

**City of Carson City
Agenda Report**

Date Submitted: July 8, 2014

Agenda Date Requested: July 17, 2014

To: Mayor and Supervisors

Time Requested: 15 minutes

From: Parks and Recreation Department

Subject Title: For possible action: To approve a recommendation from the Parks & Recreation Commission of a “Notice and Acceptance of Exercise of Option” for the purchase by the City of property owned by the Boys and Girls Clubs of Western Nevada, located along Russell Drive for the construction of the Multi-purpose Athletic Center (MAC).

Staff Summary: Attached as Exhibit A is a “Notice and Acceptance of Exercise of Option” for the purchase by the City of property owned by the Boys and Girls Clubs of Western Nevada, located along Russell Drive for the construction of the Multi-purpose Athletic Center (MAC). This property contains approximately 4.55 acres including the future MAC, and appertaining parking lot and grounds. The property is shown on the attached proposed parcel map (Exhibit A of the “Notice”) as parcel 2. The acceptance of the option is premised upon the City and the Boys and Girls Club executing a Joint Use Agreement attached as Exhibit B of the “Notice.”

Type of Action Requested: (check one)

Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve a recommendation from the Parks & Recreation Commission of a “Notice and Acceptance of Exercise of Option” for the purchase by the City of property owned by the Boys and Girls Clubs of Western Nevada, located along Russell Drive for the construction of the Multi-purpose Athletic Center (MAC).

Explanation for Recommended Board Action: On June 18, 2009 the Board of Supervisors approved the purchase of an option for ten years to acquire property owned by the Boys and Girls Clubs of Western Nevada located along Russell Drive for the purpose of constructing an indoor recreation center. The indoor recreation center has since been changed to the Multi-purpose Athletic Center (MAC). The final acquisition will be completed through an additional fee of \$10.00. The acceptance of the option is premised upon the City and the Boys and Girls Club executing a Joint Use Agreement which is included as Exhibit B of the “Notice.” Both the “Notice” and the Joint Use Agreement were unanimously approved by the Parks and Recreation Commission during their July 1, 2014 meeting, with a minor change made to the Joint Use Agreement by the Commission. The Joint Use Agreement includes:

1. Joint use by both parties of each party’s facilities and also allows for first right of refusal to both parties for use of each party’s facilities.
2. A commitment to the extent possible and reasonable for allowance for shared use of the facility.
3. Provides for and stipulates the maintenance of the facilities.

4. That each party will pay for its proportionate share of janitorial services and utility costs for the MAC.
5. That each party will maintain appropriate insurance naming each party as an additional insured.
6. Mandates that the two parties meet at least quarterly to discuss the use of the facilities in the prior quarter and to plan and schedule the next quarter's use.

Applicable Statute, Code, Policy, Rule or Regulation: Carson City Charter, Section 2.140, 2.16.050, NRS 268.008, 244.270, 244.275, 244.300, 244.305, 244.3073

Fiscal Impact: \$10.00.

Explanation of Impact: To complete the acquisition of the property.

Funding Source: 254-5046-452

Alternatives: Do not approve the request and/or direct staff towards and alternative approach.

Supporting Material: Exhibit A, "Notice and Acceptance of Exercise of Option."

Prepared By: Roger Moellendorf

Reviewed By: Roger Moellendorf Date: 7/3/14
(Parks & Recreation)

Michael Marano Date: 7/8/14
(City Manager)

Tom Johnson Date: 7/8/14
(District Attorney)

Dana Paulson Date: 7/8/14
(Finance Director)

Exhibit A

NOTICE AND ACCEPTANCE OF EXERCISE OF OPTION

This Notice And Acceptance Of Exercise Of Option (“Notice”) is effective on the ____ day of _____, 2014 by and between BOYS AND GIRLS CLUB OF WESTERN NEVADA, INC., a Nevada non-profit corporation, (the “Club”) and CARSON CITY, a consolidated municipality and political subdivision of the STATE OF NEVADA (the “City”), hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Club is the owner of certain real property located in Carson City, in the State of Nevada, being Assessor’s Parcel Number 002-101-85 (“the Property”);

WHEREAS, the City and the Club executed an Option Agreement on or about June 18, 2009, through which the City purchased an option to acquire a portion of the Property to develop a recreation center, which shall include a gym. As consideration for the Option, the City and Club agreed that they would ultimately share joint use of each other’s facilities on the Property;

WHEREAS, the City and Club Amended the Option Agreement on or about October 20, 2011;

WHEREAS, by this Notice, the City does hereby exercise its Option to purchase the portion of the Property depicted on Exhibit “A,” attached hereto and incorporated herein;

WHEREAS, by this Acceptance, the Club acknowledges that the City has properly and timely exercised its Option to purchase the portion of the Property depicted on Exhibit “A,” attached hereto and incorporated herein; and

WHEREAS, this Notice and Acceptance of the City’s exercise of the Option is premised upon the City and the Club executing a Joint Use Agreement in the substantial form and substance as the Joint Use Agreement attached hereto as Exhibit “B;”

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

Article 1 **Rights and Obligations of Parties**

1.1 The Club Shall:

- 1.1.1 Complete parcelling of the Property in conformance with the illustration attached hereto as Exhibit “A.”
- 1.1.2 Convey the parcel of the Property upon which the multipurpose athletic complex (“MAC”) shall be constructed, as shown on the illustration attached hereto as Exhibit “A,” to the City.

1.1.3 Execute and effectuate a Joint Use Agreement with the City in the substantial form and substance as the Joint Use Agreement attached hereto as Exhibit "B."

1.2 The City Shall:

1.2.1 Complete construction of the MAC upon the portion of the Property shown on Exhibit "A" attached hereto.

1.2.2 Execute and effectuate a Joint Use Agreement with the Club in the substantial form and substance as the Joint Use Agreement attached hereto as Exhibit "B."

**Article 2
General Provisions**

2.1 **Preemptory Clause.** This Notice and Acceptance shall supersede the original Option Agreement between The Club and the City, as well as any amendment thereto. Upon satisfactory performance of the obligations hereunder, both the City and the Club agree that all obligations under any Option Agreement between the parties have been fully and finally satisfied and discharged.

2.2 **Joint Use Agreement.** This Notice and Acceptance is specifically premised upon the material obligation of the City and the Club to enter a Joint Use Agreement for all facilities located upon the Property. A draft Joint Use Agreement is attached hereto as Exhibit B. The draft Joint Use Agreement is dependent upon approval thereof by the City's Board of Supervisors.

2.3 **Time is of the Essence.** The City and Club each acknowledge that time is of the essence in completing the obligations hereunder, including without limitation, parcelling the Property, conveying the subject portion thereof as discussed above, constructing the MAC, and approving and executing a Joint Use Agreement.

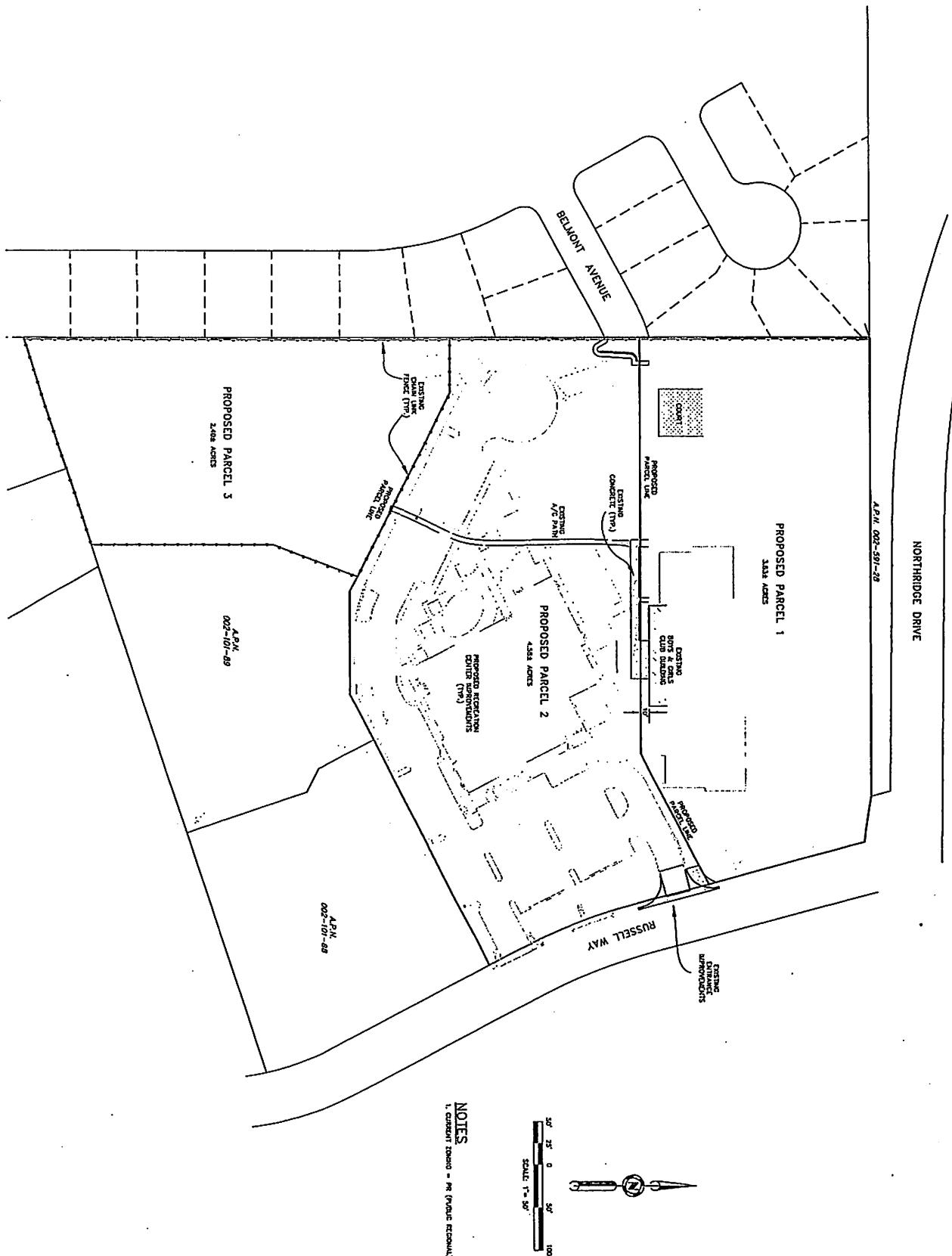
IN WITNESS WHEREOF, the parties here to have executed this Agreement as of the date entered on the first page hereof.

CARSON CITY, a political subdivision
of the State of Nevada

BOYS AND GIRLS CLUB OF WESTERN
NEVADA, a Nevada non-profit corporation

By: _____
Robert L. Crowell, Mayor

By: _____
Laurie Gorris, CPO



CARSON CITY
PROPOSED PARCEL MAP EXHIBIT
BOYS & GIRLS CLUB, 1870 RUSSELL WAY
A.P.N. 002-101-87

www.turkcell.com.tr

LUMOS

JOINT USE AGREEMENT

This Joint Use Agreement (“Agreement”) is entered into on the _____ day of _____, 2014 by and between BOYS AND GIRLS CLUB OF WESTERN NEVADA, INC., a Nevada non-profit corporation, (the “Club”) and CARSON CITY, a consolidated municipality and political subdivision of the STATE OF NEVADA (the “City”), hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Club is the owner of certain real property located in Carson City, in the State of Nevada, being Assessor’s Parcel Number 002-101-85 (the “Property”);

WHEREAS, the City purchased an option to develop a multipurpose athletic center (“MAC”) on a portion of said real property;

WHEREAS, on or about July 1, 2014, the City and the Club executed a Notice and Acceptance of Exercise of Option under which the City exercised its purchase option;

WHEREAS, the Notice and Acceptance is premised on the City and the Club entering an agreement for the joint use of all facilities, parking lots, and fields located on the Property;

WHEREAS, the City shall complete construction of the MAC on the Property, the completion of which shall be the effective date of this Agreement.

WHEREAS, the City and the Club desire to enter this Agreement to further the collective goal of ensuring that the MAC is used to its greatest potential;

WHEREAS, the Parties desire to enter this Agreement in order to govern their rights and obligations set forth herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, as well as the inherent value of the portion of both the Property transferred to the City and the MAC, the parties agree as follows:

Article 1 **Rights and Obligations of Parties**

1.1 The City Shall:

- 1.1.1 Enjoy use of all facilities, parking lots, and fields located on the Property at all times other than during the Club’s regular operating hours.
- 1.1.2 Maintain its facilities, including its structure, parking lots, and landscaping.
- 1.1.3 Pay its proportionate share of all janitorial services and utilities for the MAC.

- 1.1.4 Allow the Club a right of first refusal for any times in which the City will not utilize the MAC during its allotted time frames.
- 1.1.5 Maintain appropriate insurance covering the MAC and the City's use thereof, with the Club named as an additional insured.
- 1.1.6 Meet quarterly with the Club to discuss use of the facilities in the prior quarter and schedule use prospectively in furtherance the parties' intention to ensure the MAC is utilized as much as possible.

1.2 The Club Shall:

- 1.2.1 Enjoy exclusive use of the multipurpose athletic complex ("MAC") constructed by the City on its campus during its regular operating hours. The Club shall, to the extent practical and reasonable, allow for shared use of the facility.
- 1.2.2 Staff the MAC during the Club's regular operating hours.
- 1.2.3 Allow the City a right of first refusal for any times in which the Club will not utilize the facilities, parking lots, and fields located on the Property during the Club's regular operating hours.
- 1.2.4 Maintain its parking lots and fields.
- 1.2.5 Pay its proportionate share of all janitorial services and utilities for the MAC.
- 1.2.6 Maintain appropriate insurance covering the MAC and the Club's use thereof, with the City named as an additional insured.
- 1.2.7 Meet quarterly with the City to discuss use of the facilities in the prior quarter and schedule use prospectively in furtherance the parties' intention to ensure the MAC is utilized as much as possible.
- 1.2.8 In scheduling use of the MAC, the Club shall make its reasonable best efforts to ensure the City is able to schedule for evening use of the MAC which may commence prior to the end of the Club's regular operating hours.

Article 2

General Provisions

- 2.1 **Limited Liability.** The Club and the City do not waive, and intend to assert, any statutory privileges available to each under Nevada Law. Contract liability of both parties shall not be subject to punitive damages.
- 2.2 **Assignment.** This agreement is not assignable.

2.3 **Modification.** This Agreement is the entire Agreement between the parties. This Agreement shall not be modified or amended nor shall any rights hereunder be waived, except by written instrument signed by all parties.

2.4 **Benefits.** This Agreement is entered into solely for the benefit of the parties hereto. It shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of the Agreement. The decision to assert or waive any provision of the Agreement is solely that of each party.

2.5 **Term.** This Agreement is intended to continue in perpetuity so long as the parties are materially honoring their obligations hereunder

2.6 **Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

2.7 **Interpretation and Severability.** This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall be interpreted in accordance with the laws of the State of Nevada. If any provision of this Agreement or its application is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

2.8 **Attorney's Fees.** In the event that any action is filed in relation to this contract, each party shall pay its own attorney's fees regardless of who ultimately prevails in any action.

IN WITNESS WHEREOF, the parties here to have executed this Agreement as of the date entered on the first page hereof.

CARSON CITY, a political subdivision
of the State of Nevada

BOYS AND GIRLS CLUB OF WESTERN
NEVADA, a Nevada non-profit corporation

By: _____
Robert L. Crowell, Mayor

By: _____
Laurie Gorris, CPO