



CITY OF INDIANOLA COUNCIL MEETING

March 30, 2023

6:00 PM

City Council Chambers
110 N 1st St, Indianola, IA
Agenda

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. New Business**
 - A. Resolution approving Amendment Number 2 to the Agreement between the City of Indianola, Iowa and the Young Men's Christian Association of Greater Des Moines, Iowa.
- 5. Adjourn**



MEMORANDUM

To: Mayor and City Council

From:

Date: March 30, 2023

Subject: Resolution approving Amendment Number 2 to the Agreement between the City of Indianola, Iowa and the Young Men's Christian Association of Greater Des Moines, Iowa.

Recommendation: Roll call is in order.

Attachments:

1. Resolution Approving Amendment No. 2
2. Amendment 2 with Exhibit

RESOLUTION NO. _____

RESOLUTION APPROVING AMENDMENT NO. 2 TO
AGREEMENT BETWEEN THE CITY OF INDIANOLA, IOWA
AND THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF
GREATER DES MOINES, IOWA

WHEREAS, the City of Indianola, Iowa (the "City") has previously approved, adopted and filed an agreement (the "Agreement") with the Young Men's Christian Association of Greater Des Moines, Iowa ("YMCA"), originally filed April 18, 2012; and

WHEREAS, the City and YMCA have mutually and individually determined that it is in the best interests of the citizens of the City of Indianola to terminate said Agreement according to the terms of a Second Amendment to the Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF INDIANOLA, IOWA:

Section 1. That Amendment No. 2 to the Agreement, attached hereto as Exhibit "A" is hereby approved.

Section 2. That the Mayor and City Clerk are hereby authorized and directed to execute said Amendment No. 2 on behalf of the City.

Section 3. That the City Clerk is hereby authorized and directed to file the executed Amendment No. 2 with the Secretary of State of Iowa.

PASSED AND APPROVED this _____ day of _____, 2023.

Stephanie Erickson, Mayor

ATTEST:

Jackie Raffety, City Clerk

**AMENDMENT NO. 2 REGARDING TERMINATION OF CHAPTER 28E AGREEMENT
BETWEEN THE CITY OF INDIANOLA, IOWA, AND
THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER DES MOINES,
IOWA**

This Amendment No. 2 (“Amendment”) to the 28E Agreement between the City of Indianola, Iowa, and the Young Men’s Christian Association of Greater Des Moines, Iowa (the “Agreement”), regarding the termination of the Agreement is made and entered into this ____ day of March, 2023, by and between the City of Indianola, Iowa (hereinafter referred to as the “City”), and the Young Men’s Christian Association of Greater Des Moines, Iowa (hereinafter referred to as “YMCA”).

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E;

WHEREAS, the YMCA is an Iowa non-profit corporation organized and existing under the laws of the State of Iowa and is a private agency as defined in Iowa Code Chapter 28E;

WHEREAS, the City and the YMCA entered into that certain 28E Agreement dated the 5th day of December 2011 wherein the City constructed improvements on land owned by the City and which improvements the YMCA agreed to use and operate as a YMCA branch facility; and

WHEREAS, the City and the YMCA have mutually and individually determined that it is in the best interests of the citizens of the City of Indianola to terminate said Agreement pursuant to Paragraph 25(A) of the Agreement according to the terms of this Amendment.

NOW, THEREFORE, the City and the YMCA agree as follows:

1. Grant. Effective on the 30th day of July 2023 (“Effective Date”), YMCA shall relinquish its exclusive right to use and operate the following described real property owned by the City and the improvements thereon:

Lot 1 of Summercrest Hills Plat 3, Warren County, State of Iowa (the “Facility”).

As of the Effective Date, the YMCA further relinquishes to the City the YMCA’s right to any additions or improvements affixed to the Facility, and any equipment, furnishings or furniture that came with the Facility or has been replaced by or at the cost of the City. In addition, except as set out in Paragraph 5 of this Amendment, as of the Effective Date, the YMCA shall relinquish any equipment, furniture or furnishings added during the term of the Agreement at the YMCA’s expense, in their “as is” condition as of the Effective Date.

2. Termination. The Agreement, as amended, shall terminate at 12:00 A.M. Central Time on the Effective Date.

3. Operations. Effective at 12:00 A.M. Central Time on the Effective Date, the YMCA shall relinquish its exclusive right to operate the Facility to the City which, in accordance with the City’s bond covenants, shall continue to operate the Facility as a community wellness

center so as not to allow any user or use or occupancy of the Facility for any purpose or purposes which would cause interest on the City Bonds to be includable in gross income under Section 103 of the Internal Revenue Code.

4. Programming. The YMCA Marlins swim program shall continue as scheduled from April 10, 2023 through July 23, 2023. Swim team members will be provided with the opportunity to transition to the Wellmark Y Marlins team.

5. Equipment. The City and the YMCA agree that all equipment, score boards, tools, supplies, and materials of every kind (within the Facility, attached or unattached) will stay with the Facility except for the items listed in Exhibit A to this Amendment which shall be returned to the YMCA on or before August 2, 2023.

6. Information Technology. The YMCA agrees to provide the City with a list of equipment, not included in the transition to the City, that is necessary to process memberships through the ReClique Core software. The YMCA will connect the City with Aureon, the YMCA's IT service provider, to share non-confidential information with City staff during initial set-up and agrees that the YMCA and Aureon will answer questions through August 2, 2023. Aureon will not be permitted to provide YMCA confidential information to the City and the City is not permitted to receive such confidential information without the express written consent of the YMCA. YMCA confidential information does not include information for those members who elect to have their membership transferred to the City, which information shall be accessible to the City upon authorization by the member as set out in Paragraph 7.

7. Membership Fees. The YMCA has provided contact information for ReClique Core, the YMCA's current membership software. The City intends to purchase this software in order to provide a seamless transition of memberships. Through August 2, 2023, the YMCA will work cooperatively with the City and ReClique Core software to support the transition of YMCA members who authorize the transition of their membership to the City Facility membership, following all applicable laws. All membership fees for those that draft before July 30, 2023 (whether monthly, semiannually, quarterly or annually) that include payment for July 30, 2023 or after, shall be prorated between the City and the YMCA with the City receiving payment on July 30, 2023 for amounts attributable to July 30, 2023 and all dates thereafter. This paragraph is not applicable to members who choose to retain their YMCA membership and also obtain a City Facility membership, unless the member gives authorization to have account information transferred to the City. For those members who do not give authorization for transfer of account information, the City will have the sole responsibility to create their City Facility memberships.

The parties recognize that many members have their membership paid for by their insurance provider. From the date the YMCA executes this Amendment through August 2, 2023, the YMCA agrees to provide general information to the City about how these insurance programs work and contact information for these insurance programs.

8. Donations, Pledges and Solicitations. The parties agree that donations specifically directed solely to the Facility received on or after the execution of this Amendment shall be returned to the donor. The parties agree that donations/pledges directed solely to the Facility

received on or after the execution of this Amendment from uncollected pledges also will be returned to the donor. This paragraph does not apply to donations/pledges directed to the YMCA generally or to any of the YMCA's other facilities in the greater Des Moines area.

To avoid confusion for transitioned membership, YMCA agrees to remove all transitioned membership contact information from its future direct-mail and electronic-mail distribution lists and refrain from directly soliciting contribution or donations from said members. Provided, however, indirect marketing efforts such as television, radio, and websites are permitted. This paragraph does not apply to transitioned members who elect to hold dual memberships with the City Facility and the YMCA.

9. Maintenance Reserve Fund and Facility Repair Fund. Any funds remaining in the Maintenance Reserve Fund and/or the Facility Repair Fund currently held by the City shall be the sole property of the City. Any funds remaining in the Operational Reserve Fund and/or Facility Repair Fund currently held by YMCA shall be the sole property of YMCA.

10. Maintenance. From the date of execution of this Amendment by the YMCA through July 29, 2023, the parties shall continue to work together to complete all in-process capital maintenance projects including upgrades and repairs to the HVAC System, Pool Concrete Girder Repairs, and door leakage repairs. The repair/replacement of these items will be managed by YMCA facilities personnel and paid for by the City.

YMCA facilities personnel will continue to maintain the Facility and its equipment in accordance with the terms of the Agreement, as amended, and its normal business practices. Routine maintenance will not be postponed nor delayed, but will be performed in accordance with the YMCA's normal business practices and staffing availability. As soon as practicable, but no later than July 1, 2023, the YMCA will review any outstanding maintenance items with City staff.

11. Human Resources. Beginning May 1, 2023, the City may provide YMCA employees of the Facility a conditional offer of hire. The City shall have no obligation to hire an employee; provided, however, the City may, in the City's sole discretion, make offers of employment to any YMCA employee of the Facility, and the terms and conditions of any such employment offers shall be within the sole discretion of the City.

The YMCA and the City shall mutually agree on the date(s), beginning with May 1, 2023, on which the City will be allowed to interview the YMCA Facility employees with the agreement and understanding that such interviews shall be conducted as to not disrupt the YMCA's regular business operations of the Facility. The YMCA shall be responsible for paying all Facility employee wages and other applicable benefits through July 29, 2023 in accordance with the YMCA's applicable policies and procedures.

Following the execution of this Amendment by the YMCA and through July 29, 2023, the YMCA agrees it will not change the pay rate for employees whose primary employment duties are conducted at the YMCA Facility except those who also perform work at another YMCA branch, i.e. group fitness instructors. The excepted employees will be eligible for rate increases for the work performed at the other branch(es). For each of the YMCA Facility employees who

indicate a commitment of employment with the City and with written permission from each of them, the YMCA will provide the City with the employee's hourly pay rate or annual salary. In addition, as soon as practicable but no later than April 30, 2023, the YMCA will provide the Indianola YMCA organization chart, the job titles of Indianola YMCA employees and essential job functions for each job title.

Should Heather Hulen, the current YMCA Facility Executive Director, notify the YMCA of her intention to become employed with the City at the Facility, the YMCA agrees to allow Hulen to take a reasonable amount of time away from her current Executive Director duties with the YMCA to participate in the interviews with the YMCA Facility staff conducted by the City and discussed herein.

12. Except as modified by this Amendment, the applicable provisions of the Agreement shall remain in force as originally adopted, approved, and recorded through July 29, 2023. The Agreement and all obligations thereunder, including the YMCA's obligation to pay insurance premiums attributable to the Facility and carry liability insurance for protection of the City, as outlined in the Agreement, shall terminate at 12:00 A.M. Central Time on the Effective Date. In the event the YMCA is entitled to reimbursement for any insurance premiums for coverage after July 29, 2023, the YMCA is entitled to receive and the City shall have no claim to such reimbursed funds.

13. Once executed by all parties, this Amendment shall be filed with the Secretary of State as required by law.

Signature Pages to Follow

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective officers, pursuant to full authority granted and given as of the day and year first above written.

CITY OF INDIANOLA, IOWA

By: _____
Stephanie Erickson, Mayor

ATTEST:

By: _____
Jackie Raffety, City Clerk

STATE OF IOWA, COUNTY OF WARREN: ss

On this ____ day of _____, 2023, before me, a Notary Public in and for the County and State aforesaid, appeared Stephanie Erickson and Jackie Raffety, to me personally known, who, being duly sworn, did say that they are the Mayor and City Clerk of the City of Indianola, Iowa, respectively, a municipal corporation; that the seal affixed is that of the corporation; that said instrument was signed and sealed on behalf of the City of Indianola, Iowa, by authority of its City Council; and that the said Stephanie Erickson and Jackie Raffety, as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa.

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF
GREATER DES MOINES, IOWA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF IOWA, COUNTY OF _____ : ss

On this _____ day of _____, 2023, before me, a Notary Public in and for the County and State aforesaid, appeared _____ and _____, to me personally known, who, being duly sworn, did say that they are the _____ and _____ of the Young Men's Christian Association of Greater Des Moines, Iowa, respectively, a non-profit corporation; that the seal affixed is that of the corporation; that said instrument was signed and sealed on behalf of the corporation, by authority of its Directors; and that the said _____ and _____, as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa.

EXHIBIT A

1. All YMCA branded materials (including, but not limited to, clothing, materials, internal and external signage, decals, etc.)
2. SECA Digital Scale
3. All Swim Ears including the closet, 3 – USB, and 20 chargers. (Excluding the two sets of Swim Ears purchased through a local donation from Mike Van Niewall. *(Each of the donated sets include 20 individual cases, 20 swim ears, 20 USB cords, and 20 charging blocks as well as a head coach's headset, with USB cord, charging block, and case.)* In total Mr. Van Niewall's donation included 42 individual units.)
4. Copier/Printers on Lease by the YMCA
 - Main Copier/Printer
 - Lexmark at front desk
 - Lexmark upstairs at wellness desk
 - Lexmark at pool
5. Dymo in Learn & Play
6. 4 - Internet access points (Configured to the YMCA network)