

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Council members

**FROM/PHONE:** Dennis Andresky, Director 954-797-1150

**DOCUMENT PREPARED BY:** Dennis Andresky, Director 954-797-1150

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 3

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH WEST BROWARD YMCA TO OPERATE AFTER SCHOOL, SCHOOL DAYS OFF, WINTER BREAK AND SPRING BREAK DAY CARE PROGRAMS.

**REPORT IN BRIEF:** In order to provide a need responsive recreational after school program for it's residents, the Town established a joint program for provision of such service with the YMCA. The Town recently completed a Request for Proposal for continuation of this program with the YMCA being the sole responder. Staff has verified the YMCA's qualifications, experience and capability to perform fully the requirements for the after school care program, and has determined that the YMCA has the necessary staff, expertise, skills and capabilities to provide the required services. The program will be conducted at The Davie Pine Island Park Multipurpose Center.

**PREVIOUS ACTIONS:** The Town has had a formal agreement with the YMCA for provision of the after school care since 1998. The most recent agreement will expire in January of 2003 and approval of this resolution will enable continuation of the program. The West Broward YMCA has a quality working relationship with the Town and has successfully conducted the program for the Town at the Davie Pine Island Park Multipurpose. This program is well attended and benefits a significant target population of Town residents by meeting the need for after school care.

**CONCURRENCES:** Resolution R-2000-197, R-98-347, Original Agreement The agreement has been approved by the Town Attorney.

**FISCAL IMPACT:**

Has request been budgeted? N/A Program produces revenue payment to Town.  
If yes, expected cost: No cost to Town except for utilities at Pine Island Park Multipurpose Center

Additional Comments: The estimated annual revenue from this program is \$7,000. This amount includes a \$750 per year facility maintenance fee.

**RECOMMENDATION(S):** Motion to approve resolution

**Attachment(s):** Resolution and Agreement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH WEST BROWARD YMCA TO OPERATE AFTER SCHOOL, SCHOOL DAYS OFF, WINTER BREAK AND SPRING BREAK DAY CARE PROGRAMS AT SPECIFIED TOWN FACILITY.

WHEREAS, the Town desires to offer after school, school days off, winter break and spring break day care programs at the Davie Pine Island Multipurpose Center; and

WHEREAS, the Town's Selection Committee authorized the Parks and Recreation Department to negotiate the terms of the agreement with the YMCA; and

WHEREAS, the Town has verified the YMCA's qualifications, experience and capability to perform fully the requirements for such a joint recreation program, and has determined that the YMCA has the necessary staff with expertise, skills and capabilities to provide the required services; and

WHEREAS, it is in the Town's best interest to execute a contract for these services; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to execute a contract with YMCA of Broward County, West Broward Family YMCA.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie authorizes the Mayor to execute a contract with YMCA of Broward County, West Broward Family YMCA to operate after school, school days off, winter break and spring break day care programs.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

\_\_\_\_\_  
MAYOR/COUNCIL MEMBER

ATTEST:

\_\_\_\_\_

TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002. □

AGREEMENT BETWEEN THE TOWN OF DAVIE  
AND YMCA OF BROWARD RELATING TO  
JOINT RECREATIONAL PROGRAMMING

THIS AGREEMENT, made and entered into this 18th day of December, 2002, by and between:

Town of Davie, Florida  
a municipal corporation  
6591 Orange Drive  
Davie, Florida, 33314  
(hereinafter referred to as "TOWN")

AND

YMCA of BROWARD COUNTY, INC.  
West Broward Family YMCA  
11366 State Rd 84  
Davie, Florida, 33325  
(hereinafter referred to as "YMCA")

WITNESSETH

WHEREAS, Town and YMCA, as part of their recreational programming agree to provide both indoor and outdoor recreational activities with priority enrollment being given to Town residents; and

WHEREAS, Town and YMCA believe that a joint recreational program would avoid a duplication of services and create an efficient and cost effective recreation operation for the Town's residents; and

WHEREAS, Town has a park area and facility suitable for use by both Town and YMCA in conducting a joint recreation program for residents of Town of Davie; and

WHEREAS, the Town has verified the YMCA's qualifications, experience and capability to perform fully the requirements for such a joint recreation program, and has determined that the YMCA has the necessary staff with expertise, skills and capabilities to provide the required services as approved by the Davie Town Council on December 18, 2002; and

WHEREAS, Town and YMCA wish to enter into this Agreement to outline the parties' responsibilities for the use of the Town's facilities during this proposed joint recreational program; now therefore

IN CONSIDERATION of the mutual covenants and agreements as herein set forth, sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

**1. TERM:**

1.1. The term of this agreement shall be for the period commencing on January 6, 2003, and terminating on June 12, 2003. The days shall be on Broward County Public School days from 2:00 p.m. to 6:00 p.m. and on Broward County Public School early release days from 12:30

p.m. to 6:00 p.m. The school days off, winter break and spring break programs shall be conducted from 7:30 a.m. - 6:00 p.m. The Town reserves the right to extend the contract for up to three (3) one (1) year periods by mutual written agreement of the parties. During any period of extension, all terms, conditions and specifications of the original agreement shall remain unless amended by written agreement by the parties adopted with the same formality as the original.

## **2. JOINT RECREATION PROGRAMS:**

2.1 Town and YMCA agree to offer a joint recreational program which will include, but not be limited, to the following activity:

### **After-School Program and Early Release Days**

2.1A After-School Program consists of after-school recreational activities for boys and girls first through fifth grade.

The after-school program will be conducted from 2:00 p.m. - 6:00 p.m. on school days and from 12:30 p.m. - 6:00 p.m. on early release school days.

YMCA after school program provides creative recreational and educational opportunities through challenging activities in small and large group settings.

A nutritious snack and drink will be offered daily to all participants.

Some of the activities include arts and crafts, games, sports, nature, cultural enhancements, movies and swimming, etc.

### **The School Days Off, Winter Break and Spring Break Programs**

2.1B The school days off, winter break and spring break programs consists of after-school recreational activities for boys and girls first through fifth grade.

The school days off, winter break and spring break programs will be conducted from 7:30 a.m. - 6:00 p.m.

YMCA school days off, winter break and spring break programs provides creative recreational and educational opportunities through challenging activities in small and large group settings.

A nutritious snack and drink will be offered daily to all participants.

Some of the activities include arts and crafts, games, sports, nature, cultural enhancements, movies and swimming, etc.

## **3. DUTIES OF YMCA:**

### **3.1 Development and Implementation of After-School, Early Release Days, School Days Off, Winter Break and Spring Break Programs:**

YMCA shall formulate, implement, direct, manage and control a complete and full service recreation program for school age children and special populations. The duties of the YMCA

pertaining to these programs are as follows:

3.1.1 Organize and supervise After-School Program as defined in Paragraph 2.1A of this Agreement and School Days Off, Winter Break and Spring Break Programs as defined in Paragraph 2.1B of this Agreement. A minimum number of thirty (30) registered participants is required to commence program. The maximum number of participants permitted to use the facility is sixty (60).

3.1.2 Select, hire and employ at YMCA's sole expense, all instructors, assistants and staff necessary to YMCA's performance of duties and obligations under the terms of this Agreement provided, however, that all teaching staff shall meet the following minimum qualifications: must be 18 years of age or older; must be a high school graduate and must meet the minimum standards for child care facility personnel as specified by 2002 Florida Statute 402.305. None of the employees of the YMCA shall be deemed employees or agents of the Town of Davie for any purposes whatsoever. The YMCA is acting as an independent contractor with regard to this license and no agency relationship is created between the YMCA and the Town by virtue of this agreement. YMCA staff will be identified by a T-shirt and/or ID badge.

3.1.3 Manage, control and supervise all instructors, assistants and staff employed by YMCA and conduct business at all times in a professional and courteous manner to the satisfaction of the Town Administrator and/or Designee.

3.1.4 Be fully responsible for the payment and maintenance of all insurance, taxes and other incidents of employment for those persons hired by YMCA to assist in the fulfillment of YMCA obligations under this Agreement.

3.1.5 Allow YMCA's name to be used for the promotion of these programs in the Town of Davie, by the Town of Davie. Allow Town's name to be used for the promotion of these programs in the YMCA by the YMCA.

3.1.6 Maintain records and accounts of all transactions that result from doing business pursuant to this Agreement for a period of three (3) years. Such records shall include daily attendance and enrollment records, as well as, financial records. Such records shall be kept so as to satisfy standard bookkeeping requirements. Such records shall be made available to the Town for inspection, review and auditing within ten (10) calendar days written notice from Town. Notwithstanding the provisions set forth in this paragraph, it is agreed that the YMCA will cooperate in all respects with the Town with regard to compliance with the public records law of the State of Florida.

3.1.7 Contractor shall pay for, provide and maintain all necessary licenses, permits and inspections necessary for operation, including but not limited to HRS licenses, if applicable as required by law. A copy of all applicable licenses shall be given to the Town.

3.1.8 Supervise and be responsible and legally liable for the safety and conduct of all participants at any event or activity conducted by YMCA and its agents, volunteers or employees engaged in the performance of YMCA duties under this Agreement.

3.1.9 Not permit any signs or advertising at any Town facility unless specifically approved in writing by the Parks and Recreation Director.

3.1.10 Perform all tasks which are reasonably necessary to be done in order to accomplish the work and objectives as otherwise provided for under this Agreement.

3.1.11 YMCA shall sign out any Town of Davie equipment and shall return it in good condition.

3.1.12 All dates, times and locations must be approved by the Parks and Recreation Director prior to YMCA commencing any activities under this Agreement.

3.1.13 Notify the Parks and Recreation Director and all registered participants immediately if the After-School Program, Early Release Days, the School Days Off, Winter Break and Spring Break are to be canceled in accordance with the provisions of this Agreement.

3.1.14 Insure that all facilities are kept free of litter and debris during and immediately after their use under this Agreement.

3.1.15 Contractor shall provide sufficient qualified staff to oversee children based on HRS guidelines and provide Florida protective services background checks on HRS form 1651 for all employees.

### **3.2 YMCA's Duty to Inspect and Make Safe:**

3.2.1 The YMCA shall conduct a thorough examination and inspection of the premises and equipment to identify any unsafe condition or defect prior to the commencement of any of its duties, operations and services under this Agreement and provide written confirmation to the Town of Davie indicating acceptance of the premise in it's "as is condition." During the operation of the program, the YMCA will notify the Town in writing of repairs needed at the facility and/or equipment that is in need of repairs. Repairs shall be completed by the Town of Davie within seven (7) or fewer days once written notification is received.

3.2.2 If, in the course of its use and/or operations, YMCA or any agent, representative, employee or volunteer of YMCA becomes aware or should become aware of any dangerous condition in or on the premises or equipment, YMCA or its agents, representative, employee or volunteer shall immediately notify the Facility Manager or other Town authorized designee of such dangerous condition and either immediately correct the dangerous condition, or cease operations so as not to endanger persons or property in the vicinity of the premises or equipment.

## **4. REGISTRATION:**

4.1 The YMCA of Broward County, Inc. shall handle the registration process through the West Broward YMCA, including the collection of fees. Both mail-in registration and walk-in registration will be conducted at the West Broward YMCA Office. For the convenience of working families, a special preregistration will be held at the Davie Pine Island Multipurpose Center. Registration after preregistration will take place at the Davie Pine Island Multipurpose Center with the YMCA Site Director, during regular program hours.

## **5. PROGRAM FEES AND PAYMENT TO THE TOWN:**

5.1 The After-School Program fee will be \$36.00 weekly. An additional fee of \$1.80 per hour is charged on early release days. The base rate for full day care on holidays and teacher workdays is \$25.00 daily. This is abased on a 10 1/2 hour day. Scholarships are provided based on financial need. Provide a 10% discount for additional children enrolled from the same family. No annual and/or additional fee shall be charged to the participant in addition

to the stated program fee. Contractor shall provide each participant a fee schedule of any and all services that are offered. Current utility bills are required for proof of residency ( a drivers license is not acceptable).

5.2 The remuneration due to the Town of Davie is based on a per daily unit of registered participants as follows:

After School program:	\$0.50/day/registered participant.
Early release and school off days:	\$1.00/day/registered participant
Winter and Spring Break Program:	\$1.25 /day/registered participant
Use of Swimming Pool	\$1.00 /day/registered participant
Annual Facility Maintenance Fee:	\$750/year.

5.3 Penalty for late payment. In the event the YMCA fails to pay any payment due hereunder within five (5) days of the due date, there shall be added to such payment a late charge of \$50.00, and interest at the highest rate allowed by law until the payment is brought up to date.

5.4 The YMCA of Broward County will issue attendance sheets for the month with an invoice summarizing the total number of participants attending each week by the 15th of the following month.

5.5 It will be the responsibility of the YMCA to collect any outstanding fees.

5.6 The YMCA will offer financial assistance to working families who are unable to pay the full cost of the program. The fees are based on a sliding fee scale and are subject to need and availability of YMCA funds.

5.7 The YMCA will be required to provide one (1) scholarship per twenty-five (25) registrations for any Davie children that meet the Federal Hot Lunch Program Guidelines and cannot afford the cost of the After School Day care Programs.

5.8 Contractor shall pay the Town an annual facility maintenance fee of \$750 payable to the Town of Davie upon signing of this agreement and within ten (10) days of the start of the program.

## **6. ADVERTISING AND PROMOTION:**

6.1 YMCA may use advertising in promoting the programs at the assigned Town facility. YMCA may specifically use the name of the Town facility provided that when so doing it is identified as a Town of Davie facility. The cost of all advertising promulgated by YMCA shall be paid by YMCA and approved in writing by the Parks and Recreation Director before publication. Advertising shall be kept to a minimum and be conducted only at the Silver Ridge Elementary School.

6.2 Town reserves the right to advertise and promote the program provided for under this Agreement and the services of YMCA in the form of a flyer which will be distributed to all of the day camp participants that have been enrolled in the Town's Summer Daze Drop-In summer program. Town shall be allowed to use YMCA's name and appropriate likeness in any such advertising or promotion without additional compensation to YMCA. The cost of advertising for promotion promulgated by Town will be paid by Town and approved, in writing,

by YMCA Executive Director before publication.

**7. PREMISES:**

7.1 All Town premises are provided in “as is” condition. Town disclaims all representations and warranties, express and implied, as to the condition of the premises and equipment or the use and occupancy authorized other than those contained in this agreement.

**8. TOWN FACILITIES:**

8.1 The program will be held at the Davie Pine Island Multipurpose Center, 3801 Pine Island Road, Davie, Florida.

8.2 Town agrees to allow YMCA to use the facilities for activities upon the following terms and conditions:

(a) Use of the Davie Pine Island Multipurpose Center is limited to use of one half of the gymnasium and use of craft room and game room as scheduled/approved by the Facility Operations Supervisor. It is understood and agreed to that priority use of the Craft Room and Game Room is for other Town Programs and use by the general public.

(b) Each use shall be at mutually agreeable times and days with said agreement not unreasonably withheld. Agreement as to use shall be between Town's Parks and Recreation Director or his/her authorized designee and the Director of YMCA or his/her authorized designee. YMCA shall execute the standard Town Facility Use Permit form prior to each use.

(c) Town shall provide lighting, air conditioning, heating and water for ordinary purposes, but for no other purposes. Town will also provide athletic fields for the various types of sports, based upon availability. The Town will provide one (1) kitchen cabinet for storage and the YMCA will provide one (1) storage cabinet for the above named programs.

(d) Use of Town facilities for the YMCA's programming is specifically conditioned upon YMCA providing a written designation of the authorized agent who shall be in charge of the activity and who shall supervise YMCA participants and invitees while on designated property. Said designation shall be delivered to the Parks and Recreation Director prior to any use.

(e) YMCA shall require its instructors, agents, students and invitees to follow all rules and regulations for the use of parks and park property as promulgated by Town and as set forth in Section 16.3 of Town's Municipal Code.

(f) Town and its officers, agents and employees engaged in the operation, maintenance and repair of Town's facilities designated herein shall have the right, at any time, to enter upon and have free access to any and all parts of the premises used pursuant to this Agreement.

**8.3 YMCA DUTY TO INSURE TOWN FACILITIES:**

8.3.1 YMCA shall maintain for the full term of this Agreement, insurance which must include the following coverage and minimum limits of liability:

The YMCA shall furnish proof of Worker's Compensation Insurance, Liability Insurance, Automotive Liability Insurance and Professional Liability Insurance. The YMCA shall carry in force at all times the insurance coverage with the Town added as an “additional insured”.

Insurance requirements are as follows:

1. Worker's Compensation & Employer's Liability Insurance

Limits: Worker's Compensation	Statutory
Employer Liability	\$100,000 each accident
Disease	\$500,000 (policy limit)
Disease	\$100,000 (each employee)

2. Professional Liability - \$1,000,000

3. Commercial General Liability Insurance - coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage with an annual aggregate of not less than \$3,000,000. This shall include coverage for:

- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Independent Contractors

4. Business Automobile Liability Insurance - coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage with an annual aggregate of not less than \$3,000,000. This shall include coverage for owned autos, hired autos and non-owned autos.

Insurance must be furnished to the Town's Purchasing Division and notification received of its approval by the Town's Risk Manager PRIOR TO THE COMMENCEMENT of any work. Failure to do so will result in the recommendation to terminate the contract immediately. The Town will be given 15 days written notice of any cancellation or material change in any policy.

8.3.2 No operations under this Agreement shall be commenced until the required certificate of insurance naming the Town of Davie as additionally insured has been received and approved by the Town Administrators Office.and/or Designee.

8.4 **INDEMNITY/HOLD HARMLESS AGREEMENT:** The contractor agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the Town may suffer as a result of claims, demands, costs, or judgments against it arising from the subject project. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

9. **PROTECTION OF PUBLIC SAFETY:**

9.1 YMCA shall exercise reasonable care and precaution at all times for the protection of persons and property on the premises provided under this Agreement. Safety provisions of all applicable laws and ordinances shall be strictly observed. Town reserves the right to expel any person from municipal property who is causing a disturbance, is conducting themselves in violation of Town rules, regulations, ordinances or whose conduct or activity presents a safety risk or public nuisance. Neither Town nor any of its officers, agents or employees shall be liable to YMCA for any damages that may be sustained by YMCA through exercise by Town of such right.

**10. TRAINING:**

10.1 YMCA represents that each staff member hired by YMCA and working at and under the direction and supervision shall also have sufficient experience and/or education to provide proper supervision and instruction to persons of various ages and skill levels.

**11. TERMINATION:**

11.1 Each party to this Agreement shall have the right to terminate this Agreement, without cause, by furnishing ninety (90) calendar days advance written notice to the other party.

11.2 Each party to this Agreement shall have the right to terminate this Agreement, with cause, by furnishing five (5) calendar days advance written notice to the other party.

**12. MODIFICATION AND WAIVER:**

12.1 This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. Modification to this Agreement can only be made in writing and by execution of both parties. Reference to the Agreement shall be deemed to include any duly executed modification or amendment. The failure of a party to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

**13. ASSIGNMENT:**

13.1 This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstance without prior written consent from the other contracting party.

13.2 This agreement is for the benefit of the executing parties and is not to provide any rights to third parties as third party beneficiaries.

**14. NOTICE:**

14.1 Notices required by this Agreement shall be deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses:

AS TO CITY: Town of Davie  
Parks and Recreation Director  
6901 Orange Drive  
Davie, Florida 33314

AS TO YMCA: YMCA of Broward County  
West Broward Family YMCA  
11366 State Rd 84  
Davie, Florida 33325

**15. GOVERNING LAW AND VENUE:**

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida with venue for any litigation thereon to be found in the Seventeenth Judicial Circuit in and for Broward County, Florida.

**16. SEVERABILITY:**

16.1 If any part of this Agreement is found to be in conflict with applicable laws, such part shall be null and void insofar as it is found in conflict with the laws of the State of Florida, but the remainder of the Agreement shall be and remain in full force and effect.

**17. LICENSE NOT A LEASE:**

17.1 This Agreement shall not be deemed to be a lease of any facilities, the use of which is permitted hereunder, but rather a license to use and occupy the respective premises under the terms and conditions stated herein. No leasehold interest in either Town premises or YMCA's premises is confined to the using party under the provisions hereof.

**18. NON-DISCRIMINATION:**

18.1 An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods and services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor. or consultant under contract with any public entity and may not transact business with any public entity.

IN WITNESS WHEREOF, the parties hereto have executed this Reciprocal Use Agreement the day and year first written above.

YMCA OF BROWARD COUNTY, INC.

TOWN OF DAVIE, FLORIDA

BY: \_\_\_\_\_

WEST BROWARD FAMILY YMCA

MAYOR

ATTEST:

TOWN CLERK

STATE OF FLORIDA )

) ss.

COUNTY OF BROWARD)

