

RESOLUTION 2020-04

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AUTHORIZING ENTERING INTO AN OPERATING AGREEMENT WITH THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF WEST CENTRAL FLORIDA, INC.; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City owns the property commonly known as the Lake Wales Family YMCA located at 1001 Burns Avenue, Lake Wales, Florida; and

WHEREAS, the City believes that there is a present need within the community for access to the facilities and programs administered by the YMCA to meet the recreational needs for citizens of all ages; and

WHEREAS, the YMCA has expressed a willingness to operate the Lake Wales Family YMCA for the purpose of allowing public use of the facilities and programs in accordance with the Operating Agreement "Exhibit A"; and

WHEREAS, the City Commission of the City of Lake Wales finds and determines that a public purpose would be met by assuring the public of the benefits of healthy and wholesome recreation programs for all ages provided by the YMCA for the benefit of the Lake Wales community; and

WHEREAS, the City has agreed to relieve the Young Men's Christian Association of Lake Wales, Inc., of its current debt by acquiring its previously owned property located at 1001 Burns avenue, Lake Wales, Florida; and

WHEREAS, the City has, leased the property back to the YMCA for the purpose of providing recreational programs for the community, and in particular for providing programs to City residents though a 50% membership discount.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida; Chapter 166, Florida Statutes; the Charter of the City; and other applicable provisions of law.

SECTION 2. FINDINGS. The above stated recitals are hereby incorporated as part of this Resolution.

SECTION 3. APPROVAL. The City of Lake Wales, by and through its City Commission, does hereby agree to enter into the Operating Agreement "Exhibit A" with the Young Men's Christian Association of West Central Florida, Inc.

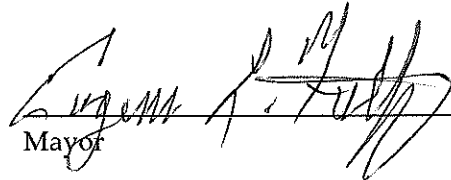
SECTION 4. INCIDENTAL ACTION. The Mayor, City Manager, Chief Financial Officer and Clerk of the City, and their designees are hereby authorized to take such actions as may be necessary to carry out the purposes of this Resolution.

SECTION 5. EFFECTIVE DATE. This Resolution shall become immediately effective upon its adoption.

DULY RESOLVED this 4th day of February, 2020.

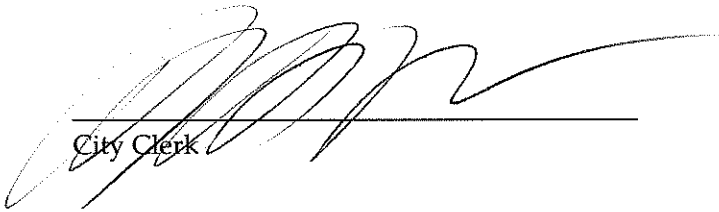
CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA

(SEAL)



Mayor

ATTEST:



City Clerk

Exhibit A OPERATION AGREEMENT

This Operation Agreement ("Agreement") is made and entered into this 20th day of February, 2020 (the "Effective Date"), by and between the **CITY OF LAKE WALES**, a Florida municipal corporation, hereinafter referred to as "City", and the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF WEST CENTRAL FLORIDA, INC.**, a Florida not for profit corporation, hereinafter referred to as "YMCA."

WITNESSETH

WHEREAS, the City owns the property commonly known as the Lake Wales Family YMCA located at 1001 Burns Avenue, Lake Wales, Florida; and

WHEREAS, the City believes that there is a present need within the community for access to the facilities and programs administered by the YMCA to meet the recreational needs for citizens of all ages; and

WHEREAS, the YMCA has expressed a willingness to operate the Lake Wales Family YMCA for the purpose of allowing public use of the facilities and programs in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the City Commission of the City of Lake Wales finds and determines that a public purpose would be met by assuring the public of the benefits of healthy and wholesome recreation programs for all ages provided by the YMCA for the benefit of the Lake Wales community; and

WHEREAS, the City has agreed to relieve the Young Men's Christian Association of Lake Wales, Inc., of its current debt by acquiring its previously owned property located at 1001 Burns avenue, Lake Wales, Florida; and

WHEREAS, the City has, by separate Lease Agreement of even date herewith and incorporated herein by reference (the "Lease"), leased the property back to the YMCA for the purpose of providing recreational programs for the community, and in particular for City residents at a 50% discount.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS provided hereby, the parties hereto agree as follows:

1. GRANT. YMCA agrees to reduce its in-city membership rates by fifty percent (50%) with the balance of the membership fee to be funded by the City in the form of an annual grant ("Grant"). Based upon the YMCA membership at the time of initial approval of this Agreement, the Grant for the initial annual period during the term of this Agreement shall be in the amount of Eighty-Four Thousand and 00/100 US Dollars (\$84,000.00) payable on the Effective Date and thereafter each annual Grant shall be paid on each anniversary of the Effective Date during the term of this

Agreement. All facilities and programs administered by the YMCA shall be available to its in-city membership in accordance with the provisions of this paragraph 1. The Grant for operations shall be recalculated immediately prior to each annual period during the term of this Agreement based on the estimated discounted membership fees that the YMCA will provide but such amount shall not exceed One Hundred Twenty-Five Thousand & 00/1000 US Dollars (\$125,000.00) unless such increase is mutually agreed upon by the parties.

2. Swimming Pool Services. YMCA hereby agrees, in consideration of an additional annual grant ("Swim Grant") in the amount of Thirty-Six Thousand and 00/100 US Dollars (\$36,000.00) to provide for the benefit of the public and the CITY, the following:

A. YMCA agrees to provide public access to the facility's swimming pool during its normal operating hours on Saturday from 10:00 a.m. to 4:00 p.m. and on Sunday from 12:00 noon to 4:00 p.m. year-round.

B. YMCA additionally agrees to provide public access to the facility's swimming pool on Tuesdays and Thursdays from 11:00 am to 1:00 p.m. and from 4:00 p.m. to 7:00 p.m. year-round.

C. YMCA agrees to offer its classes, and seasonal or additional programs to city resident non-members at the discounted YMCA member rates.

D. This Agreement shall in no way affect the membership fees and charges of the YMCA for any of its programs provided to its members who are not residents of the City of Lake Wales.

The Swim Grant shall be paid annually beginning on the Effective Date and on each anniversary of the Effective Date during the term of this Agreement.

3. TERM. The initial term of this Agreement shall be for a period of thirty-six (36) months beginning on the Effective Date; provided, however, that notwithstanding any contrary provision herein, the term of this Agreement shall be concurrent with the Lease so that any termination of this Agreement shall terminate the Lease and any termination of the Lease shall terminate this Agreement. This Agreement may be renewed subsequent to its initial term upon mutual agreement of the parties.

4. TERMINATION. In the event YMCA fails to provide the services described herein, the CITY may terminate this Agreement upon providing thirty (30) days' notice and an opportunity for the YMCA to cure said default. In the event the YMCA fails to cure said default within said thirty (30) day time period, the City may elect to terminate this Agreement and take such action as may be authorized by law to seek reimbursement for the remaining unamortized portion of the Grant for the calendar year in which the Agreement is terminated.

Either party may terminate this Agreement for any reason or no reason at all, upon one hundred eighty (180) days written notice.

5. REPORTING REQUIREMENTS. YMCA shall maintain books and records with respect to the operations at the Lake Wales YMCA and the services provided herein for a period of three (3) years. The YMCA shall make such records available upon reasonable notice by the City so they may be reviewed and audited by the CITY in order that the CITY may ensure that the activities, programs and services to be provided have been performed in accordance with the terms of this Agreement. The records to be maintained shall also provide for assurance that the ratio of swimmers to lifeguards is met at all times during the term of this Agreement.

6. INDEMNIFICATION; WAIVER OF CONSEQUENTIAL DAMAGES: YMCA shall indemnify, defend and save City and its elected or appointed officials, agents, and employees harmless against any and all liabilities, penalties, demands, claims, causes of action, suits, losses, damages, cost and expenses (including reasonable attorneys' fees) ("Claims") (whether the same arise out of or in connection with the services, or from any operations under or in connection with this Agreement) to the extent caused by YMCA (or any of its employees), any of its subcontractors (or any employee thereof), or any person, firm or corporation (or any employee thereof) directly or indirectly employed or engaged by YMCA.

7. INDEPENDENT CONTRACTOR: YMCA shall perform the terms and conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status.

8. NOTICE. ANY notice or other communication required or permitted to be given under this Agreement shall be in writing and mailed (by U.S. certified mail, return receipt requested, postage prepaid), sent by overnight delivery by a nationally recognized overnight courier service, or personally delivered to the parties as follows:

City of Lake Wales

Post Office Box 1320
Attn: City Manager
Lake Wales, FL 33859-1320

YMCA of West Central Florida, Inc.

Lake Wales Family YMCA
1001 Burns Avenue
Attn: Branch Director – Lake Wales
Lake Wales, FL 33853

With Copy to:

YMCA of West Central Florida, Inc.
Attn: CEO
P.O. Box 24327
Lakeland, FL 33802

9. AMENDMENTS OR MODIFICATIONS. Any alterations, amendments, deletions or waivers of the provisions of this Agreement shall be valid only when reduced to writing, signed and executed by both parties with the same formality and equal dignity herewith.

10. PUBLIC RECORDS. YMCA agrees to comply with *Chapter 119 of Florida Statutes*, and to make all of its records open and available to the public for public inspection to the extent of providing the services described in paragraph 2 above, specifically any and all records reflecting compliance with the requirements of the required ratio of swimmers to lifeguards. The other activities of the YMCA not covered by this Agreement shall not be subject to the Public Records law.

11. PUBLIC ACCESS. YMCA agrees to conduct any of its Board of Directors meetings relating to the services outlined in paragraphs 1 and 2 above, in open session allowing any member of the press or public to attend. In order to ensure that the public has proper notice of any such meeting, a copy of the agenda shall be posted at the offices of the YMCA at least ten (10) days prior to the meeting. The agenda shall clearly state that the portion of the meeting relating to the services described in Paragraph 2 above will be open to the public. Other regular business not covered under Section 2, coming before the Board of Directors of the YMCA shall not be subject to the public access provisions of this paragraph.

12. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related thereto. Venue for any action arising out of this Agreement shall lie in Polk County, Florida. In the event of any litigation arising in any way related to this Agreement the parties shall each bear their own respective costs and attorney's fees. The parties, to the fullest extent that they may lawfully do so, hereby waive trial by jury in any action or proceeding brought by any party to this Agreement with respect to this Agreement, or any matter related to this Agreement.

13. SEVERABILITY. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any report, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. ATTACHMENTS AND COUNTERPARTS. This Agreement may be executed in counterparts to be deemed a single Agreement and all attachments and

exhibits hereto are incorporated hereby as a material and relevant part of this Agreement.

15. CODE OF CONDUCT. YMCA reserves the right to remove any member or non-member from its programs or from the facility for failure to abide by the terms of its Code of Conduct.

16. ASSIGNMENT. Neither party shall, without the prior written consent of the other party (which consent shall not be unreasonably withheld, delayed or conditioned), assign this Agreement by operation of law or otherwise, provided that such approved assignment shall not release the assigning party from its liabilities and obligations under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

Execution on the following pages.

**YOUNG MEN'S CHRISTIAN ASSOCIATION
OF WEST CENTRAL FLORIDA, INC.**

By: 
_____, President

ATTEST:

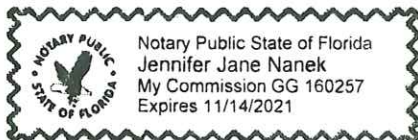



DATED: February, 2020

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged by Eric Kark, President and on behalf of the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF WEST CENTRAL FLORIDA, INC.**, who is personally known by me or produced sufficient identification.

Witness my hand and official seal, this 20th day of February, 2020.





Notary Public, State of Florida
My Commission expires: 11/14/2021

CITY OF LAKE WALES, FLORIDA

By: Eugene S. Fultz
Eugene Fultz, Mayor

ATTEST:
Jennifer Narek
Jennifer Narek, City Clerk

DATED: February 5, 2020

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged by Eugene Fultz, Mayor and on behalf of the **City of Lake Wales, Florida**, who is personally known by me or produced sufficient identification.

Witness my hand and official seal, this 5th day of February, 2020.

Keroma Mills - Mills
Notary Public, State of Florida
My Commission expires:

