

**RESOLUTION NO. 2019-13**

**A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF  
A POOL USE AGREEMENT TO BE ENTERED INTO BETWEEN  
THE VILLAGE OF MAYWOOD AND THE WEST COOK YMCA  
RELATIVE TO THE FRED HAMPTON FAMILY AQUATIC FACILITY  
(2019 SUMMER SEASON)**

**WHEREAS**, the President and Board of Trustees of the Village of Maywood (the "Village") desire to enter into a Pool Use Agreement with the West Cook YMCA ("YMCA") relative to the FRED HAMPTON FAMILY AQUATIC FACILITY (the "Pool") for the 2019 Summer Season (expected dates of operation: June 10, 2019 through August 18, 2019), subject to the terms and conditions of use, operation and maintenance as set forth in the Pool Use Agreement. A copy of the Pool Use Agreement is attached hereto as **Exhibit "1"** and made a part hereof; and

**WHEREAS**, the YMCA desires to enter into the Pool Use Agreement with the Village relative to the Pool, and agrees to operate the Pool during the 2019 Summer Season, subject to the terms and conditions of use, operation and maintenance as set forth in the attached Pool Use Agreement; and

**WHEREAS**, the President and Board of Trustees of the Village of Maywood, a home rule Illinois municipal corporation, have the authority to enter into the attached Pool Use Agreement pursuant to their home rule powers as provided by Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), and find that entering into the attached Pool Use Agreement is in the best interests of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, ILLINOIS, PURSUANT TO ITS HOME RULE POWERS AS PROVIDED BY ARTICLE VII, SECTIONS 6 AND 10(a) OF THE ILLINOIS CONSTITUTION OF 1970, AND THE INTERGOVERNMENTAL COOPERATION ACT (5 ILCS 220/1 *et seq.*) AS FOLLOWS:**

**SECTION 1:** Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

**SECTION 2:** The President and Board of Trustees of the Village of Maywood approve entering into the Pool Use Agreement with the West Cook YMCA, a copy of the Agreement being attached hereto as **Exhibit "1"** and made a part hereof, and authorize and direct the Village President and the Village Clerk, or their designees, to execute and deliver the Agreement, which may contain certain non-substantive and non-financial modifications that are approved by the Village Attorney, and all other instruments and documents that are

necessary to fulfill the Village's obligations under the Pool Use Agreement. The President and Board of Trustees of the Village of Maywood further authorize the payment of costs that are necessary to fulfill the Village's obligations under the Pool Use Agreement.

**ADOPTED** this 9<sup>th</sup> day of April, 2019, pursuant to a roll call vote as follows:

**AYES:** Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington and M. Lightford

**NAYS:** None

**ABSENT:** Trustee R. Rivers

**APPROVED** this 10<sup>th</sup> day of April, 2019, by the Village President of the Village of Maywood, and attested by the Village Clerk, on the same day.

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Edwenna Perkins, Village President

**ATTEST:**

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Viola Mims, Village Clerk

**EXHIBIT "1"**

**POOL USE AGREEMENT BETWEEN  
THE VILLAGE OF MAYWOOD AND THE WEST COOK YMCA  
(2019 SUMMER SEASON)**

(attached)

**POOL USE AGREEMENT BETWEEN  
THE VILLAGE OF MAYWOOD AND THE WEST COOK YMCA  
(2019 SUMMER SEASON)**

This **POOL USE AGREEMENT** ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the VILLAGE OF MAYWOOD, an Illinois Municipal Corporation ("Village"), and the WEST COOK YOUNG MEN'S CHRISTIAN ASSOCIATION INCORPORATED, an Illinois not-for-profit corporation ("YMCA").

**RECITALS**

**WHEREAS**, the Village currently owns and maintains a public pool, land adjacent to the pool inside a fenced area, and related facilities inside a fenced area, commonly known collectively as the Fred Hampton Family Aquatic Center ("Pool Facility"), on property commonly known as Maywood Park, and which is located north of Oak Street, south of the Union Pacific Railroad lines, west of 1st Avenue and east of 5th Avenue; and

**WHEREAS**, the Village and the YMCA desire for the Pool Facility to be maintained, operated and controlled by the YMCA during the 2019 summer season ("2019 Season"), including the provision of all management, staff and activities at the Pool Facility; and

**WHEREAS**, the Village and the YMCA find that it is necessary and desirable, and in the best interests of the Village and the YMCA and their respective residents, members or patrons, to enter into this Agreement for the Pool Facility, so that the Pool Facility may be maintained, operated and controlled by the YMCA during the 2019 Season.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **INCORPORATION OF PREAMBLES**: Each of the Whereas paragraphs contained in the Recitals section above is incorporated herein and made a part of this Agreement.

2. **EFFECTIVE DATE, TERM AND TERMINATION**: This Agreement shall be deemed dated and become effective on the date that the last party executes this Agreement (the "Effective Date"). The **term of this Agreement shall run from its Effective Date until August 18, 2019**, unless such term is extended by mutual written agreement of the parties. Either party may terminate this Agreement for any reason upon ten (10) calendar days' written notice. Upon termination, the YMCA shall immediately cease its operation of and access to the Pool Facility. At the time of termination of this Agreement, the YMCA shall return all Village-owned personal property associated with the Pool Facility, including but not limited to all keys to any Village buildings or locks, and shall remove any YMCA-owned locks that have been temporarily installed at the Pool Facility.

3. **POOL FACILITY OPERATION, CONTROL AND MAINTENANCE**: Responsibility for Pool Facility operation, control and maintenance during the term of this Agreement shall be as follows: (a

summary of the responsibilities for routine maintenance and operation of the Pool Facility is attached hereto as Exhibit "A"):

- A. The Village shall be responsible for all mechanical upkeep of the Pool Facility and pool-related equipment, including maintenance of all pumps, motors, slides, fencing and lighting in good and operating condition. All mechanical equipment will be confirmed as being operational during a facilities walk-through and before control of the Pool Facility is turned over to the YMCA.
- B. The YMCA shall be responsible for routine maintenance and operation of the Pool Facility, including, but not limited to, water testing, chemical applications, filter backwashing, and the provision of cleaning and janitorial services for all areas making up the Pool Facility. The Pool Facility shall be operated to maintain the aquatic safety requirements of Cook County (including but not limited to chemical levels and lifeguard ratios). Failure by the YMCA to maintain the Pool Facility to the satisfaction of the Village shall be regarded as a default under this Agreement.
- C. The Village agrees to allow the YMCA access to and use of all existing equipment located at the Pool Facility necessary for routine maintenance and operation of the Pool Facility.
- D. The YMCA shall control access to the Pool Facility by keeping the Pool Facility secured at all times and locked when not in use so that no unauthorized access into the Pool Facility may occur.
- E. The YMCA shall operate the Pool Facility by opening it for the **2019 Season**, which shall be defined as **Monday, June 10, 2019 through Sunday, August 18, 2019**, to the Village residents, YMCA members and the public, by maintaining regular hours, and by offering swimming lessons and other recreational programming, services, rental, and other activities and events related to the Pool Facility. **The YMCA will provide a final schedule of hours of operation, programming and activities to the Village Manager by Monday, May 20, 2019**, which schedule shall be generally consistent with the "YMCA - 2019 Season Pool Operating Hours and Fee Schedule For The Maywood / Fred Hampton Family Aquatic Center," which is attached hereto as Exhibit "B" and made a part hereof.
- F. The YMCA shall provide management and appropriate certified staff to operate the Pool Facility in a professional manner. All management and staff used for operation and routine maintenance activities at the Pool Facility shall be YMCA employees, unless the YMCA and the Village mutually agree in writing to have the Village, at its cost, employ certain people to perform certain designated functions at the Pool Facility. **Staff employed by the Village will be under the supervision of the YMCA and be trained by YMCA staff.**
- G. The pool at the Pool Facility shall not be used without a YMCA Lifeguard on duty.
- H. The Village will provide a temporary uniformed security officer at the Pool Facility during Pool Facility hours. The Maywood Police Department will vet the security staff and manage times that are worked; the Maywood Police Department will conduct hourly checks on the Pool Facility by officers assigned to Zone 2 (Pool and Park area) which will include a walk around the concession area identified as a concern; the Maywood Police Department will assign a Part-Time Officer (PTO) from 3:00 p.m. to

7:00 p.m. to cover Pool Facility closings and walk Pool Facility manager to car with daily cash bank.

- I. The YMCA shall operate the Pool Facility in accordance with the terms of this Agreement. However, if the revenue generated by users of the Pool Facility is not enough to cover the operating cost of the Pool Facility, or there is a lack of available and qualified staff to provide a safe environment, the YMCA, subject to prior notice and discussion with the Village Board members, reserves the right to alter the hours and dates of operation.
  - J. The Village and the YMCA will collaborate to promote Pool Facility operations, as outlined in the attached "YMCA - 2019 Season Pool Operating Hours and Fee Schedule For The Maywood / Fred Hampton Family Aquatic Center" (**Exhibit "B"**), such as lessons and any other applicable events and/or programs. However, the YMCA agrees to be the party with the primary responsibility for promoting the use of the Pool Facility to Village residents, Village-based schools and community organizations and groups as well as the other West Cook YMCA community members.
  - K. Upon termination of this Agreement, the YMCA shall return the Pool Facility to the Village in substantially the same or better condition than at the time of the Effective Date, normal wear and tear excepted.
  - L. The Village reserves the exclusive right to operate, or have a contractor operate on its behalf, a concession stand at the Pool Facility.
5. **UTILITIES:** During the term of this Agreement, the Village shall be solely responsible for the costs and maintenance of all utilities servicing the Pool Facility, including water and sewer service provided by the Village, electricity, air conditioning, lighting, telephone, etc.
6. **FEES:** The parties agree as follows:
- A. **Pool Start-Up and Operations Fee:** The Village agrees to pay to the YMCA an amount equal to **SIXTY-THREE THOUSAND AND NO/100 DOLLARS (\$63,000.00)** for the sole purpose of contributing to the start-up costs, common maintenance costs, operational costs, advertising and activities / programming costs, and staffing costs related to the Pool Facility ("Pool Start-Up and Operations Fee") for the 2019 Season. The YMCA is solely responsible for paying the remaining start-up costs, common maintenance costs, operational costs, advertising and activities / programming costs, and staffing costs incurred relative to the operation of the Pool Facility for the 2019 Season. In the event that the YMCA incurs start-up costs, common maintenance costs, operational costs, advertising and activities / programming costs, and staffing costs related to the Pool Facility for the 2019 Season that are less than the Pool Start-Up and Operations Fee, the YMCA shall return the unused portion of the Pool Start-Up and Operations Fee to the Village within thirty (30) calendar days of delivery of the financial statement mentioned in Section 6.B. below. **The payment of the Pool Start-Up and Operations Fee shall be made in three (3) equal payments: (1) one-third of the Pool Start-Up and Operations Fee (or \$21,000.00) shall be paid on or before Friday, April 19, 2019; (2) one-third of the Pool Start-Up and Operations Fee (or \$21,000.00) shall be paid on or before Friday, May 24, 2019; and (3) one-third of the Pool Start-Up and Operations Fee (or**

**\$21,000.00) shall be paid on or before Friday, June 28, 2019.**

- B. Audit; Return of Pool Start-Up and Operations Fee:** The YMCA shall prepare a financial statement (as required by Section 6.E. below) of the actual, documented costs incurred by the YMCA in regard to the start-up costs, common maintenance costs, operational costs, advertising and activities / programming costs, and staffing costs related to the Pool Facility for the 2019 Season, and, to the extent that such costs do not exceed the Pool Start-Up and Operations Fee paid by the Village, as a result of any early termination of this Agreement (See, Section 6.C. below), then the YMCA agrees to return to the Village the unused portion of the Pool Start-Up and Operations Fee within thirty (30) calendar days of its delivery of the financial statement to the Village Manager. The YMCA agrees to make its financial records and supporting documents, or certified, true and accurate copies of such records, relative to the operation of the Pool Facility for the 2019 Season, available for inspection by the Village Manager, the Finance Director, the Village Attorney and the Village's Auditor for purposes of verifying the financial statement prepared by the YMCA under this Agreement.
- C. Early Termination; Default - Cure:** In the event that the Pool Facility does not operate for the entire 2019 Season by mutual consent of the parties, the parties agree that the financial statement process, sharing of net profits and return of Pool Start-Up and Operations Fee (if any is owed) identified in this Section 6 will be followed. If the Agreement is terminated by one party due to a default by the other party, upon delivery of written notice of the default, the defaulting party shall have five (5) business days to cure or commence action to cure the default.
- D. Pool Revenues; Financial Statement:** Subject to Sections 6.E. and 6.F. below, the YMCA shall be entitled to any fees generated by the Pool Facility during the term of this Agreement, including fees related to Pool Facility passes, rental of the Pool Facility, and fees generated by recreational programming run by the YMCA at the Pool Facility, but excluding any revenues generated by a Village-operated concession stand. The YMCA agrees to use the fees generated by the Pool Facility to defray the costs associated with maintaining, controlling and operating the Pool Facility. The YMCA agrees to maintain current and accurate records of all fee income generated and incurred expenses related to the Pool Facility and to provide to the Village Manager a detailed line-item financial statement, including supporting documents, of the fees generated and expenses incurred relating to the Pool Facility for the 2019 Season within sixty (60) calendar days of the closing date of the Pool Facility. This financial statement shall include a profit and loss statement for the 2019 Season. The Village's Pool Start-Up and Operations Fee shall be included in the financial statement as fee income for purposes of determining net profit and net losses.
- E. Sharing of Net Profit:** The YMCA and the Village agree to share equally any net profit that is realized by the operation of the Pool Facility for the 2019 Season. The term "net profit" shall mean that amount of income generated by the operation of the Pool Facility for the 2019 Season that is in excess of the actual, documented expenses incurred by the YMCA in operating the Pool Facility during the 2019 Season. The

Village's Pool Start-Up and Operations Fee shall be included as fee income for purposes of determining net profit. The YMCA shall pay to the Village its fifty percent (50%) share of any net profit within thirty (30) calendar days of delivery of the financial statement.

- F. **Sharing of Net Operating Losses:** The Village's Pool Start-Up and Operations Fee and all other sources of Pool Facility-related revenues received by the YMCA shall be included as revenue for purposes of determining net losses. If there is no net profit generated and a net operating loss exists, then the parties agree to share equally in the net operating losses, **subject to the YMCA's capped contribution toward any net operating losses equal to FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)**. The Village shall pay all net operating losses that are in excess of the YMCA's capped contribution. The Village shall pay to the YMCA its share of any actual, documented net losses within thirty (30) calendar days of delivery of the financial statement.

7. **MUTUAL COOPERATION:** The Village and the YMCA agree to fully cooperate, consult and inform each other regarding any and all major decisions related to maintenance, operation and control of the Pool Facility, in order to achieve the mutual goals and purposes of maintaining, operating and controlling a high quality recreational Pool Facility and related programming for the residents of the Village and members of the YMCA. During the term of this Agreement, as requested by either party, the Village and the YMCA agree to consult one another in connection with:

- A. Achievement of goals for programming provided at the Pool Facility by the YMCA, including swimming lessons and other recreational programming, services, and events related to the Pool Facility.
- B. Personnel matters, including hiring of qualified, certified, employees by the YMCA for staffing the Pool Facility.
- C. Replacement, repairs or additions to equipment needed for the maintenance, operation or control of the Pool Facility.
- D. Any other matter concerning the operation of the Pool Facility, including without limitation the YMCA's implementation of safety practices at the Pool Facility (e.g., employment of adequate trained and certified lifeguard staff) as deemed necessary by the Village or any regulatory agency for the protection of the health and safety of persons using the Pool Facility.

8. **RENTAL OF POOL FACILITY:** The YMCA may rent out use of the Pool Facility for events during the term of this Agreement, subject to the prior approval of the Village Manager. The Village shall not be named as a party in any rental agreement, any rental agreement entered into shall specify that the YMCA and/or lessee are solely responsible for any liability associated with or arising out of the rental, and renter shall sign a waiver, hold harmless and indemnification agreement that protects the Village and YMCA. The Village Manager may, in his or her sole discretion, deny any proposed rental.

9. **AS-IS, WHERE-IS:** The YMCA shall insure that the Pool Facility is still in compliance with the federal Virginia Graeme Baker Spa and the Pool Safety Act prior to opening, subject to the Village's responsibility to pay for the costs of any compliance measures and the mechanical upkeep of the Pool



Facility. The YMCA agrees that it is accepting control of the Pool Facility under this Agreement in “AS-IS, WHERE-IS” condition (including all existing environmental conditions of the soil and the groundwater), agrees that the Village is not making any warranties or guarantees of any kind regarding the suitability or fitness for a particular purpose of the Pool Facility, and agrees to waive any claims, suits, actions and causes of action of any kind that it has or could have against the Village relative to the Pool Facility.

10. **INDEMNIFICATION BY YMCA:** As a material inducement for the Village to enter into this Agreement, and subject to the terms and limitations of the insurance coverages set forth in Section 12 below, and to the extent permitted by law, the YMCA agrees to defend, indemnify and hold harmless the Village and its officers, appointed and elected officials, President, Trustees, employees, agents, volunteers, representatives, attorneys and engineers (the “Village Affiliates”) from and against any and all claims, actions, suits, property damages, economic and non-economic damages, losses, causes of action, costs, expenses and liabilities, including the reasonable fees and expenses of their attorneys, expert witnesses and consultants, court costs and fines, asserted against them or sought to be imposed upon them, individually, jointly or severally, as follows:

- A. Any such claims, actions, suits, property damages, economic and non-economic damages, losses, causes of action, costs, expenses and liabilities of any kind which arise directly out of the negligence or tortious, willful or unlawful acts or omissions in association with the conduct of the YMCA, its officers, agents, employees, contractors or subcontractors (“YMCA Affiliates”), and in connection with any personal injury, bodily injury, illness or death, or loss or damage to the property of any person, associated with or related to the use of the Pool Facility, YMCA’s maintenance, operation and control of the Pool Facility and/or other YMCA responsibilities under this Agreement and brought against the Village or any of the Village Affiliates. Said obligation to indemnify and hold harmless shall not extend to the extent that those claims, actions, suits, damages, losses, causes of action, costs, expenses and liabilities arise from the sole negligence or willful or unlawful acts or omissions of the Village and/or the Village Affiliates.
- B. Loss or damage resulting from the YMCA’s failure to comply with any provision of this Agreement, or of any federal, State or local law or regulation applicable to the YMCA.

In the event of any personal injury, bodily injury, death, illness, or loss or damage or claim or claims therefore related to the Pool Facility, the YMCA shall give immediate written notice thereof to the Village Manager.

11. **INDEMNIFICATION BY VILLAGE:** As a material inducement for the YMCA to enter into this Agreement, and subject to the terms and limitations of the insurance coverages set forth in Section 12 below, and to the extent permitted by law, the Village agrees to defend, indemnify and hold harmless the YMCA and the YMCA Affiliates from and against any and all claims, actions, suits, property damages, economic and non-economic damages, losses, causes of action, costs, expenses and liabilities, including the reasonable fees and expenses of their attorneys, expert witnesses and consultants, court costs and fines, asserted against them or sought to be imposed upon them, individually, jointly or severally, as follows:

- A. Any such claims, actions, suits, property damages, economic and non-economic

damages, losses, causes of action, costs, expenses and liabilities of any kind which arise directly out of the negligent or tortuous, willful or unlawful acts or omissions of the Village or Village Affiliates and in connection with any personal injury, bodily injury, illness or death, or loss or damage of any kind to the property of any person, associated with or related to the Village's mechanical upkeep and maintenance of the Pool Facility and/or other Village responsibilities under this Agreement and brought against the YMCA or any of the YMCA Affiliates. Said obligation to indemnify and hold harmless shall not extend to the extent that those claims, actions, suits, damages, losses, causes of action, costs, expenses and liabilities arise from the sole negligence of the YMCA and/or the YMCA Affiliates.

- B. Loss or damage resulting from the Village's failure to comply with any provision of this Agreement, or of any federal or State law or regulation applicable to the Village.

12. **INSURANCE.** The YMCA and Village shall each maintain the following minimum levels of insurance coverage during the term of this Agreement:

- A. General Comprehensive Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, death and property damage. The general aggregate shall be twice the required occurrence limit. The minimum general aggregate shall be no less than \$2,000,000.
- B. Workers' Compensation: Workers' Compensation limits as required by State statute.
- C. Employer's Liability: \$500,000 per incident.
- D. Excess Liability: \$5,000,000 per occurrence and in the aggregate. (The Village shall reimburse the YMCA for any additional premium incurred in increasing its current excess liability coverage to \$5,000,000.)

The insurance coverage of the YMCA shall specifically name the Village of Maywood and its officers, appointed and elected officials, President, Trustees, employees, agents, volunteers, representatives, assigns, successors, transferees, licensees, invitees, attorneys and engineers as additional insureds on a primary and non-contributing basis. The YMCA shall keep a current certificate of insurance on file with the Village at all times during the term of this Agreement. The Village shall be provided with thirty (30) calendar days written notice should any of the described policies be cancelled or materially changed before the expiration date thereof.

The YMCA's policy or policies of insurance shall specifically recognize and cover the YMCA's indemnification obligations under this Agreement, and shall contain cross-liability endorsements. Said insurance shall provide that the insurance provided by the YMCA shall be primary and that any provision of any contract of insurance or other risk protection benefit or self-insurance policy purchased or in effect or enacted by the Village and any other insurance or benefit of the Village shall be in excess of the YMCA's insurance.

13. **BUILDINGS, STRUCTURES, FIXTURES, STATUES, PLAQUES AND OTHER ARTWORK, LANDMARKS OR ARCHITECTURAL FEATURES:** The YMCA is obligated to maintain and leave in place all buildings, structures, improvements (e.g., fences, lights, etc.), fixtures, statues, busts, plaques, artwork,

landmarks or other architectural features (the “Improvements”) existing on the Pool Facility for the term of this Agreement. The YMCA may not remove, modify or otherwise alter any of the Improvements existing on or at the Pool Facility without the express written consent of the Village, which consent may be withheld for any reason. The Improvements existing on or at the Pool Facility specifically include, but are not limited to, the plaque displaying the name of the Pool Facility and the statue honoring the late Fred Hampton.

14. **PRIORITY OF MAYWOOD RESIDENTS:** Residents of the Village will be given first priority in any recreational program openings related to the Pool Facility.

15. **STANDARD OF CONDUCT:** The YMCA shall not tolerate any unsafe, illegal or inappropriate behavior or conduct by Pool Facility patrons, renters, guests or other invitees, or its own employees and agents, and shall cause any persons engaging in such behaviors to be immediately removed from the Pool Facility. Such conduct may result in the termination of this Agreement by the Village if such activities are promoted by, participated in by, condoned or allowed to happen by YMCA personnel. Such conduct may result in the immediate termination of this Agreement without notice where such conduct is ongoing and is promoted by, participated in by, condoned or allowed to happen by YMCA personnel and is likely to result in immediate harm to the Pool Facility and/or patrons, renters, guests or other invitees, or the YMCA’s own employees and agents, such that providing notice is not practical.

16. **NOTICE:** All notices required to be provided under this Agreement shall be in writing and served either: (a) personally during regular business hours; or (b) by registered or certified mail, return receipt requested, properly addressed with postage prepaid and deposited in the United States mail. Notices served personally shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. All notices shall be addressed as follows:

<b><u>To the Village:</u></b> Village Manager Village of Maywood 40 Madison Street Maywood, Illinois 60153 Telephone: (708) 450-6301	<b><u>To the YMCA:</u></b> Chief Operations Officer – Kevin Klein West Cook YMCA 255 South Marion Street Oak Park, Illinois 60302 Telephone: (708) 434-0203
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17. **MECHANIC’S LIEN:** The YMCA will not suffer or permit any mechanic’s lien or other such lien to attach to the Pool Facility. The YMCA shall save and keep harmless the Village and its property from any such lien or claim therefor and from any and all cost or expense incurred in connection with any such lien or claim, including attorney fees and expenses incurred with removing, settling or contesting such lien or claim.

18. **PERMITS:** The YMCA and the Village shall work together to obtain all necessary State, County and Village permits, licenses, consents and other approvals for the operation of the Pool Facility.

19. **ASSIGNMENT:** The YMCA shall not assign, sublet, transfer or convey this Agreement

and its obligations hereunder to any person or entity.

20. **GOVERNMENTAL REGULATIONS:** The YMCA shall comply with all applicable requirements of federal, State, county and local regulatory authorities, including the applicable provisions of the Village Code, with respect to the maintenance, operation and control of the Pool Facility. The YMCA shall immediately notify the Village of any change in conditions or change in federal, State or local law, or of any other event, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Agreement.

21. **EXECUTION:** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same Agreement.

22. **ENTIRETY OF AGREEMENT:** This Agreement, together with any Exhibits attached hereto (all of which are attached hereto or incorporated herein by this reference), contains the entire understanding between the parties concerning maintenance, operation and control of the Pool Facility for the term of this Agreement and supersedes any prior understanding or written or oral agreements between them with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

23. **AMENDMENT:** No oral modification, amendment or change shall be allowed to this Agreement. Any modification, amendment or change hereto shall be in writing upon mutual agreement of the parties. A party recommending a revision or modification to this Agreement shall provide the other party with at least ten (10) days' notice of the proposed change.

24. **NO DUTY TO THIRD PARTIES:** This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or implied, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the YMCA and/or Village, and/or any of their respective officials, officers and/or employees.

25. **AUTHORITY:** Execution of this Agreement by the Village is authorized by a resolution passed by the President and Board of Trustees of the Village on April 9, 2019. Execution of this Agreement by the YMCA is authorized by a motion passed by the Board of Directors of the YMCA on March 4, 2016. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

26. **DISCLAIMER OF RELATIONSHIP:** Nothing contained in this Agreement, nor any act of the Village or the YMCA, shall be deemed or construed by either of the parties hereto, or by third persons, to create any relationship of a third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the Village and the YMCA.

27. **ENFORCEABILITY:** If any provision of this Agreement, or any paragraph, sentence,

clause, phrase or word or the application thereof, is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law, provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the parties.

28. **JURISDICTION AND VENUE:** This Agreement concerns property located within, and actions and activities to be performed within, the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in the Circuit Court of Cook County, Illinois and the parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the date the last signatory signed and dated this Agreement below, which date shall be inserted on page 1 hereof.

**VILLAGE OF MAYWOOD**

**WEST COOK YMCA**

By: \_\_\_\_\_  
Edwenna Perkins  
Village President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
President/Chief Executive Officer

Date: \_\_\_\_\_, 2019

Date: \_\_\_\_\_, 2019

Attest: \_\_\_\_\_  
Viola Mims  
Village Clerk

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Chief Operating Officer

Date: \_\_\_\_\_, 2019

Date: \_\_\_\_\_, 2019

## EXHIBIT "A"

### POOL FACILITY OPERATION, CONTROL AND MAINTENANCE

#### **West Cook YMCA – Routine Maintenance and Operation of the Fred Hampton Pool in Maywood:**

- **Daily upkeep and checks of:**
  - Pumps
  - Filters
  - Backwashing – cleaning filtration
  - Ordering chemicals (Chlorine/Acid)
  - Dispersing chemicals
  - Test kits for testing the water
- **Bathroom**
  - Daily cleaning
  - Unclogging toilets and sinks
- **Locker room**
  - Daily cleaning
- **Pool Deck**
  - Daily cleaning

#### **Village of Maywood is responsible for:**

- On site surveillance cameras
- The Village will provide a temporary uniformed security officer at the pool during pool hours. The Maywood Police Department will vet the security staff and manage times that are worked; the Maywood Police Department will conduct hourly checks on the Pool Facility by officers assigned to Zone 2 (Pool and Park area) which will include a walk around the concession area identified as a concern; the Maywood Police Department will assign a Part-Time Officer (PTO) from 3:00 p.m. to 7:00 p.m. to cover Pool Facility closings and walk Pool Facility manager to car with daily cash bank.
- Landscaping
- Scheduling trash pick-up
- Any structure issues with building such as front entrance, men's and women's locker room, cashier desk, lifeguard office
- Replacing the privacy screen located on fence and general fence repairs
- Any breakdown of mechanical equipment
- Major plumbing issues
- Major electrical issues, including the outdoor lights
- All Pool Structural issues:
  - Leaks
  - Cracks
  - Problems with drains
  - Ladders
- Structural issues with:
  - Slides
  - Ladders
  - platform
- AED unit

The Village of Maywood may contract with YMCA Building & Operation Staff for some of the items listed in the "Village of Maywood is responsible for" items and we can address them at our \$25.00 per hour rate.

**EXHIBIT "B"**

**YMCA – 2019 Season Pool Operating Hours and Fee Schedule  
For The Maywood / Fred Hampton Family Aquatic Center**

**Dates and Hours of Operation: June 10, 2019 to August 18, 2019 from 12:00 Noon to 7:00 p.m.**

	<b>Maywood Resident</b>	<b>Non-Resident</b>
<b>Daily Fees</b>		
Youth (Ages 3-17)	\$5	\$7
Adult (Ages 18-54)	\$8	\$10
Senior (Ages 55+)	\$6	\$8
Family (Limit 6)	\$15	\$17
<b>Annual Passes</b>		
Youth (Ages 3-17)	\$40	\$60
Adult (Ages 18+)	\$50	\$70
Family (Limit 6)	\$90	\$110

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

**CLERK'S CERTIFICATE**

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, certify that the attached document is a true and correct copy of that certain Resolution now on file in my Office, entitled:

**RESOLUTION NO. 2019-13**

**A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF  
A POOL USE AGREEMENT TO BE ENTERED INTO BETWEEN  
THE VILLAGE OF MAYWOOD AND THE WEST COOK YMCA  
RELATIVE TO THE FRED HAMPTON FAMILY AQUATIC FACILITY  
(2019 SUMMER SEASON)**

which Resolution was passed by the Board of Trustees of the Village of Maywood at a Village Board Meeting on the 9<sup>th</sup> day of April, 2019, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 9<sup>th</sup> day of April, 2019.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

**AYES:** Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington and M. Lightford

**NAYS:** None

**ABSENT:** Trustee R. Rivers

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 10<sup>th</sup> day of April, 2019.

\_\_\_\_\_  
Viola Mims, Village Clerk

[SEAL]