



City Council Staff Report

Date: June 7, 2017 CONSENT CALENDAR

Subject: APPROVAL OF FACILITY USE AGREEMENT FOR THE DEMUTH COMMUNITY CENTER WITH BLOOM IN THE DESERT MINISTRIES

From: David H. Ready, City Manager

Initiated by: Parks and Recreation Department

SUMMARY

This action will approve a new Facilities Use Agreement with Bloom in the Desert Ministries for use of the Demuth Community Center for a period of three years, with two, one-year optional extensions, commencing July 1, 2017.

RECOMMENDATION:

- 1) Approve Agreement No. _____, a Facility Use Agreement with Bloom in the Desert Ministries for use of the Demuth Community Center for a period of three years, with two, one-year optional extensions, commencing July 1, 2017;
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

Bloom in the Desert Ministries (the "Tenant") has conducted faith-based services at the Demuth Community Center since 2004 having started with the YMCA and continued on with the City when the facility was acquired from the YMCA in June 2010.

Under the terms of the proposed new Facility Use Agreement, the Tenant will pay the City \$731.92 monthly for those months with four Sundays, and \$914.90 monthly for those months with five Sundays, for use of the Demuth Community Center. In 2016, Tenant paid \$8,325.91 in rental fees for use of the Demuth Community Center.

Each annual anniversary date of the Commencement Date, monthly rental shall be adjusted in proportion to the published changes in the Consumer Price Index ("CPI") for, All Items, for the Riverside/San Bernardino Metropolitan Statistical Area. The "CPI" for this year is 2% and the proposed monthly fee reflects that increase.

The Tenant is responsible for establishing telephone lines, in separate accounts from the City, and is responsible for payment of monthly accounts related to the services. All other utilities will be provided by the City.

ITEM NO. 1.K.

ENVIRONMENTAL IMPACT:

This actions is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378. This action is an organizational or administrative activity by the City of Palm Springs in furtherance of its governmental authorities, and will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

Approval of the Facilities Use Agreement will generate revenue of approximately \$9,000 annually.

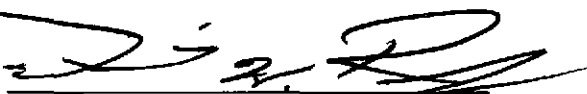
SUBMITTED:



VICKI OLTEAN
Director of Parks & Recreation



MARCUS FULLER, MPA, PE, PLS
Assistant City Manager



DAVID H. READY, Esq. Ph.D.
City Manager

FACILITY USE AGREEMENT
(DEMUTH COMMUNITY CENTER)

This Facility Use Agreement ("Agreement") is made and entered into this _____ day of _____, 201____, by and between the City of Palm Springs, a California charter city and municipal corporation, ("City"), and Bloom in the Desert Ministries, a religious non-profit corporation, ("Tenant"), concerning the use of the Demuth Community Center ("Facility").

RECITALS

WHEREAS, the City and Tenant are mutually interested in providing needed amenities and community services to all residents of Palm Springs; and

WHEREAS, through this agreement, Tenant will be afforded the opportunity, on the same basis as other lawful users, to provide services desired by the community; and

WHEREAS, Tenant has previously entered into an agreement for the use of the Facility, which is located at 3601 East Mesquite Avenue in Palm Springs, California, for the purpose of conducting faith-based services; and

WHEREAS, Tenant now desires to enter into this Agreement to obtain access and use of the Facility, according to the terms and conditions stated herein.

NOW, THEREFORE, the City and Tenant do hereby mutually agree as follows:

AGREEMENT

1. **TERM.**

1.1. **Term.** This Agreement shall be in full force and effect for a period of three (3) years, beginning July 1, 2017, and ending June 30, 2020. City and Tenant may renew this Agreement for two (2) additional one (1) year terms, under the same terms and conditions stated herein, except for any changes such as fees and charges for the use of certain facilities as specified in Section 2. Upon each annual anniversary date of the Commencement Date, monthly rental shall be adjusted in proportion to the published changes in the Consumer Price Index ("CPI") for, All Items, for the Riverside/San Bernardino Metropolitan Statistical Area.

1.2. **Termination.** City and Tenant may terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to Tenant. Nothing shall prohibit termination at less than sixty (60) days' written notice upon any material breach of this Agreement, which includes, but it not limited to failure to timely pay rent, failure to maintain required insurance, and damage to the Facilities.

2. FACILITY USE.

2.1. Facility Use.

2.1.1. Large Multi-Purpose Room and Kitchen. City grants Tenant the use of the Large Multi-Purpose Room, the Inner Lobby and the Kitchen as identified in Exhibit "B" and according to the rules and regulations outlined in Exhibit "A". The Facility, and the areas to be used by Tenant, are more specifically described in the attached Exhibit "B" and incorporated herein by reference.

2.1.2. Overflow Use. Tenant may also use the Kitchen, the Small Multi-Purpose Room, and the Gymnasium at the Facility for larger events or overflow attendance, not to exceed one hundred and twenty-five (125) people, and shall provide a notice in writing to the City prior to such use.

2.1.3. Additional Rental Sessions. Tenant may request additional rental sessions of the Facility to be coordinated and negotiated on a case-by-case basis and subject to availability.

2.2. Scheduling of Use. Tenant may use the Facility in accordance with Section 2.1 only during the times specified in the Schedule, attached as Exhibit "C" and incorporated herein by reference. The City may, in its sole discretion, alter the Schedule in order to maximize use of the Facility for all users.

2.3. Fees and Charges for Facility Use. Tenant agrees to pay City Seven Hundred Thirty-One Dollars and Ninety-Two Cents (\$731.92) for months with four (4) Sundays and Nine Hundred Fourteen Dollars and Ninety Cents (\$914.90) for months with five (5) Sundays. Tenant must pay monthly, on or before the fifth of every month, for use of the Facility. An additional late charge of \$35 shall be due on all payments received after the fifth of every month.

2.4. Storage and Personal Property. Tenant may use the storage closet identified in Exhibit "B" for the purpose of storing personal property to be used for Tenant's Sunday morning services. City shall provide Tenant keys for the access of the storage closet. Tenant retains ownership of the curtains currently in use in the Large Multi-Purpose Room at the Facility.

2.5. Mailbox. City permits Tenant's use of a designated mail slot/inbox at the front reception counter area of the Facility.

2.6. Utilities. Tenant is responsible for establishing telephone lines, in separate accounts from the City, and is responsible for payment of monthly accounts related to these services. All other utilities shall be provided by the City. Tenant expressly waives any and all claims to the City for compensation for any and all losses or damages sustained for any reason or any defect, deficiency or impairment of any utility system, water supply system, drainage system, electrical apparatus or wires serving the Facility with respect to the loss of the facility for Tenant functions.

2.7. Signs. No signs may be erected at the Facility, unless Tenant first obtains written approval from the City. All signs posted by Tenant at the Facility shall conform to all applicable Palm Springs Municipal Code and Palm Springs Zoning Code provisions.

2.8 Improvements. Should Tenant desire any improvements at the facilities referenced above, Tenant shall provide City advanced written notice of such improvements, including the proposed scope of work, and obtain City's written approval prior to any commencement of work. Tenant shall be solely responsible for any tenant improvements at the facilities, and represents and warrants that all improvements by Tenant or Tenant's contractors shall comply with all applicable local, state, and federal law, including zoning and building codes and any applicable business licenses. Proof of insurance covering the proposed work in favor of the City, to the satisfaction of the City, must be presented to City prior to the commencement of any work. Tenant is personally responsible for the cost of any proposed improvements. If Tenant commences improvements without complying with the procedures outlined herein, the City may declare a material breach of this Agreement and terminate the Agreement immediately without any penalty. In addition, upon expiration or termination of this Agreement for any reason, Tenant releases all claims to any improvements at the facilities and permits the City to retain or remove any improvements and recover any such costs from Tenant.

3. SECURITY. Tenant representatives are responsible for locking the building and setting the alarm upon departure in those instances that Tenant staff are the last occupants in the facility. Tenant shall identify to the City, in writing, one or more representatives responsible for securing the building and setting the alarm upon departure. Tenant shall comply with Chapter 5.02 of the Palm Springs Municipal Code as an "alarm user" and shall be liable for all false alarm response fees pursuant to Palm Springs Municipal Code § 5.02.075 resulting from Tenant's failure to set the alarm under circumstances required by this Agreement.

4. INSURANCE.

4.1. Minimum Insurance. Tenant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement, including any extension thereof, the following policies of insurance:

4.1.1. Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in an amount not less than Two Million Dollars (\$2,000,000.00) in aggregate. Insurance companies shall have an AM Best's Guide Rating of A-, Class VII or better.

4.1.2. Workers' Compensation Insurance. To the extent required by Labor Code § 3700, Tenant shall procure and maintain workers' compensation insurance in the amount and to the extent required by law.

4.2. Proof of Insurance. Proof of the insurance required under Section 4 shall be provided to City prior to the execution of this Agreement.

4.3. Primary Insurance. Tenant's insurance coverage shall be primary with respect to the City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Tenant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

4.4. Endorsements. Tenant shall obtain an Additional Insured Endorsement designating the City, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of this Agreement. All endorsements shall reference that Tenant's insurance shall be primary and non-contributory, as outlined in Section 4.3.

4.5. Deductible. Any deductibles or self-insured retentions must be declared to and approved by the City prior to the commencement of this Agreement. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its elected officials, officers, employees, agents, and volunteers; or (2) Tenant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Tenant guarantees payment of all deductibles and self-insured retentions.

4.6. Amendment of Insurance Policy. Tenant shall not amend, or allow to be amended, any insurance policy under this Agreement if such amendment is not consistent with the minimum insurance requirements contained herein. Such amendment without the consent of the City shall be considered a material breach of this Agreement and City may immediately terminate this Agreement upon such occurrence.

4.7. No Cancellation of Insurance Policy. Tenant shall not cancel, or allow to be cancelled, any insurance policy required under this Agreement. If said policies of insurance are cancelled, Tenant shall, prior to the cancellation date, immediately obtain new insurance consistent with the requirements of this Agreement and immediately submit evidence of such insurance to the City.

4.8. Failure to Obtain Valid Insurance During Use of the Facility. If Tenant is not minimally insured, as required under Section 4, Tenant shall be considered in material breach of this Agreement and City may immediately terminate this Agreement.

4.9. No Limitation. The provisions of this Section 4 shall not be construed as limiting in any way the extent to which Tenant may be held responsible for the payment of damages to any persons or property resulting from Tenant's activities or the activities of any person or persons for which Tenant is otherwise responsible.

5. INDEMNIFICATION AND DEFENSE.

5.1. Indemnification. Tenant agrees to indemnify the City, its officers, agents and employees against, and shall hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, including injury or death to any person, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "Claims") that may be asserted or claimed by any persons, firm or entity arising out of or related to this Agreement or Tenant activities at the Facility, except to the extent that the Claim arises from the sole negligence or willful misconduct of the City, its officers, agents or employees.

5.2. Defense. Tenant agrees to defend, with counsel acceptable to City, the City, its officers, agents and employees against any Claims that may be asserted or claimed by any persons, firm or entity arising out of or related to this Agreement or Tenant activities at the Facility, except to the extent that the Claim arises from the sole negligence or willful misconduct of the City, its officers, agents or employees.

5.3. Costs Associated with Indemnification and Defense. Tenant shall be responsible for all costs incurred by the City that are associated with the indemnification or defense of City by Tenant, including any costs associated with the use of City resources, including lost time by employees, expended in furtherance of the indemnification or defense.

6. GENERAL PROVISIONS.

6.1. Notice. All notices, demands and requests which may be given or which are required to be given by any party to this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective either: (1) on the date personally delivered to the address below, as evidenced by written receipt therefore, whether or not actually received by the person to whom addressed; (2) on the third (3rd) business day after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (3) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service (i.e., FedEx Corporation, UPS, or DHL) addressed to such party at the address specified below; or (4) on the business day sent via facsimile transmission to the facsimile numbers below, as evidenced by a printed confirmation of the successful electronic transmission of the message prior to 2:00 p.m. (Pacific Standard Time), or otherwise delivery shall be considered to be on the following business day. For purposes of this section, the addresses of the parties for all notices are as follows:

6.1.1. City.

City Manager
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
(760) 323-8299

6.1.2. Tenant.

Reverend Kevin A. Johnson
3155 E. Ramon Road, Unit 802
Palm Springs, CA 92264

Tenant shall be responsible for notifying the City, in writing, of any changes in Tenant's address.

6.2. California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Tenant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

6.3. Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.4. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.5. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

6.6. Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief that may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows that are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

6.7. Compliance with Governing Law. Tenant shall comply with all applicable laws, codes, ordinances and regulations of the federal, state, and local government.

6.8. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

6.9. Modification. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

6.10. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs or sections of this Agreement hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that this invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.11. Successors. The terms and conditions contained herein shall be binding on and inure to the parties to this Agreement, their administrators, representatives, successors and assigns, except as otherwise provided in this Agreement.

6.12. Assignment. Tenant may not assign or transfer its interest under this Agreement without City's prior written consent, which consent may be withheld, conditioned or delayed in City's sole and absolute discretion. Any attempted assignment, sublet or transfer made in violation of this provision shall be void.

6.13. Venue. Any action at law or in equity brought by either party to this Agreement regarding the subject matter of this Agreement shall be filed in the Superior Court of the State of California for the County of Riverside, Indio Branch.

6.14. Headings. The headings used in this Agreement are employed solely for convenience of the parties and are not to be used as an aid in interpretation.

6.15. Relationship. Nothing contained in this Lease shall be construed as creating the relationship of principal and agent or of partnership or joint venture between City and Tenant.

6.16. Authority to Enter into Agreement. The persons executing this Agreement on behalf of Tenant warrants that they are duly authorized to execute and deliver this Agreement on behalf of said party, and by so executing this Agreement, such party is formally bound to the provisions of this Agreement.

6.17. Counterparts and Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any facsimile of the original shall be treated as an original. The party submitting any facsimile must submit a copy of the original to the other Party within a reasonable time after the transmission of the facsimile.

6.18. Entire Agreement. This Agreement constitutes the entire Agreement between City and Tenant. There are no oral agreements between the parties hereto affecting this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

7. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION.

7.1 Non-Liability of City Officers and Employees. No officer or employee of City shall be personally liable to the Tenant, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Tenant or its successor, or for breach of any obligation of the terms of this agreement.

7.2 Conflict of Interest. Tenant acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this agreement, nor shall Tenant enter into any agreement of any kind with any such officer or employee during the term of this agreement and for one year thereafter. Tenant warrants that Tenant has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this agreement.

7.3 Covenant Against Discrimination. Tenant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, gender identity, gender expression, national origin, physical or mental disability, medical condition, or ancestry. Tenant shall otherwise fully comply with the provisions of Palm Springs Municipal Code Section 7.09.040 relating to non-discrimination in city contracting.

[SIGNATURES TO FOLLOW]

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

CITY OF PALM SPRINGS

David H. Ready, Esq., Ph.D
City Manager

Date: _____

ATTESTED:

Kathleen D. Hart, MMC
Interim City Clerk

Date: _____

APPROVED AS TO FORM:

Edward Z. Kotkin
City Attorney

Date: _____

BLOOM IN THE DESERT MINISTRIES

Kevin A. Johnson
Pastor

Date: _____

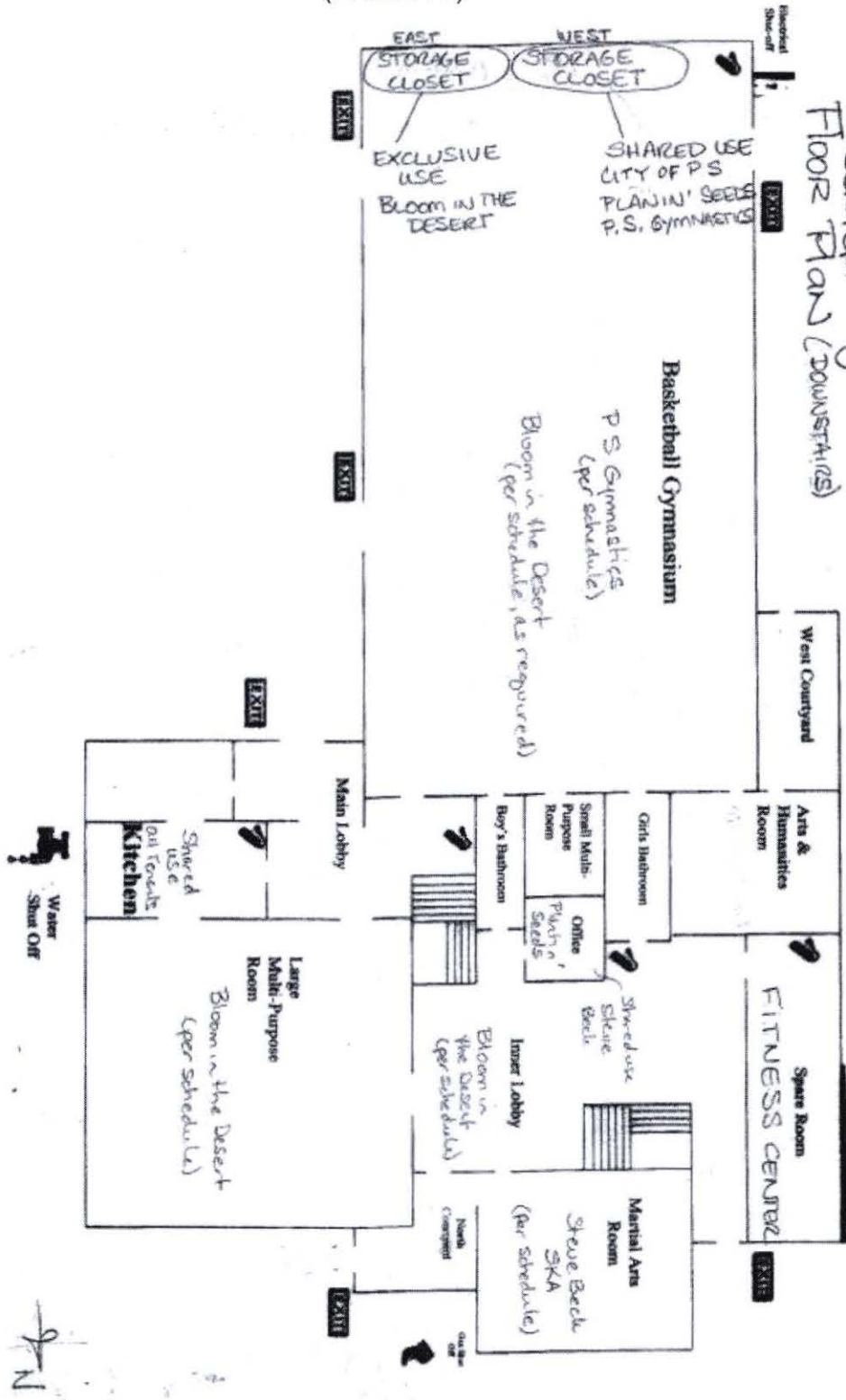
If Tenant is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to City.

EXHIBIT "A"
(RULES AND REGULATIONS)

1. Tenant shall require users of the kitchen to clean up after themselves and maintain the kitchen in a clean condition. The City reserves the right to revoke access to the kitchen at its sole discretion
2. Tenant is responsible for maintaining the security of attendees and parked vehicles at the Facility through its own efforts, within the scope of Tenant's use of the Facility or any portion thereof.
3. All of Tenant's refuse and rubbish shall be removed on a regular basis at Tenant's sole cost and expense. Tenant shall not place any rubbish or other matter outside any building within the Facility, except in such containers as are authorized from time to time by the City.
4. No radio or television or other similar device audible outside the facility shall be installed without obtaining in each instance the written consent of the City. No aerial shall be erected on the roof, exterior walls or grounds of the Facility without first obtaining in each instance the written consent of the City which consent shall not be unreasonably withheld or delayed. Any aerial so installed without such written consent shall be subject to removal without notice at any time.
5. No loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Facility without complying with the provisions of the City's Noise Ordinance.
6. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
7. Tenant will not allow animals, except seeing-eye/service dogs, in, about or upon the Facility. Exception will be made for one annual pet blessing event, to be determined and held at one Sunday service during the month of December.

EXHIBIT "B"
(FACILITY)

Verde Community Center
 Floor Plan (DOWNSTAIRS)



 Mesquite Ave

EXHIBIT "C"
(SCHEDULE)

Use of Large Multi-Purpose Room, Inner Lobby and Kitchen
Sundays: 8:00 a.m. to 1:00 p.m.

Note: Use of Gymnasium for overflow events up to 125 people will be permitted upon written notice to the City of Palm Springs.