

**TOWNSHIP OF CRANFORD
CRANFORD, NEW JERSEY**

RESOLUTION NO. 2023-131

**AUTHORIZING THE PREPARATION AND EXECUTION OF A
FACILITIES OPERATION AGREEMENT
TO FURTHER THE COLLABORATION BETWEEN THE
TOWNSHIP OF CRANFORD AND THE WESTFIELD AREA YMCA**

WHEREAS, the Township of Cranford (the "Township") and its Parks and Recreation Department operates wellness, swimming lessons, summer day camp and other programs for the benefit of the Township's community by providing high-quality program services (hereinafter "Services") for children, teenagers, young adults, families, and its thriving senior population; and

WHEREAS, the Township has limited resources to modernization and upgrade the Centennial Avenue Pool Complex (the "Facilities"), which requires capital improvements prior to any expansion of Services; and


WHEREAS, the Westfield Area YMCA (hereafter the "YMCA") has the resources to make capital improvements to the Township's Facilities and expertise to expand such Services for the benefit of the Township's residents; and

WHEREAS, the Township and YMCA have already successfully collaborated on a Phase 1 project of making capital improvements to the Facilities for purposes of operating a full-day summer childcare program in 2022; and

WHEREAS, the Township and YMCA wish to expand that collaboration to a Phase 2 project of renovating and modernizing the Facilities' wellness center and equipment for expanded wellness programs, swimming lessons, summer day camp, and other programs at the Facilities; and

NOW THEREFORE, BE IT RESOLVED, the Cranford Township Committee authorizes the preparation and execution of an investment and operating agreement with the Westfield Area YMCA to invest approximately One Million Five Hundred Thousand and 00/100 (\$1,500,000.00) in capital improvements at Cranford's Centennial Avenue Pool Complex, to be reimbursed by the Township through a revenue sharing agreement until such time as the capital investment is fully repaid or the agreement expires.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held March 7, 2023.


Patricia Donahue, RMC
Municipal Clerk

Dated: March 7, 2023

FACILITIES OPERATING AGREEMENT

This Agreement is entered into this 1st day of March 2023, between the **Township of Cranford**, a municipal corporation of the State of New Jersey, hereinafter called the “**Township**,” having municipal offices located at the Municipal Building, 8 Springfield Avenue, in the Township of Cranford, County of Union, State of New Jersey, and the **Young Mens Christian Association of Westfield, N.J.**, hereinafter referred to as the “**YMCA**.”

WITNESSETH:

WHEREAS, the Township and its Parks and Recreation Department operates wellness, swimming lessons, summer day camp and other programs for the benefit the Township community by providing high-quality program services (hereinafter “**Services**”); and

WHEREAS, the Township desires to expand those Services to provide additional services to a greater number of Cranford and area residents but currently has limited resources to expand such Services at taxpayer expense; and

WHEREAS, the Township’s Centennial Avenue Pool Complex (the “**Facilities**”) requires capital improvements prior to any expansion of such Services;

WHEREAS, the YMCA has expertise, resources, and experience providing wellness, swimming lessons, camps and other program services and has the resources to make capital improvements to the Facilities needed to expand such services in Cranford; and

WHEREAS, the YMCA’s mission is to focus on nurturing the potential of every child and teen, improve our community’s health and well-being and give back to our neighbors, is consistent and complementary to the culture and character of the Cranford community and the programs operated by the Township’s Parks and Recreation Department; and

WHEREAS, the YMCA and the Township have successfully collaborated on a Phase 1 project of making capital improvements to the Facilities for purposes of operating a full-day summer child care program; and

WHEREAS, the YMCA and the Township wish to expand that collaboration to a Phase 2 project of renovating and enhancing the Facilities' wellness center and equipment for expanded wellness programs, swimming lessons, summer day camp, and other programs at the Facilities;

NOW, THEREFORE, in consideration for the mutual covenants contained herein,
IT IS AGREED:

1. Responsibilities of the YMCA

Capital Improvements. The YMCA shall make capital improvements necessary to the Facilities to operate a full-day summer camp and a health/wellness center, as well as such additional services and programs as mutually agreed upon, Monday through Sunday. Such capital improvements are estimated to cost up to One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00), and shall include, but not be limited to, (i) renovating the health/wellness center, (ii) renovating the child watch room, (ii) adding multipurpose space; and (iv) replacing indoor pool filter and chemical feed systems. Upon the completion of capital improvements and Facilities' upgrades, the YMCA shall provide the Township with an itemized list of all improvements and upgrades and the costs incurred by the YMCA in making those improvements and upgrades. Additional capital improvements and Facilities' upgrades shall be made, if necessary, and with the mutual consent of the Township and the YMCA. Any additionally

agreed upon Capital Investments and upgrades shall be incorporated into this Agreement as an addendum with payback per section #9.

- a. **Memberships:** While the Capital Improvements are being made and the health/wellness center cannot be safely used, YMCA shall permit existing Township annual members access and use of the YMCA's health/wellness center located at 220 Clark Street, Westfield, New Jersey. The YMCA shall also offer new memberships to Cranford residents pursuant to the terms and fees set forth in this Agreement.
- b. **Programs:** The YMCA shall design, market the following programs: exclusive use (during YMCA Services) of the current health/wellness center within the Facilities for YMCA/Cranford memberships, the child watch room, the new multipurpose space and pool lanes for lap swim & swimming lessons, the trailer, and the new back right camp fenced in area (the "Programs");
- c. **Operations:** Provide staff as necessary to provide the Services and Programs.

2. **Responsibilities of the Township.**

- a. The Township shall: Stop providing/selling inside usage memberships and collaborate with the YMCA to establish and offer new YMCA/Cranford Program Center membership tiers for use of the Facilities;
- b. Provide the space in the Facilities for the YMCA to deliver the following Programs:
 - i. Exclusive use (during YMCA Services) of the current health/wellness center for YMCA/Cranford membership, the child watch room, the new

multipurpose space and select pool lanes for lap swim & swimming lessons, the trailer, and the new back right camp fenced in area;

- ii. shared usage of other additional outside space and occasional use of other areas reasonably required by licensing or as requested by the YMCA to deliver a quality program, such as the locker rooms, bathrooms, pool and other indoor spaces;
- c. Continue the existing life safety requirements, lifeguards for the pools during mutually agreed-upon Program Center hours (current operating hours i.e. 5am-9pm M-F & 8am-6pm S-S), overall maintenance of the Facilities, including but not limited to, cleaning (the public spaces during summer outdoor pool usage or Town approved groups use), snow removal, landscaping, supplies, utilities, structural repairs, roofing, HV/AC, plumbing, electrical, major equipment and non-programmatic operating supplies;
- d. Retain full title and ownership of the Facilities and the real property upon which the Facilities is located, and financial responsibility for all life safety, security, general maintenance and structural and major building system repairs to the Facilities and grounds.

3. **Enrollment.** The Township and the YMCA shall both use their best efforts to sell YMCA/Cranford memberships, to enroll participants in health/wellness programs, to promote and provide swimming lessons, camps and other agreed upon services. The YMCA shall use its existing marketing resources to promote the Facilities and its services at the Facilities to Cranford residents and surrounding areas.

4. **Fees.** The cost for the YMCA/Cranford membership and other Services for this Phase 2 of this Agreement shall be pursuant to Exhibit A, annexed hereto, and shall include a discounted Cranford resident's rate, and higher non-Cranford resident's rate. All rates will be subject to an annual percentage increase each year based on market place and operational sustainability and as determined by mutual agreement of the Parties.

5. **Net Revenue.** Subject to Sections 9 & 10 hereinafter, during the term of this Agreement, the Net Revenue of the Services, which shall mean the Facilities' gross revenue less YMCA's direct and indirect costs and expenses incurred to operate onsite programs, including but not limited to, the costs of salaries, employment benefits, marketing, program supplies, software, identification cards, insurance, and program equipment repairs, shall be shared evenly (50%/50%) between the parties. The YMCA shall on a quarterly basis prepare and submit to the Township a financial statement itemizing the gross revenue and all direct and indirect expenses incurred to operate and conduct the Services.

6. **Compliance.** The YMCA shall comply with all federal, state, and local laws in any manner affecting the Services, and those engaged or employed in the work and of all such orders and decrees from bodies having any jurisdiction or authority over the same. The YMCA shall obtain, at its sole cost and expense, any applicable permits or licenses from any government entity that has jurisdiction to require the same.

7. **Insurance.** The YMCA and the Township shall maintain reciprocal insurance and shall deliver certificates of insurance to each other in amounts which shall not be less than the following limits:

- A. Workers' compensation and disability benefits insurance as required by law; such coverage also shall include the Standard Extension Endorsement (for the inclusion of diseases not otherwise covered by the policy).

- B. Comprehensive General Liability for bodily injury, personal injury and property damage, including damages from collapse, explosion, and underground structures, if applicable, at a limit of not less than \$2,000,000.00 combined single limit for damages arising out of injury to or destruction of property.
- C. Contractual liability insurance indemnifying and holding each other harmless from any and all claims for personal injury or property damages resulting from the negligence of the Contractor or anyone working under its control.
- D. Comprehensive Automobile Liability applicable to all owned, non-owned and hired vehicles at a limit of not less than \$1,000,000.00 combined single limit for bodily injury and property damage for each incident.
- E. Fire insurance and products insurance for equipment and stock in trade for an amount not less than \$100,000.00.

With the exception of workers' compensation, all insurance policies shall name each other as an additional insured and shall require thirty (30) days' written notice to the other party prior to any cancellation or modification during the term of this Agreement.

8. Indemnification of the Parties

(a) The YMCA shall hold harmless and indemnify the Township from any and all claims for damages to property, injuries or death to persons or other liability arising from (i) the YMCA's negligence or the negligence of the YMCA's employees, (ii) claims of persons with whom the YMCA contracts, or (iii) all claims of unlawful discrimination by the YMCA's employees or by applicants for employment with the YMCA, including, but not limited to, costs, fees and expenses (including reasonable attorneys' fees and expenses) incurred by the Township as a result of such claims.

(b) The Township shall hold harmless and indemnify the YMCA from any and all claims for damages to property, or injuries or death to persons or other liability arising from (i) the Township's negligence or the negligence of Township's employees, (ii) claims of persons with whom the Township contracts, (iii) all claims of unlawful discrimination by Township's employees or by applicants for employment with Township, (iv) Township's

failure to make timely repairs, including, but not limited to, costs, fees and expenses (including reasonable attorneys' fees and expenses) incurred by the YMCA as a result of such claims.

9. Recoupment of Capital Investment. The Township shall reimburse the YMCA for the total costs and expenses of Capital Improvements as follows. The YMCA shall be permitted to apply the Township's share of the Net Revenue (as defined in Section 5 of this Agreement), and every Renewal Term thereafter until the Township has reimbursed the YMCA 100% of the cost of all Capital Investments. If this Agreement is cancelled for any reason (or for no reason) prior to the YMCA being fully reimbursed for the cost of Capital Improvements, the balance of such reimbursements to the YMCA shall become immediately due and payable to the YMCA from the Township. Subsequent to the YMCA being fully reimbursed for the total costs and expenses of Capital Improvements, the YMCA and the Township shall equally share (50%/50%) the Net Revenue generated by the YMCA as a result of the YMCA programs and services provided at the Facilities.

10. Term & Renewal. The initial term of this Agreement shall be for Ten (10) Years from the Effective Date. This Agreement shall automatically renew for additional Five (5) year terms (each, a "Renewal Term") unless either party provides six (6) months written notice to the other party of its intent to terminate this Agreement.

11. No Waiver. The Township's payment of money shall not operate as a waiver of any provisions of this Agreement or of any power herein reserved to the Township, or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. Any remedy provided for in this Agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein

provided, and in addition to all other suits, actions, or legal proceedings, the Township shall also be entitled as of right to a writ of injunction against any breach of any of the provisions of this Agreement. Nothing contained herein shall constitute a waiver of the either parties' legal or equitable rights and remedies as a result of the breach of the obligations contained in this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no amendment, modification or addendum to this Agreement shall be effective unless in writing, dated subsequent to the date hereof, and executed by the duly authorized officers of the respective parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Section and this shall be deemed an essential term of the Agreement.

13. **Choice of Law.** This Agreement is governed by the laws of the State of New Jersey, and any lawsuit arising under this Agreement shall be filed only in the Superior Court of New Jersey, Union County vicinage. If any term or conditions of this Agreement, or any application of this Agreement shall be determined to be contrary to the laws of the State of New Jersey or the United States, then such term or condition or application shall not be deemed valid except to the extent permitted by law, but all other terms and conditions or applications shall continue in full force and effect.

14. **Counterparts.** This Agreement may be executed in several counterparts and by facsimile signatures, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Any Party executing by facsimile signature shall provide original copies as soon as reasonably practicable.

ACKNOWLEDGEMENT

BE IT REMEMBERED that on this _____ day of _____ 2023, before me, the subscriber, personally appeared Patricia Donahue, who, being duly sworn on her oath, did depose and make proof to my satisfaction that she is the Township Clerk of the Township of Cranford, the municipal corporation named in the within instrument, that Brian Andrews is the Mayor of the Township of Cranford, that the execution as well as the making of this instrument has been duly authorized by the Township Committee; that the seal of said municipal corporation is well known to deponent and that the seal affixed to said instrument is such corporate seal and was thereto affixed to said instrument, signed and delivered by said Mayor as and for his voluntary act and deed and as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who, thereupon subscribed her name as attesting witness.

A Notary Public of the State of New Jersey

My Commission Expires on: _____