

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 2/3/05
Department Name: General Services
Department No.: 63
Agenda Date: February 22, 2005
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Ron Cortez, Director
General Services Department

STAFF CONTACT: Don Grady, Agent (568-3065)
Real Estate Services

SUBJECT: Lease Agreement Amendment for Santa Maria YMCA at Waller Park
Folio No. 001029
Fourth Supervisorial District

Recommendation(s):

That the Board of Supervisors approve and execute the First Amendment to the Lease Agreement between the County of Santa Barbara and the Santa Maria YMCA at Waller Park, which amends the master plan and recognizes the existing skate park and the barbeque and picnic area on the premises, and updates the Indemnification and Insurance provisions.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1: An Efficient Government Able to Anticipate and Respond Effectively to the Needs of the Community.

Executive Summary and Discussion:

On January 3, 1977, the Board of Supervisors approved and executed a fifty-year lease agreement between the County of Santa Barbara and the Santa Maria YMCA, whereby the YMCA would occupy a portion of Waller Park for the purpose of installing recreational and educational facilities for public use. It was subsequently determined by the Parks Department and the YMCA that a skate park was needed as a recreational facility for children, young adults and adults. The skate park was determined to be consistent with the recreational purpose for which Waller Park was established.

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The County and the Santa Maria YMCA agreed to certain terms and conditions regarding the skate park's construction, contingent upon the YMCA satisfying certain conditions. The County's Planning and Development Department made a substantial conformity determination that the YMCA had satisfied those conditions. The plans for the skate park were reviewed and found to be consistent with the existing permits and the park was constructed accordingly.

The first of three phases of construction was completed in 1997, and the park began operations. This amendment describes certain features, requirements and conditions regarding each phase of the skate park, and recognizes the construction of an adjacent barbeque and picnic area. The revised site plan for the property, which includes the skate park and the new barbeque and picnic area, is attached to the Amendment as Exhibit A.

This proposed amendment to the lease agreement also provides for the future construction and installation of buildings, structures and facilities on the premises, and establishes a specific process whereby, prior to construction; proposed plans and specifications will be submitted to and approved by our Parks Department. As the original lease agreement was executed in 1977, the insurance and indemnification provisions have also been amended to reflect the County's current approach to these protections.

Mandates and Service Levels:

There are no mandates or changes to existing service levels.

Fiscal and Facilities Impacts:

There are no fiscal or facilities impacts.

Special Instructions:

Upon approval and execution, the Clerk of the Board should distribute as follows:

- | | |
|--|----------------------------------|
| 1. Original signed documents | Official File |
| 2. Duplicate original signed documents | GS/Real Property-Attn: Don Grady |

Concurrence:

Parks Department

Project: YMCA (Waller Park)
Folio No.: WC 1029
APN: 111-100-015 (Portion)
Agent: DG

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT, is made by and between the

COUNTY OF SANTA BARBARA, a political
subdivision of the State of California,
hereinafter referred to as "COUNTY";

and

SANTA MARIA VALLEY YOUNG MEN'S
CHRISTIAN ASSOCIATION, a nonprofit
corporation, hereinafter referred to as "YMCA,"

with reference to the following:

WHEREAS, COUNTY is the owner of that certain real property located in the County of Santa Barbara, State of California, commonly known and referred to as Waller County Park and more particularly described as a portion of Santa Barbara County Assessor's Parcel No. 111-100-015 (hereinafter "Waller Park"); and

WHEREAS, YMCA has been leasing from COUNTY a portion of Waller Park (hereinafter "Property") under an existing fifty (50) year lease (hereinafter "Agreement") which commenced in 1977, and required YMCA, prior to commencement of any improvements on the Property, to submit to COUNTY a master plan of all buildings, structures, and facilities, for approval by COUNTY; and

WHEREAS, YMCA, in accordance with that approved master plan, has constructed and been operating certain facilities on the Property, including a skate park, and currently proposes the further construction and operation of additional facilities thereon; including a barbeque and picnic area; and

WHEREAS, the parties hereby desire to amend the existing lease to acknowledge the construction and operation of the skate park, to facilitate the further construction, operation, maintenance, and management of recreational and educational facilities on the Property by the YMCA, and to update the insurance and indemnification provisions.

NOW, THEREFORE, in consideration of the premises, and the promises, covenants and conditions herein contained, COUNTY, as Lessor, and YMCA, as Lessee, agree to amend the existing lease as follows:

1. Section 5, FACILITIES, is hereby repealed in its entirety, and replaced with the following:

“5. FACILITIES

Any construction or alteration proposed by YMCA in, on, or about the Property shall be presented to COUNTY in written form with proposed plans and specifications prior to any construction or alterations. COUNTY, through its Parks Department, shall issue a written approval or disapproval of any plans and specifications submitted pursuant to this Section. Any such construction or alteration must conform to the master plan for the Property, as that master plan has been approved by COUNTY. The master plan may be amended from time to time, upon approval by COUNTY. A site plan identifying the location of the current facilities on the leased premises is attached hereto as Exhibit A, and incorporated herein by this reference.

Any such COUNTY approval shall be deemed conditional upon YMCA acquiring all necessary permits from the appropriate governmental agencies, furnishing a copy thereof to COUNTY prior to the commencement of the work, and YMCA’S compliance with all conditions of said permit(s). Any and all permits or clearances required shall be granted only on the merits of the application thereof, and nothing in this Agreement shall be construed to require that COUNTY, or any other government agency, grant such permits or clearances. YMCA shall give COUNTY’S Parks Department, or designee, not less than ten (10) days written notice prior to the commencement of any such work in, on, or about the Property; and COUNTY shall have the right to post Notices of Nonresponsibility, as provided by law.

During any such construction or alteration, YMCA shall keep the leasehold and improvements free and clear of liens for labor and materials expended by or for YMCA or on its behalf, and shall hold COUNTY harmless and defend COUNTY with respect to any construction or alterations. Non-compliance with this section shall constitute a material breach hereof. When improvements are constructed by YMCA under the provisions of this Agreement, YMCA shall inform COUNTY of the date of completion of such improvements.

The requirements relating to construction set forth herein are those of COUNTY as landowner and not as a governmental entity. Nothing in this Agreement shall be construed to entitle YMCA to undertake construction of any alterations or improvements without complying with all permitting required by COUNTY in its governmental capacity.

During the term of this Agreement, title to any and all improvements on the Property shall vest with YMCA. YMCA has the right during the term of this Agreement, to erect facilities as may be needed; to erect additions, structures, or signs, in or upon the Property. During the term of this Agreement or any extension thereof, the improvements shall be and remain the real property of YMCA, however, YMCA shall have no right to waste, destroy, demolish or remove the improvements, except as provided in this Agreement. In the event that YMCA discontinues use of the improvements, YMCA may (with COUNTY’S written consent) dispose of the improvements in place by transferring title thereto to COUNTY.

A. SKATE PARK: YMCA has constructed a skate park on the Property with a total size of approximately (44,250) sq. ft. The skate park is depicted as the cross-hatched area of Exhibit A hereto. By this Amendment, COUNTY hereby grants permission for the operation of the skate park subject to the provisions of this section, this Amendment, and the Agreement.

YMCA shall take all reasonable precautions to protect skaters and non-skaters including, but not limited to, adult supervision of skating, barriers between skaters and non-skaters, limiting number of skaters, and requiring each and every skater to wear protective gear. For purposes of this

section, "skater" shall include all persons regardless of age wearing foot skates or using skateboards or any other similar device.

The parties are aware that Health and Safety Code Section 115800 (effective January 1, 1998) defines certain skateboarding as a "hazardous recreational activity," provides immunity for public entities and public employees, requires maintenance of records regarding injuries and requires reporting of those injuries. It is the intent of the parties to secure the maximum immunity available for COUNTY under Section 115800 as amended, and/or any other legislation intended to protect public entities from liability and cost for the activities contemplated herein. YMCA shall comply with any and all requirements needed to secure and ensure such immunity under Section 115800, as amended, and/or any other similar legislation, whether local, state, or federal. Notwithstanding immunity, if any, YMCA shall indemnify COUNTY for any and all matters associated with the skate park except to the extent that such indemnification would be prohibited by law. YMCA shall maintain a record of all known or reported injuries incurred in the skate park, regardless of severity, and shall report all such injuries to COUNTY'S General Services, Risk Management Division by December 31 of each year covered under this Agreement. Such reports shall be sent to:

County of Santa Barbara
General Services Division, c/o Risk Management
105 East Anapamu Street
Santa Barbara, CA, 93101-2037

The provisions herein regarding indemnity and reporting shall be effective on the day which the YMCA signed a contract for the construction of the skate park or on the day work actually began on its construction; whichever was earlier."

B. BARBEQUE AND PICNIC AREA: COUNTY hereby approves of the construction and operation by YMCA of a Barbeque and Picnic Area, subject to the terms and conditions of this Agreement. The Barbeque and Picnic Area is depicted as the diagonally-slashed area of Exhibit A hereto."

2. Section 9, HOLD HARMLESS-INSURANCE, is hereby repealed in its entirety, and replaced with the following:

"A. INDEMNIFICATION: YMCA shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the YMCA or its agents or employees or other independent contractors directly responsible to them; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY. YMCA shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

B. INSURANCE: Without limiting the YMCA'S indemnification of the COUNTY, YMCA shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A:VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place YMCA in

default. Upon request by the COUNTY, YMCA shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. **Workers' Compensation Insurance.** Statutory Workers' Compensation and Employers Liability Insurance shall cover all YMCA'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event YMCA is self-insured, it shall furnish a copy of a Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if YMCA has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and YMCA submits a written statement to the COUNTY stating that fact.

2. **General and Automobile Liability Insurance.** The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of YMCA and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the YMCA in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and YMCA. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of YMCA pursuant to YMCA'S activities hereunder. YMCA shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, employees, and agents shall be named as Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. Any deductible or Self-Insured Retention (SIR) over \$10,000 requires approval by the COUNTY. Said policy or policies shall include severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form: *"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."*

If the policy providing liability coverage is on a 'claims-made' form, the YMCA is required to maintain such coverage for a minimum of three years following completion of the performance of the provisions of this Agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

YMCA shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated COUNTY representative as a condition precedent to any payment under this Agreement.

Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the YMCA may be held responsible for payment of damages resulting from YMCA'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the YMCA is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the YMCA'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of the Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. YMCA agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification."

3. Section 6, DISCRIMINATION PROHIBITED, is hereby repealed in its entirety, and replaced with the following:

"YMCA shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth. Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefore."

4. Section 19, NOTICE, is hereby amended to reflect the current notice addresses for COUNTY and YMCA as follows:

To COUNTY: Parks Department
 North County Administration/Deputy Director
 300 Goodwin Road
 Santa Maria, CA 93455-1923

To YMCA: Santa Maria Valley YMCA
 Chief Executive Officer
 3400 Skyway Drive
 Santa Maria, CA 93455-2599

5. The Agreement is hereby amended by addition of the following:

"21. ADMINISTRATION AND ENFORCEMENT: The provisions of this Agreement shall be administered and enforced for COUNTY by COUNTY'S Director of the Parks Department, or designee."

6. It is expressly understood that in all other respects, the terms and conditions of the original Lease Agreement dated January 3, 1977, shall be in full force and effect.

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Project: YMCA Waller Park
Folio No.: WC 1029
APN: 111-230-50 (Portion)
Agent: DG

IN WITNESS WHEREOF, YMCA and COUNTY have signed this First Amendment to the Lease Agreement by the respective authorized officers as set forth below to be effective on the date executed by COUNTY.

“COUNTY”
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Chair, Board of Supervisors

By: _____

Date: _____

APPROVED:

“YMCA”
SANTA MARIA VALLEY YOUNG
MEN’S CHRISTIAN ASSOCIATION

Terri Maus-Nisich
Director of Parks Department

By: _____

Name and Title

By: _____

Name and Title

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT GEIS, C.P.A.
AUDITOR-CONTROLLER

By: _____
Deputy

By: _____
Deputy

APPROVED:

APPROVED AS TO INSURANCE:

Ronn Carlentine SR/WA
Real Estate Services Manager

Stephen D. Underwood
Chief Assistant County Counsel