



City of Ketchum

November 4, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Addendum to Parking Agreement 20403 Between the City of Ketchum and the YMCA

Recommendation and Summary

The Mayor is recommending the council approve Agreement 20427 and adopt the following motion:

I move to Approve Addendum to Parking Agreement 20403 Between the City of Ketchum and the YMCA

The reason for the recommendation is as follows:

- The Addendum clarifies the ambiguity within the 2006 Parking Agreement and sets forth the parking availability for the YMCA and the City of Ketchum.
- The YMCA supports the proposed Addendum

Introduction and History

In 2006 the City of Ketchum and the YMCA entered into a parking Agreement (Attachment A). This Agreement established the criteria for shared parking between the YMCA and City of Ketchum. Unfortunately, the 2006 Parking Agreement was confusing and ambiguous which caused different interpretations of the terms of the Agreement.

Analysis

Representatives of the YMCA and representatives of the City of Ketchum worked on the Addendum to clarify the terms of the Parking Agreement. The proposed Addendum (Attachment B) is acceptable to both parties.

Financial Impact

There is no financial impact resulting from approval of the proposed Addendum.

Attachments:

Attachment A: 2006 Parking Agreement

Attachment B: Addendum to Parking Agreement 20403

PARKING AGREEMENT
(City of Ketchum/Wood River Community YMCA)

THIS PARKING AGREEMENT is made and entered into this 12 day of OCTOBER, 2006 by and between the City of Ketchum, a municipal corporation ("City"), and the Wood River Community Young Men's Christian Association, Inc., an Idaho nonprofit corporation ("YMCA").

WHEREAS, the City owns real property located in the City, situated adjacent to the northeasterly side of the intersection of Warm Springs Road and Saddle Road, commonly referred to as the Park and Ride Lot ("Park and Ride Lot").

WHEREAS, the City entered into a Lease Agreement with the YMCA, dated March 16, 2005 ("Lease Agreement"), by which the YMCA leased a portion of the Park and Ride Lot ("Y Lease Area") to allow the YMCA to construct and operate recreational and cultural facilities thereon ("Facilities").

WHEREAS, the City intends to develop the remainder of the Park and Ride Lot in the future (all remaining property referred to herein as the "Development Parcel"). Currently, City uses for the Development Parcel include general public parking, special event parking and shuttle parking to and from Warm Springs base. The City and the Presbyterian Church of the Bigwood, Inc., an Idaho nonprofit corporation ("Church"), entered into a Joint Parking Agreement, dated April 19, 2002 ("Church Parking Agreement"), by which the City allows Church parking on the Development Parcel and the Church allows City parking on the Church parking area.

WHEREAS, the Y Lease Area is not sufficient for the YMCA to meet all of its required parking under the City's Zoning Code and, therefore, the YMCA has requested joint use by the City and the YMCA for parking on a portion of the Development Parcel to enable the YMCA to comply with the required parking for the proposed new YMCA Facilities.

WHEREAS, the City's Zoning Code, Title 17, Section 17.124.060.E, provides that required parking spaces may be provided in areas designed to serve jointly two or more uses or buildings.

WHEREAS, the City is willing to allow the YMCA to use a portion of the Development Parcel for YMCA required parking under the City's Zoning Code, pursuant to the terms and conditions of this Agreement.

WHEREAS, a map of the Park and Ride Lot, showing the Y Lease Area and the Development Parcel is attached hereto as Exhibit A.

NOW, THEREFORE, the parties, intending to be bound, agree as follows:

1. Use of Development Parcel for YMCA Parking. The City shall permit the YMCA to jointly use the Development Parcel, currently being used for City and Church parking needs, for the YMCA's parking requirements under the City Zoning Code. The City acknowledges, as of the date of this Agreement, that the Development Parcel is undeveloped and completely available for joint parking, on a non-exclusive basis, by the YMCA, the Church and the City. The YMCA's parking requirements on the Development Parcel have been determined by the City to be 150 parking spaces. The YMCA agrees it will not interfere with the Church's rights to use the Development Parcel for its parking requirements under the Church Parking Agreement with the City. The YMCA agrees it will not interfere with the City's rights to develop or improve the Development Parcel in the future; provided if as a result of any future development, the City reduces the number of parking spaces available to the YMCA to less than 150 parking spaces, then any YMCA permit issued by the City shall be automatically modified to correspond to the number of parking spaces then available or allocated to the YMCA.

2. Term. The term of this Agreement shall be the same as the Lease Agreement between the City and the YMCA.

3. Restriction on YMCA Use. The YMCA agrees to use the parking area in the Development Parcel exclusively for vehicular parking for its employees, agents, members, guests, licensees and invitees. The YMCA shall not use any parking area in the Development Parcel for other activities or events without obtaining the City's prior written consent, which consent may be withheld for any reason. The YMCA agrees to cooperate with the City in good faith to accommodate parking, including paid parking, within the Development Parcel for special events.

4. Liability Insurance. The YMCA agrees to acquire and maintain during the term of this Agreement, at its sole expense, liability insurance in the same amount as the YMCA is required to maintain under its Lease Agreement with the City to insure the YMCA and the City against liability for injury to persons or property arising out of the YMCA's access and use of the Development Parcel pursuant to this Agreement. The YMCA may comply with this requirement by adding or incorporating the coverage required hereunder to its already existing liability insurance policies required to be maintained under the Lease Agreement. The YMCA shall furnish the City with a Certificate of Insurance evincing the coverage hereunder.

5. Section 5309 Funds. The YMCA agrees to provide the matching funds to a certain Section 5309 grant, which the City has been awarded, provided the City expends the grant funds received on those improvements described in the grant application submitted by or on behalf of the City.

6. Alterations and Improvements. The YMCA shall not make any alterations or improvements on the Development Parcel without the prior written consent of the City, which consent may be withheld for any reason.

7. Assignment. This Agreement shall not be assigned by the YMCA, except in conjunction with an assignment of the Lease Agreement, and only with the prior written consent of the City in the City's sole discretion.

8. Mutual Release and Indemnification. Each party shall indemnify and hold the other harmless from any claims by reason of death of or injuries sustained by or property damage suffered by any person on the Development Parcel in any manner whatsoever, unless such claims arise from the negligence or intentional acts of a party, its employees and agents.

Each party shall indemnify the other against all liabilities, expenses, costs and losses, including reasonable attorney's fees, arising out of or relating to the failure by either party to perform any covenant required to be performed by said party under this Agreement other than such claims arising out of intentional or negligent acts of the party, its employees and agents.

9. Corporate Authority. If any party is a corporation, each individual executing this Agreement on behalf of said corporation, represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with the duly adopted resolution of said Corporation and that this Agreement is binding upon said corporation in accordance with these terms.

10. Applicable Law. This Agreement is being executed and delivered within the State of Idaho and shall be construed and enforced in all respects in accordance with the laws of the State of Idaho.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

12. Exhibits. All exhibits attached to this Agreement are hereby incorporated into this Agreement by reference.

13. Recitals. All recitals stated in this Agreement are hereby incorporated into this Agreement by reference.

14. Entire Agreement. The parties acknowledge that the terms of this Agreement may vary from the terms contained in any other preliminary agreements, written or oral, made prior to the execution of this Agreement and may vary from any negotiations between the parties prior to the execution of this Agreement. The parties agree that the terms, covenants and conditions of this Agreement shall supersede all such prior negotiations and agreements, and that there are no other agreements not contained in this Agreement, and that this Agreement shall be and is the final expression of the agreement of the parties and shall control. No modification of this Agreement shall be valid unless in writing and executed by the parties to the Agreement.

15. Severance and Validity. In the event any provision of this Agreement or any

part thereof shall be determined by any Court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby, it being agreed that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void or unenforceable provision or part thereof.

16. Attorneys' Fees. In the event that either party hereto retains an attorney to enforce any right or duty arising out of this Agreement, the prevailing party in such dispute shall be entitled to be paid reasonable attorney's fees by the non-prevailing party, whether or not litigation is actually instituted and including any bankruptcy proceedings or any appeals.

THIS PARKING AGREEMENT is executed as of the day and year first above written.

CITY OF KETCHUM,
a municipal corporation



By: _____
Its: _____

ATTEST:

Jarvis E. Cady
City Clerk

WOOD RIVER COMMUNITY YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC.,
an Idaho nonprofit corporation

Cynthia B. Murphy
By: Cynthia B. Murphy
Its: YMCA Board Chair

STATE OF IDAHO)
) ss.
County of Blaine)

On this 12th day of October, 2006, before me, a Notary Public in and for said State, personally appeared Randy Hall known or identified to me to be the Mayor of the CITY OF KETCHUM, a municipal corporation, and the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

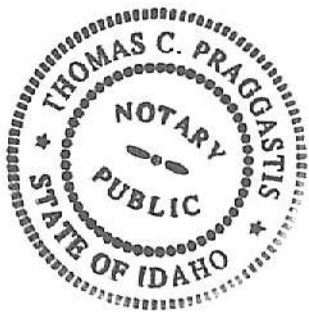


Barbi S. Ross
NOTARY PUBLIC in and for
the State of Idaho,
residing at Sun Valley, ID
Commission expires May 21, 2007

STATE OF IDAHO)
) ss.
County of Blaine)

On this 12 day of OCTOBER, 2006, before me, a Notary Public in and for said State, personally appeared CYNTHIA B. MURPHY known or identified to me to be the CHAIRMAN OF THE BOARD of the WOOD RIVER COMMUNITY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC., an Idaho nonprofit corporation, and the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same on behalf of said corporation.

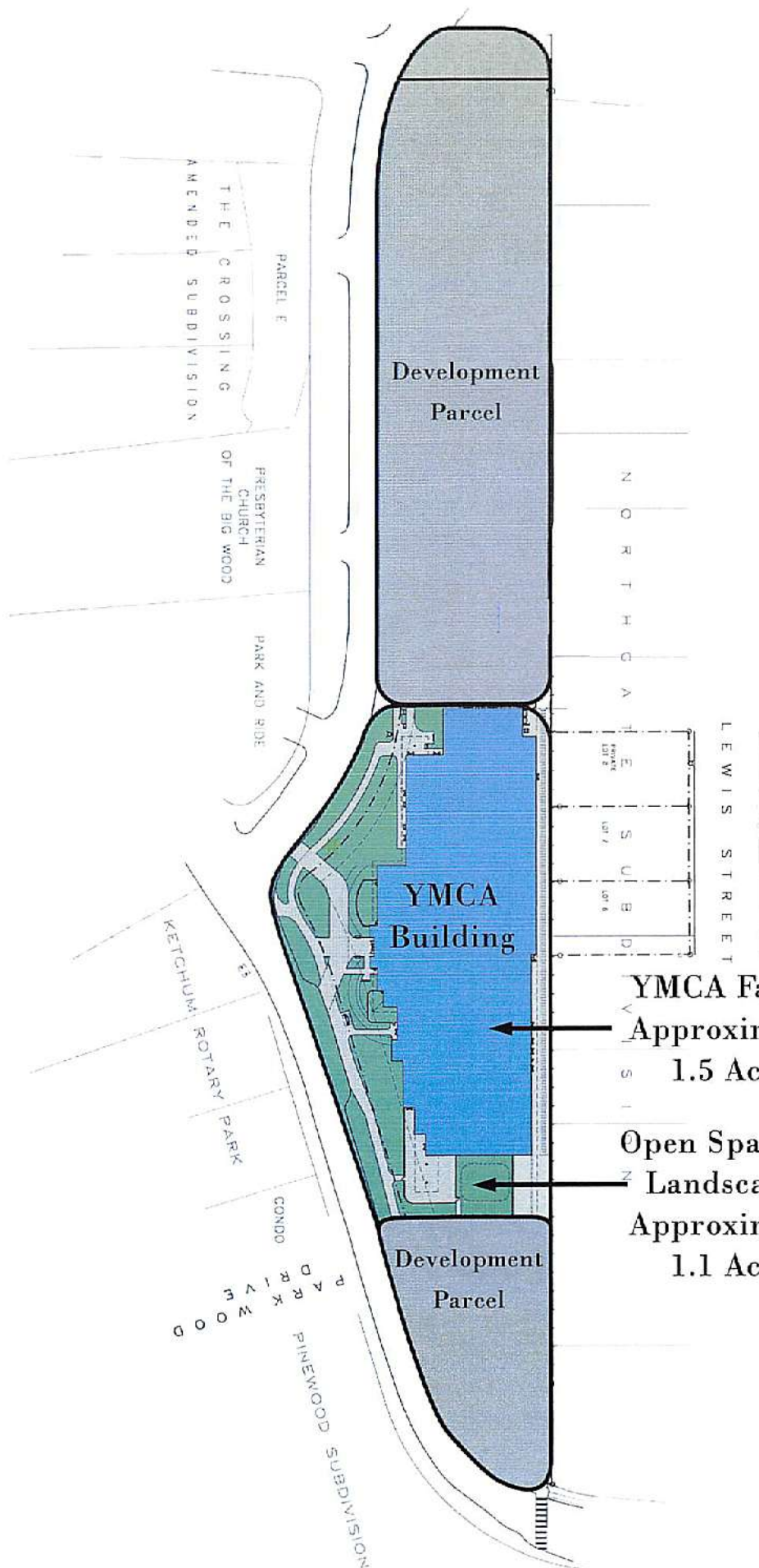
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Thomas C. Praggastis
NOTARY PUBLIC in and for
the State of Idaho,
residing at SUN VALLEY
Commission expires 10-6-2009



Park N' Ride Site



YMCA Facility
Approximately
1.5 Acres

Open Space and
Landscaping
Approximately
1.1 Acres

ADDENDUM AND AMENDMENT TO PARKING AGREEMENT

This ADDENDUM AND AMENDMENT is made and entered into this _____ day of November, 2019, by and between the City of Ketchum, a municipal corporation of the State of Idaho (“Lessor” or “City”), and Wood River Community Young Men’s Christian Association, Inc., dba Wood River Community YMCA, an Idaho nonprofit corporation (“Lessee” or “YMCA”).

- A. The City leases certain real property to the YMCA (“Leased Property”) under the Lease Agreement, dated March 16, 2005, with a First Amendment to Lease, dated April 25, 2013 (“Lease”). The Parties also entered into a Parking Agreement, dated October 12, 2006, (“Parking Agreement”) to address parking requirements and joint use arrangements in connection with the lease.
- B. The Parking Agreement covers parking on the Development Parcel, being all remaining property within the identified Park and Ride Lot not leased to the YMCA, and upon which certain joint parking uses were allowed pending future development by City. The YMCA relies upon the availability of sufficient public parking on the City land not leased to the YMCA.
- C. The City is pursuing potential development of a fire station (“City Development”) which will impact the Development Parcel with respect to public parking availability. The City desires to minimize impact on the public parking also available to the YMCA. The YMCA supports the City Development and desires to come to an arrangement to accommodate the changing needs of the Parties.
- D. The YMCA is planning for expansion and further development of YMCA facilities as contemplated in the Lease. The City supports the YMCA and its mission in the community, and desires to come to an arrangement to accommodate the changing needs of the Parties.
- E. The Parties desire to continue the existing Lease and Parking Agreement with certain addendums and amendments to address changing needs and clarify the duties of the Parties.

Therefore, the Parties agree to further addend and amend the Lease Agreement, as previously amended, and the Parking Agreement, as follows:

1. Continued Use of Development Parcel for YMCA Parking. The City will continue to permit the YMCA to jointly use public parking facilities on the Development Parcel for the YMCA’s parking requirements as generally contemplated within the Lease and Parking Agreement. In the event of any inconsistency between this Addendum and Amendment and the Parking Agreement or Lease this Addendum and Amendment shall govern. Except as amended by this Addendum and Amendment the Lease and Parking Agreement are ratified and affirmed.

2. Vicinity Parking.

The Parties have identified 150 parking spaces as the number of spaces reasonably necessary for the YMCA to continue to generally serve its patrons and fulfill its mission. In consideration of the ongoing cooperative efforts and support between the City and YMCA the City will maintain public parking available for YMCA non-exclusive use within the Vicinity of the YMCA. The Vicinity, for purposes of this Addendum and Amendment, shall be the area as identified on Exhibit A.

Upon completion of the City Development, the City will, at no required expense to the YMCA, develop, manage, and provide public parking in the Vicinity in the amount of at least one-hundred and fifty (150) on-site, on-street, or off-street public parking spaces or other equivalent parking facilities, which the Parties mutually agree are sufficient to ensure that the YMCA reasonably has access to public parking spaces for its ordinary and routine use.

The Parties understand that retaining a certain level of parking more proximate to the YMCA facilities is also desirable. Therefore, to preserve such proximity, at least one-hundred (100) of such public parking spaces will be located On-Site. "On-Site" is defined as illustrated by Exhibit B hereto.

At the time of a building permit for the contemplated YMCA expansion, the City will, at no required expense to the YMCA, increase the development, management, and provision of public parking to at least two-hundred (200) public parking spaces or equivalent parking facilities within the Vicinity. The commitment for On-Site spaces will increase to one-hundred and fifty (150) spaces. The definition of "On-Site" at this time will be expanded to include the additional area illustrated on Exhibit C hereto.

The Parties understand that unique circumstances, special events, and non-routine events will occur and will not be considered interference with the routine provision of generally available public parking.

The Parties understand and agree that ADA compliant spaces will be included to the extent required by law. The Parties also understand and agree that at the time of this Addendum and Amendment these commitments will not include compact car spaces, and that the Parties shall work cooperatively to address changing automobile and parking habits over the course of the Lease.

3. No Designated or Committed Parking. The Parties understand and agree that all public parking developed by the City shall be open and available to general public use. None of the On-Site public parking spaces are hereby designated to, reserved, or committed solely to the YMCA.

4. Ongoing Cooperative Efforts; Reservation of City Rights. The Parties understand and agree that this Addendum and Amendment is a result of the designated City Development. The Parties acknowledge and agree the City Development is dependent on the electorate's approval of the bond measure on November 5, 2019 which approval is an express condition precedent to the rights and obligations of the Parties hereunder. In the event the bond measure is not approved this Addendum and Agreement will be deemed as without effect and in which case neither Party shall have any further rights or obligations hereunder. Subject to the terms and conditions of this Addendum and

Amendment, the City reserves all general rights to provide, manage, and maintain public parking under its municipal powers. The Parties will endeavor to maintain a cooperative and collaborative effort in addressing parking needs for future development.

This Addendum shall be effective as of the later date of execution below.

CITY OF KETCHUM

WOOD RIVER COMMUNITY YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC.

Neil Bradshaw, Mayor

Date: _____

John Dondero, Board Chair

Date: _____

Attest: _____

Robin Crotty, City Clerk

ADDENDUM and AMENDMENT EXHIBIT A



Legend

 Vicinity

ADDENDUM and AMENDMENT EXHIBIT B



Legend

 On-site location for 100 parking spaces prior to YMCA expansion

ADDENDUM and AMENDMENT EXHIBIT C



Legend

 On-site parking location for 150 parking spaces after YMCA expansion