

RESOLUTION NO. 2015-03

ORIGINAL

**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  
(2015 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 2015 Summer Season (**expected dates of operation: Memorial Day (May 26, 2015) and June 15, 2015 through September 7, 2015**), 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 2015 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 and all other instruments and documents that are necessary to fulfill the Village's obligations under the Agreement.

**ADOPTED** this 25<sup>th</sup> day of February, 2015, pursuant to a roll call vote as follows:

**AYES:** President Pro Tem A. Jaycox, Trustee(s) C. Ealey-Cross, A. Dorris, M. Rogers, M. Lightford and R. Rivers.

**NAYS:** None

**ABSENT:** Mayor Edwenna Perkins

**APPROVED** this 26th day of February, 2015, by the Village President Pro Tem of the Village of Maywood, and attested by the Village Clerk on the same day.

  
\_\_\_\_\_  
Village President Pro Tem

**ATTEST:**

  
\_\_\_\_\_  
Village Clerk

Date: 2-26-15

**EXHIBIT "1"**

**POOL USE AGREEMENT BETWEEN  
THE VILLAGE OF MAYWOOD AND THE WEST COOK YMCA**

(attached)



**POOL USE AGREEMENT BETWEEN  
THE VILLAGE OF MAYWOOD AND THE WEST COOK YMCA**

This **POOL USE AGREEMENT** ("Agreement") is made and entered into this \_\_\_ day of March, 2015, by and between the VILLAGE OF MAYWOOD ("Village"), an Illinois Municipal Corporation, and the WEST COOK YOUNG MEN'S CHRISTIAN ASSOCIATION'S INCORPORATED ("YMCA"), 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 1<sup>st</sup> Avenue and east of 5<sup>th</sup> Avenue; and

**WHEREAS**, the Village and YMCA desire for the Pool Facility to be maintained, operated and controlled by the YMCA during the 2015 summer season ("2015 Season"), including the provision of all management, staff and activities at the Pool Facility; and

**WHEREAS**, the Village and YMCA find that it is necessary and desirable and in the best interests of the Village and YMCA and their respective residents, members or patrons, to enter into this use agreement for the Pool Facility, so that the Pool Facility may be maintained, operated, and controlled by the YMCA during the 2015 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 the Agreement (the "Effective Date"). The **term of this Agreement shall run from its Effective Date until September 7, 2015**, unless such term is extended by mutual written agreement of the parties. Either party may terminate this Agreement for any reason on ten (10) calendar days 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 is attached 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 Facility secured at all times and locked when not in use so that no unauthorized access into the Facility may occur.

E. The YMCA shall operate the Pool Facility by opening it for the 2015 Season, which shall be defined as **Memorial Day (May 25, 2015) and reopen on Monday June 15, 2015 through September 7, 2015**, 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 Friday, April 17, 2015**, which schedule shall be generally consistent with the "YMCA - Proposed 2015 Season Pool 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 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 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 sufficient to cover the operating cost of the Pool Facility, the YMCA, subject to prior notice and discussion with the Village Board members, reserves the right to alter the hours and dates of operation.

I. The Village and YMCA will collaborate to promote pool operations, as outlined in the attached YMCA - Proposed 2015 Season Pool Schedule (**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.

J. 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.

K. 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 FORTY EIGHT THOUSAND AND NO/100 DOLLARS (\$48,000.00) 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 2015 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 2015 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 2015 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 6B 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 \$16,000.00) shall be paid on or before Friday, May 8, 2015; and (2) one third of the Pool Start-Up and Operations Fee (or \$16,000.00) shall be paid on or before Friday, June 12, 2015 and (3) one third of the Pool Start-Up and Operations Fee (or \$16,000.00) shall be paid on or before Friday, July 10, 2015.**

**B. Audit; Return of Pool Start-Up and Operations Fee:** The YMCA shall prepare a financial statement (as required by Section 6E 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 2015 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, subsection 6C 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 2015 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 Pool Facility does not operate for the entire 2015 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 Subsections 6E and 6F 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 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 2015 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 2015 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 2015 Season. The term "net profit" shall mean that amount of income generated by the operation of the Pool Facility for the 2015 Season that is in excess of the actual, documented expenses incurred by the YMCA in operating the Pool Facility during the 2015 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:** If there is no net profit generated, then the parties

agree that the Village's responsibility for paying any operating losses incurred relative to the Pool Facility for the 2015 Season is limited to payment of the Pool Start-Up and Operations Fee **plus any actual, documented operating losses that exceed Forty-Eight Thousand Dollars (\$48,000.00)**. The YMCA is responsible for paying all operating losses incurred that are in excess of the Pool Start-Up and Operations Fee, **subject to a cap on operating losses equal to Eight Thousand Dollars (\$4,000.00)**. The Village shall pay to the YMCA its share of any actual, documented net losses in excess of Forty-Eight Thousand Dollars (\$48,000.00) 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 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 the 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") harmless 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 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 harmless 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. 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 Maywood 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:

<p><b>The Village:</b>  Village Manager  Village of Maywood  40 Madison Street  Maywood, Illinois 60153  Telephone (708) 450-6301</p>	<p><b>The YMCA:</b>  Chief Operations Officer - David I. Parsons  West Cook YMCA  255 S. Marion Street  Oak Park, Illinois 60302  Telephone: (708) 434-0203</p>
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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 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 shall provide the other Party with at least ten (10) day 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 impliedly, 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 March 3rd, 2015. Execution of this Agreement by the YMCA is authorized by a motion passed by the Board of Directors of the YMCA on March 4, 2015. 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 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 the 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.

**VILLAGE OF MAYWOOD**

**WEST COOK YMCA**

By: \_\_\_\_\_  
Village President

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

Date: \_\_\_\_\_, 2015.

Date: \_\_\_\_\_, 2015.

Attest: \_\_\_\_\_  
Village Clerk

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

Date: \_\_\_\_\_, 2015.

Date: \_\_\_\_\_, 2015.

## EXHIBIT "A"

### 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**
  - Cleaning
  - Unclogging toilets and sinks
- **Locker room**
  - Cleaning
- **Pool Deck**
  - Daily cleaning

### Village of Maywood is responsible for:

- Landscaping
- Scheduling trash pick-up
- Any structure issues with building such as front entrance, men's & 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
- Structural issues to the pool:
  - Leaks
  - Cracks
  - Problems with drains
  - Ladders
- Structural issues with:
  - Slides
  - Ladders
  - platform
- AED unit

## EXHIBIT "B"

We are beginning the process much earlier which began in December of 2014 in an effort to sign the 2015 Season contract before the end of January 2015. This will enable us to effectively market to the community, raise contributions, and establish greater and farther reaching and strategic partnerships.

We will continue to work hard so that we can mitigate any lingering misunderstanding from prior seasons when the Fred Hampton Aquatic Center was not operating consistently causing Maywoodians to patronage other neighboring pools.

Work has begun to establish a partnership with Proviso East High School so we can provide Lifeguard safety courses to Proviso East High School students. Those who complete the Lifeguard safety certification process will be eligible to serve as lifeguard at the Fred Hampton Aquatic Center as well as other pools in the area. This will ensure lifelong skill set and economic potential.

Fall 2014 Irving Middle School youth participated in swim lessons and safety courses. This investment and effort will allow them to volunteer and/or become Jr. Lifeguards at the Fred Hampton Facility.

We are planning to extend the 2015 season by 20% of 2 full weeks to Labor Day concluding on September 7th 2015.

### Proposed 2015 Schedule

- We will open for one day on Memorial Day (5/25)
- Close 5/26 – 6/13 while school is still in session
- Reopen Monday 6/15 – Monday 9/7

### Proposed Fee Schedule for 2015:

#### **2015:**

#### **Annual Pass:**

\$40 Youth  
\$50 Adult  
\$90 Family limit 6

#### **Daily Fees**

\$5 youth (3 to 17)  
\$8 Adult (18 to 55)  
\$6 Senior (56 +)  
\$15 Family limit 6

We propose to continue upon the ground swell of support that we have received from Maywood youth, families and organizations as we seek to find viable path to operating the Fred Hampton Aquatic Center during the 2015 season. To this end, we put forth the following operational protocols to guide the partnership and help ensure a viable 2015 summer season.

- The Village of Maywood provides 48,000 in financial support to cover operational budget.
- We welcome the possibility of the Village operating the concession stand inside the pool to help attract more patrons to the pool
- Shared responsibility for marketing the pool through:
  - Village assistance in a full-on marketing campaign by March to solicit season passes, day camp and group rentals

- Helping support a preseason marketing plan to be provided by The West Cook YMCA
- Target levels written into the agreement for the amount of season passes and Daycare/Day camps that need to have been secured PRIOR to opening the pool to ensure that the pool does not incur major losses.
- If the revenue target numbers of season passes and groups are not reached by the specified dates below, then both parties agree to reduce the number of days the pool will operate from 7 days per week to 5 (MWFS&S) to avert significant budget losses:

Season and group rental sales target levels:

- By May 21
  - Season Passes
  - 20 youth
  - 30 families
- By June 8
  - 10 more youth
  - 20 more families