



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: April 2, 2024

* = Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

YMCA of Southern Arizona

***Project Title/Description:**

Operating Agreement for Northwest YMCA-Pima County Community Center

***Purpose:**

The current 25 year operating agreement ends April 12, 2024. The purpose of this agreement is to provide YMCA a new ten (10) year operating agreement to allow them to continue providing recreational facilities and programming to Pima County constituents.

***Procurement Method:**

This operating agreement is a non-Procurement contract and not subject to Procurement Rules.

***Program Goals/Predicted Outcomes:**

Pima County Natural Resources, Parks and Recreation and the YMCA continue to share common goals for the health and wellness, development and leisure pursuits of the residents of Pima County.

***Public Benefit:**

Pima County residents will continue to receive quality recreational and aquatics programming as well as arts and leisure class offerings with no disruption.

***Metrics Available to Measure Performance:**

None

***Retroactive:**

No

To COB: 3/15/24
Pgs: 16
Vers: 1

MAR15'24AM1137 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: PR Contract Number (i.e., 15-123): 24-0340
Commencement Date: 04/13/2024 Termination Date: 04/12/2034 Prior Contract Number (Synergen/CMS):
Expense Amount \$ 1,500,000 * Revenue Amount: \$

*Funding Source(s) required: General Fund

Funding from General Fund? Yes No If Yes \$ %
Contract is fully or partially funded with Federal Funds? Yes No
If Yes, is the Contract to a vendor or subrecipient?
Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.
Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):
Amendment No.: AMS Version No.:
Commencement Date: New Termination Date:
Prior Contract No. (Synergen/CMS):
Expense Revenue Increase Decrease
Is there revenue included? Yes No If Yes \$
Amount This Amendment: \$
*Funding Source(s) required:
Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):
Commencement Date: Termination Date: Amendment Number:
Match Amount: \$ Revenue Amount: \$
*All Funding Source(s) required:
*Match funding from General Fund? Yes No If Yes \$ %
*Match funding from other sources? Yes No If Yes \$ %
*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Robert Padilla

Department: Natural Resources, Parks and Recreation

Telephone: 724-5235

Department Director Signature: [Signature]

Date: 3/7/24

Deputy County Administrator Signature: [Signature]

Date: 3/8/2024

County Administrator Signature: [Signature]

Date: 3/11/2024

PIMA COUNTY DEPARTMENT OF: NATURAL RESOURCES, PARKS & RECREATION

PROJECT: Operating Agreement for Northwest YMCA-Pima County Community Center

OPERATOR: YMCA OF SOUTHERN ARIZONA

AMOUNT: \$1,500,000

OPERATING AGREEMENT NO.: CT-PR-24*0340

OPERATING AGREEMENT

This Operating Agreement ("**Agreement**") is made and entered into between Pima County, a political subdivision of the State of Arizona ("**County**") and the YMCA of Southern Arizona, an Arizona non-profit corporation ("**YMCA**" or "**Contractor**"). County and YMCA are each individually a "**Party**" and collectively the "**Parties**."

RECITALS

- A. The County has the authority pursuant to A.R.S. § 11-932 to enter into agreements for the operation of recreation areas.
- B. The YMCA is a nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code (26 USC § 501(c)(3)).
- C. The Parties entered into Ground Lease Agreement Number: CT 12*1269 on April 13, 1999, to develop, construct, operate, and maintain a recreational facility and affordable recreation programs on the "Property" as depicted and identified on the existing Ground Lease Agreement. The third amendment to the Ground Lease Agreement executed by the Pima County Board of Supervisors on March 18, 2014, permitted the installation and operation of solar energy panels in the parking lot, and extended the existing Ground Lease Agreement to May 1, 2040.
- D. The Parties entered into Operating Agreement Number: 11-04-Y-130852-0699 on April 13, 1999, for the day-to-day operation of the Property and Facilities as identified in Ground Lease Agreement Number CT 12*1269. The since constructed and operated Facilities include the Northwest YMCA Branch, Northwest Art Center, the Thad Terry Aquatic Center, Parking Lot and Grounds. The existing Operating Agreement is set to expire on April 12, 2024.
- E. The Parties continue to share common goals for the health and wellness, development, and leisure pursuits of the residents of Pima County, Arizona, and have mutually agreed to create and execute a new ten (10) year Operating Agreement that shall commence on the expiring date of the previous Operating Agreement to avoid any disruption of service.

AGREEMENT

1. **Agreement of the Parties with Respect to the Existing Ground Lease and the Operating Agreement.** Subject to the terms and conditions set forth in this new Operating Agreement, and ensuring unambiguous clarity and guidance for operation and maintenance responsibilities; except for the parking lot solar project identified in amendment three (3) of the Ground Lease Agreement

CT 12*1269; the Parties agree this new Operating Agreement shall supersede any conflicting statements with the existing Ground Lease Agreement for any operation, repair, and maintenance in the event there is any ambiguity between the two Agreements.

2. **Definitions.** As used in this Operating Agreement, the following term “Facilities” shall have the following meaning with respect to the Property as set forth below:

2.1. Northwest YMCA-Pima County Community Center “Facilities”. As depicted on **Exhibit A** aerial map, the Facilities shall include the existing Northwest YMCA Branch, Thad Terry Aquatic Center, Northwest Art Center, Parking Lot and Grounds.

2.2. The term “Facilities” does not include any of the developed and undeveloped areas of the County owned and operated Ann Day Community Park immediately adjacent to the Facilities as shown in **Exhibit A**. While the County is responsible for maintaining the existing pathway from the Facilities to the Ann Day Community Park (See Section 14 of this Agreement regarding exterior maintenance), the YMCA, like every other community user, shall be required to follow County’s field allocation process and the Board of Supervisor’s Approved Fee Structure for use of the Ann Day Community Park.

3. **Term.** The County and YMCA mutually agree to the term of this Agreement as outlined herein this section.

3.1. Term. The term of this Agreement shall be for a period of ten (10) years beginning on April 13, 2024 (the “Commencement Date”) and ending on April 12, 2034 (the "Expiration Date").

3.2. Extension Option. County may renew this Contract for up to one additional period of up to six (6) years (an “Extension Option”). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3.3. Effective Date. Regardless of the date that the Parties approve and execute this Agreement, it will be deemed to be effective as of April 13, 2024.

4. **Occupancy of Facilities.** The Parties shall continue to occupy the existing Facilities on the Property (see **Exhibit A** for aerial map of the Property) as follows:

4.1. Northwest YMCA Branch. The YMCA shall have sole occupancy and oversight of the management, control, activities, and programming undertaken within this area of the Facilities. The Northwest YMCA Branch includes without limitation, the gymnasium, meeting and activity rooms, fitness rooms, outdoor basketball court & playground, outdoor bocce ball court, offices, restrooms, and other various program rooms.

4.2. Northwest Art Center. The County shall have sole occupancy and oversight of the management, control, activities, and programming undertaken within this area of the Facilities. The Northwest Art Center includes without limitation, the multi-media room, ceramics room, jewelry room, restrooms, and kiln yards.

4.3. Thad Terry Aquatic Center (Pool). The County shall have primary responsibility for the Pool and pump room along with all activities, and undertakings in connection with this area of the Facilities. The YMCA shall have secondary responsibility in the form of aquatic programming during agreed upon operating hours. See Section 13 of this Agreement for operation of the Pool. The Pool includes without limitation, the competition pool, slide pool, ramadas, deck, patio area, grass areas, guard office, storage room, bathhouse, and pump room.

- 4.4. Parking Lot and Grounds. The County shall have sole responsibility for the management and oversight of the Parking Lot and Grounds. The Parking Lot and Grounds includes without limitation, paved & dirt parking lot areas, fire lanes, roadways, pathways, lighting, vegetation, and landscape, etc. YMCA shall always be given access to the Parking Lot and Grounds by the County for general daily use by YMCA members and staff. Any special use of the Parking Lot and Grounds by the YMCA shall require approval by the County. The County shall not unreasonably deny the YMCA use of the Parking Lot and Grounds for a YMCA sponsored event.
- 4.5. The Parties agree to cooperate so that portions of the of the Facilities under their respective primary control and responsibility shall be available for reservation and/or rental on a scheduled basis by individuals or groups requesting such use through the other Party.
5. **Cooperative Intent.** The Parties agree to meet on a regular basis (at a minimum bi-annually) to determine the needs of the community and to cooperate in the creation and implementation of programs to meet those needs. The Parties further agree not to compete or unduly interfere with the programs operated by the other Party, to the maximum extent possible and practical.
6. **Powers of the YMCA.** In order to carry out its responsibilities under this Agreement and subject to the limitations of applicable federal, state and local laws, policies, rules, and regulations, and Executive Orders, the YMCA shall be authorized to handle, manage, and control the operations conducted at the Facilities, to execute such agreements, contracts, or other documents as it deems necessary, in its best judgement, to carry out such functions, and to do such other acts or things and execute such other documents of instruments as it deems wise and prudent in order to carry out its duties set forth herein. The YMCA shall not be considered an agent of the County and shall not have the authority to bind the County or speak on behalf of the County, unless otherwise provided by written instrument.
7. **Advisory Board.** The YMCA shall maintain boards and committees for oversight of its activities, per its usual and customary practices. County staff shall be available to such boards and committees in an advisory capacity upon request.
8. **Coordination of Programs.** The dates and descriptions of all programs and services to be conducted at the Facilities shall be determined and published adequately in advance and arranged so that no conflict shall result between such programs and other programs conducted by the Parties.
9. **YMCA Director.** The YMCA shall appoint a Director for the Northwest YMCA Branch. The YMCA Director shall be responsible for YMCA programming, staffing, and maintenance responsibilities, as assigned by the YMCA, as well as coordination of programming and maintenance with the County with respect to the Facilities.
10. **Utilities.** The shared cost of the Facilities utilities by both Parties is depicted in **Exhibit B**. The YMCA shall pay all electric, solar electric, natural gas, water, and sewer bills directly to the proper authorities. County shall reimburse YMCA for utility costs. YMCA shall invoice County for County's utility cost share monthly, and County shall pay such invoices within 60 days. YMCA shall provide and pay for telephone and internet services. The total amount paid by County for the utility costs shall not exceed \$150,000 per year.
11. **Telephone and Internet Service.** YMCA shall be responsible for providing and maintaining telephone service at the Facilities and the County shall have access to said telephone service at all times during their portion of the operation. The Parties agree to pay their respective obligations for any internet service based upon use.

12. **Security.** The Parties agree to review and implement (if required in the future) specific security protection (alarms, patrols, etc.) for the Facilities. The initial installation cost along with the ongoing service cost(s) shall be divided between the Parties on a mutually agreed upon basis. If implemented, the YMCA would pay the upfront cost(s) of installation and ongoing services; then invoice the County for their portion of agreed upon costs.

13. **Operation of the Pool.** The outdoor Pool and bathhouse shall generally be open for use daily, per the below described schedules. Access to the Pool during County operated hours shall be from the parking lot gate via the Pool entrance sidewalk. Access to the Pool during YMCA operating hours may be restricted through the Northwest YMCA Branch, provided that the parking lot gate is continuously available for emergency exit. YMCA shall be responsible for providing proper temporary signage if access to the Pool is restricted.

13.1. County shall be responsible for, and agrees to provide, classes in lifeguarding and water safety instructor training, per County's current agreements with County's current provider(s) of lifeguarding and swim lessons certification. County may restrict access to such classes to individuals intending to work for either County or YMCA. Additionally, YMCA may provide lifeguarding and water safety instructor classes, per YMCA's current agreements or authorizations for teaching such classes, and per YMCA's usual and customary processes for enrollment. The certifying entity may be different for each Party. For example, County may teach and utilize American Red Cross Lifeguarding, and YMCA may teach and utilize YMCA Lifeguarding.

13.2. The Pool shall always be operated by both Parties as a Public Swimming Pool per Pima County Health Code 8.32.190. County shall maintain and pay appropriate fees for any needed permits & licenses required to operate the Pool, such as operating permits from the Pima County Health Department. County shall be responsible for, and agrees to provide, the Pool rules and emergency action procedures, relevant signage, and emergency equipment. YMCA shall follow all such Pool rules and emergency procedures. YMCA may request, and County shall not unreasonably withhold approval of, additional rules or modified procedures during YMCA operational hours. Such additional rules and modified procedures shall be requested in writing by YMCA and approved or denied in writing by County.

13.3. County shall coordinate and direct use of the guardhouse and storage room with the YMCA. County shall be responsible for providing safety equipment, first aid items, and Pool related deck equipment. YMCA may purchase and use additional Pool operational equipment (i.e. lawn chairs, swim lesson toys, water aerobics equipment, etc.) provided such equipment is intended for commercial use and won't damage the Pool. Both Parties agree to share safety, exercise, educational, and training equipment purchased by either Party at the Pool whenever possible to reduce the demand for separate storage.

13.4. **Pool Schedule.** The summer and non-summer schedule for the Pool shall be operated by the County and YMCA commensurate with seasonal demand and community needs. The scheduling of the Pool shall provide access to the YMCA for programming from 5:00 a.m. to 1:00 p.m., Monday through Saturday, and 5:00 a.m. to 11:00 a.m. on Sunday. County shall provide its programming at the Pool from 1:00 p.m. to 10:00 p.m., Monday through Sunday. Additionally, County shall coordinate a cleaning shift on Sundays, from 11:00 a.m. to 1:00 p.m. YMCA shall participate in cleaning shifts as requested by the County.

13.4.1. If either Party is not fully utilizing a significant portion of their scheduled time (such as the County or YMCA not being open on Sundays) the other Party may request in writing

use of such time, at least 30 calendar days in advance, and approval of such requests shall not be unreasonably denied.

13.4.2. Both Parties recognize there will be no more than thirty (30) minutes of staff overlap on either side of the 1:00 p.m. hour shift change between Parties. Each Party shall be responsible for the safety and operation of the Pool during their portion of the Pool schedule and during this daily shift change between the Parties. Unless agreed upon in writing, neither Party shall occupy the Pool area during the other Party's operation time.

13.4.3. Both Parties further recognize the need for additional cleaning shifts during the summer schedule and shall work together to expand and participate in the cleaning of the Pool to meet seasonal demand.

13.5. Pool Programming. See Exhibit C for both existing and future Pool programming.

13.6. Notwithstanding any other provision hereof to the contrary, YMCA members will be allowed free access to the Pool during County open swim and lap swim, except for any YMCA organized groups, such as Y camps, teen clubs, etc.

13.7. County, at its option, may allow YMCA organized groups use of the Pool during its sponsored time provided the Pool has the capacity, and YMCA provides payment of \$1.00 per YMCA participant for each organized group. County shall invoice the YMCA for such agreed upon participation at the end of each month. The County further agrees to honor any individual passes issued by the YMCA.

13.8. During any YMCA sponsored open swim and lap swim, members of the public, who are not YMCA members, shall be allowed to participate by paying a fee directly to the YMCA not to exceed \$5.00 per participant per day. The YMCA further agrees to honor any individual passes issued by the County.

13.9. County shall coordinate and direct all rentals and use of the Pool by third parties.

14. **Repairs and Maintenance of the Facilities.** See **Exhibit B** for the Parties shared cost responsibilities for this section herein. The Parties shall, always, bear the obligation to maintain, repair and keep the Facilities in good, secure and safe order and condition as provided for herein. The YMCA shall bear the cost of all repairs and maintenance to the interior areas of the Facilities, and the County shall bear the cost of all repairs and maintenance to the exterior areas of the Facilities with the following clarifications and exceptions:

14.1. Northwest YMCA Branch Maintenance. YMCA shall provide general maintenance and custodial maintenance for the interior of the main building, including pest control, plumbing, painting, air conditioning/heating system maintenance, fire alarm monitoring, electrical, doors, door locks, windows, flooring, etc. Furthermore, the YMCA shall be solely responsible for the exterior YMCA basketball court, exterior YMCA playground (and playground shade structure), and exterior YMCA bocce ball court.

14.2. Art Center Maintenance. YMCA shall provide custodial service for the Art Center, per YMCA's third-party service agreement for the Facilities, including annual waxing of the floors, and County shall provide general cleaning during its use times. YMCA shall provide general maintenance, such as plumbing, painting, interior pest control, windows, doors, door locks, windows, and air conditioning/heating system maintenance for the Art Center. County shall provide and maintain all specialty art equipment such as kilns, wheels, easels, etc.

14.3. Pool and Bathhouse Maintenance. Each Party shall provide general daily cleaning of the Pool and bathhouse during their respective use times. YMCA, at its sole option, may provide custodial service for the bathhouse, per YMCA's third-party service agreement for the Facilities. Additionally, each Party shall test and log the chlorine and pH of the Pool water on an hourly basis during their respective use times (per Pima County Health Code 8.32.190), utilizing testing equipment and logbooks provided by the County. County shall bear the cost and pay for all Pool water treatment chemicals and related chemical supplies (such as water testing equipment) for the Pool.

14.4. YMCA shall provide general maintenance for the bathhouse, guardhouse, and storage room, such as maintenance and repair of light fixtures and plumbing, painting, windows, doors, door locks, shower boilers, and pest control. County shall bear all cost and supply toilet paper/sanitation supplies, soap, paper towels, garbage cans, refrigerator, microwave, etc. for the Pool and bathhouse. County shall further be responsible for all Pool evaporative cooler systems and heater systems maintenance.

14.5. County shall provide maintenance of the Pool pump room, landscape, hardscape, appurtenances, and mechanical equipment, such as pumps, filters, controllers, chemical feeders, and heaters in the equipment room, as well as Pool grates, drains, railings, shade structures, water slide, turf areas, Pool lights, etc.

14.6. However, in the case of replacement or repair of Pool equipment, whose cost is anticipated to exceed \$15,000, such as future decking, plastering, and major equipment room replacement; such costs shall be divided between the Parties as outlined and depicted in Exhibit B. County shall coordinate all work and pay all costs associated with such work, and County shall invoice YMCA for their percentage portion of the total completed work outlined and depicted in Exhibit B, which YMCA shall then reimburse the County.

14.7. Parking Lots and Grounds Landscaping Maintenance. County shall provide general maintenance of all exterior areas, including parking lots, landscaping, sidewalks, and exterior lighting, as well as exterior pest and rodent control. County shall provide seal coating and restriping of parking lots per its normal and customary schedules and procedures.

14.8. Facilities Keys. YMCA shall maintain, distribute, and manage all keys with respect to the Facilities.

15. **Concessions and Vending Machines.** YMCA may provide vending machines or may contract with a third party to provide vending machines at the Facilities. Any costs or revenues associated with such operations shall be the sole responsibility of the YMCA. Any vending machines or concessions must comply with A.R.S. §23-504, and may require additional analysis, processes, and written approval by County.

16. **Additions to Facilities.** The Parties contemplate that, from time-to-time during the term of this Agreement, there may arise the need for additions to be made to the Facilities. Accordingly, if such additions are necessary, whether as a result of programs then currently in use, programs proposed by the YMCA, or otherwise, the Parties agree to mutually develop and implement a mechanism for providing such additions towards achievement of the benefits and purposes elsewhere set forth in this Agreement.

17. **Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be

placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII. Pima County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

17.1. Minimum Scope and Limits of Insurance

17.1.1. Contractor shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

17.1.2. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

17.1.3. Business Automobile Liability. Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 for each accident.

17.1.4. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 for each accident and each person - disease.

17.1.5. Claim-Made Insurance Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

17.2. **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

17.2.1. Additional Insured. The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

17.2.2. Subrogation. The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

17.2.3. Primary Insurance. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance.

17.2.4. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

17.3. **Notice of Cancellation.** Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice shall include the Pima County project or contract number and project description.

17.4. **Verification of Coverage.** Contractor shall furnish Pima County with certificates of insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

17.4.1. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

17.4.2. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

17.5. **Approval and Modifications.** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

18. **Fire Safety Systems.** YMCA will always have access to manage all related fire safety infrastructure at the Facilities and will be responsible to maintain all fire safety systems along with any monitoring service.

19. **Signs.** With advance written approval from County, YMCA may, upon obtaining any necessary permits from governmental authorities, erect, maintain, and repair at YMCA's own expense, signs of such dimensions and materials as it may desire. YMCA is responsible for all costs associated with the design, manufacture, installation, permitting, and connecting of any utilities necessary for any signage on the interior or exterior of the Facilities. County shall maintain the signage for the Art Center and Pool portion of the Facilities.

20. **Licenses and Permits.** YMCA and County shall procure and maintain each and every license, permit, certificate, or other authorization, and any and all renewals, extensions and/or continuations thereof, necessary in order to operate the Facilities and programs therein, all in connection with the uses and purposes thereof, provided, however, that notwithstanding the forgoing, the County shall be solely responsible for any and all licenses, permits, certificates, health department compliance items and other such matters pertaining to the Pool.

21. **Employees of the Parties.** Neither the YMCA, its Directors, officers, and employees, nor persons or entities engaged by the YMCA shall be considered as employees or agents of the County, its elected officials, officers, and employees, nor persons or entities engaged by the County, shall be considered employees or agents of the YMCA.

21.1. Each Party shall independently bear all expenses relative to the staffing of the programs for which it is primarily responsible hereunder and as is otherwise necessary to satisfy its obligations under this Agreement, unless otherwise provided herein.

21.2. Since this Agreement involves a non-profit corporation and is for the purposes of the public welfare, all wages and other charges paid by the YMCA shall be reasonable in amount and conform to all applicable labor laws.

22. **Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by the Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.
23. **Taxes.** Any taxes owing in connection with the operation of the Facilities (as opposed to the ownership of the Property and/or the Facilities) shall be borne by the County and the YMCA in accordance with the provisions of the Ground Lease Agreement.
24. **Restriction on Assignment.** Neither Party to this Agreement shall transfer, assign or otherwise alienate their duties or rights under this Agreement during the entire term hereof, including a renewal, without first receiving the advance consent of the other Party, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Any attempt to transfer, assign or otherwise alienate a Party's duties or rights not in compliance with the provisions of this paragraph or the provisions of the Ground Lease Agreement shall be null and void.
25. **Cross-Default.** A default by either Party in the obligations under this Agreement shall also constitute a default under the Ground Lease Agreement. In the event that the County cancels or terminates this Agreement at any time prior to the expiration of its term, or in the event that the YMCA cancels or terminates this Agreement as a result of a material breach by the County, the County agrees to compensate the YMCA for the Facilities and the YMCA's contribution to any other improvements placed upon the Property as provided in the Ground Lease Agreement.
26. **Negotiated Resolution.** Nothing in this Agreement shall preclude the Parties from agreeing upon alternate terms pertaining to the foregoing contingencies, obligations, duties, and provisions considering the circumstances in existence at the time of any such subsequent agreement, provided, however, that no Party shall be compelled to negotiate for or to accept any such alternate terms.
27. **Cancellation for Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. §38-511 regarding the cancellation of contracts involving conflict of interest.
28. **Non-Waiver.** No covenant, term or condition of this Agreement shall be waived except by a writing signed by the Party against whom such waiver is sought, and the forbearance or indulgence by a Party in any regard whatsoever shall not constitute a waiver of any provision.

29. **Notices.** Any notice required or permitted to be given under this Agreement will be in writing and will be served by personal delivery, United States mail service, email or electronic transmission, or certified mail upon the other party as follows:

To the County: NRPR Director
Pima County Natural Resources, Parks, and Recreation
3500 W. River Road
Tucson, AZ
85741-3600
Email: Victor.Pereira2@pima.gov

(Parties agree the email for the NRPR Director may change)

To the YMCA: CEO
YMCA of Southern Arizona
P.O. Box 1111
Tucson, AZ
85702
Email: kurtisd@tucsonymca.org

(Parties agree the email for the YMCA CEO may change)

Any notice given as indicated in this Section will be deemed to have been given on the date of receipt, or if delivery is refused, on the date of such refusal.

30. **Non-Discrimination.** The Parties will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement, neither Party will discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
31. **Americans with Disabilities Act.** County and YMCA shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act.
32. **Legal Arizona Worker's Act.** If Contractor, under this Contract, furnishes labor, time or effort to County within the State of Arizona, the following applies: Contractor warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this Contract that subjects Contractor to penalties up to and including termination of the Contract. County retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with this warranty.
33. **Choice of Law.** The laws of the State of Arizona will apply to any action relating to this Agreement and any court action will be brought in a court in Pima County, Arizona.

34. **Termination by County, With Cause.** County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.
35. **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in force and effect and shall in no way be affected, impaired or invalidated.
36. **Force Majeure.** If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor trouble, civil disorder, inability to procure materials, restrictive governmental laws or regulations or other unforeseen circumstances without fault and beyond the control of the Party obligated, performance of such act shall be excused for the period of delay and then for a period of time reasonably necessary to perform the act.
37. **Entire Agreement.** This Agreement, and any exhibit or addendum attached hereto, sets forth the entirety of all covenants, promises, agreements, conditions and either oral or written, between the County and the YMCA with respect to the subject matter hereof, namely, the day-to-day operations of the Property and the Facilities, provided that the Parties acknowledge the existence and validity of the separate Ground Lease Agreement between the County and the YMCA relating to the Premises (as therein defined), which Ground Lease Agreement is intended to be read in concert with this Agreement. Except as herein otherwise provided no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the County or the YMCA unless reduced to writing and signed by both Parties.


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IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement effective April 13, 2024.

PIMA COUNTY BOARD OF SUPERVISORS

YMCA OF SOUTHERN ARIZONA, an Arizona non-profit corporation

Adelita Grijalva
Chair, Board of Supervisors

By: 

Kurtis Dawson
President/CEO

Date: _____

Date: 3/7/2024

ATTEST:

Melissa Manriquez, Clerk of Board of Supervisors of Pima County

Date: _____

APPROVED AS TO CONTENT:



Victor Pereira
Director, Pima County Natural Resources, Parks and Recreation

Date: 3/7/2024

APPROVED AS TO FORM:



Rachelle Barr
Deputy County Attorney

Date: 02/29/2024

EXHIBIT A
Northwest YMCA Pima County Community Center “Facilities”
Aerial Map (Page 1 of 2)

Articulated below is the Northwest YMCA Pima County Community Center “Facilities” and the adjacent County owned and operated Ann Day Community Park.

The breakdown of the “Facilities” is located on **Exhibit A** Page 2 of 2.



EXHIBIT A
Northwest YMCA Pima County Community Center “Facilities”
Aerial Map (Page 2 of 2)

Aerial map breakdown of the “Facilities” into the following four(4) areas identified in Section 5 of the Operating Agreement:

- Northwest YMCA Branch
- Northwest Art Center
- Thad Terry Aquatic Center (Pool)
- Parking Lot and Grounds

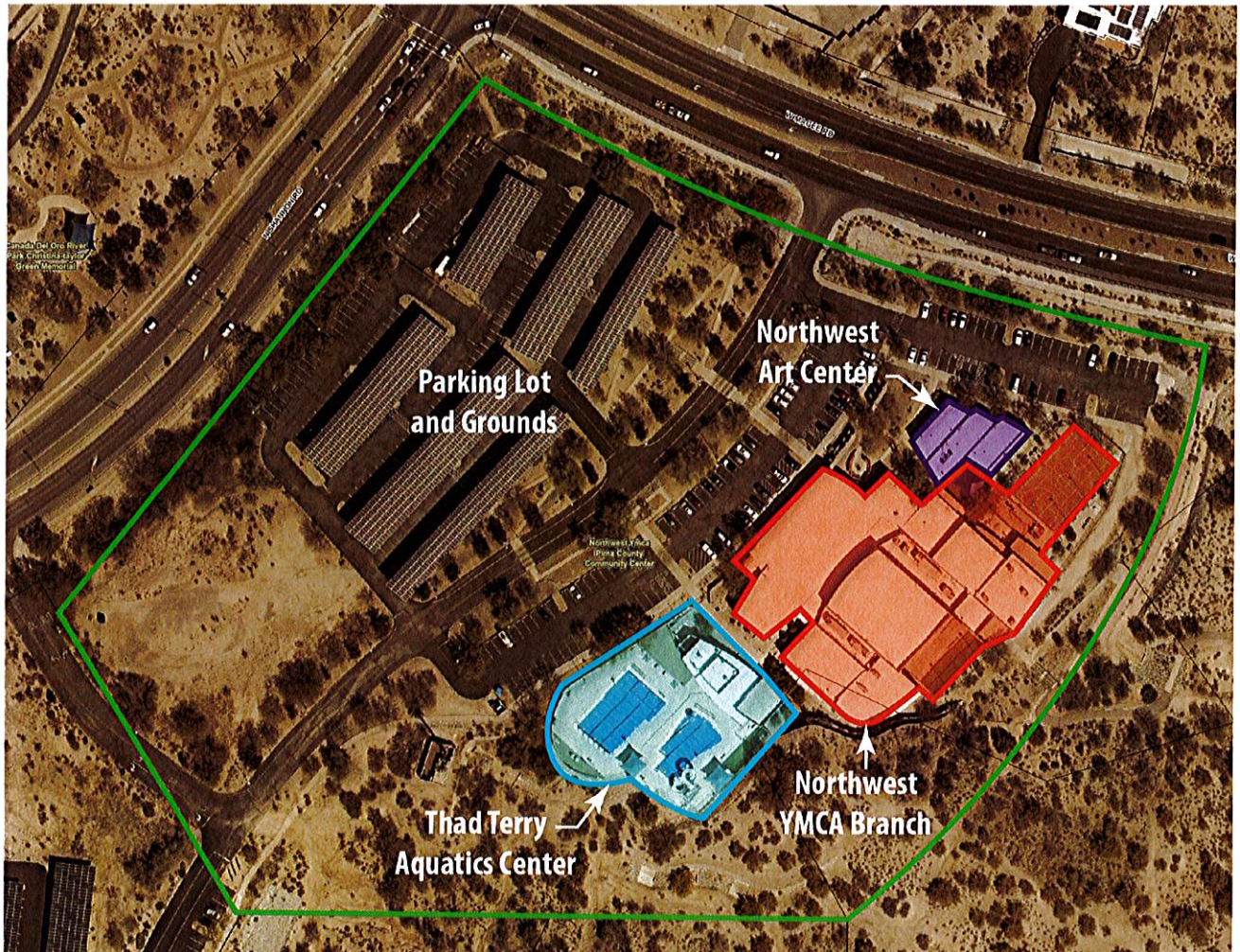


EXHIBIT B
Annual Cost Responsibilities Between the Parties for the Facilities
(Page 1 of 1)

COST ITEM	Party(ies) Responsible for Identified Annual Cost		
	YMCA	COUNTY	BOTH
Utilities (gas, water, electric)	N/A	N/A	Parties shall each pay 50% (50/50) of the Facilities utilities, with the County having a not to exceed annual cost amount of \$150,000 per fiscal year year (July-June). YMCA shall pay 100% of the upfront utility cost, then be reimbursed by the County for 50% of the utility cost.
County coordinates all work/costs associated with mechanical pool equipment replacement and future decking, plaster resurfacing of the Pool exceeding \$15,000; then bills YMCA for their portion of the cost once work is completed. County shall not invoice YMCA for any items identified above that are less than \$15,000.	N/A	N/A	County shall pay 100% initial cost, then be reimbursed 25% by the YMCA
YMCA responsible for daily custodial services for the Art Center	100%	0%	N/A
Interior Maintenance of the Facilities (See Section 15 of this Agreement for a complete breakdown of "Interior maintenance")	100%	0%	N/A
Exterior Maintenance of the Facilities (See Section 15 of this Agreement for a complete breakdown of "Exterior Maintenance"). Includes landscaping maintenance and Parking Lot preservation plan	0%	100%	N/A

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EXHIBIT C
Pool Programming
(Page 1 of 1)

As stated in Section 6 of this Agreement, the Parties agree not to compete or unduly interfere with the programs operated by the other Party, to the extent possible and practical. Below is the list of agreed upon existing Pool programs offered by the Parties at the Pool during their respective operating hours:

COUNTY Pool Programs	YMCA Pool Programs
Open Swim Family Swim Lap Swim Lifeguard Training Youth & High School Swim Team/Swim Meets Summer Junior Lifeguarding Party Zone Rentals	Open Swim Lap Swim Lifeguard Training Y-Camp Swim Youth & Adult Swimming Lessons Water Fitness/Aerobics

Unless mutually agreed upon by both Parties, future/new Pool programming by either Party shall not compete or unduly interfere with a program operated by the other Party as noted above.

Should either Party permanently end an existing Pool program, the other Party, at its sole option, may take over primary responsibility for said Pool program during their operating hours.

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