



City of La Quinta

CITY / SA / HA / FA MEETING DATE: April 1, 2014

ITEM TITLE: APPROVAL OF A JOINT USE OF FACILITY AND SERVICES AGREEMENT WITH THE BOYS AND GIRLS CLUB OF COACHELLA VALLEY

AGENDA CATEGORY:

BUSINESS SESSION:

CONSENT CALENDAR: 2

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Approve a Joint Use of Facility and Services Agreement with the Boys and Girls Club of Coachella Valley, a member chapter of the Boys and Girls Club of America, and authorize the City Manager to execute the Agreement.

EXECUTIVE SUMMARY:

- The Joint Use of Facility and Services Agreement ("Agreement") (Attachment 1) is a partnership between the City and the Boys and Girls Club of Coachella Valley ("Club") for the use of the President Gerald R. Ford Boys and Girls Club of La Quinta.
- The City will have use of classrooms and the gymnasium for programs during specified hours. The Club will have use of the former fitness center owned by the City.
- The Agreement adds an additional weekday night and weekend use for activities and events such as basketball, volleyball, and youth sports programs.
- City Council approved additional funding for the Club with the approval of the 2013/14 mid-year budget.
- The City received \$20,000 in Community Development Block Grant (CDBG) funding for Club (La Quinta Unit) through the County of Riverside's Urban County CDBG program. CDBG funding is used for certain discretionary projects, which primarily benefit low and moderate income persons and persons with disabilities.

FISCAL IMPACT:

The proposed Agreement will be effective April 6, 2014 through June 30, 2016 for an amount not to exceed \$40,000 annually for the facility use fee and up to \$20,000 annually for CDBG funding. The current Agreement is \$30,000 annually for the facility use fee and up to \$30,000 annually for the CDBG funding. The City Attorney has indicated that the Agreement may have a term of more than one year because it functions as an implementing agreement for the lease of the facility. City and Club staffs believe that a two-year agreement is appropriate because of the continuity in programming offered between the two agencies, and the long-standing relationship between the staff.

BACKGROUND/ANALYSIS:

On February 4, 1992, the Club entered into a lease agreement with the City to construct a facility providing a variety of children's programs, which it began offering on June 20, 1994. The City owns the underlying land and leased it to the Club for a period of 40 years. There is 20 years remaining on the lease. On December 19, 1995, the City Council approved an Agreement with the Club.

The Agreement is divided into two components. The first is for shared use of the President Gerald R. Ford Boys and Girls Club of La Quinta facility. It provides the City with the ability to use the facility for programs operated Monday through Thursday, 7:00 p.m. to 10:00 p.m.; Saturdays, 6:00 p.m. to 10:00 p.m.; on Saturdays, 7:00 a.m. to 6:00 p.m. (if requested in advance) and Sundays, 7:00 a.m. to 10:00 p.m. The facility offers a game room, gymnasium, multi-purpose room with kitchen, computer room, craft room, band room, and dance room. The City will pay a \$40,000 facility use fee for usage of the President Gerald R. Ford Boys and Girls Club of La Quinta so that the City can utilize the facility for youth sports and open gym programs when not in use by the Club.

The second component of the Agreement is for services provided by the President Gerald R. Ford Boys and Girls Club of La Quinta facility to provide recreation programs to children, ages 7 to 17. The recreation program schedule is Monday through Friday 2:00 p.m. to 7:30 p.m. during the school year, and 7:30 a.m. to 5:30 p.m. during the summer months. Activities include arts, sports and games, clinics, tournaments, parties, and other programs designed for youth. These activities are funded in part by CDBG funds. City staff coordinated with the Riverside County Economic Development Agency to gain permission for a multi-year agreement using CDBG funds.

ALTERNATIVES:

As a result of the continued partnership between the Club, staff does not have an alternative recommendation.

Report prepared by: Robert Ambriz Jr., Recreation Supervisor

Report approved for submission by: Edie Hylton, Community Services Director

Attachment: 1. Agreement

JOINT USE OF FACILITY AND SERVICES AGREEMENT

This Joint Use of Facility and Services Agreement (the "Agreement") is hereby entered into by and between the **BOYS AND GIRLS CLUB OF COACHELLA VALLEY**, a member chapter of the **BOYS AND GIRLS CLUB OF AMERICA**, a nonprofit organization (the "Club"), and the **CITY OF LA QUINTA**, a California municipal corporation (the "City"), as of this _____ day of _____, 2014 (the "Effective Date"). City and Club are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City is the owner of certain real property located in the City of La Quinta consisting of approximately 3.06 acres and improved with a facility more commonly known as the President Gerald R. Ford Boys and Girls Club of La Quinta ("Facility"); and

WHEREAS, on or about February 4, 1992, the City entered into a 40-year lease with the Club for the purpose of allowing the Club to build and utilize the Facility, which lease has been amended on three (3) prior occasions (as amended, the "Lease"); and

WHEREAS, the City desires to use the Facility, and the Club desires to grant a license to the City, to enter upon, occupy, use and operate, according to the terms, condition and covenants herein contained, the Facility (with the exception of and subject to the terms contained in the "Reserved Areas" identified in Section 1.3 below), for recreation purposes; and

WHEREAS, as a condition of this Agreement, the Club has agreed to allow the City to utilize, subject to the restrictions and conditions set forth herein, the Facility; and

WHEREAS, the City is the owner of a classroom attached to the west side of the Facility more commonly known as the "Fitness Classroom"; and

WHEREAS, the Club desires to use the Fitness Classroom, and the City desires to grant a license to the Club, to enter upon, occupy, use and operate, according to the terms, conditions and covenants herein contained, the Fitness Classroom, for recreation purposes; and

WHEREAS, this Agreement sets forth the terms and conditions for the City's use of the Facility and the Club's use of the Fitness Classroom, as well as the rights and obligations of the Parties hereto with respect to the shared use, operations, maintenance, and funding requirements associated with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the recitals set forth above, which are incorporated herein by this reference, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Club and the City agree as follows:

1.0 SHARED USE OF FACILITY; SHARED USE OF FITNESS CLASSROOM

1.1 Club Grant of Use of Facility. Except for those office areas identified as reserved in Section 1.7 below, the Club hereby grants to the City for a term beginning April 6, 2014 to June 30, 2016, a license to enter upon, occupy, use and operate, according to the terms, conditions and covenants herein contained, the Facility during the time frame set out for City use in Section 1.2 below.

1.2 Basic Schedule for City Use ("City Time").

Monday through Thursday	7 p.m. – 10 p.m. (Year Round)
Saturdays	6 p.m. – 10 p.m. (Year Round) 7 a.m. – 6 p.m. (Up to 6 times per calendar year with Boys & Girls Club Staff Approval)
Sundays	7 a.m. – 10 p.m. (Year Round)

1.3 City Grant of Use of Fitness Classroom. The City hereby grants to the Club for a term beginning April 6, 2014 to June 30, 2016, a license to enter upon, occupy, use and operate, according to the terms, conditions and covenants herein contained, supervised access to the Fitness Classroom upon prior written approval of City staff.

1.4 Quarterly Schedule Review. The Club and the City shall meet and confer at least quarterly to discuss their programming plans for the Facility and Fitness Classroom and avoid duplication of services as both Parties agree is reasonable. The City shall implement a program plan within 60 days from the date of this Agreement, and maintain said plan in accordance with its terms.

1.3 Permitting Other Group Use. During such periods of City time that the City does not have a proposed group use of the Facility, the City may permit public benefit groups ("Permittees") to utilize such periods of City time. If it does so, the City will take the necessary steps to require the Permittees to meet the insurance and all other requirements of this Agreement.

1.4 Duty to Supervise. During all such times as all or part of the Facility is permitted by the City to be used by one or more Permittees, the City shall provide competent, on-site supervision of said Permittees by an appropriate contingent of responsible adults, and such appropriate security therefore necessary to prevent property damage or intentional personal injury.

1.5 Liability for Damage. City shall be liable for all property damage and personal injury that occurs solely as a result of actions by City or City's guests or attendees with respect to the use of the Facility, and shall hold the Club harmless from any and all such liability. Club shall be liable for all property damage and personal injury that occurs solely as a result of actions by Club or Club's guests or attendees with respect to the use of the Fitness Classroom, and shall hold the City harmless from any and all such liability.

1.6 Specific Violations of Facility Use. Without limitation as to other possible violations of the Facility use, the City shall specifically not permit the following uses:

1.6.1 Political Activities. City shall abide by Club's facility use policies and shall not permit or tolerate the use of the Facility for campaigning or otherwise working for the nomination or election of any individual to any public office, partisan or nonpartisan, or for any ballot measure, including any initiative, referendum, or advisory vote, except with the advance written permission of the Club, as a forum for open public debate by candidates on the condition that no member of the public shall be excluded therefrom.

1.6.2 Alcohol, Drugs, or Tobacco. City shall abide by Club's facility use policies and not allow alcohol, illegal drugs, or tobacco to be sold, used or consumed in, on or about the Facility. City shall not permit or allow any portion of the Facility to be rented or utilized by any person, group or company that intends to provide alcoholic beverages at an event or meeting. The City shall make these facts known, in writing and through oral communications, to all staff members and participants at the Facility.

1.7 Reserved Areas.

1.7.1 Club Office Areas. Excepted from the license herein granted to City is the area of the Club's staff offices.

1.7.2 Storage Areas. Excepted from the license herein granted is the area of the Club's storage for games and supplies which is hereby specifically reserved and granted to the exclusive and full time use of the Club during the term of this Agreement. License is granted to the City by the Club for a term that is conterminous with the right of the City to use and operate the Facility, unless sooner terminated by the Club or 30 days written notice, for the full time and exclusive use of the small storage room off of the gymnasium in the Facility.

1.8 Operations.

1.8.1 Fees. City may charge attendance fees to its invitees and users.

1.8.2 Log Book. Each Party shall keep, maintain and permit the inspection by the other Party of, a joint log book in a form approved by the Club and the City in which the City and the Club shall maintain a record of acts of vandalism, repairs, incidents of graffiti, and other major incidents.

1.8.3 Procedure Training. City shall cause and train its employees to comply with procedures in a manual ("Procedures Manual") the Club prepares regarding utility turn-offs, alarm responses, locking up/closing, key distribution, facility damage (including graffiti reporting). The Club shall provide City with a copy of hereby mentioned manual and provide City with a facility alarm code.

1.8.4 Key Provision. Parties will coordinate on providing keys and lock up procedures and use of the alarm system.

1.8.5 Maintenance. Except for conditions which may be corrected by normal janitorial services, all Parties shall leave the Facility at the conclusion of their daily time allotment in a neat and clean condition and one that does not impose any additional duty on the janitorial and custodial services staff, or upon the next

occupant of the Facility. The Facility shall be kept and maintained in a clean, sanitary and safe condition as established by the Club. The Club shall also be responsible for acceptable maintenance of all landscape areas, playgrounds, parking lots, and trash enclosure. Except for conditions which may be corrected by normal janitorial services, all Parties shall leave the Fitness Classroom at the conclusion of any use in a neat and clean condition and one that does not impose any additional duty on the janitorial and custodial services staff, or upon the next occupant of the Fitness Classroom. The Fitness Classroom shall be kept and maintained in a clean, sanitary and safe condition as established by the City.

2.0 MUTUAL INDEMNITY AND RELEASE.

Reciprocal Indemnity for Invitee's, Employee's or Trespasser's Personal and Property Injuries. Each Party ("Indemnifying Party") indemnifies each other Party ("Indemnified Party"), holds the Indemnified Party harmless, and agrees to defend the Indemnified Party against loss, damage or liability on a claim, the adverse judgment, adverse order on, or good faith settlement of, such a claim, including attorney's fees and court costs in defending such claim, suffered by an Indemnified Party due to personal injury to, or damage to the property of, an invitee (including a Permittee) of an Indemnified Party ("Indemnified's Invitee"), an employee ("Indemnified's Employee") of an Indemnified Party, or to a trespasser or other uninvited person, at the Facility and/or Fitness Classroom primarily caused by the act or omission of the Indemnifying Party, its employees or invitees.

3.0 INSURANCE. The Parties agree to provide insurance in accordance with the provisions of this Section 3.

3.1 City's Insurance Obligation. Without limiting the indemnification provisions provided herein, the City, at its sole expense, shall obtain and keep in force during the term of this Agreement and any extensions thereof, a policy or policies of general liability insurance covering all injuries to persons and damage to property occurring in, upon or about (i) the Facility resulting from any actions or omissions of the City or any use of the Facility by the City or its invitees in accordance with the terms of this Agreement, or (ii) the Fitness Classroom resulting from any actions or omissions of the City or any use of the Fitness Classroom by the City or its invitees. The policy or policies evidencing such insurance shall name the Club and its officials, officers, employees, and agents as additional insureds, shall provide that same may not be cancelled or amended without written notice to the Club, and shall provide for a combined single limit coverage of bodily injury and property damage in the amount of not less than One Million Dollars (\$1,000,000). Such policy or policies shall be issued by an insurance company licensed to do business in the State of California and be rated A-/VIII or better by ambest.com. Prior to the Effective Date, and upon renewal of such policies, the City shall submit to the Club certificates of insurance and any applicable endorsements evidencing that the foregoing policy or policies are in effect. At the City's option, City shall be allowed to self-insure the insurance coverages as required above.

3.2 Club's Insurance Obligation. Without limiting the indemnification provisions provided herein, the Club, at its sole expense, shall obtain and keep in force during the term of this Agreement and any extensions thereof, a policy or policies of general liability insurance covering all injuries to persons and damage to property occurring in, upon or about (i) the Facility resulting from any actions or omissions of the Club or any use of the

Facility by the Club or its invitees, or (ii) the Fitness Classroom resulting from any actions or omissions of the Club or any use of the Fitness Classroom by the Club or its invitees in accordance with the terms of this Agreement. The policy or policies evidencing such insurance shall name the City and its officials, officers, employees, and agents, as additional insureds, shall provide that same may not be cancelled or amended without written notice to the City, and shall provide for a combined single limit coverage of bodily injury and property damage in the amount of not less than One Million Dollars (\$1,000,000). Such policy or policies shall be issued by an insurance company licensed to do business in the State of California and be rated A-/VIII or better by ambest.com. Prior to the Effective Date, and upon renewal of such policies, the Club shall submit to the City certificates of insurance and any applicable endorsements evidencing that the foregoing policy or policies are in effect. At the Club's option, Club shall be allowed to self-insure the insurance coverages as required above.

4.0 SERVICES OF CLUB.

4.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Club shall continue to provide those services related to social recreation programs to the children of La Quinta according to the Desert Sands Unified School District Master Calendar.

Regular school session	Monday-Friday 2:00 p.m.-7:00 p.m.
School holiday breaks	Monday-Friday 7:30 a.m.-5:30 p.m.
Summer break	Monday-Friday 7:30 a.m.-5:30 p.m.
Excluding any days off for observance of Boys and Girls Club holiday schedule.	

The Club is required by this Agreement to be familiar with and comply with the Community Development Block Grant (CDBG) regulations and shall further comply with the terms and conditions of any applicable Sub-Recipient Agreement for the use of Community Development Block Grant Funds entered into by Club and City (each a "Sub-Recipient Agreement"). The Club understands and agrees that no waiver or exception can be granted to the CDBG policies, regulations, or requirements, or any of the terms or conditions set forth in a Sub-Recipient Agreement except with express written consent of the City Manager.

The Social Recreation program is to include but is not limited to table games, board games, game technique clinics, tournaments, holiday parties, and to provide other opportunities for fun and constructive use of children's leisure time. Club warrants that all services will be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry for such services.

5.0 COMPENSATION.

5.1 Community Development Block Grant (CDBG). It is the understanding of the Club and the City that CDBG funds will be used to fund this portion of the contract. The maximum sum of Twenty Thousand Dollars (\$20,000) per fiscal year is contingent upon the Club completing the necessary reporting documents required by the Riverside County CDBG program.

5.2 Contract Sum ("License Fee"). For the License Fee the City shall make quarterly payments of \$10,000 for a total amount not to exceed Eighty Thousand Dollars (\$80,000)

during the term of this Agreement. For the term of this Agreement, the License Fee payments will be made to the Club according to the following schedule:

<u>Payment Amount</u>	<u>Payment Date</u>
\$10,000	July 31, 2014 and July 31, 2015
\$10,000	October 31, 2014 and October 31, 2015
\$10,000	January 31, 2015 and January 31, 2016
\$10,000	April 30, 2015 and April 30, 2016

In the event this Agreement is terminated pursuant to the terms hereof, the final payment shall be as follows: (i) if the final date of this Agreement occurs on a Payment Date, then the \$10,000 payment due on said Payment Date shall be the final payment due hereunder; and (ii) if the final date of this Agreement occurs on a date other than a Payment Date, then the payment due on said final date shall be \$10,000 prorated for the number of days during the last quarter for which this Agreement was in effect.

6.0 PERFORMANCE SCHEDULE.

6.1 Time of Essence. Time is of the essence in the performance of this Agreement.

6.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed diligently and within the time period established in Section 4.1. Extensions to the time period specified in Section 4.1 may be approved in writing by the Community Services Director of the City (the "Contract Officer"). CDBG reporting forms must be filed in a timely manner in compliance with CDBG reporting timelines.

6.3 Term. This Agreement shall become effective April 6, 2014, and shall remain in effect for a term of two (2) years, unless earlier terminated as provided hereafter. Either party may terminate this Agreement providing the other with six (6) months prior written notice of the termination date.

6.4 Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, clearly detailing the default to be cured. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within thirty (30) days from the date of the notice or such longer period if the nature of the default is such that more than thirty (30) days is required to cure such default. Notwithstanding any other provision of this Agreement, the injured party shall have the right to immediately terminate this Agreement by written notice to the other party in the event of a default which is not cured within the time set forth in this section.

7.0 RECORDS AND REPORTS.

7.1 Reports. Club shall prepare and submit to City a monthly report of attendance concerning the services as outlined in this Agreement. In addition, a progress report, including an accounting of expenditures, shall be provided on or about December 15, 2014, June 15, 2015, December 15, 2015, and June 15, 2016. The Club shall prepare reports and intake forms as required by the Riverside County CDBG program.

7.2 Records. Club shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the City to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. City shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

7.3 Release of Documents. The reports, records, documents and other materials prepared by Club in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer or except as required by law. Club shall not disclose to any other private entity or person any information regarding the activities of the City, except as required by law or as authorized by the City.

7.4 Community Development Block Grant (CDBG) Funding. The Club agrees to comply with the reporting processes of the Riverside County CDBG program in order to document that the program meets the National Objective by serving limited clientele – all persons (100%) served by the services outlined in this Agreement shall be low or moderate income.

8.0 MISCELLANEOUS PROVISIONS.

8.1 Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between City and Club in connection with this Agreement, the prevailing Party shall be entitled to recover from the losing Party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

8.2 Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other Party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another commercially reasonable method, including facsimile transmission and addressed to the party for whom intended, as follows:

If to City: City of La Quinta
 Attn: City Manager
 78-495 Calle Tampico
 La Quinta, CA 92253
 Fax: (760) 777-7101

If to Club: Boys and Girls Club of La Quinta
 Attn: Jim Ducatte, Chief Executive Officer
 42600 Cook Street, Suite 120
 Palm Desert, CA 92260
 Fax: (760) 836-1160

Any Party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above. If any notice or document is sent by facsimile transmission, the same shall be deemed fully delivered and received

upon the transmission to the sender of a facsimile confirmation sheet.

8.3 Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

8.4 Entire Agreement. This Agreement and the Lease constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

8.5 Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

8.6 Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.

8.7 Invalidity of Provision. If any provision of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

8.8 Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Club and City.

8.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

8.10 Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth herein above.

CLUB:
BOYS AND GIRLS CLUB OF COACHELLA VALLEY, PRESIDENT GERALD R. FORD BOYS AND GIRLS CLUB OF LA QUINTA, a nonprofit organization

By: _____

Its: _____

ATTEST:

Club Secretary

APPROVED AS TO FORM:

Club Special Counsel

"CITY"
CITY OF LA QUINTA, a municipal corporation

Date

Frank J. Spevacek, City Manager

ATTEST:

Susan Maysels, City Clerk

APPROVED AS TO FORM:

M. Katherine Jenson
City Attorney

