



CITY OF PALM DESERT

73-510 FRED WARING DRIVE
PALM DESERT, CALIFORNIA 92260-2578
TEL: 760 346-0611
info@cityofpalmdesert.org

August 9, 2021

Ms. Paula Simonds
C.E.O.
Family YMCA of the Desert
43-930 San Pablo Ave
Palm Desert, California 92260

Dear Ms. Simonds:

Subject: Contract No. C36623 - Extension of Contract for Professional Services with Family YMCA of the Desert

At its regular meeting of May 13, 2021, the Palm Desert City Council, by Minute Motion:
1) Extended Contract No. C36620 for professional services to the Family YMCA of the Desert ("YMCA"), Palm Desert, California, for management and staffing of the Palm Desert Aquatic Center, effective July 1, 2021, through June 30, 2022; 2) authorized the Mayor to execute the contract extension.

Enclosed is a fully executed original Agreement for your records. If you have questions or require additional information, please do not hesitate to contact us.

Sincerely,



NORMA I. ALLEY, MMC
CITY CLERK

NIA/mgs

Enclosure (as noted)

cc/enc: Jennifer Nelson, Management Analyst

EXTENSION TO AGREEMENT

WHEREAS, the City of Palm Desert ("City") and the Family YMCA of the Desert., a California non-profit corporation ("Consultant"), entered into an agreement, dated July 1, 2018, to provide management and operation at the Palm Desert Aquatic Center ("Agreement"), the parties wish to extend the Agreement effective July 1, 2021.

NOW, THEREFORE, the parties agree as follows:

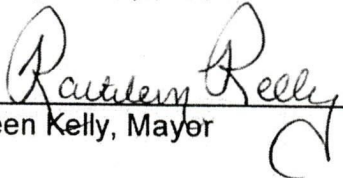
- A. Term is extended to add the following paragraph to the end of the existing section, as amended.

"The term of this Agreement is extended, and shall include the time period from July 1, 2021 through June 30, 2022."

- B. Insurance Requirements are added, as described in the attached Exhibit A.
- C. All other terms and conditions of the Agreement shall remain unchanged, and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the 13th day of May 2021.

CITY OF PALM DESERT
A Municipal Corporation



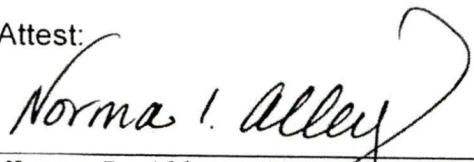
Kathleen Kelly, Mayor

Family YMCA of the Desert



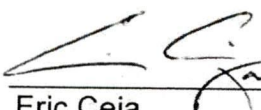
Paula Simonds, C.E.O.

Attest:



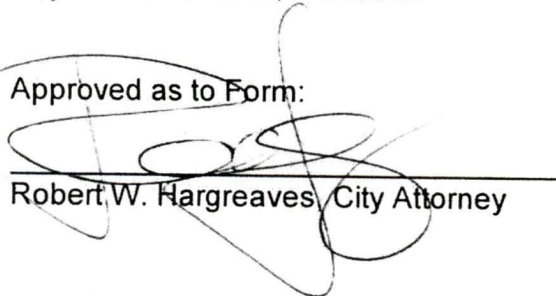
Norma I. Alley, MMC, City Clerk
City of Palm Desert, California

Approved as to Content:



Eric Ceja
Interim Director of Development Services

Approved as to Form:



Robert W. Hargreaves, City Attorney

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

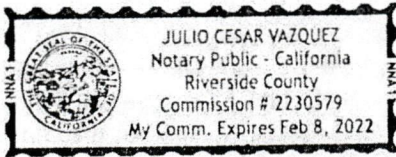
STATE OF CALIFORNIA

COUNTY OF Riverside

On June 11, 2021, before me, Julio Cesar Vazquez - Notary Public, personally appeared Paula K Simonds, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
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.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> Individual		
<input type="checkbox"/> Corporate Officer		
_____ Title(s)		_____ Title or Type of Document
<input type="checkbox"/> Partner(s)	<input type="checkbox"/> Limited	_____ Number of Pages
	<input type="checkbox"/> General	
<input type="checkbox"/> Attorney-In-Fact		_____ Date of Document
<input type="checkbox"/> Trustee(s)		
<input type="checkbox"/> Guardian/Conservator		
<input type="checkbox"/> Other:		
Signer is representing: Name Of Person(s) Or Entity(ies)		

Minimum Requirements. Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

General Liability Insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$10,000,000 per occurrence, \$12,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. The City's Risk Manger may modify this requirement if it is determined that Consultant will not be utilizing a vehicle in the performance of his/her duties under this Agreement.

Personal Property Insurance. Consultant's personal property, fixtures, equipment, inventory and vehicles are not insured by City against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. With respect to the Improvements, FF&E, and other items of personal property located on or in the Premises, insurance against fire, flood, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in standard "all risk" forms in general use in Riverside County, California, for an amount equal to not less than the full current actual replacement cost thereof. Such insurance shall include endorsements for the leasehold improvements, inflation coverage, plate glass, business interruption, sprinkler leakage, and changed conditions. City shall be an additional insured under such policy or policies and such insurance shall contain a replacement cost endorsement.

Sexual Abuse/Molestation Insurance. Consultant shall procure and maintain Sexual Abuse/Molestation Liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage, Professional Liability coverage; or as a separate policy.

Umbrella or Excess Liability Insurance. Consultant may opt to utilize umbrella or excess liability insurance in meeting insurance requirements. In such circumstances, Consultant shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies; and
- Policies shall "follow form" to the underlying primary policies.
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, volunteers and representatives.

Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

Pollution Liability Insurance Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

Cyber Liability Insurance. Consultant shall procure and maintain Cyber Liability insurance with limits of \$1,000,000 per occurrence/loss which shall include the following coverage:

- a. Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.
- b. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
- c. Liability arising from the failure of technology products (software) required under the contract for Consultant to properly perform the services intended.
- d. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- e. Liability arising from the failure to render professional services

If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional period of three (3) years following termination of the contract.

Fidelity Coverage. Consultant shall provide evidence of fidelity coverage on a blanket fidelity bond or other acceptable form. Limits shall be no less than \$1,000,000 per occurrence.

Other Provisions or Requirements.

(A) Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be

kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(B) Duration of Coverage. Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his/her agents, representatives, employees or subconsultants.

(C) Primary/Non-Contributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(D) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may terminate this Agreement.

(E) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(F) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, volunteers, and representatives or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its elected or appointed officers, agents, officials, employees, volunteers and representatives and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(G) Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(H) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a

waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(I) Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(J) Additional Insured Status. General liability, automobile liability, and if applicable, pollution liability, sexual abuse & molestation liability, and cyber liability, policies shall provide or be endorsed to provide that the City and its officers, officials, employees, agents, volunteers and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement, under such policies. This provision shall also apply to any excess/umbrella liability policies.

(K) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(L) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(M) Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Project who is brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subconsultants, subcontractors, and others engaged in the Project will be submitted to City for review.

(N) City's Right to Revise Specifications. The City and the City's Risk Manager reserve the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation. If the City reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.

(O) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or

replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(P) Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(Q) Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Services.

(R) Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

resulting with the YMCA of the Desert again being awarded the contract. The term of the current contract with the YMCA ends June 30, 2021 with the option to renew every year until June 30, 2023.

Since the opening of the facility the YMCA has done an outstanding job managing and operating the facility on behalf of the City. The YMCA has continued its dedication to operating a safe facility, providing a community oriented management philosophy, and maintaining the facility in excellent condition, even during a pandemic. The City and YMCA staff have created a very good working relationship and desire to continue the partnership for another year.

Based on these factors, staff is recommending that the City continue its relationship with the YMCA as operator of the Aquatic Center and extend Contract No. C36620 for the third of four possible extensions.

Fiscal Analysis

The YMCA is not requesting any increase in its management fee as approved in the original 2018/2019 contract. The total management fee will remain at \$165,000.00 annually and paid over a 12-month period at \$13,750.00 per month. The costs included in this renewal contract and all associated reimbursement costs are included in the proposed 2021/2022 budget.

LEGAL REVIEW	DEPT. REVIEW	FINANCIAL REVIEW	ASSISTANT CITY MANAGER
N/A	<i>Eric Ceja</i> Eric Ceja Interim Director of Development Services	<i>Janet M. Moore</i> Janet M. Moore Director of Finance	<i>Andy Firestine</i> Andy Firestine Assistant City Manager
Robert W. Hargreaves City Attorney			
City Manager, L. Todd Hileman: <i>L. Todd Hileman</i>			

VENDOR: YMCA of the Desert
43-930 San Pablo Ave.
Palm Desert, CA 92260

ATTACHMENTS: Original Executed Agreement
Amendment No. 3

CITY COUNCIL ACTION
 APPROVED ✓ DENIED _____
 RECEIVED _____ OTHER _____

MEETING DATE 5-13-2021
 AYES: Harnik, Jonathan, Nestande, Quintanilla, + Kelly
 NOES: None
 ABSENT: None
 ABSTAIN: None
 VERIFIED BY: MBS/sfs