

## **FACILITY USE AGREEMENT**

This Facility Use Agreement ("Agreement") is made and entered into this 5th day of May, 2015 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and the Boys and Girls Club of Redlands, a non-profit charitable organization ("BGCR"). City and BGCR are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

### **ARTICLE 1. PREMISES**

Section 1.01 City agrees to permit BGCR to use the gymnasium, consisting of approximately 7650 square feet, located at the Community Center, 111 West Lugonia Avenue, Redlands, California (the "Premises") on the terms and conditions hereinafter set forth.

### **ARTICLE 2. TERM**

Section 2.01. This Agreement shall be for a term of three (3) years, unless earlier terminated as provided for herein.

### **ARTICLE 3. FEE WAIVER**

Section 3.01. Except as provided in Section 4.02, below, City will waive the Sixty One Dollar (\$61.00) per hour fee for the use of the Premises, and the Twenty Dollar (\$20.00) per hour staff attendant fee, for BGCR's use of the Premises during the term of this Agreement.

### **ARTICLE 4. USE OF PREMISES**

Section 4.01. The Premises shall be used for the exclusive purpose of providing recreational programs associated with the BGCR spring and summer day camps. BGCR shall not use or permit the Premises to be used for any other purpose without the prior written consent of City.

#### Operation of Business

Section 4.02. During the term of this Agreement, BGCR shall, unless prevented by conditions beyond its control, conduct business of the type and nature specified in Section 4.01 of this Agreement on the Premises in a safe and business like manner. The Premises shall be used only for the time and dates approved for BGCR as identified on City's Facility Rental form. In the event that scheduling modifications are necessary, BGCR shall make a forty-five (45) day advance schedule change request to City indicating the proposed modification. City shall respond to such requests within two (2) weeks of receipt. City may charge BGCR a fee in the amount of Sixty One Dollars (\$61.00) per hour for any scheduling changes made by BGCR without the aforementioned forty-five (45) day notice. BGCR shall assume full responsibility for its personal property used at the Premises, and shall hold City harmless for any theft or damage relating to BGCR's personal property.

#### User Responsibility

Section 4.03. BGCR shall be solely responsible for any set up and cleaning associated with its use of the Premises, and shall maintain the Premises in a clean and litter free manner.

#### Insurance Hazards

Section 4.04. BGCR shall not commit, or permit the commission of, any acts on the Premises, or use or permit the use of the Premises, in any manner that will increase the existing rates for, or cause the cancellation of, any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. BGCR shall, at its own cost and expense, maintain insurance for all personal property and improvements on the Premises.

#### Waste or Nuisance

Section 4.05. BGCR shall not commit, or permit the commission by others, of any waste on the Premises. BGCR shall not maintain, commit or permit the maintenance or commission of any nuisance on the Premises, and BGCR shall not use or permit the use of the Premises for any unlawful purpose.

#### Compliance with Laws

Section 4.06. BGCR shall, at BGCR's sole cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, federal, state and county or municipal, relating to BGCR's use and occupancy of the Premises for BGCR's operation of business whether those statutes, ordinances, regulations and requirements are now in force or are subsequently enacted. The judgment of any court of competent jurisdiction, or the admission by BGCR in a proceeding brought against BGCR by any government entity that BGCR has violated any such statute, ordinance, regulation or requirement shall be conclusive as between City and BGCR and shall constitute grounds for termination of this Agreement by City.

### **ARTICLE 5. INDEMNITY AND INSURANCE**

Section 5.01. BGCR shall secure and maintain throughout the term of this Agreement the following types of insurance:

A. Comprehensive general liability insurance, with carriers acceptable to City, with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. A certificate of insurance with endorsements evidencing such coverage shall be provided to City prior to BGCR's occupancy of the Premises.

B. Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that BGCR is self-insured or exempt from the workers' compensation laws of the State of California. BGCR shall provide City with Exhibit "A," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.

C. BGCR shall defend, indemnify and hold harmless City, and its elected officials, officers, employees, agents and volunteers, from any and all liabilities for injury to persons and damage to property arising out of any act or omission of BGCR, or its officers, employees, agents or volunteers, in connection with operation of its business at the Premises.

## **ARTICLE 6. TAXES AND UTILITIES**

### Utilities

Section 6.01. City shall pay, and hold BGCR free and harmless from, all charges for the furnishing of gas, water, sewer, electricity, solid waste disposal and other public utilities provided to the Premises during the term of this Agreement. BGCR shall pay, and hold City free and harmless from, all charges for telephone usage by BGCR at the Premises.

## **ARTICLE 7. MISCELLANEOUS**

Section 7.01. BGCR shall not encumber, assign, or otherwise transfer this Agreement, any right or interest in this Agreement, or any right or interest in the Premises or any improvements that may now or hereafter be constructed or installed on the Premises. Any encumbrance, assignment, transfer, or subletting by BGCR without the prior written consent of City, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of City, result in the immediate termination of this Agreement.

Section 7.02. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice in accordance with this section:

City  
Dave Jaffe, Recreation Coordinator  
Community Center  
City of Redlands  
111 W. Lugonia Ave.  
PO. Box 3005 (mailing)

Boys & Girls Club of Redlands  
Mark Davis, Vice President  
1251 Clay Street  
Redlands, CA 92374

Redlands, CA 92373

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section 7.02.

Section 7.03. This Agreement constitutes the entire agreement between City and BGCR respecting BGCR's use of the Premises, and correctly sets forth the obligations of City and BGCR to each other as of its Effective Date. Any agreements or representations between the Parties respecting the Premises not expressly set forth in this Agreement are null and void.

Section 7.04. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing Party shall, in addition to any costs and other relief be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

Section 7.05. This Agreement may be terminated by either Party by giving ninety (90) days prior written notice to the other Party.

Section 7.06. This Agreement may be terminated by City should BGCR commit a material breach of this Agreement. City shall provide five (5) days prior written notice to BGCR that identifies the reasons of default. Further, City, at its discretion, may provide options and a timeline for BGCR to remedy the breach.

Executed at Redlands, California.

CITY OF REDLANDS

BOYS AND GIRLS CLUB OF REDLANDS



Paul W. Foster, Mayor



Mark Davis, Boys & Girls Club Vice President

ATTEST:



Sam Irwin, City Clerk

## EXHIBIT "A"

### WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

#### CHECK ONE

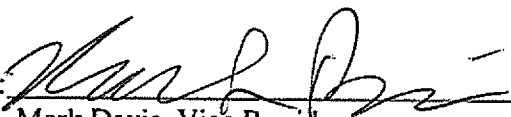
☒ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

\_\_\_\_\_ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

Boys & Girls Club of Redlands

Date: 4/24/08

By:   
Mark Davis, Vice President