



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: September 20, 2018

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager *PS*
Real Estate Management Division

FROM: Alex Feinman, Leasing Program Manager *AF*
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: APPROVAL AND EXECUTION OF FOURTH AMENDMENT TO LEASE AGREEMENT BETWEEN ORANGE COUNTY AND CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASSOCIATION, INC. (YMCA) AND DELEGATION OF AUTHORITY TO THE REAL ESTATE MANAGEMENT DIVISION TO EXERCISE RENEWAL OPTIONS AND FURNISH NOTICES REQUIRED OR ALLOWED BY THE LEASE, AS NEEDED

PROJECT: Tangelo Park YMCA
5160 Pueblo Street, Orlando, Florida 32819
Lease File #5016

District 6

PURPOSE: To continue to provide space for the Tangelo Park YMCA Family Center.

ITEM: Fourth Amendment to Lease Agreement
Revenue: \$1 per year
Size: Building – 13,700 square feet; Land – 25,264.80 square feet
Term: 5 years
Options: Two, 5-year renewals

BUDGET: Account No.: 0001-043-0201-6245

APPROVALS: Real Estate Management Division
Family Services Department
Parks and Recreation Division
Risk Management Division

REMARKS: Orange County and Central Florida Young Men's Christian Association, Inc. ("YMCA") entered into that certain Lease Agreement approved by the Orange County Board of County Commissioners ("BCC") dated June 15, 1987, as amended by that certain Agreement approved by the BCC dated March 14, 1988, Amendment to Lease approved by the BCC dated September 16, 2003, and Amendment to Lease approved by the BCC dated June 27, 2006 (collectively, the "Lease") to provide for the YMCA's operation of a community center on Orange County lands.

This Fourth Amendment to Lease Agreement extends the Lease Term for five years. It also provides for two, 5-year renewals by the mutual consent of YMCA and Orange County. This Fourth Amendment to Lease Agreement also updates the termination, insurance, and indemnification provisions of the Lease.

All other terms and conditions of the Lease shall remain in effect.

OCT 02 2018

ORANGE COUNTY, FLORIDA
and
CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASSOCIATION, INC. (YMCA)

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this "**Fourth Amendment**") is made as of the date last executed below (the "**Fourth Amendment Effective Date**") and entered into by and between Orange County, a charter county and political subdivision of the State of Florida, ("**Landlord**" or "**County**") and Central Florida Young Men's Christian Association, Inc., a non-profit corporation ("**Tenant**" or "**YMCA**" or "**Contractor**").

RECITALS

- A. Landlord and Tenant entered into that certain "Lease Agreement" approved by the Orange County Board of County Commissioners (the "**BCC**") on June 15, 1987 (the "**Original Lease**"), as amended by that certain "Agreement" between Landlord and Tenant dated March 14, 1988 (the "**First Amendment**"), as further amended by certain "Amendment to Lease" between Landlord and Tenant approved by the BCC on September 16, 2003 ("**Second Amendment**"), and as further amended by that certain "Amendment to Lease" between Landlord and Tenant approved by the BCC on June 27, 2006 ("**Third Amendment**") (collectively the "**Agreement**").
- B. The term of the Agreement is expired on August 31, 2018.
- C. Tenant is now in possession of the Leased Premises.
- D. Tenant desires to extend the term of the Agreement and Landlord has agreed to such extension.
- E. Landlord and Tenant also desire to update and amend certain provisions of the Agreement, including those related to termination, indemnification, and insurance.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.
2. Definitions. Defined (capitalized) terms used herein, but not defined herein, shall

have the meanings given to such terms by the Agreement.

3. Second Renewal Term. The term of the Agreement is hereby extended for one (1) additional term of five (5) years, commencing on September 1, 2018, and terminating on August 31, 2023 (the “**Second Extension Term**”).

4. Renewals. Upon expiration of the Second Extension Term, Tenant may request renewal the term of the Agreement for two (2) additional terms of five (5) years each (the “**Third Extension Term**” and the “**Fourth Extension Term**”, respectively). Each such renewal shall be by the mutual consent of Landlord and Tenant. Landlord’s Real Estate Management Division, acting through its Manager or such Manager’s designee, is authorized to approve any renewal options.

5. Rent. Tenant agrees to pay to Landlord the sum of One Dollar and 00/100 (\$1.00) per year as rent for the Leased Premises during the Second Extension Term. If Tenant requests to extend (and Landlord agrees to such request), Tenant shall continue to pay to Landlord the sum of One Dollar and 00/100 (\$1.00) per year as annual rent for the Leased Premises during each of the Third Extension Term and the Fourth Extension Term.

6. Article VII, Section 2, of the Original Lease and Section 19 of the First Amendment are each hereby deleted in their entirety and replaced with the following:

Termination. This Agreement may be terminated in accordance with the following provisions:

- a. Upon affirmative vote of a majority of either the Orange County Board of County Commissioners for the County or the Board of Directors for the YMCA; or*
- b. Upon mutual written agreement by both the County and the YMCA that the terms and conditions of this Agreement cannot be satisfactorily performed; or*
- c. Upon five (5) days’ prior written notice by the County of breach or failure of the YMCA to comply with any covenant or provision of this Agreement.*

Notwithstanding anything contained in the Agreement or this Fourth Amendment to the contrary, neither party may terminate the Original Lease or the First Amendment without also terminating the other agreement.

7. Indemnification – Original Lease. Article X of the Original Lease is hereby deleted in its entirety and replaced with the following:

ARTICLE X

INDEMNIFICATION

To the fullest extent permitted by law, the YMCA shall defend, indemnify and hold harmless the County its officials and employees from any and all losses

and expenses, claims and damages, demands, suits or other actions or any liability whatsoever, including reasonable attorney's fees and costs arising out of or resulting from the performance or failure to perform its operations, obligations and responsibilities associated with the operation, use, care and maintenance of the YMCA's Leased Premises.

To the fullest extent permitted by Section 768.28, Florida Statutes, the County shall release, defend, indemnify and hold harmless the YMCA, its officials and employees from all losses and expenses, claims and damages, demands, suits or other actions or any liability attributable to its negligent acts or omissions or those of its officials and employees acting within the scope of their employment or arising from the County's negligent performance associated with the operation, care, use and maintenance of the Park Premises. Nothing contained herein shall constitute a waiver of the County's sovereign immunity or the provisions of Section 768.28, Florida Statutes.

The foregoing shall not constitute an agreement by either the YMCA or the County to assume liability for the acts, omissions and/or negligence of the other party.

8. Indemnification – First Amendment. Section 13 of the First Amendment is hereby amended in its entirety to be consistent with the indemnification provisions of Article X of the Original Lease, as amended by Section 7 of this Fourth Amendment above.

9. Insurance – Original Lease. Article XII of the Original Lease, as amended by Section 2 of the Second Amendment and by Section 10 of the Third Amendment, is hereby deleted in its entirety and replaced with the following:

ARTICLE XII

INSURANCE

The YMCA agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this Agreement and any extensions thereof the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Tenant is not intended to and shall not in any manner limit or qualify the liability or obligations assumed by the Tenant under this Agreement, or limit or modify the liability or obligations assumed by landlord under this agreement. The YMCA shall require and ensure that all contractors or subcontractors providing services or performing work on the Leased Premises procures and maintains until the completion of their respective services insurance of the types and to the limits specified herein. All insurance carriers providing coverage required herein, other than workers' compensation, shall be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or

better. Workers' Compensation shall require a current A.M. Best's Financial Strength Rating of B++ Class VIII or better.

Required Coverage:

- *Commercial General Liability. The YMCA shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$1,000,000 (one million dollars) per occurrence. The YMCA further agrees coverage shall not contain any endorsement(s) excluding or limiting Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit. The YMCA agrees to endorse the County as an Additional Insured with a CG 20 26 Additional Insured – Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. This endorsement applies only to claims against the additional insured based upon breaches of this agreement by or negligence of the named insured. The additional insured shall be listed in the name of Orange County Board of County Commissioners.*
- *Business Automobile Liability. The YMCA shall maintain coverage for all owned; non owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$500,000 (five hundred thousand dollars) per accident. In the event the YMCA does not own automobiles the YMCA shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.*
- *Workers' Compensation. The YMCA shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability.*
- *All-Risk Property. The YMCA shall maintain all-risk property insurance for the Leased Premises including any real and personal property located at the Leased Premises and any alterations, structures, additions and improvements made to or installed on the Leased Premises for their full replacement value and shall include any loss of use or revenue associated with any damage or destruction of the Leased Premises.*

The YMCA shall provide the County with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the YMCA shall also provide a blanket or specific additional insured endorsement for each policy as required above. All specific policy endorsements shall be in the

name of the Orange County Board of County Commissioners and shall reference the policy number(s) to which these endorsements apply.

The certificates shall clearly indicate that the YMCA has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. The YMCA shall notify the County not less than thirty (30) business days (ten business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. To maintain compliance with the aforementioned insurance requirements the YMCA shall immediately provide evidence of replacement coverage to the County or its certificate management representative.

10. Insurance – First Amendment. Section 14 of the First Amendment is hereby amended in its entirety to be consistent with the insurance provisions of Article XII of the Original Lease, as amended by Section 9 of this Fourth Amendment above.

11. Effects; Conflicts. Except as set forth in this Fourth Amendment, all other terms and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect. In the event of any conflict between the provisions of this Fourth Amendment and the provisions of the Agreement, the provisions of this Fourth Amendment shall control.

12. Counterparts. This Fourth Amendment may be executed in two or more counterpart copies, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

(signature pages follow)

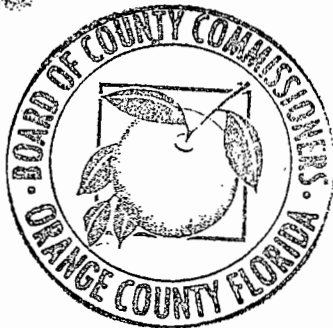
Tangelo Park YMCA
Lease File #5016

IN WITNESS WHEREOF, Landlord and Tenant have caused this "Fourth Amendment to Lease Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Fourth Amendment Effective Date.

LANDLORD:

Signed, sealed, and delivered
in the presence of:

ORANGE COUNTY, a charter county and
political subdivision of the State of Florida



By: *B. J. Dalchanda*
Teresa Jacobs
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: *Katie Jones*
Deputy Clerk

Tangelo Park YMCA
Lease File #5016

IN WITNESS WHEREOF, Landlord and Tenant have caused this "Fourth Amendment to Lease Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Fourth Amendment Effective Date.

TENANT:

Signed, sealed, and delivered
in the presence of:

**CENTRAL FLORIDA YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC.,**
a non-profit corporation

Witness: Deborah Korba By: Daniel Wilcox
Print Name: Deborah Korba Daniel Wilcox
Witness: Colleen K. Manahan Title: CEO
Print Name: Colleen K. Manahan Date: 9/10/18