10) days written notice, YMCA will appear and defend all claims and lawsuits against City growing out of any such injury or damage resulting from any defect in the construction or condition of the interior premises of the building. The City does not waive its immunities under state or federal law.

WORKER'S COMPENSATION

15.1 YMCA shall comply with all Minnesota Worker's Compensation laws in the utilization of all employees employed on the premises.

ALCOHOLIC BEVERAGES

16.1 YMCA shall assure and verify that any third party so renting any portion of the Premises and intending to serve any alcoholic beverages must, prior to the scheduled rental, secure an Alcohol Consumption Permit from the City. At no time are alcoholic beverages to be served nor consumed without such Alcohol Consumption Permit being in the possession of the rental party. At no time shall alcoholic beverages be sold without securing an on-sale alcoholic beverage license from the City.

16.2 YMCA agrees that at any time or during any function at which alcoholic beverages are to be served on any portion of the Premises, it shall be the duty of YMCA to assure that the function be attended and actively overseen by one or more uniformed Duluth Police officers or private security officers as may be reasonably required to properly oversee such function.

TERMINATION OF AGREEMENT

- 17.1 Upon termination of this agreement, or a specific portion thereof, YMCA agrees to surrender possession of said Premises, or portion thereof, 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.
- 17.2 This Agreement may be terminated, or portion thereof, by either party by serving ninety (90) 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 or directed to the City Designee, and any such notice to be addressed or directed to YMCA Designee. Should YMCA violate 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.

CITY ACCESS

- 18.1 City may schedule activities and events on said Premises on a priority basis in coordination with YMCA and shall not be charged any fee for such use.
- 18.2 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 Premises. 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.
- 18.3 During such times when Citywide voting or elections are held, YMCA shall make available those portions of the Premises required by the City Clerk for this purpose. Generally, elections are held the second Tuesday of September and the first Tuesday of November. City agrees to notify YMCA thirty (30) days prior to any non-scheduled or Special Election.

GENERAL PROVISIONS

- 19.1 The rights of YMCA to build, occupy, use, and maintain the above described premises and any buildings or structures located thereon 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.
- 19.2 The Premises are multi-use facilities requiring the cooperation of all users. This cooperation includes sharing parking, 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 users groups.
- 19.3 YMCA agrees to operate said premises in strict 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.
- 19.4 By this agreement the parties do not create a principle / agent relationship or joint venture or enterprise. YMCA shall not be deemed as acting as an agent of the City nor shall it be deemed as acting in an official capacity. This agreement is intended to create only a landlord/tenant relationship. YMCA is a tenant of the Premises and shall not represent itself as an agent of the City.
- 19.5 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.

19.6 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 Designee: Kathleen Bergen
Address: 12 E 4th St
Duluth MN 55805
Phone: 730-4309

YMCA Designee: J. Palmer
Address: 302 W First St
Duluth MN 55802
Phone: 218-222-4245

CITY OF DULUTH

DULUTH AREA FAMILY YMCA

By [Signature]
Mayor

By J. H. Palmer
Executive Director

ATTEST:

[Signature]
City Clerk

Jane H. Casperson
Board Officer

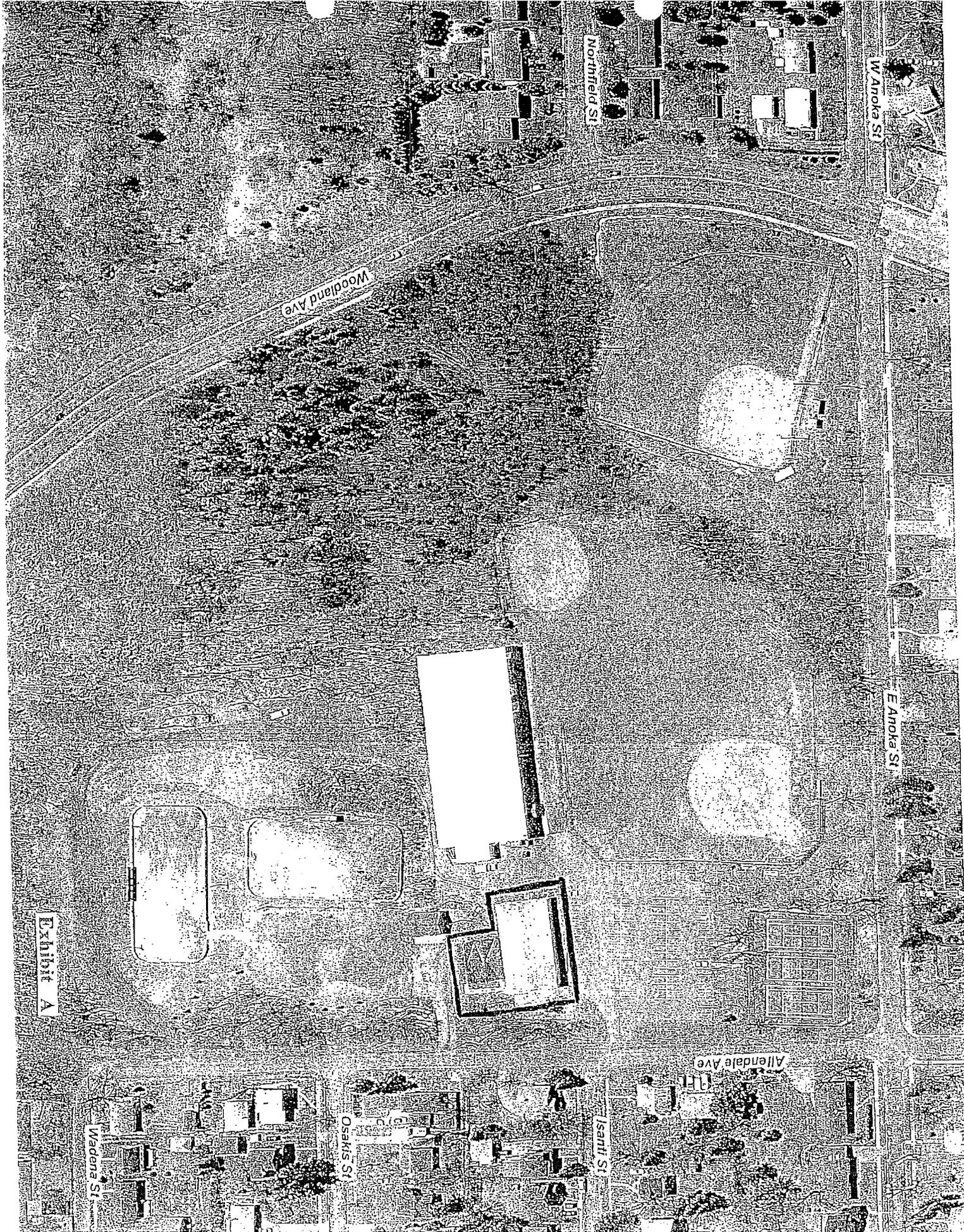
COUNTERSIGNED:

APPROVED AS TO FORM:

[Signature]
City Auditor

[Signature]
Assistant City Attorney

Kathleen Bergen
Manager, Parks & Recreation



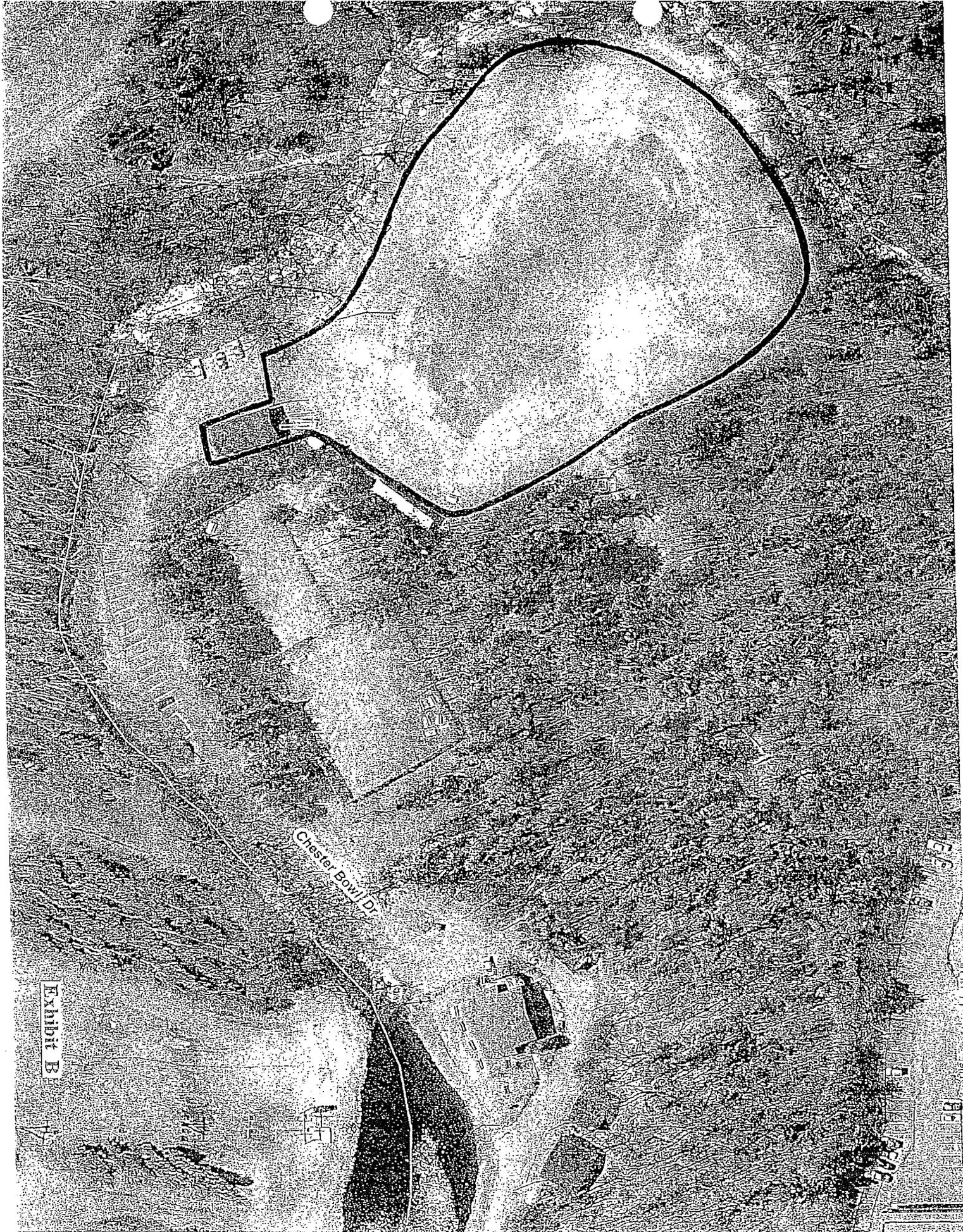


Exhibit B

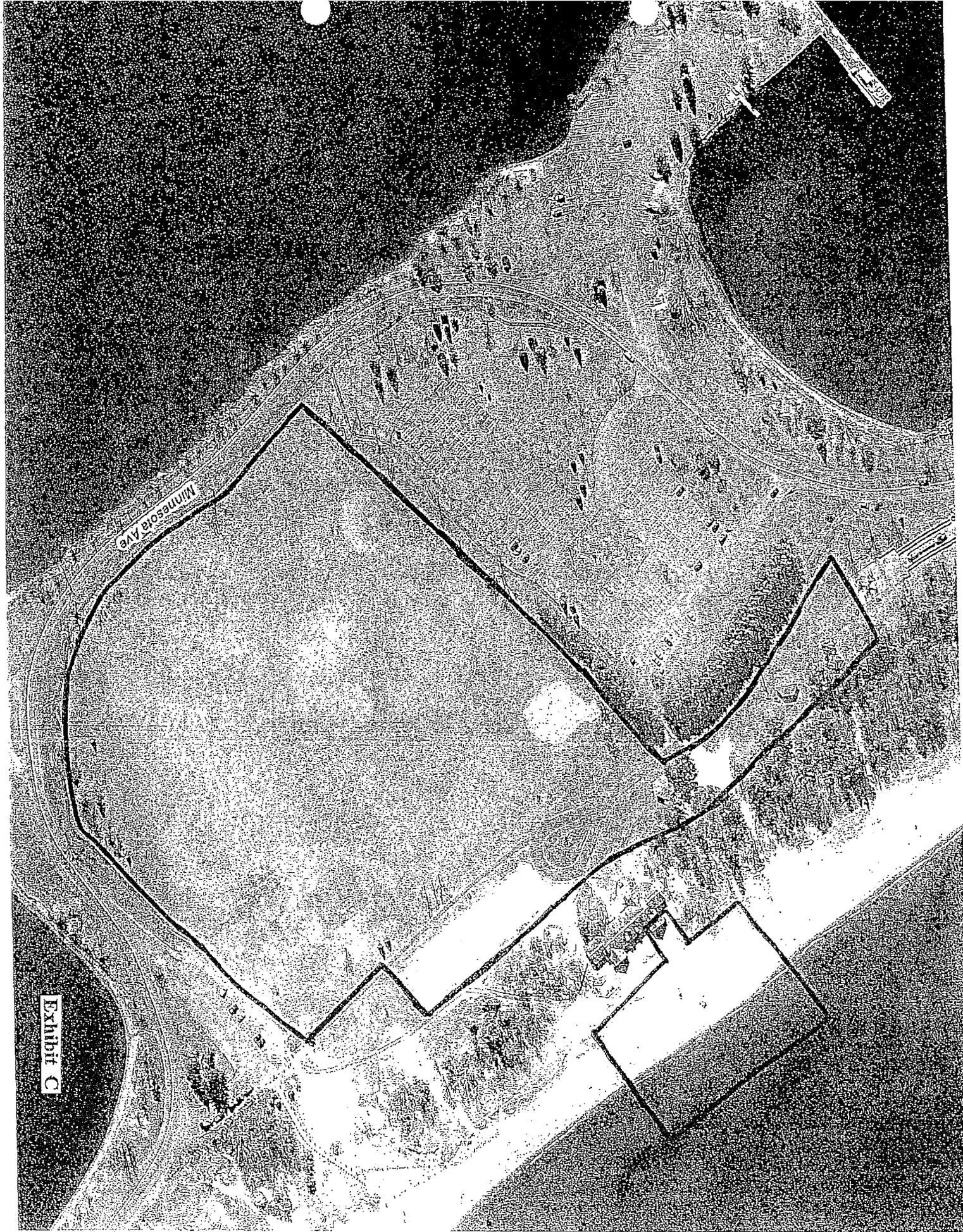


Exhibit C

EXHIBIT D

TEMPORARY LEASE AGREEMENT

THIS AGREEMENT made this ___ day of _____, 20___, by and between _____ YMCA hereinafter called "Lessor" and _____ hereinafter called "Lessee".

WITNESSETH, that the Lessor, in consideration of rents and covenants hereinafter mentioned, does hereby demise, lease and let onto Lessee, and said Lessee does hereby hire and take from Lessor that portion of the _____ Community Center building on the ___ day(s) of _____, 20___, from _____ am/pm to _____ am/pm as is described as follows, to-wit:

Space(s) to be leased by Lessee: _____

But excluding the following: _____

The purpose of Lessee's use will be as follows: _____

TO HAVE AND TO HOLD, the premises just as they are, without any liability or obligation on the part of said Lessor or the City of Duluth of making any alterations, improvements, or repairs of any kind on or above the said premises for the term as stated above Lessee yielding and paying the rent of \$ _____ dollars. The Lessee may not access the premises for deliveries, decorating, etc. before or after the following dates and times:

Not Before _____ am/pm, ___ day of _____, 20___.

Not After _____ am/pm, ___ day of _____, 20___.

THE LESSEE has herewith agreed to make a damage/clean-up deposit of \$ _____, which must be paid by the ___ day of _____, 20___ to assure that the premises are maintained in as good order and condition and state of repairs, reasonable wear and tear excepted as the same now are or may be put into by Lessor. All deposits shall be cashed and deposited by Lessor upon receipt. The damage/clean-up deposit shall be returned to the Lessee provided the premises are maintained in good order, there are no damage/cleaning claims by the Lessor, and the Lessee has paid in full all rents and covenants herein mentioned.

THE LESSEE must abide by all laws of the United States, State of Minnesota, St. Louis County, City of Duluth, and especially the rules and regulations of the City of Duluth Parks & Recreation Department. Lessor acknowledges receipt of a down payment of \$ _____ and the balance of \$ _____ to be paid to Lessor not later than ___ day of _____, 20___.

AS PART OF THIS LEASE, The Lessee hereby fully releases the City of Duluth; Lessor, and Lessor's servants, agents, employees, contractors, or sub-contractors from any liability whatsoever in any way arising from any claim for damage to any person and/or property sustained or received on or about said _____ Community Center during the term of this lease. Additionally, the Lessee agrees to save harmless and indemnify the Lessor and the City of Duluth from any and all expenses arising because of any claim which may hereafter be presented by anyone for loss or damage or personal injury as a result of the use of _____ Community Center.

THE LESSEE shall provide a copy of their insurance policy for the above disclosed activity not later than ___ day of _____, 20___ indicating that Lessee has secured Personal Liability coverage at a minimum level of One Hundred Thousand Dollars (\$100,000.00) per occurrence. The Lessor and the City of Duluth shall be named as additional insured on all insurance policies covering the above activity.

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 09-0357

ADOPTED: JUNE 8, 2009

WHEREAS, the city faces a demand for the provision of public recreational services with reduced financial and staffing resources; and

WHEREAS, the Duluth Area Family YMCA desires to enter into an agreement with the city for the operation of the Woodland Community Center, program use of a portion of Chester Bowl and facility scheduling, program use and lifeguarding services at Park Point Recreation Area.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 09-0608-13, between the city of Duluth and the Duluth Area Family YMCA.

Resolution 09-0357 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the eighth day of June, 2009, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 18th day of June, 2009.

JEFFREY J. COX
City Clerk

by Janet A. Oswald
Assistant
CITY OF DULUTH, MINNESOTA



Department of Public Administration - Maintenance Operations
Architecture, Facility Management Services and Street Light Utility

1532 West Michigan Street • Duluth, Minnesota • 55806
PHONE: 218-730-5730 • FAX: 218-723-3560
tgroshong@duluthmn.gov

EXHIBIT F

INTER-DEPARTMENT CORRESPONDENCE

DATE: March 11, 2011

TO: Department Directors & Division Managers
Community Clubs and Organizations

FROM:  Terry L. Groshong, AIA
City Architect/Facility Manager

SUBJECT: Project Request and Approval Process

Each year there are numerous requests for improvement projects on City Property. The projects and related funding are pursued through a variety of avenues such as additional capital requests not included in the City's 5-year Capital Improvement Program (CIP), requests to the City Facilities Management or Parks and Recreation Department, Community Development Block Grant Program (CDBG), and others. These avenues and the different people and requirements of each process have caused some confusion. The result has been delays and, on occasion, rejection of funded projects.

For example, acquiring funds for a project through CDBG, a DNR grant, fundraising, or donations does not guarantee project acceptability if the project is being considered on City property? It must also receive recommendation and approval by the appropriate City officials. There is no assurance that this will occur after the fact, and therefore, City approval should occur in advance of, or at least concurrent with pursuing funding.

The City departments most actively involved with projects have developed a system that will result in better communications, tracking, and processing of project requests. It establishes Facilities Management as the City entity that will initiate the process once a request has been received. Facilities Management (FM) is charged with identifying the responsible and accountable "Project Team" and facilitating the process. At any point in the process, FM can be contacted to respond to questions or concerns that are not being addressed by the Project Team.

The intent of this process is to expedite decision making, clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns. This process may need modification to improve upon what has been developed. Your input will be critical in that sense.

Enclosed you will find two documents, 1) the City of Duluth Project Proposal Request Form and 2) the Project Request and Approval Process sheet. The Request Form activates the Request and Approval Process which is diagrammed to reflect how the process works. Implementation of this process is effective immediately.

Your cooperation and assistance is requested and much appreciated. If you have any questions, please contact Tari Rayala at 730-4434.

CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM

Use this form to propose improvement projects to any City facility. A City facility includes both building and grounds. It is intended to be used by external community groups, organizations and internally generated requests.

PROJECT (Brief Description) _____

LOCATION (Name of City Park, Building) _____
ADDRESS: _____

Attach Sketch Diagram yes, or Add Drawing on back of this form, yes

NAME OF GROUP OR ORGANIZATION PROPOSING PROJECT: _____

Contact Person Name _____ Home Phone _____
Address _____ Work Phone _____
City, State, Zip _____ Cell Phone _____
E-mail _____

PROJECT FUNDING: Do you have funding for this project?

YES, indicated Funding Sources, Amounts and Total Project Cost _____

NO, COMMENTS _____

Total Project Cost _____

ENERGY USE: Do you think there will be a change in the use of energy for any energy type listed here because of this project?

YES NO Not Sure Check all energy types where use will change:

ELECTRICITY (kWh) _____ GAS (Therms) _____ OIL (gallons) _____
STEAM (Pounds) _____ WATER and SEWER (CCF) _____

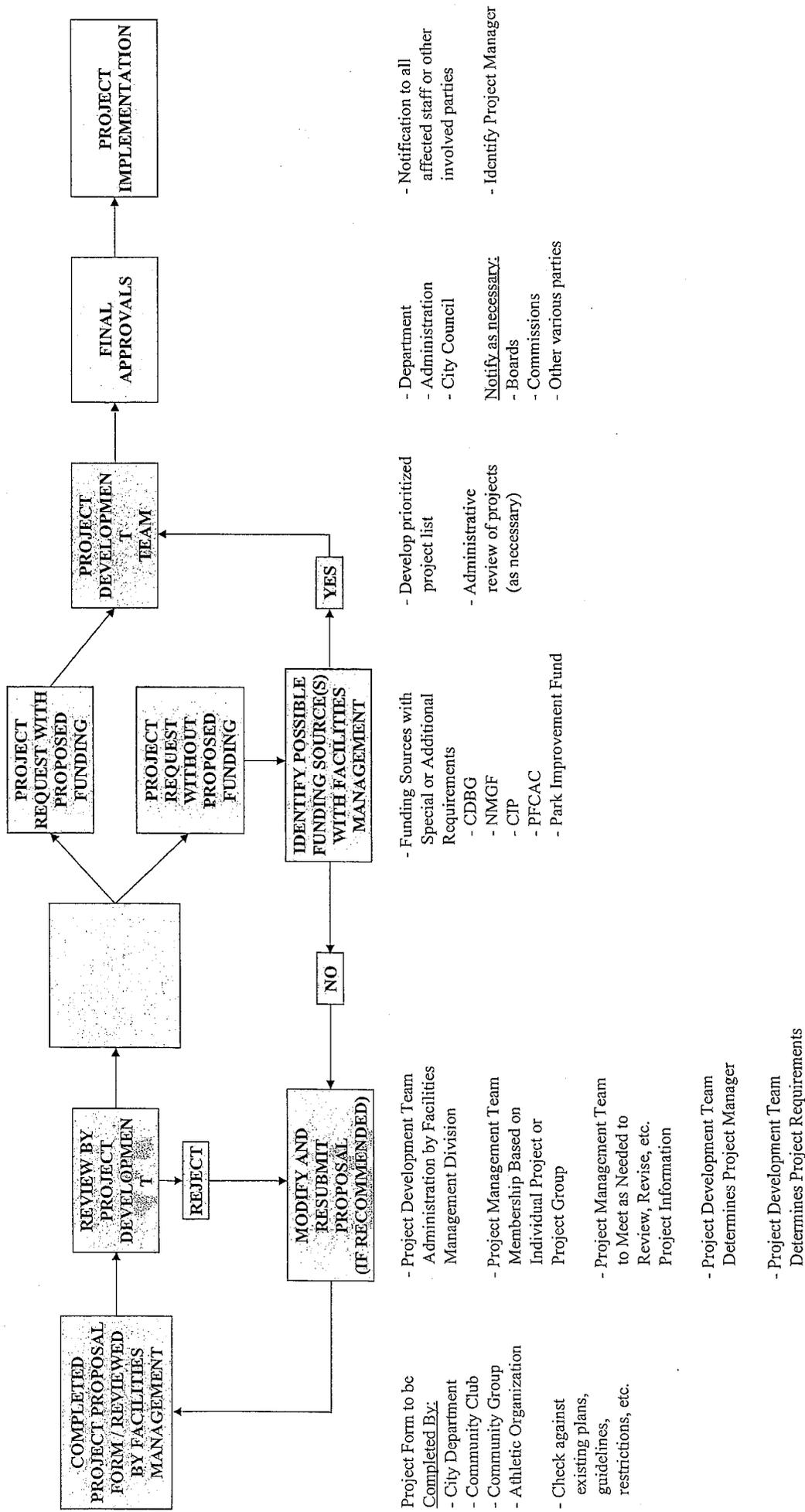
Person completing and submitting this request: PRINT NAME: _____
Phone _____ SIGNATURE: _____

SUBMIT COMPLETED FORM to: Tari Rayala; Architecture & Facility Management; 1532 West Michigan Street; Duluth, MN 55806; trayala@duluthmn.gov; (218) 730-4434

(For city use only) Action Taken:
Forward to: CCP committee - YES NO
CCP (Cities for Climate Protection) Advisory Committee Review: _____
Signed: _____ Date: _____
Project Review Team: Date _____
Accepted: _____ Rejected: _____ Comments: _____
Notifications sent to: Submitter _____ Date: _____ Dept. Director _____ Date _____

PROJECT REQUEST AND APPROVAL PROCESS

City Facilities (Buildings & Grounds): Process For Capital and/or Improvement Projects Which Propose To Make Any Physical, Non-Maintenance Improvement



Note: Once adopted, this process must be effectively communicated to all City in-house staff and external organizations.

CITY OF DULUTH
PROJECT REQUEST AND APPROVAL PROCESS

↑
**MODIFY AND
RESUBMIT
PROPOSAL**
(If Recommended)

Step 1: Project Proposal: Project Proposal Form to be completed by designated or authorized representative of City Department, Community Club, Community Group, Athletic Organization, etc. Include as much detail as possible. Submit completed Project Proposal Form to Tari Rayala in Architecture & Facility Management who will review your Project Proposal and consider any existing master plans, guidelines, restrictions, etc. to determine initial project feasibility.

Step 2: Project Review: Project evaluation by City's Internal Project Review Team. This team was established by Administrative Services based on project type and scope and will consist of City staff authorized to review specific projects. The Project Review Team will meet as needed to gather, review, and/or revise project information and requirements. Feasible projects without identified funding or with insufficient funding will receive further review to determine eligibility for funding sources such as CDBG, CIP, etc., and will proceed through the appropriate funding review and approval process. In addition, review by appropriate Boards and Commissions shall occur as needed. Projects are either approved, modified, or rejected at this step. Outcome of this step communicated back to submitter with notification of the next step of the process.

Step 3: Preliminary Approval: Projects with approved funding are returned to project submitter to proceed with final project design including detailed plans necessary for construction.

Step 4: Final Approval: Final review of completed project design. Final approvals as needed from Department, Administration, City Council.

Step 5: Implementation: Notification to all involved parties, including City staff, with project "Notice to Proceed". Identification of Project Manager with responsibility for project oversight during project construction to completion and final acceptance.

Date of report: _____

Nature of Incident/Accident: _____ Disciplinary _____ Suggestion _____ Complaint _____ Other: _____

Name of involved person: _____ Age: _____ Gender: _____

Address: _____ Phone: _____

Date of Incident: _____

Time: _____

Location: _____

of people in program area: _____

Water condition: _____

Weather condition: _____

Nearest Relative: _____
Relationship: _____
Phone (if different): _____

Describe the accident/incident; include what happened, how many people were involved and what actions were taken.

List the names of those involved in the accident/incident:

Did those involved disregard rules or orders of the YMCA Staff Members? If yes, please explain.

Actions Taken (include first-aid given if appropriate):

Was CPR used? Yes No If yes, for how long? _____

Were law enforcement or EMS squads called? Yes No What time did they arrive? _____

Was additional medical attention required? Yes No If yes, indicate where individuals were taken, who provided treatment, and what treatment was given: _____

Please Fill Out Reverse Side

Witnesses: (include name, address, phone number and relation to those involved)

1) _____

2) _____

3) _____

Blood-borne Pathogen Program Exposure Incident

Employee Name: _____ Soc. Security # _____

Was the source of exposure the involved injured person? Yes No

If No, give source's name: _____

Address: _____ Phone: _____

Document route of exposure: (mucous membrane, puncture, etc...) _____

Was protective equipment used? Yes No If yes, describe equipment _____

If protective equipment was not used, please give reasons why: _____

Describe post exposure cleanup procedures that were used: _____

Information of Staff Person Helping Fill Out This Form:

Name: _____

Position: _____

Assignment location: _____

Hours on/off duty: _____

Signature: _____

Date: _____

Facility Supervisor Staff - Please read and initial the following checklist (if applicable):

1. _____ Photocopy of this report was made
2. _____ Original Copy was given to Executive Director
3. _____ Copy given to Member Service Desk staff to place in binder (if behavioral-related)
4. _____ Alert was placed in Member ST regarding individual (if behavior warrants alert)
5. _____ If a youth was involved, contact was made with Parent/Guardian
6. _____ Follow-up contact was made with "victim"

EXHIBIT H

Form of Financial Report