



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: February 2, 2010

SUBJECT: Approve an Agreement between City of Woodland and the YMCA of Superior California to lease space and operate a Wellness Center at the Community & Senior Center and authorize the City Manager to execute the Agreement

Report in Brief

The Parks & Recreation Department is interested in making the fitness center and its equipment available to the community. In response to fiscal and other issues that may have made City operation of the facility infeasible, Department staff has been looking for other alternatives. The YMCA of Superior California has offered to operate a Wellness Center in the facility under a lease agreement with the City of Woodland. This agreement will provide increased revenue and use of this area in the Community & Senior Center.

Staff recommends that the City Council approve an agreement between the City of Woodland and YMCA of Superior California to lease space and operate a Wellness Center at the Community & Senior Center and authorize the City Manager to execute the agreement.

Background

Phase II of the Community/Senior Center project included space and equipment for a fitness center. The facility was ready for use in March 2009. The City Council, expressing concerns over City operation of the facility, directed staff to seek other options for operating the Center. These concerns included the fiscal feasibility of City operation and potential unfair competition with private sector fitness clubs. In response to Council direction, the Department developed a Request for Proposal (RFP) seeking a partnership for operating the center. While some entities came forward to discuss the opportunity, no formal proposal was received. Staff continued to seek other options, including using the facility for contract classes.

The YMCA of Superior California approached the City with a proposal to operate the center. The YMCA Wellness Center will only provide services that act as a supplement and complement Parks & Recreation's own programming. This is an opportunity for the YMCA to grow and develop a wellness program within Woodland and to work collaboratively with City staff in the operation of

the Community & Senior Center. YMCA and City staff have discussed the opportunity and have developed framework which both believe will benefit the community.

Discussion

The YMCA Wellness Center will provide services that supplement and/or compliment Parks & Recreation programming. This opportunity allows the YMCA to grow and develop a wellness program within Woodland and also to increase collaboration with City staff in offering recreational services to the community, thus serving the mission of both agencies. The YMCA, like the City, is committed to offering services to City residents regardless of the ability to pay.

The agreement between the City and the YMCA calls for the City to provide space and equipment for the Wellness Center. This includes exclusive use of the fitness center and use of the adjacent aerobics center during “prime hours” for Wellness programming. The YMCA will operate the Wellness Center seven days-a-week. The YMCA will provide Wellness Center staff and will clean and maintain the areas of exclusive use. The YMCA will maintain the equipment and will return equipment to City upon termination of the agreement. The initial term for the agreement is five (5) years with an option to renew for an additional five (5) years.

The designated “prime hours” for use of the aerobics center are 6-8 AM; 11:30 AM until 1 PM; and 5-8 PM. The agreement allows the YMCA to request “Non-Primetime Use” which staff may approve depending on other requested uses and in accordance with the Community & Senior Center use policies. Staff believes these hours will not preclude other programs from utilizing the facility.

The YMCA will pay for use of the space, based on level of participation (memberships) and also pay a prorated share of utilities based on amount of space and hours of use. The City will be able to open up a valuable asset for community use. The agreement also calls for both agencies to meet regularly and seek other complimentary programs to benefit community members.

Fiscal Impact

The YMCA is being provided the facility to be leased on a monthly basis. If the monthly membership increases beyond a base number, a higher minimum payment will be recovered from the YMCA. The YMCA will pay a pro-rated share for utilities based upon square footage of their area of rental. The initial payments will provide approximately \$38,000 to the General Fund during the first twelve months.

Public Contact

Public notification was accomplished through posting of the City Council agenda.

Commission Recommendation

The terms of agreement between the City of Woodland/ Parks & Recreation Department and YMCA were reviewed by the Parks & Recreation Commission at the January 25, 2010 meeting. Three

Commissioners voted to recommend approval with the fourth abstaining. The abstaining Commissioner did not have sufficient information regarding the specific rates being charged for the YMCA Wellness Center or the YMCA procedures for community members to claim financial hardship and request waiver/reduction of fees. Additionally, the Commission did not have information on the cost of another associated fee, the YMCA membership fee that must be paid before an individual could enroll into the Wellness Center. The Commissioner felt the fitness facility was intended to be available to all community members, at a low rate. However, the rate could not be determined based upon insufficient detail available at the meeting. If the City Council approves the agreement, staff will work with the YMCA to clarify these issues prior to opening of the Wellness Center.

Alternative Courses of Action

1. Approve an agreement between the City of Woodland and YMCA of Superior California to lease space and operate a Wellness Center at the Community & Senior Center and authorize the City Manager to execute the agreement.
2. Do not approve agreement and direct staff to develop other alternatives for operating the Fitness Center
3. Direct staff to amend specific terms of the agreement.
4. Direct staff to develop staffing and operational plan for opening of Fitness Center within Parks & Recreation Department.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Prepared by: Krista Bain
Recreation Supervisor

Reviewed by: Carey F. Sullivan
Interim Director,
Parks & Recreation

Mark G. Deven
City Manager

Attachments

WELLNESS CENTER USE AGREEMENT

THIS USE AGREEMENT (“Agreement”) is entered into this ___th day of January, 2010, by and between the CITY OF WOODLAND, a California municipal corporation (“City”), and the YMCA of Superior California, a California nonprofit corporation (“YMCA”), on the terms and conditions set forth below:

1. **PROPERTY.**

(A) The City owns the real property generally located at 2001 East Street in the City of Woodland, County of Yolo, (the “Property”). On the Property, the City owns and operates a public community and health center (“Community and Senior Center”).

(B) Subject to the terms and conditions set forth in this Agreement, the City grants to YMCA the right to use and YMCA accepts the right to use from City (i) the approximately 2400 square feet fitness center located on the Property as depicted in Exhibit A (“Wellness Center”), (ii) the use of the approximately 5,000 square feet aerobics center located within the Property as depicted in Exhibit A (“Aerobics Center”) and (iii) locker room facilities located on the Property as depicted in Exhibit A (“Locker Rooms”) (collectively the “Licensed Area”).

(C) City also hereby grants to YMCA and its employees, agents, and guests a license in, on, across and over the exterior portions of the Property, on the terms set forth in this Agreement. It is expressly understood that all rights granted to YMCA under this Agreement are irrevocable until this Agreement expires or is sooner terminated according to the provisions of this Agreement.

2. **LICENSED AREA.**

(A) YMCA and its employees, agents, and guests shall be entitled to the exclusive use of the Wellness Center, including all fitness and audio visual equipment located in the area as of the Commencement Date of this Agreement. Title to all equipment shall remain in the City.

(B) YMCA and its employees, agents, and guests shall be entitled to the exclusive use of the Aerobics Center during the following hours: (i) 6:00 A.M. until 8:00 A.M.; (ii) 11:30 A.M. until 1:00 P.M.; and (iii) 5:00 P.M. until 8:00 P.M (“Primetime Use”). YMCA shall be entitled to request use of the Aerobics Center at any other time (“Non-Primetime Use”). City shall endeavor to provide YMCA with preferred scheduling subject to applicable Community and Senior Center rules and regulations for any requested Non-Primetime Use. YMCA shall provide the City with reasonable notice prior to any requested Non-Primetime Use. YMCA understands and agrees that all Non-Primetime Use is subject to facility availability.

(C) YMCA and its employees, agents, and guests shall be entitled to the nonexclusive use of the Locker Rooms during the Community and Senior Center’s normal business hours, as they may be changed in the City’s sole and complete discretion. YMCA shall comply with all applicable City Community and Senior Center rules and regulations regarding Locker Room use.

(D) YMCA and its employees, agents, and guests shall access the Licensed Area through the exterior door of the Community and Senior Center located adjacent to the portion of the Property commonly known as the “Wellness Center” as depicted in Exhibit A.

3. TERM.

The initial term of this Agreement (“Initial Term”) shall be for five (5) years commencing on March 1, 2010 (“Commencement Date”). Upon the written mutual consent of the Parties, which may be withheld in the sole and absolute discretion of either Party, the Agreement may be renewed for up to five (5) additional terms (each a “Renewal Term”) of one (1) year each.

4. RENT.

(A) Base Rent. Upon the Commencement Date, the monthly rent (“Rent”) shall be Two Thousand Dollars (\$2,000) per month and shall be adjusted as provided in subsection 4(B). Rent shall be payable to the City, 300 First Street, Woodland, CA 95695, or such other address provided by the City and shall be paid in advance on the first day of each and every calendar month and without demand, deduction, offset or abatement. Notwithstanding the foregoing, Rent for the months of March 2010 and April 2010 shall be prorated in equal amounts over the remaining eight months of the first calendar year of the Agreement, during which the prorated share of the March 2010 and April 2010 Rent shall be due and payable along with the applicable Rent for that month.

(B) Rent Adjustment. The Rent shall be adjusted according to the following formula: (i) at any time following the first anniversary of the Commencement Date (“Initial Adjustment Date”) when the number of YMCA memberships (“Membership Units”) has increased by ten percent or more from the current base number of seven hundred and sixty (760) Membership Units, the Rent shall be increased by five hundred dollars (\$500) and (ii) every 12 months after the Initial Adjustment Date Membership Units will be reviewed and the Rent shall be increased by one hundred twenty-five dollars (\$125) for each Membership Unit increase of twenty-five. To allow the Parties to accurately calculate the applicable Rent, the YMCA shall provide the City with written notice of the total number of Membership Units beginning five days before the Initial Adjustment Date and continuing each anniversary thereafter for the term of the Agreement.

(C) Electric and Gas Utilities. YMCA shall be responsible for the monthly prorated share of the gas and electric utilities (“Utility Cost”) for the Community and Senior Center. The YMCA shall pay the Utility Cost at the same time and in the same manner as the Rent. However, the Utility Cost for the months of March 2010 and April 2010 shall not be prorated as provided in subsection (A) for Rent and shall be due and payable as all other Rent and Utility Cost payments.

The Utility Cost shall be calculated pursuant to the following formula: the product of (i) 1.056, representing a premium for Sunday use, and (ii) the sum of (a) the applicable per square foot utility cost for the entire Community and Senior Center (“Square Foot Cost”) multiplied by the number of square feet in the Wellness Center and (b) the Square Foot Cost multiplied by the

number of square feet in the Aerobics Center multiplied by the ratio of Primetime Use of the Aerobics Center based on a fourteen hour day. Any fractional amount above shall be expressed to the thousandth.

The Square Foot Cost shall be calculated each calendar year based on the preceding calendar year's usage by (i) totaling the previous twelve months of gas and electric bills for the Community and Senior Center, subtracting any light usage fees attributable to the Sports Park; (ii) then dividing the total by twelve; and (iii) dividing this amount by 51,000 representing the total interior square foot area of the Community and Senior Center.

The Utility Cost for 2010 shall be \$1,196.23. As an example of the formula above, this was calculated based on (i) a Square Foot Cost of \$.24; (ii) 2,400 square feet for the Wellness Center; (iii) 5,000 square feet for the Aerobics Center, and (iv) a ratio of Primetime Use of the Aerobics Center of .464 based on 6.5 hours of usage in a fourteen hour day. The mathematical expression of the formula is $1,196.23 = 1.056 * ((.24 * 2400) + (.24 * 5000 * (6.5/14)))$. This expression is for reference purposes only.

(D) Late Payment Charges. YMCA acknowledges that in the event YMCA fails to pay Rent or the Utility Cost within five (5) business days of when due, such failure will cause City to incur costs not contemplated in this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing, personnel and accounting costs. Accordingly, if any such payment is not received by City when due, YMCA shall pay City a late payment charge equal to ten percent (10%) of the overdue payment as well as interest on the outstanding amount due that shall accrue at the rate of ten percent (10%) per annum. In no event shall the late charge exceed the maximum allowable by law. YMCA agrees that this late charge represents a fair and reasonable estimate of the costs City will incur by reason of YMCA's late payment. City's acceptance of such late charge shall in no event constitute a waiver by City of YMCA's default with respect to the overdue payment, nor prevent City from exercising any of the other rights or remedies granted to City under this Agreement, at law, or in equity.

5. USE OF LICENSED AREA.

(A) In exchange for the use of the Licensed Area, it is expressly agreed by the Parties that YMCA shall utilize the Licensed Area as a social and recreational facility for its members and nonmembers. YMCA use of the Licensed Area shall comply with all applicable laws and regulations, including, but not limited to, the Community and Senior Center rules and regulations. YMCA may establish practices and policies applicable to Licensed Area, provided that they are consistent with the terms and conditions of this Agreement. YMCA may delegate the authority to conduct and oversee programs offered In the Licensed Area to the Yolo County YMCA Service Area Advisory Board.

(B) The Licensed Area shall be known as the City of Woodland / YMCA Wellness Center. This name may be changed with the Parties' mutual written consent.

(C) YMCA shall not charge users of the Licensed Area any fee, charge or rate except as may be approved in the sole discretion of the City or allowed by this section. YMCA may

charge users a Wellness Center membership fee or Wellness program introductory fee. The amount of these fees may be set in YMCA's reasonable discretion and shall include both a monthly membership and daily use rate ("Use Rates"). YMCA may also set and charge users fees for unique, special interest programs it offers in the Licensed Area ("Special Interest Class Rates".) Any Special Interest Class shall comply with all applicable Community and Senior Center rules and regulations, including any required fee splitting with the City. In its discretion, YMCA may subsidize the Use Rates or Special Interest Class Rates based on an individual's financial situation.

(D) YMCA and City agree to meet annually, or more often as needed, to discuss program offerings, including any Special Interest Class, to optimize health, recreation, fitness and well-being opportunities for the City and its residents. YMCA shall not offer programs in the Licensed Area which compete with existing or future City programs.

(E) YMCA shall operate the Wellness Center on a daily schedule mutually agreed upon between the City and the YMCA. The initial schedule of operating hours shall be from 6:00 A.M. to 8:00 P.M. on Mondays through Fridays; 7:00 A.M. to 4:00 P.M. on Saturdays; and 11:00 A.M. to 4:00 P.M. on Sundays. YMCA and the City may mutually agree to close the Wellness Center on any federal, state or City holiday.

(F) Subject to the City's sole discretion regarding placement, size and content, YMCA may install outdoor and indoor signage on the Property. All signs shall comply with all applicable laws, including the Woodland Municipal Code. The City agrees to provide reasonable advertisements of YMCA events IN the Licensed Area on the electronic marquee on the Property.

(G) YMCA shall be solely responsible and liable for any costs incurred in preparing the Licensed Area for its use pursuant to this Agreement.

(H) YMCA shall not commit or allow any waste, nuisance, or other such act or omission to occur in the Licensed Area, and shall not commit any act or allow in the Licensed Area any condition which may disturb the quiet enjoyment of those occupying the surrounding properties, including without limitation any other tenants, users or occupants of the Property.

(I) YMCA and its customers, employees, guests, students and invitees are hereby granted the right to use any parking spaces not reserved for exclusive use by City officials or other tenants as more particularly described in Exhibit B, or the public parking areas designated in front of the Property. Such parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles, pick-up trucks or sport utility vehicles.

(J) YMCA agrees that it shall not allow for the sale or use of alcoholic beverages in the Licensed Area at any time, or in any manner, without first obtaining prior written consent of the City allowing for such sale and/or use, which consent may be withheld and/or conditioned upon compliance with the Woodland Municipal Code and the City's rules and regulations. Notwithstanding anything in this Agreement to the contrary, YMCA's failure to strictly adhere to this provision shall result in YMCA immediately being declared in material breach of this Agreement by the City.

(K) YMCA agrees not to, or allow anyone else to, conduct any religious or sectarian activities or expound any religious or sectarian message in the Licensed Area or on the Property. YMCA further agrees not to use or allow anyone else to use the Licensed Area for any religious or sectarian purposes or uses.

6. OTHER UTILITIES.

YMCA shall be solely responsible for all telephone, cable television, internet or other utilities not subject to subsection 4(C) of this Agreement that are provided to the Licensed Area.

7. MAINTENANCE AND ALTERATIONS.

(A) YMCA shall maintain the Licensed Area, and every part thereof, in a safe, clean and sanitary condition and repair, structurally sound and free from fire hazards, and shall repair all damage. YMCA shall also maintain and repair all City fitness, audio visual or other equipment located in the Licensed Area.

(B) YMCA may not make any alterations, improvements or additions in, on or about any of the Licensed Area without first obtaining the City's prior written consent, which may be withheld in the City's sole discretion.

8. RECORDS.

(A) YMCA shall accurately maintain all records relating to its use of the Licensed Area. YMCA shall maintain complete accounting records pertaining to billing and revenue ("Accounting Records") prepared on an accrual basis in accordance with generally accepted accounting principles for at least four (4) years. The City shall have the right, upon five business days advance notice, to inspect and/or audit Accounting Records, and other like materials of YMCA that reasonably relate to YMCA's compliance with the provisions of this agreement. Such records shall be made available to City at a location within Yolo County.

(B) In addition to the provisions of subsection (A), YMCA shall prepare and submit to the City an annual operating budget for the Licensed Area on or before January 15th of each year. YMCA shall also prepare and submit to the City quarterly financial statements regarding its operation of the Licensed Area. Lastly, YMCA shall prepare and submit an audited annual financial statement regarding its operation of the Licensed Area. This annual statement shall be submitted on or before May 1st of each calendar year.

9. DISCRIMINATION.

YMCA covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, use, occupancy, tenure, or enjoyment of the Licensed Area, nor shall the YMCA itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of users, operators, suboperators, or vendees in the Licensed Area

10. POSSESSORY INTEREST TAX.

YMCA hereby recognizes and understands that this Agreement may create a possessory interest subject to property taxation, and that YMCA may be subject to the payment of property taxes levied on such interest. Any such imposition of a possessory interest tax shall be a tax liability of YMCA solely, and shall be paid for by the YMCA; and any such tax payment shall not reduce any rent due City hereunder. In addition, YMCA shall pay any personal property taxes that may become due for equipment, fixtures, inventory, or other personal property installed, maintained, or present in the Licensed Area.

11. INDEMNIFICATION.

YMCA shall indemnify, hold harmless and defend City and its elected officials, officers, agents, employees and volunteers (“Indemnified Persons”) against all liability (including without limitation court costs and reasonable attorneys’ fees), claims, losses, demands or actions for injury to, or death of a person or persons, or damage to property relating to, arising out of, alleged to arise out of or in consequence of YMCA’s possession of or activity in the Licensed Area, to the extent such liability, claims, losses, demands or actions are caused by or result from the negligent acts or omissions of YMCA, its representatives, officers, agents, employees, invitees, spectators or participants in YMCA events or other activities in the Licensed Area, or others permitted or allowed in the Licensed Area by YMCA.

12. INSURANCE.

(A) YMCA and its contractor(s) and subcontractor(s) shall maintain in full force and effect during the term of this Agreement a comprehensive general liability and property damage insurance policy issued by a reputable insurance company acceptable to City. This policy shall be in an amount of not less than \$2,000,000 (two million dollars) combined single limit for all bodily injury and property damage claims. YMCA shall name City and all Indemnified Persons as additional insureds on such insurance policy. YMCA shall, prior to signing this Agreement, provide City with complete certified copies of all required policies, including endorsements evidencing the coverage and shall be subject to the satisfaction of the City Attorney. YMCA insurance shall be a primary policy and not contributory to or in excess of any policy of City. Said insurance policy shall provide that it shall not be cancelled or reduced in amount of coverage until thirty (30) days’ written notice of cancellation or reduction in coverage has been mailed to City.

(B) YMCA shall furnish City with an insurance endorsement prior to the exercise of any of the rights and privileges granted by this Agreement and each subsequent year of this Agreement. Upon request of City, YMCA shall provide City with a copy of its insurance policy evidencing the issuance of the foregoing policy.

(C) If YMCA employs any individual on the premises or contracts for services to be rendered by a contractor’s employee in the Licensed Area, any such employee in the Licensed Area shall be covered by applicable workers’ compensation insurance as required by law. YMCA shall submit proof of current, effective workers’ compensation insurance to City both annually and upon request by City.

13. ENTRY AND INSPECTION.

City shall have the right to enter and inspect the Licensed Area at any time for any reason, including, but not limited to, facility maintenance, information technology or audio visual equipment access and use.

14. SURRENDER.

YMCA shall, at the expiration or on sooner termination of this Agreement, surrender the Licensed Area, remove all improvements and property within sixty (60) days and give peaceable possession of the Licensed Area to the City, in satisfactory condition as determined by the City Manager.

15. TERMINATION.

(A) Either Party may terminate this Agreement upon sixty (60) days written notice.

(B) City may also terminate this Agreement prior to its expiration upon the happening of one or more of the following events, and the occurrence of any such event shall constitute an event of default:

- (i) YMCA remains in arrears in any payments required by section 4 for a period of at least five (5) days following receipt of written notice of such arrearage from City;
- (ii) YMCA fails or refuses to:
 - (1) Pay any fees required to be paid by it within fifteen (15) days following receipt of written notice of such arrearage from City;
 - (2) Obtain or maintain the insurance required by this Agreement;
 - (3) Maintain the Licensed Area as set forth in this Agreement;
- (iii) YMCA files a voluntary petition in any proceedings in Bankruptcy Court;
- (iv) Abandonment of the Licensed Area by YMCA.
- (v) Except as otherwise provided, default by YMCA in the performance of any promise, term, condition, duty or covenant required of it hereunder, provided YMCA fails to cure such default within thirty (30) days following receipt of written notice of such default from City.

Early termination by City pursuant to this subsection (B) shall be upon not less than fifteen (15) days advance written notice to YMCA. This notice shall state both the basis of such termination and the effective date thereof. Thereafter, City, upon the effective date of such termination, may take possession of the Licensed Area, without further notice or demand to YMCA unless YMCA has cured the default by the effective date of the termination.

Failure to serve notice of termination upon the happening of any of the events described in this subsection (B) shall not operate to bar or otherwise cause the waiver of City's right to thereafter declare such termination upon the subsequent happening of any such event.

16. ASSIGNMENT AND SUBLICENSE.

YMCA shall not assign or transfer any of its rights or duties under this Agreement or assign or sublicense the Licensed Area without the prior written consent of City. Notwithstanding the provisions of California Civil Code sections 1995.260 and 1995.270, the City may grant or withhold such approval in its sole and complete discretion.

17. COMPLIANCE WITH LAWS

YMCA shall comply with all applicable federal, state and local laws, regulations and standards that are or may become applicable to YMCA's occupancy and/or activities in the Licensed Area. The judgment of any court of competent jurisdiction, or the admission of YMCA in a proceeding brought against it by any governmental entity, that YMCA has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between the City and YMCA and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by the City.

18. NONWAIVER OF RIGHTS.

No waiver of default by either Party hereto of any of the terms, promises, covenants or conditions hereof to be performed, kept and observed by the other Party shall be construed as, or shall operate as, a waiver of any subsequent default by such Party.

19. SAFETY AND ENVIRONMENTAL PROTECTION.

(A) YMCA shall operate and maintain the Licensed Area so as to avoid injury or damage to any person or property. In carrying out its work, YMCA shall at all times, exercise all necessary precautions for the safety and environmental protection of the Licensed Area and Property, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Relations (Cal/OSHA) regulations, Cal/EPA, and US/EPA (as applicable).

(B) YMCA shall defend, indemnify and hold harmless the City and its partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this section. This section shall survive the termination of this Agreement.

20. NOTICES.

All notices shall be in writing, and delivered in person or transmitted by mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of Woodland
300 First Street
Woodland, CA 95695

Notices required to be given to YMCA shall be addressed as follows:

President
YMCA of Superior California
1926 V Street
Sacramento, CA 95818

21. SEVERABILITY.

Should any provision of this Agreement be deemed unlawful, that provision shall be severed, and the remaining terms shall continue to be valid and fully enforceable.

22. AMENDMENT.

This Agreement may be amended only by further written agreement of the Parties. Mutually agreed changes shall be incorporated in written amendments to this Agreement.

23. COMPLETE AGREEMENT.

This Agreement supersedes any and all agreements, either oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any Party which is not embodied herein or any other agreement, statement or promise not contained in this Agreement shall be valid and binding.

24. AUTHORITY TO EXECUTE.

Each signatory to this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of his or her principal.

25. INTERPRETATION.

The Parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Agreement.

In the event of a controversy or dispute between the Parties concerning the provisions herein, this Agreement shall be interpreted according to the provisions herein and no presumption shall arise concerning the draftsmanship of such provision.

26. APPLICABLE LAW.

The Parties hereto understand and agree that the terms of this Agreement have been negotiated and executed within the State of California and shall be governed by and construed under the laws of the State of California.

In the event of a dispute concerning the terms of this Agreement, the Parties hereto expressly agree that the venue for any legal action shall be with the appropriate court in the County of Yolo, State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the day and year first written above.

CITY OF WOODLAND
ASSOCIATION

YMCA OF SUPERIOR CALIFORNIA

By: _____
Mark Deven
City Manager

By: _____
President

Date Signed: _____

Date Signed: _____

Attest:

Sue Vannucci
City Clerk

Approved as to Form:

Andrew J. Morris
Best Best & Krieger LLP
City Attorney

Exhibit "A"

Map of the Community and Senior Center

