

# south euclid

COME TOGETHER & THRIVE

## REMINDER

CITY COUNCIL

### NOTICE OF MEETING

**Dennis Fiorelli**  
*President*  
**Sara Continenza**  
**Joe Frank**  
**Marty Gelfand**  
**Jane Goodman**  
**Ruth Gray**  
**Jason Russell**

MEETING OF: **RECREATION COMMITTEE**  
CALLED BY: RUTH GRAY, CHAIR  
DATE: **FEBRUARY 25, 2019**  
LOCATION: COMMITTEE/JURY ROOM  
TIME: 6:00 P.M.  
RE: REVIEW OF RES. 38-10:  
SELREC/YMCA AGREEMENT &  
DEER CULLING.

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**COMMITTEE MEMBERS:**

SARA CONTINENZA  
JASON RUSSELL

**COUNCIL MEMBERS:**

DENNIS FIORELLI  
JOE FRANK  
MARTY GELFAND  
JANE GOODMAN

**ADMINISTRATION:**

KEITH BENJAMIN, COMM. SERVICES DIRECTOR  
JIM ANDERSON, SERVICE DIRECTOR

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 38-10  
INTRODUCED BY: Miller  
REQUESTED BY: Mayor

May 24, 2010

A RESOLUTION

AUTHORIZING THE MAYOR, AS A MEMBER OF THE SOUTH EUCLID-LYNDHURST RECREATION COMMISSION, TO ENTER INTO AN AGREEMENT WITH THE YMCA OF GREATER CLEVELAND FOR THE PURPOSE OF MANAGING AND OPERATING MUNICIPAL RECREATION PROGRAMS.

WHEREAS, The City of South Euclid, the City of Lyndhurst and the South Euclid-Lyndhurst City Schools are members of the Regional Council of Governments for the South Euclid-Lyndhurst Recreation Commission (SELREC); and

WHEREAS, The Members of SELREC, including the City of South Euclid, wish to enter into an agreement with the YMCA of Greater Cleveland for the purposes of operating and managing the municipal recreation programs provided by SELREC.

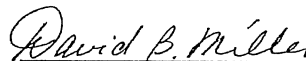
NOW THEREFORE, BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Mayor of the City of South Euclid, in partnership with the City of Lyndhurst and the South Euclid-Lyndhurst City Schools, be and hereby is authorized to enter into an agreement with the YMCA of Greater Cleveland for the purposes of managing and operating the municipal recreation programs provided by the South Euclid-Lyndhurst Recreation Commission.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

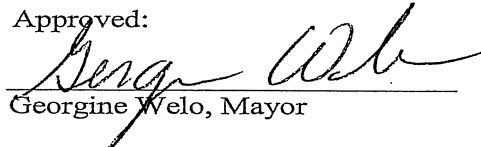
Section 3: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this 24th day of May, 2010.




David B. Miller, President of Council

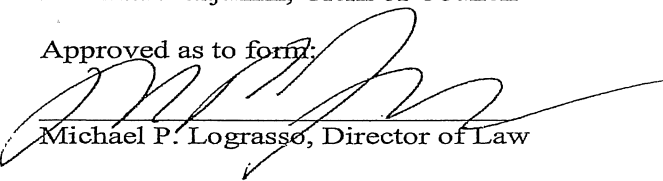
Approved:

  
Georgine Welo, Mayor

Attest:

  
Keith A. Benjamin, Clerk of Council

Approved as to form:

  
Michael P. Lograsso, Director of Law

## **OPERATING AGREEMENT**

This Agreement is made at Lyndhurst, Ohio as of May 18, 2010, by and between the Regional Council of Governments for the South Euclid–Lyndhurst Recreation Commission, which with its successors and assigns is herein called “SELREC” and the YMCA of Greater Cleveland, which with its successors and assigns is herein called “YMCA” and with SELREC and YMCA collectively herein called the “Parties”.

WHEREAS, pursuant to the Memorandum of Understanding dated March 3, 2010 by and between SELREC and the YMCA (the “MOU”), SELREC desires to engage the YMCA to manage and operate the municipal recreation programs currently being provided by SELREC (the “SELREC Programs”), and the YMCA desires to manage and operate the SELREC Programs.

NOW, THEREFORE, subject to the foregoing and in consideration of the mutual covenants set forth herein and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), SELREC and YMCA hereby agree as follows:

### **1. Management.**

SELREC hereby engages the YMCA, and the YMCA hereby accepts the engagement as exclusive manager and operator of the SELREC Programs in accordance with the terms of this Agreement.

YMCA further agrees that the obligations of the YMCA with respect to the management and operation of the SELREC Programs shall commence on July 1, 2010 (the “Commencement Date”).

### **2. Term of Agreement.**

The term of this Agreement shall commence on the Commencement Date, July 1, 2010, and shall automatically renew every five years from the Commencement Date, unless any Party to this agreement provides written notice to terminate at least 90 days before the renewal date.

The Parties agree to assess the terms of this Agreement relative to their mutual benefit no later than one year subsequent to the Commencement Date. Negotiation of any modifications to this Agreement shall be completed within 90 days or as otherwise mutually agreed after commencement of negotiations; provided, however, that either party may terminate negotiations at any time without penalty.

**3. Financing; Payments; Program Space.**

YMCA assumes the financial responsibility for the management and operation of the SELREC Programs subject to the following conditions precedent:

**(A) SELREC agrees to finance the SELREC Programs with an eighteen month operating subsidy not to exceed \$155,933 as follows:**

South Euclid-Lyndhurst Board of Education	\$62,373
City of South Euclid	56,136
City of Lyndhurst	37,424
	<u>\$155,933</u>

**(1) The above subsidy is to be paid on a quarterly basis equal to one-sixth of the above amounts commencing September 30, 2010 and ending December 31, 2011,**

**(B) SELREC agrees to provide space required for SELREC Programs through the South Euclid-Lyndhurst Board of Education (the "SEL-BOE") and municipalities of South Euclid and Lyndhurst, at no cost, providing that the use of such space does not incur an additional cost to the providing governmental agency throughout the term of the Operating Agreement,**

**(C) YMCA will operate the Childcare program presently operated by the Kiddie Company under an Independent Contractors Agreement with SELREC and SELREC agrees to promote Childcare as a SELREC Program operated by the UMCA immediately upon execution of this Agreement,**

**(D) SEL-BOE agrees to provide two second floor double classrooms, the ground floor cafeteria and playground at Southlyn School to operate a licensed school aged child care ("SACC") program, on an annual basis. The availability of this space shall automatically renew on an annual basis on the Commencement Date, July 1, 2010, unless SEL-BOE provides written notification of its inability to provide such space at least 90 days before the annual Commencement date. The YMCA agrees to pay reasonable and customary custodial fees for the space,**

**(E) SEL-BOE agrees to enter into an agreement to provide busing services to YMCA for the operation of the above SACC programs on a mutually agreeable mileage and hourly rate basis,**

(F) SEL-BOE agrees to continue renting the SELREC administration building ("SELREC Office") to YMCA for \$10,000 per year throughout the term of the Operating Agreement per the existing terms of the annually renewable lease agreement,

(G) YMCA may consolidate redundant programs presently offered at both SELREC and the Hillcrest YMCA, at the Hillcrest YMCA where applicable, acknowledging that the Lyndhurst Dad's Club, South Euclid Girl's Softball, South Euclid Boy's Baseball, South Euclid-Lyndhurst Soccer, South Euclid Basketball and Gator Football are not SELREC programs,

(H) Field permits will be issued by SELREC in coordination with both cities and the SEL-BOE,

(I) Staffing practices will follow YMCA policies and procedures, and YMCA shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations and requirements and the orders of all duly authorized governmental officials with respect to SELREC and the use and occupancy of SELREC Space and shall cause SELREC Programs to at all times conform to the foregoing,

(J) Existing SELREC agreements with independent program contractors terminate at the end of their respective program sessions,

(K) SELREC's AEK registration accounting system and the BOE business support service including IT and phone system network support will be maintained at a mutually agreeable service fee until the YMCA determines an appropriate conversion plan, and

(L) SELREC Program participant policies will follow YMCA policies and procedures.

#### 4. Relationship of Parties.

YMCA is not a tenant of SELREC. SELREC and YMCA are not partners. Neither is obligated for any of the obligations or responsibilities of the other. YMCA has no authority to bind SELREC with respect to any matters whatsoever and will not represent to any party that it has any such authority. YMCA is solely a manager and operator of SELREC Programs and has no possessory rights with respect to SELREC.

#### 5. Insurance.

(A) YMCA shall provide general commercial liability insurance, with SELREC as an additional named insured, with combined single limit coverage of no less than Three Million Dollars (\$3,000,000.00).

**(B) YMCA shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse YMCA for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent operators in the business of YMCA or attributable to prevention of access to the SELREC Programs as a result of such perils.**

**(C) The foregoing policies shall have such terms and conditions as are reasonably acceptable to SELREC in accordance with coverage generally obtained in the greater Cleveland area with insurers licensed to sell insurance in Ohio and which have a Best's Rating of A or better and with a Best's Financial Classification of XI or better.**

**(D) Failure to maintain general liability insurance indicated in 5(A) shall be deemed a material breach of this contract.**

#### **6. Indemnification.**

**YMCA shall defend, indemnify and save SELREC harmless from and against any and all actions, causes of actions, liability, damage, penalties, costs, expenses and judgments (including, but not limited to, court costs and attorneys' fees) arising from injury to person or persons or property sustained by anyone in the SELREC Programs, resulting from any acts or omissions of YMCA or YMCA's officers, agents, employees, contractors, licensees, invitees or arising from any breach of default of this Agreement or the enforcement of the same or the collection of any judgments obtained or arising with respect to the foregoing.**

**SELREC shall defend, indemnify and save YMCA harmless from and against any and all actions, causes of actions, liability, damage, penalties, costs, expenses and judgments (including, but not limited to, court costs and attorneys' fees) arising from injury to person or persons or property sustained by anyone in the SEREC Programs, resulting from any acts or omissions of SELREC or SELREC's officers, agents, employees, contractors, licensees, invitees or arising from any breach of default of this Agreement or the enforcement of the same or the collection of any judgments obtained or arising with respect to the foregoing.**

#### **7. Sufficiency and Inspection of Records.**

**The Parties agree that the books, records, documents and other supporting data pertaining to the financial operation of SELREC per this Agreement are to be maintained by the YMCA in manner consistent with Generally Accepted Accounting Principals. The Parties further agree that the financial statements of SELREC will be consolidated within the financial statements of the Hillcrest YMCA.**

The YMCA agrees that SELREC representatives are entitled to enter the SELREC Office and make periodic inspections of the books, records, documents and other supporting data pertaining to this Agreement. The inspections may be made at any time during normal business hours of the SELREC Office or at any time necessary for police and fire personnel in the course of performance of their official duties.

#### **8. Removal of Property.**

Personal property presently owned by SELREC shall be deemed to be part of SELREC under this Agreement. Any personal property acquired in substitution or replacement thereof shall be deemed to be part of the YMCA under this Agreement.

YMCA must remove YMCA's personal property not comprising a part of SELREC within forty-five (45) days if YMCA terminates this Agreement and within forty-five (45) days prior to the stated termination date of this Agreement; provided, however, that the foregoing shall not limit SELREC's right to enter, remove and dispose of said personal property upon an Event of Default as defined herein.

In the event YMCA removes any items, YMCA shall immediately repair or reimburse SELREC for all damage or defacement resulting from the removal. If items are not removed within said deadlines, at SELREC's option, said items shall become and remain the property of SELREC and shall be deemed to be abandoned or at SELREC's option, SELREC may remove and dispose of said items and YMCA shall immediately reimburse SELREC for the costs for said removal.

#### **9. Default.**

(A) As used in this Agreement, the term "Event of Default" shall mean any of the following:

(1) YMCA's failure, within thirty (30) days after receipt of demand from SELREC, to fulfill any non-payment obligation imposed on YMCA by this Agreement; provided if the failure is of such a nature that it cannot be corrected within 30 days, then such failure shall not constitute an Event of Default so long as YMCA institutes curative action within 30 days and diligently pursues the action to completion; or

(2) The filing by YMCA in any court a petition in bankruptcy or insolvency or for reorganization or for arrangement or liquidation within the meaning of the Bankruptcy Code or any comparable state law, or for

the appointment of a receiver or trustee of all or a portion of YMCA's property; or

(3) The filing of an involuntary petition of the kind referred to in subitem (2) of this Section shall be filed against YMCA and such petition shall not be vacated within sixty (60) days after the date of filing thereof; or

(4) YMCA be adjudicated a bankrupt.

(B) Upon the occurrence of an Event of Default, at SELREC's option, this Agreement shall terminate and the Parties shall be relieved of all obligations hereunder, except for liabilities and obligations accruing prior to the date of termination.

#### 10. Representations and Warranties of YMCA and SELREC.

YMCA represents and warrants the following:

(A) YMCA is duly authorized to do business in the State of Ohio and has the corporate power and authority to enter into this Agreement,

(B) YMCA is a not-for-profit corporation in good standing under the laws of Ohio,

(C) There is no action, suit or proceeding pending, or to the best of YMCA's knowledge, threatened, against or affecting YMCA at law or in equity before any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality or arbitrator which, if adversely decided, could have a material adverse effect on the business, assets or financial condition of YMCA or its right to enter into this Agreement to which it is a party or the validity or effectiveness thereof, and

(D) Neither the execution and delivery of this Agreement, nor the fulfillment of, or compliance with, the terms and conditions hereof, nor the consummation of the transactions contemplated hereby conflicts with or results in a material breach of or a material default under any law, regulation or rule or the YMCA's Articles of Incorporation or By-laws or the terms, conditions or provisions of any restriction or any agreement or instrument to which the YMCA is bound.

SELREC represents and warrants as follows:

(A) SELREC is duly authorized to enter into this Agreement,

(B) There is no action, suit or proceeding pending, or to the best of SELREC's knowledge, threatened, against or affecting SELREC at law or in equity before any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality or arbitrator which, if adversely decided, could have a material adverse effect on the business, assets or financial condition of SELREC or its right to enter into this Agreement to which it is a party or the validity or effectiveness thereof, and

(C) Neither the execution and delivery of this Agreement, nor the fulfillment of, or compliance with, the terms and conditions hereof, nor the consummation of the transactions contemplated hereby conflicts with or results in a material breach of or a material default under any law, regulation or rule or the SELREC's Charter or the terms, conditions or provisions of any restriction or any agreement or instrument to which SELREC is bound.

#### 11. Assignment and Encumbrances.

YMCA acknowledges that the services to be provided hereunder are personal and cannot be provided in a substantially similar fashion by any other party. YMCA shall not assign this Agreement or encumber in any way all or any portion of YMCA's right or interest hereunder. Any merger or acquisition of YMCA by or with an unrelated party shall be deemed to be a prohibited assignment of this Agreement. The YMCA and SELREC agree that a merger or acquisition of YMCA by or with a related YMCA entity is permissible.

#### 12. Miscellaneous.

(A) The provisions of this Agreement are severable. The unenforceability or illegality of any provision shall not affect the enforceability or illegality of any other provisions.

(B) The provisions of this Agreement constitute the only agreement between SELREC and YMCA and supersede all prior and contemporaneous agreements, understandings, representations, warranties and contracts.

(C) This Agreement shall be binding upon and the benefits thereof shall accrue to the benefit of SELREC and YMCA and their respective heirs, legal and estate representatives, successors and permitted assigns.

(D) Ohio law shall govern the interpretation and enforcement of this Agreement. SELREC and YMCA hereby submit to the personal

**jurisdiction of the State Courts of Cuyahoga County, Ohio. All disputes arising hereunder shall be properly and exclusively venued in the State Courts of Cuyahoga County, Ohio.**

**(E) All titles are for convenience and are not substantive.**

**(F) Time shall be of the essence with respect to all provisions of this Agreement applicable to YMCA.**

**(G) All notices to YMCA shall be deemed delivered on the date personally delivered to Hillcrest YMCA or the date when placed in the United States mail, postage prepaid, addressed to 2200 Prospect Avenue E., Suite 900, Cleveland, Ohio 44115 Attention: President/CEO.**

**[Balance of page intentionally left blank.]**

IN WITNESS WHEREOF, SELREC and YMCA have set their hands as of the day and year set forth above.

**SELREC Board of Directors**

**City of Lyndhurst**

BY: Joseph M. Querny  
Title: MAYOR

**YMCA OF Greater Cleveland**

BY: Clayton Hickey  
Title: CEO

**City of South Euclid**

BY: George Wile  
Title: Mayor

**South Euclid-Lyndhurst Board of Education**

BY: [Signature]  
Title: SUPERINTENDENT