

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 12, 2022

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Recreation Facility Rental Agreement with the Young Men’s Christian Association of the Palm Beaches, Inc. (YMCA) for use of the swimming pool and other recreation facilities at the Club Managers Association of America Therapeutic Recreation Complex (TR Complex) in John Prince Park for the period May 1, 2022 to April 30, 2023 with two (2) one (1) year renewal options.

Summary: On January 12, 2021, the Board approved a Lease Agreement with the YMCA for five acres of land in Lake Lytal Park to relocate their existing Branch located in Palm Springs. In the next few months, the YMCA will close on the sale of their existing property and have to vacate the premises. While waiting for their new facility to be constructed within Lake Lytal Park, the YMCA and Parks have collaborated on a partnership that will allow the YMCA to offer expanded services to their members and the general public and reduce operational costs to the County.

The Facility Rental Agreement requires the YMCA to assume all operations of the Gleneagles Country Club Aquatic Center including all staffing, lifeguard services and scheduling of all aquatic, recreational and instruction-based programming. The seasonal facility will be operated on a year round basis providing expanded recreational opportunities during the winter months. The YMCA will provide services to both its members and non-members and will not require the general public to become members. The YMCA will coordinate the schedule to ensure that all previously established County programs are maintained. The YMCA will be responsible to provide all janitorial services of the pool and deck, restrooms and support areas.

The YMCA will also be permitted to use the Fountains Country Club Recreation Center up to 25 hours per week for classes and programs. These services will be made available to members and non-members and these expanded programs will not displace previously established County programs.

The YMCA has agreed that any and all charges for aquatic or recreation programs will be at or near the County established fee schedule and the YMCA will pay a monthly rental fee of \$5,628 for the use of Park facilities. Staff feels this agreement is a win-win for both parties as the YMCA has the opportunity to continue offering services and the County is the recipient of expanded year round programming at the TR Complex at no additional cost. District 3 (AH)

Background and Justification: The YMCA is the nation’s largest provider of aquatic training and drowning prevention programs in addition to the variety of classes, camps and services they offer. This rental agreement allows for the County to expand on its partnership with the YMCA for year round aquatic programming at the TR Complex and increase the overall number of classes and services offered to the general public. These expanded services will be provided without increasing Ad Valorem funding.

Attachment: Recreation Facility Rental Agreement

Recommended by: 
Department Director

3-18-22
Date

Approved by: 
Assistant County Administrator

3/31/2022
Date

II. FISCAL IMPACT ANALYSIS


A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>3,576</u>	<u>67,536</u>	_____	_____	_____
External Revenues	<u>(28,140)</u>	<u>(67,536)</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>(24,564)</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	<u>X</u>	No	_____
Does this item include use of federal funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund 0001 Department 580 Unit 5302/5307
 Object Various/Revenue Source 4735 Program _____


B. Recommended Sources of Funds/Summary of Fiscal Impact:

DESCRIPTION	FY 2022	FY 2023
OPERATING EXPENSES GLENEAGLES POOL	\$39,300	\$94,321
OPERATING EXPENSES FOUNTAINS BLDG	\$6,385	\$15,324
TOTAL OPERATING EXPENSES	\$45,685	\$109,650
Pool Revenue	\$11,593	\$11,593
TOTAL LOST REVENUE	\$11,593	\$11,593
Seasonal Pool Manager (1)	-\$17,037	-\$17,037
Seasonal Pool Lifeguards (4)	-\$36,665	-\$36,665
TOTAL SALARIES	-\$53,702	-\$53,702
GRAND TOTAL EXPENSES	\$3,576	\$67,536
LESS YMCA RENTAL FEE	-\$28,140	-\$67,536
NET FISCAL IMPACT	-\$24,564	\$0

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 Laura Mont 3/22/22
OFMB 3/22/22

 3/30/22
 Contract Development & Control
3-30-22 TD

B. Legal Sufficiency:

Anne Delgent 3-31-22
 Assistant County Attorney

C. Other Departmental Review:

 Department Director

**RECREATION FACILITY RENTAL AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

THIS RECREATION FACILITY RENTAL AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on _____ day of _____, _____, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY," and THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PALM BEACHES, INC., a Florida not for profit corporation, authorized to conduct business in the State of Florida, hereinafter referred to as "RENTER".

W I T N E S S E T H:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," owns and operates recreation facilities; and

WHEREAS, COUNTY seeks to supplement the cost to improve and maintain said recreation facilities by providing qualified entities the opportunity to conduct recreation activities in exchange for the payment of rent; and

WHEREAS, such recreation facility use is a privilege granted to RENTER and governed by COUNTY pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, COUNTY and RENTER hereby agree to the following terms and conditions:

1. **Term:** This Agreement is effective May 1, 2022, the date RENTER enters the recreation facility property, and will terminate on April 30, 2023, the date RENTER is to complete vacating the recreation facility property.

The number of days the Term of this Agreement is effective includes, without proration, any partial day's use and occupancy of the Recreation Facility.

2. **Option to Extend:** COUNTY hereby grants to RENTER, provided RENTER is not then in default of this Agreement, the right and option to extend the Term of this Agreement for two (2) one (1) year periods under the same terms and conditions as this Agreement and commencing upon the expiration of the initial Term of this Agreement or any extension thereof. RENTER shall exercise the options to extend, if at all, by written notice to the Department received no later than ninety (90) days prior to the expiration of the initial Term of this Agreement or any extension thereof. Failure of RENTER to duly and timely exercise its options to extend the Term of this Agreement shall be deemed a waiver of RENTER's rights to said extension optional.
3. **Recreation Facility:** The recreation facilities available for use by RENTER are the Gleneagles Country Club Aquatic Center and the Fountains Country Club Recreation Center located at the Club Manager's Association of America Therapeutic Recreation Complex, in John Prince Park at 2728 Lake Worth Road Lake Worth, Florida 33461, hereinafter collectively referred to as the "Facility", together with certain equipment, improvements, and appurtenances thereto all as more particularly described on the Rental Selection Form, attached hereto as **Exhibit "A"**.

4. **Use:** The purpose for which RENTER is granted use of the Facility is hereinafter referred to as "Activities". The scope and detail of the Activities is more particularly described on the Rental Scope and Detail, attached hereto as **Exhibit "B"**.

5. **Rental, Fees and Charges:**

a. **Facility Rental Fee:** RENTER shall pay to the COUNTY Monthly Rent during the term of this Agreement, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefor or any deduction, holdback or setoff whatsoever. The Monthly Rent is **\$5,628**. The initial monthly installment of the Rent shall be due within fifteen (15) days after the effective date. Any Rent payment hereunder for any fractional month shall be calculated and paid on a per diem basis using a 30-day month.

In the event RENTER fails to make payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate of one and one half percent (1.5 %) per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by COUNTY. Such interest shall constitute Additional Rent. Payments received after interest has started to accrue shall be applied to the accrued interest first and then towards the delinquent rent. Notwithstanding the foregoing, COUNTY shall not be prevented from terminating this Agreement for default in the payment of rentals, fees, charges, and payments due to COUNTY pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law.

Monthly Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be mailed to the Palm Beach County Board of County Commissioners/Finance Department, PO Box 3977, West Palm Beach, FL 33402.

6. **Termination:** The COUNTY and RENTER shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the other party. Following the termination of this Agreement, the COUNTY will assess the condition of the Facility, its equipment, improvements, appurtenances, and associated premises. For purposes of this Agreement, "associated premises" are those areas which the use of is included in the Facility rental and therefore not subject to a separate rental charge. In the event damages are discovered and/or further clean-up is necessary, reasonable wear and tear, condemnation and casualty excepted, RENTER will immediately remit payment to the COUNTY in the amount of the documented reasonable out of pocket expenses incurred by the COUNTY as a result of such damages.

7. **Performance:**

a. RENTER agrees to:

1. **use** the Facility solely for the purpose for which this Agreement is entered into;
2. **remain** on-site for the duration of the rental or assign an authorized representative who will be on-site to act on RENTER's behalf;

3. **accept** the Facility and all equipment and improvements related to the rental in the condition existing as of the date of this Agreement;
4. **waive** any and all claims RENTER may have against the COUNTY for compensation for any and all losses or damages sustained due to failure or malfunction of the Facility's water or electrical power supplies or associated amenities, unless caused by the gross negligence or willful misconduct of the COUNTY or any employees or other agents thereof;
5. **adhere** to the directives of the COUNTY's representatives including, but not limited to, proper use and handling of COUNTY owned equipment and assignment of designated parking areas and locations for offloading equipment;
6. **repair** all damages to Facility caused by, resulting from, or in any way arising out of RENTER's operations or use of Facility, whether such damage is caused by RENTER, its agents, or its invitees. The COUNTY reserves the right to, periodically throughout the term of the Agreement, inspect or cause to be inspected the Facility, identify any maintenance or repair items and report, in writing, the nature of these items and recommend corrective action. RENTER shall promptly repair, replace, or repaint any damaged or defaced surfaces within seventy-two (72) hours of discovery or notification by the COUNTY. RENTER is to provide a proposed schedule of cleaning, maintenance, and repair of Facility;
7. **monitor** and comply with all CDC and OSHA regulations and guidance, and other federal, state and local regulations and guidance for responding to COVID-19 during said use;
8. **identify** and report child abuse and neglect, as required by law;
9. **comply** with the Americans with Disabilities Act (ADA) and Health Information Privacy and Portability Act (HIPPA);
10. **ensure** when applicable, adequate and qualified instruction and supervision of participants occurs during all of RENTER's activities;
11. **immediately** notify COUNTY of any possible health, safety, repair, and/or security hazards that may exist within any area, including use by unauthorized parties, so corrective actions can be determined and implemented. Notification of County shall be made via telephone call to the COUNTY at the phone number set forth in Section 21 of this Agreement no later than 24 hours after such incident. Neither COUNTY nor COUNTY's agents or servants shall be liable for any damages caused by, or growing out of any defect in the Facility, unless caused by the gross negligence or willful misconduct of the COUNTY or any employees or other agents thereof. COUNTY shall have no obligation to commence repairs until fifteen (15) days after the receipt by COUNTY of written notice of the need for repairs. RENTER waives the provision of any law, or any right RENTER may have under common law, permitting RENTER to make repairs at COUNTY's expense.
12. **conduct** its operations and activities at the Facility in a safe manner and comply with all safety and health regulations and standards imposed by Governmental Regulations. RENTER agrees that neither they, nor employees or any person working for or on behalf of RENTER shall require any personnel engaged in the performance of RENTER's operations to work in surroundings or under working conditions which are unsanitary, unsafe, hazardous or dangerous to his or her health or safety as determined by Governmental Regulations;
13. **complete** a Level I background screening and sexual predator check to the extent permitted by law, at it's own expense, for all staff and volunteers working at the Facility. The COUNTY

reserves the right to deny access rights to any of RENTER's employees or volunteers in accordance with adopted laws, policies, and procedures. RENTER shall have no recourse or claim against COUNTY for denied access rights;

14. **prohibit** any activity on the Facility premises that may be considered contrary to community standards of appropriateness;
15. **assure** that all persons under RENTER's control conduct themselves in a socially acceptable manner; Ensure that any fees charged during RENTER's use of the Facility have been preapproved by the COUNTY's representative;
16. **assume** all responsibility for revenue collection associated with any of the RENTER's programs at the Facility, all of which is subject to the review and approval of the COUNTY including attendance tracking, accounting, and financial reporting;
17. **coordinate** and cooperate with the COUNTY regarding programs, special events and activities conducted in John Prince Park (the "Park") and shall, upon request from the COUNTY, suspend operations at the Facility when such events warrant the suspension of the operation of the RENTER as reasonably determined to be necessary by the COUNTY. COUNTY shall provide RENTER with ten (10) days prior written notice of such events. RENTER shall not conduct special events or promotions within the Park without prior written approval by the COUNTY;
18. **provide** funding for all operational expenses of RENTER associated with approved programs provided at the Facility by RENTER, including, but not limited to, personnel expenses, independent contractors, program supplies, transportation, computers, telephone, copy machine, and office supplies. At no time shall COUNTY be liable for these expenses;
19. **provide** cleaning and disinfectant supplies and equipment and conduct enhanced cleaning and disinfecting of programming areas during program hours;
20. **limit** attendance to the capacity specified by the COUNTY, the final decision regarding all issues related to attendance and capacity will be made by the COUNTY's designated representative for Rental;
21. **acknowledges** that any security measures deemed necessary or desirable for protection of the Facility shall be the sole responsibility of the RENTER at no cost to the County. County may implement key, card, or code control measures reasonably acceptable to RENTER to safeguard the keys, cards, or code provided pursuant to this requirement.

Notwithstanding the above, RENTER shall notify County of any incident resulting in loss or damage to the Facility or breach of security whether or not such incident is reported to the Palm Beach County Sheriff's Office. Notification of County shall be made via telephone call to the COUNTY at the phone number set forth in Section 21 of this Agreement no later than 24 hours after such incident.

22. **Obtain** County's written approval and consent through the COUNTY prior to placing signage on any exterior door, wall, window, fence, railing, or tree of the Facility. Any such signs not approved shall be immediately removed at the sole cost and expense of RENTER, upon written notification thereof by County. RENTER further agrees that such signs, as may be approved, shall be maintained in good condition and repair at all times and shall conform to the criteria established from time to time by County for the Facility.
23. **deliver** to the COUNTY, no later than forty-eight (48) hours prior to the effective date of the Facility Rental, a copy of those certain specialty certifications, licenses and / or memberships

referenced above in addition to any fees charged to participants of RENTER's programs or events at the Facility, all of which will be retained by the COUNTY;

24. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and a demand for payment of all administrative costs incurred by COUNTY in association with this Agreement;
25. **protect** the County's Facility through exercise of a high standard of maintenance. Proper maintenance shall include, but not be limited to, providing adequate custodial services, , garbage and trash disposal, keeping the Facility and associated rental areas clear of debris and stains.
26. **remove** all equipment and materials owned by RENTER and subcontractors no later than the termination date and time specified in Article 1 above;
27. **return** the Facility and all equipment and improvements related to the rental to the condition existing as of the effective date and time specified in Article 1 above, reasonable wear and tear excepted;
28. **follow** tropical storm or hurricane preparation and recovery protocols as directed by the COUNTY including but not limited to clearing outdoor Facility areas of all movable furniture and closure procedures for facility. RENTER agrees to not re-enter the Facility after a tropical storm or hurricane event without the facility first being cleared for safety by the COUNTY;
29. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to RENTER's failure to remove same from the Facility premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and
30. **comply** with all Facility rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and COUNTY standard operating procedures as all such laws, regulations, ordinances, and procedures apply to RENTER's use of the Facility.

b. COUNTY agrees to:

1. **deliver** the Facility and associated premises in a safe, clean, and orderly condition and in compliance with all applicable laws, rules and regulations;
2. **assign** staff liaison to provide logistical support and oversee all aspects of this Agreement including authority to make final decisions and issue directives on behalf of COUNTY;
3. **maintain** Facility buildings and associated infrastructure as more specifically identified in "Exhibit A";
4. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Facility, without interference by RENTER or any person working for or on behalf of RENTER, the disposition of which may include retaining such items at a lost-and-found location.

8. **Postponement or Cancellation:** In the event emergency conditions arise which may affect public safety, RENTER's use of the Facility may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel RENTER's use of the Facility and will

endeavor to provide RENTER at least four (4) hours notice of such postponement or cancellation. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during Facility usage.

9. **Cancellation for Cause:** The occurrence of any one or more of the following acts constitutes a material default and breach of this Agreement by RENTER and will result in cancellation of RENTER's use of the Facility:

- RENTER misrepresents its intended use of the Facility including acting as a broker or agent by attempting to re-let the Facility;
- RENTER's use of the Facility expands beyond the scope and purpose for which this Agreement is entered into;
- RENTER provided materially false information relating to this Agreement;
- Any person under the control of RENTER, including subcontractors, is responsible for purposely damaging the Facility, associated infrastructure, or any COUNTY owned equipment; or
- Any person under the control of RENTER, including subcontractors, is guilty of gross misconduct or unlawful behavior while on the Facility premises.

Termination of this Agreement due to any such material default or breach requires RENTER to pay any and all COUNTY expenses associated with such material default or breach together with all fees and charges due and owed up to the date of termination the same as if RENTER's use of the Facility had not been cancelled. COUNTY will not be held liable for any lost profits or damages resulting from any such cancellation. RENTER's expenses, fees and charges owed to COUNTY is due and payable upon RENTER's receipt of COUNTY's invoice.

10. **Photography / Recording:** Except for items covered by copyright laws, licensing fees or other legal regulations, COUNTY may photograph and/or record audio and video during RENTER's use of the Facility. Such photos and recordings may be used by COUNTY for promotional and informational purposes only. RENTER agrees to provide assistance as needed to accommodate such photography and recording. RENTER is responsible for being aware of and advising COUNTY of any copyright infringements or other legal limitations that may apply to photographing and/or recording during RENTER'S use of the Facility.

11. **Relationship of the Parties:** RENTER is an independent contractor and operator responsible for its acts and omissions, for which COUNTY cannot be held liable.

This Agreement does not constitute an endorsement or sponsorship by COUNTY of RENTER or of RENTER's use of the Facility. Though COUNTY may issue press releases and publish announcements regarding RENTER's use of the Facility, including postings on COUNTY websites and social media sites, such announcements are intended solely for the purpose of raising public awareness of the Facility and are not to be misrepresented as a form of endorsement or sponsorship by COUNTY.

RENTER may not use the name or logo of the COUNTY, the Department or Facility in a manner that suggests a relationship other than owner and renter. Any use of the COUNTY, Department or Facility logos is subject to approval by the COUNTY.

12. **Taxes:** RENTER assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to RENTER's use of the Facility and its business operations thereon. Additionally, RENTER is not eligible to benefit from the COUNTY's tax exempt status but may rely on its own tax exempt status.
13. **Subcontracting:** Those employed by any entity performing any work or service on behalf of RENTER at the Facility is considered to be a subcontractor for whom RENTER is responsible. Any agreement between RENTER and a subcontracting entity will be provided to the COUNTY upon request.
14. **No Assignment or Brokerage:** RENTER may not assign any rights, responsibilities, or obligations under this Agreement nor act as an agent or broker for the renting of the Facility. Any attempt to re-let the Facility is a material breach of this Agreement and cause for immediate termination.
15. **County Representative:** The COUNTY's authorized representative for this Agreement is:
Name: Rebecca Schnirman Phone Number: 561 966-6650
16. **Insurance Requirements:** It is the responsibility of RENTER to provide proof of the required insurance coverages specified on Insurance Requirements, attached hereto as **Exhibit "D"**.

Such proof of insurance must be provided to the COUNTY's authorized representative prior to the execution of this Agreement or no later than ten (10) days prior to the effective date hereof, at the COUNTY's discretion.
17. **Indemnification:** RENTER agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of a breach of this Agreement or RENTER's use and occupancy of the Facility. Such causes of action include, without limitation, those arising by reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Facility existing at the effective date of this Agreement, (iv) RENTER's acts, omissions or operations hereunder, (v) the performance or non-performance of RENTER, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.
18. **Damage or Destruction of Facility:** RENTER hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Facility by or with the actual or constructive consent of any person acting for or on behalf of RENTER. If the Facility, or any part thereof, during the Term of this Agreement, is damaged by the act, default, or negligence of RENTER, or of RENTER's members, agents, employees, officers, representatives, guests, invitees, or contractors, RENTER is to promptly restore the Facility, at its sole cost and expense, to the condition existing prior to such damage as determined by COUNTY. If RENTER fails to restore the Facility in the timely manner prescribed by COUNTY, such restoration will be completed by COUNTY and RENTER assumes responsibility for payment of all such costs, plus ten percent (10%) administrative overhead. Such restoration cost, plus the administrative cost, constitutes additional rent which is due and payable upon receipt of invoice.

Additionally, RENTER is prohibited from defacing the Facility in any way including using nails, hooks, tacks, screws or any other faceting device. RENTER is also prohibited from painting any areas of the Facility or painting any items including personal property anywhere on the Facility premises. No signs, advertisements, show-bills, lithographs, posters, placards or any other such items are to be posted or otherwise displayed anywhere on the Facility premises without the express consent of the COUNTY's authorized representative. Any such unapproved items will be immediately removed at the sole cost and expense of RENTER.

19. **Termination Upon Destruction or other Casualty:** In the event the Facility or any part thereof is destroyed or damaged in whole or part by fire, water, or any other cause, or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement impossible, as determined by COUNTY in its sole discretion, this Agreement will terminate effective upon notice to RENTER and RENTER agrees to not hold COUNTY liable for any claim for damages or compensation should this Agreement be so terminated.
20. **COUNTY Not Liable:** COUNTY will not be responsible or liable to RENTER for any claims for compensation or any losses, damages or injury sustained by RENTER resulting from failure of any water supply, electrical current, sewerage or drainage facility, or caused by natural physical conditions of the Facility premises, whether on the surface or underground, including displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or any cause beyond the control of COUNTY. All personal property placed on or moved onto the Facility premises will be done so at the sole risk of RENTER or owner thereof and RENTER expressly acknowledges and agrees that COUNTY will not be liable for any damage to or loss of such personal property.
21. **Notices:** All notices required by this Agreement are to be hand delivered or sent by certified mail, return receipt requested to:

COUNTY:

Palm Beach County Parks and Recreation Department
Attn: Stacy Staebell (Fountains Country Club Recreation Center)
2700 6th Avenue South
Lake Worth, Florida 33461

Palm Beach County Parks and Recreation Department
Attn: Kevin Downes (Gleneagles Country Club Aquatic Center)
2700 6th Avenue South
Lake Worth, Florida 33461

RENTER:

YMCA
Attn Tim Coffield (YMCA of the Palm Beaches)
2085 S Congress Avenue
West Palm Beach, FL 33406

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or RENTER.
24. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears:** RENTER is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. RENTER further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind RENTER to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, RENTER certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits:** In the event that any part of the payment due and owed to COUNTY is calculated as a portion or percentage program revenue, RENTER will maintain the necessary records sufficient to adequately substantiate all such calculations for five (5) years following completion or termination of this Agreement and agrees to produce such records for audit immediately upon receipt of COUNTY's notice.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of RENTER, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

30. **Waiver**: The failure of a party to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that such party may have for any subsequent breach, default, or non-performance, and such party's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
31. **Nondiscrimination**: The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the RENTER warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of the Contract.
32. **Regulation; Licensing Requirements**: RENTER agrees to comply with all laws, ordinances and regulations applicable to its use and rental of the Facility premises. RENTER is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
33. **Criminal History Records Check**: The RENTER, RENTER's employees, subcontractors of the RENTER and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The RENTER is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the RENTER acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the RENTER(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The RENTER shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the RENTER or its subcontractor(s) terminates an employee who has been issued a badge, the RENTER must notify the COUNTY within 24 hours. At the time of termination, the RENTER shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the RENTER if the RENTER 1) does not comply with the requirements of County Code Section 2-371 – 2-377, as amended; 2) does not contact the COUNTY regarding a terminated RENTER employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

34. **Counterparts:** This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. RENTER shall execute by manual means only, unless the COUNTY provides otherwise.
35. **Entirety of Agreement:** COUNTY and RENTER agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
36. **E-verify – Employment Eligibility:** RENTER warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov) and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of RENTER’s subcontractors performing the duties and obligations of this Agreement are registered with the E-Verify System, and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

RENTER shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. RENTER shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that RENTER has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that RENTER’s subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify RENTER to terminate its contract with the subcontractor and RENTER shall immediately terminate its contract with the subcontractor. If COUNTY terminates this Agreement pursuant to the above, RENTER shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, RENTER shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ATTEST:
Clerk of the Circuit Court & Comptroller

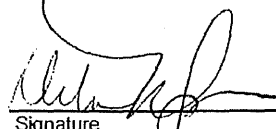
PALM BEACH COUNTY:
Board of County Commissioners

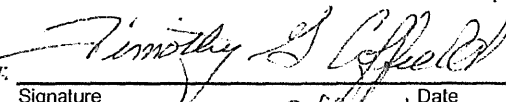
Deputy Clerk

By: _____
Mayor

WITNESS

RENTER - THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF THE PALM BEACHES, INC.


Signature _____ Date 3/2/22
Delia Miraglia-Stern
Print

By: 
Signature _____ Date 3-1-2022
Timothy G. Caffield
Print
CEO
Title

APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:

APPROVED AS TO
TERMS & CONDITIONS:

County Attorney

Department Director


Signature _____ Date

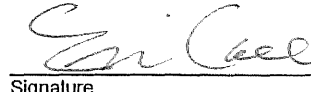

Signature _____ Date 3-8-22

EXHIBIT "A"

RECREATION FACILITY RENTAL AGREEMENT

Rental Selection Form

- GLENEAGLES COUNTRY CLUB AQUATIC CENTER:** Located in John Prince Park
2728 Lake Worth Road
Lake Worth, FL 33461

Facility includes a six (6) lane swimming pool, offices, restrooms, a fenced pool deck area, and associated equipment.

- FOUNTAINS COUNTRY CLUB RECREATION CENTER:** Located in John Prince Park
2728 Lake Worth Road
Lake Worth, FL 33461

Facility includes a multipurpose room, tables, chairs, kitchen, and restrooms

EXHIBIT "B"

(1 of 2)

RECREATION FACILITY RENTAL AGREEMENT

Rental Scope & Detail

FACILITY NAME: Gleneagles Country Club Aquatic Center

RENTER SHALL:

1. Assume all operations of the Gleneagles Country Club Aquatic Center including but not limited to providing all staffing, lifeguard services, and program scheduling for aquatic, recreational and instruction based programs and associated costs.
2. Provide services to both members and non-members of its organization and shall not require program participants to become members of its organization in order to receive such services.
3. Charge its participants no more than 20% above the County's approved fee structure for a similar program.
4. Coordinate a schedule for the Gleneagles Country Club Aquatic Center with the COUNTY to accommodate previously established COUNTY programs.
5. Operate the facility at a minimum on 5 days a week with hours of operation at minimum from 9:00am to 6:00pm. All hours of operation must be approved by the COUNTY representative in advance
6. Open, close, and secure Facility per County provided procedures.
7. Ensure offices, restrooms, showers, staff areas, and common areas are cleaned regularly and kept in a sanitary condition. Renter will be responsible for janitorial supplies and services including trash removal.
8. Provide cleaning and disinfectant supplies and equipment and conduct enhanced cleaning and disinfecting of programming areas, restrooms, offices and pool deck and equipment.
9. Maintain the physical appearance of pool and deck. Ensuring the pool is free from debris, pool walls and bottom are brushed regularly, waterline tiles kept free of buildup, and the deck regularly pressure washed.
10. Ensure a monthly record of three daily chemical checks are logged and are available on demand.
11. Ensure adequate and qualified instruction and supervision of participants during all activities, including lifeguard duties at all times during supervision of pool.
12. Ensure that all lifeguard staff hold valid Lifeguarding, CPR, First Aid, and AED certifications from a nationally recognized agency such as American Red Cross, YMCA, Starguard, Ellis & Associates, or similar. Staff are required to receive in-service trainings at the intervals recommended by the certifying agency. A receipt of trainings must be documented and be made available if requested by a COUNTY representative.

COUNTY SHALL:

1. Maintain and service all building and property related issues including but not limited to plumbing, electrical, and structural needs.
2. Maintain and service all infrastructure and equipment located in the pool pump area to be in compliance with Florida Department of Health regulations, specifically as it relates to Chapter 64E-9 Administrative Codes.
3. Provide all necessary pool chemicals to maintain water chemistry is within the appropriate ANSI/NPSI standard ranges as it relates to Florida Department of Health Regulations.
4. Provide COUNTY owned assets that will be available to the RENTER that are necessary to operate the facility. At least one day prior to contractual start date, an Inventory Checklist of all COUNTY owned assets must be completed and mutually agreed upon by both the RENTER and the COUNTY.

EXHIBIT "B"

(2 of 2)

RECREATION FACILITY RENTAL AGREEMENT

Rental Scope & Detail

FACILITY NAME: Fountains Country Club Recreation Center

RENTER SHALL:

1. Utilize the Facility up to 25 hours per week according to the permitted schedule provided by the COUNTY. Facility usage requests, to include weekly classes, must be submitted to Facility Manager at least two weeks prior to the date requested. The request shall include the number of estimated participants and the amount of parking needed during scheduled Facility use. County shall have priority use of the facility.
2. Provide services to both members and non-members of its organization and shall not require program participants to become members of its organization in order to receive such services.
3. Charge its participants no more than 20% above the County's approved fee structure for a similar program.
4. Ensure customers are parking in designated parking spaces and are directed to an approved location if overflow parking is required.
5. Open, close, and secure Facility per County provided procedures.
6. Maintain the physical appearance of the facility. Ensure all common areas, restrooms and any equipment used are cleaned and sanitized after use and returned to the same condition they were received including removal of trash. Renter will be responsible for providing janitorial supplies and services.
7. Ensure all equipment and supplies belonging to the Renter are removed from the facility daily. Storage space at the facility is not available.
8. Ensure adequate and qualified instruction and supervision of participants during all activities.
9. Ensure that all program instructors hold valid CPR, First Aid, and AED certifications from a nationally recognized agency such as American Red Cross, YMCA, or similar. Instructors are required to receive in-service trainings at the intervals recommended by the certifying agency. A receipt of trainings must be documented and be made available if requested by a COUNTY representative.

EXHIBIT "C"

(1 of 2)

AMPHITHEATER RENTAL AGREEMENT

Insurance Requirements

RENTER will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by RENTER, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by RENTER under the Agreement. RENTER agrees to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

County Representative to Initial as applicable:

- No Insurance Required:** Based on scope of services, RENTER shall not be required to provide insurance.
- Commercial General Liability:** RENTER shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
- Participant Liability:** RENTER shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.
- Auto Liability:** RENTER shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event RENTER owns no automobiles, the Business Auto Liability requirement shall be amended allowing RENTER to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.
- Professional Liability:** RENTER shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of RENTER's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, RENTER shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, RENTER shall purchase a SERP with a minimum reporting period not less than three (3) years.

EXHIBIT "C"

(2 of 2)

- Additional Insured Clause:** Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."
- Waiver of Subrogation:** RENTER hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then RENTER shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should RENTER enter into such an agreement on a pre-loss basis.
- Certificates of Insurance:** Prior to execution of the Agreement, the RENTER shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the RENTER shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:
Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: Rebecca Schnirman
2700 Sixth Avenue South
Lake Worth, Florida 33461
- Umbrella or Excess Liability:** If necessary, RENTER may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- Right to Revise or Reject:** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.