

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew Fertal  
Dept.: City Manager  
Subject: CHILDREN'S BUREAU OF SOUTHERN CALIFORNIA FACILITIES USAGE AGREEMENT

From: Kimberly Huy  
Dept.: Community Services  
Date: July 13, 2010

OBJECTIVE

To request that the City Council approve the attached Facilities Usage Agreement between the City of Garden Grove and Children's Bureau of Southern California to utilize space at the Magnolia Park Family Resource Center.

BACKGROUND/ANALYSIS

In May 2010, the Orange County Children and Families Commission (OCCFC) awarded funding for the Health Care Access Program to the Children's Bureau of Southern California. The Children's Bureau of Southern California has requested to utilize space at the Magnolia Park Family Resource Center to offer the Health Care Access Program. Staff and the Children's Bureau of Southern California representative agreed that a Facilities Usage Agreement needed to be created that outlined the terms and conditions applicable to the operations at the facility.

DISCUSSION

The attached Agreement is the result of the discussions held between the City and Children's Bureau of Southern California. The Children's Bureau of Southern California would provide Health Care Access Program services at Magnolia Park Family Resource Center and employ a total of four staff members, two staff would office at the Center full-time and two would office at least part-time. Services offered include home visitations to at-risk families, health insurance enrollment assistance, connecting families to a medical facility, health care education, family health fairs, information and referrals.


FINANCIAL IMPACT

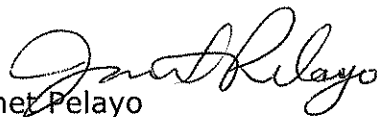
The approval of said Facilities Usage Agreement has no financial impact to the City's current fiscal budget. The City would receive the monthly rent in the amount of \$500 during the term of this Agreement.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Facilities Usage Agreement between the City and Children's Bureau of Southern California, and
- Authorize the City Manager to execute the Agreement.

  
KIMBERLY HUY  
Director

  
By: Janet Pelayo  
Administrative Analyst

Attachment: Facilities Usage Agreement

**Recommended for Approval**

  
**Matthew Fernal**  
City Manager

FACILITIES USAGE AGREEMENT  
(Children's Bureau of Southern California)

THIS AGREEMENT is made and entered into this \_\_\_1st\_\_\_ day of July, 2010, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and Children's Bureau of Southern California, a non-profit 501(C)3 entity, hereinafter referred to as "TENANT."

RECITALS

- 1) CITY owns a park building, known as the "Magnolia Park Family Resource Center," located at 11402 Magnolia Street (the "Center").
- 2) TENANT wishes to utilize space at the Center to provide Health Access programs and services.
- 3) CITY desires to allow TENANT to sublease the Center to provide said services upon the terms and conditions herein set forth.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) TERM. This Agreement shall commence on the 1st day of July 2010, and shall continue through June 30, 2011 (the "Term"), unless sooner terminated by either party. The CITY and TENANT may negotiate extensions of the terms for additional years.
- 2) FACILITY USE. The facility covered by the Agreement is the Magnolia Park Family Resource Center, owned by CITY, and located at the Magnolia Park, 11402 Magnolia Street, in the City of Garden Grove. The TENANT will use space at the Center to provide health access programs and services to pregnant women and families with young children, including insurance, medical home, and immunizations access. Services will be provided in client's homes and at Center. In-office services will include individual meetings with clients and classes. Classes and any events such as health fairs may be held if mutually agreeable between TENANT and CITY. TENANT will employ three Promotoras and a Health Care Coordinator, for a total of four staff members, to office at the Center at least part-time. Two Promotoras will office at the Center full-time. The Center Director will determine the Center space that will be used for said services.
- 3) RENT. TENANT shall pay to CITY monthly rent during the Term of this Agreement on the first day of each month in the amount of \$500.00; this amount includes the agreed upon use of space, copier machine, internet, utilities (phone, sewer, electrical and water) and access to (2) two computers.

4) TERMINATION.

- a) TERMINATION WITHOUT CAUSE. Either party may terminate this Agreement without cause by giving written notice of such termination at least thirty (30) days prior to the intended date of termination.
- b) TERMINATION FOR CAUSE. Either party may terminate this Agreement upon any material breach by the other party by providing written notice specifying the nature of said breach. Unless the Section of this Agreement that is the subject of the breach provides for a grace period for performance or specifies a longer cure period, the breaching party shall have thirty (30) days to cure the breach.

5) NONPROFIT STATUS. TENANT shall at all times during the term of this Agreement, maintain California non-profit corporate status, and shall adhere to all laws and regulations related to such status.

6) FACILITY MAINTENANCE, REPAIRS AND ALTERATIONS. CITY shall provide interior maintenance for other areas not occupied by TENANT, and exterior maintenance and building repairs.

- a) CITY OBLIGATIONS. CITY shall keep the Center, including the building, interior and exterior and common areas, in good condition and repair, and provide custodial services (including, but not limited to, cleaning of all restrooms, upholstery, carpeting, emptying trashcans and windows). CITY shall not be obligated to repair or replace any improvements that are not ordinarily a part of the building or that exceed building code standards.
- b) ALTERATIONS. TENANT shall make no additional alterations, structural modifications, remodeling, or change in use of any portion of the Center without the prior written permission of CITY, which will not be unreasonably withheld.
- c) On the last day of the Term hereof, or on any sooner termination, TENANT shall surrender the Center space to CITY in the same or reasonably similar condition as received, ordinary wear and tear excepted, clean and free of debris. TENANT shall repair any damage to the Center occasioned by the installation or removal of TENANT's alterations, furnishings and equipment.

7) INSURANCE REQUIREMENTS.

- a) COMMENCEMENT OF ACTIVITY. TENANT shall not commence work under this Agreement until all insurance certificates and endorsements have been received and approved by CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- b) WORKERS' COMPENSATION INSURANCE. For the duration of this Agreement, TENANT shall maintain and ensure that all of its contractors and

subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law, if applicable. Tenant shall provide a waiver of subrogation from Carrier waiving its subrogation rights against the City, its officers, officials, agents, and volunteers.

c) INSURANCE AMOUNTS. TENANT shall maintain the following insurance for the duration of this Agreement:

- i) Commercial general liability in the amount of \$1,000,000.00 per occurrence **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A- Class VII or better, as approved by CITY.
- ii) Automobile liability in the amount of \$1,000,000 combined single limit **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A- Class VII or better, as approved by CITY.
- iii) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.
- iv) Sexual Misconduct coverage in an amount not less than \$1,000,000 per occurrence; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement for the policy under Section 7(c)(i) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insured for liability arising out of work or operations performed by or on behalf of TENANT. TENANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

An Additional Insured Endorsement for the policy under Section 7(c)(ii) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insured for automobiles owned, leased, hired, or borrowed by the TENANT. TENANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

An Additional Insured Endorsement for the policy under section 7(c)(iv) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising under the sexual misconduct policy. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, TENANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of TENANT's insurance and shall not contribute with it.

- 8) INDEPENDENT CONTRACTOR. It is agreed that in the performance of the services to be performed by TENANT, TENANT shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY's employees.
- 9) NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY. No official or employee of CITY shall be personally liable to TENANT in the event of any default or breach by CITY, or for any amount, which may become due to TENANT, or any obligation under the terms of this Agreement.
- 10) NON-DISCRIMINATION. TENANT covenants there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any action or activity pursuant to this Agreement.
- 11) GENERAL PROVISIONS.
  - a) COMPLIANCE WITH LAWS. Both parties shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local governments.
  - b) DISCLOSURE OF DOCUMENTS. All data, documents, or other information developed or received by either party are deemed confidential and not to be disclosed without authorization of the disclosing party, unless disclosure is required by law.
  - c) CONFLICT OF INTEREST AND REPORTING. TENANT shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.

- d) NOTICES. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.
- i) Address of TENANT is as follows:  
Children's Bureau of Southern California  
50 South Anaheim Blvd., Suite 241  
Anaheim, CA 92805-2961  
Attn: Lyn Brammer, MSW
  - ii) Address of CITY is as follows:  
City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840  
Attn: Community Services Director
- e) LICENSES, PERMITS, FEES AND ASSESSMENTS. At its sole expense, TENANT shall obtain all licenses, permits, and approvals as may be required by this Agreement.
- f) FAMILIARITY WITH WORK. By executing this Agreement, TENANT warrants that:
- i) It has investigated the work to be performed;
  - ii) It has investigated the site of the work and is aware of all conditions there;
  - iii) It has considered how the work should be performed; and
  - iv) It understands the facilities, difficulties, and restrictions of the work under this Agreement.
- g) TIME OF ESSENCE. Time is of the essence in the performance of this Agreement.
- h) LIMITATIONS ON SUBCONTRACTING. The experience, knowledge, capability, and reputation of TENANT were a substantial inducement for CITY to enter into this Agreement. TENANT shall not contract with any other entity to perform the services required without written approval of CITY. If TENANT is permitted to subcontract any part of this Agreement, TENANT shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of TENANT. CITY will deal solely and directly with TENANT.
- i) AUTHORITY TO EXECUTE. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of the entity for which they are signing, and that by executing this Agreement, the party for which each is signing is bound by this Agreement.
- j) INDEMNIFICATION. TENANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any

person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by TENANT, TENANT's agents, officers or employees, subcontractors, or independent contractors. The only exception to TENANT's responsibility to protect, defend and hold harmless CITY is due to the negligence of CITY, or any of its elective or appointive boards, officials, officers, agents, employees, or volunteers, in the case of which CITY agrees to protect, defend, and hold harmless TENANT and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by CITY, CITY's agents, officers or employees, subcontractors, or independent contractors.

- k) MODIFICATION. This Agreement constitutes the entire Agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by TENANT and CITY.
- l) WAIVER. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY or TENANT, as appropriate.
- m) CALIFORNIA LAW. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the central or main branch of the Orange County Superior Court.
- n) INTERPRETATION. This Agreement shall be interpreted as though prepared by both parties.
- o) CITY'S REPRESENTATIVE. The City Manager of CITY, or his or her designee, shall serve as CITY's representative in carrying out any CITY responsibility under this Agreement.
- p) PRESERVATION OF AGREEMENT. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provisions interpreted, and all remaining provisions shall remain enforceable.



IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first referenced herein.

CITY OF GARDEN GROVE

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

Children's Bureau of Southern California

By:   
\_\_\_\_\_  
Lyn Brammer, MSW  
Orange County Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney