

## MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: August 25, 2015

Subject: Approval of an extension of the agreement with the Boys and Girls Club of the Big Pines for operation of the City Swimming Pool

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The Boys and Girls Club of the Big Pines has requested an extension of the contract for the operation of the City Swimming Pool. The current agreement expires on August 31, 2015, and they have requested that the agreement be extended through October 31, 2015.

During the summer months, the Boys and Girls Club hosted a Water Aerobics class, which has seen a very good enrollment and attendance. The participants have asked if it would be possible to extend the class through the month of October. The pool would not be open for swim lessons or "open" swim sessions, but only for the purpose of continuing the Water Aerobics class.

The proposed extension to the agreement is attached, as well as a copy of the original agreement.

**AMMENDMENT AND EXTENSION OF THE SWIMMING POOL AGREEMENT CITY OF MARSHALL AND BOYS AND GIRLS CLUB OF THE BIG PINES**

THIS AMENDMENT AND EXTENSION OF THE SWIMMING POOL AGREEMENT between the City of Marshall, Texas, "City", and the Boys and Girls Club Of the Big Pines, INC., a nonprofit organization, hereinafter called "Manager" is made and entered into effective as of the 27<sup>th</sup> day of August, 2015, to establish and amend certain terms and conditions of the Agreement.

By and in consideration of mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The Agreement is amended to extend the term of the contract for an additional sixty (60) days after August 31, 2015. The Agreement shall be and remain in full force and effect through October 31, 2015.
2. The Agreement is amended by deleting paragraphs 4. A. (4) and (5) regarding swim lessons and "open" swim sessions.
3. Except as modified and extended herein, all of the other terms and provisions of the Agreement are hereby continued in full force and effect.
4. This agreement may not be modified further except in writing, signed by the parties.

IN WITNESS WHEREOF, the parties have caused this Contract and Agreement to be executed by their respective and appropriate officials on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, to be effective on the date for the terms herein provided.

ATTEST:

THE CITY OF MARSHALL, TEXAS

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Lisa Agnor, City Manager

ATTEST:

BOYS & GIRLS CLUBS OF THE BIG PINES

\_\_\_\_\_  
Executive Director

**SWIMMING POOL AGREEMENT CITY OF MARSHALL  
AND BOYS AND GIRLS CLUB OF THE BIG PINES**

THE SWIMMING POOL AGREEMENT ("Agreement") is made May 22, 2015 by and between the City of Marshall, Texas, hereinafter called "City," and Boys and Girls Club Of the Big Pines, INC., a nonprofit organization, hereinafter called "Manager."

By and in consideration of mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Manager shall manage and operate the following described premises located in Marshall, Texas, upon the terms and conditions set forth herein: The swimming pool owned by City of Marshall located at 1500 Positive Place and comprising the pool areas themselves, equipment, and restrooms (hereinafter collectively referred to as "Managed Premises").

2. **TERM.** The term of this Agreement shall commence May 1, 2015 and shall continue for a period thereafter, expiring on August 31<sup>st</sup>, 2015 unless such Agreement term is extended upon mutual agreement in writing no less than 15 days prior to expiration date.

**3. MANAGEMENT.**

A. The Manager shall pay costs and expenses associated with operating the Managed Premises including salaries, taxes, insurance premiums and benefits of Manager's employees in such operation. The City will be responsible for the cost of utilities and pool chemicals as needed for the standard operations of Managed Premises.

B. The Manager shall maintain complete and accurate financial records of the expenditures, revenue, and other costs associated with the management of the Premises and on request of the City or other person, shall make such records available for inspection and review by the City or other person.

C. The Manager shall collect all revenues of the Managed Premise. The Manager shall submit a monthly report to the City detailing the revenue collected and the number of people serviced during the term of this Agreement.

D. This contract shall not obligate the City for any expenditure of funds beyond that amount approved, nor the expenditure of funds from any other source of funds save and except as that source is stated in this contract

4. **CONDITION AND USAGE OF MANAGED PREMISES.** The Manager expressly covenants and agrees to use the Managed Premises for traditional program services. The Managed Premises shall not be used for any purpose prohibited by the laws of the United States,

State of Texas, or local laws, ordinances and regulations.

**A. Program Services.**

(1) It shall be the duty of the Manager to furnish trained and certified lifeguards to be on guard and save the lives of any and all persons using the swimming pool and to be present at all times when there people in the pool.

(2) Manager shall provide at least two (2) certified lifeguards on duty observing the pool when pool is open for "free swim" to the public. Manager also agrees to maintain a ratio of 1 lifeguard per 25 persons using the pool. Manager shall provide another support person, in addition to the two lifeguards, to manage the front door.

(3) The Manager shall be responsible for the hiring, training, and scheduling of all lifeguards during the term of the agreement.

(4) The Manager agrees to offer swim lessons during the term of Agreement at the swimming pool. The Manager further agrees to require all employees responsible for teaching classes be trained and certified instructors.

(5) Manager agrees to provide program services at the managed premises that are open for the public. Specifically Manager agrees to provide "open or free" swim for the public at a minimum of 4 (four) hours a day at least five days a week.

(6) The City has established a price per person for open swim at the pool by Ordinance or Resolution. The Manager agrees to charge and collect the same fee for use of the pool during open swim.

**B. Maintenance of Managed Premises.**

(1) Manager will be responsible for testing and maintaining adequate levels of chemicals in the swimming pool. Manager will provide staff to clean and maintain the Managed Premises, including a "Certified Pool Operator" to maintain the proper chemical balance in the Pool.

(2) The City shall provide the chemicals and other materials needed to properly maintain the Pool. In addition, the may periodically monitor the pool chemical balance to verify that Manager is properly maintaining the pool.

(3) Manager shall inform City immediately of any pool equipment failure or damage to the Managed Premises.

(4) The City agrees to keep the facilities at the Managed Premises in safe repair as well as the areas that surround the pool on the City's property. City shall be responsible for all repairs and replacement costs in case of equipment failure. The City will use best efforts to repair the

Pool, however, the City will not be responsible for expenses or lost revenue for a closing due to an equipment failure or any other pool damage.

**C. Use of Managed Premises.**

(1) The Manager will have full use of the pool, except as otherwise provided for in this agreement. Manager will provide City with a schedule of planned usage during the term of the agreement.

(2) At any time that the Manager is operating and managing the pool, upon completion of that day's hours of operation by Manager, the premises will be locked.

(3) City will provide Manager with keys to the Managed Premises. Manager agrees that no duplication of keys will be made without the permission of the City. The Manager will return all keys that City issued at the conclusion of term agreement. City will provide to Manager only the safety equipment that is required by local or state law: telephone, shepherd's crook, ringbuoys, and backboard.

(4) Manager may store any equipment inside City's storage building. Manager will store all of City's safety equipment in the City's storage area when Manager leaves the Managed Premises. City agrees to replace any City safety equipment when worn or found to be inadequate. Manager shall replace, at its expense, any of City's equipment that is broken or stolen while under the control of the Manager.

**5. INSURANCE.** Manager covenants and agrees that it shall carry and maintain workers' compensation and general liability insurance in an amount and in a form acceptable to the City. All general liability insurance shall name the City, its officers, agents, and employees as Additional Insured and shall provide that the "other insurance" clause shall not apply to the City. Evidence of the insurance coverage required under this contract shall be supplied to and approved by the City Manager before the commencement of any work covered by this contract.

**6. DESTRUCTION OF MANAGED PREMISES.** Should the Managed Premises be destroyed or rendered uninhabitable through no act or fault of the Manager, either by the fire, act of God, or otherwise, this Agreement may be terminated by the City or Manager.

**7. INDEMNIFICATION and HOLD HARMLESS.**

A. The City by this agreement, to the extent allowed by law, indemnifies Manager and agrees to hold it harmless from any and all liability or costs arising out of the operation of the Managed Premises with the exception of the salaries of Manager's staff and employees and the cost of workers' compensation insurance for Manager's employees. Except as expressly

provided below, the City shall defend the Manager and its trustees, officers, agents and employees against all legal actions and claims made or brought against the Manager or any of its trustees, officers, agents or employees arising out of or resulting from the performance of this Agreement.

B. Excluded Matters. The City shall not indemnify the Manager or any of its trustees, officers, agents or employees for any loss, including but not limited to any judgments, awards, attorney's fees or costs, which arises from any of the following:

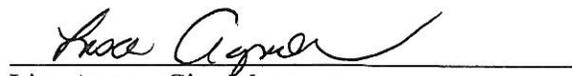
- (1) Any judgment or award based on willful, wanton or malicious conduct by Manager or any of its trustees, officers, agents or employees (for the purposes hereof, "willful conduct" shall mean conduct done voluntarily and intentionally and with the intent to do something the law forbids, i.e., with bad purpose either to disobey or to disregard the law);
- (2) Any dispute, litigation, suit, arbitration, or other proceeding between the City and the Manager concerning the validity, applicability, interpretation, breach, termination or rights and obligations of the parties, as among themselves, under this Agreement; or
- (3) Any claim for bodily injury, whether or not it is incurred in connection with this Agreement, occurring on property owned by the Manager or which arises out of the condition of, maintenance of or failure to maintain any such property.

IN WITNESS WHEREOF, the parties have caused this Contract and Agreement to be executed by their respective and appropriate officials on this the 22<sup>ND</sup> day of May, 2015, to be effective on the date for the terms herein provided.

ATTEST:

THE CITY OF MARSHALL, TEXAS

  
City Secretary

  
Lisa Agnor, City Manager

ATTEST:

BOYS & GIRLS CLUBS OF THE BIG PINES



  
Executive Director