

USE AND PROGRAM AGREEMENT

THIS USE AND PROGRAM AGREEMENT entered into this ____ day of June, 2019, by and between City of Pensacola ("City"), a Florida municipality whose principal office is located at 222 W. Main St., Pensacola, FL 32502, and Young Men's Christian Association of Northwest Florida, Inc., a Florida not-for-profit corporation ("YMCA") whose principal office is located at 165 E. Intendencia Street, Pensacola, Florida, 32502.

WHEREAS:

A. City and YMCA both address critical community needs by offering programs and services for all ages, abilities and income;

B. City and YMCA both provide an inclusive and positive programming experience in school-age childcare, youth sports, swimming, and health and wellness programs;

C. City and YMCA believe that collaboration between the two organizations reduces duplication of services while creating a more efficient and effective way of developing youth, strengthening families, and promoting social connections in the community by leveraging each organization's strength;

D. YMCA owns the real property located at 3215 Langley Avenue, Pensacola, Florida (the "Langley Property");

E. City owns the real property located at 2130 Summit Blvd., Pensacola, Florida (the "Roger Scott Athletic Complex");

F. City provides certain programs for the community at the Vickrey Resource Center (the "Vickrey Center"), located on the Roger Scott Athletic Complex;

G. City and YMCA are negotiating an exchange of the Langley Property for a parcel located at the Roger Scott Athletic Complex;

H. YMCA desires to build a new health and wellness facility on the Roger Scott Athletic Complex near the Vickrey Center (the "New Health Facility");

I. YMCA desires to provide programs at the New Health Facility and at the Vickrey Center; and

J. Any exchange of the Langley Property for property located at the Roger Scott Athletic Complex is contingent upon YMCA having use of the Vickrey Center and the pool located at the Roger Scott Athletic Complex (the "Roger Scott Pool") for the provision of programs. The specific provisions of the parties' shared use of the Vickrey Center, pool, and Roger Scott Athletic Complex and surrounding grounds shall be subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are fully incorporated into the provisions of this Use and Program Agreement.
2. **Acknowledgement.** The Parties acknowledge that the provisions of this Use and Program Agreement are mutually beneficial and constitute necessary, good and valuable consideration supporting the Parties' exchange of ownership of real property reflected in that certain Real Property Exchange Agreement which the Parties intend to enter into through the execution of documents pertinent thereto.
3. **Use and Access to the Vickrey Center.** City hereby grants YMCA the following licenses to use the Vickrey Center:
 - i. **YEAR-ROUND:**
 - a. YMCA shall have reasonable access to the Vickrey Center before and after all programs for the purpose of preparing and cleaning the facility;
 - b. YMCA is hereby granted year-round, exclusive use of the spaces designated as 127 and 128 on the rendering attached hereto as Exhibit A (the "Vickrey Center Rendering") for the purpose of storage, office, childcare programs, registration or business as it deems necessary;
 - c. YMCA is hereby granted year-round use of a portion of the closet space in the area designated as 111 on the Vickrey Center Rendering for the purpose of equipment and ball storage. Minimum amount 40 square feet;
 - d. YMCA is hereby granted access to the kitchen and the ice maker located therein for the purpose of using ice and storage of food.
 - e. YMCA is hereby granted year-round, exclusive use of the supply closet designated as area F on the Vickrey Center Rendering;
 - f. City shall adjust its use, including its hours of use, to accommodate the use by YMCA as described herein;
 - g. YMCA shall have the right to place decals and signage throughout the Vickrey Center as required by the Department of Children and Families (DCF) and all other applicable laws and to provide reasonable directions and information to members and program participants. Further, YMCA shall have the right to install YMCA door and window logos and directional signs, provided that all signage and logos which are not required by DCF shall be mutually agreed to by the parties;

- h. YMCA shall be allowed to install equipment and wiring necessary for phones and internet;
- i. YMCA shall be allowed to utilize the lobby area as a common area for greeting, checking in and conducting daily business;

ii. **BEFORE & AFTERSCHOOL PROGRAMMING:**

- a. Subject to review and approval by the City, which review and approval shall not be unreasonably withheld or delayed, YMCA may make such improvements and renovations to the Vickrey Center as necessary to allow YMCA to obtain and maintain a license issued by DCF to provide child care for a minimum of 135 children; The exact number of children to be served shall be determined by DCF.
- b. During the school year, as determined by the calendar for public schools located in Escambia County, Florida, and from 2:00 P.M. to 5:30 P.M., YMCA is hereby granted exclusive use, enjoyment and occupancy of the public and common areas of the Vickrey Center for the care of school-age children;
- c. During the school year, as determined by the calendar for public schools located in Escambia County, Florida, and from 7:00 A.M. to 5:30 P.M., YMCA is hereby granted exclusive use, enjoyment and occupancy of the public and common areas of the Vickrey Center during holidays and teacher workdays for the care of school-age children;

iii. **SUMMER CAMP:**

- a. Subject to review and approval by the City, which review and approval shall not be unreasonably withheld or delayed, YMCA may make such improvements, renovations, and adjustments to the Vickrey Center or programming as necessary to allow YMCA to obtain and maintain a license issued by DCF to provide child care for a minimum of 135 children; The exact number of children to be served shall be determined by DCF.
- b. During the summer months, as determined by the calendar for public schools located in Escambia County, Florida, and from 6:30 A.M. to 5:30 P.M., YMCA is hereby granted use, enjoyment and occupancy of the Vickrey Center for the care of school age-children. No later than April 15 of the then current year, the parties shall agree to a reasonable schedule for programming at the Vickrey Center, that will not conflict with existing City programs;
- c. YMCA is hereby granted use of areas designated as 104, 105, 106, and

109 on the Vickrey Center Rendering for the childcare and summer camps during summer break as designated by Escambia County, Florida public schools;

- d. Use of the Roger Scott Pool. At a minimum, YMCA shall have the use of the Roger Scott Pool located at the Roger Scott Athletic Complex for 5 one-hour slots daily for camp swimming. During such time slots, YMCA shall have sufficient use of the pool to accommodate the number of children participating in the respective camp, provided that such use does not preclude pool use by City program participants.
4. **License and Use Fee.** YMCA shall pay City two thousand and No/100 Dollars (\$2,000.00) per month as a license and use fee.
5. **Remodeling for DCF Licensure.** YMCA shall pay for all improvements that may be required to obtain a license issued by DCF to provide childcare for a minimum of 135 children.
6. **Maintenance.** City shall maintain and repair the Vickrey Center, including but not limited to the structural components (including the slab, exterior walls, and roof and roofing systems, the doors, the interior walls, the windows, the plumbing systems, the heating, ventilation, and air conditioning systems, and the electrical systems. YMCA agrees to notify City in writing of any needed maintenance or repairs. All repairs required by DCF shall be accomplished as soon as practicable, and non-DCF-required repairs shall be accomplished in a reasonable time frame. Disputes which may arise concerning the need for repair, the method of repair, and the urgency or timing of repair shall be resolved through the Dispute Resolution procedures set forth herein.
7. **Casualty.** The parties anticipate that in the event the Vickrey Center is substantially damaged or destroyed by fire or other casualty, and the structure is rendered or estimated to be unusable for a period of twelve (12) months or longer, the City will notify the YMCA in writing of its plan to rebuild or repair the Vickrey Center and the time that will be required to accomplish that project. The City will render reasonable cooperation to the YMCA in assisting the YMCA to relocate its on-site programs to a different location and to assist the YMCA in maintaining its programs during the period of repair or renovation of the Vickrey Center.
8. **Utilities.** City shall pay all utilities related to the operation of the Vickrey Center, including, but not limited to, power, water, sewer, phone, internet, and garbage collection.
9. **Janitorial.** City shall provide, at its expense, use of dumpster and daily janitorial services.
10. **Lobby.** YMCA visitors, members, guests, program participants, employees, and invitees shall have the right to occupy and utilize the lobby for the purpose of greeting, checking

children in and out, and normal business activities, during hours of YMCA operation.

11. **Restrooms.** YMCA visitors, members, guests, program participants, employees, and invitees shall have the right to utilize the restrooms, during hours of YMCA operation.
12. **Parking.** YMCA visitors, members, guests, program participants, employees, and invitees shall have the right to park anywhere throughout the Roger Scott facility complex, including, but not limited to, parking spaces around the Vickrey Center, the Roger Scott Pool, and athletic fields.
13. **Building Access.** YMCA employees shall have access to the Vickrey Center 24 hours a day/seven days a week. City shall provide YMCA sufficient keys for its employees.
14. **Playground.** City and YMCA shall designate a mutually agreed upon area, which shall be approximately 2,250 square feet, for a playground for school-age childcare. At a minimum, the playground shall include features and elements similar to those described on the quote from Gulf Coast Recreation attached here to as Exhibit B. YMCA is hereby granted a license to use such playground for its programs. Such license shall be exclusive during the hours required by DCF. City shall maintain the playground. YMCA agrees to notify City in writing of any needed repairs. The City shall use reasonably diligent efforts to make all required repairs to the playground and shall reasonably accommodate the requirements of the YMCA while such repairs are being performed.
15. **Use of Exterior Space.** YMCA may use the areas around the Vickrey Center for outside activities for school-age children for the programs described in paragraphs 3.i, 3.ii, and 3.iii.
16. **Term.** The term of this Agreement shall be 30 years commencing on the closing of the exchange of the Langley Property for the parcel of property at the Roger Scott Athletic Complex. If YMCA is not in material default, then YMCA may renew the term of the Agreement for 2 successive 10-year terms. If there is a material adverse change to the operations or business model contemplated for the Vickrey Center by YMCA, then YMCA may terminate this Agreement by giving City 6 months prior written notice.
17. **Contingencies.** This Agreement is contingent upon City and YMCA closing on an exchange of the Langley Property for a parcel of property located at the Roger Scott Athletic Complex.
18. **Binding Effect.** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.
19. **Recording of Memorandum.** After closing of the exchange of the Langley Property for a parcel of property located at the Roger Scott Athletic Complex, the parties agree to record a copy of this Agreement in the Public Records of Escambia County, Florida.
20. **Waiver.** The waiver by either party of any breach or violation of any provision of this

Agreement shall not operate or be construed as a waiver or any subsequent breach or violation.

21. **Notices.** Any notices required or permitted by this Agreement or by law to be sent to the City shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service or certified mail, return receipt requested, addressed to the City as follows:

City of Pensacola
Attn: City Administrator
222 West Main Street, 7th Fl.
Pensacola, Florida 32502

with copy to:

City Attorney
City of Pensacola
222 West Main Street, 7th Fl.
Pensacola, FL 32502

Any notices requires or permitted by this Agreement or by law to be sent to YMCA shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service, or certified mail return receipt requested, addressed to the YMCA as follows:

Young Men's Christian Association
of Northwest Florida, Inc.
c/o Executive Director
165 E. Intendencia Street
Pensacola, Florida 35202

22. **Remedies.** In addition to remedies at law, including recovery of money damages, each party shall be entitled to specific performance, including but not limited to specific performance of the obligation to repair, renovate, or rebuild the Vickrey Center pursuant to Section 6 above. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained herein and hereby agree to waive and not to assert in any action for specific performance the defense that a remedy at law would be adequate.
23. **Governing Law.** This Agreement has been negotiated and executed in the State of Florida, and the laws of that state shall govern its construction and validity without regard to the conflicts of laws principles of such state. Venue for any action shall be in the federal or state courts in Escambia County, Florida.
24. **Assignment and Subleasing.** YMCA may assign this Agreement to a new entity formed and wholly owned by YMCA for the purpose of acquiring and operating the New Health Facility and providing programs at Vickrey Center.

25. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all of which, taken together, shall constitute one and the same instrument as if all parties hereto had executed the same instrument; and any party or signatory hereto may execute this Agreement by signing any such counterpart. A pdf or facsimile copy of any such counterpart shall be considered an original.
26. **No Representation Concerning Suitability.** YMCA ACKNOWLEDGES THAT THE CITY HAS MADE NO REPRESENTATIONS OR WARRANTIES RELATING TO THE SUITABILITY OF THE PREMISES OR IMPROVEMENTS FOR ANY PARTICULAR USE OR PURPOSE (INCLUDING WITHOUT LIMITATION THE USE SET FORTH HEREIN) AND THAT THE CITY SHALL HAVE NO OBLIGATION WHATSOEVER TO RENOVATE THE LICENSED PREMISES OR IMPROVEMENTS UNLESS EXPRESSLY SET FORTH IN THIS AGREEMENT.
27. **Taxes.** In the event that any lawful taxing authority shall assess or impose any tax upon the YMCA's use or occupancy of the Vickrey Center, or upon the sale of any merchandise or product or upon any activity occurring as a result of YMCA's activities under this Agreement, such taxes and costs shall be borne and paid entirely by the YMCA.
28. **Insurance.** YMCA shall procure and maintain at all times during the term of this Agreement, insurance of the types and to the limits specified herein issued by insurers qualified to do business in Florida whose business reputation, financial stability and claims payment reputation is reasonably satisfactory to the City. YMCA acknowledges and agrees that the types and minimum limits of insurance herein required may become inadequate during the term of this Agreement and, therefore agrees that the minimum limits may be increased to commercially reasonable limits and/or additional types of insurance may be required by the City from time to time during the term of this Agreement. Insurance specifications are attached hereto and identified as Exhibit C.
29. **No Waiver of Rights.** YMCA acknowledges that the City of Pensacola, by entering into this Agreement, does not waive any rights it may have as a Florida municipality including, but not limited to, its full police power, its authority as the governing body of the citizens of the City of Pensacola, and its constitutional and statutory rights to sovereign immunity from suits to the full extent of the law.
30. **No Third-Party Beneficiaries.** The City and the YMCA hereby acknowledge that the provisions of this Agreement are intended to benefit only the entities executing this Agreement and that there is no intent to create or benefit any parties not signatory to this Agreement.
31. **Dispute Resolution.** The Parties acknowledge that the mutual commitments contained in the Use and Program Agreement and the Real Property Exchange Agreement will establish a long-term working relationship between the City and the YMCA, which will

require each party to act in good faith and fair dealing in order to accomplish the objectives of the Agreements and to render a high quality of public service to the citizens of Pensacola and the patrons of the YMCA. The parties further acknowledge that the Agreements will require cooperation between the parties, their agents, officers, employees, and volunteers, and that in the process of drafting the Agreements it has not been possible to anticipate and resolve in advance all disagreements that may arise. In order to provide a framework for ensuring good faith and a process for resolution of unanticipated matters, the following commitments are agreed to:

- a. Each party shall inform the other at the earliest practicable time that a problem has arisen that requires action on the part of the other party.
- b. If a party believes that a provision of an Agreement has been or is anticipated to be breached, or if a party believes there is a dispute concerning an issue or problem not contemplated by the terms of this Agreement, the party shall notify the other party in writing of that position.
- c. Upon receipt of a notification of an issue, problem or an asserted or anticipated breach of an Agreement, the parties will arrange for authorized representatives to meet and confer as soon as possible, but no later than 72 hours following notification.
- d. If the resolution of the issue or problem requires the development of a procedure or protocol to be followed to avoid a recurrence, that procedure shall be developed and implemented immediately upon mutual consent to it.
- e. If the resolution of the issue or anticipated breach requires the expenditure of funds beyond the authority of the City's Parks and Recreation Director or his/ her YMCA counterpart to commit, the party bearing the responsibility to make the expenditure will advise the other party as promptly as possible regarding the action to be taken and the timetable required.
- f. In the event that a problem or issue cannot be resolved through the steps outlined above, the parties agree that they will utilize a mediation process substantially similar to that utilized by the Florida court system, although it shall not be necessary to utilize a compensated mediator or panel of mediators if there is mutual agreement not to do so. If a mediator or panel of mediators cannot be agreed upon, the Mayor and the YMCA Executive Director shall appoint one nominee each and those two nominees shall select the mediator. The issue shall thereafter be scheduled for mediation at the earliest practicable opportunity.
- g. In the event that mediation is not successful in resolving the dispute or problem, and litigation is being considered, the party seeking to initiate litigation shall be required to secure the approval of a majority of its governing board or body prior to the initiation of litigation.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have entered into this agreement as of the date first above written.

WITNESSES:

CITY:

City of Pensacola

Print Name _____

By: _____

Its: _____

Date: _____

Print Name _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of City of Pensacola. He ☐ is personally known to me or ☐ has produced a current Florida driver's license, as identification.

SIGNATURE OF NOTARY

NAME LEGIBLY PRINTED,
TYPEWRITTEN OR STAMPED

(SEAL)

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires: _____

YMCA:

Young Men's Christian Association of
Northwest Florida, Inc.

Print Name _____

By: _____

Its: _____

Date: _____

Print Name _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of City of Pensacola. He ☐ is personally known to me or ☐ has produced a current Florida driver's license, as identification.

SIGNATURE OF NOTARY

NAME LEGIBLY PRINTED,
TYPEWRITTEN OR STAMPED

(SEAL)

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires: _____

EXHIBIT

התאחדות המורים

SHEET 4 of 23



EXHIBIT

tabbies

B

Augusta

\$35,448

AGE RANGE: 2-12 YEARS

CHILD CAPACITY: 69-79

FALL HEIGHT: 84"

SAFETY ZONE: 46'6" x 51'5"



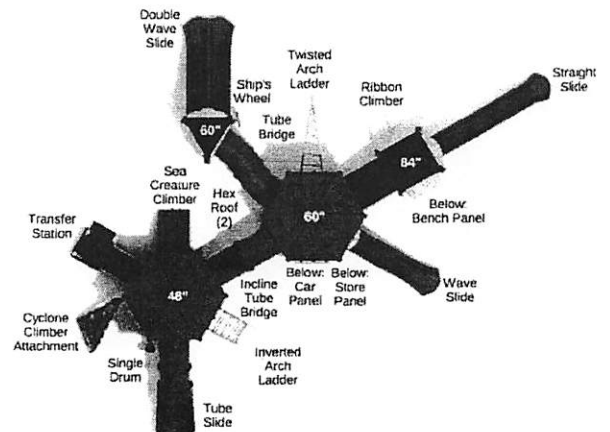
Discover a mystical, gem-toned sea castle fit for a ship of tiny heroes and heroines: the Augusta. With a vibrant color palette and four amazing decks, the Augusta design is a sprawling maze of crawl tubes, slides, and climbers that will entertain kids for hours. It features four types of slides: a Double Slide, Straight Slide, Wave Slide, and a Straight Tube Slide. And it also has a beautiful blue roofline, an Inverted Arch Climber, a Double Loop Climber, a Twisted Ladder Climber, an Arch Panel Climber, and a Twisted Rock Wall Climber for kids who love to scale and swing. Augusta includes fun ground-level elements to engage kids of all ability levels, like the pretend-play Car Panel, Storefront Panel, and Ship's Wheel. Kids can rest awhile and take in the action with the Bench Panel, and they'll need it. Trust us: your kids will want to play on Augusta all day.



ITEM	PRICE
AUGUSTA	\$26,375.00
BORDERS 50 AT \$26/EACH	\$1,300.00
EWf MULCH	\$3,800.00
FREIGHT	\$3,450.00
INSTALLATION	\$10,600.00
TOTAL	\$45,525.00

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The above information is for estimate and project planning purposes only. Applicable taxes, if any, have not been applied to the estimate.



Please contact us with any questions

Ryan@gulfcoastrecreation.com

1-833-PLAY-FUN



EXHIBIT C

Insurance Requirements

As used in this section of this Agreement, the term City shall mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

WORKER'S COMPENSATION

The YMCA shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least **\$100,000** each person -accident, **\$100,000** each person - disease, **\$500,000** aggregate - disease.

COMMERCIAL GENERAL, AUTOMOBILE AND UMBRELLA LIABILITY COVERAGES

The YMCA shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability policy filed by the Insurance Services Office. The City shall be an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Agreement. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of **\$1,000,000** per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required. If the required limits of liability afforded should become impaired by reason of any claim, then the YMCA agrees to have such limits of **\$1,000,000** per occurrence, reinstated under the policy.

Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, contractual liability, and independent contractors. This policy must be endorsed to include coverage for Abuse/Molestation. Fire Legal Liability must be provided with minimum limits of \$100,000 per occurrence. The coverage shall be written on occurrence-type basis.

Business Auto Policy coverage must be provided, including bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles.

Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

BUILDER'S RISK COVERAGE

The YMCA shall cause its contractor to obtain builder's risk insurance for any property improvements undertaken by the YMCA. Coverage shall be on an Inland Marine "All-Risk" type form which includes collapse coverage for any improvements while being constructed on the Property.

The Amount of Insurance is to be 100% of the completed value of the work. The policy must be specifically endorsed to eliminate any "Occupancy" clause or similar warranty or representation that the premises in the course of construction shall not be occupied or used without specific endorsement of the policy.

The City shall be listed as Additional Insured by endorsement on the policy and if required by the City, a copy of the policy shall be supplied to the City. The policy shall contain a "Waiver of Subrogation" clause in favor of the City, any subsidiaries or affiliates, its elected and appointed officials, employees, volunteers, representatives, and agents.

CERTIFICATES OF INSURANCE

Required insurance shall be documented in the Certificates of Insurance that provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The City of Pensacola shall be named on each Certificate as an Additional Insured and this Agreement shall be listed. If required by the City, the YMCA shall furnish copies of the YMCA's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City an ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The YMCA shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the YMCA shall, upon instructions of the City, cease all operations under the Agreement until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521

INSURANCE OF THE YMCA PRIMARY

The YMCA required coverage shall be considered primary and all other insurance shall be considered as excess, over and above the YMCA's coverage. The YMCA's policies of coverage

will be considered primary as relates to all provisions of the Agreement.

LOSS CONTROL AND SAFETY

The YMCA shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the YMCA shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the YMCA for the protection of all persons, including employees, and property. The YMCA shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.