



CITY OF AVON PARK

Highlands County, Florida

CITY COUNCIL REGULAR MEETING

November 29, 2016

6:00 PM

City Council Chamber

123 E Pine St

Avon Park, FL

A. OPENING

1. Invocation
2. Pledge of Allegiance
3. Roll Call

B. ATTORNEY:

- B1. Closed Executive Session Announced (Mayor)
- B2. Closed Meeting Commenced (Mayor)
- B3. Closed Meeting Concluded (Mayor)
- B4. **OPEN DISCUSSION OF NEGOTIATION OF COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY AND THE FIREFIGHTERS IAFF LOCAL 3132.**

C. CONSENT AGENDA:

5. Approve Minutes of November 14, 2016 Regular Council Meeting.
6. Approval of End of Year Budget Adjustments

D. COMMITTEE REPORTS/ATTY UPDATES/ANNOUNCEMENTS/PRESENTATIONS

8. Discussion requirement for Council to meet 2nd and 4th Mondays. (City Attorney)

E. ADMINISTRATIVE:

10. Discussion on Voting Order, and Seating Change (Councilman Heston)

F. CITIZENS PARTICIPATION

H. ADJOURN

Any person who might wish to appeal any decision made by the City Council of the City of Avon Park, Highlands County, Florida, in public hearing or meeting is hereby advised that he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. Any person with disabilities requiring accommodations in order to participate should contact the City Manager prior to the meeting.

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CITY COUNCIL REGULAR MEETING MINUTES
Council Chambers – 123 E. Pine St., Avon Park, FL
November 14, 2016
6:00 PM

Members Present: Mayor Sharon Schuler, Deputy Mayor Brenda Gray, Councilperson Dora Smith, Councilman Parke Sutherland, Councilman Terry Heston.

Members Absent: None

Others Present: City Manager Julian Deleon, Interim City Clerk Bonnie Barwick, and City Attorney Gerald Buhr. Members of the press and Audience.

Mayor Sharon Schuler called the meeting to order at 6:00 PM. The invocation was given and the Pledge of Allegiance was recited. The roll was called and a quorum was present.

B. Citizens/Outside Agencies:
Moved to last on the agenda.

C. Consent Agenda:

5 Approve Minutes of October 24, 2016 Regular Council Meeting.

Motion made by Councilman Southerland, Seconded by Councilman Heston to approve the minutes as presented. Motion passed unanimously.

D. Administrative:

6. Ordinance 26-16 annexing ten (10) parcels of land. 2nd reading.

Attorney Gerald Buhr read the title into the record. Mayor Sharon Schuler opened the public hearing. Seeing no show of hands she closed the public hearing.

Motion by Councilman Heston, Seconded by Deputy Mayor Gray to approve 2nd reading of Ordinance 26-16 as presented. Motion passed unanimously.

7. Lease between City of Avon Park and the Boys and Girls Club.

There was discussion between the Council Members and the City Manager and Mr. Wright regarding the lease. After much discussion the Council asked City Attorney Gerald Buhr to make the following changes to the lease:

Page 1 paragraph one to read "Martin Luther King Complex Building".

Page 1 paragraph 2 the wording "twelve" to read "thirty six".

Page 16 paragraph "Exhibit C Line 1. Add "each contract".

Motion by Councilman Heston, Seconded by Deputy Mayor Gray to approve the Lease Agreement with the changes noted. Motion passed unanimously.

8. Bid Award FKC Dewatering Screw Press.

City Manager Deleon addressed the Council regarding the need for an additional screw press. He explained it had been put out for bids. After discussion

Motion made by Councilman Heston, Seconded by Councilman Sutherland to approve the bid from FKC. Motion passed unanimously.

9. Update on water line plan. City Manager Deleon turned this discussion over to Mayor Schuler, as she requested it to be placed on the Agenda. Mayor Schuler asked City Manager Deleon about the water line plan. He stated that water lines were going in on as available and places like the bowling alley and camper corral that were annexed for the water availability.

10. Update on hiring part time code enforcement employees. City Manager Deleon stated that the positions were being advertised. It was discussed that one of the code enforcement employees would be required to work on the week end.

11. Update on hiring of Firefighters. Mayor Schuler asked what the status of this item was. City Manager Deleon stated that there was a contract meeting the next day and since we would have a New Mayor and Councilman that an executive meeting should be scheduled before the next council meeting.

B. Citizens/Outside Agencies

Michael Gergan from the Chamber of Commerce asked that the City or the CRA sponsor the Christmas Parade. After discussion **Motion** made by Deputy Mayor Gray, Seconded by Councilman Sutherland to waive the fees for the Christmas Parade up to \$2,000.00. Motion passed unanimously.

Warren West, AP Fire Fighter presented Mayor Schuler with a bouquet of flowers and Councilman Sutherland and Mayor Schuler a cup. Members of the audience spoke on behalf of the Mayor for the outstanding job she had done over the years.

Mayor Schuler and Councilman Sutherland stepped down.

Interim City Clerk Bonnie Barwick swore in Mayor Elect Garrett Anderson and Councilman Elect Jim Barnard. They then took their seats at the Council Table.

Motion made by Councilman Heston, Seconded by Councilwoman Smith to appoint Brenda Gray as Deputy Mayor. Motion passed unanimously.

Mayor Anderson stated he would like to have the seating changed. He suggested that Councilwoman Smith sit on the far right, Councilman Barnard next to her, then Councilman Heston to the far left and Deputy Mayor Gray next to Councilman Heston. **Motion** made by Councilman Barnard, Seconded by Mayor Anderson to approve the new sitting arrangement. Motion passed 3 to 2 with Councilwoman Smith and Deputy Mayor Gray voting no.

Mayor Anderson made the following Committee Liaison Appointments:

Main St. CRA Advisory Board	Dora Smith
Southside CRA Advisory Board	Brenda Gray
Airport CRA Advisory Board	Terry Heston
Airport CRA Board	Terry Heston
Planning & Zoning Board	Garrett Anderson
Recreation Board	Terry Heston
Housing Authority Board	Dora Smith

Boys and Girls Club
Police/Fire Pension Boards
HRTPO
Tourist Development Council
Chamber of Commerce
RPAC
EDC/IDA

Brenda Gray
Jim Barnard
Garrett Anderson
Terry Heston
Jim Barnard
Parke Sutherland
Brenda Gray

Interim City Clerk Bonnie Barwick let the Council know that the 2nd meeting in December fell on Christmas Holiday so the Council cancelled the 2nd Meeting in December.

Interim City Clerk Bonnie Barwick talked to the Council regarding the 2nd meeting in November was the same day as the Christmas Parade. The meeting was moved to Tuesday the 29th. The CRA Board will meet the same day.

Meeting adjourned at 7:45 PM

Recorded and transcribed by Interim City Clerk Bonnie Barwick

Attest Bonnie Barwick

Mayor Garrett Anderson

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**City of Avon Park
BUDGET ADJUSTMENT**

Budget Adjustment # 34
30-Sep-16

DP

GMBA Batch 2555

*Use round dollars only - No decimals

Account Number	Description	Amt. To Increase	Amt. To Decrease
001-0101-511.11-00	LEGISLATIVE-GENERAL GOV. / EXECUTIVE SALARIES	300	
001-0101-511.21-00	LEGISLATIVE-GENERAL GOV. / FICA	25	
001-0150-512.12-00	EXECUTIVE - CITY MANAGER / REGULAR SALARIES & WAGES	550	
001-0150-512.21-00	EXECUTIVE - CITY MANAGER / FICA	62	
001-0150-512.42-20	TRANSPORTATION / GASOLINE	180	
001-0201-513.23-00	LIFE & HEALTH / LIFE & HEALTH	2	
001-0271-519.34-00	OTHER GOVERNMENT SERVICES / OTHER CONTRACTUAL SERVI	3,400	
001-0271-519.43-10	UTILITY SERVICES / ELECTRICITY	1,400	*
001-0271-519.44-00	OTHER GOVERNMENT SERVICES / RENTAL AND LEASES	100	
001-0271-519.49-41	OTHER CUR CHARGES & OBLG. / ADVERTISING	800	
001-0301-521.11-00	LAW-ENFORCEMENT POLICE / EXECUTIVE SALARIES	400	
001-0301-521.23-00	LAW-ENFORCEMENT POLICE / LIFE & HEALTH INS	100	
001-0301-521.42-20	TRANSPORTATION/POSTAGE / GASOLINE	100	
001-0301-521.46-10	REPAIR & MAINTENANCE SVCS / BUILDINGS REP & MAINT	1,100	
001-0301-521.51-00	LAW-ENFORCEMENT POLICE / OFFICE SUPPLIES	100	
001-0351-522.14-00	FIRE CONTROL - FIRE / OVERTIME	1,200	
001-0351-522.21-00	FIRE CONTROL - FIRE / FICA	500	
001-0351-522.34-00	FIRE CONTROL - FIRE / OTHER CONTRACTUAL SERVICE	1,300	
001-0351-522.43-10	UTILITY SERVICES / ELECTRICITY	150	*
001-0353-529.11-00	OTHER PUBLIC SAFETY / EXECUTIVE SALARIES	100	
001-0353-529.23-00	OTHER PUBLIC SAFETY / LIFE & HEALTH INSURANCE	100	
001-0353-529.42-00	OTHER PUBLIC SAFETY / TRANSPORTATION/POSTAGE	100	
001-0501-541.17-00	STREET DEPARTMENT / ON CALL & HOLIDAY WORK	100	
001-0501-541.46-10	REPAIR & MAINTENANCE SVCS / BUILDINGS REP & MAINT	100	
001-0501-541.46-20	REPAIR & MAINTENANCE SVCS / VEHICLES REP & MAINT	1,200	
001-0501-541.46-40	REPAIR & MAINTENANCE SVCS / MACHINERY REP & MAINT	2,400	
001-0501-541.52-00	STREET DEPARTMENT / OPERATING SUPPLIES	1,600	
001-0601-572.17-00	PARKS / ON CALL & HOLIDAY WORK	10	
001-0601-572.43-16	UTILITY SERVICES / MEMORIAL FIELD-FOOTBALL	400	
001-0651-575.17-00	RECREATION / ON CALL & HOLIDAY WORK	10	*
001-0651-575.23-00	RECREATION / LIFE & HEALTH INSURANCE	10	
001-0661-576.43-10	UTILITY SERVICES / ELECTRICITY	900	
001-0390-515.34-00	COMPREHENSIVE PLANNING / OTHER CONTRACTUAL SERVICE		5,779
001-0501-541.12-00	STREET DEPARTMENT / REGULAR SALARIES & WAGES		13,000

Explanation of adjustment:

Year End Budget realignment

Department Head Signature _____

Date _____

Finance Director Approval _____

Date _____

City Manager's Approval _____

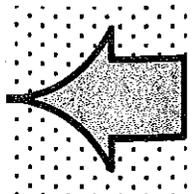
Date _____

CITY COUNCIL APPROVAL REQUIRED:

Yes No X

Mayor's Approval _____

Date _____



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LEASE

This Lease is made and executed on November 29, 2016, by and between the **CITY OF AVON PARK**, a Florida Municipal Corporation organized and existing under the laws of the State of Florida, having its principal office at 110 East Main Street, Avon Park, FL 33825, herein referred to here "City" and the **BOYS & GIRLS CLUB OF HIGHLANDS COUNTY, INC.**, a non-profit corporation, organized and existing under the laws of the State of Florida, having its principal office at 248 Pomegranate Avenue, Sebring, FL 33870, herein referred to as "BGC." The City and BGC shall be referred to collectively as the "parties."

1. DEMISE; DESCRIPTION OF PREMISES

City leases to BGC and BGC hires from City, solely for use to provide services to children in Avon Park as more specifically described in Exhibit "A," attached hereto and made a part of this Agreement (hereinafter "Services"), a non-exclusive right to occupy the Martin Luther King Complex Building. The Premises generally known as the Martin Luther King Jr. Memorial Field complex located at 207 E. State Street, Avon Park 33825 (hereinafter "Premises" or "Rec Center"), along with the structures and appurtenances accepted by BGC AS-IS and WHERE-IS. City makes no representation or warranty whatsoever as to the condition of the Premises or of quiet enjoyment, but will cooperate with BGC to make the Premises available for BGC use in providing its Services, while allowing other typical and customary uses of the Rec Center. As used in this Lease, the term "Premises" refers to the partial or shared occupation and use of the real property described above and to any improvements to that Rec Center from time to time during the term of this Lease.

2. TERM

The term of this Lease shall be for a term of three (3) years, commencing on the date of execution above, and terminating ~~twelve~~ thirty six months later except as provided herein. The term shall automatically renew for an addition one (1) year term unless one of the parties hereto gives notice to the other of intent to terminate, such notice being delivered not less than three (3) months prior to the (each) termination date.

3. RENT

The total rent for the full Lease term shall be five dollars (\$5) per year, which BGC shall pay to City annually.

4. MANAGEMENT, USES, AND USES PROHIBITED

(a) **Use of Premises Limited.** BGC leases the Premises for the purposes stated in Exhibit A. For the full term of this lease and any subsequent periods, if extended, BGC shall make the Services in Exhibit "A", open to the public, with appropriate age restrictions, during reasonable hours and day each week, and at reasonable rates, charges and terms. If BGC ceases using the Premises for the purposes stated herein or the Services in Exhibit "A"; or, if BGC loses its status as 501(c)(3) entity under the Internal Revenue Code, this Lease may be terminated by the City in its sole discretion.

(b) BCG acknowledges and agrees that the right to use the Premises for a nominal rent, is provided by the City solely because BCG is providing the Services to the children of Avon Park. BCG agrees to provide an annual report on the quality and quantity of the Services provided, stating at a minimum:

1. The number of children residing within Avon Park that were provided services;
2. The manner of Services provided to Avon Park resident children; and
3. The beneficial effects, if any, of such Services.

(c) **Rules for Use of Premises.** Exhibit "B," attached hereto and made a part of this Agreement, contains all the rules of use by the City for the Premises use by BGC, which Rules may be reasonably modified from time-to-time.

5. UNLAWFUL ACTS, WASTE AND NUISANCE PROHIBITED

During the term of this Lease, BGC shall comply with all applicable laws affecting the leased Premises including City ordinances and resolutions. BGC shall not commit or suffer to be committed any waste on the leased Premises, or any nuisance.

6. ABANDONMENT OF PREMISES

BGC shall not vacate or abandon the Premises nor cease using the Premises in the manner described in Exhibit "A" at any time during the term of this Lease. If BGC abandons, vacates, or surrenders the leased Premises, this Lease shall be terminated by the City. Personal property in the space will be returned to BGC and BGC shall be provided five (5) days to retrieve the property at BGC's sole expense.

7. CITY'S RIGHT OF USE AND ENTRY

BGC shall permit City and the agents and employees of City to enter the nonexclusive leased Premises within restriction. In addition to the normal use by the public, the City may authorize or

hold large functions and events at the Premises, but shall do so only after reasonable notice to BCG, such notice not to exceed fifteen (15) days, and in cooperation with BCG in a manner to minimize or ameliorate any disruption of BCG's provision of the Services. Notices and correspondence under this paragraph may be accomplished by e-mail.

BCG acknowledges and agrees that the Premises are used as the **north district emergency shelter**, and BCG shall suspend any Services that might disrupt such use by the City and the public, or modify such Services to compliment the use as an emergency shelter in accordance with directions of emergency personnel. BCG shall follow the directions of authorized emergency personnel, and in the event of a conflict, the Director of Public Services shall make the final determination, with the sue as an emergency shelter being the primary concern.

8. REMOVAL OF MANUFACTURED MODULAR SCHOOLS

As part of the inducement to the City to provide BGC with this favorable lease with nominal rent, BCG agrees to permanently remove the manufactured modular school buildings presently at 217 Gwen Hill Street, Avon Park, FL 33852. BCG shall additionally clear any concrete pads, tie downs and any other structures or debris to bring that property back to a visibly aesthetic condition. Such work shall be fully accomplished within six (6) months of commencement of this Lease

9. ENVIRONMENTAL CONCERNS

BGC shall in a timely manner, comply with all applicable Environmental Laws applicable to BGC's use of the Premises.

City is unaware of any unlawful discharges or contamination in violation of Environmental Laws onto the Premises, and BGC has made diligent research and inquiry as to the present condition of the Premises, and accepts the Premises and all structures for all purposes AS-IS WHERE-IS.

10. SUBLETTING AND ASSIGNMENT

Subletting of the right to partially occupy the Premises or assignment of this Lease by BGC is strictly prohibited. Only the renting of space for temporary special events may be allowed if written permission is received from the City Council. Such permission may be withheld or denied by the City Council in its sole, unfettered discretion.

11. NOTICES

Unless otherwise provided herein, all notices, demands, or other writings in this Lease shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, postage prepaid return receipt requested or by delivery to a nationally

recognized overnight courier service, and addressed to that party at the address stated above, unless notified of a different address in writing.

12. TAXES AND GOVERNMENT CHARGES

BGC acknowledges that, City is a governmental entity with authority to tax its citizens, and BGC shall be obligated to pay any property tax bills as rendered through Highlands County directly to Highlands County if BGC is lawfully required to pay such taxes under Florida law. Furthermore, BGC agrees to pay all other lawful taxes, levies or charges lawfully imposed by any state or local governments to the extent applicable to the Premises and/or improvements thereto.

13.COMPLIANCE WITH LAW; ALTERATIONS AND DESTRUCTION OF PREMISES AND IMPROVEMENTS; LIENS AND ENCUMBRANCES PROHIBITED

BGC shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises. The City shall pay for all maintenance and other costs associated with the air conditioning units. The City shall pay for other repairs to the physical building including the roof, walls and entry doors.

BCG shall not alter or modify the building or any portions thereof, without the written permission of the City. Permission for any modifications or alterations shall be first submitted to the City Manager for review and approval at the staff level. Any substantial alterations or modifications shall require the approval of the City Commission.

BGC may not encumber by mortgage, lien, deed of trust, or other instrument, the Premises or BGC's leasehold interest in the leased Premises.

14. UTILITIES

All utilities for the Premises, including without limitation, water, wastewater, electric, garbage, telephone service and internet service, shall be paid for the respective parties in accordance Exhibit "C" attached hereto and made a part of this Agreement.

15. LIENS

(a) **BGC's duty to keep Premises free of liens.** BGC shall keep Premises and improvements free and clear of all mechanics', materialmen's, and other liens, and should such liens be imposed by acts or omissions of BCG, BCG shall pay to remove such liens.

(b) **Contesting liens.** If BGC desires to legally contest any lien rather than paying it outright, it shall notify City of its intention to do so. In such a case, and provided that BGC shall, on

demand, protect City by a good and sufficient surety bond against any lien and cost, liability, or damage arising out of such contest, BGC shall not be in default under this Lease but shall satisfy and discharge the lien to the extent held valid. BGC shall protect and indemnify City against all loss, expense, and damage resulting from the contest of a lien including reasonable attorney's fees and costs at all tribunal levels.

16. INDEMNIFICATION OF CITY

Indemnity. BGC shall defend, indemnify and hold harmless the City of Avon Park and all of the City of Avon Park's officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs, through appeals, which may arise because of the negligence of BGC, its officers, agents or employees in performance or non-performance of its obligations under the Agreement, or otherwise arising through BGC's use and control of the Premises. BGC recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the City of Avon Park when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the City of Avon Park in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida, and other good and valuable consideration, the receipt and sufficiency of which BGC hereby acknowledges. This clause shall survive the termination of this Lease as to any events occurring during BGC's tenancy of the Premises. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve BGC of its liability and obligation to defend, hold harmless and indemnify the City of Avon Park as set forth in this article of the Agreement.

Nothing herein shall be construed to extend the City of Avon Park's liability beyond that provided in section 768.28, Florida Statutes.

17. ATTORNEYS' FEES; VENUE; JURY TRIALS

(a) If any action at law or in equity shall be brought under this Lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorneys' fees, including paralegal costs, appeals and bankruptcy proceedings, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

(b) To the extent that a waiver of jury trial is permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this lease or the Premises.

18. SIDEWALK SPACE; SIGNAGE

The City does not lease to BGC any space under, in, or on any street or sidewalk adjacent to the leased Premises. BGC may install identifying/directional signage and other signage as required for identification and location needs, public safety and convenience, but only with written approval by the City.

19. REDELIVERY OF PREMISES; REMEDIES CUMULATIVE; DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE

BGC shall pay the rent in the manner provided in this Lease. In the event of the non-performance by BGC of any of the covenants which BGC has undertaken, this Lease may be terminated as provided in this Lease. All remedies conferred on City shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

On termination of this Lease for any cause or no cause, the City shall become the owner of any fixtures paid for by the City Contribution and improvements on the Premises.

20. PUBLIC RECORDS ACCESS

A. In the event that it is determined that BGC is “acting on behalf of the City” or is a contractor to the City, BGC shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. BGC shall keep and maintain public records required to perform the services under this Agreement.

B. This Agreement may be unilaterally canceled by the City for refusal by BGC to either provide public records to the City upon request, or to allow inspection and copying of all public records made or received by the BGC in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

C. If BGC meets the definition of “BGC” found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

i. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify BGC of the request, and BGC must provide the records to the City or allow the records to be inspected or copied within a

reasonable time. If BGC fails to provide the public records to the City within a reasonable time, BGC may be subject to penalties under s. 119.10, F.S.

ii. Upon request from the City's custodian of public records, BGC shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

iii. BGC shall identify and ensure that all public records that are exempt or confidential and

exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the BGC does not transfer the records to the City.

iv. Upon completion of the Agreement, BGC shall transfer, at no cost to City, all public records in possession of BGC or keep and maintain public records required by the City to perform the services under this Agreement. If the BGC transfers all public records to the City upon completion of the Agreement, the BGC shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the BGC keeps and maintains public records upon completion of the Agreement, the BGC shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to City, upon request from the City's custodian of public records, in a format that is accessible by and compatible with the information technology systems of City.

D. IF THE BGC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE BGC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS by telephone at 863-452-4405, by email at bbarwick@avonpark.cc , or at the mailing address below:

**Bonnie Barwick, Interim City Clerk
110 East Main Street
Avon Park, FL 33825**

21. INSURANCE

(a) **Insurance coverage of Premises.** BGC shall, at BGC's sole expense, keep all BCG contents and improvements that are now or in the future a part of the Premises, insured against loss or damage by fire and the extended coverage hazards for the full replacement value of the improvements, with loss payable to City with the insurance proceeds.

(b) **Personal injury liability insurance.** BGC shall, at its sole cost and expense, procure and maintain throughout the term of this Lease, Comprehensive General Liability and Worker's Compensation insurance, including Employer Liability insurance, with minimum policy limits of \$1,000,000 Combined Single Limits, and \$2,000,000 for injury to or death of any number of persons in one occurrence, or to the extent and in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the City of Avon Park as a named, additional insured, as well as furnishing the City of Avon Park with a copy, or copies, of said insurance policies. Certificates of insurance and copies of these insurance policies must be received by the City within 10 days of signing the lease.

(c) **City's right to pay premiums on behalf of BGC.** All of the policies of insurance referred to in this section shall be written in a form satisfactory to the City and by insurance companies satisfactory to City, but not less than AM Best "A", with City being included as an additional named insured, and with the insurer waiving any subrogation rights against City. BGC shall pay all the premiums and deliver the policies, or certificates of the policies, to the City within thirty (30) days of commencement of this Lease. In the event of BGC's failure either to acquire the insurance in the names called for or to pay the premiums or to deliver the policies, or certificates of the policies to the City, the City shall be entitled, but shall have no obligation, to acquire the insurance and pay the premiums which shall be repayable to City within thirty (30) days of written demand upon BGC. Failure to repay the premiums shall be cause for the City to terminate this Lease. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by an independent instrument furnished to City, that it will give to City at least thirty (30) days' written notice before the policy or policies in question shall be altered or cancelled. City agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by BGC.

(f) **Blanket insurance policies.** Notwithstanding anything to the contrary contained in this section, BGC's obligations to carry the insurance provided for in this Lease may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by BGC; provided however, the coverage afforded the City will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of a blanket policy of insurance, and provided further that the requirements of Subsection (e) of this section are otherwise satisfied.

22. PERMITS

Permits for food, alcohol, occupancy, inspections, or permissions as may be required by local, state, or national governments shall be furnished by BGC at BGC's expense.

23. NOTICE OF DEFAULT

Except as otherwise provided herein, BGC shall not be deemed to be in default under this Lease unless, if such default is curable, the City first gives to BGC thirty (30) days' written notice of the default, and BGC fails to cure the default within a 90-day period or, if the default is of such a nature that it cannot be cured within 90 days, BGC fails to commence to cure the default within such period of 90 days or fails to proceed to the curing of the default with due diligence.

24. DEFAULT

Breach of any provision in this Lease shall be deemed a default. In addition, BGC shall be deemed in default of this Lease if it ever files a claim of bankruptcy of any kind, ceases to be a 501(c)3 organization, ceases to actively provide services as described herein, or is otherwise determined to be insolvent in the reasonable opinion of the City's certified public accountant. In the event of any breach of this Lease by BGC, the City, in addition to the other rights or remedies the City may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises. Any property may be removed and stored in a public warehouse or elsewhere at the sole cost of, and for the account of, BGC. City may at any time after that elect to terminate this Lease for any previous breach. Should City at any time terminate this Lease for any breach, in addition to any other remedy it may have, City may recover from BGC all damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from BGC to City.

25. EFFECT OF EMINENT DOMAIN

(a) **Effect of condemnation.** In the event all or a portion of the leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the conclusion of the taking, and BGC shall then be released from any liability accruing under this Lease after that date.

(c) **Condemnation award.** In the event of the termination of this Lease due to the total or partial taking of the Premises by eminent domain, then in any condemnation proceedings, the City shall have the sole right to make claim against the condemning or taking authority for any damage done because of the taking.

26. INTERRUPTION OF SERVICES OR USE

Interruption or curtailment of any utility or other service maintained in the building, if caused by emergencies, strikes, mechanical difficulties, or any causes beyond the City's reasonable control, whether similar or dissimilar to those enumerated above, shall not entitle BGC to any claim against the City. If the premises are rendered untenable in whole or in part, for a period of ten (10) business days, by the making of repairs, replacements, or additions, other than those made with BGC's consent or caused by misuse or neglect by BGC or BGC's agents, servants, visitors, or licensees, there shall be a proportionate abatement of rent during the period of untenability as the sole remedy for BGC.

27. WAIVER

The waiver by City of or the failure of City to act with respect to any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach, or of any other term, covenant, or condition contained in the Lease.

28. SECTION CAPTIONS

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

29. DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP

The terms and conditions in this Lease are the product of mutual draftsmanship by both parties, and any ambiguities in this Lease or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Lease were negotiated at arms' length, and that each party, being represented by counsel or capable of being so represented, is acting to protect its, his, her, or their own interest.

30. RECORDATION

This Lease may not be recorded without the City's prior written consent, but BGC agrees, upon request of the City, to execute a memorandum hereof for recording purposes.

31. RADON GAS

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county

health department.

32. COUNTERPARTS AND FACSIMILE (FAX) DOCUMENTS

This Lease may be signed in counterparts, and each counterpart bearing an original signature shall be considered one document with all others bearing original signature. Also, facsimile transmission of any signed original document and re-transmission of any signed facsimile transmission shall be the same as delivery of an original.

BGC

Witnesses:

**BOYS & GIRLS CLUB OF HIGHLANDS
COUNTY, INC.**

Printed name: _____

By: _____
Timothy Brinling, President

Printed name: _____

CITY

Attested by: _____
Bonnie Barwick, Interim City Clerk

CITY OF AVON PARK, FLORIDA

By: _____
_____, Mayor

APPROVED AS TO FORM AND CONTENT

Gerald T. Buhr, City Attorney

EXHIBIT A
DESCRIPTION OF SERVICES TO BE RENDERED TO YOUTH IN AVON
PARK BY LESSEES

EXHIBIT B
RULES FOR USE OF PREMISES

1. The hours of operation at the Rec Center are _____. Unless special permission is obtained from the City in writing, BGC shall strictly adhere to those hours.
2. BGC shall not suffer or permit the obstruction of, or hazard to, any common areas, including driveways, walkways, and stairways.
3. City reserves the right to refuse access to any persons City in good faith judges to be a threat to the safety, reputation, or property of the Rec Center and its occupants.
4. BGC shall not make or permit any noise or odors that annoy or interfere with other occupants or persons having business within the Avon Park Rec Center.
5. BGC shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
6. BGC shall not alter any lock or install new or additional locks or bolts without the express written permission of the City.
7. BGC shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities on the Premises. No foreign substances of any kind are to be inserted in any toilet rooms, plumbing or other utilities.
8. BGC shall not deface the walls, partitions or other surfaces of the premises or Avon Park Rec Center.
9. BGC shall not suffer or permit anything in or around the premises or building that causes excessive vibration or floor loading in any part of the Avon Park Rec Center.
10. Furniture, significant freight, and equipment shall be moved into or out of the building only with the City's knowledge and consent, and subject to reasonable limitations, techniques, and timing that may be designated by City. BGC shall be responsible for any damage to the Avon Park Rec Center arising from any such activity.
11. BGC shall not employ any service or contractor for services, or work to be performed in the building, except as approved by City.
12. No window coverings, shades, or awnings shall be installed or used by BGC without express, written permission and approval by the City based on the City's code, and the City's desired building motif and character.
13. No BGC employee, agent, or invitee shall go on the roof of the building.

14. BGC shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in or around the Rec Center.
15. BGC shall not use any method of heating or air conditioning other than as provided by City. BGC shall conserve energy as reasonable and prudent under the circumstances.
16. BGC shall not install, maintain, or operate any vending machines.
17. Although the Premises has a kitchen for low volume use by BGC employees, the Premises shall not be used for lodging or manufacturing, or large scale cooking. BGC is responsible for acquiring and paying for any required government permits and approvals for providing food or alcohol at BGC events, or hiring at its sole expense, any licensed vender to provide this service.
18. BGC shall comply with all safety, fire protection, and evacuation regulations established by City or any applicable governmental agency. BGC shall hold reasonable evacuation drills in accordance with recommendations by the City Fire Department.
19. City reserves the right to waive any one of these rules or regulations, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application of that rule or regulation to the BGC.
20. BGC assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
21. City reserves the right to make other reasonable rules and regulations that City may from time to time deem necessary for the appropriate operation and safety of the Avon Park Rec Center and its occupants. BGC agrees to abide by these and any other reasonable rules and regulations that City designates

EXHIBIT C

ALLOCATIONS OF COMMON UTILITIES AND SERVICES

1. Electric - The City shall pay a lump sum of not more than \$14,500 by July 1, of each contract year, and the BGC shall pay all other costs of electric., each contract.
2. Water – City pays.
3. Sewer – City pays
4. Garbage – City pays
5. Telephone, fax, WIFI, internet and related services – City pays.
6. Mowing and common area landscaping shall be provided by the City at the City's sole discretion and expense.
7. Repaving and maintenance of park lot shall be provided by the City at the City's sole discretion and expense.
8. Window washing shall be provided by the City at the City's sole discretion and expense.

9. Painting of exterior shall be provided by the City at the City's sole discretion and expense.
10. Janitorial services – City pays