

RESOLUTION NO. 04-29

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; APPROVING THE YMCA OF SOUTH DADE CONTRACT TO PROVIDE PARKS AND RECREATION SERVICES TO THE VILLAGE AT PERRINE PARK; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A CONTRACT WITH THE YMCA OF SOUTH DADE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village is desirous of providing the highest levels of parks and recreation services to the residents of Palmetto Bay; and

WHEREAS, the Village has followed a competitive selection process for said services under Request for Qualifications (RFQ No. 03-005); and

WHEREAS, the selection committee recommends the selection of the YMCA of South Dade to provide parks and recreation services as determined by the Village Manager; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The YMCA of South Dade is hereby selected to provide parks and recreation services to the Village of Palmetto Bay, in accordance with the following schedule:

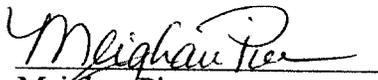
YMCA of South Dade—Primary recreation provider at Perrine Park

Section 2. The Village Manager is authorized to execute a contract with the YMCA of South Dade in substantially the same terms and conditions provided in the attached proposal.

Section 3. This resolution shall take effect immediately upon approval.

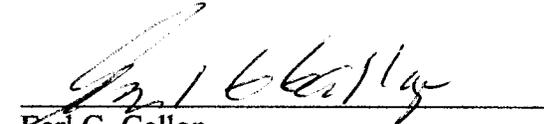
PASSED and ADOPTED this 1st day of March, 2004.

Attest:


Meighan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:



Earl G. Gallop,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

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PROGRAMMING AGREEMENT BETWEEN THE VILLAGE OF PALMETTO
BAY, FLORIDA, AND THE YMCA OF GREATER MIAMI, INC. FOR
PERRINE PARK

This programming agreement is made and entered into this 5th day of January, 2004 by and between the Village of Palmetto Bay, Florida, a political subdivision of the State of Florida ("VILLAGE"), and the YMCA of Greater Miami, Inc. ("YMCA"), in order to provide for the programming of Perrine Park.

WHEREAS, village and YMCA desire to enter into this agreement for the YMCA to provide be the primary Agency providing the programming of Perrine Park; and,

WHEREAS, Perrine Park consists of the 5 acre developed area located at 17535 SW 95th Avenue, Palmetto Bay, Florida 33157 and the undeveloped 12 acre area of park; and,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by all parties, the parties agree as follows:

1. **WHEREAS CLAUSES.** The above referenced whereas clauses are incorporated by reference into this agreement and stipulated to be true and accurate.
2. **PREMISES.** Perrine Park ("PARK"), located at 17535 SW 95th Avenue, Palmetto Bay, Florida, 33157; including the developed 5 acre area and the undeveloped 12 acre area.
3. **TERM.** The term of this programming agreement shall be for an initial nineteen (19) month period, commencing March 1, 2004. and terminating September 30, 2005, unless extended pursuant to the terms of this agreement.
4. **EXTENSIONS.** This programming agreement may be extended for two (2) additional 12 month terms.
5. **USE OF PREMISES.** The PARK shall be actively used to provide park and recreational programs for the Village of Palmetto Bay. The VILLAGE

hereby enters into this programming agreement with YMCA to provide park and recreation programs.

6. HOURS OF OPERATION. The minimum hours of operation of the Park are established by the VILLAGE. The YMCA may, at its option, keep the PARK open additional hours, with the approval of the VILLAGE. The minimum hours of staffed operation are:

- Monday thru Friday; 2 p.m. – 9:00 p.m.
- Saturday; 8 a.m. – 6 p.m.
- Sunday; 9 a.m. – 6 p.m.

7. SCHEDULING OF ACTIVITIES. YMCA will schedule all PARK activities and requests for use of or events at the PARK. YMCA agrees to allow the VILLAGE the precedence of scheduling authorized activities or events, no more than ten times in a calendar year at the PARK. The VILLAGE will notify YMCA of the events or activities, but YMCA will be exempt from liability for said events.

8. FEES. The Tot Lot at the PARK shall remain open to the public at no charge. The YMCA, with approval of the Village, may establish fees for all other recreational programs of the PARK.

The YMCA fee schedule for activities and programs at the PARK shall be generally in accord with fees charged by the YMCA at other comparable locations. The YMCA shall furnish to the VILLAGE, on a quarterly basis, a listing of programs and fees for the PARK. The VILLAGE reserves the right to disapprove a fee that is deemed to be greater than comparable fees at other locations. The YMCA shall make every effort to allow participation by all children, regardless of their ability to pay.

YMCA acknowledges that the Perrine Khoury League currently uses the PARK for baseball and softball practice. It is acknowledged that the VILLAGE may elect to continue to allow Perrine Khoury League to use the PARK.

9. CONCESSION OPERATIONS. The YMCA may operate a concession operation at the PARK based upon demand or during scheduled events and programs. The concession stand shall not be open beyond PARK hours except during properly scheduled activities and events. Commodities to be sold at the concession stand shall include healthy foods, drinks, real juice products, bottled

water and snacks and must be sold at prices comparable with other like concessions in the surrounding area. No items may be sold in glass containers. YMCA may collaborate with other organizations to operate the concession stand; however, the YMCA will be entitled to the right of refusal in this regard. YMCA will furnish all necessary equipment and furnishings needed to operate the concession stand, and upon termination of this programming agreement, all such equipment and furnishings will become the property of the YMCA

10. **PARK REVENUES.** The YMCA shall be entitled to all revenue generated at the facility through September 30, 2004. Subsequent to that date and during any extension period, as provided in section 4, the YMCA shall pay to the VILLAGE an amount equal to ten percent (10%) of the gross revenues generated at the PARK to include program revenues and concession revenues received by the YMCA. Said amounts shall be paid by YMCA on a quarterly basis payable 30 days after the end of the quarter. All PARK revenue records and accounts must be kept according to generally accepted accounting principles and made available during regular business hours (Monday-Friday, 9:00 a.m. – 5:00 p.m., and not including holidays) to auditors or accountants employed by Village of Palmetto Bay.

11. **UTILITIES.** The YMCA will be responsible for a fee of \$15 per day when the park is used for evening programming and the field or tennis court lights are used. The Village shall be responsible for all other utilities.

12. **SIGNAGE.** YMCA and VILLAGE shall jointly develop and fund signs for the PARK, including entry sign(s), rules & regulations signs, and other signs as mutually agreed.

13. **COMPLAINTS.** YMCA and VILLAGE agree to work together in close communication concerning all grievances and complaints.

14. **IMPROVEMENTS.** The VILLAGE may remodel, renovate or reconstruct any buildings, structures or pavilions on the premises. YMCA may, with prior written approval of the VILLAGE, make improvements to the PARK. Any additional or supplemental arrangements concerning YMCA improvements will be mutually agreed prior to commencement of the improvement.

15. **MAINTENANCE.** VILLAGE will be responsible for maintenance of the Park with the exception of maintenance required for programming activities which are the responsibility of the YMCA for their programs. YMCA responsibilities would include items such as the following:

- Field lining and preparation

- Operating supplies and equipment for all YMCA programs, such as arts and crafts supplies. Footballs. Soccer balls etc.
- Tennis nets, tennis balls, machines and equipment
- Janitorial cleanup after indoor programs and field cleanup after sports and outdoor events.

The YMCA will notify the VILLAGE immediately of any items requiring maintenance or repair.

16. FUNDRAISING. All fundraising and fees charged in connection with the PARK shall be used only to benefit PARK. The YMCA will be responsible for the collection of the abovementioned fundraising and fees. In addition, YMCA will decide upon the appropriate disbursement and allocation of these funds. The YMCA will remit to the Village an amount equal to 10% of the net revenue received by the YMCA for the fundraising event for use by the Village in continuing improvements at Perrine Park.

17. ACCOUNTING/INSPECTION OF BOOKS/ANNUAL AUDIT. The YMCA shall maintain its financial records in accordance with generally accepted accounting principles and allow the VILLAGE to inspect its books and records at any reasonable time. YMCA shall, at its expense, provide the VILLAGE with an annual audit prepared by an Independent Certified Public Accountant. YMCA shall retain all records pertaining to this programming agreement for a period of three years after the term expires. YMCA shall comply with all applicable public records laws.

18. CANCELLATION. Either party hereto may cancel this programming agreement with or without cause by giving the other party 60 days prior written notice sent certified mail of its intentions to do so.

19. RETURN OF PREMISES. At the end of the term of this programming agreement or any extensions thereof, YMCA shall vacate and peacefully surrender the premises to the VILLAGE. Premises shall be returned to the VILLAGE in at least comparable condition as premises is in at the commencement of this Agreement. YMCA shall not be responsible for damage to the premises beyond normal wear and tear.

20. INDEPENDENT CONTRACTOR. At all times and for all purposes hereunder, the YMCA is an independent contractor and not an employee of the Village of Palmetto Bay. No statement contained in this programming agreement shall be construed so as to find YMCA or any of its employees, contractors, servants or agents to be employees of the VILLAGE.

21. INDEMNIFICATION AND HOLD HARMLESS. To the extent permitted by law and as limited by section 768.28, Florida Statutes, the VILLAGE shall defend, indemnify and hold harmless YMCA and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which YMCA or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this agreement by the village, its employees, officers and agents. YMCA shall promptly notify the VILLAGE of each claim, cooperate with the VILLAGE in the defense and resolution of each claim and not settle or otherwise dispose of the claim without VILLAGE participation.

To the extent permitted by law, YMCA shall defend, indemnify and hold harmless the VILLAGE and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the village or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this agreement by YMCA, its employees, officers, and agents. The VILLAGE shall promptly notify YMCA of each claim, cooperate with YMCA in the defense and resolution of each claim and not settle or otherwise dispose of the claim without YMCA participation.

22. INSURANCE. Prior to YMCA taking possession of the property owned by the VILLAGE, or commencing its operations, YMCA shall obtain, at its own expense, insurance as specified in the attached schedules, which are made part of this programming agreement. The YMCA shall not commence work under this agreement until it has obtained all insurance required by the village. The YMCA shall defend, indemnify and hold the village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the YMCA, or the YMCA's subcontractors, suppliers and laborers incident to the performance of the YMCA's services under this agreement. The YMCA shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence. YMCA will not be permitted to occupy or use the property until satisfactory evidence of the required insurance has been furnished to the VILLAGE as specified below

- a) YMCA shall maintain, at its sole cost and expense, during the life of the agreement, commercial general liability, including contractual liability insurance, in the amount of \$1,000,000 per occurrence.
- b) YMCA shall maintain, at its sole cost and expense, during the life of the agreement, comprehensive automobile liability insurance in the

- minimum amount of \$500,000 combined single limit for bodily injury and property damage liability.
- c) YMCA shall maintain, at its sole cost and expense, during the life of the agreement, adequate worker's compensation insurance and employer's liability insurance as required by chapter 440, Florida Statutes.
 - d) The VILLAGE shall be named as an additional insured on each of the required policies, unless prohibited by law, and YMCA shall provide the village with a certificate of insurance. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without 30 calendar days written notice to the village prior to the effective date of cancellation, modification, or reduction in coverage.
 - e) YMCA shall maintain each of the insurance policies throughout the term of this agreement and any extensions of this agreement.
 - f) YMCA shall provide the village with a current copy of each of the above insurance policies, and any renewals.
 - g) If coverage under any of the required policies is provided on a claims-made basis, upon the termination of this agreement, CSA shall purchase an extended reporting period option for one year.
 - h) The acceptance and/or approval of YMCA's insurance shall not be construed as relieving YMCA from any liability or obligation assumed under this programming agreement or imposed by law.
 - i) The policies shall contain waiver of subrogation against the village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the village may have. The village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the village.
 - j) All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.
 - k) The YMCA shall furnish certificates of insurance to the village prior to the commencement of operations. The certificates shall clearly indicate that the YMCA has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the village.
 - l) Compliance with the foregoing requirements shall not relieve the YMCA of its liability and obligations under this agreement.

23. **COMPLIANCE WITH LAW.** In providing all services pursuant to this programming agreement, YMCA shall abide by all statutes, ordinances, and rules and regulations pertaining to or regulating the provisions of such services, including those in effect and those hereinafter adopted. Any violation of said statutes, ordinances or rules and regulations shall constitute a material breach of this programming agreement and shall entitle the VILLAGE to terminate this programming agreement immediately upon delivery of written notice of termination to YMCA, and the VILLAGE may thereupon re-enter the premises.
24. **PROFESSIONAL RESPONSIBILITY, LICENSING, ARTICLES OF INCORPORATION.** YMCA shall assure that all employees have current and appropriate professional licenses and professional liability insurance coverage. Upon execution of this programming agreement, the YMCA will provide the VILLAGE with a copy of its Articles of Incorporation and a list of its Board of Directors.
25. **REPORTING CHILD ABUSE.** YMCA in administering programming of park shall comply with the terms and conditions of its internal operating procedures as related to the immediate reporting to the appropriate authorities (police, state attorney's office and village manager) of suspected or known incidents of child abuse, child pornography or child related sexual offenses (collectively "child abuse"). The requirement by village that YMCA comply with its own internal operating procedures and manual dealing with child abuse towards minors does not create an employee-employer relationship between the YMCA and the village. The village does require, however, the YMCA, to put the village immediately on notice of any allegations, suspicions, or known events that may or have placed a minor in jeopardy.
26. **MODIFICATIONS AND AMENDMENTS.** Any and all modifications to this programming agreement or to any of the services provided shall require an amendment to this programming agreement to be approved in writing by both parties hereto.
27. **NO ASSIGNMENT.** YMCA shall not assign this programming agreement or sublease the premises except in writing and with prior written approval of the Board of Village Commissioners, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This programming agreement shall be incorporated by reference into any assignment and any assignee shall comply with all provisions herein. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the VILLAGE.

28. **NON-DISCRIMINATION.** YMCA shall not discriminate against any person on the basis of race, creed, color, national origin, sex or sexual orientation, age, physical handicap or any other characteristic or aspect which is not job-related in its recruiting, hiring, promoting, terminating or any other area affecting employment under this programming agreement. At all times, YMCA shall comply with all applicable laws and regulations with regard to employing the most qualified person(s) for positions under this programming agreement. Additionally, YMCA shall not discriminate against any person on the basis of race, creed, color, national origin, sex or sexual orientation, age, physical handicap, financial status or any other characteristic or aspect in regard to providing services hereunder.

29. **NOTICE.** Any notice required or permitted under this programming agreement shall be in writing and hand-delivered or mailed, postage pre-paid, by certified mail, return receipt requested, to the other party as follows:

FOR VILLAGE
Village of Palmetto Bay
8950 SW 152 Street
Palmetto Bay, FL 33157

FOR YMCA
YMCA of Greater Miami, Inc.
1200 NW 78th Avenue, Suite 200
Miami, Florida 33126

30. **CONTACT PERSONS.** The following, or the designees, are the contact persons in connection with this programming agreement:

FOR VILLAGE
Charles Scurr
Village Manager
Village of Palmetto Bay

FOR YMCA
Tom Den Boer
Executive Director
South Dade YMCA

31. **CONSENT TO JURISDICTION.** This programming agreement shall be construed by and governed under the laws of the State of Florida and venue for any action arising under this programming agreement shall be in Miami-Dade County, Florida.

32. **NON-WAIVER.** Any waiver or any breach of covenants herein contained to be kept and performed by YMCA shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the VILLAGE from declaring a forfeiture for any succeeding breach, either of the same condition or covenants or otherwise.

33. **FUNDING AVAILABILITY.** In the event that funds are partially reduced or cannot be obtained or continued at a level sufficient to allow for the purchase of the services contemplated, then the contract may be

terminated immediately at the option of the VILLAGE upon written notice of termination being delivered in person or by mail to YMCA. The VILLAGE will not be obligated to pay for any services provided by YMCA after YMCA has received written notice of immediate termination.

34. PUBLIC ENTITIES CRIME STATEMENT. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

35. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES. The village does not waive sovereign immunity for any claim for breach of agreement or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

36. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY. The YMCA warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and the YMCA has not, and will not, pay a fee the amount of which is contingent upon the village awarding this agreement to the YMCA.

The YMCA warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this agreement in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances.

A violation of this paragraph will result in the termination of the agreement and forfeiture of funds paid, or to be paid, to the YMCA.

37. ENTIRE AGREEMENT. The agreement, when signed by all of the parties, constitutes the full and complete understanding and agreement of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This agreement and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of

any conflict, the terms of this agreement will govern over the provisions of any incorporated documents.

39. SEVERABILITY. Should any paragraph or any part of any paragraph of this agreement be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this agreement.

ATTEST: VILLAGE OF PALMETTO BAY,
A municipal corporation

By: _____

Charles Scurr
Village Manager

Meighan Pier
Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____

Earl G. Gallop
Village Attorney

ATTEST: YMCA OF GREATER MIAMI, INC.

By: _____ Title: _____

By: _____ Title: _____

