

MEMORANDUM

To: Honorable Mayor and Members of the Yakima City Council

cc: Parks and Recreation Commission

From: Tony O'Rourke, City Manager

Date: September 25, 2015

RE: YMCA Aquatics and Fitness Agreements

Attached for City Council review, in preparation of the October 27 study session, is a Master Aquatic Center Agreement that incorporates a Ground Lease, a Development Agreement and an Operating Agreement between the City of Yakima and Yakima Family YMCA, a Washington non-profit corporation. These documents represent an intent to collaborate in the design, development, and operation of an Aquatics Center at Chesterley Park consisting of a lap pool, therapy pool, and family/children's pool. Independently, the YMCA will also construct and operate a \$9 million dollar Fitness Center, which like the Aquatic Center will be open to the entire community on a daily or monthly pass basis. The Yakima Family YMCA Board tentatively approved these agreements on September 22, 2015, subject to final review by the City Council. The final review and proposed execution of these agreements is scheduled for the City Council's October 27, 2015 study session.

The Yakima Family YMCA is a Yakima-based, non-profit that has been committed to building a healthy spirit, mind, and body among individuals, families, and businesses of Yakima since 1906. In collaboration with the City of Yakima, they have the experience, ability, and resources to design, develop, maintain, and operate this proposed Aquatics Center. The proposed agreements do not constitute a joint venture. Each party has their own independent responsibilities and rights.

The agreements to design, build, and operate an Aquatic Center are subject to three contingencies. The first is a due diligence contingency of 90 days to inspect and test soils at Chesterley Park before entering into a ground lease. The second requires the City to complete a land conversion process with the Washington Recreation and Conservation Office and National Parks to replace approximately 7.5 acres at Chesterley Park since it was paid for with state and federal grants. The third requirement is that the YMCA has to raise approximately \$15 million or 80% of the construction cost of the aquatic and fitness center by December 31, 2017.

Currently the City has only one year-round pool at Lions Park and a summer outdoor pool at Franklin Park. In addition, both pools are nearly 45 years old and are reaching the end of their functional life unless significant capital investments are made to extend their functionality.

Highlights of the proposed agreement include:

TERM

The initial term of the proposed ground lease for approximately 7.5 acres at Chesterley Park for the YMCA Aquatics Center and Fitness Center is for a term of 40 years commencing upon the opening of the facilities, with the option of the YMCA to extend the initial 40-year term for three (3) additional ten (10) year terms.

SITE

The proposed location of the Aquatics Center and Fitness Center is on approximately 7.5 acres of land in the northwest corner of Chesterley Park (see site plan attached to the Ground Lease as Exhibits A-1 and A-2). This site is zoned R2 and recreational uses are a permitted use under a Class 2 Review. Because Chesterley Park was purchased with State of Washington Recreation and Conservation Office (RCO) and National Parks Scenic (NPS) grants the City is required to provide replacement property for the existing RCO/NPS Chesterley Park property in order to use the approximately 7.5 acres for the proposed Aquatics/Fitness Center. The replacement conversion process is lengthy. The RCO/NPS property conversion requirements provide a summary of the process involved in gaining RCO/NPS approval of a conversion. The City will be required to undergo a “yellow book” appraisal of both the Chesterley Park site, the proposed replacement site, which at this time is being considered on the second 60-acre SOZO parcel. In addition to the appraisals, NEPA environmental impact assessment, archeological assessment, and recreational suitability analysis of each parcel must be completed. Successful completion of this property conversion requirement is necessary to consummate this YMCA-City Agreement.

FACILITY/FEATURES

The proposed Aquatic Center has a projected cost of \$9 million and will be a joint City of Yakima/YMCA facility.

The state-of-the-art facility will feature multi-level glass walls to make it highly visible and attractive both inside and out. The facility will total approximately 72,000 square feet of which 34,000 square feet will be dedicated to the Aquatic Center. The Aquatics Center will feature three bodies of water: a lap pool, a family/children’s recreation pool and a warm water therapy pool. Plans call for the family/children’s recreation pool to include a slide, spray and splash elements and a lazy river. The pool deck includes a hot tub and steam rooms. The two facilities will share a common lobby space and locker rooms. The YMCA Fitness Center includes group fitness studios, cardio equipment, circuit weights, free weights, a gymnasium, child watch area, drop-in youth room, community classrooms and a teaching kitchen.

If feasible, a future outdoor pool could be built adjacent to the Aquatic Center.

ACCESS

The facility will have shared access to the existing 185 Chesterley Park parking spaces, as well as exclusive access to 120 additional spaces to be built. The facility is open to the entire community. Day and monthly passes will be available for access to both facilities for either the Aquatics Center or the YMCA Fitness Center. The YMCA will also offer standard membership options. The YMCA provides opportunities for youth and families with limited resources to have access to the YMCA facilities and programs. The facility will be open seven days a week.

PROGRAMMING

Aquatics Center: programming for the Aquatics Center will include water aerobics classes, swim lessons, masters swim instruction, private swim lessons, senior water aerobics classes, arthritis and therapy group classes, birthday parties, lifeguard training certification, swim meets, open lap swimming, aqua dance, water walking classes and other group fitness, as well as recreational opportunities.

YMCA: Programming will include youth outreach programs, group fitness classes, community health programming in diabetes and obesity prevention, aerobics classes, personal training, cycling classes, basketball leagues, Zumba and a wide range of personal fitness opportunities.

COST

The estimated cost of the Aquatic Center is \$9 million, of which the City will contribute a not to exceed amount of \$4,500,000. The annual debt service on the City's contribution of \$4.5 million non-tax exempt debt is approximately \$360,000 annually starting in 2018. The YMCA will be responsible for all additional costs of completion. The City and YMCA will equally share in the operating cost of the Aquatics Center. The Fitness Center will also cost approximately \$9 million, of which the YMCA will pay 100%.

Highlights of the proposed Aquatic Center Development Agreement, Operating Agreement, and Ground Lease include:

YMCA Development Agreement

- YMCA shall construct an aquatics center consisting of lap pool, therapy pool, and family/children's pool.
- The City shall contribute a total of \$4,500,000 for design, engineering, and construction costs related solely to the aquatics center upon satisfaction of the Due Diligence Contingency. It is expressly confirmed that all costs paid by the City for design and engineering shall be reimbursed to the City by the YMCA in the event the Financing Contingency is not satisfied and the project fails to be developed.
- YMCA shall construct a fitness facility, exclusively at their cost
- The YMCA will solely own the aquatics center and fitness center. At the end of the ground lease these facilities will revert to the City.
- The YMCA shall have sole responsibility for the design, building plans, engineering, site plan, and construction of the aquatics center, subject to review by the City manager to confirm the aquatic center design is in compliance with required specifications.
- The City shall be reimbursed for its pro-rata design and engineering costs if the Aquatics Center fails to be developed, provided the city successfully completes all RCO requirements to make the Chesterley Park site available.
- The City shall conduct a complete public works project bidding process for construction of the Aquatics Center development in accordance with Washington Public Works requirements. The YMCA shall be responsible for selecting and contracting the architects, and engineers that will be used to construct the aquatic and fitness facilities.

- The YMCA is solely responsible for all costs necessary for development and construction of the aquatics center, including any construction cost overruns and change orders.
- Any off site traffic or other improvements outside of the YMCA's leased space required by the City as a result of the aquatics center and other facilities on the leased premises are the responsibility of the City and with no reduction to the City's \$4,500,000 aquatic center contribution.
- Any on site improvements within the leased space shall be shared equally between the City and the YMCA. The City's share will come from its \$4,500,000 contribution.
- The naming rights of the aquatics center will belong solely to the YMCA, provided, however, the aquatics center name must include the word "Yakima".

YMCA Ground Lease

- The YMCA will lease from the City approximately 7.5 acres at Chesterley Park for the YMCA aquatics center and fitness center (see Ground Lease Exhibits) for an initial term of forty (40) years commencing upon the opening date of the facilities. The YMCA will have the option to extend the initial 40-year term for three (3) additional ten (10) year terms under the same terms and conditions.
- The YMCA's lease is contingent on satisfactory due diligence of the leased premises on or before 90 days of the effective date of the lease.
- The YMCA's obligation to lease the Chesterley site and construct the Aquatic Center, and the City's obligation to make a \$4.5 million contribution, is contingent on the YMCA securing 80% of the funding needed to construct the Aquatics Center and fitness facility by December 31, 2017.
- The City's and YMCA's respective obligation to lease space in Chesterley Park is financially contingent on the YMCA's ability to fund the construction and operation of the aquatics center and fitness center, as well as successful completion of the RCO conversion. If the financial contingency or RCO conversion is not satisfied on or before December 31, 2017, either the City or YMCA may terminate this entire Agreement after 60 days written notice period for the Parties to satisfy the contingencies.
- The Lease Agreement is subject to the terms of the Development Agreement and Operating Agreement.
- The YMCA may share the use of existing Chesterley Park parking areas, however, they will have exclusive use of any additional parking they construct.
- The YMCA is permitted to sublease all or any portion of the leased premises with City approval.
- The YMCA and City have 60 days to cure any defaults.

YMCA Operating Agreement

- The aquatics center will be managed, operated, and maintained by the YMCA in accordance with operating standards consistent with industry and mutually agreed upon standards.
- Minimal operating hours:
 - Monday through Friday 6:00 a.m. to 9:00 p.m.
 - Saturday 7:00 a.m. to 7:00 p.m.
 - Sunday 12:00 p.m. to 6:00 p.m.
- The YMCA will maintain commercial general liability insurance not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
- The aquatics center shall be available for use by the general public and fees charged by the YMCA for public use will be set in consultation with the City and must be commercially reasonable with fees charged by facilities of similar size and scope in the State of Washington.
- Prior to April 1 of each calendar year, the City shall submit the City's requested program schedule for general public use of the aquatics center to the YMCA. The YMCA shall consider and address the City's requested program schedule while preparing the annual aquatics center schedule. The YMCA shall manage the aquatics center to ensure general public access and use is a primary objective in program scheduling.
- The City shall share equally with the YMCA all reasonable pre-opening, staffing, and operational costs in preparing and organizing the aquatics center for its opening date.
- The YMCA shall submit to the City Manager, at least 9 months before opening day, a proposed initial budget for the period from opening day through July 31st of the year of opening.
- The aquatics center budget year shall commence on September 1st annually. The YMCA shall submit a proposed annual operating budget and annual capital budget for the aquatics center for the upcoming fiscal year (September 1st through August 31st) to the City Manager by July 1st of each year. Review, reconciliation and approval of the annual aquatics center budget shall be jointly approved at least 15 days prior to September 1st of each year. In the event the YMCA and City are unable to approve the initial or annual budget the parties will submit to mediation to resolve the budget impasse.
- The City is obligated to reimburse the YMCA for 50% of all annual aquatics center operating deficits.
- The YMCA and City shall maintain an operating reserve fund to offset budget variances and cash-flow timing.
- The City is obligated to reimburse the YMCA for 50% of all annual aquatics center capital expenditures.
- A Capital Improvement Reserve Fund shall be established separately by the City and YMCA for asset repairs and replacements. Beginning on the first anniversary of the facility opening date the City and YMCA shall each deposit \$40,000 annually into the capital improvement

reserve fund until each reserve fund reaches a value of \$1,000,000 to ensure routinely scheduled funding and replacement of the aquatics center's capital assets. As expenditures are deducted from the total balance of the reserve funds, the Parties shall make additional deposits to restore and maintain the \$1,000,000 reserve fund balance.

- The YMCA shall submit quarterly written reports to the City Manager on the status of the aquatics center financial performance, usage and programs.
- The City shall have the right to audit the YMCA's aquatics center finances annually.
- In the event the YMCA or City materially breach the terms of this agreement, the YMCA or City shall provide notice of the specific default(s), and if not cured within 60 days, the YMCA or City shall seek equitable relief or terminate this agreement. If either party wrongfully terminates the agreement, the offending party is obligated to pay the other party's costs and attorney's fees and liquidated damages in the amount of \$1,000,000.
- An unsuccessful "conversion process" will not constitute a breach of the terms of this Agreement and/or cause for the YMCA to seek damages from the City.

SUMMARY

The approval of these agreements represents the City's willingness and ability to enter into public/private partnerships to enhance the overall quality of life for Yakima citizens while also reducing the public's capital and operating cost contributions by 50% to gain a new aquatic center for the Yakima community.

The Aquatics Center addresses a significant need for another year-round pool in Yakima and builds upon the City Council's recent decision with SOZO for the development of a 19 field sports complex to enrich the recreational and economic vitality of Yakima.

These agreements would not have been possible without the great cooperation and efforts of the YMCA representatives, Bob Romero, Dustin Yeager, Mark Smith, and Paul Larsen. In addition, City Attorney Jeff Cutter and Public Works Director Scott Schafer were invaluable in representing the City and achieving this mutually beneficial partnership.