

## **FACILITIES MANAGEMENT AGREEMENT**

This Facilities Management Agreement (the "Agreement") is made and entered into this 13th day of November, 2018 ("Effective Date"), by and between the Sky Family Young Men's Christian Association, Incorporated, a Florida not-for-profit corporation, hereinafter referred to as the "YMCA," and the City of North Port, Florida, a political subdivision of the State of Florida, herein after referred to as the "City," together the "Parties."

### **WITNESSETH:**

**WHEREAS**, the Parties desire to enter into a Facilities Management Agreement for the management and operation of the Al Goll Center, located at 5930 Sam Shapos Way, North Port, Florida (the "Facility"), which is owned by the City; and

**WHEREAS**, the Parties are mutually interested and concerned with providing and making child day care services available to the public at the Facility; and

**WHEREAS**, the City finds that offering child day care services at the Facility serves a public purpose; and

**WHEREAS**, the YMCA is currently providing child day care services at the Facility; and

**WHEREAS**, the Parties believe it is mutually beneficial and in the best interests of the Parties for the YMCA to continue to provide child day care services at the Facility.

**NOW THEREFORE**, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Responsibilities of the YMCA:**

- A. The YMCA shall operate and manage the Facility in order to offer child day care services to the public.
- B. The YMCA shall abide by and adhere to all laws, ordinances, rules and regulations for the safety, appearance, care, cleanliness, and use of the Facility and the preservation of good order therein.
- C. The YMCA shall abide by and adhere to all County, City and State laws, ordinances, rules and regulations related to providing child day care services and for facilities providing said services.
- D. The YMCA shall maintain and retain all licensing required by the Florida Department of Health, Florida Department of Corporations, or any other applicable regulatory or licensing body to operate a child day care facility or to provide child day care services to the public.
- E. The YMCA shall provide all necessary staff and associated compensation for the operation of child day-care services at the Facility.
- F. The YMCA shall be responsible for the payment of all utility bills, including trash pickup, recycling, water, and sewer at the Facility.

- G. The YMCA shall collect and retain all membership and usage fees for the Facility.
  - H. The YMCA shall maintain and be solely responsible for all existing equipment and furnishings located at the Facility and any equipment and furnishings placed at the Facility by it in the future.
  - I. The YMCA shall be responsible for all capital improvements, repairs, and replacements that do not exceed \$5,000 per item. Items shall not be grouped together or considered collectively in order to exceed the \$5,000 limit. The City shall not be responsible for the cost of any capital improvements, repairs, or replacements necessitated by the negligent acts or omissions of the YMCA, its directors, officers, agents, employees, licensees or invitees. The YMCA shall reimburse City for any such repairs upon written demand.
  - J. Except as provided in Subsection I herein, the YMCA shall, at its expense, maintain and repair of the Facility in a clean and healthy condition, bearing responsibility for the following amenities and services:
    - (1) All maintenance and repairs required for mechanical and plumbing systems, air conditioning (HVAC) or utility lines, electrical lines, wires and equipment provided;
    - (2) All operating, maintenance, and repair expenses for the Facility including but not limited to management overhead, fees, insurance, applicable taxes, landscaping, window cleaning, and pest control;
    - (3) Exterior lighting and landscape maintenance, not including mowing;
    - (4) Repairs or damage to the Facility resulting from malfunctioning of Facility heating and air conditioning (HVAC) equipment, plumbing, or electrical fixtures; and
    - (5) All charges for water, sewer, electric, and trash collection services for the Facility.
2. Alterations and Improvements:
- A. With City's written consent, the YMCA at its expense shall have the right to remodel, redecorate, and make structural improvements to the Facility provided the same are pre-approved by the City at both the planning and building phase. All improvements and alterations, including plumbing, light fixtures, and affixed partitions shall become the City's property and shall remain upon and be surrendered with the Facility upon termination or expiration of this Agreement. The City's consent to the YMCA's request to remodel, redecorate, or to make structural improvements to the Facility shall not waive any required permit or associated permit fees that must be obtained or paid for by the YMCA; all permit requirements must be met.
  - B. If YMCA makes any alteration or improvement to the Facility without the City's written consent, the YMCA shall restore the Facility substantially to its original or better condition as approved by the City, unless the City provides written notice that a particular alteration or improvement shall remain intact.
  - C. All furniture, portable partitions, appliances, electronic equipment, or computers, which have been or will be installed by the YMCA, at its expense, shall remain the property of the YMCA and

may be removed at any time during the term of this Agreement by the YMCA, provided that same can be removed without damage to the Facility.

3. Term: The term of this Agreement shall be for five (5) years, commencing on the Effective Date ("Initial Term"). After the Initial Term, unless otherwise terminated as set forth herein, this Agreement shall automatically renew for one additional five (5) year term.
4. Termination:
  - A. Either party may terminate this Agreement at any time without penalty or premium by providing the other party with one-hundred-eighty (180) days written notice.
  - B. In the event the Facility is totally destroyed by fire, act of God, or other casualty, or any substantial portion of the Premises is so damaged or destroyed thereby rendering same unfit for YMCA's purposes for at least sixty (60) days, the City may terminate this Agreement upon written notice and the rights of the Parties shall cease, except such rights and liabilities as may have accrued to the date of such destruction.
5. Default: The occurrence of any one of the following events shall constitute a default of the YMCA:
  - A. Abandonment of the Facility for a period of thirty (30) consecutive days;
  - B. Failure to pay any monies due and continuing for a period of ten (10) days after the same is due;
  - C. Filing a voluntary petition in bankruptcy, receivership, attachment, or other judicial seizure of substantially all of the YMCA's assets at the Facility;
  - D. An assignment or sublease, or attempted assignment or sublease, of this Agreement or the Facility without the City's express consent;
  - E. Failure in the performance of any obligations required in this Agreement;
  - F. Chronic delinquency in the payment of any payments required to be paid by the YMCA under this Agreement; or
  - G. Failure to perform or observe any other condition or obligation of this Agreement and to cure such failure within thirty (30) days following the City's written notice to the YMCA. If the nature of the default poses an imminent danger to persons or property, then the period of time for cure shall be a reasonable period of time in light of the circumstances.
6. Default Remedies: In the event of the YMCA's default, the City may:
  - A. Terminate this Agreement;
  - B. Re-enter the Facility, terminate the YMCA's right of possession of the Facility, and manage or lease all or any part of the Facility;

- C. Cure the default on behalf of the YMCA, and YMCA shall pay the reasonable costs of such cure within ten (10 ) business days upon issuance of a written demand; and/or
- D. In the event of a default or breach of the Agreement terms, the City may avail itself of each and every remedy specifically given to it now existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise, or the beginning of the exercise, of one remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

7. Joint Quarterly Inspections:

- A. Joint quarterly inspections of the Facility shall be conducted by appropriate staff of the Parties to insure compliance with the terms of this Agreement.
- B. One staff member for each party conducting a joint quarterly inspection of the Facility shall sign, and each Party shall receive a copy of, the inspection report.
- C. Where either party identifies an item that requires maintenance or repair during a joint quarterly inspection of the Facility a deadline for the completion of the identified maintenance or repair will be set and noted on the quarterly site inspection report.
- D. Unless further agreed to in writing, any maintenance or repair identified on a quarterly site inspection report must be completed by the responsible party by the identified deadline.
- E. Where the YMCA is the responsible party and does not complete an identified maintenance or repair by the deadline listed on the quarterly site inspection report or other date as otherwise agreed to by the Parties, the City may in its sole discretion, complete the maintenance or repair on behalf of the YMCA and the YMCA shall pay the reasonable costs of such maintenance or repair to the City upon written demand.

8. Reporting Requirements:

- A. The YMCA shall provide the City with a copy of any written report or inspection conducted by the Florida Department of Health, Florida Department of Children and Family Services, or any other State agency as well as the City of North Port Fire Marshal, within twenty-four (24) hours of its receipt of such report or inspection.
- B. The YMCA shall notify the City within a reasonable amount of time whenever emergency services such as police, ambulance, and/or fire department services are called or respond to the Facility.

9. Annual Reporting Requirements:

- A. On or before February 1 of each year, the YMCA shall furnish to the City an annual report for the previous fiscal year. The annual report shall include, at a minimum, a financial statement identifying number of children served by age group, number of children receiving scholarship or

financial aid from any source to satisfy child care costs; number of full-time and part-time employees hired, retained, and separated throughout the reporting period; and revenue and expense reports for the operation of the Facility. Annual reports shall be for the calendar year starting January 1 and ending December 31.

- B. With each annual report, the YMCA shall submit a list of all capital improvements, repairs, and replacements made throughout the reporting period as well as a prioritized list of recommended capital improvements, repairs, and replacements for the Facility.
10. Right of Entry: The City shall have the right to enter the Facility at reasonable hours to inspect, maintain, clean, or repair the Facility, provided that the City shall not unreasonably interfere with the YMCA'S business at the Facility.
11. Hazardous Materials Prohibited: To the best of the YMCA's knowledge, as of the commencement date of this Agreement, no hazardous materials or conditions exist at the Facility. Except as otherwise provided herein, the YMCA, its agents, licensees, and invitees shall not use, handle, store, display or generate hazardous materials (materials that are ignitable, corrosive, toxic or reactive) in or on the Facility. "Hazardous materials" shall mean those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; in the regulations adopted and promulgated pursuant thereto; and in the applicable laws, regulations and ordinances enacted by the State of Florida, Sarasota County, and/or the City of North Port.
12. Maintenance and Repairs:
- A. If the YMCA terminates this Agreement and has not completed any repairs or maintenance that are its responsibility pursuant to the terms of this Agreement or as identified as its responsibility on a joint quarterly inspection report, the City may in its sole discretion, complete the maintenance or repair on behalf of the YMCA and the YMCA shall pay the reasonable costs of such maintenance or repair to the City upon written demand.
  - B. The YMCA shall leave the Facility in as good or better condition as when received, except for reasonable wear and tear, loss by fire or other casualty, and acts of God, and shall remove all trash and debris and leave the Facility in broom-swept condition.
  - C. The City shall not be responsible for the cost of any repairs to the Facility necessitated by the negligent acts or omissions of the YMCA, its directors, officers, agents, employees, licensees or invitees. The YMCA shall reimburse the City for any such repairs upon written demand.
13. Insurance:
- A. The City is self-insured for all liability claims and related expenses pursuant to the provisions of Florida Statutes, Section 768.28.
  - B. Before the effective date of this Agreement and during the life of this Agreement, the YMCA shall procure and maintain the insurance listed below, unless otherwise specified. The policies of

insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida, and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."

No changes are to be made to these specifications without the City Manager or designee's prior written approval. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with the YMCA.

- (1) Workers' Compensation and Employer's Liability Insurance: The YMCA shall provide coverage on behalf of all employees who are to provide the services under this Agreement at the statutory limits provided by state and federal laws. The YMCA must provide proof of current workers' compensation coverage or worker's compensation exemption (notarized affidavit). The policy must include the YMCA'S Liability with a limit of \$100,000 each accident; \$100,000 each employee; and \$500,000 policy limit for disease. In the event the YMCA has "leased" employees, the YMCA or the employee leasing company must provide evidence of a workers' compensation policy for all personnel at the Facility.
  - (2) Comprehensive Commercial General Liability Insurance: This policy shall include but is not limited to bodily injury, property damage, contractual, products and completed operations, watercraft, and personal injury with the following minimums: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises. Aggregate must apply separately to this Agreement.
  - (3) Business Automobile Insurance: This policy shall include all vehicles owned, leased, hired, and non-owned vehicles limits of not less than \$1,000,000 per person for bodily injury; \$1,000,000 per accident; and \$1,000,000 property damage, with contractual liability coverage for all work performed under this Agreement. Coverage shall include liability for owned, un-owned, and hired automobiles. In the event YMCA does not own automobiles, YMCA agrees to maintain coverage for hired and un-owned automobile liability, which may be satisfied by way of endorsement to the commercial general liability policy or separate business auto liability policy. If private passenger automobiles are used in the business, they must be commercially insured.
  - (4) Umbrella Liability: With limits of not less than \$2,000,000 each occurrence covering all work performed under this Agreement.
- C. Waiver of Subrogation: All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the YMCA. It is the YMCA'S responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, the YMCA, its officers, officials, agents, employees, volunteers, and any sub-contractors, agree to waive all rights of subrogation against the City and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which the YMCA or its agents may be responsible.

D. Policy Form:

- (1) All policies required by this Agreement, with the exception of professional liability and workers' compensation, or unless Risk Management through the City's Purchasing Office gives specific approval, are to be written on an occurrence basis and shall name the City of North Port, Florida, its commissioners, officers, agents, employees and volunteers as additional insureds as their interest may appear under this Agreement. Claims-made policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the City's Purchasing Office. All claims-made policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the YMCA agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year
- (2) Insurance requirements itemized in this Agreement, and required of the YMCA, shall be provided by or in behalf of all subcontractors to cover their operations performed under this Agreement. The YMCA shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-contractors.
- (3) Each insurance policy required by this Agreement shall:
  - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
  - b. Be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The YMCA is to notify the City's Purchasing Office by written notice via certified mail, return receipt requested.
- (4) The City shall retain the right to review, at any time, coverage, form, and amount of insurance.
- (5) **The procuring of required policies of insurance shall not be construed to limit the YMCA'S liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of the YMCA'S liability for indemnity of the City shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the YMCA and its carrier.**
- (6) The YMCA shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the City is an insured under the policy. The YMCA'S insurance is considered primary for any loss, regardless of any insurance maintained by the City. The YMCA is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
- (7) All certificates of insurance must be on file with and approved by the City before commencement of any work under this Agreement. All certificates of insurance required

herein must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing claims-made or occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the City's Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work and a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the City's Purchasing Office before the YMCA will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.

- (8) Notices of accidents (occurrences) and notices of claims associated with work being performed under this Agreement shall be provided to the YMCA'S insurer(s) and the City's Purchasing Office as soon as practicable after notice to the insured.

14. Public Records: In accordance with Florida Statutes, Section 119.0701, the YMCA shall comply with all public records laws, and shall specifically:

A. Keep and maintain public records required by the City to perform the service.

- (1) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
- (2) "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. The YMCA'S records under this Agreement include but are not limited to, supplier/sub-contractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this Agreement.

- B. Upon request from the City's custodian of public records, provide the City, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- C. Ensure that records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, if the YMCA does not transfer the records to City following completion of the Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
- D. Upon completion of the Agreement, transfer, at no cost, to the City all public records in the YMCA'S possession or keep and maintain public records required by the City to perform the

service. If the YMCA transfers all public records to the City upon completion of the Agreement, the YMCA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the YMCA keeps and maintains public records upon the completion of the Agreement, the YMCA shall meet all applicable requirements for retaining public records.

- E. IF THE YMCA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE YMCA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7056 OR HOTLINE (941) 429-7270; E-MAIL: kpeto@cityofnorthport.com.**

**15. Indemnification:**

- A. To the extent permitted by Florida law, the YMCA shall indemnify, defend, and hold harmless the City, its commissioners, officers, agents and employees, from all liabilities, fines, claims, assessments, suits, judgments, damages, losses and costs, including consequential, special, indirect, and punitive damages, (including but not limited to reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees), arising out of any acts, actions, breaches, neglect, or omissions of the YMCA, or the YMCA'S officers, employees, agents, subcontractors, sub-consultants, and other persons employed or utilized by the YMCA in the performance of, or the failure to perform, this Agreement. This Agreement does not constitute a waiver of sovereign immunity or consent by the City or its subdivisions to suit by third parties.**
- B. The City shall provide all available information and assistance that the YMCA may reasonably require regarding any claim. In the event of a claim, the City shall promptly notify the YMCA in writing by certified mail return receipt requested or by delivery through any nationally recognized courier service that provides evidence of delivery, at the address provided for receipt of notices in this Agreement.**
- C. insurance coverage and limits required in this Agreement may or may not be adequate to protect the City and such insurance coverage will not be deemed a limitation on the YMCA'S liability under the indemnity provided in this section. In any proceedings between the Parties arising out of or related to this indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).**
- D. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the City as set forth in Florida Statutes, Section 768.28.**
- E. The terms of this section survive the termination of this Agreement.**

- 16. Notices: Except as otherwise provided herein, all notices, invoices, reports, or any other type of documentation required by this Agreement shall be made in writing and shall be deemed given and**

served when deposited in the United States mail, postage paid, to the addresses listed below. Either Party may change its address or representative by providing written notice to the other party.

For the YMCA: Sky Family YMCA, Inc.  
Pete Shattuck, COO  
701 Center Rd  
Venice, FL 34285  
941-492-9622

For the City: City of North Port, Florida  
Parks & Recreation Department  
4970 City Hall Blvd  
North Port, FL 34286  
(941) 429-7129

With copies of notices to: City of North Port, Florida  
City Attorney's Office  
4970 City Hall Blvd  
North Port, FL 34286  
northportcityattorney@cityofnorthport.com

17. Radon Gas: Pursuant to Florida Statutes Section 404.056(5), the City provides the following notice:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

18. Miscellaneous:

- A. Binding Effect/Counterparts: By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. It may be signed in counterparts.
- B. Governing Law and Venue: The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.
- C. No Agency: Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.
- D. Severability: Should any provision of this Agreement be decided by the courts to be illegal, invalid, or conflict with any law, the validity of the remaining portions or provisions of this Agreement shall not be affected thereby.

- E. Headings: The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
- F. Complete Agreement: This Agreement contains and embodies all the representations, covenants and promises made by the Parties. Except as otherwise provided herein, no modifications or Amendments to this Agreement shall be valid unless in writing and executed by the Parties.
- G. Non-Discrimination: The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services. The YMCA shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.
- H. Assignment: The YMCA shall not assign this Agreement or any right or responsibility herein unless with the written consent of the City.

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