#14
CB 117429

Charles Ng/RH
DPR Cascade People's Center 2012 ORD
February 7, 2012
Version #3

ORDINANCE _____

AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation and Cascade Park; authorizing the Superintendent to enter into a five-year agreement, with options to extend, with YMCA of Greater Seattle to operate and provide management of the Cascade People's Center located at 309 Pontius Avenue North, Seattle, WA 98109.

WHEREAS, Since 2000 the City's Department of Parks and Recreation ("DPR") has been partnering with the Cascade Neighborhood Council, Lutheran Community Services, and other community organizations to provide programming in the Cascade People's Center ("CPC") building located in Cascade Playground for the benefit of the Cascade neighborhood and other City residents; and

WHEREAS, DPR initiated a Request for Proposal ("RFP") process in March 2011 that was designed to ensure stability and financial viability to the CPC, possibly achieve a better financial arrangement, and secure a long-term operator for the CPC; and

WHEREAS, DPR completed the RFP in late April and selected YMCA of Greater Seattle ("YMCA") as the winning proposer of the RFP;

WHEREAS, the YMCA will be providing public benefits including community access to the facility for programs, classes, and community events; and

WHEREAS, the YMCA will form a Cascade People's Center Advisory Council to ensure community engagement in facility programming; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the Department of Parks and Recreation ("Superintendent"), or his designee, is authorized to execute for and on behalf of the City an agreement for the use, operation, community programming, and maintenance of the City's Cascade People's Center, substantially in the form of the Agreement between the City of Seattle Department of Parks and Recreation and the YMCA of Greater Seattle which is attached to this ordinance as Attachment 1 ("Agreement").

Section 2. The Superintendent is authorized to renew and extend the term of the Agreement for up to five years at the Superintendent's option and as provided in the Agreement.

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Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Agreement between the City of Seattle Department of Parks and Recreation and the YMCA of Greater Seattle

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Charles Ng/RH
DPR Cascade People's Center 2012 ORD ATT 1
February 7, 2012
Version #4

AGREEMENT
Between
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
And
YMCA OF GREATER SEATTLE

This Agreement (Agreement) is entered into by and between THE CITY OF SEATTLE, a municipal corporation (City), acting by and through its Seattle Department of Parks and Recreation (DPR), and YMCA of Greater Seattle, a Washington non-profit organization (YMCA).

Recitals.

WHEREAS, the Superintendent of the Seattle Department of Parks and Recreation is responsible for administering broad and varied programs of public recreation activities pursuant to SMC 3.26.040; and

WHEREAS, the City believes Seattle residents' use and enjoyment of the City's park and recreation system is increased through the provision of recreational, educational, and community development opportunities; and

WHEREAS, DPR entered into an Agreement with the Cascade Neighborhood Council (CNC) that was approved by Ordinance 121189 in 2003 to provide recreational, community development, and educational opportunities at the Cascade People's Center; and

WHEREAS, after CNC discontinued providing programming at Cascade People's Center, DPR continued to permit various partners to provide these services and decided in February 2011 to conduct a Request for Proposal (RFP) process for a long-term provider; and

WHEREAS, in March 2011 DPR completed the RFP process and determined the YMCA of Greater Seattle in April 2011 the most qualified proposer to lease the Cascade People's Center for purposes of providing recreational, community development, and educational opportunities; and

WHEREAS, the YMCA entered into an interim Agreement while DPR prepared the legislative paperwork for City Council approval required to finalize the long-term Agreement with YMCA; and

NOW THEREFORE, the City and YMCA agree as follows:

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ARTICLE 1 DEFINITIONS

1.1 "Commencement Date" means the date on which this Agreement is executed by both parties following an authorizing ordinance by Seattle City Council.

1.2 "Community Programming" means the educational, community development, and recreational opportunities more particularly described in Section 3.1.

1.3 "Director" means the Leadership Director of YMCA of Greater Seattle.

1.4 "Service Credits" means credits for services provided by the YMCA, in particular the provision of Community Programming and building maintenance as described in Section 5.4.

1.5 "Premises" means the Cascade People's Center located adjacent to Cascade Playground, more particularly described in Article 2.

1.6 "Superintendent" means the City's Superintendent of the Seattle Department of Parks and Recreation or his/her designee.

ARTICLE 2. PREMISES

2.1 Premises Defined. YMCA shall be authorized to use and occupy approximately 3,520 square feet, the total square footage of the building commonly referred to as the Cascade People's Center (CPC) having the common address of 309 Pontius Avenue N., Seattle, Washington. The Premises are located on a portion of Cascade Playground which is legally described as:

> Lot 8, Block 10 of Fairview Homestead Association, for the Benefit of Mechanics and Laborers, except that portion of said Lot 8 described as follows:
>
> Beginning at the southwest corner of said lot; thence on the west line thereof north 45.00 feet, more or less, to a point of curve to the right and the true point of beginning; thence with a radius of 15.00 feet following the arc of said curve in a northeasterly direction, a distance of 23.56 feet, more or less, to a point of tangency on the north line of said lot; thence on said north line west 15.00 feet, more or less to the northwest corner of said lot; thence on the west line of said lot, south 15.00 feet, more or less to the true place of beginning.

A site map depicting the location of the Premises is attached as Exhibit 1.

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2.2 Condition and Acceptance. YMCA has examined the Premises, has had a reasonable opportunity to attend a walk-through inspection, and has determined, after such examination, that the Premises are suitable for the use and occupancy desired by YMCA hereunder. YMCA ACCEPTS THE PREMISES in "AS IS" condition, WITH ALL DEFECTS, AND ASSUMES ALL RISK that one or more defects exist in the Premises. The CITY MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, express or implied, with respect to the condition of the Premises or the use and occupancy authorized therein other than as specified in this Agreement. YMCA agrees that any express or implied representations, statements, or warranties made by or on behalf of the City prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever.

2.3 Use Grant. During the term of this agreement, YMCA shall use the Premises exclusively for recreational, community development, and educational purposes. In particular, YMCA shall use the Premises as follows: YMCA shall provide youth programs such as Boys Outdoor Leadership Development (BOLD) and Passages Northwest wilderness expeditions, and Community Programming falling into the categories described in Article 3 of this Agreement. YMCA is authorized to hold YMCA and community meetings, and engage in fund raising activities supporting the above programs or any other comparable community programs as determined by the YMCA. YMCA shall maximize the use of the Premises by making the space available to DPR and to other community groups as described in Article 21, and may license the use of the facility by third parties for special events and other activities consistent with the uses described herein. YMCA shall not use the Premises for any other purpose without the prior written consent of the Superintendent, whose consent shall be given or withheld in that official's sole discretion. YMCA shall not use the Premises for any activity of a non-secular nature, without the written consent of the Superintendent.

2.4 City Right to Close Premises. The City reserves and retains the right to close the Premises at its convenience for reasons of public safety or other good cause as determined by the Superintendent upon a written notice given to YMCA not less than fourteen (14) days prior to such closure, provided that in case of emergency the Superintendent may close the Premises immediately without advance written notice.

ARTICLE 3. COVENANTS REGARDING YMCA OPERATION AND SERVICES

3.1 Community Programming and Access Covenants. The City's willingness to enter into this Agreement is conditioned, in part, upon YMCA's covenants herein. During the term of the Agreement, YMCA covenants to provide the public with a variety of Community Programming and public access opportunities falling within the categories listed below and in a manner suitable for multiple age groups and developmental levels:

a. Public Access to Facility and Resources. YMCA will provide a minimum of twenty (20) hours a month of public access to the facility meeting

SEATTLE CITY CLERK

rooms, computer lab, kitchen and child/youth areas for meetings, classes and workshops, family and community events for local organizations, neighborhood groups, individuals, and families. YMCA will create and manage a community blog with both general and current information regarding all programs, events, and opportunities at the Cascade People's Center. The blog will be easily accessible and its address made readily apparent in the community.

b. Community Building. YMCA will organize a Cascade People's Center Community Advisory Council with representatives who live and work in the neighborhood. This group will provide overall guidance and suggestions on the types and levels of programming offered at the CPC. The Council will be supported by both YMCA and DPR and will work with YMCA staff to establish annual goals and work plans for the CPC. The work plan and goals will be shared and offered for changes to DPR staff, the Superintendent, and YMCA.

c. Programming Focus. YMCA will offer a balance of ongoing classes, annual events, and cultural activities at the Premises that meet the needs and interests of the surrounding Lake Union and Cascade Neighborhood communities. Priority access and use will be given to Cascade neighborhood organizations, South Lake Union neighborhood organizations, and finally adjacent neighborhood organizations. Programming will concentrate on child and family development, environmental stewardship, fitness, arts and culture, social equity, neighborhood development, and other identified needs. Free and reduced-fee registration will be offered as available to applicants.

d. Volunteer Coordination. The CPC will also serve as a hub of volunteerism including a full volunteer program consisting of recruitment, screening, and oversight to support volunteers. These volunteers will offer direct programs and events at the CPC and also be available to serve and assist other groups such as the P-patch, Immanuel Community Services, and others as needed.

e. YMCA Programs. YMCA will offer the BOLD program for boys and Passages Northwest for girls during the summer months, which consist of wilderness expeditions for youth from the greater Seattle area. Additional Community Programming will be offered during the summer months as the schedule and facility may allow. YMCA may, as needed and permitted by DPR, also utilize outdoor space during the summer.

f. Facility Janitorial Maintenance. YMCA will be responsible for staff and volunteers providing a minimum of ten (10) hours a week in general janitorial and building maintenance activities. These maintenance hours

SEA CITY CLERK

can be added to the service credits to offset the amount of Use Fee due to DPR as described in Section 5.4. YMCA must submit detailed documentation that demonstrates the hourly rate that it spent for staff in order to provide the janitorial and building maintenance services. If YMCA uses volunteers then the amount of offset shall be based upon the rate per hour for volunteer service as defined by Independent Sector. Current rates can be found at http://www.independentsector.org/programs/research/volunteer_time.html.

3.2 Permissible Fees. YMCA may charge fees for its Community Programming at CPC that it does not intend to submit for consideration as a Service Credit pursuant to Article 5; however, such fees shall be charged uniformly and shall be consistent with the current Seattle Department of Parks and Recreation Fees and Charges which can be found at http://www.ci.seattle.wa.us/parks/reservations/feesAndCharges/contents.htm. YMCA may also charge fees for use of meeting rooms as stated in Article 21.1.2. Notwithstanding the foregoing, the YMCA shall not charge any fee for the use of the computer lab.

3.3 YMCA Operation Hours and Closure of Premises. YMCA shall post its hours of operation and schedule of Community Programming on the community blog and other places readily visible to the public. Subject to the prior written approval of the Superintendent, YMCA may, for good cause, close the Premises or a portion thereof for a reasonable period during its regularly scheduled hours of operation and Community Programming.

3.4 Mandatory Closures. The Premises shall be closed and locked during the hours of 11:30 p.m. to 4:30 a.m., and no activity shall occur on the Premises during such time, except with the prior written approval of the Superintendent, whose approval shall be given or withheld in his/her sole discretion.

3.5 Materials Storage. DPR understands that some Community Programs offered by YMCA involve the use of supplies and materials. DPR will allow YMCA to store on the Premises supplies and materials used for Community Programming only if, in the opinion of the Superintendent, all such supplies and materials are safely and appropriately stored and secured so as to not unreasonably inconvenience or conflict with other Community Programming and uses of the Premises. There shall be no storage of any items not used in connection with Community Programming permitted under this Agreement. YMCA shall store all personal property on the Premises at its own risk; under no circumstances will the City be liable for loss of any items stored on the Premises.

3.6 Limited Use of Intoxicating Beverages: YMCA shall not permit alcoholic beverages to be used at the Premises without the prior written approval of the Superintendent, which may be conditioned or withheld in the Superintendent's discretion. If the Superintendant provides approval, YMCA shall ensure that all use, sale,

SEA CITY CLERK

consumption, or dispensation of any alcohol at the Premises is conducted in accordance with the approval and all applicable laws, ordinances, rules, and regulations, as now or hereafter amended.

3.7 Keys. YMCA shall provide DPR staff with one extra set of keys so that they can have access to the Premises.

3.8 Reporting. No more than sixty (60) days after the end of each fiscal year under the Term, YMCA shall submit a summary of its Community Programs and other uses to DPR for its records. YMCA's fiscal year runs from January 1 through December 31. Such summary shall consist of all Community Programming and other permitted uses, dates, identification of the user/groups, and rentals. If YMCA is requesting an offset of the Use Fee as afforded in Article 5, then YMCA must submit reports semi-annually in a form similar to Exhibit 2, and in the time and manner described in Sections 5.2 and 5.4.

3.9 Resolution of Scheduling Conflicts. YMCA is responsible for scheduling all Community Programming and other permitted uses. In the event of a scheduling conflict, YMCA shall be responsible for resolving the conflict.

ARTICLE 4. TERM; AUTHORIZED PERIOD OF PREMISES USE

Term of Agreement. This term of this Agreement shall be for five (5) years beginning on the Commencement Date. This Agreement may be extended for an additional five (5) year term at the option of the Superintendent. If the Superintendent decides to exercise the option to extend, then at least thirty (30) days prior to the expiration of the Initial Term, the Superintendent or an assigned designee shall send a written notice to YMCA of the intent to extend the term of the Agreement. As used in this Agreement, "Term" means the initial Term and the extended term, if any.

ARTICLE 5. CONSIDERATION; USE FEES; REDUCTIONS AND OFFSETS THERETO

5.1 Consideration. In partial consideration of the use of the Premises DPR is granting to YMCA under this Agreement, YMCA shall pay an annual Use Fee of $65,500. YMCA shall pay $1,000 of the annual Use Fee in cash on a quarterly basis, and the balance of the Use Fee is subject to offset as detailed further below.

5.2 Time of Payment of Annual Use Fee. Beginning on or before January 1, 2012 and thereafter on the first day of each quarter during the Term (January 1, April 1, July 1, October 1) in advance, YMCA shall pay DPR the quarterly amount of cash Use Fee ($250.00) plus the leasehold excise tax due under Section 5.7. The balance of the annual Use Fee ($64,500) shall be either payable or offset as described under Section 5.4 in two installments of $32,250 each; one due on the thirtieth (30th) day of June and the second one due on the thirtieth (30th) day of December for each year during the Term.

DPR CITY CLERK

5.3 Annual Use Fee Exclusive of Taxes. The Use Fee is exclusive of any and all sales, business, occupation, leasehold excise tax, or other tax levied or assessed as a consequence of this Agreement or any activity of YMCA thereunder. Any and all taxes shall be paid by YMCA in the time and manner due with no offset or deduction from the Use Fee whatsoever.

5.4 YMCA's Opportunity to Offset Annual Use Fee with Services. Up to $64,500 of the Annual Use Fee is eligible for offset by Service Credits. Eligible services include Community Programming and major and routine maintenance. If YMCA desires to take advantage of this opportunity during the term of this Agreement, then YMCA must perform these program services and maintenance work prior to the semi-annual due dates noted in Section 5.2. YMCA shall send a written report in accordance with Article 3.8 which details the program services and maintenance rendered and the value of such services, supported by an itemized accounting of time, labor rates, and materials, with corresponding dollar values. Exhibit 2 is an example of the types of eligible programs and maintenance and the calculation of the value that may be used to offset the Annual Use Fee.

5.5 Determination of Fair Use Fee. DPR and YMCA believe that the Use Fee set forth in Subsection 5.2 above reflects a fair use fee for similar and comparable Premises and taking into account, among other factors, the substantial public benefits that DPR and community receives from YMCA's commitment to Community Programming available to the public throughout the term of the Agreement; the benefit to the community resulting from YMCA's commitment to provide all routine and major maintenance and administration of the Premises which results in the building remaining open for use instead of closed indefinitely. The parties further have considered the fact that the availability of parking at the site is limited, and that its location often results in difficult access during certain times of the day.

5.6 Late and Refused Payments. YMCA acknowledges that late payment to the City of the Use Fee or any other sum due to the City hereunder will cause DPR to incur costs not contemplated by this Agreement, including but not limited to processing and accounting charges. Therefore, if YMCA fails to pay any sum when due to the City, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid. Additionally, a Twenty Dollar ($20.00) charge shall be paid by YMCA to the City for each check refused payment for insufficient funds or any other reason.

5.7 Leasehold Excise Tax. YMCA shall be responsible for payment of all leasehold excise tax ("LET") due as a result of YMCA's use of the Premises under this Agreement. YMCA shall remit the applicable amount of LET to DPR with each quarterly payment. The Leasehold Excise Tax rate at the time this Agreement is drafted is 12.84% of the Annual Use Fee.

SEA CITY CLERK

ARTICLE 6. PAYMENT PROCESSES

All payments due to the City hereunder, including Use Fee and leasehold excise tax payments, shall be paid no later than stated in Article 5 to the Department of Parks and Recreation, Attention: Concessions Coordinator, Contracts and Business Resources Office, 6310 N.E. 74th Street, #109E Seattle, WA 98115-8164, accompanied by an explanatory cover letter.

ARTICLE 7. UTILITIES AND MAINTENANCE CHARGES

7.1 Responsibility for Utilities. During the term of this Agreement, YMCA shall pay the costs associated with maintaining the Premises, including the costs of all utilities, and costs and services to maintain the Premises as referenced in Article 8. YMCA will establish utility accounts with any applicable utility provider, including Seattle Public Utilities, City Light, and Puget Sound Energy so that bills will be sent to YMCA directly for payment.

7.2 Interruption. City shall not be liable, and YMCA hereby waives any claim against City, for the interruption or failure of any utility service to the Premises, for any reason whatsoever.

ARTICLE 8. CARE OF PREMISES; MAINTENANCE AND REPAIR

YMCA shall comply with this Article 8 at no cost or expense to the City:

8.1 YMCA's Routine Maintenance and Repair Obligation. YMCA shall be responsible for ensuring that the Premises are maintained in compliance with all applicable code regulations, including Seattle's fire code and building code.

8.2 YMCA's General Cleaning and Janitorial Services Obligation. YMCA shall keep the interior of the building in a neat, clean and sanitary condition, and shall provide all general cleaning and janitorial services, at no cost or expense to the City, as may be required in and for the Premises. YMCA shall be responsible for frequent trash removal and litter pickup within the Premises.

8.3 Intrusion Alarm Installation. YMCA may at its option, maintain on the Premises, at no cost or expense to the City, an intrusion alarm system.

8.4 Fire Suppression Systems Installation. If YMCA should decide to install a fire suppression and detection system, it will do so at its own expense and it shall be maintained by YMCA at no cost or expense to City in accordance with manufacturer specifications. YMCA shall provide all cooking surfaces with hood, vent, and fire suppression systems that have been approved by the Washington Survey and Rating Bureau to maintain maximum fire insurance rate credit.

SEA CITY CLERK

8.5 Rain Harvest Irrigation Systems. YMCA will work with the current caretaker to maintain the rain-harvest systems or will assume responsibility for the systems.

8.6 P-patch Coordination. YMCA will work with the caretaker of the P-patch gardens to allow trainings in and around the CPC building.

8.7 DPR Right of Inspection at any time. DPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, inspecting, or improving the Premises with reasonable notification to YMCA.

8.8 Emergency Access. If an urgent health and safety issue arises requiring immediate attention as determined by DPR, then DPR may immediately access the Premises in order to undertake such work.

ARTICLE 9. INDEMNIFICATION; WAIVER

9.1 Indemnification. YMCA shall hold harmless, indemnify, and defend the City, its officers, agents, and employees, from and against all and any liability, claim, suit, damage, loss, action, fine, cost, or expense (including reasonable attorney's fees and costs) arising from or relating to (i) the use and occupancy of the Premises contemplated under this Agreement and any portion thereof, whether used and occupied by YMCA, its officers, employees, agents, volunteers, contractors, its invitees, licensees, assignees, or other subordinate users; or (ii) breach of this Agreement or violation of law; or (iii) any act or omission of YMCA or any of its officers, employees, agents, contractors, licensees, invitees, assignees, or volunteers in or about the Premises; and YMCA shall promptly satisfy any final judgment adverse to the City or to the City and YMCA jointly. Provided, that in the event the City determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. To the extent permitted by law, the above liability shall not be diminished by the fact, if it be a fact, that any such liability, claim, suit, damage, loss, action, fine, cost, or expense may have been, or may be alleged to have been, contributed to by the negligence of the City or its officers, employees, or agents; provided, however, that nothing contained in this Article shall be construed as requiring YMCA to indemnify the City against liability for damage arising out of bodily injury to a person or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents. The parties specifically and expressly intend that this indemnity include YMCA's waiver of its immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the City only. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER WAS MUTUALLY NEGOTIATED AND AGREED UPON BY THEM.

9.2 Release of Claims. YMCA hereby waives and releases all claims against the City for any losses or other damages sustained by YMCA resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure

SEATTLE CITY CLERK

of building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of building facilities or services; broken glass; water leakage; the collapse of any building component; or any act or omission of any other occupants of the Premises.

9.3 Survival of Obligations. The indemnification and release obligations of YMCA hereunder shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10. INSURANCE

10.1 YMCA Furnished Coverages and Limits of Liability: YMCA shall obtain and maintain in full force and effect at all times during the Term of this Lease, at no expense to City, insurance as specified below.

1. Commercial General Liability insurance including
   - Premises/Operations
   - Contractual Liability
   - Independent Contractors
   - Stop Gap/Employers Liability
   - Fire/Tenant Legal Liability

   Limits of liability shall be not less than $1,000,000 each occurrence, bodily injury, and property damage combined single limit (CSL) except:

   - $ 1,000,000 each accident - Disease Stop Gap/Employers Liability
   - $ 250,000 each occurrence - Fire/Tenant Legal

2. Workers Compensation insurance in accordance with Title 51 of the Revised Code of Washington (RCW).

3. All Risks Property insurance on a replacement cost basis, covering YMCA's tenant improvements, trade fixtures, and business and personal property.

10.2 City-Furnished Coverages and Limits of Liability: The City shall maintain in full force and effect at all times during the Term of this Lease All Risks Property Insurance for the Building, including earthquake and flood, on a replacement cost basis. Upon request, City shall cause its Property Insurance representative to issue certification of Property insurance coverage to YMCA.

10.3 Mutual Waiver of Property Insurance Subrogation: YMCA and the City hereby waive their respective (a) insurer's rights of subrogation in favor of the other with respect to perils covered by insurance required under this Agreement, and (b) their respective rights of recovery against one another for claims falling within policy deductible amounts, except to the extent that the other party caused or contributed to the loss.

SEA CITY CLERK'S

10.4 General Terms and Conditions (Not Applicable to Worker's Compensation):

1. Any self-insured retention in excess of $25,000 must be disclosed and is subject to the City's approval. YMCA shall be responsible for paying any claims that fall within amount of the self-insured retention. In order for the City to approve a self-insured retention about the stated amount, YMCA must state, in writing, that it will protect and defend the City of Seattle as an additional insured under its self-insured retention to the same extent as City would be protected under a commercial insurance policy meeting the requirements set forth herein has been issued and, in addition, provide detailed information as to how and to whom the City should direct any notice or tender.

2. The City reserves the right to approve any insurer, form or type of coverage. Unless the City approves otherwise, all insurers shall be licensed to do business in the State of Washington and rated A-:VII or higher in the current A.M. Best's Key Rating Guide; or issues as surplus lines under the provisions of chapter 48.15 RCW by a Washington State licensed broker.

3. The City of Seattle shall be named as an additional insured on the CGL insurance for primary and non-contributory limits of liability.

4. City reserves the right to periodically review the appropriateness of coverages and/or limits of liability in view of inflation and/or changing industry conditions and to reasonably require an increase in such coverages and/or limits of liability upon ninety (90) days' written notice to YMCA and provided such increases are reasonable with respect to market practices.

5. If YMCA fails to maintain insurance as required herein, the City may procure the same and charge YMCA for the full expense thereof, which YMCA shall pay upon demand.

6. YMCA shall not keep or use in or about the Premises any article which is prohibited by City's insurance policy. YMCA shall pay immediately any increase in City's premiums for insurance during the term of this Lease that results from YMCA's use of the Premises.

10.5 Evidence of Insurance

1. Except with respect to Workers' Compensation insurance, before occupying the Premises, YMCA shall provide City with evidence of insurance that it has complied with the insurance requirements hereunder, including coverages, limits of liability and other terms and conditions specified in this Section.

CITY CLERK

2. As respects CGL insurance, evidence of insurance must include a copy of the actual designated additional insured endorsement or blanket additional insured policy wording that documents that "The City of Seattle" is an additional insured for primary and non-contributory limits of liability.

3. As respects all coverages, each policy must include evidence that the policy will not be cancelled without at least thirty (30) days' written notice of cancellation having been delivered to the City, except in cases of non-payment of premium, in which case, cancellation may occur upon ten (10) days' written notice.

4. The certificate holder to whom evidence of insurance shall be sent is:

The City of Seattle Department of Parks & Recreation
Parks Concessions Coordinator
Business Resources Office
6310 N.E. 74th Street, #109E
Seattle, WA 98115-8164

Certification shall also be sent to the City's Risk Manager at facsimile number (206) 470-1270 or as an email attachment in PDF format sent to riskmanagement@seattle.gov.

ARTICLE 11. CITY'S CONTROL OF PREMISES AND VICINITY

All common and other facilities provided by the City in or about the Premises, including parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may, therefore, do any and all of the following (among other activities in support of DPR or other municipal objectives) without incurring any liability whatsoever to YMCA:

11.1 Change of Vicinity. Increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, and parking areas in the vicinity of the Premises;

11.2 Traffic and Parking Regulation. Regulate all traffic near and adjacent to the Premises, including the operation and parking of vehicles of YMCA and its invitees, employees, and patrons, and including the relocation or removal of the parking spaces adjacent to the Premises. YMCA understands that the parking spaces adjacent to the Premises are not reserved for YMCA use but may be used by YMCA, its invitees, employees, and patrons on an as available basis;

11.3 Display of Promotional Materials. Erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

DAS CITY CLERK

11.4 Promulgation of Rules. Promulgate reasonable rules and regulations from time to time regarding the use and occupancy of any DPR property including but not limited to the Premises; and

11.5 Change of Businesses. Change the size, number, and type and identity of any concessions, stores, businesses, programs, and operations being conducted or undertaken in the vicinity of the Premises.

11.6 DPR Ability to Show Premises. At any time during the term of this Agreement, DPR shall have the right to show the Premises to other prospective users at its convenience, upon reasonable notice to YMCA.

ARTICLE 12. RENOVATIONS, IMPROVEMENTS, ALTERATIONS, ADDITIONS

12.1 Prior Written Consent of DPR Required. YMCA shall make no alteration, addition, renovation, or improvement in or to the Premises without first obtaining the written consent of DPR, whose consent shall be given or withheld in its sole discretion. All alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of YMCA. DPR reserves the right to review and approve or disapprove YMCA plans, specifications, and proposed contractors for any and all such alterations, additions, renovations, and improvements. DPR reserves the right to impose restrictions or conditions upon its consent to any aspect of any work, including without limitation, the requirement that YMCA appropriately bond such work, that YMCA enter into written contracts for such work in a form approved by DPR, and follow any applicable municipal bidding requirements.

12.2 Any and All Approved Renovations or Improvements are the Property of DPR. Any and all alterations, additions, renovations, or improvements shall remain in and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Agreement; provided, to the extent that DPR determines in its sole discretion that it approves and that it is practicable, YMCA may remove any approved improvements at YMCA's sole expense. If so removed, YMCA shall repair at its sole expense any damage done to the Premises as a result of such removal.

The alterations, additions, renovations, and improvements addressed in this Article expressly include, without limitation, those made and installed pursuant to any prior permits or agreements; all items acquired by YMCA with any grant funds provided by or through DPR; and all capital improvements and fixtures installed pursuant to any construction agreement.

12.3 Programming and Use Fee Obligation in the Event of Approved Alterations or Improvements. If YMCA obtains DPR approval and undertakes an alteration, addition, renovation, or improvement, and if during such undertaking the Premises are wholly or partially unusable, then YMCA's obligation to provide Community Programming under Article 3 shall be abated wholly or partially, as

DNS CITY CLERK

reasonably determined by the Superintendent and confirmed by one or more notices to YMCA, for the duration of such unusable or partially unusable state. YMCA's obligation to pay Use Fees, however, shall not be abated.

ARTICLE 13. DAMAGE OR DESTRUCTION

13.1. Report of Damage or Destruction. If the Premises are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, YMCA shall notify DPR in writing within twenty-four (24) hours after its discovery.

13.2 Use Fee Obligation in Event of Damage or Destruction. If the Premises are destroyed or damaged by fire or other casualty, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same), and if YMCA has given timely notice of such destruction or damage as provided by this Article, then YMCA's obligation to pay Use Fees shall be abated until the date that the Premises are made usable. The unusability of the Premises and the duration of any such Use Fee abatement shall be reasonably determined by the Superintendent and confirmed by one or more notices to YMCA. If only a portion of the Premises is damaged or destroyed by fire or other casualty but the remainder of such Premises remains usable, as reasonably determined by the Superintendent, and YMCA has given timely notice of such destruction or damage as provided by this Article, then YMCA shall pay a reduced amount of Use Fee that is proportionate to the extent of the Premises that remains usable for the purposes identified in Article 2 hereof, which reduced Use Fee amount shall be reasonably determined by the Superintendent and identified by notice to YMCA, and paid by YMCA through the date reasonably specified by the Superintendent in such notice or the later date specified in any subsequent notice.

13.3 Community Programming Obligation in Event of Damage or Destruction. If the Premises are destroyed or damaged by fire or other casualty, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same), then YMCA's obligation to provide Community Programming shall be abated until the date that the Premises are made usable. The unusability of the Premises and the duration of any such Community Programming abatement shall be reasonably determined by the Superintendent and confirmed by one or more notices to YMCA. If only a portion of the Premises is damaged or destroyed by fire or other casualty but the remainder of such Premises remains usable, as reasonably determined by the Superintendent, then YMCA shall offer a reduced schedule of Community Programming and/or offer Community Programming with a reduced capacity, as shall be reasonably determined by the Superintendent, in consultation with YMCA, and identified by notice to YMCA.

13.4 Rebuilding and Repair. The City, in its sole discretion, may either repair, rebuild, or demolish the Premises. If City elects to repair or rebuild, then upon written notice from the Superintendent, YMCA shall re-occupy the Premises, the Use Fee abatement or reduction provided pursuant to this Article shall be discontinued, the full

DNS CITY CLERK

Use Fee shall again be due and payable, and the Community Programming schedule shall resume. The City shall not be liable to YMCA for damages, compensation or any other sum for inconvenience, loss of business, or disruption arising from any repair, rebuilding, or closure of any portion or the whole of the Premises. Nor shall City be required to repair or replace any equipment or property located on the Premises and owned or maintained by YMCA or other users of the Premises.

13.5 Termination Rights in Event of Damage or Destruction.

By YMCA: If a loss to any portion of the Premises effectively renders the entire Premises unusable in the reasonable opinion of the Superintendent, then YMCA may elect to terminate this Agreement.

By City: Unless DPR, within sixty (60) calendar days after the happening of any such damage or casualty, gives notice to YMCA of the City's election to restore the Premises, this Agreement shall automatically terminate.

ARTICLE 14. CONDEMNATION

If any part of the Premises shall be taken or condemned, and a part thereof remains that is susceptible of occupation hereunder, this Agreement shall, as to the part so taken, terminate as of the date title shall vest in the condemner, and the Use Fee payable hereunder shall be adjusted so that YMCA shall be required to pay for the remainder of the term of this Agreement only such portion of the Use Fee as the number of square feet in the part remaining after the condemnation bears to the number of square feet of the entire Premises immediately prior to the condemnation; but in such event DPR shall have the option to terminate this Agreement by notice to YMCA within thirty (30) days of the date when title to the part so condemned vests in the condemner. If part or all of the Premises is taken or condemned, all compensation awarded upon such condemnation or taking shall go to the City, and YMCA shall have no claim to any of the same, and YMCA hereby irrevocably assigns and transfers to the City any right to compensation or damages payable by reason of the condemnation of all or a part of the Premises.

ARTICLE 15. COMPLIANCE WITH LAW

15.1 General Requirements. YMCA, at no cost to the City, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and the rules, regulations, orders, and directives of their administrative agencies and the officers thereof, as such enactments now exist or are hereafter enacted or promulgated. Whenever YMCA is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any of its officers, employees, volunteers, contractors, subcontractors, agents, or invitees, or any person admitted to the Premises, YMCA shall immediately desist from and/or prevent or correct such violation.

CITY CLERK

15.2 Licenses and Other Authorizations. YMCA, at no cost to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof, and shall submit to DPR evidence of YMCA's satisfaction of all such requirements prior to the commencement of any modification of the Premises. YMCA shall be responsible for payment of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a certificate of occupancy prior to the use or occupancy of any modified portion of the Premises.

15.3 Equality Of Treatment. Without limiting the generality of Section 15.1, YMCA shall conduct its business in a manner that assures fair, equal, and nondiscriminatory treatment at all times, in all respects, to all persons in accordance with all applicable laws, ordinances, resolutions, rules, and regulations. Any failure to comply with this provision shall be a material breach of this Agreement.

15.4 Nondiscrimination. Without limiting the generality of Section 15.1, YMCA will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

15.5 Americans With Disabilities Act Compliance. Without limiting the generality of Section 15.1, the YMCA, at no cost to the City, shall comply with all requirements of the Americans With Disabilities Act (ADA), as now or hereafter amended, and all rules and regulations implementing the same in connection with all aspects of its use and operation of the Premises hereunder; provided, however, that the City shall be responsible for ADA compliance with respect to any alterations or improvements it makes to the Premises.

15.6 Recycling of Waste Materials: YMCA, at no cost to the City, shall collect, sort, and separate into such categories as may be legally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Premises at such minimum frequency as is specified by the DPR. The City reserves the right to refuse to collect or accept from YMCA any waste product that is not sorted and separated as required by law, ordinance, rule, or regulation, and to require YMCA to arrange for the collection of the same at YMCA's sole cost and expense using a contractor satisfactory to the City. YMCA shall pay all costs, fines, penalties, and damages that may be imposed on City or YMCA as a consequence of YMCA's failure to comply with the provisions of this subsection.

SEA CITY CLERK

ARTICLE 16. LIENS AND ENCUMBRANCES AND CLAIMS

YMCA shall keep the Premises free and clear of any liens and encumbrances and claims arising or growing out of its use and occupancy of the Premises. At the City's request, YMCA shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

ARTICLE 17. VISUAL ARTIST RIGHTS ACT

17.1. Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without Superintendent's Prior Express Written Consent. The City reserves to and for itself the right to approve or disapprove of the installation or integration on or into the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration on or into the Premises of a work of visual art. YMCA shall not, without the prior, express, written consent of the Superintendent, install on or integrate into, or permit any other person or entity to install on or integrate into, any portion of the Premises any "work of visual art." The Superintendent's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in the Superintendent's discretion.

17.2. YMCA's Indemnification of the City Against Liability under Visual Artists Rights Act of 1990. YMCA shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of this section; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by YMCA or any of its officers, employees, agents, invitees or licensees. This indemnification obligation shall exist regardless of whether the City or any other person employed by the City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

ARTICLE 18. RECORDS, BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

18.1 YMCA to Maintain Records. YMCA shall maintain records documenting the following:

* identify all Community Programs offered, attendance, any fees charged, any waivers granted, and basis therefore;

SEA CITY CLERK

* identify all community group users, time of use, and purpose of use;
* maintain all receipts and any other records relating to any and all maintenance and repair; and
* all forms and records related to taxes owed and paid.

These records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by DPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract.

18.2 YMCA to Assist City in Providing Data to State and Federal Governments. Upon the request of the City, YMCA shall promptly provide, at YMCA's sole expense, necessary data to enable the City to fully comply with any and every requirement of the State of Washington or the United States of America for information or reports relating to this Agreement and to YMCA's use of the Premises.

18.3 Retention of Records. YMCA shall retain in King County all records, documents, and other material relevant to this Agreement for six (6) years after the expiration or termination of this Agreement, and make them available for inspection by the City at such times and on such forms as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 19. NAME, SIGNS OR ADVERTISING

19.1 The YMCA Name. The YMCA shall operate its programs under the name "the Y at Cascade People's Center" and may not refer to itself as the "Seattle Department of Parks and Recreation" or "The City of Seattle" on any correspondence, merchandise, or marketing information. In other cases, naming may simply refer to Community Programs or events at Cascade People's Center.

19.2 YMCA Signs. YMCA shall have the right upon prior written approval from DPR to install a sign on the Premises that identifies the same for YMCA purposes. Any such sign shall include the name "The Cascade People's Center" and shall be constructed in a style, size and installed in a method consistent with architectural integrity of the facility and DPR's Design Guidelines for Community Center Signs. Reader boards, kiosks, and other similar signage types shall not be permitted.

19.3 DPR Signs. DPR shall have the right to post its building name, logo, and name in an appropriate size on the exterior of the building in a manner compatible with the signage it may approve for YMCA.

19.4 Bulletin Boards/ Other Interior Signs or Postings. YMCA shall have the right to install bulletin boards and other interior signage or postings within the Premises, and to display community related notices, posters, and similar materials thereon as related to YMCA's operation of the Premises.

SEA CITY CLERK

19.5 No Other Signage on Premises. Other than the DPR approved exterior signage and interior bulletin boards and other interior signage permitted by Subsections 19.2 and 19.4, above, YMCA shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever exterior to the Premises, without first obtaining DPR's written consent thereto. At the expiration or sooner termination of this Agreement, YMCA will remove all signage it installed and repair any damage or injury to the Premises caused thereby at YMCA's sole expense.

ARTICLE 20. WASTEFUL AND DANGEROUS USE

YMCA shall not commit or suffer any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Park Code as now existing or hereafter amended, or any activity that is inconsistent with the uses authorized by this Agreement or that will be dangerous to life or limb, or any activity that will increase any insurance rate upon the Premises

ARTICLE 21. DPR USE OF PREMISES; OTHER COMMUNITY GROUPS USE OF PREMISES

21.1 DPR Use of Premises. DPR shall have access to the Premises at no charge for community hearings and other DPR meetings on an as available basis by contacting YMCA at least two (2) weeks in advance of the proposed use date. The parties agree that the space will be considered "available" if there is no other scheduled program at the time of DPR's request. DPR shall provide qualified staffing if it uses the Premises on a day or during a time that YMCA does not open the Premises; or, if DPR staff is not available to do such opening and closing, then YMCA shall perform such function and DPR will pay YMCA for its reasonable opening and closing charges. Such use by DPR shall not entitle DPR to use any YMCA equipment during its use without the prior approval and supervision of YMCA staff.

21.2 Other Community Groups Use of the Premises.

21.2.1 YMCA Obligation. YMCA shall have the obligation to allow the subordinate use of the Premises by other community groups for small meetings and related activities. In no event shall the fact of subordinate uses relieve YMCA of any of its obligations under this Agreement.

21.2.2 Permissible Fees Charged. YMCA may charge fees for use of the meeting rooms inside the facility; provided that such fees shall be charged uniformly and shall be consistent with the Seattle Parks and Recreation Fees and Charges for Community Meeting Rooms. If YMCA waives any fees for particular users, YMCA shall document all such waivers, describing the user and category of waiver or in-kind value received in lieu of payment, and YMCA shall provide such documentation to DPR at the end of the lease term. Additionally, YMCA may charge for opening, closing, and staffing charges.

DNS CITY CLERK

21.2.3 Scheduling. YMCA shall allow community groups use of the Premises on an as available basis. The parties agree that the space will be considered "available" if there is no other scheduled program at the time of user's request, and said group has been qualified through YMCA and/or DPR.

21.2.4 Supervision, Volunteer, and Staffing. YMCA shall provide qualified staffing, volunteers, and supervision or assign volunteers during all subordinate uses of the Premises under this Article 21.1.4. YMCA shall be responsible for opening and closing the facility if the use is on a day or during a time that YMCA does not open the facility. YMCA shall be responsible for the security of equipment and property inside the facility.

ARTICLE 22. ASSIGNMENT & OTHER INTEREST TRANSFERS

Except as permitted under Sections 2.3 and Article 21, YMCA shall not assign, mortgage, encumber, or otherwise transfer any of its rights under this Agreement, in whole or in part, including leasing or licensing use or occupancy of the Premises or any part thereof or any of the rights or privileges or any portion of the Premises granted under this Agreement to any other person, firm, or corporation without the prior written authorization of DPR, which authorization may be granted, withheld, or conditioned in each instance in the sole discretion of the Superintendent. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. The rights and privileges granted hereunder, and the Premises are not assignable or transferable by any process or proceedings in any court, or by attachment. Any assignee or other transferee approved by DPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by YMCA. Any transfer of this Agreement from YMCA by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Agreement. If YMCA in any manner permits anyone to occupy all or any portion of the Premises for any purpose not within the intent of this Agreement, such permission shall be deemed an assignment or other interest transfer, as deemed appropriate by DPR. DPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through YMCA. The City may charge YMCA reasonable costs of processing any assignment or other interest transfer, including attorney's fees (not to exceed $500). In no event shall any assignment or any other transfer of this Agreement relieve YMCA of any of its obligations under this Agreement unless the assignment or other transfer is to a party that is of equal or better credit; and as a condition to DPR's approval of an assignment or other transfer, YMCA and such assignee or other transferee shall agree in writing to be jointly and severally liable for the performance of all of YMCA's obligations under this Agreement.

ARTICLE 23. DEFAULT, BREACH, AND TERMINATION

23.1 Default defined. In the event that YMCA violates, breaches, or fails to

keep or perform any term, provision, covenant, or any obligation of this Agreement; or if YMCA abandons, deserts, vacates, or otherwise removes its operations from the Premises without the prior consent of the Superintendent; or if YMCA files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for YMCA's assets or if YMCA makes an assignment for the benefit of creditors, or if YMCA is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; or if YMCA violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of any separate agreement between the City and YMCA addressing funding or construction of an alteration, addition, renovation, or improvement or other construction project on the Premises, then YMCA shall be deemed in default ("Default"). City shall be in Default if City fails to perform its obligations under this Agreement within thirty (30) days after its receipt of written notice of nonperformance from YMCA.

23.2 Process for Termination of Agreement.

23.2.1 For Cause. Either party may terminate this Agreement in the event that the other party has Defaulted and such Default has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after written notice of Default has been provided to such other party, or within ten (10) days if such Default is for nonpayment of any monetary obligations owed under this Agreement; provided, however, that if the nature of such party's obligation (other than monetary obligations) is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

23.2.2 For Reasons Beyond the Control of the Parties. Either party may terminate this Agreement without recourse by the other party where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as but not limited to: acts of Nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

23.3 Notice of Termination. Notice of termination pursuant to Subsections 23.2.1 shall be given pursuant to Article 26 from the party terminating this Agreement, after any applicable cure period in 23.2.1 has elapsed, and to the other party not less than five (5) days prior to the effective date of termination.

23.4 Superintendent to Determine YMCA Default on Behalf of City. The Superintendent shall have the right to determine, on the City's behalf, whether YMCA has defaulted in the performance of its obligations hereunder or has otherwise materially breached any of the terms and conditions of this Agreement.

23.5 Re-entry by City Upon Termination. Upon the termination of this

Agreement, the City may re-enter said Premises. YMCA shall be liable and shall reimburse City upon demand for all costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of YMCA. The City shall have the right to sell such stored property, without notice to YMCA or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from YMCA to the City; the balance, if any, shall be paid to YMCA.

23.6 City's non-exclusive remedies upon Termination due to Default of YMCA. Notwithstanding such re-entry and anything to the contrary in this Agreement, in the event of the termination of this Agreement because of the Default of YMCA, the liability of YMCA for the Use Fees and all other sums due under this Agreement provided herein shall not be extinguished for the balance of the term of this Agreement and shall be subject to the late fees and interest provided for in Section 5.6. YMCA shall also be liable to City for any other amount necessary to compensate City for all the detriment proximately caused by YMCA's failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington and at equity.

ARTICLE 24. TERMINATION AT OPTION OF CITY OR YMCA

CITY. In the event City determines, at any time during the term of this Agreement, to terminate the contract for convenience, it may do so upon written notice by DPR to YMCA upon ninety (90) days' prior notice in accordance with all terms and conditions of this Agreement.

YMCA. In the event YMCA determines, at any time during the term of this Agreement, that the Premises are no longer required for its use, this Agreement shall be subject to termination upon ninety (90) days' prior written notice by YMCA to DPR and in accordance with all terms and conditions of this Agreement.

ARTICLE 25. VACATING OF PREMISES

25.1 Surrender & Delivery. Upon the expiration or termination date of this Agreement, whichever is earlier, YMCA shall surrender the Premises in a broom clean condition, reasonable wear and tear excepted. YMCA shall promptly deliver to DPR all keys that YMCA, and any of its officers, agents, and employees have to the Premises.

Immediately following the vacating of the Premises and the surrender of the same to the City, YMCA shall inspect the Premises with DPR to determine the condition of the Premises. The results of such inspection shall be summarized by DPR on a Premises inspection report, a copy of which shall be provided to YMCA. If DPR determines that YMCA has failed to surrender the Premises in a broom clean condition, DPR shall have the right, but not the obligation, to restore the Premises to a broom clean condition at the expense of YMCA. YMCA shall reimburse the City for its costs therefor, including any administrative costs.

25.2 Removal of YMCA's Property. Prior to the expiration date of this Agreement, or in the event this Agreement is terminated, within fifteen (15) days after the termination date, whichever is earlier, YMCA shall remove, at its sole expense, all equipment and property owned or installed by YMCA in, on, or from the Premises, unless DPR agrees in writing that any requested items may stay. YMCA shall take due care to not injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Agreement, ordinary wear and tear and improvements, additions, and alterations, approved by the City excepted.

25.3 Storage of YMCA's Property. If YMCA fails to remove equipment and property owned or installed by YMCA by the expiration date or sooner termination date, the City may, but shall not be required to, remove such material from the Premises and store the same, all at YMCA's expense; and in the event the City removes or arranges for the storage of such material, YMCA shall reimburse the City for its costs therefor, including any administrative costs.

25.4 Holdover. If YMCA fails to surrender the Premises upon the expiration or sooner termination of this Agreement without DPR's prior written consent, YMCA shall indemnify, defend, and hold harmless the City from all losses, damages, liabilities, and expenses resulting from such failure, including without limiting the generality of the foregoing, any claims made by any succeeding user of the Premises arising out of such failure. Additionally, all terms and conditions of this Agreement shall apply during the period of any holdover, except that in addition to the Use Fee, YMCA shall owe City an additional fee of $250.00/day for each day after the expiration or sooner termination of the Agreement that YMCA fails to surrender and deliver the Premises in accordance with all of YMCA's obligations under this Agreement.

25.5 No Claim for Removal. In no event shall YMCA make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or any other damage suffered by the YMCA arising out of removal operations under this Agreement.

ARTICLE 26. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations,

offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either served upon the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to YMCA:

David Kelly-Hedrick
Metrocenter YMCA
909 Fourth Avenue
Seattle, WA 98104

And to

Bob Gilbertson, CEO
YMCA Of Greater Seattle
909 Fourth Avenue
Seattle, WA 98104

If to the City:

The City of Seattle
Department of Parks and Recreation
Concession Coordinator
Business Resources Office
6310 74th Street, #109E
Seattle, WA 98115-8164

or to such other address as either party may specify for itself in a notice to the other.

ARTICLE 27. MISCELLANEOUS

27.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

27.2 Time. Time is of the essence.

27.3 Partial Invalidity. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

27.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns, and subsidiaries.

27.5 Applicable Law. This Agreement shall be interpreted under the laws of the State of Washington.

27.6 Jurisdiction and Venue. The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be the Superior Court of the State of Washington for King County.

27.7 No Partnership or Joint Venture Created. The City does not by this Agreement, in any way or for any purpose, become a partner or joint venture of YMCA in the conduct of its business or otherwise.

27.8 City's Remedies Cumulative. The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

27.9 Amendments. No modification of this Agreement shall be binding upon the City or YMCA unless reduced to writing and signed by an authorized representative of each of the parties hereto.

27.10 Excuse and Suspension of Obligations (Force Majeure). If a party's performance (other than any monetary obligations) under this Agreement is prevented by an unforeseeable act of Force Majeure (see 27.10.1 below), then performance of such affected obligation shall be suspended (excluding, however, any monetary obligations), but only for the duration of such condition. The existence of more than one (1) such condition on a given day shall result in only a one (1) day extension.

27.10.1 Acts of Force Majeure include, but are not limited to:

(1) Acts of Nature;
(2) Acts of war or public rebellion;
(3) Fire or other casualty for which neither party is responsible;
(4) Quarantine or epidemic;
(5) Strike or defensive lockout;
(6) Unusually severe weather conditions which could not have been reasonably anticipated; and
(7) Unusual and unforeseen delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to City was available at the time the delay became foreseeable or at any later time when delay could have been avoided by prompt action.

27.11 No Third Party Rights. No term or provision of this Agreement is intended

to be, or shall be, for the benefit of any person, firm, organization, or corporation that is not a party hereto nor shall any person, firm, organization, or corporation other than a party hereto have any right or cause of action hereunder.

27.12 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by YMCA, nor shall such a document waive any failure by YMCA to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

27.13 Exhibits. The following documents are attached hereto and hereby incorporated into this Agreement as if set forth in full herein:

Exhibit 1: Premises Map
Exhibit 2: Sample Public Benefits Report

27.14 Entire Agreement. This Agreement and all attachments and exhibits pertaining to same constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written understandings, agreements, promises, or other undertakings between the parties regarding the subject matter hereof. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of the Agreement are not to be construed against any party on the basis of such party's preparation of the same.

IN WITNESS WHEREOF, the parties have executed this contract:

_____ _____
Bob Gilbertson, Chief Executive Officer Date
YMCA of Greater Seattle

_____ _____
Christopher Williams, Acting Superintendent Date
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION

Exhibits: 1 – Premises Map

2 – Sample Public Benefit Report

Exhibit 1
Premises

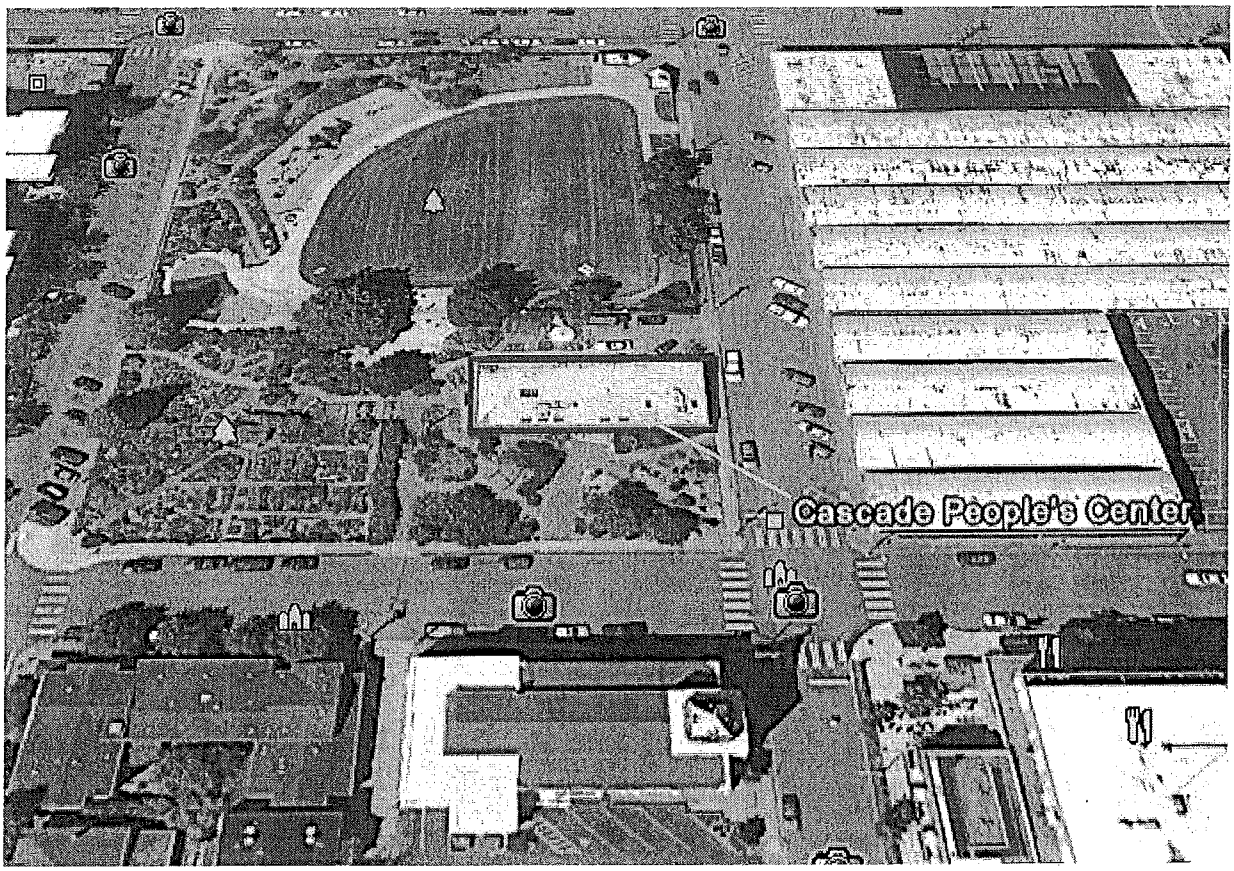

Exhibit 2
Sample Public Benefit Report

Schedule of Public Benefits

YMCA of Greater Seattle shall provide the following for the City of Seattle Department of Parks and Recreation and residents of the City:

I. Public Access

1. Public Access to facility and resources. YMCA will provide 20 hours a week of free access to the facility meeting rooms, computer lab, kitchen and child/youth areas for meetings, classes, and workshops, and family and community events to local organizations, neighborhood groups, individuals, and families. Resources within the facility including telephone, computer, and library and kitchen equipment will also be available for community use during open access hours.

II. Environmental Educational Programs

1. Community Service. YMCA shall recruit community members including students from the Seattle Public Schools to participate in work parties to teach, demonstrate, and implement environmental sustainability practices and landscaping. In partnership with EcoCascade, YMCA will host two four-hour work parties, one of which will be targeted to youth for a total of eight activity hours. Each work party will consist of 20 volunteers.

We anticipate that many volunteers will participate in more than one work party for an estimated total of 40 duplicated/30 unduplicated volunteers and 60 volunteer hours.

2. EcoEducation Workshops. In partnership with EcoCascade, YMCA will host two three-hour workshops on environmental sustainability principles and practices. One of the workshops will target youth. Each workshop will include up to 50 participants, many who will attend both workshops.

We anticipate a total of 100 duplicated/75 unduplicated participants for a total of six hours of education.

III. Community Building and Cultural Events

In partnership with YMCA of Greater Seattle and other community organizations

SEA CITY CLERK

and businesses, YMCA will host two three-hour festivals or large community events to celebrate community assets and/or cultural traditions. Each event is anticipated to attract over 200 participants of all ages.

IV. Facility Maintenance and Repair

1. YMCA will recruit and support volunteers to provide a minimum of XX hours a week in general janitorial and building maintenance activities for a total of XXX hours valued at $XXXX based upon the rate of $____ an hour for volunteer service as defined by Independent Sector. http://www.independentsector.org/programs/research/volunteer_time.html

2. YMCA will oversee and support Facility and Grounds Work Parties with new REI employees for one hour each month for 10 months. Typical work parties include 10 volunteers. Total of 100 volunteer hours valued at $XXXX based upon the rate of $____ an hour for volunteer service as defined by Independent Sector.

Summary of Activities for Public Benefit- Lease:

Activity Category	Activity Hours	Staff Hours *	Volunteer Hours	Volunteer Value	Total Volunteers
Public Access					
Eco Work Parties					
Eco Workshops					
Community Festivals					
Weekly Facility Maintenance					
Grounds/Facility Work Parties					
Total					
FTE Equivalent (XXX hrs/wk or XXX/yr)					

* Staff Hours include planning, collaboration, volunteer support and coordination, administration, and facilitation of activities.

YMCA of Greater Seattle provides the above described activities and services free of charge to community members. Therefore, the estimated value of the public benefit is based upon the expenses incurred by YMCA in the delivery of these programs and services. These expenses are outlined in the budget below.

Budget:

Salaries XX FTE)	
Benefits/Taxes (.17)	
Volunteer Value	
Total	

Salary based upon .8 FTE (XXXX hr/yr) Program Coordinator @ $_____/hour.
Benefits @ 25% of Salary include FICA, L&I, Taxes, Medical, Dental, etc., Benefits @ .17 include partial costs of items above.
* Federally Approved Rate at .308 of Salaries

CITY CLERK

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Charles Ng 684-8001	Amy Williams/233-2651

Legislation Title:
AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation and Cascade Park; authorizing the Superintendent to enter into a five-year agreement, with options to extend, with YMCA of Greater Seattle to operate and provide management of the Cascade People's Center located at 309 Pontius Avenue North, Seattle, WA 98109.

Summary of the Legislation:
The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a five-year Agreement with YMCA of Greater Seattle (YMCA) to manage and operate the Cascade People's Center (CPC) as a community center for programming and public purposes. The Cascade People's Center also has a computer lab that the YMCA will manage for the community's use. The proposed agreement includes an option to extend the lease for one five-year extension at the discretion of DPR.

Background:
The property that the Cascade Peoples Center is on was purchased by the City in 1929 and 1932. The building was built by the Work Projects Administration (WPA) in 1938 at a cost of $17,000. WPA notes describe the building as a shelter house consisting of a restroom and caretakers and instructors rooms. In the 1970's nearby Immanuel Lutheran Church operated a free medical clinic and community meeting space at the facility. In 1995, the City Council adopted the Cascade Playground Site Plan. The plan included two options for the southeast portion of the park, based on whether the existing building on site was maintained for community use or demolished for open space purposes. In 2001, the Superintendent decided the building would be retained for community purposes after a public involvement process that included a hearing before the Board of Park Commissioners. However, no funding was available for operating or providing programs at the building, now known as the Cascade People's Center.

Since 2000, DPR partnered with the Cascade Neighborhood Council (CNC) and other community organizations to provide community programming in the building. In 2003, DPR entered into a formal three-year agreement with the CNC (Ordinance 121189) for the purpose of operating the CPC as a recreational community development center. The agreement included a seven year renewal option.

In 2006, CNC partnered with Lutheran Community Services (LCS) to continue programming the facility. At this time, LCS became the lead service provider with financial support from the CNC. In 2010, the CNC applied for and received a grant for the current computer lab at the

DPS CITY CLERK

center. They also received donations from Vulcan to upgrade the kitchen.

In July 2010, LCS informed DPR of their decision to terminate their partnership due to fiscal hardships and a change in direction. In August 2010, CNC agreed to fill in and continue to provide volunteer coordination of the community services at the Cascade People's Center until DPR completed a Request for Proposal (RFP) process. The RFP process occurred in spring 2011; two proposals were received, one from the YMCA and one from the Cascade Neighborhood Council. The proposals were evaluated by a panel of four representatives (three from DPR and one from the Department of Neighborhoods), and the panel determined that the YMCA of Greater Seattle was the most qualified proposer.

The proposed agreement allows YMCA to operate two outdoor youth leadership programs at CPC, Boys Outdoor Leadership Development (BOLD), and Passages Northwest wilderness expeditions. The agreement also requires YMCA to provide a minimum of twenty hours a month of public access to the facility meeting rooms, computer lab, kitchen and child/youth areas for meetings, classes and workshops, family and community events for local organizations, neighborhood groups, individuals, and families. In addition, the YMCA will organize a Cascade People's Center Community Advisory Council with representatives who live and work in the neighborhood. This group will provide overall guidance and suggestions on the types and levels of programming offered at the CPC and serve as a hub of volunteerism, including a full volunteer program consisting of recruitment, screening, and oversight to support volunteers.

The annual rent owed by YMCA is $65,500 per year, which can be offset with the provision of public benefits as described in the above section. Eligible public benefits can also include routine maintenance. YMCA will be responsible for providing at least ten hours a week in general janitorial and building maintenance activities using staff and volunteers. These maintenance hours can be added to the service credits to offset the amount of rent due to DPR annually. The combined public benefits offered by YMCA are anticipated to cover all but $1,000 of the annual rent.

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Appropriations Notes:

CITY CLERK

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from base fee payment	$ 1,000.00	$ 1,000.00
TOTAL			**$ 1,000.00**	**$ 1,000.00**

Revenue/Reimbursement Notes:
The rental fee for the Cascade People's Center building is $65,500 annually. The agreement includes a plan for the YMCA to offset the rental payment to DPR with comparable benefits to the community and DPR for the use of the Cascade People's Center. Such offsets, called Service Credits, are to be approved in writing by DPR. Service Credits are expected to fully offset all rental fees assessed except for a $1,000 per year required cash payment. An example of different types of Service Credits can be found in Exhibit 2 of the Agreement.

The new lease agreement will also transfer utility and maintenance costs for the premises from the City to YMCA. This change will save DPR $3,500 to $5,000 per year on utilities and approximately $10,000 in maintenance and operating costs.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2012 Positions	2012 FTE	2013 Positions*	2013 FTE*
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Position Notes:

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2012 Expenditures	2013 Anticipated Expenditures
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Spending/Cash Flow Notes:

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** No

b) **What is the financial cost of not implementing the legislation?**
The proposed five-year agreement would save DPR at least $13,500 annually or $67,500 in operation and maintenance costs over the term of the initial five-year agreement. These savings will continue if DPR agrees to the five-year extension. By not implementing this legislation, DPR would not only lose these savings, but also remain accountable for a facility that lacked any available funding for recreation programs.

c) **Does this legislation affect any departments besides the originating department?** No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** DPR does not have any available funding to operate the facility. Therefore, this partnership is the only option available that will enable the Department to activate the Cascade People's Center and provide community outreach and programming options for the public.

e) **Is a public hearing required for this legislation?** No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No

g) **Does this legislation affect a piece of property?** Yes, the Cascade People's Center located at 309 Pontius Avenue North.

h) **Other Issues:**

List attachments to the fiscal note below:

Attachment A: Contract Summary Form

Charles Ng/RH
DPR Cascade People's Center 2012 FISC ATT A
February 7, 2012
Version #3

Attachment A
Seattle Department of Parks and Recreation

CONTRACT SUMMARY

February 7, 2012

Name of Contracting Party/ Lessee/ Concessionaire/Other: YMCA of Greater Seattle

Contract Type: Agreement

Non-Profit _X_ or **For Profit**__ ____

New or **Renewal (or extension of existing Lease)** New

Term of Original Agreement: Five years with an option to extend an additional five years at the discretion of the Superintendent of Parks and Recreation.

Purpose of Agreement: To enter into a five-year Agreement with YMCA of Greater Seattle to use the Cascade People's Center (CPC) as a community center for public purposes including the Boys Outdoor Leadership Development (BOLD) program and as a recreational, educational, and community program facility open to and available for public use.

Public Benefit: YMCA will provide 20 hours a week of free access to the facility meeting rooms, kitchen and child/youth areas for meetings, classes and workshops, family and community events to local organizations, neighborhood groups, individuals and families. Resources within the facility including telephone, computer, library, and kitchen equipment will also be available for community use during open access hours subject to supervision by YMCA volunteers or staff.

Brief description, overview, history, general terms and other pertinent info:
Beginning in 2000, DPR partnered with the Cascade Neighborhood Council (CNC) and other community organizations to provide programming in the Cascade People's Center building. In 2003 DPR entered into a formal agreement with the CNC (Ordinance 121189) for the purpose of operating the CPC as a recreational community development center.

In 2006 Lutheran Community Services (LCS) took over the lead in providing community programs at CPC. LCS received a grant to create a computer lab and also upgraded the kitchen with donations from Vulcan. In July 2010 LCS informed DPR they were ending their involvement at CPC due to fiseal hardships and a change in direction. In August 2010, CNC agreed to fill in and continue to provide volunteer coordination of the community services until DPR advertised and completed a Request for Proposal (RFP) process.

The RFP process was conducted in the spring of 2011. Two RFP responses were received and were evaluated by a panel of four (3 from DPR and 1 from the Department of Neighborhoods). YMCA of Greater Seattle was determined to be the most qualified proposer.

CITY CLERK

City of Seattle
Office of the Mayor

March 6, 2012

Honorable Sally Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which authorizes the Superintendent of Parks and Recreation to enter into an agreement for the operation of the City's Cascade People's Center located in the South Lake Union neighborhood. The ordinance authorizes a five-year agreement with YMCA of Greater Seattle with an option to extend an additional five years.

Cascade People's Center is a Department of Parks and Recreation (DPR) building that has been operated by partners to provide community programming since 2000. A formal agreement was signed by DPR and the Cascade Neighborhood Council (CNC) in 2003. In 2006, CNC partnered with Lutheran Community Services (LCS) to continue programming the facility. At this time, LCS became the lead service provider.

In July 2010, LCS informed DPR of their decision to terminate their partnership due to fiscal hardships and a change in direction. In August 2010, CNC agreed to fill in and continue to provide volunteer coordination of the community services at the Cascade People's Center until DPR completed a Request for Proposal (RFP) process. In February 2011, DPR advertised a Request for Proposal (RFP) process for a long-term provider. Two responses to the RFP were received, one from the CNC and the other from the YMCA of Greater Seattle. Both proposals were thoroughly reviewed by a team of four evaluators that included three Parks staff and one representative from the Department of Neighborhoods. The proposal from the YMCA of Greater Seattle best met the RFP review criteria and was judged to be the most advantageous to the City.

Approval of this legislation will continue community outreach and provide educational opportunities to the Cascade neighborhood. Thank you for your consideration of this legislation. Should you have questions, please contact Charles Ng, Manager of Business Resources, at 684-8001.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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Seattle, WA 98124-4749

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