

RESOLUTION NO: 34 - 2017  
INTRODUCED BY: Kumin

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH THE YMCA OF  
GREATER CLEVELAND TO MANAGE AND STAFF THE CITY POOL AND  
RELATED FACILITIES IN 2017; AND DECLARING AN EMERGENCY.**

WHEREAS, after substantial investigation and analysis, the City administration determined that there would be substantial cost savings to the City to contract with an independent contractor to manage and staff the City's pool and related facilities; and

WHEREAS, beginning in 2015, upon obtaining quotes from various private entities for the management and staffing of the City's pool and related facilities, the administration recommended as the best entity to perform these services -- the YMCA of Greater Cleveland ("YMCA"); and

WHEREAS, Council having determined that the YMCA was the best entity to manage and staff the City's pool and related facilities entered into an agreement for such services for the 2015 and 2016 seasons; and

WHEREAS, at this time Council deems it in the best interest to once again enter into an agreement with the YMCA for such services for the 2017 season.

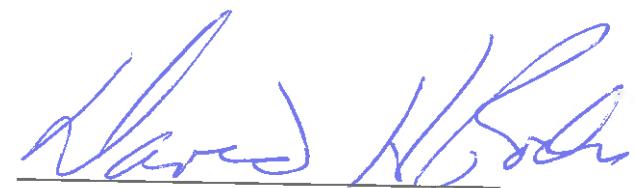
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is authorized to enter into an agreement with the YMCA of Greater Cleveland to manage and staff, as an independent contractor, the City's pool and related facilities for the 2017 season, pursuant to a "Pool Management Agreement" in substantially similar form as the agreement which is attached hereto as "Exhibit A".

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Resolution is declared to be an emergency measure immediately necessary to preserve and enhance the public health, safety and general welfare of the citizens of the City and the users of the City pool and related facilities, and for the further reason that it is immediately necessary to have the YMCA be authorized to manage and staff this municipal service at the earliest time in order to open the pool and related facilities in a timely manner; wherefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: 4-25-17

  
\_\_\_\_\_  
David H. Roche, Mayor

APPROVED: 4-25-17

ATTEST: Betsy Traben  
Betsy Traben  
Clerk of Council

  
\_\_\_\_\_  
Eloise Cotton-Henry  
President of Council

## POOL MANAGEMENT AGREEMENT

This Pool Management Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Richmond Heights, Ohio (the "City") and the YMCA of Greater Cleveland (the "YMCA").

WHEREAS, as the City currently maintains an outdoor swimming pool, spray grounds, and related facilities located at the Richmond Heights Community Park (hereinafter collectively referred to as the "Pool"); and

WHEREAS, based upon the management and experience of YMCA, the City wishes to engage the YMCA to operate and manage, as an Independent Contractor, the Pool; and

WHEREAS, the YMCA desires to operate the Pool, and wishes to accept such responsibility upon the terms, provisions, and conditions hereinafter contained.

NOW THEREFORE, in consideration of the mutual promises, terms, conditions, and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the City and the YMCA as follows:

1. Duties of City. The City shall furnish to the YMCA, without charge for the use thereof, such space, furniture and equipment, as are, in the opinion of the City, necessary to reasonably provide the services contemplated by this Agreement. The City shall also furnish necessary pool maintenance and safety equipment within pool areas, including but not limited to pool vacuum, backboards and raised life guard chairs, whistles, fanny packs, lifeguard tubes, umbrellas for chairs, fully stocked first aid kit, BVM (Adult and Pediatric) and AED. The City shall pay YMCA invoices submitted to the Finance Department which are presented substantially in the form attached hereto as EXHIBIT A. The specific duties of the City are set forth on the attached EXHIBIT B which is incorporated herein by reference.

2. Duties of YMCA. The YMCA shall provide all necessary labor, materials, supervision, administration, insurances, and all other services required hereunder and perform, on behalf of the City, all services necessary for the efficient and economical operation and management of the Pool as a going concern. The YMCA shall operate and be responsible for all activities conducted at the Pool and agrees to perform all the professional, management, and Pool-day pass sales services in connection with the Pool in a diligent manner and in accordance with reasonable standards for health and safety considerations in the industry and to comply with all terms and conditions contained herein. The YMCA shall also provide programs and activities at the Pool including Water Exercise Programming, Swim Lesson Programs, and Swim Team Programming as set forth in EXHIBIT C attached. Revenues from these programs shall be divided between the City and the YMCA as set forth in Section 5 of this Agreement. The YMCA shall pay all operating expenses as hereinafter defined.

The YMCA shall collect all Revenue as defined below and distribute, all or a portion of it, to the City depending on the specific source of the Revenues, in accordance with Section 5 of this Agreement. "Revenue" will be defined as monies and revenues received by the YMCA from or in

YMCA shall not include the costs of advertising and pool administration in its calculation of the City's share of the Net Revenue. Net Revenue for the following programs shall be disbursed to the City, along with supporting documentation of the receipts, as follows:

- a. 100% of all revenue received by the sale of the following items:
  - i. Pool Passes – Seasonal passes good for the entire summer season and shall cost \$50.00 per person who is a resident of Richmond Heights and \$110.00 per family of 4 persons who are residents of Richmond Heights.
  - ii. Pool Day Passes – Guests may purchase a pass for the day at a rate of \$5.00 per pass per day.
  - iii. Program Membership fees – If a guest would prefer to have a lesser package than a Seasonal Pass, but wants more access to the pool than would be afforded with a Pool Day Pass, such guest may pay for and enroll in specific Pool Programs individually and pay a one-time Program Membership fee of \$20.00.
  - iv. Richmond Heights residents who are age sixty or more are free.

Funds collected by the YMCA for the Pool Passes, Day Passes, and Program Membership Fees shall be disbursed to the City Police Department Dispatch center every evening at the close of business.

- b. Net Revenue from all Swim Lesson Programming by the YMCA will be split- 50% to the City and 50% to the YMCA after the YMCA has calculated and subtracted all costs for swim instructors. Payments will be made on a month lag, but supporting documentation to be turned in to Director of Finance for the City every two weeks corresponding with payroll distributions.
- c. Net Revenue from all Water Exercise Programming by the YMCA will be split-50% to the City and 50% to the YMCA after the YMCA has calculated and subtracted all costs for instructors, and program personnel. Payments will be made on a month lag, but supporting documentation to be turned in to Director of Finance for the City every two weeks corresponding with payroll distributions.
- d. Net Revenue from YMCA sponsored and operated special events will be split-50% to the City and 50% to the YMCA after the YMCA has calculated and subtracted all direct costs of each event at the time that the event occurs for special events. Net Revenues shall be disbursed by the YMCA to the City on a month lag to assure final numbers
- e. 100% of all revenue will be collected by the City during all city sponsored and operated special events. All expenses, including those for staffing from the YMCA shall be paid by the City on a month lag to assure final numbers.

6. Maintenance/Repairs/Replacement. YMCA shall perform normal and routine daily maintenance of the pool, water features and amenities at the Pool and shall perform all necessary chemical testing, adjustments and reports on at least an AM/PM basis and in accordance with all applicable regulations of the County Board of Health. Normal and routine daily maintenance shall include, but not be limited to, vacuuming the pool, emptying trash cans in bathrooms and aquatic facility, general cleaning of all spaces and putting trash bags into the city dumpster, responsible for the cleanliness and picking up litter near and around the pool and within a 20 foot radius of the pool facility, chlorinating, and preparing the deck. The YMCA shall communicate to the City on a daily basis any safety concerns and related repairs, and any supplies or equipment that are needed or not working properly and the City shall have the obligation to make necessary repairs, corrections, or

If there are more than 6 guards needed to stay with the ratio, the YMCA has the right to add up to 1 more guard without asking permission and the City will pay for the guard. If the YMCA goes to 7 guards or more without written permission from the City, the City has the right to refuse the expense.

Lifeguard staff shall be qualified and experienced individuals, minimum of 16 years of age and shall hold a current Red Cross or YMCA Lifeguard Certification, Professional rescuer CPR Certification for 2-person CPR with use of a bag-valve mask and child/infant CPR, First Aid Certification and AED Certification. YMCA shall be solely responsible for determining Pool staff and confirming lifeguard certification and qualifications. All such staff shall be employees of the YMCA and not employees of the City. YMCA shall be responsible for workers compensation and also for the payment of all compensation, including wages, salaries, unemployment taxes and benefits, with respect to its staff, and any required withholdings and filings for tax or benefit purposes.

#### **9. Orientation and Training by the YMCA and the City.**

- a. **Orientation.** The YMCA and the City shall work together on the orientation of all staff. An initial orientation will be provided upon the hiring of aquatic staff and shall be conducted by someone knowledgeable. The orientation shall include Pool/facility operation; pump room operation; Emergency Action Plans (EAP); and OSHA workplace safety procedures and guidelines. An additional orientation for all lifeguards will be conducted one week prior to the opening of the Pool, by the YMCA's Director of Aquatics Safety & Compliance and Aquatics Safety Supervisor. Prior to a lifeguard's first shift, all new lifeguards shall be thoroughly oriented to the environment in which they will be guarding. Prior to assigning a new lifeguard a zone of responsibility, all new lifeguards shall shadow other lifeguards, under the supervision of an experienced staff member, for a minimum of two shifts. The orientation shall include oral, written and physical components with proper documentation. This orientation shall include, but not be limited to the following:

Zones and rotations

Emergency policies and procedures, including emergency action plans

Location and use of rescue and resuscitation equipment

Location and use of personal protective equipment

Pool rules and injury prevention policies

Recreation Department policies and procedures.

- b. **Training.** At a minimum, the YMCA shall conduct a minimum of two hours of in-service training per month for all lifeguard staff. Included in these in-service training topics (among others) shall be the following:

First aid skills

Scanning patron surveillance

Emergency response, including emergency action plan drills

Spinal injury management

Water rescue skills

Water park training and certification.

party's overall conduct under this Agreement.

**14. Warranties.** The YMCA warrants that services hereunder shall be performed in a professional and workman-like manner in accordance with applicable professional standards. In the event the YMCA is notified in writing within ten (10) days of performance of a service that such performance is not in compliance with this warranty, the YMCA shall perform again any such service. The YMCA warrants that it is qualified to provide the management services hereunder and has obtained or will obtain and maintain all certificates and licenses, to the extent such certifications and/or licenses are necessary and required by law for any of the services it provides under this Agreement.

**15. Compliance with Laws.** The City and the YMCA shall operate the Pool in compliance with all federal, state, county and municipal laws, ordinances and regulations, and all employment and environmental laws. The YMCA shall promptly remedy all violation(s) of any such law, ordinance, rule, regulation or order within thirty (30) calendar days of the YMCA's receipt of a written notice of such violation, or within any shorter time prescribed by law.

**16. Insurance.** The YMCA shall carry the following insurance during the term of this Agreement and any renewal term:

- a. The City, at its sole expense shall maintain throughout the Term of this Agreement and any extension thereof:
  - i. All risk property casualty insurance, (full standard form extended coverage) in an amount not less than one hundred percent (100%) of the full replacement value of the facility.
- b. The YMCA, at its sole expense, shall maintain throughout the Term of this Agreement and any extension thereof, comprehensive general liability insurance protecting against all claims for personal injury, death, or property damage occurring upon, in or about the Pool, resulting from the use or occupancy thereof, with limits of at least One Million Dollars (\$1,000,000).

Upon request, each party shall deliver a certificate of insurance to the other party as evidence of compliance with the foregoing insurance requirements. The City shall be added as an additional insured to the YMCA's insurance policy referenced herein. The YMCA shall deliver to the City, at least ten (10) days prior to the expiration of such policy, evidence that it has been renewed and such renewal covers the stated Term of the Agreement.

The YMCA shall also provide an Additional Insured/Primary and Non-Contributory Endorsement indemnifying the City of Richmond Heights. All policies of liability insurance required to be maintained by YMCA shall name the City as an additional insured with primary/noncontributory coverage. The YMCA shall annually provide the City a certificate of insurance as evidence of the above coverage.

In addition to the above, the YMCA shall carry Workers' Compensation Insurance (including occupational disease) in compliance with Workers' Compensation statutes of Ohio for all of its employees providing services at the Pool.

**22. Equal Opportunity Employer.** The YMCA represents that it is an Equal Opportunity Employer and agrees not to discriminate against employees or applicants for employment by reason of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth nor knowingly permit subcontractors to do so.

**23. Force Majeure.** Neither the YMCA or the City shall be held liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God or inevitable riot, sabotage, weather and energy related closing, governmental rules or regulations, nor for real or personal property, destroyed or damaged due to such cause listed herein.

**24. Assignment.** This Agreement and the duties and obligations hereunder, shall not be assigned by the YMCA without the prior written approval of the City.

**25. Notice.** Any notice to be given under this Agreement shall be in writing, and shall be deemed to have been effectively given when emailed and mailed by registered or certified mail, postage pre-paid, to the parties as follows:

City of Richmond Heights  
Attention: Mayor  
26789 Highland Road  
Richmond Heights, Ohio 44143  
[Mayors.office@richmondheightsohio.org](mailto:Mayors.office@richmondheightsohio.org)

and

YMCA of Greater Cleveland  
Attention: President and Chief Executive Officer  
2200 Prospect Avenue  
Cleveland, Ohio 44115  
(add email address)

Any notice given pursuant to this Agreement may be given by the parties hereto, or their legal counsel. Either party may change its address for purposes of this Agreement by giving notice of the change to the other party pursuant to the terms of this Paragraph.

**26. Relationship of Parties.** Nothing in this Agreement is intended to or shall be deemed to constitute a partnership, association or joint venture between the City and the YMCA in the conduct of the provisions of this Agreement. The YMCA shall at all times have the status of an Independent Contractor.

**27. Miscellaneous.** The terms, provisions, covenants and conditions herein contained constitute the entire Agreement between the YMCA and the City regarding the operation of the Pool and may not be altered, modified or amended except by a subsequent writing signed by each party. In the event any clause, term or condition of this Agreement is deemed invalid or contrary to law, this Agreement shall remain in full force and effect as to all other clauses, terms and conditions.

## EXHIBIT A

**Safety INVOICE**

- j) The City shall, in partnership with the YMCA, develop a written preventative maintenance and inspection schedule according to manufacturers' recommendations, and keep inspections and maintenance records on file.
- k) The City shall, in partnership with the YMCA, provide routine maintenance of the Pool mechanical systems in accordance with the manufacturers' equipment manuals and keep a record of all maintenance performed on file.
- l) The City will provide security at the Pool, when necessary, solely at its cost.
- m) The City shall make minor pump repairs, and other minor system and mechanical repairs and replacements.
- n) The City shall provide all cleaning paper supplies, disinfectant solutions, soap solution for bathroom dispensers and tissue for bathroom stalls, trash pickup and facility cleaning.
- o) The City shall develop and post all updated signage including but not limited to the new hours of operation, rules and guidelines
- p) Develop and maintain a facility manual which shall be kept on site. The facility manual shall have in place specific policies to address safety concerns.

Examples include, but are not limited to, the following:

- Drowning or submersion events
- Program-specific emergency procedures, if applicable
  - Child abuse prevention and reporting procedures
  - Missing person
  - Hypoxic training and breath-holding
  - Natural disasters and severe weather
  - Facility evacuation
  - Power failure
  - Properly securing and storing equipment after hours or end of season
  - Securing of facility at end of season or end of daily operation
  - Rental agreements and contracts for rental groups
  - Equipment maintenance and operation
  - Establish daily, ongoing safety inspections to include
  - Rescue and safety equipment
  - Deck and facility equipment
  - Noise and ambient air temperature levels
  - Evaluate each lifeguard zone seasonally for size and effectiveness

## EXHIBIT D

### SPECIFIC DUTIES OF THE YMCA AT THE POOL

The specific duties of the YMCA shall include but not be limited to the following:

- a) Properly maintain Pool, bathrooms, staff rooms, general pool area, and all related equipment in a clean and safe condition.
- b) Maintaining a daily log that includes a record of Pool usage. This will include both day pass and seasonal pass attendance.
- c) Accurately document and complete accident/incident reports and promptly provide to the City. All accident/incident reports should be reviewed weekly by the YMCA and the City to determine if corrective action is needed; identify training and supervising issues; ensure accurate reporting and documentation of incidents and outcomes; evaluate effectiveness of emergency procedures; and discuss with Pool management on a monthly basis as part of the review of overall risk management strategies. If the YMCA decides the Pool is unsafe for operation the YMCA shall have the right to close the Pool and the City will be notified in writing and informed as to the reason why the pool is closed, along with an estimate as to the duration of the closure. Such closure shall also be documented in the log book.
- d) Testing four (4) times a day for water temperature, air temperature, chlorine content, and pH content of the Pool, and logging the results of said tests.
- e) Monitoring and staffing an entry system at the entrance to the Pool area during hours of operation.
- f) Collecting, securing and accounting for all revenue generated through sale of Pool passes, admission charges, water exercise programming, swim lessons, swim teams, concession sales and otherwise. YMCA will remit all revenues collected to the City (all revenues collected and not yet remitted are and remain the property of City) as set forth in the Agreement. YMCA shall provide an accounting of all such revenue every two weeks, or such other period as reasonably requested by the City of Richmond Heights Director of Finance.
- g) Segregate, for accounting purposes, the revenues, operating expenses, accounts and funds from other YMCA revenues, accounts, and funds and shall keep or cause to be kept proper books of record and account (separate and distinct from all other records and accounts of the YMCA) in such manner as is necessary to show the complete financial results of operation of the Pool, all expenditures for improvements, revenues, operating expenses, all expected expenditures therefor and the amounts deposited.
- h) Prepare on a monthly basis (or earlier should it relate to an emergency) a report of any and all complaints, problems, fines, citations, and inquiries relating to the Pool. YMCA's responses to such complaints, problems, shall be reduced to writing. The copy of these reports and any requested responses shall be kept in sequential order, and shall be provided to the City when completed.
- i) Provide the City with current copies of all Certifications as set forth herein, of all of the

EXHIBIT E

**CITY MAINTENANCE**

The City shall perform all other maintenance not performed by the YMCA including but not limited to:

- a) The City will perform backwashing in accordance with manufacturer's recommendations on a weekly or biweekly basis.  
(The process of backwashing knocks loose particulates that may have become lodged in the pool filter and ultimately allows the filter to operate more efficiently.)
- b) Repair all safety concerns brought to its attention by the YMCA.
- c) The City shall, in partnership with the YMCA, provide routine maintenance of the Pool mechanical systems in accordance with the manufacturers' equipment manuals and keep a record of all maintenance performed on file.