

LEGAL DEPARTMENT  
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Extension 208

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Extension 277

## MEMORANDUM

July 2, 2008

**TO:** Mayor and Common Council  
**FROM:** Town YMCA Negotiating Team  
**SUBJECT:** YMCA Term Sheet

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The Town's negotiating team has reached a tentative Term Sheet with the Valley of the Sun YMCA with the exception of a provision addressing Open Swim by the Town's residents. The attached table summarizes the differences between the Town's term regarding Open Swim and the YMCA's term.

If the Council desires to move forward with the YMCA, the attached Resolution 2395 would allow the Council to adopt a term sheet. The Council would need to decide if it desires to adopt the term sheet with the Town's recommended provision 3(E), Exhibit A, or the term sheet with the YMCA's provision 3(E), Exhibit B.

If the Council desires to approve the Term Sheet with the Town's provision 3(E), an appropriate motion would be "I move to approve Resolution 2395 with Exhibit A."

If the Council desires to approve the Term Sheet with the YMCA's provision 3(E), an appropriate motion would be "I move to approve Resolution 2395 with Exhibit B."

JUL 02 2008 G-7

	Town Version of Term 3(E)	YMCA Version of Term 3(E)
Section 1	Between and including Memorial Day and Labor Day	SAME
Section 2	1:00-5:00 pm daily	1:00-5:00 pm Monday thru Friday
Section 3	On non school days, pool staffed for a 165 swimmers	On non school days, pool staffed for the lesser of 165 swimmers or the average of Open Swim at attendance and to meet all requirements set forth by Gila County and YMCA insurance providers.
Section 4	Town residents (who are not YMCA members) pay \$2.00/day for Open Swim	Members of the public (who are not YMCA members) pay \$2.00/day for Open Swim

6/30/08

**RESOLUTION NO. 2395**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING A TERM-SHEET FOR A LEASE AGREEMENT WITH THE VALLEY OF THE SUN YMCA.**

**WHEREAS**, the Town of Payson and The Valley of the Sun YMCA (the "YMCA"), through their respective negotiating teams, have been in negotiations for terms for a lease, by the YMCA, of land and facilities at Rumsey Park; and

**WHEREAS**, the Mayor and Common Council of the Town of Payson have considered the proposed term-sheet negotiated for such Lease Agreement; and

**WHEREAS**, the Town of Payson wishes to enter into a Lease Agreement with the YMCA in accordance the term-sheet attached hereto as Exhibit "\_\_\_"; and

**WHEREAS**, the Mayor and Common Council of the Town of Payson wish to approve the Term-Sheet to: 1) authorize the leasing of Town park property to the YMCA through a Lease Agreement, and 2) authorize the drafting of a Lease Agreement for such purpose,

**NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:**

Section 1. The proposed Term-Sheet for a Lease Agreement between the Town of Payson and the YMCA, attached hereto, marked Exhibit "\_\_\_" and made a part hereof by this reference as through set forth in full at this point be and is hereby approved and adopted.

Section 2. That, after the effective date of this Resolution No. 2395, the Town of Payson negotiating team, consisting of the Town Manager, the Legal Department and the Parks and Recreation Director be and are hereby authorized to draft for approval by the Mayor and Common Council a Lease Agreement in accordance with the Term-Sheet approved in Section 1.

Section 3. That the Town of Payson be and is hereby authorized to perform such other and further actions as are necessary or appropriate to carrying out the purposes and intents of this Resolution No. 2395.

Section 4. The Mayor and Common Council find and declare that the provisions in this Resolution No. 2395 first embody and constitute the legislative act to lease Taylor Pool and five acres, more or less, of park property in Rumsey Park to the YMCA.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE  
TOWN OF PAYSON, ARIZONA, this 2<sup>nd</sup> day of July, 2008, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Samuel I. Streichman, Town Attorney

**POTENTIAL EXHIBIT A**

**TOWN TERM 3(E)**

**FOR RESOLUTION 2395**

5. Teen Center
  6. Child Watch
  7. Aerobic Studio/Multipurpose Room
  8. Locker Rooms
  9. Office and Administrative Area
  10. Parking areas in an amount required pursuant to the Town Code; a shared parking agreement may be used.
- D. YMCA shall operate the Facilities continuously, and shall not fail to operate the Facilities and offer services for any period, except in the case of Acts of God, major renovation or maintenance, or construction of the Facilities.
- E. Aquatics Facilities/Taylor Pool: The YMCA shall make the pool available for "Open Swim" and meet the following program requirements:
1. Open Swim shall be held only between and including Memorial Day and Labor Day of each year.
  2. Open swim shall be daily between the hours of 1:00 p.m. and 5:00 p.m.
  3. During any Open Swim held on a day on which the Payson Unified School District does not have classes (i.e. weekends, holidays, and summer recess) the YMCA shall staff the pool such that a minimum of 165 swimmers may use the pool at any one time.
  4. Town residents who are not YMCA members may use the pool during Open Swim for a fee of \$2.00/day. Such fee may be increased based upon the CPI.
- F. Multipurpose Room: YMCA shall make the multipurpose room available on a reservation basis to the Payson Parks and Recreation Department and to 3<sup>rd</sup> party non-profit groups in the Payson community at times not previously scheduled by YMCA. The Town shall have priority over all groups other than the YMCA. The Town shall pay any direct costs associated with its use of the Multipurpose Room.
- G. Gymnasium: YMCA shall make the Gymnasium available on a reservation basis to the Payson Parks and Recreation Program at times not previously scheduled by YMCA. The Town shall have priority over all groups other than the YMCA. The Town shall pay any direct costs associated with its use of the Gymnasium.
- H. Parking areas in the vicinity of the Facilities shall be shared with the Payson Parks and Recreation Department.
4. YMCA Memberships
- A. YMCA shall make the Facilities available to the general public by offering a three-tier, income-based rate scale comparable to rate scales at similar YMCA's.

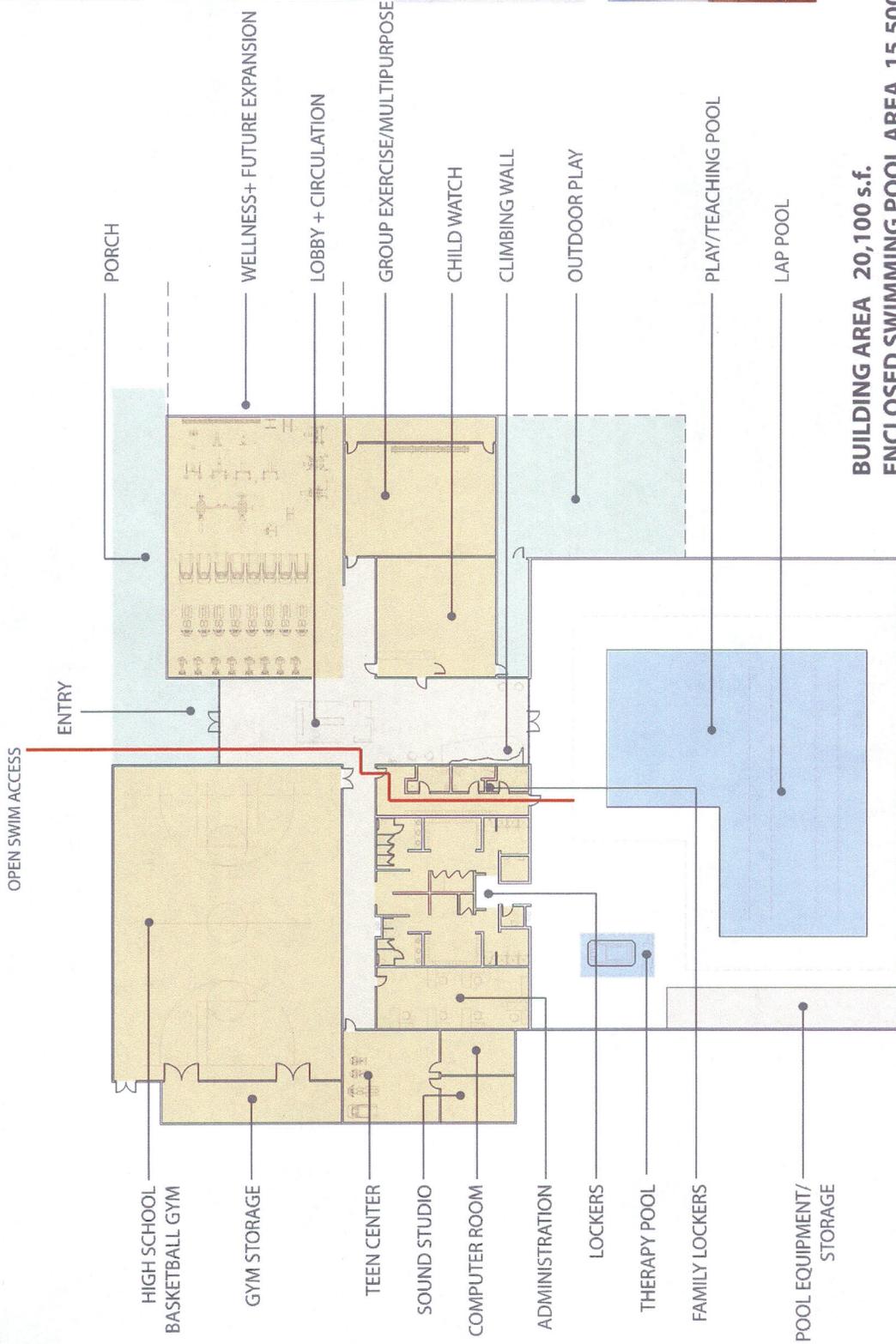
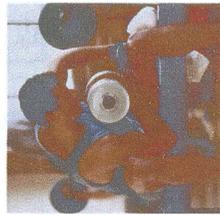
5. Approvals
  - A. Lease is contingent on obtaining all necessary approvals to build the Facility.
  - B. YMCA shall apply for and obtain all necessary approvals. Town of Payson shall process all such applications pursuant to the Town's Codes.
  - C. YMCA shall obtain a Conditional Use Permit for the Property from the Planning and Zoning Commission.
  - D. The YMCA shall be responsible for any applicable State Historic Preservation Office requirements.
  
6. Construction
  - A. YMCA to be responsible for the architectural design, development, planning, and construction of the Facilities.
  - B. Local Contractors: YMCA to use local contractors where possible, unless local contracts will increase costs or construction schedule, or reduce construction quality.
  - C. Prior to start of construction, YMCA will apply for and obtain all necessary architectural, development, and construction approvals and permits.
  - D. Contingencies: Lease and Facilities construction shall be contingent on:
    1. YMCA/Friends of Payson Parks and Recreation must raise \$5,600,000.00 within 24 months of the effective date of the Town Council approving the Lease.
    2. If the funding milestone is not reached or the costs of the Facilities are in excess of \$5,600,000.00, the YMCA shall have the option to cancel the lease or present a revised facilities plan to the Town Council for approval.
    3. Construction Drawings and all required architectural renderings shall be submitted to the Town for review no later than nine (9) months after reaching the fund raising benchmark.
    4. Construction shall commence within sixty (60) days after obtaining all necessary permits.
    5. Total estimated time to complete the facility shall be twelve (12) months from issuance of building permit.
  - E. The Town does not object to the YMCA entering into an agreement to pay Water Development Fees over time pursuant to the Town's existing policy.
  - F. The Town will not object to any requests made to the Northern Gila County Sanitary District re Sewer Connection Fees.
  
7. Financing and Management
  - A. YMCA shall be responsible for Facilities financing and construction.
  - B. YMCA shall be responsible for financing and budgeting for Facilities operations.
  - C. YMCA shall be responsible for the management and programming of the Facilities throughout the Lease term.
  - D. YMCA shall be responsible for all utilities, maintenance and operational costs of the Facilities.

- E. The Town will not make any monetary contribution to the general financing, maintenance, management, staffing or general operations of the Facilities.
  - F. The Town may establish a grant program to provide funds to its citizens for a wellness program. If such a program is established, the Town shall include the YMCA in such program on similar terms as other wellness providers.
8. YMCA Advisory Board
- A. The YMCA Advisory Board shall consist of Board Members from the Payson-area community.
  - B. The Town shall appoint a number of members to the YMCA Advisory Board in an amount equal to one less than a quorum of the Town's Parks and Recreation Board.
    - 1. Such members shall not be required to make monetary contributions to the YMCA, but may be asked to assist in local fundraising efforts to benefit the YMCA.
    - 2. The Town appointed members shall serve at the pleasure of the Town Council.
9. Insurance and Indemnification
- A. YMCA shall indemnify and hold Town of Payson, its officers, agents, and employees harmless from liability and obligation of every kind whatsoever arising out of or resulting from YMCA's occupancy or use of the premises and facility. However, YMCA will not indemnify against negligent or intentional acts of the Town of Payson, its officers, agents, and employees.
  - B. The Town of Payson shall indemnify and hold the YMCA, its officers, agents, and employees harmless from liability and obligation of every kind whatsoever arising out of or resulting from Town of Payson's use of the premises and facility. However, Town of Payson will not indemnify against negligent or intentional acts of the YMCA, its officers, agents, and employees.
  - C. YMCA shall procure a comprehensive general liability insurance policy with policy limits to meet Town of Payson requirements.

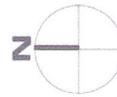
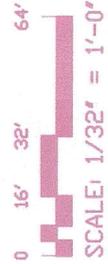
PROPOSED TERM SHEET (with Town Term 3(E))

Lease Agreement between Valley of the Sun YMCA  
and the Town of Payson

1. Term/Effective Date: 20-year initial term with three 5-year renewals at YMCA's option. The Lease shall be effective 30 days after approval by the Town Council. The Term and Rent shall begin upon the issuance of a building permit.
2. Property and Use
  - A. Property: +/-5 acre parcel surrounding Taylor Pool in Rumsey Park. YMCA to provide legal description of the property. The YMCA will allow access to the north multipurpose field, Rumsey 2, and Rumsey 3 across the leased Property; additionally, the YMCA shall allow access from the north driveway of Rumsey Park to the southern portion of the park across the Property.
  - B. Limited Use: Use limited to indoor/outdoor recreational uses traditionally conducted at YMCA. The Lease shall not be assignable or assumable by any other party without the prior written consent of the Town of Payson.
  - C. Reversion to Town of Payson: Real property and improvements, but excluding YMCA's equipment, revert to the Town of Payson upon Termination or Expiration of the Lease.
  - D. The Town will use reasonable efforts to obtain a release, waiver, or commitment of non applicability from the Forest Service re the Deed Restrictions. Lease is contingent upon the Forest Service providing such release, waiver, or commitment of non applicability.
3. Rents, Proposed Facilities, and Services
  - A. Rent shall be \$10,000 dollars per year for the initial term with a CPI for subsequent additional terms. Town of Payson may use such Rent to provide wellness programs for its residents.
  - B. Taxes: YMCA shall pay all municipal, county, state, and federal excise, sales, use or transactional privilege taxes levied or imposed against YMCA and Landlord (except state, federal, or any other income taxes imposed or levied against Landlord for items that are independent of and unrelated to the construction, operation and maintenance of the YMCA).
  - C. Proposed Services and Facilities: (See attached conceptual scale drawing with approximate dimensions of the proposed Facilities)
    1. Swimming Pool - Renovate existing pool, retain the 'Taylor Pool' name, and install OpenAire pool enclosure, the specifications of which shall be attached as an exhibit to the lease.
    2. Gymnasium
    3. Climbing Mountain
    4. Wellness Center



**BUILDING AREA 20,100 s.f.**  
**ENCLOSED SWIMMING POOL AREA 15,500 s.f.**



**POTENTIAL EXHIBIT B**

**YMCA TERM 3(E)**

**FOR RESOLUTION 2395**

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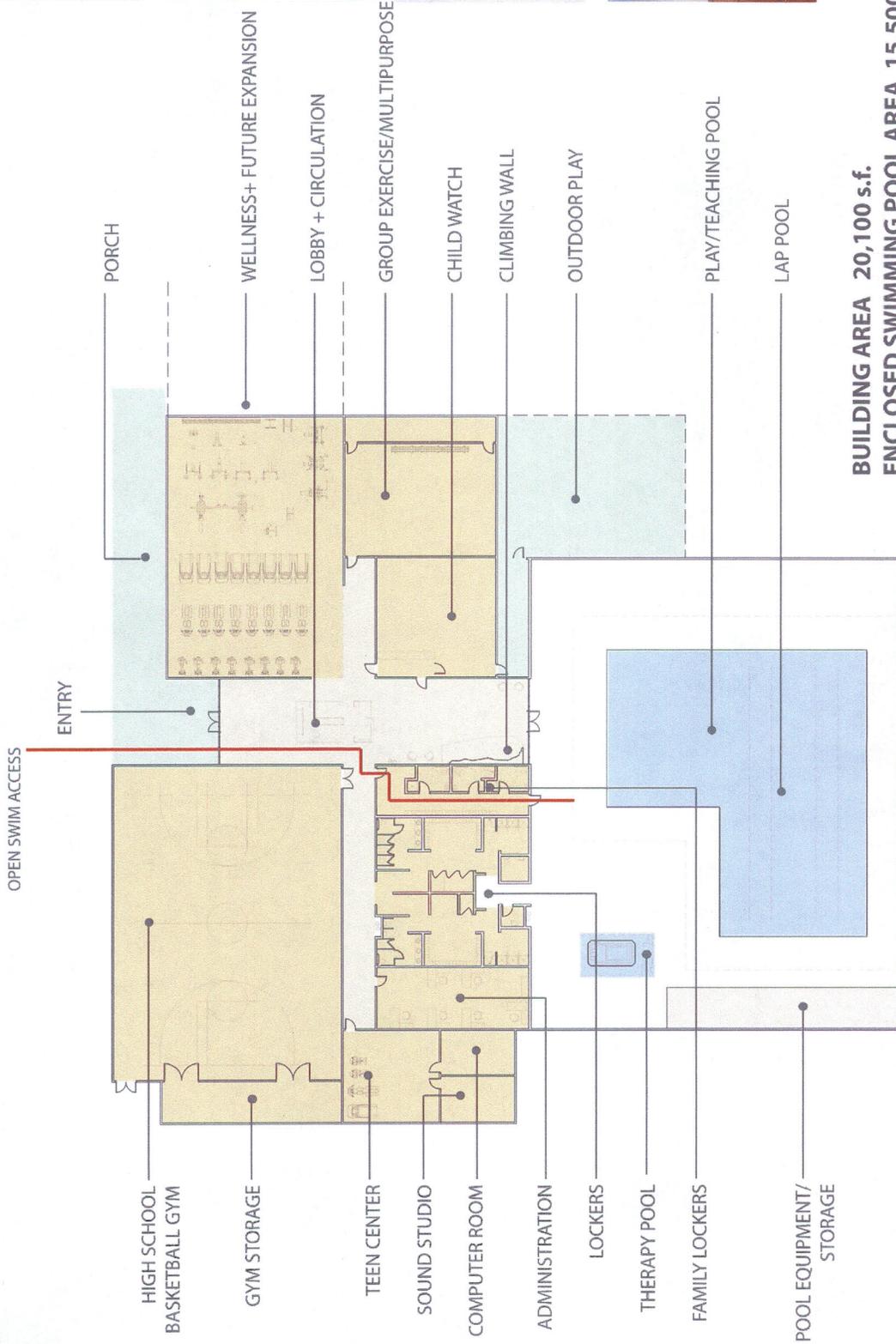
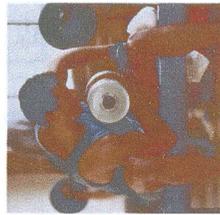
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**BUILDING AREA 20,100 s.f.**  
**ENCLOSED SWIMMING POOL AREA 15,500 s.f.**

