

Prepared by and return to:
Office of the City Attorney
City of Port St. Lucie
121 SW Port St. Lucie Blvd.
Port St. Lucie FL 34984

FIRST AMENDMENT TO LEASE AGREEMENT AT JAYCEE PARK
YMCA OF THE TREASURE COAST, INC.

This First Amendment is made and entered into this _____ day of _____, 2023 (“Effective Date”), by and between **the City of Port St. Lucie, a Florida municipal corporation** (hereinafter referred to as “CITY”) and **YMCA of the Treasure Coast Florida, Inc., a Florida non-profit corporation** (hereinafter referred to as “YMCA”) (hereinafter referred to collectively as the “Parties”).

RECITALS:

WHEREAS, on or about August 12, 2013, CITY and YMCA entered into a Lease (hereinafter referred to as the “Agreement”) for YMCA’s use of Jaycee Park as a program location (hereinafter referred to as the “Property”); and to grant access to and use of the Property pursuant to the terms and conditions of the Lease; and

WHEREAS, the Lease is due to expire August 12, 2023 and may be renewed for an additional ten (10) year term upon mutual agreement of the Parties; and

WHEREAS, the Parties now mutually desire to exercise the option to renew the Agreement and revise insurance requirements; and

NOW THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and other good and valuable consideration of which is hereby acknowledged, the Parties agree to modify the provisions of the Lease Agreement as follows:

1. **RECITALS.** The foregoing recitations are true and correct and are incorporated herein by reference and as forming the intent of this Amendment.
2. **TERM.** The initial Term will expire August 12, 2023. Upon expiration of the Term, the Term shall be extended for an additional ten (10) year period which shall commence August 12, 2023, and continue in full force and effect until August 12, 2033, unless otherwise terminated as stated in the Agreement.
3. **INSURANCE.** YMCA is required to procure and maintain insurance coverage as follows:

YMCA shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by YMCA are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by YMCA under the Contract.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

Workers' Compensation Insurance & Employer's Liability: YMCA shall agree to procure and maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by YMCA qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

Commercial General Liability Insurance: YMCA shall agree to procure and maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage

is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to YMCA and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability Insurance, and Professional Liability, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability and Business Auto Liability and Professional Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents the contract name and number shall listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, YMCA shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

Automobile Liability Insurance: YMCA shall agree to procure and maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, YMCA does not own any automobiles; the Business Auto Liability requirement shall be amended allowing YMCA to agree 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. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Professional Liability Insurance: YMCA shall procure and agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but not the obligation, to review and request a copy of YMCA's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, YMCA warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right

to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, YMCA shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.

Waiver of Subrogation: YMCA shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then YMCA shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of YMCA for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

It shall be the responsibility of YMCA to ensure that all independent contractors and sub-contractors comply with the same insurance requirements referenced herein. It will be the responsibility of YMCA to obtain Certificates of Insurance from all independent contractors and sub-contractors listing the City as an Additional Insured without the language when required by written contract. If YMCA, independent contractors and sub-contractors maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by YMCA, independent contractors and sub-contractors.

YMCA may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' 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 either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but not the obligation to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better. When a self-insured retention or deductible exceeds \$5,000, The City reserves the right, but not the obligation, to review and request a copy of bidder's most recent annual report or audited financial statement.

A failure on the part of YMCA to execute the contract and/or punctually deliver the required insurance certificates and other documentation may be cause for termination of the Agreement.

4. **REAFFIRMATION OF LEASE.** Except as only set forth in this Amendment, the provisions of the Lease remain unchanged and remain in full force and effect. In the case of a perceived conflict between the terms of the Agreement and this Amendment, this Amendment shall govern. This Amendment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
5. The Parties agree for purposes of this Amendment, the Amendment may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts. Facsimile and electronic mail copies in “portable document format”(“.pdf”) form are acceptable and shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed on the date(s) set forth below:

YMCA:

By: _____ Date: _____

Authorized Representative

Print Name: _____

CITY OF PORT ST. LUCIE:

By: _____ Date: _____

Jesus Merejo, City Manager