

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

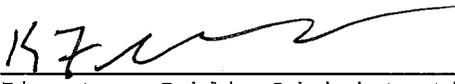
12-0272R

RESOLUTION AUTHORIZING A THREE-YEAR AGREEMENT WITH ST. JAMES HOME OF DULUTH, INC., DBA NEIGHBORHOOD YOUTH SERVICES TO PROVIDE SUMMER YOUTH PROGRAMMING IN THE CITY'S CENTRAL HILLSIDE NEIGHBORHOOD AT AN ANNUAL COST OF \$20,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to execute and implement a three year agreement with St. James Home of Duluth, Inc. dba Neighborhood Youth Services (NYS) to provide summer youth programming in the city's Central Hillside neighborhood, substantially the same as that on file with the city clerk as Public Document No. \_\_\_\_\_, and providing for the payment of \$20,000 per year, payments to be made from Fund 205-130-1219-5310 (Parks, Community Resources, Parks Operating, Contract Services).

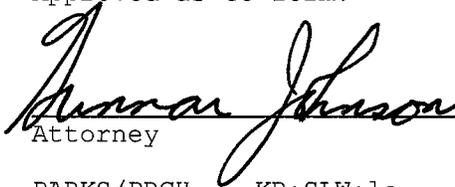
Approved:

  
\_\_\_\_\_  
Director, Public Administration  
Purchasing Agent DW

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PARKS/PRCH KB:SLW:le 05/18/2012

STATEMENT OF PURPOSE: This resolution authorizes a three year agreement for professional services with St. James Home of Duluth, Inc., dba NYS for summer youth programming in the city's Central Hillside neighborhood. The agreement can be terminated by either party upon ninety days notice. Under the terms of the agreement, NYS will facilitate a summer youth program which will provide a safe, structured environment for the youth in the Central Hillside. The program will also provide the youth with educational opportunities as well as development of health and life skills, and recreation activities. Funds for this agreement are made available from the parks fund, voted on by the Duluth citizens in November 2011. A specific portion of the parks fund is allocated for youth programming.

Requisition pending

**OPERATION AGREEMENT  
FOR SUMMER YOUTH PROGRAMS  
NEIGHBORHOOD YOUTH SERVICES**

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 **ST. JAMES HOME OF DULUTH, INC. dba Neighborhood Youth Services**, located at 310 North 1<sup>st</sup> Avenue West, Duluth, MN 55806 hereinafter referred to as "**NYS**".

**1. RECITALS**

WHEREAS, City working in cooperation with the Duluth Youth Agency Coalition (DYAC) requested a budget for NYS to operate youth services programming in the Central Hillside; and

WHEREAS, NYS submitted a budget to the City to operate a youth services program.

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 NYS shall be defined as the Program Director or designee.

**3. SERVICES/PROGRAM**

3.1. The following services will be provided by NYS: facilitate a summer youth program in the City's Central Hillside Neighborhood which provides a safe, structured environment and provides youth with educational opportunities as well as development of health and life skills, and recreation activities. In addition, NYS shall be responsible for the following:

3.1.1. Complying with the performance measurements as outlined in Exhibit A

3.1.2. Providing properly trained and licensed staff in sufficient numbers to adequately provide the Program.

3.1.3. Providing those items including equipment and supplies required for the daily operation of the Program

3.1.4. Removing all litter or other waste and properly disposing of same into the proper disposal containers provided within the Premises.

3.1.5. Complying with the City's guidelines relating to recycling, energy efficiency and maintenance of the Premises.

**4. PREMISES/LOCATION OF SERVICES**

4.1. The Program will be held at the City's Washington Center (the "Premises"). NYS's rights and responsibilities relating to the use of the Premises shall be governed by a separate Lease Agreement between the City and NYS.

4.2. NYS 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. FEES, REPORTING AND TAXES**

5.1. It is agreed between the parties that NYS's maximum annual fee for this Agreement shall not exceed the sum of Twenty Thousand and 00/100th dollars (\$20,000) inclusive of all expenses associated with the Program, payable from Fund 250-130-1219-5310 (Parks, Community Resources, Parks Operating, Contract Services). NYS shall submit invoices for services not more than two (2) times per year to the attention of

Kathy Bergen, Manager of Parks and Recreation. Payments will be made upon review and completion of the Performance Measurements by the Manager of Parks and Recreation and receipt of reasonable substantiation as required by the Manager of Parks and Recreation.

- 5.2. NYS shall file with the City Auditor an annual itemized statement showing all NYS income and expenses related to the operation of the Program. 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 NYS's By-Laws and Articles of Incorporation shall be provided to the City before this Agreement takes effect.
- 5.3. NYS agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all NYS books, records, documents, and accounting procedures and practices related to the operation of the Program are subject to examination by the City or the State Auditor for six (6) years from the date of execution of this agreement. Upon twenty-four (24) hours advance notice by City, NYS shall provide all requested financial information.
- 5.4. NYS shall pay or cause to be paid all lawful taxes and governmental charges in a timely manner. NYS 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 NYS from contesting in good faith, any such payment requirement except as such contest would negatively affect the City's rights under this Agreement.

## **6. TERM AND TERMINATION OF AGREEMENT**

- 6.1. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on June 1, 2012 and shall continue through December 31, 2012 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 one additional two (2) year period and shall expire on December 31, 2014.
- 6.2. This Agreement may be terminated by either party by serving ninety (90) days written notice upon the other. Upon termination, NYS 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 NYS took possession, reasonable wear and tear, and acts of God excepted. NYS shall remove all NYS property within ten (10) business days. Any NYS equipment remaining after the expiration of said ten (10) day period shall become the property of the City.
- 6.3. Should NYS be in default or violation of any of the provisions of this Agreement, City shall provide to NYS written notice of such violation or default and shall allow NYS 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 NYS in the manner described.
- 6.4. In the event of default by NYS, 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 NYS, 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, NYS.

## **7. INCIDENT REPORTS**

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

## **8. COMMUNICATIONS**

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

Program term identifying all activities held. The report will include statistics about the activity including date of the activity, name of activity, number of people in attendance and brief description of the activity.

## **9. INSURANCE**

- 9.1. NYS 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 NYS 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 NYS activities occurring during the Program or on or within the Premises whether said activities are performed by employees or agents under contract to NYS. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days written notice to the City of Duluth. The City of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph.
- 9.2. NYS shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- 9.3. NYS 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 NYS's interests and liabilities.
- 9.4. The City reserves the right to require NYS to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn.Stat. Sec. 466.04 are increased.
- 9.5. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.
- 9.6. When using the "Acord" Certificate form cancellation provisions, the words "endeavor to" on Line 2 must be deleted. As an additional insured under the contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage." The City of Duluth is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the agreement between the named insured and the City of Duluth.
- 9.7. The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, it must be a pre-2004 edition.
- 9.8. The City shall not be liable to NYS for any injury or damage resulting from any defect in the construction or condition of the Premises, nor for any damage that may result from the negligence of any other person whatsoever.

## **10. HOLD HARMLESS**

- 10.1. NYS 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 NYS, 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 NYS, arising out of, related to or associated with the operation of the Program or use of the Premises by NYS or performance of its obligations under this Agreement.

## **11. TOBACCO USE**

- 11.1. NYS 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.

## **12. CITY ACCESS**

- 12.1. City shall have the right to inspect the Premises at any time. NYS 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. NYS 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 NYS.

### **13. RELATIONSHIP**

13.1. 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 NYS or any of its officers, agents, servants, and employees as an officer, agent, servant, representative or employee of the City for any purpose or in any manner whatsoever. NYS's officers, agents, servants, employees, and volunteers 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 and volunteers arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. NYS's officers, agents, servants, employees and volunteers 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.

### **14. THIRD PARTY BENEFICIARIES**

14.1. 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.

### **15. SEVERABILITY**

15.1. 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.

### **16. NOTICES**

16.1. Unless otherwise provided herein, notice to the City or NYS 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

St. James Home of Duluth, Inc.  
Attn:  
4321 Allendale Avenue  
Duluth, MN 55803

### **17. GENERAL PROVISIONS**

17.1. The rights of NYS 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.

17.2. NYS 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. NYS agrees to procure at NYS expense all licenses and permits necessary for carrying out the provisions of this agreement.

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

17.4. The waiver by the City or NYS 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.

17.5. 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**

**NEIGHBORHOOD YOUTH SERVICES**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Its Executive Director  
Printed Name \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

Its: \_\_\_\_\_  
Board Officer  
Printed Name \_\_\_\_\_

Approved as to form:

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

Countersigned:

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

**Exhibit A = Performance Measurements**  
**Exhibit B = Incident Report**

**EXHIBIT A**  
**SUMMER YOUTH PROGRAMMING**  
**2012 CITY of DULUTH LEGACY FUNDING**  
**FY 2012**

**Project:** Neighborhood Youth Services

**Scope of Service:** Neighborhood Youth Services will provide Summer Youth Programming to youth living in the Central Hillside neighborhood at their site located at Washington Center. This is year one of a three year commitment.

**Performance Measurement 1:** Increase academic achievement skills and abilities in 65 percent of the youth designed needing these services.

**Performance Measurement 2:** Sixty-five percent of the participants participating in the healthy living activities will show an increased understanding and appreciation of living a healthier life style.

**Performance Measurement 3:** Sixty percent of youth participating in social skill development activities will indicate they have an increased knowledge of social interaction expectations and/or conflict resolution skills.

**Budget:**

<u>Amount</u>	<u>Program Activity Costs</u>
\$ 13,104.00	Youth Worker (24 hours/week)
\$ 2,620.00	Youth Worker Benefits (20% of salary)
\$ 4,276.00	Program Supplies
\$ 20,000.00	Total Expenditures

**Reimbursement Formula:** Twice yearly payments which are based be based on performance measurements as noted above.

**Income Verification:** Does not apply to this program.



<b>INCIDENT LOCATION:</b>			
<b>POLICE CALLED?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Police Traffic Accident Report ICR#:</b>	
<b>City Vehicle, Property, or Equipment Involved</b>	Description: _____		
	Vehicle #, Make, Model, Year: _____		
<b>Non-City Vehicle, Property, or Equipment</b>	Describe Damage: _____		
	Owner Name: _____ <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other		
	Owner Address/Phone #: _____		
	Vehicle License #: _____ Color: _____ Make/Model: _____ Year: _____		
Describe Damage: _____			
<b><u>Weather Conditions</u></b>		<b><u>Roadway Conditions:</u></b>	
<input type="checkbox"/> Clear <input type="checkbox"/> Wind		<input type="checkbox"/> Dry <input type="checkbox"/> Mud	
<input type="checkbox"/> Rain <input type="checkbox"/> Cloudy		<input type="checkbox"/> Wet <input type="checkbox"/> Paved	
<input type="checkbox"/> Fog <input type="checkbox"/> Sleet		<input type="checkbox"/> Snow <input type="checkbox"/> Unpaved	
<input type="checkbox"/> Snow		<input type="checkbox"/> Ice	
		<b><u>Light Conditions:</u></b>	
		<input type="checkbox"/> Night	
		<input type="checkbox"/> Day	
		<input type="checkbox"/> Good	
		<input type="checkbox"/> Poor	
		<b><u>Other:</u></b>	
		Approx. Temp: _____	
		Estimated Speed: _____ mph	
		Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty	
		What was load: _____	
		Drug and/or Alcohol Test?	
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<b>MISCELLANEOUS COMMENTS:</b> _____			

Sketch below how vehicle accident occurred (Give street names, direction of travel, locations of vehicles, objects and traffic control devices) ↑ North