

MEMORANDUM OF UNDERSTANDING

two THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into on the 21st day of January, 2024⁵ to be effective as of January 1, 2024⁶ (the "Effective Date"), by and between the City of South Bend, Indiana (inclusive of its departments, commissions, boards, employees, officers and agents), acting by and through its Board of Park Commissioners (the "City"), and the YMCA of Greater Michiana, Inc., a Michigan nonprofit corporation, with corporate offices at 905 North Front St, Niles, MI 49120 ("YMCA") (each a "Party" and collectively the "Parties").

Definitions

O'Brien: YMCA O'Brien Fitness Center, a facility owned by the City and under management by the City's Venues, Parks & Arts Department, located at 312 E. Walter Street, South Bend, IN 46614

VPA: Venues Parks & Arts, a Department within the City with offices at 219 S. St. Louis Blvd South Bend, IN 46617

BPC: Board of Park Commissioners legislated governing body of VPA.

YMCA: YMCA of Greater Michiana with corporate office at 905 N. Front St. Niles, MI 49120

Recitals

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Reciprocal Member Benefits: On the Effective Date of this MOU, the following membership benefits will be extended to all individuals who hold an active membership at the O'Brien located in South Bend, Indiana as of the Effective Date:
 - a. As a member of the O'Brien, individuals will have access to the O'Brien, amenities including the gym, workout & cardio room, four fitness studios, child watch, locker rooms, and saunas.
 - b. Access to most YMCA's nationwide, including the YMCA of Greater Michiana branches, pursuant to the terms and conditions of the Nationwide Membership Agreement between the YMCA and the National Council of Young Men's Christian Associations of the United States of America and its independent and autonomous member associations in the United States and Puerto Rico in effect on the Effective Date.
 - c. Member discounts for YMCA Programs. Discount amounts may be changed by providing 45 days' prior written notice to YMCA members).

2. Relationship of the Parties and Coordination: Nothing in this MOU shall be construed as creating a partnership, joint venture or agency relationship between the

Parties or, except as otherwise expressly provided in this MOU, as granting either Party authority to bind or contract any obligation in the name of or on the account of the other Party or to make any statements, representations, warranties or commitments on behalf of the other Party. All persons employed by a Party shall be employees of such Party and not the other Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

- a. The Parties will work together in good faith to make mutually agreeable decisions on membership rates, operating hours, and all other general operational logistics. (See membership rates and operating hours set forth in Exhibit A)
- b. The Parties will work together in good faith to make mutually agreeable decisions in establishing membership details for City employees and families. The YMCA will offer a corporate wellness program to City employees in collaboration with the City's Human Resources Department. (See wellness plan details set forth in Exhibit B).
- c. YMCA representatives will be responsible for membership services, including but not limited to the front desk (e.g., member check-in process), membership registration, child watch, and member communications, group fitness schedules, marketing, and promotions.
- d. VPA will manage in collaboration with the YMCA all VPA programs delivered at the O'Brien facility, as well as all programs in the ancillary grounds surrounding the building. Programs offered at the O'Brien Center will be inclusive of the YMCA members and the community.
- e. Specific Programs such as: Summer Camp at the YMCA O'Brien Center, Schools Out Y's In (SOYI), and Fall/Spring Break Camps are all programs offered by the YMCA. These programs will continue to be managed by the YMCA. Per this MOU, these programs are intended to provide a safe and affordable way to keep children in South Bend engaged.
- f. City will commit to routine maintenance of the O'Brien as well as the operation of all major building systems and outdoor lawn service. VPA will coordinate the scheduling of any routine cleaning services provided at the O'Brien. The YMCA and VPA will work together to resolve any cleaning issues that may arise.
- g. YMCA is responsible for providing training, instruction, and supervision of their employees, volunteers, or agents.
- h. The Parties will work together in good faith to establish mutually agreeable scheduling for City events and programs at the O'Brien, on a quarterly basis. VPA shall manage building scheduling for the gym and park grounds. VPA will make a coordinated effort to accommodate all reasonable requests made by the YMCA for YMCA related programs and events at the O'Brien.
- i. The City shall be responsible for the installation, maintenance and round the clock monitoring of City-owned cameras and alarms at all exterior doors and windows in

the O'Brien. The YMCA agrees that any requests to view footage or obtain copies of downloaded footage must be submitted to the City for review. Requests for copies of downloaded video footage must be submitted through the City's Access to Public Records Act process.

- j. At no time will uninvited individuals be allowed in the YMCA O'Brien facility unless they are actively supervised by either YMCA or VPA staff. Any activities outside normal hours will be coordinated in advance by VPA and YMCA. It is understood that the facilities, such as the gym, are not to be used after close of business.
3. Limitation of Liability: The City and the YMCA waive and release all claims against each other for consequential, special and exemplary damages caused by, related to or arising out of this MOU. The Parties mutually waive and release each other from all claims of damages for: sanctions; punitive, exemplary or special damages.
4. YMCA may, at no cost to the City, install or relocate fitness and exercise equipment and supplies to the O'Brien. In doing so, the YMCA agrees to ensure that the equipment is in good working condition and safe for public use in a commercial fitness operation. The YMCA agrees to repair, at the YMCA's sole expense, any damage to the O'Brien or to VPA equipment caused by YMCA's installation of equipment at the O'Brien.
5. New equipment purchased by the YMCA for the YMCA O'Brien Center will remain the property of the YMCA. It is the YMCA's sole responsibility to appropriately mark and or inventory such equipment so that there is no confusion over ownership at the end of this business relationship. The YMCA shall also be responsible for the removal of any outdated or replaced equipment, as deemed necessary by the YMCA in its sole discretion.
6. YMCA agrees and undertakes to indemnify and hold the City its respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including reasonable attorneys' fees, that the City may suffer or incur as a result of any claims or actions brought by any person or entity which are directly caused by the sole negligence of the YMCA in the performance of its obligations under this MOU. If any indemnifiable action is brought against the City its respective agents, employees, successors, or assigns, YMCA agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein. The YMCA shall have the right to use the counsel and consultants of its choosing in defense of any claim for which YMCA provides indemnification under this Section 6, to the extent not covered by a policy of insurance provided by the YMCA.
7. YMCA, at the YMCA's sole expense, shall maintain during the term of this MOU commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. The YMCA agrees to include the BPC and the City as additional insureds on any such policy and produce to the City, upon request, a certificate of insurance evidencing the same. In the event there is a claim against the City that is covered by the commercial general liability insurance provided by the YMCA under this MOU, the YMCA hereby grants the City first priority on any

proceeds received from the YMCA's insurance with respect to said claim. Notwithstanding anything in this MOU to the contrary, neither the YMCA nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

8. YMCA will, at its own cost, operate and maintain a membership registration software. All users of the O'Brien / YMCA facility will be registered through this software. City retains rights to access the user database only with respect to the O'Brien membership which existed prior to the original joint agreement between the City and the YMCA (the "Legacy O'Brien Members") for any and all reasons during the term of this MOU to the extent it is necessary or required under Indiana law. The YMCA retains ownership at all times to the YMCA membership database and neither the City or VPA shall be permitted to access membership databases for the purpose of soliciting members.
9. The Parties will ensure that all members, whether day-pass or full-time members, agree to all participation forms and policies, as amended and updated from time-to-time by agreement of the Parties. The Parties recognize the importance of providing a safe and inclusive space for all guests and members. Consistent with the City's efforts to provide access and equity to the O'Brien, VPA shall receive fifty (50) complimentary day passes per month which may be dispersed by VPA in its sole discretion. However, it is expressly understood that each guest using a complimentary day pass must sign in and out at the O'Brien front desk so that records can be maintained. The YMCA, upon prior notice to VPA, reserves the right to deny access to a guest on a complimentary pass if such guest has been proven to violate YMCA or O'Brien policies.
10. The Parties will actively work together to pursue private funding opportunities, including but not limited to grants and sponsorships. Proceeds generated from these funding opportunities will be used according to any grant or sponsorship requirements or as mutually decided upon by the Parties. Notwithstanding, the Parties understand that priority shall be given to funding City sponsored programming or capital improvements at O'Brien should proceeds be received from fundraising, grants, or any other special revenue generating activity. Upon expiration or termination of this MOU, any jointly secured funding proceeds will be divided as agreed to by the Parties. Capital projects built from these proceeds will be owned by the City and used by the YMCA as part of its community and membership programming at the O'Brien. In the event that this MOU is terminated prior to its expiration, the Parties work together in good faith to agree upon appropriate terms and compensation to permit YMCA's continued use of any such capital improvements.
11. Facility Use Fee; Operational Revenue Sharing: By January 15 of each calendar year, throughout the term of this MOU, management from each Party will determine reasonable overhead and operational expenses and work to determine an appropriate revenue sharing model to equitably reimburse costs to the fullest extent possible. In no event shall the monthly facility use fee payable by YMCA to the City exceed One Thousand Dollars (\$1,000.00) per month. Any revenues that exceed operational expenses, as determined for the previous year ending on December 31, shall be allocated between the Parties as follows: fifty-five (55%) percent to the YMCA and forty-five (45%) to the City. The YMCA shall provide the City with quarterly financial

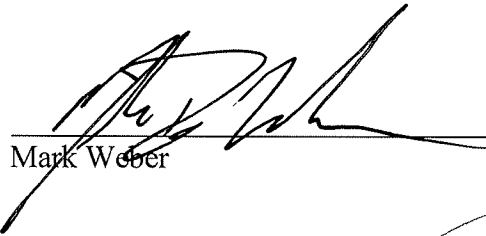
reports for YMCA membership and programs delivered at the O'Brien and shall make at least one public presentation to the City.

12. Membership Rates: Proposed membership rates under this MOU for the partnership, effective on the Effective Date, are included as Exhibit A. Rates will be periodically updated, as approved by the governing board of both Parties, to serve the needs of the community and the business operation. Parties agree to honor mutually agreed upon existing and new corporate partnerships in addition to wellness programs. The YMCA will offer its financial scholarship assistance program to all eligible individuals for discounted membership and programs.
13. Term of MOU: This MOU shall be effective as of the Effective Date and shall expire 12 months from the Effective Date. Either party may terminate this MOU the material default by the other Party, by providing written notice of default to the other Party and a thirty (30) day period after such notice to cure the default.
14. Legal/Liability/disputes: This MOU sets forth the entire understanding between the Parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This MOU may be amended only by separate writing, signed by authorized representatives of both Parties. This MOU will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this MOU or otherwise concerning a Party's performance under this MOU or the validity or enforceability of any term (including this Section 14), shall be submitted to arbitration before a single arbitrator mutually agreed to by both Parties and processed in accordance with the Commercial Rules of the American Arbitration Association (hereinafter "AAA"). Any arbitration hearings shall be held in St. Joseph County, Indiana. The decision of the arbitrator shall be rendered in a reasoned, written opinion, based on the applicable law and facts, and shall be final and binding upon the Parties. Rights under this Section 14 and any decision of the arbitrator shall be enforceable solely in any court of competent jurisdiction in the State of Indiana. Each Party shall bear its own attorney, expert and other fees and costs incurred in any arbitration or court proceedings, except that the Parties shall equally share the fees and costs of the arbitrator and the AAA. In the course of arbitration proceedings, the Parties shall have the rights to representation of counsel, pre-hearing discovery including depositions, requests for production of documents and interrogatories, all under the supervision of the arbitrator. The arbitrator shall have the power to order discovery and issue and enforce subpoenas for records and witness appearances at depositions and hearings as provided under the Indiana Court Rules. The arbitrator shall have no power to add or to subtract from or modify any of the terms of this MOU.
15. Operating Policies and Procedures: To the extent it does not violate State law, City of South Bend Ordinance, the City agrees to operate the O'Brien using the YMCA Best Practices manual as a minimum standard of business operations. Parties will collectively evaluate the manual on a consistent basis to meet the mutual interests of O'Brien users and staff.

[Signatures appear on the following page]

IN WITNESS WHEREOF, this MOU has been executed effective as of the date first appearing above.

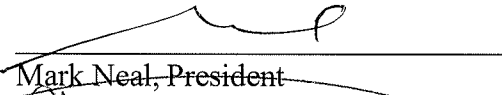
YMCA OF GREATER MICHIANA



Mark Weber

CEO

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS**



Mark Neal, President



Consuela Hopkins, Vice President



Sam Centellas, Member

Georgianne Walker, Member

ATTEST: 

Anastasia Smith-Davis, Clerk

Exhibit A.

YMCA O'Brien Center Membership Rates

Membership Type	Join Fee	Monthly Fee <i>No annual fee. No contract.</i>	Annual Fee <i>If you choose to pay annually.</i>
Youth (0-12)	\$30	\$17	\$204
Teen (13-19)	\$30	\$22	\$264
Young Adult (20-28)	\$30	\$32	\$384
Adult (29-64)	\$50	\$42	\$504
Couple	\$50	\$52	\$624
Household	\$50	\$62	\$744
Single Parent Household	\$50	\$50	\$600
Senior (65+)	\$0	\$37	\$444
Senior Couple	\$0	\$47	\$564

**Rates effective February 1, 2023*

- New/Renewing (over 30 days inactive) memberships are subject to a join fee.
- Household membership includes one or two Adult(s) and legal dependent(s) at the same address.
- For couple, household, single parent, and senior couple memberships, members must reside in the same household. Verification is required.
- Membership dues withdraw monthly on the 10th.
- Changes to membership must be made prior to the first day of the month it is to take effect.
- Dependents ages 20-26 must be enrolled in school. Otherwise, they are considered an additional adult. *Additional Adult Add-On Fee applies, see rate above.
- Military and School Employees must show ID to receive pricing.

YMCA O'Brien Center Guest Pass Rates

	Day	Week	2 Weeks	3 Weeks	Week 4
Youth/Teen (0-19 years)	\$6	\$15	\$20	\$25	\$30
Adult (20+ years)	\$10	\$20	\$32	\$42	\$50
Couple/Household (2+ Individuals)	\$15	\$25	\$40	\$55	\$70

Guest passes can be purchased at Member Service.

Facility Hours

Sunday 9:00 AM-2:00 PM

Monday 5:00 AM-9:00 PM

Tuesday 5:00 AM-9:00 PM

Wednesday 5:00 AM-9:00 PM

Thursday 5:00 AM-9:00 PM

Friday 5:00 AM-9:00 PM

Saturday 7:00 AM-4:00 PM

Exhibit B.

Full-Time and Part-Time:

Free gym membership to Full-Time & Permanent Part-Time employees. City reimburses the YMCA \$16 per employee based on usage to the facility. A joiner fee of \$20.00 will be assessed for all new non-City employee memberships.

The spouse of the employee may also be included inside the membership discount, as long as the spouse and family are included in the city wellness plan.

Children may also be included in the employee discount. Child ages 20-26 must be enrolled in school. To add children to the membership plan, the employee must place a billing method on file with the YMCA to deduct \$16 monthly for their membership. Otherwise, they are considered an adult and will not be included in the employee discount. A monthly membership rate of \$22 will be charged for the additional individual age 20-26 who is not rerolled in college.

This discount does not include Seasonal, Contractual, or Interns employed by City of South Bend.

Employees can verify membership at the front desk of the YMCA O'Brien Center. The YMCA received a updated list of employees monthly from City of South Bend Human Resources department.

The first week of each month, the YMCA will invoice the City for previous month based on the facility usage report. The City will submit payment within 45 days from receipt of the invoice.

The Y closes on major holidays:

New Year's Day, Easter Sunday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day

The Y will close early on:

Christmas Eve (12:00 PM)

New Year's Eve (3:00 PM)