

**AMENDMENT TO SUBLEASE AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
BORREGO COMMUNITY HEALTH FOUNDATION**

THIS AMENDMENT TO SUBLEASE AGREEMENT BY AND BETWEEN THE CITY OF DESERT HOT SPRINGS AND BORREGO COMMUNITY HEALTH FOUNDATION (the "Amendment"), is made and entered into as of this 18th day of July, 2017, but the effective date of this Agreement shall be September 1, 2017 ("Effective Date"), by and between the City of Desert Hot Springs, a municipal corporation, in the County of Riverside, State of California ("City"), and Borrego Community Health Foundation, a California non-profit public benefit corporation ("Borrego"), with the City and Borrego sometimes singularly referred to as "Party" and together referred to herein as the "Parties."

RECITALS

WHEREAS, the City owns the land located at 11750 Cholla Drive in the City of Desert Hot Springs, California ("Land"); and

WHEREAS, the Desert Hot Springs Health and Wellness Foundation (the "Foundation") acquired a leasehold interest in the Land from the City pursuant to a Ground Lease dated July 12, 2012, for a term of 30 years, to be extended according to lease options; and

WHEREAS, the Foundation is the owner the Health and Wellness Center, which are certain improvements that were constructed on the Land (the "H&W Center"); and

WHEREAS, the City acquired a leasehold interest in the H&W Center from the Foundation pursuant to a Facilities Lease dated July 12, 2012 (the "Facilities Lease"); and

WHEREAS, as part of its obligations under the Facilities Lease, the City and Foundation agreed that the City would sublease a certain portion of the H&W Center ("Premises") to a health facility operator primarily for the provision of health care, dental, and other health and wellness services for the benefit of the residents of the City; and

WHEREAS, the Parties previously entered into that certain Sublease Agreement dated July 1, 2013 (the "Sublease"), for Borrego to sublease from the City the Premises for the purpose of operating a Dental/Limited Scope Medical Clinic, Cardio Fitness Center, health education auditorium and nutritional lab; and

WHEREAS, the Parties now seek to amend the Sublease to expand the area within the H&W Center to be subleased by Borrego and to allow Borrego to assume certain operational activities that were previously the responsibility of the Boys & Girls

Club of the Coachella Valley, including but not limited to, recreational activities and child care services; and

WHEREAS, the Parties agree that the Health and Wellness Foundation may not need to consent to this Agreement, but is doing so in case it may be entitled to any rights and remedies; and.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

Section 1. RECITALS

The Recitals set forth above are hereby incorporated into this Amendment by this reference, as though fully set forth herein.

Section 2. DEFINITIONS AND TERMS

The terms and phrases used in this Amendment shall have the same meanings ascribed to them in the Sublease unless otherwise defined in this Amendment.

Section 3. EXPANSION OF PREMISES TO INCLUDE RECREATIONAL AND CHILD CARE USES

As of the Effective Date, the area comprising the Premises shall be expanded to include that portion of the H&W Center currently operated by the Boys and Girls Club. The expanded portion of the Premises shall hereinafter be called "Recreational Portion of Premises."

Section 4. ADDITIONS TO SUBLEASE

The following sections shall be added to the Sublease to read as follows:

A. Term; Termination.

A.1 Term. The term ("Term") of this Amendment as respecting the Recreational Portion of Premises shall commence on the Effective Date and shall expire upon the expiration of the Sublease.

A.2 Termination. Either Party may terminate this Amendment at any time and for any reason or no reason by giving thirty (30) days prior written notice. Notwithstanding the foregoing, this Amendment shall automatically terminate without any action or notice by either Party upon the end of the Term unless renewed.

B. Rent; Utilities; Other Fees.

B.1 Rent. Rental fee of \$1.00 per year shall be paid by Borrego to City on the anniversary date of the Effective Date.

B.2 Utilities. Utilities will be paid in the same manner as dictated in the Sublease, except that City shall pay all utilities which are separately metered to the Recreational Portion of Premises.

C. Use of Recreational Portion of Premises.

C.1 Permitted Use. Borrego shall use the Recreational Portion of Premises for the purpose of the Scope of Services attached hereto as Exhibit "A" and incorporated herein ("Permitted Use"). Borrego shall not change the type of use of the Recreational Portion of Premises without obtaining the prior written consent of the City, which may be withheld in its sole and absolute discretion. The foregoing notwithstanding, in its possession, use and occupancy of the Recreational Portion of Premises, Borrego agrees to observe and comply with all restrictions, laws and ordinances affecting the Recreational Portion of Premises or occupancy thereof. Borrego further agrees that no use shall be made of the Recreational Portion of Premises which will cause cancellation of any insurance policy covering the Recreational Portion of Premises.

C.2 Permits and Licenses. Borrego shall obtain and maintain any and all applicable permits and licenses required by the City or any federal, state or local authority in connection with the Permitted Use, in good standing at all times during the Term.

Notwithstanding anything to the contrary, the foregoing or herein, it being understood that as of the Effective Date of this Amendment Borrego does not possess a State of California license to conduct or engage in any activities for the Permitted Use, the parties understand that the City is exempt under the same applicable laws and is permitted to engage in the Permitted Use without possessing such license, as limited by applicable law. Therefore, the Parties agree that the City shall initially cause the operation of the Recreational Portion of Premises for the Permitted Use. To the extent permitted by the State of California, the City may subcontract all such Permitted Use activities to Borrego until such time that Borrego obtains the required license.

Borrego shall exert its best efforts to obtain any and all required licenses in the most expeditious manner possible and shall notify the City immediately upon obtaining the license.

D. Insurance.

D.1 Minimum Requirements. Borrego shall, at its expense, procure and maintain insurance for the duration of this Amendment, acceptable to the City, against claims for injuries to persons or damages to the Recreational Portion of Premises which may arise from or are in connection with this Amendment.

D.1.2 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *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); (3) professional errors and omissions liability insurance; and (4) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

D.1.3 Minimum Limits of Insurance. Borrego 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 Amendment/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.

D.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 obligations under this Amendment by Borrego 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.

(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 Borrego or for which Borrego is responsible; and (2) the insurance coverage shall be primary insurance as respects the City and its officials, officers, employees and agents.

(c) Professional Liability. Borrego shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Borrego's activities for the Permitted Use, whether such activities are performed by Borrego or by its employees, subcontractors, or sub-consultants, to the extent such persons other than Borrego are permitted to perform any of the activities under this Amendment. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

(d) 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 Borrego.

(d) All Coverages. Each insurance policy required by this Amendment shall be endorsed to state that: coverage shall not be suspended, voided, reduced or canceled unless 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 Amendment.

D.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.

D.2 Verification of Coverage. Borrego shall furnish City with original certificates of insurance effecting coverage and endorsements required by this Amendment 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 Borrego if requested. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

D.3 Personal Property. Borrego shall, at its sole cost and expense and at all times during the term of this Amendment, keep all personal property on the Recreational Portion of Premises 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 Amendment shall be construed to impose any obligation upon City to insure Borrego's personal property.

D.4 Increases in Coverage. The City may, from time to time, require Borrego to obtain (at Borrego's expense) increases in both the types and amounts of coverage provided by the insurances required to be maintained by Borrego 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.

E. Cleanliness; Waste and Nuisance.

E.1 Borrego shall keep the Recreational Portion of Premises 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 Recreational Portion of Premises nor store materials hazardous to health or safety, and shall not permit the use of the Recreational Portion of Premises for any illegal purposes.

E.2 Borrego agrees to keep the Recreational Portion of Premises 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 Borrego's programs contemplated under this Amendment during its use of the Recreational Portion of Premises.

F. Assignments; Subleases; Transfers. Borrego shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of Borrego's interest in this Amendment or the Recreational Portion of Premises, 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 Borrego shall be deemed in default of this Amendment and Agreement. Any permitted assignments shall not relieve the assigning party from its liability under this Amendment.

G. Condition of Property. Borrego and City agree that City shall make repairs and improvements to the Recreational Portion of Premises in a manner consistent with the Sublease including, without limiting the foregoing, the pool and related equipment.

H. Maintenance of Equipment. Borrego shall be responsible for maintenance of all equipment and personal property located within the Recreational Portion of Premises.

I. Damage to Property; Abandonment. Borrego shall be responsible for all damages to the Recreational Portion of Premises caused or permitted by Borrego or the guests, invitees, visitors, agents, employees and independent contractors of Borrego. Borrego shall not vacate or abandon the Recreational Portion of Premises at any time during the Term of this Amendment.

J. Alterations and Improvements. Borrego shall not, without the prior written consent of City, make any alterations, improvements or additions in, to or about the Recreational Portion of Premises. Any such alterations, improvements or additions shall be subject to Section K.2.

K. Surrender of Leased Property; Improvements.

K.1 Surrender. Upon the expiration or sooner termination of this Amendment, Borrego shall surrender the Recreational Portion of Premises in good order and condition, ordinary wear and tear or condemnation excepted.

K.2 Improvements. All improvements on the Recreational Portion of Premises at the expiration of the term or earlier termination of this Amendment shall, without compensation to Borrego, then automatically and without any act of Borrego or any third-party become City property. Borrego shall surrender the improvements to City at the expiration of the term or earlier termination of this Amendment, free and clear of all liens and encumbrances, other than those, if any, permitted under this Amendment or otherwise created or consented to in writing by City. Borrego 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 Recreational Portion of Premises.

L. Right of Entry; Inspection. Borrego shall permit the City's or the County of Riverside's agents, employees and representatives to enter the Recreational Portion of Premises at any time and without notice for the purpose of inspecting the Recreational Portion of Premises.

M. Indemnification.

M.1. Borrego 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 Borrego, its officials, officers, employees, agents, consultants, guests, contractors and subcontractors arising out of or in connection with this Amendment. If any action or proceeding is brought against City, its successors or assigns by reason of any claim, Borrego, upon notice from City, shall defend the claim at Borrego's sole expense with counsel satisfactory to City.

M.2 The City shall defend, indemnify and hold Borrego, 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 City, its officials, officers, employees, agents, consultants, guests, contractors and subcontractors arising out of or in connection with this Amendment. If any action or proceeding is brought against Borrego, its successors or assigns by reason of any claim, City, upon notice from Borrego, shall defend the claim at the City's sole expense with counsel satisfactory to Borrego.

N. Anti-Discrimination. Borrego agrees that this Amendment 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 Recreational Portion of Premises, nor shall Borrego, or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the Recreational Portion of Premises.

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

Section 5. COUNTERPARTS

This Amendment may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the Parties when at least a copy hereof shall have been signed by the Parties hereto.

Section 6. CONFLICTS

In the event there exists any conflicts between the terms of this Amendment and the Agreement, the terms of this Amendment shall be superseding.

Section 7. REMAINING PROVISIONS

All other remaining terms and conditions of the Agreement shall remain unchanged.

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IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the date first written above.

CITY OF DESERT HOT SPRINGS

**BORREGO COMMUNITY HEALTH
FOUNDATION**

Charles Maynard, City Manager

ATTEST:

**HEALTH AND WELLNESS
FOUNDATION**

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney

EXHIBIT “A”
SCOPE OF SERVICES
SEE ATTACHED

BORREGO SCOPE OF RECREATIONAL ACTIVITIES

The services described below meet specific critical objectives to continue programs and services currently provided to the youth and adolescents of Desert Hot Springs. Additionally, certain programs have been designated as expandable to all age groups. Each of the six objectives link to specific program examples. Program descriptions are provided on pages 3-4.

Objectives / Outreach Options:

Continuing Objectives	Outreach
<p><u>1st Objective: Character Development</u></p> <p>Provide peer-to-peer mentoring to encourage positive youth development. Provide support, encouragement, and apply social learning theories to promote healthy relationships.</p> <p>Program Examples:</p> <ul style="list-style-type: none">• LET’S GET REAL• TEEN SQUAD!	
<p><u>2nd Objective: Education</u></p> <p>Utilize resources to facilitate a learning environment via tutoring, computer labs, and assistance with school assignments. Promote learning through tutoring, fostering confident academic pursuits and skill development for academic advancement.</p> <p>Program Examples:</p> <ul style="list-style-type: none">• ABC’S OF MAKING SENSE INTO DOLLARS• TUTORING CAFE	<ul style="list-style-type: none">• Borrego can expand to offer at a multi-generational level.

Continuing Objectives	Outreach
<p><u>3rd Objective: Health & Play:</u></p> <p>In partnership with the Desert Healthcare District, this program provides education on healthier eating options and sustaining healthy behaviors. The program also incorporates physical activities as a critical component of a complete wellness lifestyle.</p> <p>Program Examples:</p> <ul style="list-style-type: none"> • HEALTHY HEARTS (DON'T START!) • HEALTH & PLAY 	<ul style="list-style-type: none"> • Borrego can expand to offer at a multi-generational level.
<p><u>4th Objective: Arts Programming</u></p> <p>Provide activities to encourage creative and artistic expression. Activities include painting, beading, drawing, origami, coloring, paper mache, and designated projects.</p> <p>Program Examples:</p> <ul style="list-style-type: none"> • AFTER-SCHOOL ALL STARS • CREATIVE HEARTS & ARTS 	<ul style="list-style-type: none"> • Borrego can expand to offer at a multi-generational level.
<p><u>5th Objective: Multi-Sports and Recreation</u></p> <p>Provides structured activities for participants to participate and learn various sports. Develop specific skills and provide team experiences for immediate and long term individual growth.</p> <p>Program Examples:</p> <ul style="list-style-type: none"> • HEALTH & PLAY • MULTI-SPORTS ACADEMY 	<ul style="list-style-type: none"> • Borrego can expand to offer at a multi-generational level.
<p><u>6th Objective: Supplemental Activities</u></p> <p>Borrego is committed to providing activities in the Health and Wellness Center for the Desert Hot Springs community to inspire and enrich the lives of youth.</p> <p>Program Examples:</p> <ul style="list-style-type: none"> • AFTER-SCHOOL ALL STARS • MULTI-SPORTS ACADEMY 	

Program Descriptions

1. ABC'S OF MAKING SENSE INTO DOLLARS

Introduce financial concepts at an age appropriate level to foster improved financial literacy. Each lesson includes an activity to improve individual financial skills and encourage positive fiscal habits.

2. AFTER-SCHOOL ALL STARS

Provide vibrant, fun, and interesting activities to attract youth in the after-school hours. In addition to scheduled programs and activities, the facility is equipped with a game room, computer room, learning center, gym, and arts/crafts area.

3. CREATIVE ARTS & HEARTS

Provide activities to encourage creative and artistic expression. Activities take place within the facility including painting, beading, drawing, origami, coloring, sewing, paper mache, and designated projects.

4. HEALTHY HEARTS (DON'T START!)

A collective curriculum designed to educate the teen population on the importance of avoiding drug and alcohol abuse. Includes on-going educational efforts that communicate the negative impacts associated with abusive behaviors, with a focus on protecting the mind, body, and soul of young adults.

5. HEALTH & PLAY

In partnership with the Desert Healthcare District, this program provides education on healthier eating options and resources to sustain healthy behaviors. In addition to emphasizing beneficial eating habits, this program also incorporates physical activities as a critical component of a complete wellness lifestyle.

6. LET'S GET REAL

A 3-series program that emphasizes (1) social development, (2) self-awareness, and (3) responsible decision making in regards to sexuality and sexual activity. Content is aimed for adolescent participants and includes topics covering basic anatomy, unique physical changes, and sexual behavior risk education.

7. MULTI-SPORTS ACADEMY

The Multi-sports Academy provides structured activities to provide immediate recreational outlets and long term benefits. The program's outreach to the community's youth during the afterschool hours allows participants to learn various sports, improve individual skill

development, interact in team environments, and incorporate concepts related to strategies, obstacles, and the outcomes of positive efforts.

8. TEEN SQUAD!

Teen Squad provides peer-to-peer mentoring, infusing the development of positive principles while providing support and encouragement relevant to the adolescent age groups. Activities incorporate social learning theories to foster improved social skills and relationships.

9. TUTORING CAFÉ

Multiple age levels participate by providing and/or receiving tutoring to improve academic performance. The program is designed to foster independent and confident learning by developing the skills necessary for successful academic advancement.