

**AGREEMENT  
FOR THE OPERATION AND MANAGEMENT OF  
CENTENNIAL HILLS COMMUNITY CENTER**

THIS AGREEMENT is being entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTHERN NEVADA (hereinafter the "Contractor") a not-for-profit corporation having its principal office at 1050 West 4141 Meadows Lane, Las Vegas, Nevada 89107.

**RECITAL**

WHEREAS, the City leased land pursuant to BLM Lease No.N-63022 for recreation or public purposes from the United States Department of the Interior, Bureau of Land Management ("BLM") and is subject to the Recreation and Public Purposes Act 43. U.S.C. Sections 869-869-4 (hereinafter the "RPP Act"), which lease contains conditions subsequent which, in essence, require the City to use the underlying land for recreational and public purposes and not transfer operational control or use of the land to a third party.

WHEREAS, the City desires to provide a multipurpose center that will meet the recreational, cultural, active adults and adaptive recreational needs of the growing Northwest Las Vegas community; and

WHEREAS, the City is desirous of retaining a qualified I.R.S. 501(c) (3) non-profit organization to operate and manage the Center and requested proposals from potential organizations to provide such operations; and

WHEREAS, BLM will be reviewing the form of the final Agreement between the City and the Contractor to determine if the Agreement conforms to the provisions of the RPP Act; and

WHEREAS, the City and the Contractor desire to enter into this Agreement for the operation and management of the Centennial Hills Community Center on a temporary basis until such time that BLM has approved the final Agreement between the City and the Contractor.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties hereto enter into this Agreement.

**SECTION A – Purpose**

**A-1 Purpose of Agreement**

(a) The purpose of this Agreement is to effectuate the operation, management, and maintenance of the Center by the City and the Contractor in the best interests of the City and the health and welfare of its residents, and in accordance with the public purposes of applicable federal, state and local laws and regulations, specifically, the RPP Act. The term Center includes the Contract Area, but unless the term Center is specifically used in defining a duty or responsibility of Contractor, it is assumed that the duty or responsibility of Contractor so defined extends only to the Contract Area.

(b) The Contractor will operate the Contract Area of the Center owned by the City on BLM land. The Center shall be managed and operated as a not-for-profit institution available to the general public without discrimination as to age, race, creed, religion, sex, marital status, national origin, political affiliation, physical handicap or ancestry.

(c) The City and Contractor hereby expressly acknowledge that this Agreement is subject to the final approvals of the Agreement by (1) by BLM to determine if the Agreement conforms to the provisions of the RPP Act, (2) the City Council, and (3) the governing board of the Contractor. This Agreement is interim until BLM gives final approval thereafter the Agreement will be finalized through a written amendment duly executed by the City, the Contractor and BLM.

(d) The City and Contractor hereby expressly acknowledge that this Agreement is to set forth the provisions of a temporary agreement between the parties pursuant to which Contractor will operate the Contract Area of the Center for City pending BLM approval of those portions of the Agreement subject to its jurisdiction under the RPP Act. Fee charges must consist of not more than a reasonable charge for the use of the facilities. Entrance fees may not exceed fees charged at other comparable municipal operated facilities. A periodic review of schedules will be conducted by the BLM. Determination that entrance or other fees charged for public use of this facility are unreasonable may result in action by the BLM.

(e) The Contractor shall act as the general clearing house, overseer, coordinator, and promoter of recreation, fitness, safety, therapy, and competitive programs offered in the Contract Area. This Agreement defines the operating terms mutually agreed upon by both parties.

## SECTION B – Basic Terms

### B-1 Definitions

The following definitions apply to this Agreement:

(a) "*Active Adult Wing*" an area of the Center that is approximately 10,000 square foot and its adjoining courtyard, and is operated and managed by the City as depicted in Exhibit B-1 (the building).

(b) "*Agreement*" means this document which is binding and effective only upon execution by both parties which delineates the promises, responsibilities and obligations by the City and the Contractor regarding operation and management of the Centennial Hills Community Center.

(c) "*Appurtenances*" means equipment such as clothing, tools, or instruments needed for a particular operation or sport but does not include any of the property of the Contractor.

(d) "*Award Date*" means the date that an Agreement becomes effective. It is the date that is entered into the first paragraph of an Agreement upon execution by an authorized representative of the City

(e) "*BLM*" means the Bureau of Land Management, a United States federal public agency which administers the RPP Act for all Public Lands, including the Land where the Center is located. BLM determines whether the use of the Land is an authorized use and complies with the provisions of the RPP Act and its implementing regulations.

(f) "*Center*" means the Centennial Hills Community Center which includes the building and adjoining pool facility, parking and landscaped area and is depicted in Exhibits B-1 and B-2.

(g) "*City*" means the City of Las Vegas.

(h) "*City Council*" means the governing body of the City of Las Vegas.

(i) "*City Programs*" means

(j) "*Common Area*" means an area in and around the Center that the City, the Contractor and the general public have direct access to.

(k) "*Contract Area*" means the area of the Center which is to be under the management and operation of Contractor is depicted as the building outlined in red boundary lines situated on a portion of the Land in the site map appended to the Agreement as Exhibit A "Site Map".

(l) "*Contractor*" means the IRS 501(c) (3) non-profit corporation responsible for the performance of services under this Agreement.

(m) "*Contractor Furnished Equipment or CFE*" means furniture, fixtures, equipment and other items purchased by the Contractor with their own funds.

(n) "*Contract Manager*" means the City representative who is responsible for the coordination of Agreement performance between the City and the Contractor.

(o) "*Contractor Representative*" means the individual authorized to act on behalf of the Contractor regarding routine matters arising under or relating to this Agreement.

(p) "*FF&E*" means items not permanently attached to a structure or building. For example: sports/electronics equipment, desks, chairs, bookcases, file cabinets, waste receptacles, easels, partitions, refrigerators, tables, credenzas, and furniture systems.

(q) "Hazardous Substance" and "Hazardous Waste" are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

(r) "*Land*" means a portion of the land consists of approximately 18 acres and is situated in the northwest area of the City of Las Vegas, bounded by Buffalo Drive and Deer Springs Way located at 6601 and 6611 North Buffalo Drive and as depicted on Exhibit A "Site Map".

(s) "*Operational year*" the first day that the Contract Area is operationally open and extends for no more than twelve (12) calendar months and not beyond the expiration Agreement term date.

(t) "*Programs*" are defined as organized activities, classes and meetings that are offered to the public that offer recreational, social, and educational or other benefits to participants through the various City Departments.

## **B-2 Pre-Operational Costs**

The City will reimburse the Contractor an amount not-to-exceed Fifty-Eight Thousand Dollars (\$58,000) for pre-operational management costs for the purpose of developing operation plans, marketing, public relation strategies, customer interest survey, and recruiting personnel approximately sixty (60) days prior to the opening of the Center.

## **B-3 Revenue and Budgets**

(a) It is the Contractor's objective that the Contract Area be operated at a financial break-even point with revenue equaling or exceeding operating costs. The Contractor may engage in fund raising activities to supplement operating revenue or it may supplement the operating budget through its own resources.

(b) Throughout the term of this Agreement, all revenue generated from the Contract Area including, but not limited to, user fees, class fees, and other fees or charges shall be collected and retained by the Contractor, on behalf of the City. All revenue shall be collected, handled and deposited in accordance with the Contractor cash handling procedures. The City reserves the right to review these procedures to ensure they comply with generally accepted accounting procedures. The Contractor shall keep, through the entire term of this Agreement or any

extension thereof, all books of account and records customarily used in this type of operation in accordance with generally accepted accounting principles.

(c) The Contractor shall propose operating budgets and projected revenue streams annually. The City will retain the right to approve or disapprove budgets. The Contractor shall prepare and submit annual profit and loss statements as well as any incidental financial or operating statements as deemed necessary by the City and as the normal course of operation shall dictate.

(d) The City shall make available to the BLM, in accordance with the RPP Act, copies of the annual profit and loss statements, as well as any incidental financial and operating statements reflecting all expenses and revenue associated with the Center.

#### **B-4 Deposits and Draw Downs**

The Contractor shall make daily deposits of all funds collected from the operation of the Contract Area, but not limited to, user fees, class fees, program fees and other fees or charges, into a joint account established by the Contractor and the City. The contractor shall be authorized to draw down funds that are available in the joint account for the payment of expenses related to the Contract Area. In no event shall the Contractor draw funds from the joint account which exceeds the amount available. Each month, the City may review all bank statements and request supporting data from the Contractor for any activity in the joint account. Each month, the City will receive a bank statements and an itemization of all activity in the joint account. The City may request additional supporting data as they deem necessary in reviewing the activity in the account.

#### **B-5 Operating Reserve**

(a) Contractor shall maintain throughout the term of this Agreement an operating reserve (hereinafter referred to as "Operating Reserve") during this Agreement in the principal sum of Twenty-five Thousand Dollars (\$25,000). The Operating Reserve shall guarantee performance of each term and condition of this Agreement and in the event of any breach of this Agreement, the amount thereof shall be recoverable by the City for all damages resulting from failure of the Contractor to well and faithfully perform and observe any and all provisions of this Agreement.

(b) The Operating Reserve may take one of the following forms:

1. The Operating Reserve may take the form of a corporate surety bond issued by a company licensed to do business in the State of Nevada in a form approved by the City in the principal sum of Twenty-Five Thousand Dollars (\$25,000), naming the City as an insured.

2. The Operating Reserve may take the form of a deposit of cash in the amount of Twenty-Five Thousand Dollars (\$25,000) in a restricted Certificate of Deposit drawn against the account of the Contractor on such bank as the City shall approve, allowing for withdrawal only upon written consent of the City. All interest earned on such Certificate of Deposit shall be the property of the Contractor.

3. The Operating Reserve may take the form of an irrevocable standby letter of credit in the amount of Twenty-Five Thousand Dollars (\$25,000) drawn against the account of the Contractor on such bank as the City shall approve. Said letter of credit shall be an unconditional and irrevocable letter of credit in favor of the City from a bank authorized to do business in Nevada, in form and substance satisfactory to the City Attorney of the City of Las Vegas. Further, said letter of credit shall be renewed at least thirty (30) days prior to its expiration, and the City shall be provided notice of said expiration.

**B-6 Monthly Operating Statement, Utility Invoices, and Rental Reports**

(a) Contractor shall submit a monthly operating statement to City which shall include an itemized list of gross receipts received and expenses incurred by the Contractor for the previous calendar month for its operations at the Contract Area. The operating statement also itemizes revenues collected through fundraising activities specifically for the Contract Area. Upon request, the Contractor shall also provide any regional and national fundraising reports.

(b) The amount of Contractor's gross receipts shall be deemed to reimburse Contractor for the previous calendar month's services rendered by Contractor at the Center, and City shall have no obligation to reimburse Contractor in any amount if Contractor's receipts from the Center are less than Contractor's incurred costs.

(c) The Contractor shall submit a monthly invoice to the City for utility expenses incurred for the previous calendar month for its operations at the Contract Area. Each invoice received shall be subject to review and approval by City. In the event City disputes any item on the invoice, City and Contractor shall meet promptly, as specified in Paragraph B-7 "Disputed Items" hereof, to resolve all such disputed items. The Contractor will be responsible for the payment of any annual operating deficits after utility reimbursements. Any future operating surpluses will be used to offset a previous year's operating deficit.

(d) The Contractor shall submit a monthly report of rentals made to outside parties for the previous calendar month for its operations at the Contract Area.

**B-7 Disputed Items**

For any disputed item on a monthly invoice, the City shall provide a written notice to the Contractor setting forth the reasons for disputing the item. The City and Contractor shall use their reasonable best efforts to resolve the disputed item(s) within twenty (20) days of Contractor's receipt of notice. If the disputed item is not resolved, the parties shall be entitled to exercise its remedies as set forth in this Agreement.

**B-8 Credit for Maintenance Expense**

Should the City elect to assume responsibility for maintenance and repair services provided in Paragraphs C-3(b) and D-2(c), the Contractor shall credit back maintenance expenses on the monthly utility invoice per the following schedule for each year to be defined as twelve calendar months commencing on the first date of service provided in the Contract Area:

<u>Year</u>	<u>Credit Amount</u>
Year 1	\$0.00
Year 2	50% of total maintenance expenses not-to-exceed \$200,000
Year 3	100% of total maintenance expenses not-to-exceed \$200,000
Year 4 and Out	100% of total maintenance expenses not-to-exceed \$200,000 plus adjustment for Consumer Price Index (CPI)*

\* U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Table A Urban Consumers, Expenditure Category: Recreation

**B-9 City's Administrative Service Fees**

The City shall provide the necessary services to administer this Agreement and monitor and oversee the Contractor's performance of its obligations in this Agreement. Commencing on the first anniversary date of the Award Date of this Agreement and notwithstanding the fact that this Agreement may have expired and the Agreement shall be in effect, the City shall invoice the

Contractor on a monthly basis for the administrative services incurred by the City. The initial administrative service fee shall be One Thousand Three Hundred and No/100ths Dollars (\$1,300.00) per month, and such amount may be adjusted annually by an amount dictated the National Consumer Price Index for All Urban Consumers, U.S. City Average (1967=100), published by the Bureau of Labor Statistics, United States Department of Labor, for March of the current year as compared to the same index figure for March of the previous year.

### **B-10 Agreement Term**

(a) This Agreement shall run for a five year (5) term commencing on Award Date. The City may, at its sole option, extend the performance period for up to two (2) five-year periods beyond the end of the initial Agreement term date. The City shall provide six (6) month advance written notice to the Contractor of such extension, and the Contractor may not assume an automatic renewal. Exercise of a five-year option does not commit the City to exercise further option periods.

(b) The Contractor will have the Contract Area open for operation within thirty (30) days after the Center effective date of the construction certificate of occupancy. The Contractor reserves the right to begin pre-operational activities prior to sixty (60) day's opening of the Center at the Contractor's own expense except as what is provided for in Paragraphs B-2 "Pre-Operational Costs" and D-6 "Furnishings, Fixtures, and Equipment". However, the Contractor is not allowed to occupy or furnish the Contracted Area anytime prior to the effective date of the certificate of occupancy.

(c) The Contractor covenants and agrees for itself, its successors, its assigns, and every successor in interest that during the term of this Agreement, the Contractor, its successors, and its assignees shall apply the Center for use as a sports and recreation center and other uses ancillary thereto.

## **SECTION C – Statement of Work**

### **C-1 Scope of Services**

(a) The Contractor shall manage, maintain (per Paragraph C-3) and operate the Contract Area in a professional, efficient and economical manner, consistent with good business practices. The Contractor will provide all personnel, expertise, equipment, supplies and other items necessary to operate the Contract Area as a not-for-profit institution available for use by the general public. The Contractor's responsibilities will include, but not limited to, those listed in Attachment 1, "Statement of Work".

(b) The Contractor shall not engage in any other business within the Contract Area or on the Land except as allowed herein, and shall provide such services as may be required to service users of the Contract Area.

### **C-2 Operational Standards**

(a) The Contractor will be responsible for the day-to-day operation of the Contract Area in a manner that ensures the safe, attractive, and pleasant use of the Contract Area.

(b) No Hazardous Substance or Hazardous Waste, shall be used, produced, transported, released or stored within the Contract Area at any time.

### **C-3 Contractor Maintenance Obligations**

(a) The Contractor agrees to maintain the following items and the Program Equipment (equipment such as treadmills, weight machines, and volleyball nets) provided within the Contract Area, and all parts thereof, in good condition and safe condition as its operation will reasonably

permit, and to make all repairs thereto which may be reasonably necessary for this purpose, which shall include, but are not limited to, the following:

1. Maintain the pool and all related filtration systems, including routine maintenance and all equipment, in accordance with a designated maintenance schedule approved by the City.
2. Maintain all pool area restrooms (including stocking and refilling restroom paper products) and deck space.
3. Maintain and keep in good working order all signs located within or on the exterior of the facility.
4. Maintain and clean Program Equipment.
5. Maintain and repair fire extinguisher/fire alarm & suppression system.
6. Maintain roll up doors, automatic doors and storefronts.
7. Maintain intercom/sound systems.
8. Adhere to all standards and regulations imposed by the Clark County Health District, as those standards and regulations apply to the Center.

(b) The Contractor shall provide services and materials for comprehensive and adequate cleaning of the Contract Area, including all regular, routine and daily maintenance duties and general repairs.

(c) The Contractor will be financially responsible for the monthly security system maintenance and fire alarm maintenance for the Contract Area.

#### **C-4 Repairs, Alterations and Damage**

(a) The Contractor shall make no facility alterations or additions to the Contract Area without the prior consent of the City. For such action, the Contractor shall first submit such information and plans to the Contract Manager for approval.

(b) The City shall assume responsibility for any facility repairs, improvements and/or future expansions of the Center.

(c) The Contractor shall report to the City all damage or vandalism in excess of One Thousand Dollars (\$1,000) to the Center or any damage that requires closure to the Center. The Contractor shall report to the City any and all personal injury asserted by users utilizing the Center.

#### **C-5 (Reserved)**

#### **C-6 Artwork Display and Maintenance**

There will be public artworks installed inside the Contracted Area. Both the City and the Contractor shall have the following responsibilities:

- (a) The City shall, on the behalf of the City of Las Vegas Arts Commission (LVAC):
  - (i) Own and maintain the artworks.
  - (ii) Pay for normal maintenance costs such as electrical, lighting, and replacement of glass panels.

- (iii) Will maintain instructions for regular cleaning and contact information for repairs.
- (iv) Install information plaques near the artworks.
- (v) Be available to respond to any questions about the artworks.
- (vi) Be allowed to plan tours, receptions and other activities regarding the artworks.
- (vii) Use images of artworks in their settings for promotional purposes.

(b) The Contractor shall:

- (i) Take preventive measures to keep the artworks in good condition.
- (ii) Report immediately any damage or needed repairs to artworks.
- (iii) Not remove, replace or repair the artworks.
- (iv) Not attach anything to the artworks
- (v) Discourage any activities around the artworks which may harm the artworks.
- (vi) Inform the CH staff, maintenance crews and patrons about the public artworks, their locations and their participation in keeping the artwork in good condition (like not climbing on, hitting or scratching the surface).
- (vii) Inform their Staff not to move or roll heavy objects near the glass pillars.
- (viii) Must receive permission from LVAC for using image of artwork in publications and must credit the artist and the City/ Las Vegas Arts Commission in any photo or public mention of the project.

### **C-7 Programming, Use and Rate Structure**

(a) The Contractor shall develop, operate and manage programs that serve the community. The Contractor shall continue to analyze community participation and shifting needs and adjust programming accordingly.

(b) The Contractor shall submit to the City for review and approval the scheduling and use of the Contract Area (the "Program Schedule"). The proposed Program Schedule shall be submitted to the City for approval no later than thirty (30) days prior to the publish date of the proposed Program Schedule. The Contractor shall cooperate with the City and other community organizations to allow for Joint Use of the Contract Area per Paragraph D-5 "Joint Use." Contractor agrees that the City may schedule special events with a preferred ten (10) days advance notice.

(c) Programs offered at the Contract Area from time to time shall be generally based on perceived need. The City shall have final approval over the Program Schedule. The Contractor may revise its Program Schedule from time to time by submitting proposed changes to the City, and the City shall have fifteen (15) working days from receipt of any such submission in which to provide Contractor with its comments, if any, in writing. If the City provides comments, the parties shall meet to make changes agreeable to both. If the City does not provide any such comments, the revisions as submitted by Contractor shall become effective on the later of the 16th working day following their submission to the City or the first business day thereafter.

(d) Monthly Program Activity Report. The Contractor shall submit a monthly report that lists (i) programs offered, (ii) activity attendance, and (iii) a program cancellation list for all facility offerings.

(e) No later than thirty (30) days prior to the effective date of a fee schedule, the Contractor shall submit a proposed fee schedule ("Fee Schedule") and the City shall have fifteen (15) working days to comment on the proposed Fee Schedule. If the City should object to the proposed Fee Schedule, the City shall provide the reasons for disapproval and shall provide the opportunity for the Contractor to submit a revised Fee Schedule. The City shall have final approval of the Fee Schedule. If the City does not provide any such comments, the revisions as

submitted by Contractor shall become effective on the later of the 16th day following their submission to the City or the first business day thereafter. The Contractor and the City agree that no more than a reasonable charge may be imposed or collected for the use of the Center and that any and all fees or charges for Contractor use of the Center and its facilities may not exceed fees or charges imposed by other comparable installations.

(f) If the City provides comments in writing, the parties shall meet to make changes agreeable to both. If the City does not provide any comments, the revisions as submitted by the Contractor shall become effective on the later of the 16<sup>th</sup> day following their submission to the City or the first business day thereafter.

(g) The BLM reserve the right to review the Fee Schedule, in accordance with the RPP Act. Income generated from fees and considered an "overage" may be used by the City for capital improvements on this site. "Overage" as used herein, means aggregate fees for the approved programs as authorized by the City hereunder, less the aggregate expenses of providing such programs, on an annual basis.

### **C-8 Community Needs Survey and Assessment**

The Contractor will employ a number of tools and strategies to determine community needs and desires, and to also evaluate how those needs are met. As part of this effort, the Contractor may send a direct mail survey to local residents, conduct focus group meetings with local residents, review local demographic information and assess other local services provided in the community. On an annual basis, the Contractor will appraise program quality, levels of program participation and customer satisfaction through a variety of methods to include program audits, written program evaluations, focus groups, customer's suggestion box, and annual YMCA of the USA customer satisfaction survey.

### **C-9 Advertising and Marketing**

(a) The Contractor and the City shall mutually agree upon Center advertisements, exterior and interior signage, brochures, newsletters, promotional publicity, and other marketing materials. The City signage shall contain, at minimum, the following: "City of Las Vegas Centennial Hills Community Center operated by the YMCA of Southern Nevada on BLM Property." The YMCA may create its own exterior signage provided (i) it is not permanently affixed to any City signage, (ii) it has been approved by the City's Contracts Manager, and (iii) all appropriate planning permits have been secured. Communication produced or distributed by the Contractor or City shall convey a consistent message of cooperation to the public. Each party agrees to list approved general program, facility and contact information in each other's publication and advertisement opportunities.

(b) The Contractor may not publish or sell any information from or about this Agreement without the prior written consent of the City. This restriction does not apply to the use of the City's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Contractor or its services.

### **C-10 Personnel**

(a) Selection and Salaries. The Contractor agrees to secure, furnish, train and pay for all personnel as are reasonably necessary to be employed in the successful operation of the Contract Area. Any and all employees and any and all volunteers of the Contractor, or other persons, while engaged in the performance of any work or services required by the Contractor under this Agreement, shall not have any contractual relationship with the City. Any and all claims that may or might arise under the Worker's Compensation Act of the State of Nevada or similar act on behalf of said employees or other persons while so engaged in any work, or services provided to be rendered herein, shall be the sole obligation and responsibility of the Contractor.

(b) Equal Opportunity, Americans with Disabilities Act and Drug Free Workplace Act.

1. All persons employed or applying for employment with the Contractor shall: (a) have and be entitled to the full and equal benefit of all laws and proceedings for the security of persons and properties; (b) have and be entitled to equal employment opportunities devoid and free from bias, discrimination, harassment or intimidation because of race, color, religion, national origin, sex, age, physical/mental handicap, disability, or veterans status; and (c) be subject to like punishments, penalties, licenses, and exactions of every kind.

2. The Contractor as an employer is hereby required to provide equal employment opportunities to the end that all Contractor employees shall be recruited, appointed, assigned, and promoted solely upon the basis of a bona fide occupational qualification and individual merit and free from bias, discrimination, harassment or intimidation on account of race, color, religion, national origin, sex, age, physical/mental handicap, disability, or veterans status.

3. The Contractor shall also be familiar with and adhere to the specific provisions of the Americans with Disabilities Act of 1990 relating to Title I, Employment, and Title II, Public Services, and Drug Free Workplace Act. Additionally, the Contractor will ensure that any suppliers or subcontractors functioning under this Agreement shall also be in compliance with the aforementioned titles.

(c) Staff Service Standards. The Contractor further agrees as follows:

1. The Contractor agrees to furnish prompt, safe, efficient, and courteous service adequate and reasonable for the established services at the Contract Area.

2. The Contractor agrees to furnish said service on a fair, equal, and on discriminatory basis to all users thereof.

3. The Contractor agrees that attendants shall wear appropriate attire and at all times shall present a neat and clean appearance. Such standards for attire shall be reviewed by the City.

4. The Contractor agrees to supervise attendants to ensure that they shall discharge their proper duties in a safe, courteous, and efficient manner to attain a high standard of safety and service to the public.

5. The Contractor agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it hereunder and to increase the same.

6. The Contractor agrees that employees involved in aquatic programs and activities have met the lifeguard and instructor minimum standards issued by the American Red Cross lifeguard and instructor certificate (or by any mutually agreed upon nationally acceptable standards). Aquatic staff certification will be available upon request by the City.

7. The Contractor agrees to provide the required number of lifeguards per square foot of water area as issued by the American Red Cross (or as issued by the YMCA Aquatics Certification as mutually agreed upon standards).

8. The Contractor agrees that any employee of Contractor, whether a full-time, part-time employee or trainee, and whether or not paid (volunteer), shall successfully pass a background investigation conducted by the Las Vegas Metropolitan Police Department or other appropriate law enforcement agency and conduct drug testing in accordance with the Contractor's policies and procedures.

## **C-11 Pool Operations**

The Contractor will cooperate with the City to ensure that the heating of the pools will comply with air quality control standards. The Contractor will pay for the annual air quality control permit fees and inspection. The Contractor will only heat the outdoor pool during the seasonal period from Memorial Day through Labor Day. Should a third party request the rental and heating of the outdoor pool during the non-seasonal period, the YMCA will refer the third party directly to the City for consideration. With YMCA concurrence, not to be unreasonably withheld, the City may rent to the third party.

## **SECTION D – Special Clauses**

### **D-1 Contracts Manager/Contractor Representative**

(a) Within ten (10) days of Award Date, the City will designate in writing the Contracts Manager for this Agreement. The City will provide written notice to the Contractor, should there be a subsequent Contracts Administrator change. The Contracts Manager will be the Contractor's principal point of contact at the City regarding any matters relating to this Agreement, will provide all general direction to the Contractor regarding contract performance, and will provide guidance regarding the City's goals and policies. The Contracts Manager is not authorized to waive or change any material terms of the Agreement.

(b) Within ten (10) days of Award Date, the Contractor will designate in writing the Contractor Representative for this Agreement. The Contractor will provide written notice to the City, should there be a subsequent Contractor Representative change. The City has the right to assume that the Contractor Representative has full authority to act for the Contractor on all matters arising under or relating to this Agreement.

### **D-2 Obligations of the City**

(a) Payment for Utilities. The City will be responsible for the payment of all costs associated with electric, gas, water, sewer, garbage disposal, basic telephone (except for long distance calls and special features), and utility transfer fees associated with all utilities, if any, reasonably necessary to operate the Center.

(b) Operations of Active Adult Wing. The City will provide services, materials, equipment to operate and manage active adult programming in the senior adult wing. Programs will include a mix of activities, classes and events that will be of interest to people 50 years of age and older. Examples of programs include fitness, computer classes, enrichment classes and continuing education classes. The Active Adult wing will also feature extended hours, along with weekend hours.

(c) General Maintenance and Repair. The City reserves the right to assume all regular, routine and daily custodial, maintenance duties and general repair services of the Contract Area as currently provided by the Contractor in Paragraph C-3(b) of this Agreement. The City will exercise the option by providing a sixty (60) day advance written notification to the Contractor whereupon both parties will work a mutually agreeable schedule to transition in the City staff.

(d) Other Maintenance and Repair. The City agrees to maintain the following in good repair and condition and to make all repairs thereto which may be reasonably necessary:

1. Make all repairs to the pools.
2. Maintain the parking areas at the Center.
3. Maintain and care for all plantings within the Contract Area and grounds outside of the Contract Area of the Center.

4. Maintain the Facility Equipment that is used in the operation of the facility for its intended purpose such as air conditioning units, ceiling speakers, refrigerators, basketball backstops and lockers. The City will also maintain the Center HVAC units.

5. Coordinate construction warranty repairs and make necessary repairs to the Center due to patent or latent building or pool defects.

6. Maintain artworks as set forth in Paragraph C-6(a) "Artwork Display and Maintenance".

### **D-3 Holidays**

(a) The City recognizes the following legal holidays:

Martin Luther King's Birthday  
 President's Birthday  
 Memorial Day  
 Independence Day  
 Labor Day  
 Nevada Admission Day  
 Veterans Day  
 Thanksgiving Day and Friday After  
 Christmas Day  
 New Year's Day

(b) The Contractor will close the Contract Area on the following legal holidays:

Labor Day  
 Thanksgiving Day  
 Christmas Day  
 New Year's Day

### **D-4 Computation of Time**

In computing any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. As used herein, "legal holiday" means a legal holiday recognized by the City on which the offices of the City are closed for City business.

### **D-5 Joint Use**

(a) The Contractor and the City agrees to share use of the Contract Area for City Departments and Programs at no cost. The Contractor and the City will meet on a quarterly basis to schedule Programs and other activities. The City's Active Adult Center Programs will have first priority based upon space availability. The types of Programs and estimated hours as proposed by the City's Active Adult Program are set forth in Attachment 2 "Joint Use." Other City Departments and functions will schedule their use through the City Contract Manager who will coordinate the dates with the Contractor's staff. Examples of the kinds of other uses that may arise include but are not limited to the following examples:

(i) Public Meetings set by the Mayor, City Council or City Manager's office to gain community input;

(ii) Neighborhood Service Department meetings, officially recognized Neighborhood and Homeowner Associations, forums and health fairs;

- (iii) Planning Department meetings to discuss development issues with residents of Northwest Las Vegas;
- (iv) Meetings to inform the public about public safety issues, concerns or education by the Fire Department, Metro or other City Public Safety programs; and
- (v) Intergovernmental meetings to discuss flood preparedness, transportation issues, land use, etc.

(b) The City will take care to schedule through the City Contract Manager/Contractor with as much advance notice as possible. Outside community organizations or entities will schedule directly through the Contractor and it will be the Contractor's discretion whether to rent space or provide space at no cost.

#### **D-6 Furnishings, Fixtures, and Equipment.**

(a) The construction program for the Center will include a certain amount of City procured FF&E a listing of which can be found in Exhibit C ("FF&E List"). In addition, \$400,000 will be provided to the Contractor as an allowance for it to procure additional FF&E prior to the opening. Any balance in excess of the \$400,000 allowance will be paid for by the Contractor through use of its own resources or fund-raising activities. The Contractor will furnish a list of proposed FF&E to the City for approval prior to purchase or lease. All FF&E purchased with City funds remains the property of the City. The Contractor cannot remove, alter, or dispose of any City funded FF&E without consent of the City.

(b) The Contractor has the right to choose the best method of finance to procure FF&E, whether through purchase or lease. The Contractor further agrees to take good care of such FF&E, to keep the same in good order and condition, and at Contractor's own cost and expense to promptly make all necessary repairs, replacements, and renewals to said FF&E. The Contractor shall have no right to waste, destroy, demolish, or remove the FF&E except as specifically provided for in this Agreement or otherwise approved in writing by City. Any and all other fixtures, furnishings and equipment and other personal property purchased at Contractor's expense and placed in, on, or about the Center shall be the Contractor Furnished Equipment.

(c) In the event this Agreement is terminated pursuant to Section E termination provisions, the City at its discretion, may assume the obligations of any leases for FF&E.

#### **D-7 Subcontracting/Teaming/Partnering**

(a) With prior City approval, the Contractor will be permitted to subcontract, team, or partner with other non-profit organizations that would be given responsibility for operating certain functions within the Contract Area. The form of any such subcontract or agreement would be required to take the same form as the basic contract and would have to be in full compliance with the RPP Act.

(b) In accordance with the requirements of the RPP Act, the City would retain approval rights for the programs and fees of subcontractors as if they were the Contractor's and the approval process would be the same as for the Contractor. The City would also retain the right to direct the Contractor to terminate any subcontracts. The City would hold the Contractor responsible and liable for the actions or inactions of its subcontractors or partners.

#### **D-8 Good Faith and Cooperation**

It is agreed by the City and the Contractor that it is in their mutual best interests and in the best interest of the public that the Center be operated and managed as herein agreed and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.

**D-9 Approvals by City and Contractor**

Where ever in this Agreement the approval of the City or the Contractor is required, such approval shall not be unreasonably withheld.

**SECTION E – General Clauses****E-1 Legal Notice** [CAO-6/5/02]

(a) All legal notices required pursuant to the terms and conditions of this Agreement shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Agreement shall be deemed to have been given when (i) received by the party to whom it is directed by hand delivery or personal service, (ii) transmitted by facsimile with confirmation of transmission, or (iii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY:           City of Las Vegas  
                                  Manager, Purchasing and Contracts  
                                  City Hall, First Floor  
                                  400 Stewart Avenue  
                                  Las Vegas, Nevada 89101-2986  
                                  Fax: (702) 384-9964

FOR THE CONTRACTOR:   Young Men's Christian Association of Southern Nevada  
                                  Attn: CEO  
                                  4141 Meadows Lane  
                                  Las Vegas, Nevada 89107

(b) The parties shall provide written notification of any change in the information stated above.

(c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.

(d) For purposes of this Agreement, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, change orders over \$25,000, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Agreement.

(e) Routine correspondence should be directed to the Project Manager or the Contractor Representative, as appropriate.

**E-2 Licenses/Registrations and Other Governmental Permits**

(a) During the entire performance period of this Agreement, the Contractor shall maintain all federal, state, and local licenses and registrations applicable to the work performed under this Agreement.

(b) The Contractor shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental entity for the Contract Area, including the Clark County Health District. The City shall exercise its best efforts to provide all assistance to the Contractor in securing these permits.

**E-3 Disputes [CAO-6/5/02]**

(a) For each claim or dispute arising between the parties under this Agreement, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration and litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Contractor, the Contractor shall notify the City of its intent to proceed further with the claim or dispute, and in response thereto, the City shall notify the Contractor as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Contractor in the notice of intent to proceed with further resolution and in the same notice as to whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.

(b) In the event that arbitration is originated by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.

(c) The laws of the State of Nevada shall govern this Agreement and the venue for purposes of such litigation or arbitration shall be in the City.

**E-4 Notice of Delay [CAO-6/5/02] R**

(a) Should the timely performance of this Agreement be jeopardized by the non-availability of City provided personnel, data, or equipment, the Contractor immediately shall notify the City in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, the City will advise the Contractor in writing of the action which will be taken to remedy the situation. Should the City fail to provide a timely response, then the City will pay for additional costs incurred by the Contractor to perform to the terms and conditions of this Agreement.

(b) The Contractor shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Contractor's failure to perform. Notice shall be provided as soon as the Contractor is aware of the situation; however, such notice shall not relieve the Contractor from any existing obligations regarding performance or delivery.

**E-5 Termination for Convenience [CAO-6/5/02] R**

(a) In the event that, after working in good faith and with due diligence, either City or Contractor shall conclude that it cannot reach agreement on terms for the Agreement acceptable to it that will satisfy BLM-imposed conditions, in which case this Agreement will terminate on such date as either City or Contractor may specify upon ninety (90) days written notice to the other.

(b) The City shall have the right at any time to terminate further performance of this Agreement, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from the City to the Contractor, specifying the extent and effective date of the termination. On the effective date of the termination, the Contractor shall terminate all work and take all reasonable actions to mitigate expenses. The Contractor shall submit a written request for incurred costs for services performed and equipment purchased through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay the Contractor within thirty days after receipt of a correct, adequately documented written request. The City's sole liability under this Paragraph is for payment of the costs for the services requested by the City and actually performed by the Contractor. The City is not liable for the reimbursement of deferred revenue gained through membership sales.

**E-6 Termination due to Governmental Action**

In the event any governmental authority takes any action which inhibits or adversely affects the Center, or if a portion of the Center shall be acquired or condemned under threat of eminent domain or any other governmental power, or if any governmental authority takes any action which causes or substantially contributes to a reduction in the use of the Center, either party shall have the right to terminate this Agreement by giving ninety (90) days written notice to the other party or continue its operations on the balance of the location, if any, if mutually agreed to by both parties. Remedies available to the Contractor are the same as those set forth in Paragraph E-5 (b) above.

**E-7 Condemnation Award**

(a) The Contractor hereby covenants and agrees that should the Contract Area or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding or in any other manner ("Condemnation") or should the Contractor receive any notice or other information regarding such proceeding, the Contractor shall give prompt written notice thereof to the City.

(b) The City shall be entitled to all compensation, awards, and other payments or relief therefore and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding. The City shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds (the "Proceeds") are hereby assigned to the City, and Contractor agrees to execute such further assignments of the Proceeds as the City may require.

(c) In the event any portion of the Center is so taken or damaged, the City shall have the option, in the City's sole and absolute discretion, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by the City in connection with such Proceeds, to apply such Proceeds to the restoration of the Center upon such conditions as the City may determine.

(d) Remedies available to the Contractor are the same as those set forth in Paragraph E-5 (b) above.

**E-8 Termination of the RPP Act Lease/Patent**

In the event the RPP Act Lease/Patent is terminated or relinquished, this Agreement shall also be terminated. The City shall be responsible for notifying the Contractor of impending termination or relinquishment. Remedies available to the Contractor are the same as those set forth in Paragraph E-5 (b) above.

**E-9 Termination for Default**

(a) Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, connection, or remedy with reasonable diligence and during any period of curing shall not be in default. The party claiming default shall give written notice of default to the party in default specifying the default complained of. Except as required to protect against further damages and except as otherwise expressly provided in Paragraphs E-9(e) and E-9(g) below of this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice, said thirty (30) days constituting the period to cure any default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

(b) Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(c) It is expressly understood and agreed that each of the covenants, promises, stipulations, and agreements of the parties hereto are an integral and indivisible part of the mutual consideration given by each of the parties to this Agreement and that each covenant, promise, stipulation, and agreement of the parties shall be deemed and construed as material. It is further understood and agreed that failure, refusal or neglect for any reason whatsoever of either party to perform any of the covenants, promises, stipulations, or agreements to be performed by that party pursuant to the terms and provisions of this Agreement shall constitute a material default on the part of that party, giving to the other party the right to exercise each and every of its remedies reserved in or under, or otherwise the right to enforce, this Agreement in accordance with the provisions of this Paragraph E-9 (c) and other provisions relating to default in this Agreement.

(d) Damages. If the Contractor or the City defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

(e) Specific Performance. If the Contractor or the City defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within thirty (30) days of service of the notice of default, the nondefaulting party, at the nondefaulting party's option, may institute an action for specific performance of the terms of this Agreement or for other equitable relief.

(f) Termination by the Contractor. In the event the City is in breach of this Agreement, which breach is not cured within the cure period set forth in Paragraphs E-9(a) and E-9(e) of this Agreement, the Contractor, at the Contractor's option, may declare this Agreement terminated by providing written notice to the City.

(g) Remedies by the City. If the City terminates this Agreement for default in whole or in part, it may acquire, under reasonable terms and in the manner the City considers appropriate, services or goods similar to those terminated, and the Contractor shall be liable to the City for any excess costs for those services or goods. However, the Contractor shall continue the work not terminated. Upon such termination, the City shall be entitled to receipt of the proceeds available from the Operating Reserve in place and as described in Paragraph B-5 of this Agreement.

(h) The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises from circumstances beyond the control and without the fault or negligence of the Contractor. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, (9) unusually severe weather. The time of performance of the Contractor's obligations under this Agreement shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed sixty (60) days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Agreement pursuant to the terms of Paragraph E-5, "Termination for Convenience".

(i) Either party may terminate this Agreement, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a

receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof.

(j) The City retains the right to terminate for default should the Contractor fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety after the Contractor has been given thirty (30) days to cure any of these conditions.

#### **E-10 Rights and Remedies Are Cumulative; Nonrecourse**

(a) Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

(b) Notwithstanding anything to the contrary contained in this Agreement, the City's recourse and security for those obligations shall be to terminate this Agreement or to seek damages or specific performance pursuant to Paragraphs E-3, E-4 and E-9 of this Agreement.

(c) Notwithstanding the foregoing, it is expressly agreed that the foregoing provisions shall not limit the Contractor's liability for:

1. Fraud or intentional misrepresentation made in, as an inducement for, or in connection with this Agreement;

2. Failure to pay taxes or assessments or to pay charges for labor, materials, or other obligations, which failures result in the creation of liens against any portion of the Center;

3. The misapplication of:

a. The proceeds of any insurance covering any portion of the Center, but only to the extent the proceeds are so misapplied, or

b. Misappropriation of Center funds or fees; or

4. Conversion of City FF&E Agreement.

#### **E-11 Insurance/Bonds**

(a) The Contractor shall procure and maintain continuously in effect during the term of this Agreement policies of insurance of the kind and amount as follows for the Contract Area:

1. The Contractor shall procure and maintain insurance of the kind and amount sufficient to cover any liability of the Contractor under the Industrial Insurance laws, NRS Chapter 616, of Nevada.

2. The Contractor shall procure and maintain comprehensive or commercial general liability insurance, including broad form endorsement and stop-gap (employer's liability endorsements) in minimum amounts of Two Million Dollars (\$2,000,000) per occurrence and Six Million Dollars (\$6,000,000) annual aggregate combined single limit for personal injury, including death, and for property damage. Coverages thereunder shall include premises and operations liability, contractual liability, personal injury, owner's and contractors' protection, elevator liability, employer's liability, projects and completed operations coverage. The Contractor shall also maintain sexual abuse/molestation defense insurance coverage.

3. The Contractor shall also maintain business interruption or rental loss insurance (or the functional equivalent) in an amount which covers not less than twelve (12) months of the revenues attributed to the Center for a term that matches the term of the loan.

4. The Contractor shall procure and maintain auto liability insurance for claims for damage because of bodily injury or death of any persons or property, damage arising out of the ownership, maintenance or use of any motor vehicles of Contractor whether owned, hired or non-hired in an amount no less than One Million Dollars (\$1,000,000) combined single limit "per accident" for bodily injury and property damage.

5. The Contractor shall procure and maintain products liability insurance in minimum limits of Two Million Dollars (\$2,000,000) for injury to or death of any one person; Two Million Dollars (\$2,000,000) for each accident or occurrence; Two Million Dollars (\$2,000,000) aggregate products for bodily injury liability, Two Million Dollars (\$2,000,000) for each accident or occurrence; and Two Million Dollars (\$2,000,000) aggregate products property damage liability.

6. Employee Dishonesty The Contractor agrees to furnish an Employee Dishonesty Bond held by a company approved by the City, indemnifying the City against any dishonest acts of the Contractor or any of its employees, officers, or directors, individually or in collusion with others, which bond shall be in the amount of not less than Fifty Thousand Dollars (\$50,000) for all key financial officers or employees and Twenty-five Thousand Dollars (\$25,000) for all other employees.

(b) The City shall be named as an additional insured party thereunder and such notation shall appear on the certificate of insurance furnished by the Contractor's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The adequacy of the insurance supplied by the Contractor, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City. The City requires insurance carriers to maintain a Best's Key rating of "A VII" or higher.

(c) The City, the BLM and their officers, employees, and volunteers must be expressly covered as insured with respect to liability arising out of activities by or on behalf of the named insured in connection with the performance of this Agreement, excluding professional liability insurance.

(d) The Contractor's insurance shall be primary as respect to City, its officers, employees and City designated volunteers. Any other coverage (insurance or otherwise) available to the City, its officers, employees, and volunteers shall be excess over the insurance required of the Contractor and shall not contribute with it.

(e) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$10,000.00 without the prior written approval of the City.

(f) Certificates indicating that such insurance is in effect shall be delivered to the City and the BLM within ten (10) days after the Award Date of this Agreement, or before work commences, whichever is earliest. The Contractor shall maintain coverage for the duration of this Agreement. The Contractor shall annually provide the City and the BLM with a certificate of insurance as evidence that all insurance requirements have been met. It is further agreed that the Contractor and/or insurance carrier shall provide the City with a thirty (30) day advanced notice of policy modification or cancellation. Any exclusions to the effect that the insurance carrier will "endeavor to inform" must be stricken from the certificate of insurance.

(g) Should the Contractor fail to carry the required insurance, the City has the option to purchase replacement insurance and charge the costs back to the Contractor.

**E-12 Indemnification**

(a) In addition to the insurance requirements set forth in Paragraph E-11, "Insurance/Bonds", Contractor agrees to indemnify, save harmless and defend the City and the BLM from and against any and all claims, demands, actions, debts, liabilities, judgments, costs and attorney's fees arising out of, claimed on account of, or in any manner predicated upon the purported or asserted by virtue of the Contractor's management, operation and maintenance of the Contract Area. The City and the BLM shall not assume or be responsible for any indebtedness of Contractor. The Contractor shall conform to all safety regulations, i.e., O.S.H.A. and N.O.S.H.A. and requirements covering such premises in effect at any time during the performance of the Agreement. The Contractor agrees to take all necessary steps and precautions to prevent accidents and preserve the life and health of its employees performing or in any way coming in contact with performance of this Agreement on such premises. The City will indemnify the Contractor from all loss and damage in any way sustained by it or them by reason of the performance of this Agreement for the Non-Contract Areas.

(b) Contractor agrees to indemnify and save harmless the City, the BLM, as well as its officers, employees and other persons lawfully present at the Contract Area, from all loss and damage in any way sustained by it or them by reason of the performance of this Agreement by the Contractor. In the event that the City, or the BLM, its officers, employees or other persons lawfully present at the Contract Area shall be required to pay damages, judgments or workmen's compensation to any person, partnership or corporation on account of injury or death of persons or damage to or loss of property of any kind by reason of Contractor's performance of this Agreement, or by reason of any negligence of the Contractor with regard thereto, or otherwise, causing or contributing to such injury, death, loss or damage, Contractor agrees to reimburse the City, or the BLM, its officers, employees or other persons lawfully present at the Contract Area for any and all payments made by it or them by reason of any said matters, and Contractor agrees to pay for all loss of or damage to property belonging to the City or the BLM or in its custody or under its control resulting from any of said causes; and in the event that any suit, action or other proceeding shall be brought against the City or the BLM, or its officers, employees or aforementioned other person arising as aforesaid, Contractor agrees, upon receipt of written notice within a reasonable time after the commencement of said suit, action or other proceeding to defend the same at Contractor's own cost and expense, and to pay the amount of any verdict of judgment rendered thereon.

(c) By accepting this Agreement, the RPP Act lease, and the eventual patent, the City and the Contractor agree that if at any time after lease/conveyance of this Land, any condition on the Land is discovered which results in or from: (1) Violations of federal, state, and local laws and regulations which are now, or may in the future become applicable to the leased/patented real property; (2) Judgments, claims or demands assessed against the BLM; (3) Costs, expenses, or damages incurred by or assessed against the BLM; (4) Releases or threatened releases on, into or under the Land, property, or other interests of the BLM of solid waste or hazardous substances or hazardous wastes as defined by federal or state law; (5) Other activities by which solid or hazardous substances or wastes, as defined by federal and state law were generated, released, stored, used or otherwise disposed of on the leased/patented Land and any clean-up, response action, remedial action, natural resource damage or other actions related in any manner to said solid or hazardous substances or wastes; (6) Any and all site conditions, whether known or unknown to the City, the Contractor or BLM at the time of the lease/patent resulting from or relating to mining activities including but not limited to surface, or subsurface disturbance, hazards such as open shafts and underlying tunnels, structures, mining equipment or improvements; the City shall immediately take all actions necessary to abate the condition and respond as necessary. Further, the City, subject to the limits of NRS 41, and the Contractor shall indemnify, defend and hold harmless the BLM from any costs, damages, claims, liabilities and judgments resulting from any such condition or activities. This covenant shall be construed as

running with the real property covered by this Agreement, and may be enforced by the BLM in a court of competent jurisdiction.

(d) Nonliability of City Officials and Employees. No member, official or employee of the City or the BLM shall be personally liable to the Contractor in the event of any default or breach by the City or the BLM, or for any amount which may become due to the Contractor or on any obligations under the terms of this Agreement.

#### **E-13 Assignment [CAO-6/5/02]**

Neither party may assign their rights nor delegate their duties under this Agreement without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Agreement.

#### **E-14 Waiver [CAO-6/5/02]**

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Agreement, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Agreement, or to affect the right of the City or Contractor to thereafter enforce each and every provision of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement.

#### **E-15 Taxes/Compliance with Laws [CAO-6/5/02] R**

(a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Contractor shall pay all taxes, levies, duties and assessments of every nature and kind, which may be applicable to any work under this Agreement. The Contractor shall make any and all payroll deductions required by law. The Contractor agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

(b) The Contractor in the performance of the obligations of this Agreement shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, but not limited to, the Federal Occupational Health and Safety Act, and all state and federal laws prohibiting and/or relating to discrimination, by reason of race, sex, age, religion or national origin.

(c) The Contractor shall pay when due any applicable personal property taxes and assessments assessed and levied upon the Contractor throughout the term of this Agreement. Nothing herein contained shall be deemed to prohibit the Contractor from contesting the validity or amounts of any tax, assessment, encumbrance, or lien or to limit the remedies available to the Contractor with respect thereto; provided, such contest does not subject the Center or Common Area or any portion thereof to forfeiture or sale. Contractor shall collect and pay any applicable taxes including, but not limited to, sales and/or use taxes, excise taxes and payroll taxes which may arise by reason of the performance of this Agreement and be assessed by the BLM Government, any state government or any other governmental body.

#### **E-16 Audit of Records**

(a) The Contractor agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Agreement for a period of five (5) years after completion of this Agreement and any subsequent extensions thereof. All records subject to audit findings shall be retained for five (5) years after the end of each year of this

Agreement. The books of account and records shall reflect all expenses and revenues associated with the Center. All databases for such purpose will be maintained by the Contractor, and Contractor shall assure that adequate hard copies and data backups are done on a routine basis and stored on an approved media. There will also be a requirement for the submission of various monthly and annual reports, to include financial reconciliation and variance reports.

(b) In the event the Contractor goes out of existence, the Contractor shall turn over to the City all of its records relating to this Agreement to be retained by the City for the required period of time.

(c) The Contractor agrees to permit the City or the City's designated representative(s) to inspect and audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy and/or transcribe any information that the City desires concerning Contractor's operation hereunder. The Contractor further understands and agrees that said inspection and audit would be exercised upon written notice. If the Contractor or its records and books are not located within Clark County, Nevada, and in the event of an inspection and audit, Contractor agrees to deliver the records and books or have the records and books delivered to the City or the City's designated representative(s) at an address within the City of Las Vegas as designated by the City. If the City or the City's designated representative(s) find that the records and books delivered by the Contractor are incomplete, the Contractor agrees to pay the City or the City's representative(s)' costs to travel (including travel, lodging, meals, and other related expenses) to the Contractor's offices to inspect, audit, retrieve, copy and/or transcribe the complete records and books. The Contractor further agrees to permit the City or the City's designated representatives to inspect and audit, as deemed necessary, all records of this project relating to finances, as well as other records including performance records that may be required by relevant directives of funding sources of the City.

(d) If, at any time during the term of this Agreement, or at any time after the expiration or termination of the Agreement, the City or the City's designated representative(s) finds the dollar liability is less than payments made by the City to the Contractor, the Contractor agrees that the difference shall be either: (a) repaid immediately by the Contractor to the City or (b) at the City's option, credited against any future billings due the Contractor.

(e) Annual Statements and Audit. The City shall include the Center and this Agreement as part of the City's annual statement and audit. Such annual statement and audit will be prepared after the close of the City's fiscal year (June 30).

(f) The Contractor also has the right, upon reasonable notice, to inspect the books and records of the City pertaining to the Center as pertinent to the purposes of this Agreement.

(g) During the term of this Agreement, the City, at its discretion, may conduct an inspection of the Contractor's services at the Contract Area without charges or fees. The audit may be conducted by City staff or its designated auditors. The audit may include, but not limited to, inspections for Contractor's compliance with the provisions of this Agreement and the RPP Act, including all maintenance requirements and or the Land or to comply with laws, orders or requirements of governmental authority to take all steps as may be necessary or desirable for the safety, protection or preservation of the Contract Area or the Land or as may be necessary or desirable for the operation or improvement of the Contract Area. In addition, the City may conduct a review of the physical facility of the Contract Area and examination of the program in place for the replacement of capital equipment, the need for additional investment, and other aspects dealing with the physical facilities of the Contract Area. The auditor shall issue a written report, which shall be contemporaneously delivered and considered by both parties.

**E-14 Agreement Not a Tenancy and Independent**

Nothing in this Agreement shall be construed as creating a tenancy between the City and the Contractor. The parties acknowledge that this Agreement does not constitute a lease of the location, and City assumes no responsibility for taxes, repairs, or upkeep of the Contract Area except for those maintenance obligations set forth in Paragraphs C-3 "Contractor Maintenance Obligations" and C-4 "Repairs, Alterations and Damage." In the performance of services under this Agreement, the Contractor and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Contractor shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Agreement. The City shall hold the Contractor as the sole responsible party for the performance of this Agreement. The Contractor shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this Agreement or any subcontract awarded by the Contractor shall create a partnership, joint venture or agency. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

**E-15 Severability [CAO-6/5/02]**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**E-16 Conforming Services [CAO-6/5/02]**

The services performed under this Agreement shall conform in all respects with the requirements set forth in this Agreement. It shall be the responsibility of the Contractor to furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Agreement.

**E-17 Modification/Amendment [CAO-6/5/02]**

This Agreement shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Agreement shall be null and void, and may not be relied upon by either party.

**E-18 Section and Paragraph Headings [CAO-6/5/02]**

The section and paragraph headings appearing in this Agreement are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

**E-19 Conflict of Interest (City Officials) [CAO-6/5/02]**

(a) An official of the City, who is authorized in such capacity and on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Agreement, payments under this Agreement, or work under this Agreement, shall not be directly or indirectly interested personally in this Agreement or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the City, who is authorized in such capacity and on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with this Agreement, shall become directly or indirectly interested personally in this

Agreement or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Agreement.

(b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. Notwithstanding any other provision of this Agreement, if such interest becomes known, the City may immediately terminate this Agreement for default or convenience, based on the culpability of the parties.

(c) The Contractor represents and warrants that it has, in accordance with the current policy of the City, disclosed the ownership and principals of the Contractor on Attachment 3, "Certificate – Disclosure of Ownership/Principals", and that it has a continuing obligation to update this disclosure whenever there is a material change in the information contained therein.

#### **E-20 Integration [CAO-6/5/02]**

This Agreement represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

#### **E-21 Public Records [CAO-6/5/02]**

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). All of the City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Agreement, all supporting documents, and proposals submitted under the original Request for Proposal are deemed to be public records.

#### **E-22 Confidentiality – City Information [CAO-6/5/02]**

(a) All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Contractor is confidential and privileged. The Contractor shall not disclose this information, nor allow to be disclosed to any person or entity without the express prior written consent of the City. The Contractor shall have the right to use any such confidential information only for the purpose of providing the services under this Agreement, unless the express prior, written consent of the City is obtained. Upon request by the City, The Contractor shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts.

(b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Contractor prior to obtaining the same from the City; (iii) the information is obtained by the Contractor from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Contractor shall notify the City. In such event the City, in its sole discretion, may seek to quash such demand.

(c) The obligations of confidentiality shall survive the termination of this Agreement.

#### **E-23 Limitation of Funding [CAO-6/5/02]**

The City reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to the City, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Agreement.

**E-24 Obligation to Refrain From Discrimination**

The Contractor covenants by and for itself and any successors in interest that there shall be no discrimination against any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, disability, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Contract Area nor shall the Contractor itself or any person claiming under or through the Contractor establish or permit any such practice or practices of discrimination with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub lessees, or vendees of the Contract Area. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

**E- 25 Warranty against Payment of Consideration for Agreement**

The Contractor warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as for architects, engineers and attorneys.

**E - 26 No Third-Party Beneficiary**

The provisions of this Agreement are for the exclusive benefit of the City, the Contractor and their successors and assigns, and are not for the benefit of any third person; nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person except for provisions expressly for the benefit of a mortgagee or lender of the Contractor or its successors and assigns.

**E- 27 Parties in Interest**

All terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and by their respective successors in interest.

**E- 28 Contracts and Agreements**

All equipment leases and financing agreements, and all contracts and agreements relating to the operation of the Contract Area entered during the Agreement term shall be entered by the Contractor as the contracting party. The Contractor shall not enter any contract or agreement relating to the operation or maintenance of the Contract Area which extends beyond the Term of this Agreement or which is not terminable on thirty (30) days notice in the event of termination under the terms of this Agreement.

**E- 29 Order of Precedence**

In the event of a conflict between the specific language set forth in Sections A through E of this Agreement and any Attachment or Exhibit set forth in Section F, the specific language in Sections A through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections A through E.

**SECTION F – List of Attachments/Exhibits**

The following attachments are hereby incorporated into this Agreement:

<u>Identifier</u>	<u>Title/Text Reference</u>	<u>Date</u>	<u>Pages</u>
Attachment 1	Statement of Work [Paragraph C-1]	03/07	2
Attachment 2	Joint Use Conditions [Paragraph D-5]	02/07	1
Attachment 3	Certificate – Disclosure of Ownership/Principals [Paragraph E-19(c)]	03/07	7
Exhibit A	Site Map	12/06	1
Exhibit B-1	The Building	12/06	1
Exhibit B-2	Adjoining Pool	12/06	1
Exhibit C	Description of the Contract Area with FF&E List	12/06	3

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

\_\_\_\_\_  
KATHLEEN C. RAINEY, Manager  
Purchasing and Contracts

"City"

ATTEST:

\_\_\_\_\_  
BEVERLY K. BRIDGES, Acting City Clerk

APPROVED AS TO FORM:

Thomas R. Green 3/21/07  
Date

YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF SOUTHERN NEVADA

\_\_\_\_\_  
MICHAEL A. LUBBE, President

"Contractor"

## **Attachment 1**

### **Summary Statement of Work**

1. **Non-Discrimination.** Ensure that the Contract Area is available to the general public without discrimination as to age, race, creed, religion, sex, marital status, national origin, political affiliation, physical handicap or ancestry.
2. **Preoperational Services.** Perform certain services prior to the Contract Area's opening. These duties shall begin not more than 60 days before the operational date and shall include actions related to: a) staffing, b) planning, c) programming, and d) procuring necessary furnishings, fixtures, and equipment. However, occupying or furnishing the Contract Area is not allowed prior to the effective date of the construction certificate of occupancy.
3. **Operating Hours.** Ensure that the Contract Area is operational for all days and hours as agreed to with the City and that special attention is paid to after-school care and Track Break needs of the community.
4. **Staffing.** Provide professional, competent staffing to the Contract Area to include: a) a General Manager whose sole responsibility will be management of the Contract Area and who may not be replaced without the City's prior approval of the replacement, b) adequate managerial and supervisory personnel to ensure presence of a manager or supervisor during all hours of operation, and c) all other full and part-time staff to operate the Contract Area during all proposed hours of operation. The Operator will also be responsible for maintaining satisfactory standards of employee competence, conduct, and integrity, and for taking such disciplinary action with respect to its employees as is necessary to ensure efficient operation of the Contract Area.
5. **Headquarters Support.** Provide appropriate expertise and support from the Operator's headquarters, to include quality assurance, corporate accounting and bookkeeping, staffing and planning assistance.
6. **Supplies.** Provide all supplies as are reasonably necessary to operate and maintain the Contract Area. However, the City will supply all maintenance and custodial supplies per Paragraph D-2.
7. **Warranty Enforcement.** Become familiar with all elements of the building warranties and promptly notify the City of any deficiencies covered by warranties.
8. **Equipment Inventory.** Establish and maintain a complete, electronic inventory of all City-owned property located at the Contract Area. Ensure that FF&E procured with City funding is accounted for as City property.
9. **Vandalism/Damage Reporting and Repair.** Within one (1) business day of occurrence, report to the City's Contracts Manager all damage to the Contract Area which occurs by vandalism or from other causes.
10. **Security.** Develop, institute and maintain a City-approved Security Plan that provides adequate security to ensure the safety of all Contract Area patrons and staff, and of the facility. Pay for monthly security and fire alarm maintenance expenses.
11. **Safety.** Develop, institute and maintain a City-approved Safety Program throughout the entire performance period of the Contract.

12. Vending Area. Contract Area As a non-profit organization, the Contractor will be responsible for obtaining vending concession services and will retain all proceeds from sales.
13. Purchasing Support. Furnish purchasing and subcontracting services necessary to support the requirements of the Contract Area. During the pre-operational period, procure and install all necessary furnishings, fixtures and equipment for the Contract Area except those which will be provided through the construction budget.
14. Consumer Complaints. Ensure that consumer complaints are handled expeditiously and courteously.
15. Taxes. Make payment of all applicable federal, state, and local taxes, including payroll taxes, which are related to Contract performance and for which the Contract Area and/or the Contractor are responsible.
16. Marketing. Perform marketing, promotional and fund raising activities.

Attachment 2

JOINT USE

**Anticipated Schedule for the use of the various rooms in the YMCA section of the building by the Centennial Hills Active Adult Center, Recreation Division and other City departments/programs.**

One of the two Gyms (prefer exclusive use during these times but this can be negotiated):

2 days a week in the morning for 2 hours for Pickle ball or Volleyball

2 days a week in the early afternoon for 2 hours for Badminton or basketball

1 day a week in the early evening (7-8 or 6-7) for an active adult sports evening

Weight room (not exclusive use by the Active Adult Center: All participants must be enrolled in a weight training class through the Active Adult Center. Participants will meet in the Active Adult Center and go with their instructor or staff to the weight room.

5 days a week for one hour from 10-11

5 days a week for one hour from 6-7 or 7-8.

Indoor Pool (prefer exclusive use but this can be negotiated):

5 days a week for one hour from 9-10 for water aerobics, lap swimming

5 days a week for one hour from 6-7 or 7-8 for water aerobics, lap swimming

Dance Room (exclusive use for classes):

2 days a week for 2 hours in the morning for dance classes

2 days a week for 1 hour in the afternoon

2 days a week for 1 hour in the early evening (6-7 or 7-8)

Saturday mornings for 2 hours (10-noon)

Storage room by the shell room

The Active Adult Center will use this storage area in lieu of the area by the gym.

Assumptions:

1. Active Adult Center staff will program classes at least 3 months in advance and work with the YMCA staff on scheduling.
2. Days of the week to be modified based on when people want to take a class. Any class that does not hit a minimum enrollment will be cancelled and the room released for other uses by the YMCA. If a class time slot is dropped and the time slot is given back to the YMCA, it is understood it is only for the remainder of the three month period covered by the current 3 month scheduling period. It is further understood that staff will work to develop other classes or activities that will use the time slot for the cancelled class.
3. The Adult Community Center and other City departments may from time to time request the use of larger classrooms, conference rooms, etc. for various functions. Examples could include but are not limited to larger holiday luncheons, town hall meetings, educational forums, etc.
4. If any participant of the Active Adult Community Center desires to use any of the joint-use rooms outside of the scheduled class times, they will need to get a YMCA membership to do so.  
City Departments will request to use rooms within the Portion of the YMCA from time to time for special events, meetings or other functions. Examples of these uses include but are not limited to the following: Meetings set by either the Mayor, City Council members, Neighborhood Services, Planning Department public hearings, meetings for other City Departments, Intergovernmental meetings, health fairs, etc. These uses will be scheduled through the City contract administrator assigned to oversee the contract.

ATTACHMENT 3

CERTIFICATE DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship - the owner of the business; (b) corporation - the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership - the general partner and limited partners; (d) limited liability company - the managing member as well as all the other members; (e) trust - the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

<b>Block 1 Contracting Entity</b>
YMCA of Southern Nevada
Name
4141 Meadows Ln., Las Vegas, NV
Address
702-877-9622
Telephone
88-0659266
EIN or DUNS

<b>Block 2 Description</b>
Subject Matter of Contract/Agreement
Operation and Management Services
Of Centennial Hills Community Center
RFP#060085

<b>Block 3</b>	<b>Type of Business</b>				
<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Other:

## CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

**Block 4 Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	See attached Board of Directors list		
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 5

**Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS - ALTERNATE**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: \_\_\_\_\_

Date of Attached Document: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity

*Michael Kettle*  
\_\_\_\_\_

Name

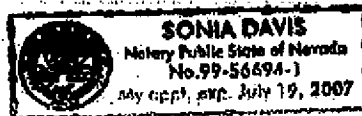
3/6/07  
\_\_\_\_\_

Date

Subscribed and sworn to before me this 6<sup>th</sup> day of

March, 2007

Sonia Davis  
Notary Public



YMCA OF SOUTHERN NEVADA  
BOARD OF DIRECTORS

2/07

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>FAX</u>
Arboleda, John	A-Team Mortgage 2340 Paseo Del Prado D304 Las Vegas, NV 89102 <u>Santo19@aol.com</u>	221-7002	221-8002
Arnold, Ryan	The Skancke Company 3225-B S. Rainbow #204 Las Vegas, NV 89146 <u>Ryan@skancke.net</u>	870-7068	474-4606
Balzar, Robert	Pinnacle Homes 8997 Opus Drive Las Vegas, NV 89117 <u>rbalzar@cox.net</u>	233-6523 (H) 232-9297 (C) 228-0720, Ext 31	228-5895
Benjamin, Michael Past Chairman	Benjamin Enterprises 2300 W. Sahara Avenue, #1130 PMB33 Las Vegas, NV 89102 <u>mikebenjamin@mac.com</u>	248-6334 499-7404 C	248-0922
Bradley, Larry	Pro Group Management 175 East Reno, #C-9 Las Vegas, NV 89119 <u>larryb@saveoncomp.com</u>	740-4380	740-4381
Brennan, Leo	Cox Communications 121 S. Martin Luther King Blvd Las Vegas, NV 89106 <u>Leo.brennan@cox.com</u>	545-1010 545-1011 Cherryl	383-0614 545-2011

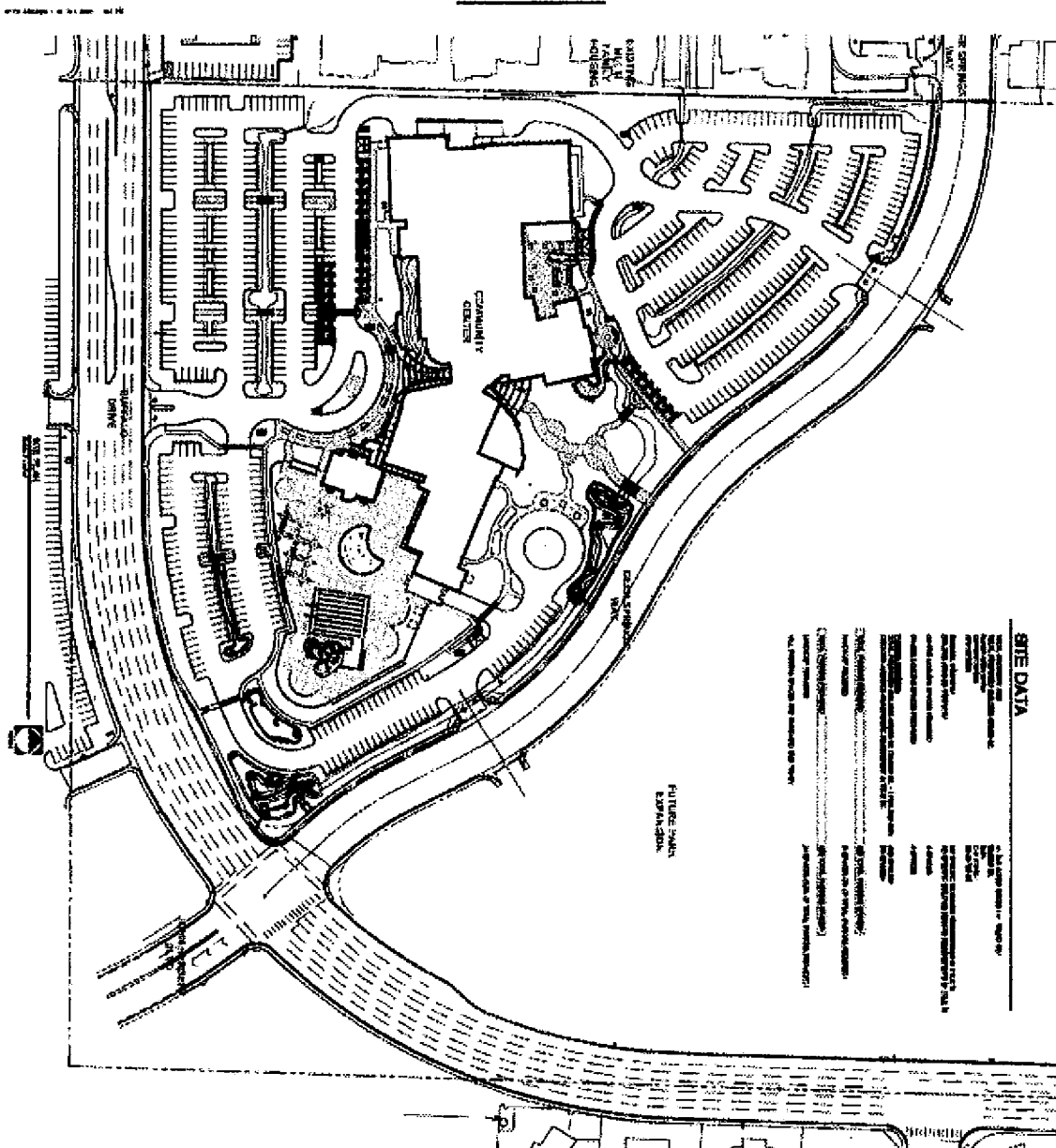
<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>FAX</u>
Campbell, Steven	Campbell Development Company 7912 West Sahara Avenue Las Vegas, NV 89117 <a href="mailto:scampbell@campbelldevelopmentco.com">scampbell@campbelldevelopmentco.com</a>	835-0900	835-0911
Crawford, Rick	Green Valley Grocery 1580 S. Jones Blvd. Las Vegas, NV 89146 <a href="mailto:rcrawford@gvgrocery.com">rcrawford@gvgrocery.com</a>	367-1539 367-0056	216-2150
De Tristan-Tait, Katherine	Nevada Rose, LLC 1945 Hobson Drive Henderson, NV 89074 <a href="mailto:kdeltristan@sencenectar.com">kdeltristan@sencenectar.com</a>	491-8381	
Evans, Sean	WAL* MART District Manager Store 2837 4350 N. Nellis Blvd. Las Vegas, NV 89115 <a href="mailto:spevans@wal-mart.com">spevans@wal-mart.com</a>	643-1417	643-6053
Fleming, Allan	General Manger Las Vegas Review-Journal P.O. Box 70 1111 W. Bonanza Road Las Vegas, NV 89125-0070 <a href="mailto:allan_fleming@lvrj.com">allan_fleming@lvrj.com</a>	383-0236	383-0402

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>FAX</u>
Fraim, Richard	87 Princeville Lane Las Vegas, NV 89113 <a href="mailto:dfraim@cox.net">dfraim@cox.net</a>	367-9610 592-8623 C	365-9831
Haller, Karen	Assistant General Counsel Southwest Gas Corp. 5241 Spring Mountain Road Las Vegas, NV 89150 <a href="mailto:karen.haller@swgas.com">karen.haller@swgas.com</a>	364-3191	252-7283
Heinrich, Greg	President Fairway Chevrolet 3100 E. Sahara Avenue Las Vegas, NV 89104 <a href="mailto:gwhceo@aol.com">gwhceo@aol.com</a>	641-1401 558-2455 Henderson	641-8037
Jansen, William D.	Justice of the Peace Clark County Court 200 Lewis 8 <sup>th</sup> Floor Las Vegas, NV 89155 <a href="mailto:shros@co.clark.nv.us">shros@co.clark.nv.us</a>	671-3381	671-3472
Kakish, Husam	Mandalay Bay 499 Petal Dew Avenue Las Vegas, NV 89123 <a href="mailto:hkakish@msn.com">hkakish@msn.com</a>	632-7173 400-7313 Cell	632-7179
Little, Martin Secretary	Jolley, Urga, Wirth & Woodbury. 3800 Howard Hughes Parkway 16 <sup>th</sup> Floor Las Vegas, NV 89109 <a href="mailto:MAL@JUWW.com">MAL@JUWW.com</a>	699-7500 699-7516	699-7555

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>FAX</u>
Martin, Rod	Majestic Realty 4155 W. Russell Road, #C Las Vegas, NV 89118 <a href="mailto:rmartin@majesticrealty.com">rmartin@majesticrealty.com</a>	896-5564	896-4838
Martinez, Jeff Treasurer	Martinez & Payan LLC 8691 W. Sahara Avenue, #180 Las Vegas, NV 89117 <a href="mailto:jeff@martinezpayan.com">jeff@martinezpayan.com</a>	524-9529 853-2580	255-3622
McMahon, Steven	EMBARQ VP Regional Operations 330 S. Valley View Blvd. Las Vegas, NV 89152 <a href="mailto:Steve.mcmahon@embarq.com">Steve.mcmahon@embarq.com</a>	244-7126	244-7378
Ostendorf, Roger Chairman	Desert Shore Tile 4141 Wagon Trail Las Vegas, NV 89118 <a href="mailto:roger@desertshoretile.com">roger@desertshoretile.com</a>	221-2262	221-2264
Peterson, Brad	Senior Vice President CB Richard Ellis 3993 Howard Hughes Parkway, #700 Las Vegas, NV 89109 <a href="mailto:Brad.Peterson@cbre.com">Brad.Peterson@cbre.com</a>	369-4809	794-0144
Sauter, Patrick	Partner The Sauter Companies 10161 Park Run Drive #140 Las Vegas, NV 89145 <a href="mailto:psauter@thesautercompanies.com">psauter@thesautercompanies.com</a>	383-3383 Ext. 1	252-0139


<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>FAX</u>
Schroeder, Julie	American Family Insurance 6775 Edmond Street #300 Las Vegas, NV 89118 <a href="mailto:Jschroe7@amfam.com">Jschroe7@amfam.com</a>	733-5820	733-5958
Seedig, Larry	USAA Savings Bank 3773 Howard Hughes Parkway #190N Las Vegas, NV 89109 <a href="mailto:larry.seedig@usaa.com">larry.seedig@usaa.com</a>	862-8891	862-8890
Velarde, Jerry	Nevada Financial Consulting 601 Proud Eagle Lane Las Vegas, NV 89144 <a href="mailto:JerryVelarde@gmail.com">JerryVelarde@gmail.com</a>	562-0500 521-9600	243-2271
Watkins, Michael	KLAS TV Channel 8 3228 Channel 8 Drive Las Vegas, NV 89109 <a href="mailto:mwatkins@klastv.com">mwatkins@klastv.com</a>	792-8842	734-7437
Wood, Marty	Robertson Wood Advertising 521 South Seventh Street Las Vegas, NV 89101 <a href="mailto:mwood@robertsonwood.com">mwood@robertsonwood.com</a>	947-7777	933-1260

### EXHIBIT A

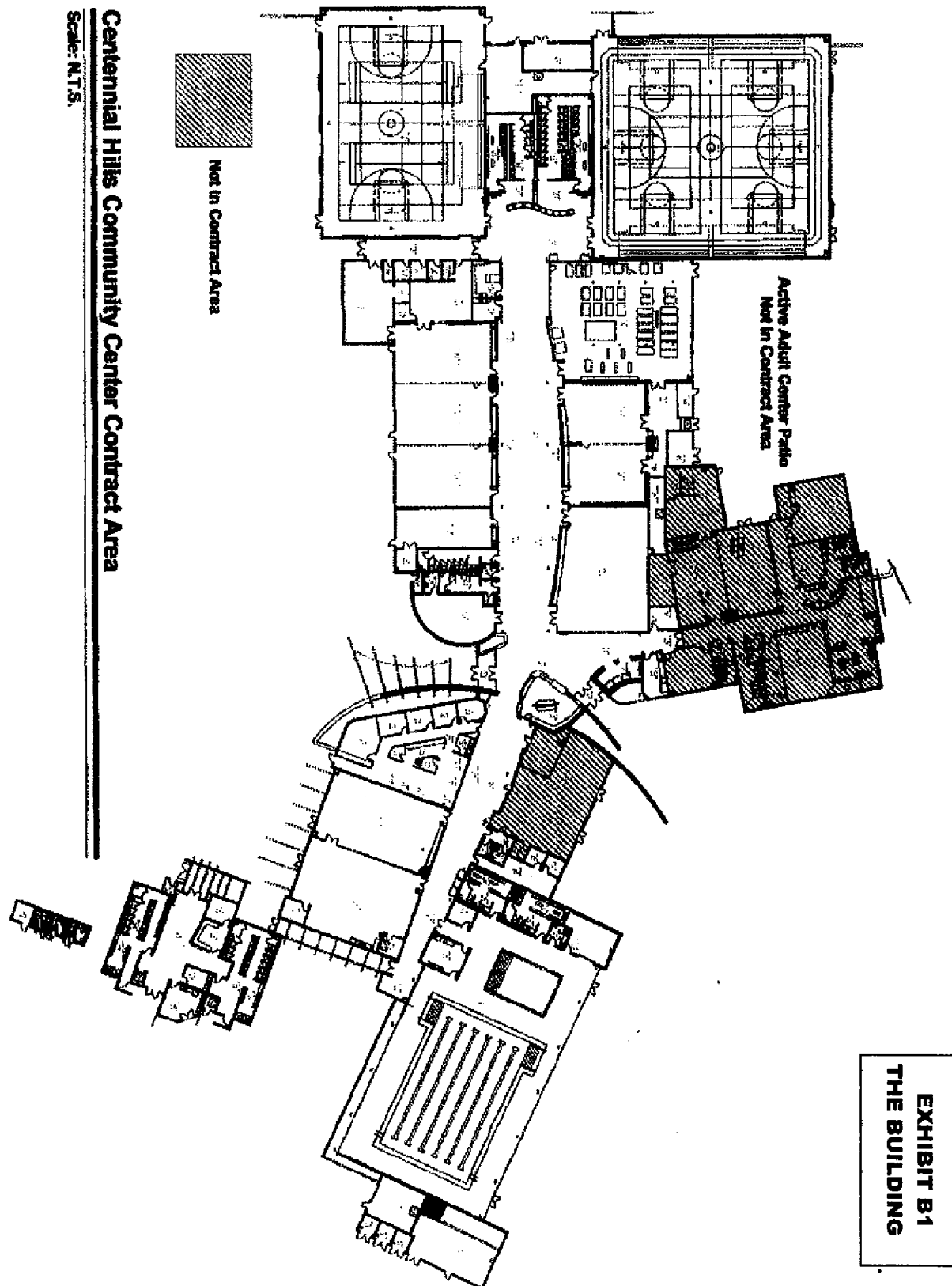


**SITE DATA**

DATE: 12/15/06	BY: [Signature]
PROJECT: CENTENNIAL HILLS COMMUNITY CENTER	LOCATION: 3400 S. LAS VEGAS BLVD., LAS VEGAS, NV
OWNER: CITY OF LAS VEGAS	DESIGNER: [Firm Name]
SCALE: AS SHOWN	DATE: 12/15/06
PROJECT NO. 060085	SHEET NO. 1 OF 1

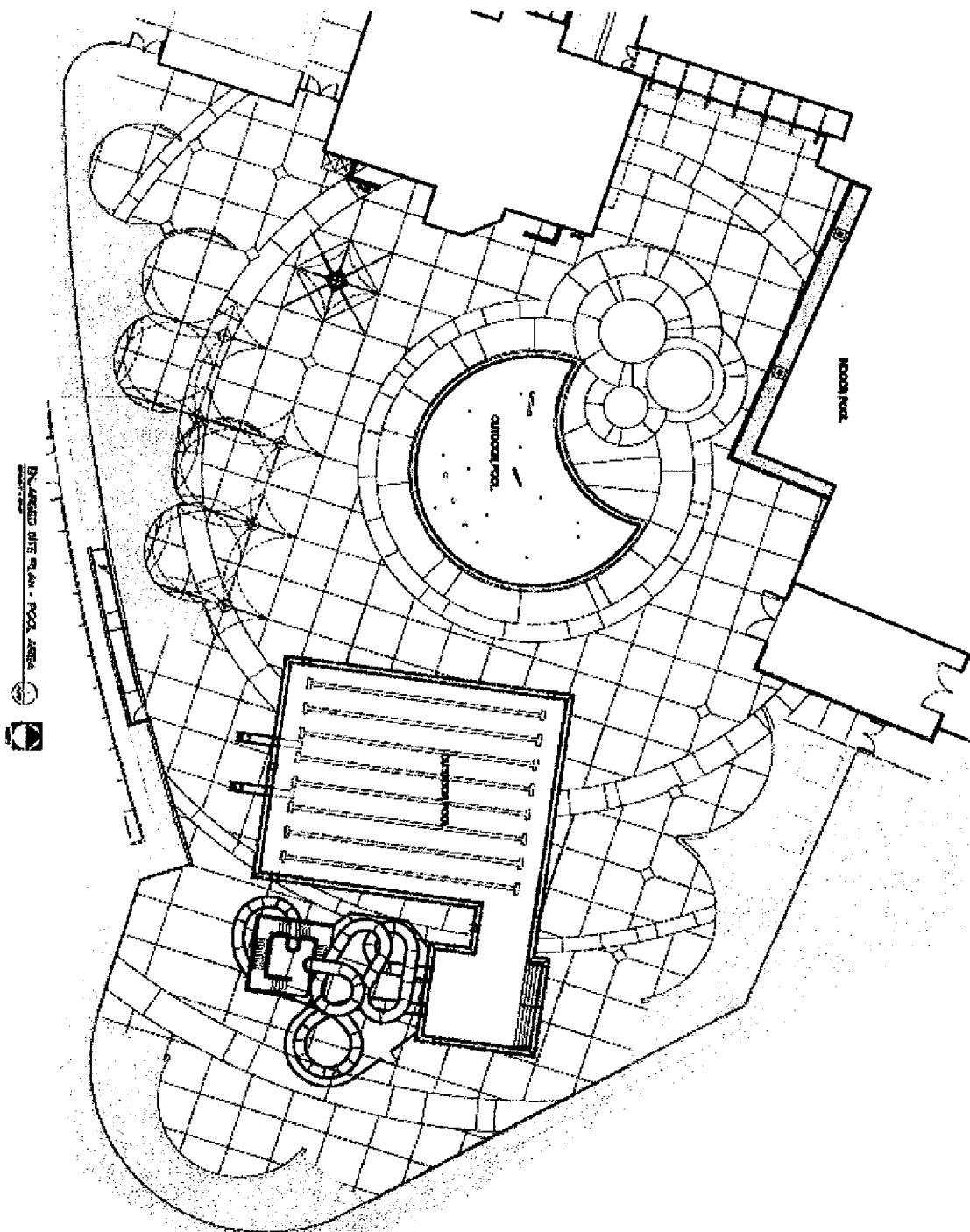
TO IV	CITY OF LAS VEGAS CENTENNIAL HILLS COMMUNITY CENTER SITE PLAN	
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**EXHIBIT B1**



**EXHIBIT B1  
THE BUILDING**

**EXHIBIT B2**



CITY OF LAS VEGAS CENTENNIAL HILLS COMMUNITY CENTER	
ENLARGED SITE PLAN - POOL AREA	
DATE: 12/06	
DRAWN BY: [Signature]	
CHECKED BY: [Signature]	
SCALE: AS SHOWN	

## EXHIBIT C

### Contract Area Description of the Contract Area with FF&E List

#### **Description of the Contract Area**

(a) The Contract Area consists of a building with indoor pool and adjoining outdoor pool facility. The Contract Area is located in the building with 98,385 square foot multipurpose facility that includes an approximately 10,000 square foot Active Adult Wing, a 2,200 square foot shell space, and their adjoining court yards. The Contract Area is located at 6601 and 6611 North Buffalo Las Vegas, Nevada. The building in the Contract Area has amenities as follows: two (2) full-size indoor basketball courts with a main gym including bleachers; child watch area; dance room, gymnastics room; meeting/multi-purpose rooms with kitchen; fitness room; arts and crafts room; game room, teen Contract Area, and program/facility support space, administrative offices, conference room and staff work areas; locker rooms, shower and restroom facilities; and concession area which shall be in compliance with NRS 426.640 through 426.680. The building is depicted on Exhibit B-1 (the building), attached hereto.

(b) The Contract Area has an adjoining outdoor pool facility with the following specifications: a fan-shaped 0 (zero) depth entry pool with water play toys; an 8-lane-25-yard swim box; (2) 1 meter diving boards; a (2) flume slide consisting of 147' and 159' long slides and full-size shower rooms and bath house. The pool is depicted on Exhibit B-2, attached hereto. The Contract Area also has an indoor pool facility with two pools, a 20ft x 30ft aerobics/teaching box and a 6 lane x 25 yard lap pool.

(c) The entire Contract Area is generally depicted inside the area that is not lined through of Exhibit B-1.

(d) Common Areas outside Contract Area and Parking Lot. Paved parking lot areas are located at the Contract Area. A plaza entry with landscaping surrounds the entrance to the Contract Area. Additional landscaping with planter boxes surrounds parts of the Contract Area. Outdoor patio areas adjoin the meeting/multi-purpose rooms and arts and crafts room.

#### Contract Area

#### **All rooms to include finish walls, floors, and ceilings**

##### ❖ **Fitness / Dance Room**

*1 @ 1233, 1 @ 1171 – Total = 2404 square feet*

Items Included: bag and shoe storage, ballet bars, AV cabinet, ceiling fans, ceiling speakers, intercom, and operable partition.

##### ❖ **Cardio / Weight Room**

*4011 square feet*

Items Included: drinking fountains, AV cabinet, ceiling fans, floor power outlets, cable outlets, TV brackets, ceiling speakers, intercom.

##### ❖ **Gymnasium 1**

*12160 square feet*

Items Included: Basketball backstops, backboards, winches, goals, nets, and safety pads, scoreboards, motorized bleachers, volley ball nets, drinking fountains, floor power outlets, cable outlet, and intercom.

- ❖ **Gymnasium 2**  
*8580 square feet*  
Items Included: Basketball backstops, backboards, winches, goal, nets, and safety pads, scoreboards, volley ball nets, drinking fountains, floor power outlets, cable outlet, and intercom.
- ❖ **Concessions**  
*192 square feet*  
Items Included: Phone outlets.
- ❖ **Game Room**  
*1986 square feet*  
Items Included: Drinking fountains, base cabinets, floor power outlets, cable outlet, TV bracket, ceiling speakers, Intercom.
- ❖ **Teen Contract Area**  
*2192 square feet (+ 100 sf storage + 120 office)*  
Items Included: Drinking fountains, base cabinets w/ sink, cable outlet, floor power outlets, intercom, ceiling speakers.
- ❖ **Computer Lounges**  
*4 total space – 312, 206, 458, 132 = 1108 square feet*  
Items Included: Power and data floor outlets.
- ❖ **Kitchen**  
*630 square feet*  
Items Included: Hand sink, janitor sink, preparation table with sink, wall cabinet, undercounter dishwasher, refrigerator/freezer, six burner range with oven base, exhaust ventilator, work table, ice maker w/ bin, scullery sink, reach in refrigerator.
- ❖ **Teacher Contract Area**  
*245 square feet*  
Items Included: Base cabinet w/ sink, work tables, intercom.
- ❖ **Gym Equipment Storage**  
*937 square feet*
- ❖ **Offices**  
*3 @ 120, 1 @ 138 – Total = 498 Square Feet*
- ❖ **Conference**  
*340 square feet*  
Items Included: Cable outlet, TV bracket, power and data floor outlets.
- ❖ **Paint and Craft Room with Storage Room**  
*1032 square feet*  
Items Included: Base cabinets w/ sink, outlet for future kiln.
- ❖ **Multi-Use Classrooms**  
*1 @ 1407, 1 @ 1436, 1 @ 1438 Total = 4281 square feet*

Items Included: Operable partitions, base cabinets w/ sink, recessed projection screens, cable outlets, TV bracket, and ceiling speakers.

❖ **Gymnastics Room with Storage Room**

*2817 square feet*

Items Included: Bag and shoe storage, AV cabinets, ceiling speakers, intercom, cable outlet, and TV bracket.

❖ **Child Watch**

*755 square feet*

Items Included: Cable Outlet, TV bracket, Intercom.

❖ **First Aid Room**

*152 square feet*

Items Included: Base cabinet w/ sink, Intercom.

❖ **Locker Rooms (including restroom area)**

*Gym Lockers – Women 1010 sf, Men 712 sf*

*Indoor Pool Lockers – Women 429 sf, Men 429 sf*

*Outdoor Pool Lockers – Women 1205 sf, Men 671 sf*

Items Included: Lockers, toilet accessories, mop sink

❖ **I.T. Room**

*1 @ 52, 1 @ 49, 1 @ 70 = 171 square feet*

Items Included: Equipment racks.

❖ **Outdoor Seasonal Pools**

*44,784 square feet total (600 sf pool, 3625 sf pool)*

Items Included: Shade structures, (2) flume slide

❖ **Indoor Pools**

*14193 square feet total (4350 sf pool, 2414 sf pool)*

❖ **Pool Equipment**

Items Included: First aid kits, life ring buoys, throw ropes, rescue hooks, pool safety signs, commercial pool vacuum, vacuum hose, utility pole, vacuum head, pool wall brush, leaf skimmer, water quality test kit, Lane line anchors, moveable lifeguard chair, grab rails, recessed steps, starting platforms, hand rails, disabled lift, racing lanes, racing lane reel w/ cover, 1 meter diving stand, 16' diving board, pool pumps, pool heaters, chlorine storage/feed system, acid storage/feed system.

❖ **Lifeguard**

*1@ 284, 1@ 272 square feet.*

Items Included: Intercom, base cabinet w/ sink.