

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 an **non-exclusive** license to **YMCA** to use land and improvements located in the City of Broken Arrow, Oklahoma popularly known as the swimming pool and bathhouse at Country Aire Park and more particularly described as that portion of the E/2 of the SW/4 of Section 9, T18N, R14E that has been adapted for use as a swimming pool, and associated facilities, and land and improvements located in the City of Broken Arrow, Oklahoma (**PREMISES**). This license shall include those areas where the swimming pool is located, namely, the swimming pool, wading pool, mechanical and bathhouse buildings, and parking lot.

As partial consideration for this Agreement, **YMCA** agrees to hire all staff to operate a municipal swimming pool, including certified lifeguards, managers, and maintenance personnel.

The **CITY** and **YMCA** agree to fill and startup the pool jointly at the start of the pool season and agree to drain and close the pool jointly at the end of the pool season. This will assist parties in proper swimming pool start up procedures and closing procedures. The **CITY** will train **YMCA** staff on swimming pool maintenance requirements during startup of the swimming pool.

YMCA will not be charged a user fee for operating and programming of the swimming pool. The goal is to increase programming and usage of Country Aire Swimming Pool for the benefit of the public, **YMCA** members, and the City of Broken Arrow.

YMCA and **CITY** agrees that admission fees, membership fees, or similar charges may be collected for swimming activities and programs. Fees are to be used to offset the cost of the swimming pool operations. **YMCA** agrees that the general public can attend and participate in open swim times. All fees and charges shall remain the property of the **YMCA**.

YMCA shall operate the swimming pool starting no later than June 1st of each year, and, shall not close the swimming pool earlier than August 1st of each year. Pool shall be available for public use at least 5 days per week.

YMCA 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. **CITY** will be responsible for the \$100 facility operational licenses.

YMCA shall submit a planned schedule of programs, days and hours of planned operations to the Parks and Recreation Department Director for the City of Broken Arrow (**DIRECTOR**). **DIRECTOR** shall confirm in writing whether **YMCA** requested dates and times are available. **All schedules and change requests are subject to the approval of DIRECTOR.**

YMCA 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.

YMCA may operate a concession facility during its scheduled activities after obtaining any necessary permits and submitting copies of said permits to **CITY**.

II. TERM

This Agreement shall commence on May 1, 2016 and shall expire September 30, 2016 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.

As partial consideration for this Agreement: **YMCA** shall supply, solely at its own expense, paper products and cleaning supplies. **YMCA** shall supply, solely at its own expense, all necessary equipment. **YMCA** shall be responsible for minor maintenance of **PREMISES**, including but not limited to clogged drains, sinks and toilets. If City personnel are called to handle minor maintenance, **YMCA** will be charged for their time on a per hour basis with a minimum of two hours being charged. **YMCA** shall clean restrooms on **PREMISES** and re-supply them with paper products, soap, etc... **YMCA**, shall, solely at its own expense, maintain the swimming pool cleanliness, chemical water balance, backwashing, and all aspects of the swimming pool maintenance. **CITY** shall be responsible for all repairs and replacement of large maintenance capital items of the Country Aire swimming pool facility. **YMCA** shall supply all necessary equipment for all **YMCA** activities.

CITY agrees to provide up to \$1,500 in chemicals to be used at the **PREMISES** to help offset the cost of operations for the **YMCA**. Any additional chemicals over the allotted amount will be billed to the **YMCA** and must be paid to the **CITY** within 30 days of invoice.

After each use of **PREMISES**, **YMCA** shall pick up all trash on and around the swimming pool facility and deposit the same in commercial dumpsters provided by **CITY**.

Upon notification of necessity from **YMCA**, **CITY** shall maintain and repair the electrical and plumbing systems and the maintenance and restroom structures on **PREMISES**. Upon notification of necessity from **YMCA**, **CITY** shall maintain and repair or replace fences and lights. **CITY** shall maintain all buildings and other permanent structures.

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** events.

YMCA agrees to provide staff or volunteers to control the parking lot during all **YMCA** activities and to prevent individuals from parking on any unpaved or unauthorized areas.

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, concessions buildings, 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**.

YMCA shall not perform any repairs to the electrical systems, but minor repairs or maintenance may be performed on the plumbing or buildings. If any electrical system repairs are needed, **YMCA** shall notify the **DIRECTOR**.

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



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 3rd day of March, 2016, 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:

12/23/2019

Charity Page
Notary Public

