

CITY OF BROKEN ARROW
PARKS AND RECREATION USE AGREEMENT

This Agreement is entered by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**CITY**) and the R.C. Dickenson Family YMCA of Greater Tulsa (**YMCA**).

I. LICENSE

The **CITY** grants a **non-exclusive** license to **YMCA** to operate swim lessons at the Family Aquatic Center (FAC) located at 1400 South Main Street in the City of Broken Arrow, Oklahoma popularly known as the swimming pool at Central Park (**PREMISES**).

As partial consideration for this Agreement, **YMCA** agrees to hire all staff to operate a swim lesson program, including but not limited to current certified American Red Cross Water Safety Instructors (or equivalent) and current certified American Red Cross CPR/AED for Professional Rescuers (or equivalent). **YMCA** agrees to all phases of operating a swim lesson program, including but not limited to patron registration, complaint resolution, and advertising.

The **YMCA** agrees to provide on duty certified lifeguards to help monitor pool activities during scheduled **YMCA** programming. The **CITY** will provide one City of Broken Arrow staff member to open and close the **PREMISES** and to monitor **YMCA** usage.

YMCA will not be charged a user fee for programming of the swimming pool area. The goal is to increase programming and usage of Family Aquatic Center for the benefit of the public, **YMCA** members, and the City of Broken Arrow.

YMCA and **CITY** agrees that a fee may be collected by **YMCA** for individuals to participate in the swim lesson program. Fees are to be used to offset the operational cost of the swim lesson program held at FAC. **YMCA** agrees that the general public can register and participate in scheduled swim lessons for a fee of \$45 per participant per session. All fees and charges shall remain the property of the **YMCA**.

CITY shall operate the swimming pool in full compliance with the Oklahoma State Department of Health Public Bathing Place Operations Regulations and the Tulsa City – County Health Department Regulations for Public Bathing Places and any other applicable public bathing codes, regulations, and rules, which may include Federal, State, and/or Local regulations and rules.

YMCA shall submit a planned schedule of swim lessons to the Parks and Recreation Department Director for the City of Broken Arrow (**DIRECTOR**) or his designee. **YMCA** shall notify **CITY** of any changes or alterations of the said schedule throughout the life of this contract. The agreed upon time slot for **YMCA** programming is Monday through Thursday from 9am to 11:30am and 6:30pm to 8:30pm at **PREMISES**. **All schedules and change requests are subject to the approval of DIRECTOR.**

CITY reserves the right, in its sole discretion, to close **PREMISES** and cancel all activities when, due to inclement weather or other problems, public safety or the preservation of **PREMISES** are threatened.

II. TERM

This Agreement shall commence on June 5th, 2017 and shall expire August 10th, 2017, unless sooner terminated in accordance with the terms and conditions of this Agreement. This Agreement does not renew automatically. The Agreement may renew annually by agreement of the parties.

III. IMPROVEMENTS

PREMISES shall remain the property of **CITY**, and may not be modified, altered, or destroyed without the prior written permission of **CITY**. Further, no improvements, structures or fixtures of any kind may be built or brought upon said property without the prior written permission of **CITY**.

All locks on **PREMISES** will be maintained as directed by **DIRECTOR**. **YMCA** may not remove or change any locks on **PREMISES** without the prior approval of **DIRECTOR** and without first supplying **DIRECTOR** with the combination or key to any new locks.

Any additions or modifications shall become the property of **CITY** unless **CITY** gives **YMCA** prior written permission to remove the additions or modifications, in which case **YMCA** shall remove the improvements in a manner approved by **CITY** immediately upon termination of this Agreement and restore **PREMISES** to the condition which existed prior to the addition or modification.

IV. MAINTENANCE

YMCA acknowledges that it has inspected the premises thoroughly, and therefore has full knowledge of the conditions on **PREMISES**. **CITY** makes no representations or warranties, express or implied, as to the condition of **PREMISES**.

YMCA shall inspect **PREMISES** immediately prior to and immediately after each use, and shall immediately notify **CITY** of any damages or of any repairs that may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, **YMCA** shall not allow individuals to utilize **PREMISES** until the defective portion of **PREMISES** has been repaired or replaced.

CITY and **YMCA** will work jointly to establish a proper storage area, within reason, at FAC for **YMCA**'s swim lesson equipment. **CITY** is not responsible for lost, stolen, and /or damaged **YMCA** equipment stored in agreed upon area(s).

As partial consideration for this Agreement: **YMCA** shall supply all necessary equipment for all

YMCA activities. **YMCA** may use **CITY**'s kickboards and lifejackets if desired. After each use of **PREMISES**, **YMCA** shall pick up all equipment used for activities and return the equipment to its proper storage area(s).

YMCA agrees to take all reasonable precautions to prevent waste, damage or injury to **PREMISES** by **YMCA** or by any member or individual under **YMCA** auspices or by any member attending **YMCA** scheduled activities.

CITY retains the right to enter **PREMISES** at any and all times, without prior notice, to inspect **PREMISES** or to conduct maintenance or repairs, or for the purpose of determining whether **YMCA** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of **CITY** under this Agreement.

YMCA shall promptly reimburse **CITY** for the cost of parts and labor for the replacement or repair of swimming pool, concession building, restrooms, and other improvements to the land, for any cause other than normal and routine wear and tear and "Acts of God," and for **CITY**'S cost in performing any of **YMCA**'s contractual duties. **YMCA** shall not be liable to **CITY** for any acts of vandalism which, upon investigation, are not attributable to the acts, omissions, negligence or misconduct of **YMCA**, its guests, invitees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors.

V. UTILITIES

All utilities upon the **PREMISES** will be provided by the **CITY**.

VII. INDEMNIFICATION

As partial consideration for this Agreement, **YMCA** agrees to indemnify, defend (at **CITY**'S option), and hold harmless **CITY**, its employees, officials, agents, representatives and volunteers from and against any and **all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature**, arising out of or in connection with any aspect of the acts, omissions, negligence or misconduct of **YMCA**, its guests, invitees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including but not limited to permitted and non-permitted uses of **PREMISES**, whether during an approved, supervised activity or not, any injury or damage that occurs on or about the **PREMISES** relating to **YMCA** activities, or **YMCA**'s performance or failure to perform the terms and conditions of this Agreement.

Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of **CITY** and in accordance with the terms, conditions and exceptions in the Governmental Tort Claims Act. The indemnification and defense obligations herein shall survive this Agreement.

YMCA shall provide **CITY** with prompt written notice of any serious injuries (serious injuries include all injuries which require medical treatment), written or oral complaints received, actual or anticipated disputes with or claims by any individual, and any lawsuits by any individual relating to any activities on or about **PREMISES**.

VIII. INSURANCE / WAIVER OF SUBROGATION

Without limiting **CITY'S** right to indemnification, **YMCA**, its contractors and subcontractors shall obtain insurance in no less than or in terms more restrictive than the following:

General Liability Insurance covering all premises and activities. The applicable limit of liability shall not be less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate;

Worker's Compensation Insurance Coverage in compliance with the Worker's Compensation Laws of the State of Oklahoma; and

Comprehensive Automobile Liability Insurance applicable to all owned, hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

YMCA shall include **CITY**, its officials, representatives, agents and employees as Additional Insured on all required insurance policies. **YMCA** shall also require its contractors and subcontractors to list **CITY** as Additional Insured. **YMCA** shall arrange for certificates of insurance and endorsements to be submitted to the **CITY'S** Risk Manager for approval prior to allowing any individuals, including but not limited to any contractors or subcontractors, to commence work or engage in any activities under this Agreement.

Such coverage shall not be canceled or materially changed without giving **CITY** at least thirty (30) days prior written notification thereof. The insurers shall have no recourse against **CITY** for payment of any insurance premium. Any insurance protecting **CITY** against any loss relating to or arising out of the subject of this Agreement shall be made payable solely to **CITY**.

YMCA and its contractors and subcontractors shall maintain the required insurance with insurers that carry a Best's "A" or equivalent rating and which are licensed and admitted to write insurance business in Oklahoma. Such insurance shall not be invalidated by any action or inaction of **YMCA** and shall insure **CITY** regardless of any breach or violation by **YMCA** of any warranty, declaration or condition contained in such insurance. Failure of **YMCA** or its contractors and subcontractors to obtain and maintain any required insurance will not relieve **YMCA** from any liability hereunder.

YMCA hereby waives, on its own behalf and on behalf of its insurers, every claim for recovery from **CITY** for any and all loss or damage to the extent that the damage is covered by valid and collectible insurance policies. **YMCA** agrees to give to each insurance company which has issued, or may issue in the future, policies of insurance, written notice of the terms of this waiver and to have said insurance

policies endorsed as necessary by reason of this waiver.

IX. DEFAULT

This Agreement shall be subject to termination upon the abandonment of **PREMISES** for a period of 30 days, or upon the failure of **YMCA** to keep, perform and observe all promises, covenants, conditions and agreements set forth in this Agreement, provided that time limits may be extended in the manner and to the extent allowed by **CITY**, where fulfillment of such obligation requires activity over a period of time and **YMCA** has commenced to perform whatever may be required to cure the default and continues such performance diligently.

The right to terminate this Agreement upon default of **YMCA** is not exclusive and is in addition to any other rights and remedies provided by law or under this Agreement. Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure to require exact, full, and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping **CITY** from enforcing the full provisions thereof.

X. TERMINATION

Either party may terminate this Agreement for cause upon giving the other 10 days' prior written notice. If this Agreement is terminated, **CITY** will be paid for costs incurred up to and including the date of termination, including but not limited to the costs of repairing **PREMISES** to the condition existing at the beginning of this agreement and the costs of storing **YMCA's** property at a public warehouse selected by **CITY**. The rights reserved in this section are alternative and in addition to, not in lieu of, any other rights and remedies provided by law or under this Agreement. Termination of this Agreement shall not terminate **YMCA's** liability for any losses, which have occurred on or prior to that date, regardless of whether either party has received notice of the claimed loss.

Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned, or encumbered by **YMCA**. Any attempt to sell, assign, alienate or encumber **PREMISES** or this Agreement shall be cause for immediate termination of this Agreement.

In the event of substantial or total destruction of **PREMISES** from any cause, either party may declare this lease terminated if repairs or restoration cannot be effectively accomplished within 30 days of the loss at a reasonable cost, with the reasonableness of said costs being within the sole judgment of **CITY**. In the event that the premises are repaired or restored by **YMCA** at the sole expense of **YMCA** or at the expense of insurance carriers, this Agreement shall not be terminated.

XI. LAWS

This Agreement shall be construed under the laws of the State of Oklahoma. Exclusive Original

Jurisdiction for any action relating to this Agreement shall be solely in the Tulsa County District Courts of Oklahoma. YMCA shall conform to and abide by all Federal, State and local laws and regulations regarding the subject of this Agreement. This Agreement is not a waiver of any permit, inspection or other legal requirements, and does not assure approval based upon any circumstances other than compliance with the law.

XII. NOTICES

Any notice or demand required or permitted to be given by the terms of this Agreement or by law shall be in writing and may be given by depositing said notice or demand in the U.S. Mail, certified mail with return receipt requested, addressed to the other party's address, or by personal delivery. Service of said notice or demand shall be complete upon receipt of said notice or demand.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Agreement.

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable. The parties shall agree, if reasonably practicable, upon provisions that are equivalent from an economic point of view to replace any provision, which is determined to be invalid.

This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

Approved as to Form:

City of Broken Arrow



Assistant City Attorney

By _____
Michael L. Spurgeon, City Manager

Date of Execution:

Attested:

City Clerk/Seal

R.C. Dickenson Family YMCA of Greater Tulsa

Susan Plank

Executive Officer

SUSAN PLANK

Name (Printed)

420 S. Main St. Ste 200
TULSA, OK 74103

YMCA Mailing Address

VERIFICATION

State of Oklahoma)

County of Rogers)

Before me, a notary public, on this 28 day of March, 2017, personally appeared Susan Plank known to me to be the CEO of **R.C. Dickenson Family YMCA** and to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

12/23/19

Amity Rose
Notary Public

