

STAFF REPORT



ITEM NO. **10**
CITY OF OCEANSIDE

DATE: April 12, 2006
TO: Honorable Mayor and City Councilmembers
FROM: Neighborhood Services Department
SUBJECT: **APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OCEANSIDE AND THE BOYS AND GIRLS CLUB OF OCEANSIDE FOR THE USE OF THE MELBA BISHOP GYMNASIUM**

SYNOPSIS

Staff recommends that the City Council approve the Memorandum of Understanding (MOU) between the City of Oceanside and the Boys & Girls Club of Oceanside for the use of the Melba Bishop Gymnasium on Friday evenings from 5:30 pm to 12:00 am beginning April 14, 2006 through December 31, 2006, and authorize the City Manager to execute the MOU.

BACKGROUND

In the Fall of 2005, staff were advised by residents of a need for additional youth programming at the Melba Bishop Gymnasium in cooperation with community leaders from the adjacent neighborhoods. In December of 2005, staff began meeting with community leaders and representatives from the Boys & Girls Club of Oceanside to discuss the best approach for providing these additional youth services. The Boys & Girls Club suggested to staff that the club would be able to meet the needs of the youth in the adjacent neighborhoods as well as bring youth from various backgrounds and neighborhoods together for recreational purposes.

ANALYSIS

The Melba Bishop Gymnasium is available for the Boys & Girls Club to operate on Friday nights with this new program and no other user groups or public access is impacted by this use of the facility. Any youth ages eight years to seventeen years as well as eighteen-year-olds that are still attending high school are welcome to participate in the program once they complete the Boys & Girls Club enrollment information and the program is free of charge. The Boys & Girls Club will be assuming all liability and have named the City as additionally insured for the purposes of programming at the Melba Bishop Gymnasium.

Staff will meet with the Boys & Girls Club quarterly to assure that the needs of the community are being met and to address any concerns that arise through the duration of the program. The term may be extended for an additional year after the term expires on December 31, 2006.

FISCAL IMPACT

There is no anticipated fiscal impact.

COMMISSION OR COMMITTEE REPORT

Does not apply.

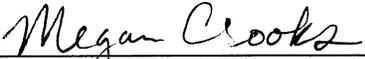
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve the Memorandum of Understanding (MOU) between the City of Oceanside and the Boys & Girls Club of Oceanside for the use of the Melba Bishop Gymnasium on Friday evenings from 5:30 pm to 12:00 am beginning April 14, 2006 through December 31, 2006, and authorize the City Manager to execute the MOU.

PREPARED BY:



Megan Crooks
Administrative Analyst

SUBMITTED BY:



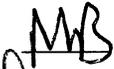
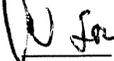
Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Interim Parks & Recreation Director

Mike Blessing, Deputy City Manager

Margery Pierce, Neighborhood Services Director

Melba Bishop Gymnasium Checklist

Opening Checklist:

1. Open the office door and deactivate the alarm.
2. Put out the front entrance mat.
3. Turn on the lights in the restrooms and rooms needed. All rooms have regular light switches. The gymnasium and restrooms require a special light key.
4. Walk-through the building and check for any damage or security concerns.
5. Open the entrance door.

User Information:

1. No Food or Drinks allowed in the Gymnasium. Water is allowed.
2. Food or drinks can be consumed in the gym lobby or outside the front of the building.
3. Trash cans have extra bags in the bottom.
4. Scoreboard electrical plug is under the chrome circle cover near the gym entrance.
5. All tables and chairs used in the gymnasium must have tennis ball protective bottoms.
6. Any blood must be cleaned from the gym floor immediately. A bottle of disinfectant will be supplied along with protective gloves and a rag. Dispose of all materials.

Closing Checklist:

1. Pull in the front entrance mat.
2. Lock the front door before starting your clean-up.
3. Unplug the scoreboard clock and put the controller back in the case.
4. Flush all toilets and pick up all trash/paper towels from the floor in the restrooms.
5. Meeting, Dance, and Weight Room windows need to be closed and locked along with the door.
6. Dust mop the gym floor and sweep up the dirt and debris. Remove any gum.
7. Empty the trash. Put a new trash bag in the container.
8. Turn off all lights – lobby, gymnasium, restrooms, side rooms, etc.
9. Lock and deadbolt all doors and then set the alarm. Leave out the front door.

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF OCEANSIDE
AND
THE BOYS AND GIRLS CLUB OF OCEANSIDE**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into this 28th day of March, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY" and the BOYS AND GIRLS CLUB OF OCEANSIDE, hereinafter designated as "CLUB."

RECITALS

WHEREAS, CITY is a general law city organized under the laws of the State of California; and

WHEREAS, CLUB is a non-profit organization qualified for exempt status under Section 501(c)(3) of the Internal Revenue Code in the preceding tax year; and

WHEREAS, non-profit organizations and general law cities are authorized by the Constitution of the State of California to organize, promote and conduct community recreation programs and activities within or without their territorial limits; and

WHEREAS, said governing bodies are authorized to enter into agreements with each other pursuant to the California Constitution, to promote the health and general welfare of the community and contribute to the availability of general recreational objectives for children and adults within the community; and

WHEREAS, the joint operation and sponsorship of facilities and out-reach programs positively utilizes recreational areas; and

WHEREAS, it is the desire of the CITY and the CLUB to break down social barriers that deter participation in programs that provide a safe, fun and healthy environment for high-risk youth; and

WHEREAS, in furtherance of the desires and intentions of the parties, the CITY and the CLUB will cooperate to provide such access through volunteer programming coordinated by the CLUB; and

WHEREAS, it is the desire of the CITY and the CLUB to enter into this MOU for the purpose of negotiating the parameters, terms and conditions for an agreement regarding the use of the Melba Bishop Gymnasium; and

WHEREAS, it is the desire of the CLUB to pursue additional programming space at such facility as it becomes available through further negotiations with the CITY;

NOW THEREFORE, the CITY and the CLUB agree to cooperate with each other as follows:

1. **Terms of Agreement.** The term of this MOU for the Melba Bishop Gymnasium shall be for a period of one (1) year to commence on the date of execution. The term may be extended for an additional period, not to exceed one year, upon the written consent of both parties prior to the MOU's termination. This agreement may be terminated with thirty (30) days notice by written notice to the contacts designated below. This Agreement may be re-opened for negotiation upon the written consent of both parties with thirty (30) days notice.

2. **Scope of Work.** The CITY and CLUB agree to cooperate, negotiate and collaborate in good faith to implement an open-gymnasium program through CLUB volunteers. It is the desire and intention of both parties to offer an open-gymnasium that will bring neighborhood youth together in a neutral territory for recreational purposes. It is agreed that CLUB will demonstrate that youth outreach has included youth from all neighborhoods and backgrounds.

A. **Location and Duration.** The CITY will provide facility-dedicated space at the Melba Bishop Gymnasium located at 5306 North River Road. Access to the full Gymnasium, the Gym Classroom, Dance Room and Fitness Room will be available solely for CLUB use on Friday evenings from 6:00 pm to 12:00 am and partial use from 5:30 pm to 6:00 pm. CLUB may provide their own mobile storage closet to be kept in the southwest exit corridor next to the Fitness Room as well as utilize cabinet space in the Gym Classroom.

B. **Eligibility.** The program will be open to any youth regardless of race, ethnicity, color, gender, national origin, religion, disability or socio-economic background. Youth between the ages of eight (8) and seventeen (17) years of age as well as youth eighteen (18) years of age that are still attending high school, shall be permitted to participate in the program. Youth of like ages should be divided into age-appropriate activities.

C. **Cost.** The CITY and CLUB agree to provide the services of the youth program at no cost to the participants. The CLUB will cover program costs, including, but not limited to, program materials and equipment, volunteers, instructors, and other program related costs. The CITY will provide as an in-kind contribution the following: location space as stated in 2.A. above and various other support services as agreed to between both parties in writing, hereafter.

D. **Program Implementation.** The CLUB will plan, develop, coordinate and implement the activities and programs that will occur at the Melba Bishop Gymnasium for the Youth Program. The CITY will provide two (2) computers stations and two (2) computer desks that may be used with adult supervision for the purpose of program integration. The CLUB will provide the CITY with a roster of participants and proper program documentation. The CLUB will ensure that all children are properly supervised. The CLUB will meet quarterly with the CITY to discuss program progress on such issues such as recruitment, enrollment

and program needs. The CITY and the CLUB will work together to ensure that the youth program operates in a safe, fun and healthy environment free of tobacco, alcohol, drugs, violence, and discrimination. The CLUB will have all employees/volunteers associated with the program fingerprinted and run background checks on them. The CLUB agrees to comply with all applicable City and state laws.

- E. **Publicity.** The CLUB as a non-profit agency, will be responsible for all promotions, marketing and publicity necessary for a successful youth program.
- F. **Maintenance and Security of Building.** CLUB shall hold responsibility of maintaining the facilities and equipment in good condition as determined by CITY. CLUB shall properly clean-up and secure facility at the end of each use utilizing the provided checklist (Attachment I). Prior to the first use of the facility, CLUB will be oriented to the facility procedures and provided a key and security code by CITY. Failure to follow procedures can lead to termination of the agreement.

3. **Liability Insurance.**

- A. CLUB shall, throughout the duration of this MOU maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CLUB, its agents and employees, performed in connection with this MOU including but not limited to premises, automobile, and workers compensation.

CLUB shall maintain liability insurance in the following minimum limits:

COMMERCIAL GENERAL LIABILITY

General Aggregate Limit	\$3,000,000
Products and Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence Limit	\$1,000,000

AUTOMOBILE LIABILITY INSURANCE \$1,000,000

General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CLUB under this MOU. The CLUB will also provide Workers Compensation insurance to their employees.

- B. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of fifty percent (50%) of each of the aggregate limits shall remain available at all times. If over fifty percent (50%) of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by CLUB to restore the required limits. CLUB shall also notify the CITY within thirty (30) days of receiving notice of all losses or claims over twenty five

thousand dollars (\$25,000.00) resulting from actions performed under this contract, or any loss or claim against CLUB resulting from any CLUB's activities.

- C. All insurance companies affording coverage to CLUB for the purposes of this section shall add the CITY as "additional insured" under the designated insurance policy. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this section.
- D. All insurance companies affording coverage to CLUB pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A+ or higher by A.M. Best.
- E. CLUB shall provide evidence of compliance with the insurance requirements listed above by providing Certificates of Insurance, in a form satisfactory to the City Attorney.
- F. All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- G. CLUB shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CLUB to provide such a substitution and extend the policy expiration date shall be considered a default by CLUB and may subject the CLUB to a suspension or termination of work under the Agreement.
- H. Maintenance of insurance by the CLUB as specified in this MOU shall in no way be interpreted as relieving the CLUB of any responsibility whatsoever and the CLUB may carry, at its own expense, such additional insurance as it deems necessary.

4. **No Agency Created** CLUB's relationship to the CITY shall be that of an independent agency. The CLUB shall have no authority, expressed or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Manager. CLUB shall be solely responsible for the performance of any of its employees, agents, and consultants under this MOU.

5. **Non-discrimination**. CLUB shall not discriminate against any person, employee, volunteer, or participant on the basis of race, color, creed, religion, sexual preference, marital status, ancestry, national origin, or physical or mental disability in compliance with all federal, state and local laws and statutes.

6. **Indemnification.** Insofar as it is legally authorized, CLUB will at all times protect, indemnify, and defend CITY against any and all loss, cost damages, or expense arising from any accident or other occurrence to persons or property on or about CITY's property which occur while CLUB has control of CITY's property.

Insofar as it is legally authorized, CLUB shall hold free and harmless, indemnify and defend, CITY, members of the City Council, boards or commissions, its employees, officers and agents, and each of them while acting as such, from all claims, loss, damages, costs, expenses or liabilities, which may arise by reasons of liability imposed by law because of injury to property or injury or death of persons, received or suffered by reason of any defective or dangerous condition of any grounds, sites, buildings, equipment, play areas, recreational facilities or other improvements located on CITY property, or participation in any activity carried out or sponsored by CLUB, and further, CLUB shall be responsible for any and all damages to property caused as a direct result of any activity being conducted on CITY property by CLUB. However, CLUB shall not indemnify CITY where CITY's sole and exclusive negligence or willful misconduct is the cause of action, damage, cost, expense, property damage, bodily injury, personal injury, contract dispute, penalty, loss or liability.

Insofar as it is legally authorized, CITY shall hold free and harmless, indemnify and defend, CLUB, members of the Board of Trustees, its employees officers and agents, and each of them while acting as such from all claims, loss, damages, cost, expenses or liability, which may arise by reason of liability imposed by law because of injury to property or injury to or death of persons, received or suffered by reasons of any defective or dangerous condition of any grounds, sites, buildings, equipment, play areas, recreational facilities or other improvements located on CITY property, or participation in any activity carried out or sponsored by CITY, and further, CITY shall be responsible for any and all damages to property caused as a direct result of any school activity being conducted on CITY property, by CITY. However, CITY shall not indemnify CLUB's sole and exclusive negligence or will misconduct is the cause of any claim, demand cause of action, damage, cost expense, property damage, bodily injury, personal injury, contract dispute, penalty, loss or liability.

7. **Financial Responsibility.** Each party shall carry adequate property damage and public liability insurance or be otherwise financially responsible in an amount sufficient to reasonably protect the property, facilities and activities set forth in this MOU against claims, demands, causes of action, damage, cost, expenses, property damage, bodily injury, personal injury, contract dispute, penalty, loss or liability. Each party shall furnish the other with proof of such financial responsibility.

8. **Entire Agreement.** This Agreement comprises the entire integrated understanding between the CITY and CLUB concerning the scope of this MOU and supersedes all prior negotiations, representations, or agreements.

9. **Interpretation of the Agreement.** The interpretation, validity and enforcement of the MOU shall be governed by and construed under the laws of the State of California. The MOU does not limit any other rights or remedies available to CITY.

The CITY and CLUB shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

10. **Notice.** Any notice required or permitted under this MOU shall be deemed given when actually delivered or when deposited in the mail, certified or registered, postage prepaid, addressed as follows:

Randall Godinet, Executive Chief Officer
Boys and Girls Club of Oceanside
401 Country Club Lane
Oceanside, CA 92054

Steven R. Jepsen, City Manager
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

11. **Agreement Modification.** This MOU may not be modified orally or in any manner other than by an agreement in writing, signed by the parties hereto.

12. **Signatures.** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authorization to enter into and to execute this MOU on behalf of the respective legal entities of the CLUB and the CITY.

This Memorandum of Understanding is executed by the duly authorized representatives of the CLUB and the CITY on the date first herein above written.

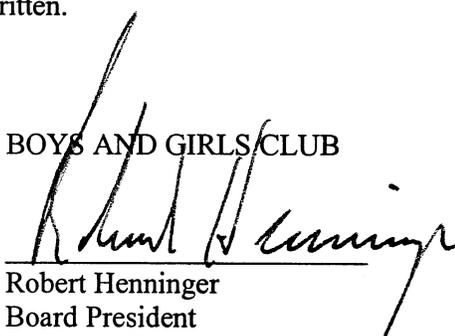
CITY OF OCEANSIDE

Steven R. Jepsen
City Manager

APPROVED AS TO FORM:


_____, ASSISTANT
City Attorney

BOYS AND GIRLS CLUB



Robert Henninger
Board President



Dan Dreger
Board Secretary

NOTARY ACKNOWLEDGMENTS OF AUTHORIZED SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Orange } ss.

On March 28, 2006 before me, Kelly Cornelius, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Robert Henninger
Name(s) of Signer(s)

Personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Kelly Cornelius
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

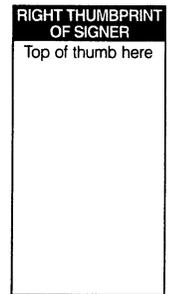
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

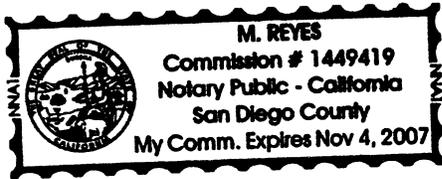
County of San Diego } ss.

On 4-4-06, before me, M. Reyes Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Dan Dreger,
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

M. Reyes
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Understanding

Document Date: 3-28-06 Number of Pages: 6

Signer(s) Other Than Named Above: Boys & Girls Club

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____