

PATTON PARK AND POOL MANAGEMENT AGREEMENT

This ~~agreement~~ AMENDED PATTON PARK AND POOL MANAGEMENT AGREEMENT, between the YMCA of Western North Carolina, a North Carolina nonprofit corporation (the "YMCA") and the City of Hendersonville, a North Carolina municipal corporation (the "City"), is to provide for the operation and management of the Patton Park and Pool located at 114 E. Clairmont Dr., Hendersonville, North Carolina, in accordance with the specifications, conditions, and terms set forth herein.

WITNESSETH

THAT WHEREAS, this Agreement was originally entered into, effective September 8 2020 for the 2021-2025 summer seasons; and

WHEREAS, this Agreement was originally amended to address insurance and indemnification provisions in June, of 2022, and those amendments have been incorporated into this AMENDED PATTON PARK AND POOL MANAGEMENT AGREEMENT; and

WHEREAS, the YMCA and the City desire to make further amendments;

NOW THEREFORE this AMENDED PATTON PARK AND POOL MANAGEMENT AGREEMENT, that for and in consideration of the mutual promises and conditions, the receipt and adequacy of which is acknowledged by both parties hereto, the parties agree as follows:

EFFECTIVE DATE. This agreement, when executed by both parties hereto, shall become effective on or before September 8, 2020, for the next five (5) years, with any amendments being effective on the date such amendments have been signed by both parties.

1. ~~RESERVED. PROPOSAL EXPIRATION OPTION. This agreement is voidable at the YMCA's option if not executed by the City of Hendersonville and returned to the YMCA by June 1, 2020.~~
2. **ACCESS AND UTILITIES.** The City of Hendersonville will permit and maintain free access to the Patton Park site for approved YMCA staff to perform their duties.

City of Hendersonville staff and their immediate family members will be allowed free access to the pool with city ID. The City must submit a list of eligible employees and family members to YMCA staff by the 25th of each preceding month.

The YMCA will prohibit food vendors from using the park unless otherwise approved by the City of Hendersonville Public Works and ~~Development Assistance~~ Community Development departments.

The YMCA cannot deny access to Patton Pool and Park to anyone based on YMCA membership.

3. **TELEPHONE.** The City of Hendersonville shall be responsible for providing an operational telephone accessible to YMCA lifeguards at the pool site, at no charge to the YMCA. This phone is to be used for official facility business only and for emergencies. For safety reasons, the pool swimming areas will only be open if the site telephone is operational. In addition, a telephone capable of directly dialing 911 or other emergency notification system shall be provided and shall remain accessible to all pool users. The telephone shall be permanently affixed to a location inside the pool enclosure or outside the enclosure within 75 feet of a public entrance. The telephone shall be visible from within the pool enclosure, or a sign shall be posted indicating the location of the emergency telephone. A sign with legible letters shall be posted at the telephone providing dialing instructions, address of the pool location, and the facility telephone number. Where the telephone does not directly access 911, the emergency notification system shall:
 - (1) Provide 24-hour monitoring of all incoming calls by a telecommunicator who answers only emergency calls;
 - (2) Be capable of routing calls to the local 911 telecommunicator via the 911 dedicated emergency trunk line; and
 - (3) Electronically transfer Automatic Number Identification and Automatic Locator Identification for the emergency telephone at the pool to the Enhanced 911 system for all calls routed to 911.
4. **PERMIT.** The YMCA will obtain a Swimming Pool Operation Permit from the local health department, with the cost included in the contract.
5. **SUPPLIES AND EQUIPMENT.** The City of Hendersonville further agrees to furnish, without cost to the YMCA, for use at Patton Park and Pool only:

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Water
Electricity
Utilities
110 volt electrical outlet in the pool pump room
Telephone(s)
Pool vacuum heads
Pool poles
Pool vacuum hoses
Pool rules signs
Trash receptacles
Life line with buoy
Lifeguard stands
Picnic tables
Sunbathing chairs
Mowing and maintenance of green space

SUPPLIES AND EQUIPMENT (continued)

The YMCA further agrees to furnish and/or arrange, without cost to the City of Hendersonville, for use at Patton Park and Pool only:

All pool chemicals
Rescue tubes
Shepherd's crook
The following pool and janitorial supplies: soap, disinfectant, paper towels, toilet tissue, and deodorizer
Trash can liners for the pool area and bathrooms
Mops
Brooms
Dustpans
Brushes
Buckets
Sponges
Pool brushes
Leaf skimmers
Algae brushes
Algaecides
Tile scrub pads
Tile cleaner
LED light bulbs for the bathrooms, pump room, and lifeguard room
Water hoses
Taylor water test kit
Test kit reagents
First aid kit
Concession stand resale items

6. **FACILITY PREPARATION.** The YMCA agrees to assist the City of Hendersonville with the preparation of Patton Pool beginning in April and will continue preparation and maintenance through the opening day. The YMCA agrees to take the necessary steps to prepare the facility for approval by the Henderson County Health Department. This includes reviewing the aquatic facility inspection guidelines and providing the labor and attention needed to bring the facility up to recommended standards.

Specifically, the YMCA will assist with removing and storing the pool cover, balancing the pool chemicals, vacuuming the pool, cleaning all pool stainless steel, removing and cleaning all furniture including umbrellas, cleaning and organization of storage rooms, concession stand preparation, and ordering necessary chemicals.

The YMCA and City Public Works staff will meet before the pool opening for the formal asset inspection. Asset inspection will review capital needs, facility maintenance issues, and park improvements. Upon completion of the inspection, both parties will determine a repair schedule.

7. **POOL OPERATION.** The YMCA agrees to furnish certified lifeguards or YMCA aquatic safety assistants as required to operate the pool on the schedule below.

Patton Pool will be open on the following days during the contracted seasons:

The Saturday before Memorial Day through Labor Day Monday

The pool will be open during the following hours on non-school days:

Monday-Friday	9 a.m. to 8 p.m.
Saturday	9 a.m. to 8 p.m.
Sunday	1-6 p.m.

Hours may vary depending on rental contracts, weather, and maintenance.

The pool will be open the following hours when Henderson County Public Schools are in session during May, August, and September:

Monday-Friday	9 a.m. to 1 p.m. for lap swim, swim lessons, and water aerobics 4-8 p.m. for swim team and public access
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The YMCA will manage and schedule Pool and Park rentals as specified in item 11.

The City website will link to the YMCA Patton Pool and Park webpage.

- 8. ~~2023~~ POOL ADMISSION RATES.** Admission rates will ~~remain the same for the Summer of 2021~~ be as stated below for the Summer of 2023. For Summer of 2024 and 2025, admission rate adjustments shall be requested before Sept. 1 each calendar year during the contract term. The City of Hendersonville shall approve or deny rate adjustment requests by Nov. 1 during the contract term.

\$5 daily admission

\$4 senior rate, daily admission

\$4 child (12 years and under), daily admission

\$198.00 Annual Family Season Pass (resident or nonresident) (additional family members over 5 is \$25.00 per family member over 5)

\$99.00 Annual Individual Season Pass (resident or nonresident)

\$80.00 Annual Senior Pass (resident or nonresident)

- 8.9. WEATHER-RELATED CLOSINGS.** On rainy or unseasonably cold days, the YMCA will determine opening or closing based on National Weather Service models. Weather-related schedule changes will be posted on Hendersonville Family YMCA Facebook page, Patton Pool voicemail, and Patton gate. The YMCA has the right to close the pool early in the event of continuous severe weather, as defined by the National Weather Service.

- 9.10. POST-SEPT. 1, 2020 WINTERIZATION AGREEMENT.**

The YMCA agrees to assist with the winterization of the City of Hendersonville Patton pool. Specifically, the YMCA will assist with securing the pool cover, cleaning, and inventory of all furniture, including umbrellas, lounge chairs, tables, and other deck furniture, cleaning of storage and locker rooms, and any final deck cleaning.

The YMCA Executive and City of Hendersonville Public Works Director will meet each September to determine capital needs for the following year. At that time, both parties may terminate the contract for the remaining term.

- 10.11. POOL AND PARK RENTALS.** The YMCA will be responsible for scheduling all rentals of the City of Hendersonville Patton Pool and the sports fields, exclusive of the skate park. The YMCA will collect all monies for the pool and sports fields. The YMCA will provide lifeguards for special events and after-hours parties. Pool rentals will be required to have a minimum of two (2) lifeguards per rental. The YMCA operates on a 1:25 guard-to-swimmer ratio.

The City of Hendersonville will maintain control of the Pavilion and retain all monies collected for pavilion rentals.

The YMCA will not rent out the entire pool without the approval of the City of Hendersonville Public Works Director until after normal business hours.

- 11.12. MINIMUM SAFETY STANDARDS.** The City of Hendersonville agrees and acknowledges that it is its responsibility to maintain depreciable assets, capital investment, replacement, and repairs within established state and local codes.

- 12.13. PERSONNEL.** All YMCA employees who work at the City of Hendersonville Patton Pool and Park in fulfilling the terms of this agreement, including lifeguards, camp staff, program staff, YMCA aquatic safety assistants, and swim instructors, shall be employed by the YMCA and be considered employees of the YMCA. No pool manager, lifeguard, or swim instructor shall be engaged by the YMCA as an "Independent Contractor" to fulfill the terms of this agreement.

The YMCA agrees to pay the following for the YMCA employees, including pool manager, lifeguards, YMCA

aquatic safety assistants, and swim instructors:

- Wages
- Earned benefits
- Income tax withholdings
- Social Security withholdings
- State unemployment insurance
- Federal unemployment insurance
- Worker's compensation insurance

All lifeguards employed by the YMCA shall have a minimum of basic lifeguarding certificates, lifeguard training certificates, or the equivalent, as well as Infant/Child CPR, Adult CPR, Basic First Aid, AED, and O2 training.

The YMCA will establish pool rules and have the authority to discipline swimmers, guests, or patrons exhibiting unsafe or inappropriate behaviors that put themselves or others at risk. The YMCA will record all serious acts of discipline and patron violations of rules and safety standards and report them to City of Hendersonville. All behaviors will be measured against the posted rules of the City of Hendersonville Patton Pool and minimum safety standards as established herein. The YMCA has the right to deny access to anyone based on behavior.

YMCA personnel will be responsible for the following duties:

- Operate the pool within currently practiced safety standards
- Check the water chemistry and record readings; make a copy of the log available to City of Hendersonville Maintenance
- Vacuum the pool as needed
- Clean tiles around the pool edge
- Backwash the filter system
- Clean the bathhouse, including all wet areas (toilets, showers), periodically throughout the day and complete a thorough cleaning at the end of each day
- Clean both rear public restroom areas attached to the pool building
- Clear the swimming pool area of food, trash, and any other discarded items
- Empty trash daily from the pool deck and two (2) exterior bathrooms during the summer pool season
- Straighten and hose off deck furniture and wipe off tables as needed
- Order and replenish janitorial supplies in the bathhouse
- Enforce the rules of the City of Hendersonville Patton Pool or the safety and convenience of the patrons
- Complete inventory of all supplies and store them onsite
- Provide YMCA management with a copy of all completed incident reports
- Report any maintenance issue in a timely manner to the City Public Works Director
- Purchase stock for and clean the concession stand area

~~13.~~14. **SWIMMING LESSONS.** The YMCA will provide swimming instruction for the general public at the City of Hendersonville Patton Pool. The YMCA has exclusive rights to conduct swimming lessons at the City of Hendersonville Patton Pool during the term of this agreement. Private lessons may be arranged during non-peak usage times at Patton Pool. The YMCA shall be entitled to all fees paid. Payment of fees shall be solely the responsibility of individuals taking the lessons.

~~14.~~15. **CONCESSION STAND.** The YMCA will operate the concession stand for the City of Hendersonville Patton Pool. The YMCA will maintain the concession stand in accordance with state and local codes and will apply for all necessary permits. As the operator of the concession stand the YMCA is entitled to all revenue. The YMCA will purchase items for and stock the concession stand with items for resale.

~~15.~~16. **YMCA USE OF PATTON PARK.** The City of Hendersonville shall permit YMCA to use Patton Park and Pool for the following purposes at no cost:

- The YMCA will have access to the soccer field, and football field, ~~and softball field~~ for YMCA sports programs for so long as the City operates them for these purposes. The City shall have the sole discretion to discontinue operation of the foregoing fields for the purposes stated at any time.
- Per Section 11 the YMCA will schedule all park rentals, exclusive of the pavilions and skate park, for the time of the agreement.

~~16.~~17. **BACKGROUND CHECKS.** Under North Carolina law, sex offenders are prohibited from coming onto City of Hendersonville's property at Patton Pool and Park. The YMCA shall conduct a check of all its employees, agents, and independent contractors that shall perform work at Patton Pool and

Park on the
N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator
Registration Program, and the National Sex Offender Registry.

17.18. MARKETING AGREEMENT. The YMCA requests an exemption from the City's existing sign ordinance for temporary signs located at the entrance of Patton Park and Pool on U.S. 25. The YMCA shall be responsible for maintaining the signage with the City's approval defined herein. Items to be promoted:

- a. YMCA athletic programs and special events
- b. City of Hendersonville programs and special events
- c. Community events at the park or pool

19. INSURANCE. Both parties shall maintain the following insurance coverage:

- a. Comprehensive general liability, including products and completed operations liability, contractual liability, property damage liability, bodily injury liability with limits of at least \$1,000,000.00 per occurrence and \$3,000,000.00 combined single limit;
- b. Workers compensation insurance in accordance with the laws of North Carolina and Employer's liability insurance with limits not less than \$1,000,000.00 per accident and \$1,000,000.00 each employee injury by disease.

Both parties shall list the other party as an additional insured on their insurance policies."

18. INSURANCE. The YMCA shall maintain the following insurance coverage:

- a. Comprehensive general liability, including products and completed operations liability, contractual liability, property damage liability, bodily injury liability, and personal insurance with limits of at least \$1,000,000 per occurrence combined single limit
- b. Worker's compensation insurance in accordance with the laws of North Carolina and Employer's Liability insurance with limits not less than \$1,000,000 per accident and \$1,000,000 each employee injury by disease.

The City of Hendersonville agrees to indemnify the YMCA of Western North Carolina under the City's liability coverage.

Both parties shall list the other party as an additional insured on their insurance policies.

20. INDEMNIFICATION/LIABILITY.

The City shall indemnify and hold harmless the YMCA from any and all liability, suits, claims, demands, actions, and costs and expense of any such kind or nature whatsoever, including reasonable attorney's fees, related in any manner to the operation of Patton Pool, including injury to person or persons or property, including death, but only 1) to the extent caused by the negligence of the City, including its officers and employees, or 2) to the extent caused by the City's failure to perform its obligations under this Agreement.

The YMCA shall indemnify and hold harmless the City from any and all liability, suits, claims, demands, actions, and costs and expense of any such kind or nature whatsoever, including reasonable attorney's fees, related in any manner to the operation of Patton Pool, including injury to person or persons or property, including death, but only 1) to the extent caused by the negligence of the YMCA, including its officers and employees, or 2) to the extent caused by the YMCA's failure to perform its obligations under this Agreement.

INDEMNIFICATION/LIABILITY. The City of Hendersonville shall indemnify and hold harmless the YMCA from any and all liability, suits, claims, demands, actions, and costs and expense of any such kind or nature whatsoever, including attorney's fees, caused by or arising out of any manner activities or functions by the YMCA's use or occupancy of the property, or any injury to person or persons, including death, resulting at any time from the activities of the YMCA or occurring while any individual is on the property of the City of Hendersonville for the YMCA purpose, except and unless said injury or death is the result of negligence on the part of the City of Hendersonville or its agent.

The YMCA shall indemnify and hold harmless the City of Hendersonville from any and all liability, suits, claims, demands, actions, and costs and expense of any such kind or nature whatsoever, including attorney's fees, caused by or arising out of any manner activities or functions by the YMCA's use or occupancy of the property, or any injury to person or persons including death, resulting at any time from the activities of the YMCA or occurring while any individual is on the property of the City of Hendersonville for the YMCA purpose, except and unless said injury or death is the result of negligence on the part of the City of Hendersonville or its agent.

19.21. AGREEMENT COST. The YMCA agrees to perform the services set forth above for the price of \$64,613.43-\$71,321.12 for the 2023+ season. Subsequent years Years 4 (2024) and 5 (2025) will be decided by mutual agreement of the parties each year following during the term. have a 2.5% increase applicable to years (2) two (3) three (4) four (5) and five per swim year, upon specifications, conditions, and terms as set forth herein. In the event the parties are unable to agree on or before November 1 preceding the next season, either party may terminate this agreement by giving written notice to the other party on or before November 30 of the same calendar year following the November 1 deadline. In the event neither party

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terminates this agreement by November 30 as allowed by this paragraph, the agreement shall continue, and the management fee for the next following season shall be increased by 5% over the preceding year. The payment schedule indicated below shall be followed for Year's 4 and 5. In addition to the financial contribution from the City of Hendersonville, the YMCA will collect all monies associated with entry fees, food sales, and sports field rentals to offset the expense associated with program offerings at Patton Park.

Payments by the City of Hendersonville to the YMCA of Western North Carolina shall be made in accordance with the following schedule:

Year 1 Payment Schedule		Year 2 Payment Schedule		Year 3 Payment Schedule	
Payment before May 7, 2021	\$21,537.81	Payment before May 7, 2022	\$22,076.25	Payment before May 7, 2023	\$22,628.45 23,773.71
Payment before July 16, 2021	\$21,537.81	Payment before July 15, 2022	\$22,076.25	Payment before July 15, 2023	\$22,628.45 23,773.71
Payment before Sept. 3, 2021	\$21,537.81	Payment before Sept 9, 2022	\$22,076.25	Payment before Sept 2, 2023	\$22,628.45 23,773.70
Total	\$64,613.43	Total	\$66,228.75	Total	\$67,884.45 71,321.12

Year 4 Payment Schedule		Year 5 Payment Schedule	
Payment before May 5, 2024	\$23,198.86 TBD	Payment before May 3, 2025	\$_
Payment before July 14, 2024	TBD23,198.86	Payment before July 12, 2025	\$_
Payment before Sept. 1, 2024	TBD23,198.86	Payment before Sept 6, 2025	\$_
Total	\$_	Total	\$_
	TBD69,581.59		TBD71,321.12

20.22. CITY OF HENDERSONVILLE REPRESENTATIVE. Please direct YMCA communications to the following City of Hendersonville Representative:

Tom Wooten, Director of Public Works
CITY OF HENDERSONVILLE
305 Williams Street, Hendersonville, NC 28792
(828) 697-3084 (ph) 828-697-3089 (fax)
twooten@hvlnc.gov

YMCA REPRESENTATIVE: Please direct City of Hendersonville communications to the following YMCA Representative:

Jessica Hendrix, Senior Executive Director
YMCA OF WESTERN NORTH CAROLINA
30 Woodfin Street, Asheville, NC 28801
828-210-5039
jhendrix@ymcawnc.org

24.23. ACCEPTANCE. Acceptance of this agreement by the City of Hendersonville through signatures below, and return of this agreement will constitute a contract entered into in accordance with the specifications, terms and conditions attached hereto.

In witness hereof, the parties set their hand and seal, both, with their signatures, indicating that they have been duly authorized to sign this AMENDED PATTON PARK AND POOL MANAGEMENT AGREEMENT.

YMCA of Western North Carolina

City of Hendersonville

By: _____
Jessica Hendrix, Senior Executive Director

By: _____
John F. Connet, City Manager

This contract has been pre-audited in the manner required by the North Carolina Local Government Budget and Fiscal Control Act.

John Buchanan, Finance Director