

MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: February 23, 2016

Subject: Approval of an agreement with the Boys and Girls Club of the Big Pines for operation of the City swimming pool

The Boys and Girls Club of the Big Pines managed and operated the City of Marshall swimming pool during the summer of 2015. This organization has approached the City to request the opportunity to manage and operate the pool again this year. A copy of the proposed agreement is attached.

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

THE SWIMMING POOL AGREEMENT ("Agreement") is made _____, 2016 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."

WHEREAS, the City owns a municipal swimming pool located at 1311 Five Notch Road, within the City, and WHEREAS, the Manager desires and agrees to assume the supervision, control, maintenance, and operation of the Pool Center for the purposes of providing recreational activities for the community under the terms of this Agreement.

NOW, THEREFORE, 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. GENERAL OPERATION. 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 1311 Five Notch Road 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 1st, 2016 and shall continue for a period thereafter, expiring on August 31st, 2016 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 are 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 City 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 the 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 the term of the 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 such insurance shall contain a waiver of subrogation against the City, its agents, officers, and employees and shall require that the City be notified in writing at least thirty (30) days before any change to said insurance policies shall become effective. 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 fire, act of God, or otherwise, this Agreement may be terminated by the City or Manager.

7. INDEMNIFICATION and HOLD HARMLESS.

A. The City shall indemnify and hold harmless the Manager against and from any and all claims, damages, costs, and expenses arising from any one or more of the following:

(1) The City's use of the Managed Premises, including the swimming pools;

(2) The City's breach or default in the performance or any obligation by the City to be performed under the terms of this Agreement; or

(3) Any act of negligence of the City, its agents, officers or employees.

B. The Manager shall indemnify and hold harmless the City against and from any and all claims, damages, costs and expenses arising from any one or more of the following:

(1) The Manager's use, management, or operation of the Managed Premises, including the swimming pools, restrooms, storage areas;

(2) The Manager's breach or default in the performance of any of its obligations to be performed by it under the terms of this Agreement; or

(3) Any act of negligence by the Manager, its agents, officers or employees.

8. AGENCY. Nothing in this Agreement shall be construed to constitute the Manager and the City as the agent of the other or as partners or joint ventures. Manager covenants and agrees that in the performance of the services hereunder Manager shall be and is an independent contractor, solely responsible for the performance of the work, and is not an employee, agent, or other representative of the City. None of the employees of the Manager shall be considered employees of the City at any time or for any reason.

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 _____, 2016, to be effective on the date for the terms herein provided.

ATTEST:

THE CITY OF MARSHALL, TEXAS

Debbie Manuel, Acting City Secretary

Lisa Agnor, City Manager

ATTEST:

BOYS & GIRLS CLUBS OF THE BIG PINES

Executive Director