

**CITY OF DESERT HOT SPRINGS
USE/LEASE AGREEMENT**

THIS FACILITIES USE AGREEMENT ("Agreement") is entered into this 2nd day of February 2010, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation in the County of Riverside, State of California, ("City") and BOYS AND GIRLS CLUB OF COACHELLA VALLEY, a non-profit California corporation ("Boys & Girls Club"). City and Boys & Girls Club are sometimes referred herein individually as "Party" and collectively as "Parties."

RECTALS

A. City is fee owner of that certain real property commonly known as the Desert Hot Springs Health and Wellness Center which is currently under construction for the purpose of operation as a Boys and Girls Club or other similar function. (the "Property").

B. Boys & Girls Club of Coachella Valley anticipates operating a complete range of Boys and Girls Club programs within the City of Desert Hot Springs.

C. Boys & Girls Club desires to use the Property and the City is willing to allow Boys & Girls Club's use for the sole purpose of operating a Boys & Girls Club in the City.

NOW, THEREFORE, in consideration of the above facts and for the promises and mutual covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following:

TERMS AND CONDITIONS

1. Effective Date; Term; Termination.

1.1 Effective Date. This Agreement shall become effective upon the issuance of a Certificate of Occupancy for the Property ("Effective Date").

1.2 Term. Upon the Effective Date, City hereby allows Boys & Girls Club to use the Property according to the terms and conditions set forth in this Agreement. The term of this Agreement ("Term"), shall commence on the Effective Date and shall end no later than the end of the calendar month of the tenth anniversary of the Effective Date.

1.3 Termination. Either Party may terminate this Agreement at any time and for any or no reason by giving thirty (30) days prior written notice. Notwithstanding the foregoing, this Agreement shall automatically terminate without any action or notice by either Party upon the end of the Term unless renewed.

2. Rent; Utilities; Other Fees.

2.1 Rent. Rental fee of \$1.00 per year shall be paid by Boys & Girls Club to City on the anniversary date of the Effective Date.

2.2 Utilities. City shall pay the appropriate suppliers for all water, gas, electricity, light, heat, power, and other utilities. Telephone, telefax, internet, cable television, or satellite television services used by Boys & Girls Club on the Property during the Term of this Agreement shall be paid by Boys & Girls Club. In addition Boys & Girls Club shall be responsible for any additions to existing utilities (such as telephone service) if requested.

2.3 City shall provide to Boys & Girls Club annual funding of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) payable one half upon the Effective Date and the balance six (6) months following the Effective Date and for future years, one-half (1/2) at the anniversary of the Effective Date and the balance six (6) months later.

3. Use.

3.1 Permitted Use. The Property shall be used solely for the purpose of conducting activities of and for Boys & Girls Club. Boys & Girls Club shall not change the type of use of the Property without obtaining the prior written consent of the City, which may be withheld in its sole and absolute discretion. The foregoing notwithstanding, Boys & Girls Club in its possession, use and occupancy of the Property, agrees to observe and comply with all restrictions, laws and ordinances affecting the Property or occupancy thereof. Boys & Girls Club further agrees that no use shall be made of the Property which will cause cancellation of any insurance policy covering the Property.

3.2 Permits and Licenses. Boys & Girls Club shall keep any and all applicable permits and licenses required by the City or any federal, state or local authority in connection with the permitted use of the Property, in good standing at all times during the term of this Agreement.

4. Insurance.

4.1 Minimum Requirements. Boys & Girls Club shall, at its expense, procure and maintain insurance for the duration of this Agreement, acceptable to the City, against claims for injuries to persons or damages to the Property which may arise from or are in connection with this Agreement.

4.1.2 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (I) *General Liability*: Insurance Services Office

Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4.1.3 Minimum Limits of Insurance. Boys & Girls Club shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California, if applicable. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

4.1.4 Endorsements. The insurance policies shall contain the following provisions:

(a) General Liability. The general liability policy shall be endorsed to state that (1) the City and its officials, officers, employees and agents shall be covered as additional insureds with respect to the performance of the Agreement by the Boys & Girls Club and its officials, officers, agents, representatives, employees or volunteers, including materials, parts or equipment furnished in connection with such services; and (2) the insurance coverage shall be primary insurance for the City and its officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Boys & Girls Club's scheduled underlying coverage. Any insurance maintained by the City or its officials, officers, employees and agents shall be excess of the Boys & Girls Club's insurance and shall not be called upon to contribute with it in any way.

(b) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City and its officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use loading or unloading of any auto owned, leased, hired or borrowed by the Boys & Girls Club or for which the Boys & Girls Club is responsible; and (2) the insurance coverage shall be primary insurance as respects the City and its officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Boys & Girls Club's insurance and shall not be called upon to contribute with it in any way.

(c) Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City and its officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Boys & Girls Club.

(d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced, or canceled without thirty (30) days prior written notice by first class mail has been given to the City. The City shall have the right during such notice period, in its sole discretion, to approve or disapprove any such change to each insurance policy required by this Agreement

4.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insured provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City or its officials, officers, employees and agents.

4.2 Verification of Coverage. Boys & Girls Club shall furnish City with original certificates of insurance effecting coverage and endorsements required by this Agreement on forms satisfactory to City. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Boys & Girls Club if requested. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.3 Personal Property. Boys & Girls Club shall, at its sole cost and expense and at all times during the term of this Agreement, keep all personal property on the Property insured for its full replacement value by insurance companies authorized to do business in the State of California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the United States. No provision of this Agreement shall be construed to impose any obligation upon City to insure Boys & Girls Club's personal property.

4.4 Increases in Coverage. City may, from time to time, require Boys & Girls Club to obtain (at Boys & Girls Club's expense) increases in both the types and amounts of coverage provided by the insurances required to be maintained by Boys & Girls Club hereunder, upon City's determination that such increases are reasonably necessary to maintain the level of protection provided to City hereunder as of the Effective Date.

5. Cleanliness, Waste and Nuisance.

5.1 Boys & Girls Club shall keep the Property in a neat, clean and sanitary condition, free from waste or debris and shall neither commit, suffer nor permit any waste or nuisance in or about the Property nor store materials hazardous to health or safety, and shall not permit the use of the Property for any illegal purposes.

5.2 Boys & Girls Club agrees to keep Property in proper order and agrees to provide all cleaning of inside restrooms, office and entry ways as well as provide all supplies necessary to operate Boys & Girls Club programs during its use of Property.

6. Assignments; Subleases; Transfers

Boys & Girls Club shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of Boys & Girls Club's interest in this Agreement or the Property, without City's prior written consent, which consent may be withheld in its sole and absolute discretion. Any attempted action described above without the prior written consent of City shall be void and Boys & Girls Club shall be deemed in default of this Agreement. Any permitted assignments shall not relieve the assigning party from its liability under this Agreement.

7. Condition of Property.

Boys & Girls Club represents that Boys & Girls Club has inspected and examined the Property and accepts the Property in its present condition and agrees that City shall only make repairs or improvements to Property on an as needed basis.

8. Damage to Property; Abandonment.

Boys & Girls Club shall be responsible for all damages to the Property caused or permitted by the Boys & Girls Club or the guests, invitees, visitors, agents, employees and independent contractors of Boys & Girls Club. Boys & Girls Club shall not vacate or abandon the Property at any time during the Term of the Agreement.

9. Alterations and Improvements

Boys & Girls Club shall not, without the prior written consent of City, make any alterations, improvements or additions in, to or about the Property. Any such alterations, improvements or additions shall be subject to section 10.2.

10. Surrender of Leased Property; Improvements

10.1 Surrender. Upon the termination of the Agreement, Boys & Girls Club shall surrender the Property in good order and condition, ordinary wear and tear or condemnation excepted.

10.2 Improvements. All improvements on the Property at the expiration of the term or earlier termination of this Agreement shall, without compensation to Boys & Girls Club, then automatically and without any act of Boys & Girls Club or any third-party become City property. Boys & Girls Club shall surrender the improvements to City at the expiration of the term or earlier termination of this Agreement, free and clear of all liens and encumbrances, other than those, if any, permitted under this Agreement or otherwise created or consented to in writing by City. Boys & Girls Club agrees to execute, acknowledge, and deliver to City any instrument requested by City as necessary in City's opinion to convey or otherwise perfect City's right, title, and interest to the improvements and the Property.

11. Right of Entry: Inspection.

Boys & Girls Club shall permit City's or County's agents, employees and representatives to enter the Property at any time and upon without notice for the purpose of inspecting the Property.

12. Indemnification.

Boys & Girls Club shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of the Boys & Girls Club, its officials, officers, employees, agents, consultants, guests, visitors, contractors and subcontractors arising out of or in connection with this Agreement. If any action or proceeding is brought against City, its successors or assigns by reason of any claim, Boys & Girls Club, upon notice from City, shall defend the claim at Boys & Girl Club's sole expense with counsel satisfactory to City.

13. Anti-Discrimination.

Boys & Girls Club agrees that this Agreement is made and accepted on and subject to the conditions that there be no discrimination against or segregation of any persons or groups of person, on account of race, color, gender, sexual preference, age, handicap, marital status, religion, national origin or ancestry in the use, occupancy, tenure or enjoyment of the Property, nor shall Boys & Girls Club, or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the Property.

14. Events of Default.

Either of the following occurrences shall constitute "Events of Default" under this Agreement:

14.1 Boys & Girls Club files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors; 14.2 Boys & Girls Club breaches any of the other agreements, terms, covenants, or conditions that the Agreement requires Boys & Girls Club to perform, and the breach continues for a period often (10) calendar days after notice by City to Boys & Girls Club.

15. Remedies.

If anyone (l) or more Events of Default set forth in Section 14 occurs and Boys & Girls Club has not cured in a reasonable time provided by the City, then the City may, at its election, terminate this Agreement and recover possession of the Property. Nothing contained herein shall limit City from pursuing, at any time, any remedy available to it at law or equity.

16. Miscellaneous.

16.1 No Waiver. No waiver or any condition or agreement in this Agreement by either City or Boys & Girls Club shall imply or constitute a further waiver by such Party of the same or any other condition or agreement.

16.2 Authority. Each of the persons executing this Agreement on behalf of Boys & Girls Club warrants to City that Agreement is a duly authorized and existing California non-profit corporation, that Boys & Girls Club is qualified to operate in the State of California, that Boys & Girls Club has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Boys & Girls Club is authorized to do so. Upon City's request, Boys & Girls Club shall provide evidence satisfactory to City confirming these representations.

16.3 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement shall be written and shall be deemed to have been given when personally delivered, sent by overnight delivery, or sent by certified or registered mail, return receipt requested, addressed to:

City:

City of Desert Hot Springs
Rick Daniels, City Manager
65950 Pierson Boulevard
Desert Hot Springs, California 92240

Boys & Girls Club:

Boys & Girls Club of Coachella Valley
Jim Ducatte, Foundation Chief Executive Officer
42-600 Cook Street, Suite 120,
Palm Desert, California 92211

City or Boys & Girls Club may change its address for notification under this Agreement by giving the other Party ten (10) calendar days notice prior to the change.

16.4 Attorneys' Fees. In the event of the bringing of an action or suit by a Party hereto against another Party hereunder by reason of a breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement, then in that event, the prevailing Party in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover from the other Party all costs and expenses of suit, including actual attorneys' fees.

16.5 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, City's successors and assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the Boys & Girls Club's successors and assigns so long as the succession or assignment is permitted by Section 6.

16.6 Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. Venue for any action filed with respect to the Agreement shall be in the courts of the County of Riverside and all Parties agree to submit to the jurisdiction of said courts.

16.7 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and constitutes the entire agreement between City and Boys & Girls Club as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

16.8 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties thereto, to any person or entity other than the Parties hereto.

16.9 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

16.10 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

16.11 No Partnership or Joint Venture. Nothing in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture, or associate in any relationship with Boys & Girls Club other than that of City and Boys & Girls Club, nor shall this Agreement be construed to authorize either to act as agent for the other.

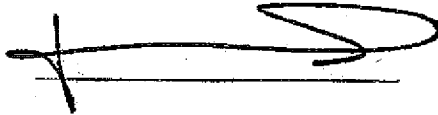
16.12 Severability. In the event anyone or more provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable, such provision(s) shall be severed from the Agreement but shall not affect any other provision of this Agreement.

IN WITNESS WHEREOF, City and Boys & Girls Club have executed this Agreement as of the date first written above.

CITY OF DESERT HOT SPRINGS

BOYS & GIRLS CLUB OF COACHELLA VALLEY

By: _____



City Manager/ or Designee

By: _____

ATTEST:



APPROVED AS TO FORM:

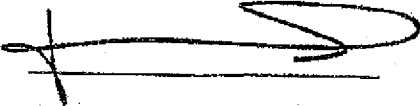
City Attorney

IN WITNESS WHEREOF, City and Boys & Girls Club have executed this Agreement as of the date first written above.

CITY OF DESERT HOT SPRINGS

BOYS & GIRLS CLUB OF COACHELLA VALLEY

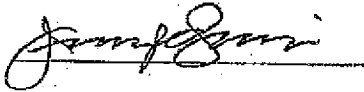
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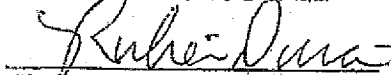
City Manager/ or Designee

By: _____

ATTEST:



APPROVED AS TO FORM:



City Attorney