

REPORT

To the Honorable Mayor and City Council
From the City Manager

June 27, 2016

SUBJECT

City of Redwood City and YMCA of Silicon Valley Exclusive Negotiating Agreement

RECOMMENDATION

By motion, approve and authorize the City Manager to execute the Exclusive Negotiating Agreement with the YMCA of Silicon Valley.

BACKGROUND

The Veterans Memorial Senior Center (VMSC) is a valued community asset which houses dozens of senior clubs; hosts hundreds of free or low-fee programs each year; receives over 100,000 annual visits; and serves as a “second home” for many of our honored senior citizens in Redwood City, including our Veterans. However, the circa-1956 VMSC building is slowly deteriorating; the campus encompasses four separate buildings which segregates program participants and social interaction opportunities; and the adjacent Herkner Pool is outdated and the facility allows little flexibility due to its design. Staff has done their best to properly maintain these facilities while trying to satisfy current users and attract new constituents. Some challenges include: the number of buildings make it very costly to maintain; there is no central welcoming center; the program space has excessive wear-and-tear and is too spread out; there is no physical access from the Center to Herkner Pool; the Senior Center Annex electrical capacity is at its limit; and staff is finding it more difficult to attract younger seniors to the Center.

Staff and the Senior Affairs Commission (SAC) spent two years gathering input about the needs for a replacement building, seeking user perspectives on what was working, what wasn't working, and desires for a new building. On April 26, 2010, the City Council accepted the “Senior Center Scoping Study” that included the collection of data, the consideration of program requirements, and the scope and magnitude of a new Center. Staff then considered a variety of reconstruction options, the identification of alternative locations for a future Center, conducted a site analysis to determine space requirements on the existing campus, and held numerous discussions with potential partners as we considered long term sustainability.

At the same time, the YMCA of Silicon Valley was also in a similar scoping process in order to expand YMCA operations with a new, larger facility. Together, City and YMCA staff believed that there was an opportunity to explore something greater.

On December 14, 2011, PRCS staff and YMCA staff presented to the City Council the idea of entering into a partnership agreement to consider building a joint-use intergenerational health, wellness, and recreational facility at Red Morton Park. Council authorized staff to move forward with the exploration of this concept and appointed three Council Members to the “City-Y Partnership Task Force” to provide input and feedback to staff regarding process, analysis, communication points, best practices, the development of a Letter of Intent (LOI) and any future agreements.

After numerous Partnership Task Force meetings, stakeholder engagement meetings, staff retreats, and community and members surveys, the City Council approved the LOI with the YMCA of Silicon Valley on December 8, 2014.

In the first half of 2015, the City and the YMCA worked together to develop a Request for Qualifications/Proposal for Phase I of architectural services which included a full site analysis, building massing, constraints analysis, and the development of a Project Description. The City and the YMCA collectively selected ELS Architecture to perform this scope of service along with conducting the first community meeting for input about the project and specifically if there was interest for preserving the Veterans Memorial Senior Center (VMSC) or to rebuild the VMSC as part of the overall project.

On October 5, 2015, the Community Workshop allowed staff to understand any concerns about the project along with the reflections of the VMSC specifically. Over 150 people attended and the vast majority would like to see a brand new facility. Through the future California Environmental Quality Act (CEQA) process, there will be further study on a number of areas including traffic, parking, and the historical assessment of the VMSC.

ANALYSIS

The idea of a joint-use facility in which both parties share financial and operational obligations is an innovative and adaptive response to the financial challenges that are upon both organizations. A partnership between the YMCA and the City of Redwood City would minimize the ongoing operating costs to Redwood City; provide affordable access to local residents; effectively leverage the strengths of the City and the YMCA to reach the best outcome; and involve community partner organizations.

Our collective vision includes a new, vibrant and inviting Veterans Memorial Senior Center and a new family YMCA facility. The advantages of partnering on such a project would be:

- New, high quality senior center and senior programs
- Expanded opportunities for the public to be engaged in healthy living and activities

- Programs provided by both partners to combat the obesity epidemic through the development of healthy lifestyles, strong minds, and fit bodies
- A comprehensive center which focuses on youth recreation activities to help our youth develop into contributing members of our community.
- Recreation experiences help older community members continue and improve their life experiences
- Facilities that will meet current and future recreational needs of the community
- An efficient use of valuable resources
- Long term sustainability

Together, this vision would strengthen Redwood City as a desirable place to live, work, play, and visit.

The recommended Exclusive Negotiating Agreement (ENA) sets forth the procedures and standards for the negotiation of a prospective YMCA of Silicon Valley and City partnership that would establish the following:

1. Development of the Project as it moves through the predevelopment, entitlement, design, and construction processes.
2. Sharing of Project costs/expenses.
3. Parameters by which future legal arrangements could be structured for the mutual benefit of the Parties.

The ENA allows the City and YMCA of Silicon Valley to exclusively negotiate the details of the Project but does not obligate the City to approve any Project. If the ENA is approved by City Council, then a CEQA review will be necessary to study the Project, which is to build all new facilities on the Project Site as shown in “Exhibit A” of the ENA. Further, CEQA review will consider meaningful alternatives to the Project, including the option of “not to proceed” with the Project.

The ENA also defines the terms; identifies Project teams; clarifies that the CEQA consultant will be selected solely by the City but that the YMCA-SV will provide fifty percent reimbursement of costs to the City if the Project proceeds; provides for design and construction processes; and makes funding commitments.

Future agreements would need to be negotiated and approved, if there is a Project, and would include a Ground Lease; Development Agreement; Rights of Access Agreement; and Operating Agreement.

ALTERNATIVES

Council may choose not to sign the Exclusive Negotiating Agreement at this time and direct staff to consider other alternatives.

FISCAL IMPACT

The ENA describes the City's commitment of \$5,000,000 towards the Project with \$4,000,000 coming from the Parks Impact Fees (development fees) and \$1,000,000 from the commitment from Stanford University's development agreement. This funding has been designated in the recommended FY 2016-17 Capital Improvement Program, which is anticipated to be approved by the City Council on June 27, 2016. Future financial commitments include the following:

- The City and the YMCA-SV will share equally in the design costs associated with the master planning process and Phase I improvements.
- The City will assume all fees and expenses associated with future zoning, entitlements and permitting for the Project
- The City will pay the costs incurred in connection with the environmental review requirements associated with the development of the Project pursuant to CEQA, and the YMCA-SV will reimburse the City for fifty percent of all CEQA costs once there is a determination for a Project.

ENVIRONMENTAL REVIEW

This action is not a "project" within the meaning of the California Environmental Quality Act because the activity involves entering into exclusive negotiations on a prospective project, but does not create a commitment to a specific project. (Public Resource Code § 21065; Guidelines § 15378) During the term of the ENA as the Project develops, the City will conduct CEQA review.



CHRIS BETH
DIRECTOR PARKS AND RECREATION



MELISSA STEVENSON DIAZ
CITY MANAGER

RELATED DOCUMENTS IN CITY CLERK'S OFFICE

1. Letter of Intent

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (“ENA”) is entered into as of _____, 2016 (“Effective Date”) by and between The YMCA of Silicon Valley, a California non-profit corporation; (“YMCA-SV”) and the City of Redwood City, a charter city and municipal corporation (“City”) (hereinafter “Party” or, collectively, “Parties”), to describe the terms and conditions of the negotiation period whereby the Parties will work in good faith to establish the details related to and associated with the joint development of an approximate Four (4) acre portion of Red Morton Park, owned by the City, as more particularly described and shown in Exhibit A (“Property”).

RECITALS

A. To meet the current and future community needs, City and YMCA-SV seek a partnership to build a recreational and wellness complex at the Property to provide (i) an approximate 65,000 square foot City recreation facility including a new Veterans Memorial Senior Center (“City Facilities”), (ii) new YMCA recreation and wellness facilities totaling approximately 60,000 square feet (“YMCA-SV Facilities”), and (iii) common areas which would include surface and structured parking consisting of approximately 162 and 270 spaces, respectively, breezeways, walkways and other pedestrian areas, landscaping and internal ingress/egress roadways (“Common Areas”) (collectively, the “Project”).

B. YMCA-SV and City entered into a certain Letter of Intent (“LOI”) dated January 7, 2015. The LOI outlined high-level Project details as well as outstanding issues which required further discussion and agreement related to the joint development of the Project.

C. The purpose of this ENA is to set forth the procedures and standards for the negotiation of a prospective YMCA-SV and City partnership that would establish (i) the development of Project as it moves through the predevelopment, entitlement, design, and construction processes, (ii) sharing of Project costs/expenses (or be reimbursed, as the case may be), and (iii) parameters by which future legal arrangements could be structured for the mutual benefit of the Parties. Notwithstanding the above, this ENA does not obligate the City to approve any Project or convey the Property, or any portion thereof, to YMCA-SV, nor does it grant either Party the right to develop the Project on the Property.

AGREEMENT

Now therefore, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above, and all defined terms set forth in such Recitals and in the introductory section preceding the Recitals, are hereby incorporated into this Agreement as though set forth in full.

2. **Term.** The Term shall commence on the Effective Date, and shall terminate Thirty Six (36) months thereafter (“Term”), unless extended as provided herein. Provided the Parties have made substantial progress in their negotiation, the Term may be extended upon the mutual written agreement of YMCA-SV and City, with the understanding that the City Manager shall have the sole authority to execute any such extension on behalf of the City without further approval by the City Council. In the even

there is not substantial progress in their negotiation, the Parties may, with City Council approval, mutually agree to additional extensions. If a Project has not been approved by City, as more particularly defined in Section 5.d., below, and agreements have not been executed by City and YMCA-SV by the expiration of the Term (as the Term may have been extended pursuant to this Section), then this ENA shall terminate, and neither Party shall have any further rights or obligations under this Agreement except such rights and obligations that expressly survive termination.

3. **Exclusive Negotiation and CEQA Review.** The Parties shall use their best efforts to exclusively negotiate the details of and pursue the Project. The Parties will work to enter into future legal agreements including a Ground Lease, Development Agreement, Right of Access Agreement, Operating Agreement, and Right of First Offer, as more particularly described in Section 5 (Future Legal Agreements), below. However, no such agreements or approvals shall occur until CEQA review is completed. This ENA should not be construed to forego the study of meaningful alternatives to the Project, including the option of “not to proceed.”

Despite the foregoing, this ENA does not impose a binding obligation on City to convey any portion of, or interest in, the Property to YMCA-SV, nor does it obligate City to grant any approvals or authorizations required for the Project. This ENA is entered into to further define the Parties’ commitment to pursue the proposed Project, as well as to facilitate third party financial resources. The ENA does not commit the City to: approving any City Project Approval, as more particularly defined in Section 5.d., below; act as a guide for the review by any City Board, Committee or Commission; nor commit financial assistance from the Parties to the Project prior to completion of the California Environmental Quality Act (“CEQA”) review. Without limiting the generality of the foregoing, YMCA-SV expressly acknowledges that any negotiations undertaken pursuant to this ENA shall result in future agreements only if those agreements are approved by the City Council following compliance with all applicable notice and hearing requirements and compliance with all other requirements of law, including without limitation CEQA.

4. **Predevelopment and Entitlement Process for a Phased Master Plan.** Concurrent with the CEQA Review, YMCA-SV and City will work jointly on the predevelopment and entitlement of the Project, including public approvals and the community outreach process associated with development review, permits and the Project Approval, as more particularly defined in Section 5.d., below, for a master plan for the Project. The Parties will equally share in the approval and payment of design costs associated with the Master Architect (defined below) and the master planning process, in general. In order to effectively negotiate and navigate the Predevelopment and Entitlement Process, the Parties establish the following structure:

- a. **Planning Oversight and Management Team.** The City Manager and the YMCA-SV CEO, or their designated representative shall be responsible for management and oversight of all aspects of the Project including, but not limited to: (a) designating the composition of other Project teams, including, but not limited to, Design, Communications, and Fundraising teams listed below; (b) periodic Project progress reviews including work plans, processes and timelines; (c) periodic review of Project teams (as necessary), budgets and, as needed, review of Project

contracts; (d) Fundraising accounting and payments to the City; and (e) dispute resolution, in the event the Parties are unable to agree on Project decisions or resolve conflict.

- i. *Pre-Development Design Team*. This Team shall manage selection of consultants, including but not limited to a Master Architect¹, with scopes of work as more particularly set forth in Section 4c., below. They will also develop and update the Project work plan, processes, and timeline, define Project bidding criteria, processes and timeline and design, distribute, review RFQ / RFP's and select 3rd party consultants, as well as negotiate consultant contract terms and oversee their work. Further, they will prepare and oversee the design budget.
 - ii. *Communications Team*. This Team shall develop and manage a Community Outreach Program, design a public relations campaign and related educational materials, as well as provide support to City and YMCA-SV Staff, Council and Board Members in their Project communications. In addition, this team will endeavor to develop Project references, logos and branding requirements and establish and monitor a communications budget.
 - iii. *Fundraising Team*. This Team shall create an overall fundraising plan, coordinate the specific strategies, and leverage financial partnerships to support the Project. Develop and submit a budget for joint fundraising costs.
- b. City/YMCA-SV Task Force. The Project Task Force shall be comprised of the City Manager, Assistant City Manager, Park, Recreation and Community Services Director and three (3) City Council members, as well as the YMCA-SV CEO, COO, Executive Director and two Board members. The Task Force shall work with the Planning Oversight and Management Team to participate in the review of all items requiring City Council and YMCA-SV Board of Directors approval. The Task Force shall provide input on recommended modifications to the Planning Oversight and Management Team. Task Force meetings shall be scheduled by the Planning Oversight and Management Team on an as-needed basis, until completion of Project.
- c. Consultants- Scopes of Work.
- i. *CEQA*. The CEQA consultant shall be retained by the City, and paid for by the City (subject to reimbursement by YMCA-SV per Section 6d), to study the environmental impact of the Project, as more particularly required by the California Environmental Quality Act. While selection of the CEQA consultant is in the sole discretion of the City, the City agrees to solicit three independent bids for the CEQA consultant.

¹ In the selection of the Master Architect, at least three (3) bids shall be considered. The Pre-Development Design Team shall recommend approval of one Master Architect to the Planning Oversight and Management Team to process approval with the Task Force, City Council and YMCA-SV Board of Directors.

- ii. *Architectural.* A Master Project architect² (“Master Architect”) shall be selected by the Pre-Development Design Team, subject to Planning Oversight and Management Team approval, to provide the Conceptual Design for the Project. In addition, the Master Architect would participate in public outreach process and community meetings. The Parties shall jointly oversee and approve architectural decisions related to the Master Architect, conduct monthly progress and oversight meetings, and be jointly liable for the cost of services of the Master Architect.

5. **Design and Construction Process.** Except as otherwise agreed or set forth in this ENA, the Parties will share equally in the engineering, design and construction costs for the development of all Common Areas as well as the on and off-site infrastructure improvements. The Parties may separately engineer, design, construct and fund their respective projects, including schematics, floor plans and construction drawings (i.e. the City Facilities and the YMCA-SV Facilities), as more particularly set forth herein. Regardless of any phasing which may be associated with the Project, throughout the construction process the Parties will pay prevailing wages. Prior to either Party commencing construction of their respective projects, both Parties shall jointly review and approve the planned facilities improvements and construction timing. Further phasing of planned facilities may be required based on funding in place or other factors which require the buildings to be constructed at different times. The Parties shall work jointly during the construction of the Project to manage and coordinate construction activities and schedules which may run concurrently. YMCA-SV and City acknowledge that YMCA-SV’s ability to construct the infrastructure required to complete the Project is reliant upon the ability of the development team to secure funding. In order to effectively negotiate and navigate the Design and Construction Process, the Parties will negotiate an organizational structure with the following general structure:

- a. Design and Construction Team. This team, made up of City and YMCA-SV representatives, will take the lead with the selection of the architect(s), contractor(s) and a Construction Manager⁵ as well as provide oversight for the design and construction of the Project. They will also prepare and oversee the construction budget(s). This team could be an extension of the Pre-Development Team, established during the Predevelopment and Project Approval phase, as more particularly defined in Section 5.d., below, and they will take steps to plan for and construct an environmentally sensitive Project which qualifies for LEED certification, working to ensure that facilities shall be situated to enhance efficiency and convenience for participants who wish to engage in both City and YMCA-SV programs, in different Project buildings

² At any point, the Parties can determine whether the Master Architect will also become responsible for the specific design development and construction documents for the Project, and/or whether further architects will be interviewed and hired to work with the Parties together, or individually, through the design and construction process. In any event, each Party will ultimately be financially liable for the architectural costs associated with their respective facilities.

⁵ The qualified Construction Management firms should submit separate bids for the Project construction management oversight for (i) the Common Areas and off-site infrastructure and related site planning improvements, and for (ii) the City Facilities and YMCA-SV Facilities to be constructed. Following receipt of the completed RFQ / RFPs, City and the YMCA-SV shall each appoint four (4) representatives to participate in Master Plan Construction Manager Interviews and selection. City and the YMCA –SV would mutually agree upon the selection of the Master Construction Manager for the Project. In this scenario, the Parties would share jointly in all costs associated with services. In the event the Parties select a Master Construction Manager for the Common Areas and off-site infrastructure and related site planning improvements and two (2) Construction Managers for the Parties respective facilities, each Party would be individually responsible for costs associated with its facilities

- b. **Project Dispute Resolution.** With regard to any dispute associated with this agreement, before any party may file an action or claim against the other party, the parties shall meet and attempt in good faith to resolve any such disputes. Nothing in this section shall in any way be interpreted as requiring that the parties reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on the parties unless expressly agreed to in writing by the parties to such meetings.

6. Funding Commitments and Opportunities for Reimbursement.

- a. The Parties will share equally in the design costs associated with the master planning process and the Phase I improvements.
- b. The City will assume all fees and expenses associated with zoning, entitlements and permitting for the Project.
- c. The City will commit a minimum of Five Million Dollars (\$5,000,000) in Fiscal Year 16-17 toward the Project, which includes the appropriation of One Million Dollars (\$1,000,000.00) from that certain Development Agreement between the City and Stanford University.
- d. The City will pay the costs incurred in connection with the environmental review requirements associated with the development of the Project pursuant to the California Environmental Quality Act and City regulations, hereby defined as “CEQA Costs.” In the event the Project is finally approved by the lead agency and all relevant appeal periods have been exhausted (“Project Approval”), the YMCA-SV will reimburse the City for Fifty Percent (50%) of all the CEQA Costs. As prescribed in Section 2, above, the City will be solely responsible for the oversight of the CEQA consultant’s budget, and the YMCA-SV will provide comments and input on the scope of work. The Parties will periodically meet to inform YMCA-SV of the progress of the CEQA process.
- e. The cost of Project-related road improvement needed for mitigation of traffic impacts caused by the Project and/or needed for ingress/egress to the Project site, if any, shall be shared equally by both Parties. If the City opts to make general road improvements around the Project site that are unrelated to mitigation or ingress/egress for the Project, such improvements shall be completed and paid for by the City.
- f. Each Party will be responsible for the accounting, management and collection of contributions made to the Project, throughout the Predevelopment, Entitlement, Design and Construction processes.

7. Future Agreements. The Parties seek to exclusively negotiate future written agreements necessary to effectuate their partnership, as follows:

- a. Ground Lease. The Parties will negotiate in good faith a 49-year Ground Lease (plus one, 5-year Lease extensions) for that certain portion of the Property where the YMCA Facilities would be constructed, for annual rent of \$1/year.
- b. Development Agreement. The Parties will seek to vest the entitlement rights beyond the normal permit period and to set forth specific terms concerning the phased construction of the Project through negotiation and approval of a Development Agreement.
- c. Right of Access Agreement. To authorize agents of YMCA-SV to access the Property for the purpose of conducting physical and environmental inspections of the Property in connection with the design development and construction of Project, the Parties intend to negotiate a Right of Access Agreement.
- d. Operating Agreement. The Parties will negotiate an agreement to control the ongoing operation of the Project in the event it is built, with the following general terms:
 - i. *Operational Team*. Established to plan and oversee all joint programs and services following the opening of the Project. Tasks might include periodic review of separate accounting for billings associated with CAM expenses including utilities (water, electric and cable), landscaping, parking, security, maintenance, and surveillance, paving, sidewalks; exterior lighting; garbage/recycling. In addition, they would have the responsibility for annual Project performance and facilities review.
 - ii. *Joint marketing and promotional programs*. City will include YMCA-SV in its semi-annual City Program Guide and the YMCA-SV will include City events at the Project in YMCA-SV email newsletters.
 - iii. *Endowment Commitment*. During the term of the Operating Agreement and Ground Lease, the YMCA-SV would use the proceeds from the sale of the Hudson YMCA (regardless of the purchaser) to fund an endowment fund managed by the YMCA-SV, whose interest earnings that are determined annually by the YMCA-SV Board of Directors would be used to fund operational costs and financial assistance for qualified low-income children, adults and families.
 - iv. *General Provisions re: possible future operations*. As summarized in **Exhibit B**, hereto.
- e. Right of First Offer. The Parties will negotiate a right of first offer to purchase the existing YMCA-SV facilities located at 1445 Hudson Street, Redwood City ("Hudson YMCA"). The Parties will negotiate the process to establish the sales price, timing and other salient terms, to be memorialized in a definitive agreement. In the event the Parties are unable to agree on a price for the site, the YMCA-SV would be free to accept an alternative purchase offer and proceed with the sale to a 3rd party.

8. **General.**

- a. Assignment/Delegation. The qualifications and identity of YMCA-SV are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this ENA. Accordingly, neither Party shall assign, delegate or transfer any interest in or duty under this ENA without the prior written consent of the other Party, and no assignment, delegation or transfer (collectively, "Assignment") shall be of any force or effect unless and until the other Party has consented in writing and provided that any such entity associated with the Assignment agrees to be bound by all the terms and conditions set forth in this ENA.
- b. Amendment. This ENA may be modified at any time by the mutual consent of the Parties. No amendment to this ENA shall be effective unless it is made in writing and signed by both Parties. Any portion of this ENA which is not specifically amended shall remain unchanged.
- c. Notices. Either Party may give notice to the other Party by facsimile transmission with a confirmation telephone call, first class mail postage prepaid, personal delivery or express delivery by a delivery service such as Federal Express. Notice shall be deemed accomplished upon receipt, provided however that notice given by first class mail shall be deemed received two (2) days after deposit in the US. mail, first class postage prepaid to addresses set forth below:
- Kathy Riggins, President and CEO
YMCA of Silicon Valley
80 Saratoga Ave.
Santa Clara, CA 95051
- City Manager
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
- d. No Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this ENA. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this ENA or any resulting agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this ENA.
- e. Relationship of the Parties. The Parties agree that nothing in this ENA shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.
- f. Authority; Disclosure. YMCA-SV warrants that none of its principals, officers, partners, joint venturers, employees, associates, or affiliates who have any economic interest in this ENA or

the contemplated development of the Property or the Project, have a familial, financial, or other material relationship with any elected or appointed official or employee of the City. Each person executing this ENA on behalf of YMCA-SV does hereby covenant and warrant that each person (and all of the persons if more than one signs) signing this ENA on behalf of YMCA-SV is duly and validly authorized to do so.

- g. Indemnification. YMCA-SV hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Indemnitees (defined in Section 9) from and against all Claims (defined in Section 9) arising out of or in connection with the actions of YMCA-SV or YMCA-SV's agents, employees, officers, representatives, contractors or consultants pursuant to this ENA; provided however, YMCA-SV shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. This Section shall survive the expiration or earlier termination of this ENA.
- h. Severability. If any term or provision of this ENA or the application thereof shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this ENA or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this ENA would be defeated by loss of the invalid or unenforceable provision.
- i. Entire Agreement. This ENA contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings, oral or written, between the Parties with respect to such subject matter.
- j. Successors and Assigns; No Third-Party Beneficiaries. This ENA shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns; provided however, that except as expressly permitted by this ENA, neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this ENA is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.
- k. Captions; Interpretation. This ENA shall be interpreted as though prepared jointly by the Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this ENA or any of its terms.
- l. Governing Law; Venue. This ENA shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of laws principles. Venue for any action under this ENA shall be in San Mateo County, California.
- m. Counterparts. This ENA may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

In reliance on each other's good faith cooperation and past relationship, the Parties have entered into this ENA as of the Effective Date and are proceeding with the Project in good faith reliance of the fact that this ENA is a legally binding document to exclusively negotiate the terms contained herein, unless or until it is cancelled by the mutual written agreement of the Parties. In the event either Party fails to comply with the terms of this ENA, including but not limited to the good faith negotiation of the terms contained herein, such Party shall be deemed to be in breach of this ENA and the non-breaching Party may pursue any and all remedies available under the law, including cancellation of this ENA.

CITY OF REDWOOD CITY, a charter city and municipal corporation

By: _____
Melissa Stevenson Diaz, City Manager

ATTEST:

By: _____
Silvia Vonderlinden, City Clerk

YMCA-SV:

THE YMCA OF SILICON VALLEY, a California non-profit corporation

By: _____
Kathy Riggins, President and CEO

Exhibit A
Property



Exhibit B

Exemplative Operating Provisions

A. Common Area.

1. City responsible for the management of all Project common areas.
2. Sharing of expenses: Costs shall be allocated based on each parties proportionate share of combined facilities square footage as defined on the approved Project site plan.

B. RWC Operated Programs.

1. Senior Programs (Theatre, Greenhouse, Arts & Crafts)
2. Computer Access, Programs, Games
3. Services for the Disabled (Adaptive PE, AFAR)
4. Veterans and Senior Clubs
5. Afterschool Organized Sports
6. Gymnasium Activities
7. Performing Arts
8. Library

C. YMCA Operated Programs.

- a. Aquatics (lessons, Recreational Teams, Water Fitness, Rec/Lap Swim/Horner Pool Programs including RWC Sharks
- b. Health and Wellness (Group Exercise Classes, Strength, Cardio Training, Wellness Programs, Clinic to Community
- c. Special Interest Programs-Starter Sports, Exploratory Activities, Parent/Child, Family and Teen Programs

D. Programs Offered by both RWC & YMCA.

- a. Gymnasium (Shared Use Facility)
- b. Youth Sports and Recreational Activities
- c. Day Camps
- d. Child Care/ Afterschool

E. Programs / Services.

1. Programs will be offered by both RWC and YMCA will be coordinated by the Director of Parks and Recreation and the YMCA COO to reduce avoid redundancy, coordinate joint promotional opportunities and maintain special events calendars.
2. Hours of Operation- It is expected that the YMCA hours of operation of its facility are: Monday – Friday 5:30am -10:30pm; Saturday & Sunday 7am-11pm. The YMCA reserves the right to amend its operating hours.
3. Membership Fees/Options-The Y shall set its membership and usage fees for its facility and reserves the right to make changes to the fee structure at any time during the term of this operating agreement. The YMCA shall include separate membership fee categories for seniors and families.

4.RWC and the YMCA may provide concessions within their respective facilities. It is agreed that permanent concessions of food and/or products will not be sold in the common areas.

F. Facilities.

- 1.Reciprocal Access and Use of facilities will be determined by the Director of Parks/Recreation and the YMCA COO.
- 2.The City of RWC and the YMCA intend to independently operate their respective facilities.
- 3.RWC and the Y agree that use of the common areas for special events shall be permitted subject to agreement by both parties. Adequate notice to the other party is required and the sponsoring party agrees to be responsible for timely cleanup following such events.
- 4.RWC Fields- The YMCA shall be allowed access to RWC's fields on an "as available" basis
- 5.Parking for the Project shall be provided in a detached parking structure, with additional spaces provided adjacent to the new Veteran's Memorial Center and the YMCA. No parking spaces shall be assigned, except as agreed to by RWC and the YMCA.
- 6.RWC and the YMCA shall be responsible for the maintenance and upkeep of their respective Facilities.