

**AMENDMENT NO. 3 TO THE AGREEMENT FOR THE OPERATION AND
MANAGEMENT OF DURANGO HILLS COMMUNITY CENTER**

This AMENDMENT NO. 3 TO THE AGREEMENT FOR THE OPERATION AND MANAGEMENT OF DURANGO HILLS COMMUNITY CENTER (the "Amendment") is made and entered into this _____ day of _____, 2009 by and between the City of Las Vegas (the "City"), a municipal corporation within the State of Nevada, having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101 and the Young Men's Christian Association of Southern Nevada ("YMCA" or "Contractor"), a not-for-profit Nevada corporation, having its principal office at 4141 Meadows Lane, Las Vegas, Nevada 89107.

The Agreement between the City and YMCA dated February 5, 2003, with its Amendment No. 1 dated October 10, 2007, and its Amendment No. 2 dated February 6, 2008 is hereby modified. Language stricken with ~~strikethrough~~ is hereby deleted, underlined language is hereby added as follows:

1. Part III-Section [§300] Operations, [§35]E, User Fees, Program Schedule, and Budget as amended by Amendment No. 2:

The City and Contractor acknowledge that the Center is controlled by the City and operated by the Contractor, in accordance with this Agreement and the RPP Act.

~~The Contractor shall cooperate with the City for not less than ten percent (10%) joint use scheduling of the Center and not less than ten percent (10%) physical usage of the Center, subject to operational constraints and limitations. The Contractor agrees that the City's ten percent (10%) of joint use schedule shall be made available during the Center's operational hours or other hours as requested by the City. Contractor agrees that the City may schedule special events with ten (10) days advance notice. The Contractor may also provide use of the Center to community organizations; however, the use by community organizations shall not apply towards the City's ten percent (10%) joint use schedule. [Language previously stricken by Amendment No.2]~~

The Contractor and the City agree to share use of the Contract Area for City Departments and Programs at no cost. The Contractor and the City will meet on a regular basis to schedule Programs and other activities. The City's Leisure Service Programs will have first priority based upon space availability. 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 meeting 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;
 - V. Intergovernmental meetings to discuss flood preparedness, transportation issues, land use, etc.; and
 - VI. City staff meetings for City training, retreats and other operational related issues.

The City will take care to schedule through the City Contract Manager and the Contractor will be given 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. [Language previously added by Amendment No. 2]

Programs offered at the City from time to time shall be generally based on perceived need. The City shall have final approval over the Program Schedules of the Center. The Contractor shall submit to the City for review and approval the scheduling and use of the Center (the "Program Schedule") and may revise its Program Schedule from time to time by submitting proposed changes to the City. The City shall have fifteen (15) 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 Program Schedule and/or changes agreeable to both. If the City does not provide any such comments, the Program Schedule and/or revisions as submitted by Contractor shall become effective on the later of the 15th day following their submission to the City or the first business day thereafter or on such later date as they may be scheduled.

No later than thirty (30) days prior to the proposed effective date of a fee schedule, the Contractor shall submit a proposed fee schedule (the "Fee Schedule") and the City shall have fifteen (15) 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 15th 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.

The City and Contractor acknowledge that there may be additional uses of the Center contemplated by either the City or the Contractor that would not otherwise be considered as a "use as a sports or recreation center and other uses ancillary thereto" pursuant to Part VI [§600]-USE OF THE CENTER, [§61] A. Uses., but are otherwise permitted under the RPP Act. If the City or the Contractor desire to permit such a use at the Center, the Parties must comply with Part VI [§600]-USE OF THE CENTER, [§63]C, herein.

The United States reserves 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.

2. Part III-Section [§300] Operations, [§36]F. Contractor Operating Records:

Throughout the term of this Agreement, all revenue generated from the Center, 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 cash handling procedures as designated by the City Treasurer. 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.

In the event that the Parties choose to permit another use at the Center pursuant to Part VI [§600]-USE OF THE CENTER, [§63]C, herein, any revenue allocated to the Contractor from such use is to be considered funds “collected” or “generated” from the operation of the Center, and such revenue shall be collected, retained, deposited and reported by the Contractor, on behalf of the City, in the same manner as any funds “collected” or “generated” from the operation of the Center as provided herein.

The City, at all times throughout the term of this Agreement or any extension thereof and for up to five (5) years following termination, shall have the right to audit and examine during normal working hours all such records and books of account relating to the Contractor's operation hereunder, provided that the Contractor shall not be required to retain such books of account and records for more than 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. 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.

All source records of gross revenue shall be prepared by the Contractor. These records shall be maintained by the Contractor. 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 for a period of five (5) years.

The City shall make available to the United States, 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.

VI. [§ 600] USE OF THE CENTER

[§61] A. Uses

The Contractor covenants and agrees that during the term of this Agreement, the Contractor shall apply the Center for use as a sports and recreation center and other uses ancillary thereto. The foregoing covenant shall run with the land in perpetuity unless the Lease/patent would be terminated or relinquished by the City in accordance with the RPP Act and its implementary regulations.

[§62] B. 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 Center 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, sublessees, or vendees of the Center. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

[§63] C. Other Uses Permitted by RPP Act; Procedure

The City and Contractor acknowledge that there are other uses of the Center that are appropriate under the RPP Act that are not necessarily within the scope of use of the Center “as a sports and recreation center and other uses ancillary thereto.” The Contractor acknowledges that as the operator of the Center on behalf of the City, it must only permit those uses that are consistent with this Agreement, the RPP Act and subject to the same limitations as the City regarding use of the Center as the owner, and cannot permit a use exceeding the scope of this Operating Agreement without consulting with the City regarding such use permitted under the RPP Act but not permitted under the scope of this Agreement.

In order to efficiently address the permissibility of any additional uses, proposed by either the City or YMCA, the Parties agree to the following:

1. Either the City or the Contractor can propose a use for the facility (“the Proposing Party”) that is outside the scope of this Agreement, but permitted under the RPP Act in writing to the other Party (the “Responding Party”);
2. The request must comply with the RPP Act, and the BLM must provide positive guidance on the proposed use;
3. The Responding Party must provide a written response to the Proposing Party, indicating approval or denial of the use;

4. If the Responding Party indicates approval of the proposed use, the Parties must negotiate a temporary, non-exclusive license for the use of space among the City (as owner), the YMCA (as operator) and the third party providing the proposed use;
5. Such Agreement must comply with all Federal, State and Local laws;
6. The use of space must be temporary in nature, the use of space must not displace scheduled public activities, and the use of space must be non-exclusive, such that the proposed use only occupies space during its use, and the space is otherwise free for use as needed; and
7. The City and YMCA shall negotiate a division of the revenue from such a license between the YMCA, on behalf of the City, for use at the Center and the City for use towards the payment of capital expenses at the Center.

If the necessary license of space is approved by all parties to the license, then the Operator may utilize the Center as indicated in the license.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 3 to be executed by their duly authorized representatives. This Agreement is not effective until such time as it is executed by the United States Bureau of Land Management.

THE CITY OF LAS VEGAS

OSCAR B. GOODMAN, Mayor

ATTEST:

BEVERLY K. BRIDGES CMC, City Clerk

APPROVED AS TO FORM:



JAMES B. LEWIS, DCA

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YOUNG MEN'S CHRISTIAN ASSOCIATION

Michael Lubbe

By: Michael Lubbe

Its: LED

APPROVAL BY BUREAU OF LAND MANAGEMENT

The foregoing Operating Agreement has been reviewed and approved by the United States of America, acting by and through the Bureau of Land Management, to be in conformance with the Recreational and Public Purposes Act, as amended (43 U.S.C. Sections 869, et seq.).

DATED:

UNITED STATES OF AMERICA
BUREAU OF LAND MANAGEMENT

By: _____

Its: _____
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