

**POOL OPERATIONS AGREEMENT BETWEEN
WEST ST. PAUL AND YMCA OF GREATER SAINT PAUL**

This Agreement (“Agreement”) made this _____ day of _____, 2013 (“Effective Date”) is made between the City of West St. Paul, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118 (“City”) and the YMCA of the Greater Twin Cities, 2125 E Hennepin Ave Suite 150, Minneapolis, MN 55413 (“YMCA”).

RECITALS

WHEREAS, the City of West St. Paul desires to engage the services of the YMCA to perform the staffing, operations and management of the West St. Paul Municipal Pool; and

WHEREAS, the YMCA is experienced in providing such services and is willing to provide the personnel to perform such services in exchange for the mutual promises as set forth in this Agreement.

NOW THEREFORE, the parties mutually agree as follows:

**ARTICLE 1
DEFINITIONS**

The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

- 1.1 **City.** “City” means the City of West St. Paul, a municipal corporation.
- 1.2 **ISD 197.** “ISD 197” means Independent School District 197.
- 1.3 **Net Revenue.** “Net Revenue” means the total revenue for season passes, gate sales, all rentals, and 40% of rentals to YMCA groups, less applicable sales tax. Net Revenue shall not include concessions sales.
- 1.4 **Pool.** “Pool” means the outdoor swimming pool, splash pool, and bathhouse/concessions building, located at 92 West Orme, West St. Paul, Minnesota.
- 1.5 **Pool Season.** “Pool Season” means April 1 through September 1.
- 1.6 **YMCA.** “YMCA” means the YMCA of the Greater Twin Cities, a non-profit corporation.
- 1.7 **Net Profit.** “Net Profit” means the total revenue from concession sales, less applicable sales tax, staff costs and product expenses.

**ARTICLE 2
TERM**

- 2.1 The Term of the Agreement shall be for three (3) years, commencing on the Effective Date of this Agreement and terminating three (3) years thereafter.

- 2.2 This Agreement shall automatically renew for additional one-year terms, up to five (5) years, under the terms and conditions set forth in this Agreement, unless either party gives written notice of its intent to renegotiate or not to renew to the other party at least 60 days prior to the end of the initial term or any subsequent renewal term.

ARTICLE 3 FEES

- 3.1 The YMCA and City shall collect, deposit and retain an accurate accounting for all Net Revenue each party generates from season passes, gate sales, and rentals for the Pool. The YMCA shall retain the first \$39,000 of Net Revenue that is collected from both parties during the Pool Season.
- 3.2 All Net Revenue generated over and above \$39,000 shall be divided equally between the City and the YMCA.
- 3.3 After the Pool Season, the YMCA shall prepare an accounting of all Net Revenue it collected during the Pool Season and submit the accounting to the City's Finance Director by October 15.
- 3.4 Within 15 days after the accounting is received, the City shall provide a statement to the YMCA that:
- 3.4.1 Accounts for the Net Revenue the City collected during the Pool Season;
 - 3.4.2 Provides the total Net Revenue generated by both parties during the Pool Season;
 - 3.4.3 Determines the revenue-sharing due each party pursuant to Section 3.2; and
 - 3.4.4 Includes any payment due to the YMCA for the YMCA's portion of the revenue-sharing.
- 3.5 If payment is due to the City pursuant to Section 3.2, the YMCA shall remit payment to the City within 15 days after it receives the statement from the City.
- 3.6 If the Net Revenue that is generated during the Pool Season is less than \$39,000, the YMCA shall retain all of the Net Revenue generated for that Pool Season. The City shall not be obligated to pay the YMCA for any shortfall in Net Revenue that is less than \$39,000.
- 3.7 The YMCA and City shall split all Net Profit generated and collected from concessions sales.

ARTICLE 4 DUTIES AND RESPONSIBILITIES

- 4.1 YMCA agrees to provide its own personnel and to perform the promises and services as described on Exhibit A, attached hereto and incorporated herein. Such services shall include

general management, operations and development of the Pool, as well as other services as agreed to by the parties.

- 4.2 City agrees to provide the promises and services as described on Exhibit B, attached hereto and incorporated herein, as well as other services as agreed to by the parties.

ARTICLE 5 INSURANCE

- 5.1 During the term of this Agreement, YMCA shall maintain in full force and effect the insurance coverages as required below.

5.1.1 Commercial General Liability Insurance with limits of \$2,000,000 each occurrence and \$3,000,000 aggregate. Such policy shall add the City as an additional insured; and

5.1.2 Worker's Compensation insurance as required by law.

- 5.2 YMCA shall provide the City with a certificate of insurance for the policies required in this Agreement.

ARTICLE 6 INDEMNIFICATION AND IMMUNITIES

- 6.1 Each party shall save and protect, hold harmless, indemnify and defend each other and each other's officers and employees, against any and all claims, causes of action, suits, liabilities, losses, charges, damages or costs and expenses, including all reasonable attorney's fees, arising from, or allegedly arising from, or resulting directly or indirectly from each indemnifying parties' own professional errors and omissions and/or negligent or willful acts or omissions, in the performance of this Agreement.

- 6.2 Nothing in this Agreement shall be deemed a waiver by the City of any statutory liability limits or immunities set forth in Minnesota Statutes, Chapter 466.

ARTICLE 7 TERMINATION

- 7.1 Either party may terminate this Agreement without cause by giving at least 60 days' advanced written notice. If terminated by the YMCA, the date of termination shall be selected to cause the least disruption to the operation of the Pool.

- 7.2 Either party may terminate this Agreement for failing to perform a term, condition or requirement of this Agreement by giving at least 10 days' advanced written notice to the

defaulting party. After receipt of such notice, the defaulting party shall have 10 days to cure the default.

- 7.3 If either party is in default and the default is such that it poses a threat to the health, safety or welfare of the citizens of West St. Paul, as reasonably determined by the non-defaulting party, the non-defaulting party may take any immediate steps it determines are necessary to cure the default, including closing the Pool. In this event, this Agreement shall terminate immediately upon notice to the defaulting party. The defaulting party shall pay all costs and expenses incurred by the non-defaulting for taking any corrective action.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 Notices. Any notice required to be given pursuant to this Agreement shall be made in writing and addressed as follows:

If to the City: City Manager
 City of West St. Paul
 1616 Humboldt Avenue
 West St. Paul, MN 55118

If to YMCA: Executive Director
 YMCA of the Greater Twin Cities
 YMCA in West Saint Paul
 150 Thompson Avenue East
 West Saint Paul, MN 55118-3216

- 8.2 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.
- 8.3 Independent Contractor Status. All services provided by the YMCA, its officers, agents and employees pursuant to this Agreement shall be provided as employees of the YMCA or as independent contractors of the YMCA and not as employees of the City for any purpose.
- 8.4 Assignment. This Agreement is not assignable without the mutual written agreement of the parties.
- 8.5 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota.
- 8.6 Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

8.7 Data Practices Compliance. All data collected by the parties pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF WEST ST. PAUL

YMCA OF THE GREATER TWIN CITIES

John A. Zanmiller, Mayor

By: _____

Its: _____

Sherrie Le, Acting City Manager

EXHIBIT A

DUTIES AND RESPONSIBILITIES OF YMCA

1. Operate the Pool to standards that are acceptable to both parties, utilizing its own personnel for all operations related to the Pool, including lifeguards, sales, concessions and all other services related to operation of the Pool that is contemplated by this Agreement. The YMCA will be solely responsible for hiring the personnel it deems appropriate for successful operations.
2. Expand Pool operating hours and provide at least the same number of hours as in previous years.
3. During the Pool Season, be responsible for the collection of fees for season passes, gate passes and rental of the Pool.
4. Operate the Pool for ten (10) weeks in the summer unless otherwise agreed upon by the parties in writing. The Pool will open on the Saturday following the last day of school for Dist. 197 and close on Sunday, ten weeks thereafter.
5. The YMCA will assume the on-going daily responsibility for the following:
 - a. Maintenance of the Pool, including required testing and adjustments of Pool chemicals by a Certified Pool Operator to ensure its viability for use; and
 - b. Daily cleaning of the bathhouse/concessions building and any outdoor seating areas.
6. Accommodate ISD 197's needs for rental of the Pool outside of daily Pool hours, as the City has done in previous years.
7. The City and YMCA will jointly promote the Pool. All sales of season passes will be sold by the YMCA, pursuant to the rental and season pass rates as established by the City, with input from the YMCA.
8. The YMCA will operate, staff and fully stock the concessions stand to provide quality service. (The City shall provide all equipment necessary for the concessions stand operations.)
9. The YMCA will cooperate with the City on management and operational decisions during the term of this Agreement.

10. The YMCA will have its insurance carrier evaluate the Pool for safety. If the insurance carrier requests any improvements and modifications that are not complied with by the City, the YMCA will have the right to terminate this Agreement pursuant to Section 7.2.

11. The YMCA will operate and staff the annual Splash Day event at the Pool, in late June each year.

EXHIBIT B

DUTIES AND RESPONSIBILITIES OF CITY

1. At least one week prior to opening the Pool, the City shall:
 - a. Ensure the Pool has the maintenance, Pool supplies, equipment, and furnishings necessary to be operational;
 - b. Obtain all appropriate licenses to operate the Pool;
 - c. Ensure the concessions stand has the equipment necessary to be operational and obtain all appropriate permits and licenses for its operation; and
 - d. Conduct staff training, with the YMCA, on proper use and care of all pool equipment and concession equipment.
2. The City agrees that the Pool will be heated to a temperature of 82 degrees for the leisure pool and 84 degrees for the splash pool.
3. The City will ensure that the Pool is equipped with the proper drains and other necessary requirements to comply with all federal, state, and local laws including, but not limited to, the Virginia Graeme Baker Pool and Safety Act and the Abigail Taylor Pool Safety Act.
4. The City will assume the on-going cost for the following:
 - a. All utilities, such as phones, natural gas, trash, and electricity;
 - b. All Pool chemicals;
 - c. Property insurance;
 - d. Property upkeep such as lawn maintenance;
 - e. All appropriate fees mandated by City, federal or state law as related to the Pool; and
 - f. All major maintenance repairs.
5. The City and YMCA will jointly promote the Pool. The City will work with the YMCA to establish rental and season pass rates.
6. The City will provide the YMCA with all relevant program materials, policies and procedures so that it may provide quality service.
7. The City will allow the YMCA to display temporary signage at the Pool promoting the YMCA, pursuant to City Code.
8. The City will publish and include the YMCA's information as it relates to operating the Pool in all appropriate summer brochures and on the City's website. In addition, the City will provide one-half hour per month of advertising on the digital display sign on Highway 52 between the dates of May 15 and August 15 to help promote the Pool and the YMCA.

9. YMCA members will be allowed to use the Pool at reduced rates as a privilege of YMCA membership. The cost of the reduced rates shall be established by the City, with input from the YMCA.
10. The YMCA shall be provided pre-arranged access to ball fields at the West St. Paul Sports Complex at no cost. Such pre-arranged access shall be coordinated with the City's Parks and Recreation Manager.
11. The City will provide food and drink for the annual Splash Day in late June.