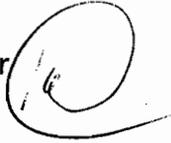


**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable City Council

**FROM:** Mike Atkin, Recreation and Community Services Manager 

**DATE:** November 29, 2007 (Meeting of December 5, 2007)

**SUBJECT:** Consider Use Agreement with Moorpark Boys and Girls Club-  
Moorpark Basketball Association (MBA)

**BACKGROUND**

In 1997 and then again in 2002, the City Council approved five-year use agreements with the major youth sports organizations in Moorpark. Among other things, the agreements identify parks and park amenities, use dates, site and amenity improvements, and maintenance responsibilities granted to each organization. The annual use fee for those organizations using sports fields is \$1.00 per year; Moorpark Basketball Association (MBA) pays a reduced hourly use fee for the use of the Arroyo Vista Recreation Center (AVRC) gymnasium. Earlier in the year, the Council considered and approved new agreements with Girls Softball, Little League, AYSO, and Moorpark Soccer Club.

Moorpark Basketball Association operates under the Moorpark Boys and Girls Club. As a result, the use agreement is between the City and the Club. The Council is now being asked to approve a new agreement with Moorpark Boys and Girls Club for MBA activities, consistent with the previously approved agreements.

**DISCUSSION**

The City's agreement with Boys and Girls Club expires in the end of 2007 and the City Council is being asked to approve a new five-year agreement. Consistent with the other youth sports use agreements, language has been added to agreement requiring Boys and Girls Club to adhere to the City's sign policy and to allow them to participate in the City's recycling program.

In addition the agreement provides for the implementation of a non-resident player fee at the start of the 2008 season (December 2008 for MBA). As a

fairness issue, and with the approval of the other youth sport use agreements, the Council approved the establishment of a youth sports non-resident fee equal to the amount Moorpark residents pay annually to maintain City parks. The final methodology for the establishment of this fee will be a topic at the next Youth Sports Committee and will be presented to the Council for action prior to implementation.

Other than the aforementioned additions, only minor cleanup changes were made to the previous agreement's provisions. Boys and Girls Club was provided with draft copy of the agreement to review and comment. The agreements address the following conditions:

Boys and Girls Club has the use of the gymnasium located at Arroyo Vista Recreation Center for MBA activities from December through March at a fee of twelve dollars (\$12.00) per hour during regular operating hours (i.e. when the gymnasium would normally be open to the public) and thirty dollars (\$30.00) per hour outside of regular operating hours, when the City pays for additional staff to be present. Boys and Girls Club is responsible for basic maintenance and cleaning of the gymnasium including picking up all trash in and around gym, and dust mopping the gym hardwood floor after use each day.

While youth sports groups who enter into use agreements with the City have primary rights to use the facilities granted in the agreement during the dates identified, the City maintains its exclusive right to manage the use of its facilities, including the gymnasium located at Arroyo Vista Recreation Center, and to allow for their use by other groups or individuals when they are not in use by the aforementioned party. Additionally, the City may preempt the use of said facilities upon thirty days written notice. The Use Agreement also includes a Use Fee Adjustment provision that allows the City to adjust use fees thirty days before the start of each respective season, upon written notice.

#### **STAFF RECOMMENDATION**

Approve a five-year Use Agreement with Moorpark Boys and Girls Club for Moorpark Basketball Association activities subject to final language approval of the City Manager and City Attorney, and authorize the City Manager to execute the agreements on behalf of the City.

Attachments A: Boys and Girls Club Agreement

**AGREEMENT BETWEEN THE CITY OF MOORPARK  
AND THE BOYS AND GIRLS CLUB OF MOORPARK**

THIS USE AGREEMENT (hereinafter "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between the CITY OF MOORPARK (hereinafter "City") and Boys and Girls Club of Moorpark a nonprofit Boys and Girls Club serving the City of Moorpark, California (hereinafter "Boys and Girls Club").

THE PARTIES AGREE THAT:

Section 1.            PREMISES

City, in consideration of the fees to be paid and of the indemnifications, covenants, and agreements agreed to herein, hereby grants to Boys and Girls Club, and Boys and Girls Club hereby accepts from City, the use of certain real property and associated with the gymnasium at Arroyo Vista Community Park (hereinafter Premises), adjacent to the Recreation Center located at 4550 Tierra Rejada Road, Moorpark, California, as more fully described in Exhibit "A" attached hereto and by this reference incorporated herein. The City's contact regarding the day-to-day activities and uses associated with this Agreement and use of Premises shall be with officials of Moorpark Basketball Association (hereinafter "MBA") as designated in writing by the Boys and Girls Club.

Section 2.            TERM

The term of this Agreement shall be for five years, commencing on December 1, 2007 and ending on November 30, 2012, provided however, that City's obligations hereunder shall be contingent upon Boys and Girls Club's payment in full of all use and related fees and fulfillment of all obligations as set forth in this Agreement.

This Agreement may be terminated by either party with or without cause by providing written notice no less than thirty (30) days in advance of such termination.

Section 3.            USE FEES

Boys and Girls Club further agrees to pay the City Use Fees for the period of December through 1 March 31 of each year, as follows:

- A. For the use of Premises during the gymnasium's normal hours of operation, defined as hours when the Arroyo Vista Recreation Center is open to the public, twelve (\$12.00) dollars per hour; and
- B. For use of Premises during the gymnasium's non operating hours, defined as hours when the Arroyo Vista Recreation Center is not open to the public, thirty (\$30.00) dollars per hour.
- C. In the event that City is required to perform cleaning on Premises following Boys and Girls Club's use, and as a result of Boy and Girls Club's lack of performance of maintenance as described in Section 14, an additional fee of fifteen (\$15.00) dollars shall be billed to Boys and Girls Club for every thirty (30) minutes required to clean Premises by City. Each year, Boys and Girls Club agrees to deposit with City two hundred (\$200.00) dollars as a cleaning deposit. Any fees remaining after March 31 each year shall be reimbursed to Boys and Girls Club.
- D. Boys and Girls Club agrees to pay use fees to City by December 31. Any changes to the approved use scheduled for Premises shall be made in writing. Fees associated with the approved changes shall be paid to City no later than April 15 following the most recent MBA season.
- E. Boys and Girls Club agrees to work with the City to implement a Non-Resident Use Fee if so directed by City. If no such notification is given, the Use Fees for the next year shall be the same amount as the prior year, except for reasons provided in Section 4 of this agreement.

Section 4.            ADJUSTMENTS USE OF FEES

For the year December 1, 2008, and for each year this Agreement is in effect, the City may adjust the Use Fees, referenced in Section 3 on or before the beginning of the new year by giving Boys and Girls Club written notice prior to October 1. If no such notification is given, the Use Fees for the next year shall be the same amount as the prior year.

Section 5.            USE

The Premises shall be used for the following specified purposes only and shall not be used for any other purpose without the prior written consent of the City:

- A. Boys and Girls Club shall use Premises for authorized MBA games and practices only. Said use is granted during the period of December 1 through March 31 (Winter Season). The specific days and hours will be finalized by the Director of Community Services prior to December 1 of each year, and upon a written request from Boys and Girls Club regarding specific days and hours, taking into account City recreation program needs and the needs of Boys and Girls Club.
- B. Use of Premises includes, but is not limited to, the bleachers and basketball standards. In consideration of use, Boys and Girls Club agrees to abide by the rules established by the City, including, but not limited to, restrictions on the consumption of food and beverages in Premises, and to enforce those rules on its players and bystanders.
- C. At all times, City retains the right to use Premise at its discretion for City sponsored and co-sponsored events upon no less than thirty (30) days written notice to Boys and Girls Club. During the Winter Season, the general public shall have access to, and use of, said Premises at a time of day and or on a day that is not included in the written schedule submitted by the Boys and Girls Club in writing and approved in writing by the City. Boys and Girls Club shall not have priority use of Premises outside of the approved schedule.
- D. Boys and Girls club agrees to attempt to secure other gymnasium facilities as they become available in future years such as planned facilities at Chaparral Middle School and Moorpark High School.

Section 6.        SIGNS

Boys and Girls Club agrees not to permit the construction or placement of any sign, signboard or other form of outdoor advertising on the Premises without the prior written consent of the City. In the event of a violation of this provision by Boys and Girls Club or any one claiming under Boys and Girls Club, Boys and Girls Club hereby authorizes City as Boys and Girls Club's Agent, to enter the Premises and to remove and dispose of any such sign, signboard or other advertising, and to charge the cost and expense of any such removal and disposal to Boys and Girls Club who agrees to pay the same upon demand.

This provision does not exclude the use of identification banners for individual teams and sponsors, which may be displayed during games and

shall be removed following the end of each game.

Section 7.            INDEMNIFICATION AND HOLD HARMLESS

Boys and Girls Club hereby agrees to hold harmless and indemnify City, its officers, agents, and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising or growing out of loss or damage to property, including City's own personal property, or injury to or death of persons, including employees of City, resulting in any manner whatsoever directly or indirectly, by reason of this Agreement or the use of the Premises by Boys and Girls Club or any person claiming use under or through Boys and Girls Club unless such loss, damage, injury, or death is due to the sole negligence of the City. Boys and Girls Club shall also hold the City harmless from all costs and expenses, including costs of investigation arising out of or incurred in the defense of any claim, proceeding, or action brought for injury to persons or damage to property, resulting from or associated with the use of said Premises under this Agreement and shall further save and hold harmless the City from any and all orders, judgments, and decrees which may be entered in any and all such suit or actions. Boys and Girls Club and all others using said Premises under this Agreement hereby waive any and all claims against the City of damage to persons or property in, or about said Premises.

The City does not, and shall not, waive any rights that it may have against Boys and Girls Club by reason of this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. Said hold harmless and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in this Section. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

Section 8.            LIABILITY INSURANCE

As a condition precedent of the effectiveness of this Agreement, Boys and Girls Club shall procure, and thereafter maintain in full force and effect at Boys and Girls Club sole cost and expense, a public liability insurance policy as specified in Exhibit "B" attached hereto and incorporated herein by this reference as though set forth in full.

Section 9.            CASUALTY INSURANCE

The parties each specifically acknowledge that City shall not be obligated to

keep the Premises insured against fire, or any other insurable risk. Boys and Girls Club hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the Premises by fire, earthquake, flooding, storm or any other cause.

Section 10.      IMPROVEMENTS

Boys and Girls Club shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City. All alterations, additions and improvements shall be done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all Federal, State, County, and local laws, ordinances, codes and standards relating thereto. Performance of work shall be subject to City monitoring and inspection. At City's sole discretion, work may be stopped if it does not conform to City specifications and standards. Unless otherwise expressly agreed to in writing by the City, any alterations, additions and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Agreement. Boys and Girls Club shall timely pay all costs associated with any and all improvements, and shall keep the Premises free and clear of all mechanics liens. Boys and Girls Club agrees to and shall indemnify, defend and save City free and harmless against all liability, loss, damage, costs, attorney's fees and other expenses of any nature resulting from any Boys and Girls Club alterations, additions or improvements to the Premises.

At such time as Boys and Girls Club vacates Premises, all improvements to Premises not already owned by City shall become the property of the City unless otherwise authorized by City in writing.

Section 11.      FLAMMABLE MATERIAL, WASTE AND NUISANCES

Boys and Girls Club agrees that it will not place or store any flammable materials on the Premises, that it will not commit any waste or damage, nor suffer any to be done. Boys and Girls Club also specifically agrees that it will not allow others to take such actions on the Premises. Boys and Girls Club further agrees that it will keep the Premises clean, free from weeds, rubbish and debris and in a condition satisfactory to City.

Boys and Girls Club shall also provide adequate controls for dust, odors, noise which may emanate from the Premises or from Boys and Girls Club's activities on adjacent property and take appropriate steps necessary to prevent dust contamination of City's facilities located on, near or adjacent to the Premises. Boys and Girls Club agrees to take preventative action to eliminate such dust, odor, noise or any other

nuisance which may disturb the adjacent or nearby community and agrees to be responsible for and to assume all liability for such dust, odor, noise or other nuisance disturbances. Boys and Girls Club also agrees that it shall not use amplified sound on Premises for any reason, without the prior written consent of City.

Notwithstanding the above, Boys and Girls Club shall not install, operate or maintain, or cause, or permit to be installed, operated or maintained any electrically charged fence on the Premises.

Section 12. PESTICIDES AND HERBICIDES

Boys and Girls Club agrees that prior to any application of either pesticides or herbicides, it shall receive written consent from City, and further any pesticide or herbicide applications on the Premises shall be made in accordance with all Federal, State, County and local laws. Boys and Girls Club further agrees to dispose of any pesticides, herbicides or any other toxic substances which are declared to be either a health or environmental hazard in such a manner as prescribed by law. This shall include, but shall not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

Section 13. HAZARDOUS MATERIALS INDEMNITY

Boys and Girls Club hereby agrees to indemnify and hold harmless City, and its respective officers, employees, and agents, from and against any and all claims, actions, losses, liabilities, costs and expenses: (a) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal of Hazardous Material on the Premises by Boys and Girls Club; and (b) including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence, or use, generation, storage, release, threatened release, or disposal of Hazardous Materials on the Premises by Boys and Girls Club. As used in this Section, Hazardous Materials means any flammable explosives, radioactive materials, asbestos, PCBs, hazardous water, toxic substances of related materials, including, without limitation, substances, defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC, Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC,

Section 6901, et seq.; the Toxic Substances Control Act, 15 USC, Section 2601, et seq.; any other Federal, State or local law applicable to the Premises; and in the rules and regulations adopted or promulgated under or pursuant to any of said laws. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 14.      MAINTENANCE

Except as specifically provided for in the Agreement, all maintenance of, and repairs to Premises shall be done at City's sole discretion and shall be performed by City force account or by City's authorized agent unless approved by City in writing. All maintenance and repair authorized to be performed by Boys and Girls Club shall adhere to City specifications and standards. All improvements shall meet City and other applicable codes, regulations, and standards including but not limited to building and zoning codes.

- A. During the period of December 1 through March 31, Boys and Girls Club shall be responsible to perform the following maintenance on Premises:
1. Pick up all trash in and around Gym, including, but not limited to under the bleachers, on and around the floor, on around the basketball court, and around the outside of the gymnasium. Place all trash in container provided by City. After use on Fridays, Saturdays, and Sundays, empty contents of trash containers and deposit in dumpster located in the improved parking lot. Insert new liners in trash container with liners provided by City.
  2. Dust mop the Gym hardwood floor after use each day with mop provided by City. After use on days when Boys and Girls Club is last to use Premises, whether use is for practices or games, treat hardwood floors with mop and solution provided by City and using method demonstrated by City.
  3. Sweep non-hardwood floor after play on days when Boys and Girls Club is last to use Premises using broom and pan provided by City; deposit debris in trash container.
  4. Boys and Girls Club may elect to participate in the City recycling program. If Boys and Girls Club elects to participate they agree to:

- a. Collect recyclable drink containers from games and practices
- b. Remove recyclable items from park grounds
- c. Provide the City with receipt generated from recycling center that shows the weight and dollar value of all recycled materials

City agrees to

- a. Provide recycling containers
- b. Allow Boys and Girls Club to keep any funds generated from recycling program

City shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Agreement. City shall not be obligated to perform any precautionary or preventative measures with respect to the Premises, including, but not limited to drainage and flood control measures. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services.

Section 15.      ENTRY BY CITY

City may enter upon the Premises at all reasonable times to examine the condition thereof, and for the purpose of providing maintenance and making such repairs as City desires to make.

Section 16.      GOVERNING LAW

Boys and Girls Club agrees that in the exercise of its rights under this Agreement, Boys and Girls Club shall comply with all applicable Federal, State, County and City laws and regulations in connection with its use of the Premises. The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California.

Section 17.      DISCRIMINATION

Boys and Girls Club agrees not to discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the Premises.

Section 18.            ASSIGNMENT AND SUBLETTING

Boys and Girls Club shall not assign this Agreement, or any interest therein, and shall not assign use of the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Boys and Girls Club excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of City. A consent to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. This Agreement shall not, or shall any interest therein, be assignable, as to the interest of Boys and Girls Club, by operation of law, without the written consent of City. Any assignment or subletting without such consent shall be void, and shall, at the option of the City, terminate this Agreement. No legal title or interest in Premises is created or vested in Boys and Girls Club by this Agreement.

Section 19.            INSOLVENCY OR BANKRUPTCY

If Boys and Girls Club shall be adjudged bankrupt or insolvent, this Agreement shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the Boys and Girls Club under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Agreement shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the Boys and Girls Club thereupon shall cease and terminate.

Section 20.            DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Agreement is in default or breach in the performance of any of the terms and conditions of this Agreement, the other party shall give written notice to remedy such default or breach. If default or breach is remedied within 30 days following such notice, then this Agreement shall continue in full force and effect. If such default or breach is not remedied within 30 days following such notice or if the nature of the default is such that it cannot reasonably be cured within 30 days, if Boys and Girls Club fails to commence to cure within the 30 day period, the other party may, at its option, terminate this Agreement. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Agreement shall be deemed to be both a covenant and a condition.

Section 21.        INTERPRETATION

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

Section 22.        WAIVER

A waiver by either party or any default or breach by the other party in the performance of any of the covenants, terms or conditions of this Agreement shall not constitute or be deemed a waiver of any subsequent or other default or breach.

Section 23.        ACQUIESCENCE

No acquiescence, failure or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

Section 24.        PARTIES BOUND AND BENEFITED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 25.        CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Agreement shall cease on the day of possession by the public authority. If a part only of the Premises should be taken under eminent domain, Boys and Girls Club shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Premises. If Boys and Girls Club remains in possession, all of the terms hereof shall continue in effect, with the fees payable being reduced proportionately for the balance of the Agreement term.

Section 26.        TIME

Time is of the essence of this Agreement.

Section 27.        REMEDIES

In case of the failure or refusal of Boys and Girls Club to comply with and perform each and all of the terms and covenants on its part herein contained, this Agreement and all rights hereby given shall, at the option of City, cease and terminate, and City shall have the right forthwith to remove Boys and Girls Club's personal property from the Premises at the sole cost, expense and risk of Boys and Girls Club, which cost and expense Boys and Girls Club agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City.

Section 28.        NOTICES AND PAYMENTS

All notices required under this Agreement including change of address shall be in writing, and all notices and payments shall be made as follows:

- A. All payments and notices to Boys and Girls Club shall be given or mailed to the current MBA Commissioner with a copy mailed to the Executive Director of Boys and Girls Club. It is the responsibility of Boys and Girls Club to notify City when there has been a change with regard to the individual serving as MBA Commissioner and to provide City with name, address, and 24-hour contact phone number of the new Commissioner:

Moorpark Boys and Girls Club  
280 Casey Road  
Moorpark, CA 93021  
Emergency Contact Person: Scott Mosher, Executive Director  
Phone Number: (805) 529-1140

- B. All payments and notices to City shall be given or mailed to:

City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021  
Attention: Director of Parks, Recreation & Community  
Services

Section 29.        PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is found by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and

shall in no way be affected, impaired or invalidated thereby.

Section 30.            GENDER AND NUMBER

For the purpose of this Agreement wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

Section 31.            PARAGRAPH HEADINGS

Paragraph headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

Section 32.            MODIFICATION

This Agreement may be terminated, extended or amended in writing by the mutual written consent of the parties hereto. Such amendments may be executed by the City Manager on behalf of the City.

Section 33.            ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous negotiations and understandings between the parties. There are no representations, warranties or commitments, oral or written, other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

City of Moorpark

Moorpark Boys and Girls Club

By: \_\_\_\_\_  
Steven Kueny, City Manager

By: \_\_\_\_\_  
Executive Director

Attest:

By: \_\_\_\_\_  
Deborah Traffenstedt, City Clerk