

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 21

DATE: January 19, 1999

STAFF: Jean Helburg

SUBJECT:

Resolution 99-9 Authorizing the Sublease of a Portion of the Old Fort Collins High School at 1400 Remington by the Boys and Girls Clubs of Larimer County.

RECOMMENDATION:

Staff recommends adoption of the Resolution.

FINANCIAL IMPACT:

Rent collected from this sublease, if extended for the full potential term of two years, will result in a total of \$32,316 in 1999 (\$2,693/month), and a total of \$33,924 in 2000 (\$2,827/month). This revenue helps to offset expenses in the Recreation Fund for operation of the Youth Activity Center at 1400 Remington. The increase in rent to Boys and Girls Club is proportionate to the rent increase to the City from Colorado State University.

EXECUTIVE SUMMARY:

The City began operation of a portion of the previous Fort Collins High School at 1400 Remington as a youth and teen center in September, 1995. Space was leased from the Poudre School District, which sold the property to Colorado State University in September of 1997. As of January 1, 1999, the City now leases this space directly from the University.

The City has subleased a portion of its space at this facility to the Boys and Girls Clubs of Larimer County since September, 1995. Staff seeks to continue this sublease.

The sublease with Boys and Girls Club, which is attached to the Resolution, has an initial term that extends through June 30, 1999, and provides for up to three six-month extensions at the City's option.

RESOLUTION 99-9
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE SUBLEASE OF A PORTION
OF THE OLD FORT COLLINS HIGH SCHOOL AT 1400 REMINGTON
BY THE BOYS AND GIRLS CLUB OF LARIMER COUNTY

WHEREAS, Colorado State University ("CSU") owns that certain property located at 1400 Remington Street in Fort Collins, Colorado, known as the Old Fort Collins High School (the "Old High School"); and

WHEREAS, the City of Fort Collins currently leases a portion of the Old High School, known as Youth Activity Center (the "YAC"), from CSU for use in providing recreational services and activities for primarily youth and teens of Fort Collins; and

WHEREAS, the City currently subleases, and wishes to continue to sublease, portions of the YAC to the Boys and Girls Club of Larimer County (the "Club"); and

WHEREAS, the Club provides services on behalf of the City to local youth, under a services agreement with the City; and

WHEREAS, the Club also provides additional youth recreational services, beyond those provided under contract for the City; and

WHEREAS, the Club wishes to use those certain portions of the YAC (the "Club Sublease Area") more particularly described in the attachment to the proposed sublease agreement which is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Sublease Agreement"), in order to provide youth recreational services, and has negotiated with City staff a sublease agreement permitting such use; and

WHEREAS, the Sublease Agreement is permitted under the terms of the City's lease of the YAC from CSU (Exhibit "B"); and

WHEREAS, City staff has determined that the proposed sublease of certain portions of the YAC to the Club will not interfere with or impair the City's intended uses of the YAC; and

WHEREAS, under Section 23-114 of the Code of the City of Fort Collins, the Council is authorized to lease any and all interests in real property owned in the name of the City, provided that Council first finds that the lease is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the sublease by the City of the Club Sublease Area to the Club is in the best interests of the City of Fort Collins.

Section 2. That the City Manager is hereby authorized to enter into the Sublease Agreement subleasing to the Boys and Girls Club of Larimer County the Club Sublease Area through June 30, 1999, with up to three additional six-month extensions, together with such other related provisions determined necessary to protect the interest of the City by the City Manager, in consultation with the City Attorney.

Passed and adopted at a regular meeting of the City Council held this 19th day of January, A.D. 1999.

Mayor

ATTEST:

City Clerk

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is made and entered into this 20th day of February, 1999, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as "the City") as sublessor and the Boys and Girls Clubs of Larimer County (hereinafter referred to as "Lessee") as sublessee.

WITNESSETH:

WHEREAS, the City is leasing that certain parcel of real estate, together with the improvements located thereon, situated in the County of Larimer, State of Colorado, which is described on attached Exhibit "A", incorporated herein by this reference; and

WHEREAS, the City wishes to sublease a portion of the property described in Exhibit "A" to the Lessee, which portion is described on attached Exhibit "B" which is incorporated herein by this reference (hereinafter referred to as "the Property") on the terms and conditions provided herein, and the Lessee desires to sublease the Property from the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties covenant, promise and agree as follows:

1. Sublease of Property. The City hereby subleases, demises and lets unto the Lessee, and the Lessee hereby hires and takes from the City the Property.
2. Term of Sublease. The term of this Sublease be from the 1st day of January 1999, and continuing until 12:00 midnight on the 30th day of June, 1999. The parties may extend this agreement for three additional six (6) month periods by written addendum.
3. Termination. The City may terminate this Sublease at any time by and upon giving the Lessee not less than fifty-five (55) days written notice of such termination.
4. Holding Over. Any holding over by the Lessee, whether recognized by the City or not, after the expiration or termination of any term of this Sublease, shall create merely a tenancy at will, terminable on three (3) days notice.
5. Rent. The Lessee shall pay rent to the City of Two Thousand Six Hundred and Ninety-three Dollars (\$2,693.00) per month due on or before the 5th day of each month of the Lease during 1999. The Lessee shall pay rent to the City of Two Thousand Eight Hundred and Twenty-seven Dollars (\$2,827.00) per month due on or before the 5th day of each month of the Lease during 2000.

6. Use of the Property. The Lessee shall use the Property only for a recreation center for young persons and other related uses as approved by the City. The Lessee shall not use the Property in any manner that violates any applicable law, rule, ordinance or regulation. The Lessee shall not permit any nuisance, disorderly conduct or undue noise at the Property having any tendency to annoy or disturb any persons owning or occupying property adjacent to the Property.

7. Property Maintenance, Repairs and Operation. The Lessee shall maintain the Property in good, clean and orderly condition at all times during the term of this Agreement. Lessee is entitled to such maintenance, repair and similar services as are actually provided by Colorado State University as owner of the Property.

8. Alterations. The Lessee shall not make or cause to be made any alterations, additions or improvements to or of the Property or any part of the Property, or attach any fixtures or equipment to the Property, without first obtaining the City's written consent. Any alterations, additions or improvements to the Property approved by the City will be made by the Lessee at its sole cost and expense unless otherwise agreed to in writing by the parties.

9. Mechanic's Liens. The Lessee will pay all costs and charges for work done by it or caused to be done by it, in or to the Property, and for all materials furnished in connection with such work. The Lessee will indemnify the City and Colorado State University against and hold the City and Colorado State University harmless from all liability, liens, claims and demands on account of such work. At least twenty-five (25) days prior to the commencement of any work in or to the Property, the Lessee will give the City written notice of the proposed work and the names and addresses of the persons supplying labor and/or materials for the proposed work.

10. Taxes, Assessments and Utility Charges. In the event that the Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Lessee shall pay all such taxes, assessments and governmental charges when due. The Lessee shall also pay all telephone charges incurred by the Lessee. Colorado State University is obligated to pay for and provide all other utilities, pursuant to its Lease Agreement with the City, dated December 18, 1998.

11. Insurance. The Lessee shall, at its sole expense, cause commercial general liability insurance to be carried and maintained with respect to the Property and all improvements thereon in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limits. Said policy shall cover bodily injury, including death to persons, personal injury and property damage liability. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation or use of the Property, including acts or omissions of the Lessee and protection against liability for non-owned and hired automobiles. Such coverage shall also include comprehensive automobile liability insurance, contractual liability and workmen's compensation insurance for employees of the Lessee.

All policies of insurance carried by the Lessee shall name the Lessee as an insured party and shall name the City as co-insured and loss payee on the policy. The policy or policies shall contain a provision that they cannot be canceled or materially altered, either by the insured or the insurance company, until fifteen (15) days prior written notice thereof is given to the Lessee and the City. Upon issuance or renewal of any such insurance policy, the Lessee shall furnish a certified copy or duplicate original of such policy or renewal with proof of premium payment to the City. Any insurance policy purchased by the Lessee must be written by an insurance carrier authorized to do business in the State of Colorado and the carrier must be acceptable to the City.

The Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy of insurance, carried and maintained by the Lessee so long as the policy segregates the amount of coverage applicable to the Property. In the event the Lessee fails to carry the insurance required herein, the City may procure such insurance and pay the premiums for it. In such event, the Lessee shall repay the City for said insurance, together with interest and the City's costs and expenses incurred in procuring the insurance upon demand by the City.

12. Damage, Destruction and Condemnation. If, prior to the termination of this Sublease, the Property is destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary or permanent use of, the Property or any portion thereof shall be taken under the exercise of the power of eminent domain, this Sublease shall terminate at the option of the City.

13. Disclaimer of Warranties. The Lessee shall take the Property in its "as is" condition. The City makes no warranty or representation, either express or implied, as to the value, design, condition or merchantability of the Property or its fitness for any particular use. In no event shall the City be liable for any incidental, indirect, special or consequential damages in connection with or arising out of the furnishing, functioning or the use of the Property by the Lessee.

14. Requirements of Law. During the Sublease term, the Lessee shall observe and comply promptly with all then current and future laws, ordinances, resolutions, orders, covenants, restrictions, rules and regulations of the federal, state and local governments, and of all courts or other governmental authorities having jurisdiction over the Property or any portion thereof, whether the same are in force at the commencement of the Sublease term or may be in the future passed, enacted or directed.

15. Assignment and Subleasing. The Lessee shall not assign this Sublease in whole or in part and shall not sublease all or any part of the Property.

16. Signs and Advertising. The Lessee shall not erect any signs on the Property without the City's prior written consent. Such consent may be given or withheld in the City's sole discretion.

17. Nuisance. The Lessee shall not permit the existence of any nuisance on the Property and shall keep the Property in a clean and safe condition and free of any explosive, flammable or combustible material which would increase the risk of fire. The Lessee shall not handle or store any

dangerous or potentially dangerous materials or any hazardous or toxic materials, as defined under state and/or federal law, and shall not permit the accumulation of junk, debris, or other unsightly materials. The Lessee shall be allowed to store up to eight (8) gallons total of motor oil and antifreeze on the property in a manner in full compliance with all applicable laws, regulations, and policies and consistent with best management practices for the storage, handling and transportation of such substances.

18. Environmental Concerns. The Lessee shall not create or permit any condition on the Property that could present a threat to human health or the environment. The Lessee, to the extent permitted by law, shall indemnify and hold harmless the City from any suit or claim arising out of any damages alleged to have been caused, in whole or in part, by an unhealthful, hazardous or dangerous condition caused by, contributed to or aggravated by the Lessee or by Lessee's violation of any laws, ordinances, regulations or requirements pertaining to solid or other wastes, chemicals, oil and gas, toxic, corrosive or hazardous materials, air, water (surface or groundwater) or noise pollution of the storage, handling, use or disposal of any such material. The Lessee shall be liable for all expenses which may be required to remedy any condition on the Property caused by the Lessee in violation of the provisions of this section. The Lessee agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until the City discovers any such health or environmental impairment, and the Lessee hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

The City shall have the right, but not the duty, to enter upon the Property from time to time to inspect the Property for environmental contamination and may conduct soil and groundwater testing. Any such testing or inspections shall be at the City's expense.

19. Default. If the Lessee shall neglect or fail to timely and properly perform any covenant, condition or provision of this Sublease, the Lessee shall be in default hereunder. If the Lessee is in default, or if the Lessee is adjudicated as bankrupt, files a petition in bankruptcy or makes an assignment for the benefits of its creditors, the City, at its election, may:

- (1) Give the Lessee written notice of the City's intention to terminate this Sublease on a specified date, and Lessee's right to possession of the Property shall cease and this Sublease shall terminate on the specified date; or
- (2) The City may re-enter and take possession of the Property or any part thereof and repossess the same as the City's former estate and expel the Lessee and those claiming through or under the Lessee and remove the effects of both or either (forcibly, if necessary).

The City's right to terminate this Sublease or to re-enter and take possession of the property as set forth above shall be remedies in addition to all other remedies provided to the City, in law or equity, available to enforce the City's rights and/or collect damages sustained due to the lessee's default hereunder.

20. Removal of Property. Upon the expiration or termination of this Sublease, or upon the City's repossession of the Property, the Lessee will surrender the Property in good order and condition, ordinary wear and tear excepted. The Lessee shall remove all of its personal property from the Property. The Lessee will fully repair any damage caused by the removal of such property. Any of the Lessee's property not immediately removed will conclusively be deemed to have been abandoned by the Lessee and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to the Lessee or to any other person and without obligation to account for them. The Lessee will pay the City all expenses incurred in connection with the City's disposal of such property, including, without limitation, the costs of repairing any damage to the Property or its improvements caused by the removal of such property. The Lessee's obligation to observe and perform this covenant will survive the end of this Sublease.

21. Attorneys Fees. In the event that either party shall default under any of the provisions of this Sublease and the non-defaulting party shall commence litigation to enforce this Sublease, the defaulting party shall be liable for all costs, expenses and reasonable attorneys fees incurred by the non-defaulting party concerning such litigation.

22. Notices. All notices, certificates or other communication hereunder shall be deemed given when hand-delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the following:

If to the City: Ms. Peggy Bowers
 City of Fort Collins
 214 North Howes Street
 Fort Collins, CO 80521

If to the Lessee: Mr. Joe MacIsaac
 Boys and Girls Clubs of Larimer County
 1400 Remington
 Fort Collins, CO 80524

23. No Remedy Exclusive. No remedy herein conferred upon or reserved to a party is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right to power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Lessee to exercise any remedy reserved, it shall not be necessary to give any notice, other than such notice as may be specifically required by this Sublease.

24. No Waiver. In the event that any covenant contained herein should be breached by a party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. In addition, the failure of

one party to insist upon strict performance of the terms, conditions, covenants and agreements herein contained or any other of them shall not constitute or be considered as a waiver or relinquishment of that party's rights thereafter to enforce any such default or term, condition, covenant or agreement.

25. Binding Effect. This Sublease shall inure to the benefit of and shall be binding upon the City, Lessee and their respective heirs, successors, administrators and assigns.

26. Severability. In the event that any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

27. Applicable Law. The laws of the State of Colorado shall be applied to this construction, interpretation, execution and enforcement of this Sublease.

28. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

29. Construction, Entire Agreement. This Sublease shall be construed according to its fair meaning and as if prepared by all of the parties hereto and shall be deemed to be and contain the entire understanding and agreement between the parties. There should be deemed to be no other term, condition, promise, understanding, statement or representation, express or implied, concerning this Sublease unless set forth in writing and signed by all parties.

30. No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or a partnership or a joint venture between the parties hereto, it being agreed that none of the provisions set forth herein, nor any acts or the parties herein, shall be deemed to create a relationship between the parties hereto other than the relationship of sub-lessor and sub-lessee.

31. Indemnity. The Lessee agrees, to the extent permitted by law, to indemnify and save the City and harmless against and from all claims by or on behalf of any person, firm, corporation or other entity arising from Lessee's or Lessee's agents guests or invitees' use or occupation of the Property, any condition on the Property or from any action performed under this Sublease.

32. Limited Use of Small Gym. The small gym, as shown on Exhibit "B", may be used by the Lessee from 2.30 p.m. to 7:00 p.m. Monday through Thursday and 2:30 p.m. to 9:00 p.m. on Friday.

33. Locker Rooms. The locker rooms on the first floor of the Property, as described on Exhibit "A" are not part of Lessee's subleased property. However, Lessee shall have the right to use these locker rooms along with the City, and on the same basis as these locker rooms are available for use by the general public during the term of this Sublease.

IN WITNESS WHEREOF, the parties hereto have entered into this Sublease Agreement the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

By: _____
John F. Fischbach, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

LESSEE: BOYS AND GIRLS CLUBS OF
LARIMER COUNTY

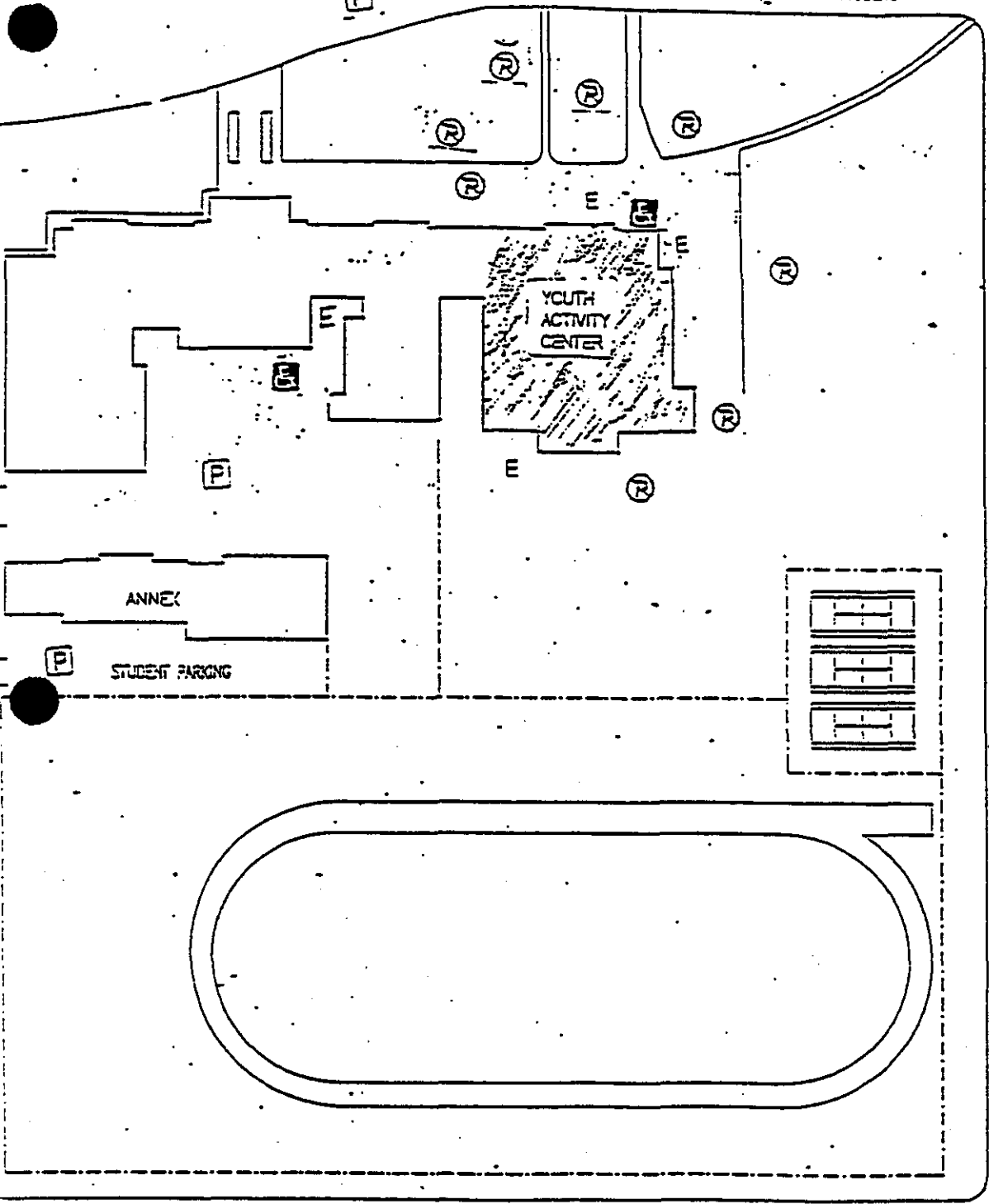
By: _____
Board President

ATTEST:

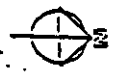
Board Secretary

YOUTH ACTIVITY CENTER
REMINGTON
MER FCHS)
714

Exhibit "A"
PARKING



- PARKING ALLOWED
- PARKING NOT ALLOWED
- PARKING FOR PERSONS WITH DISABILITIES
- GYM ENTRANCE



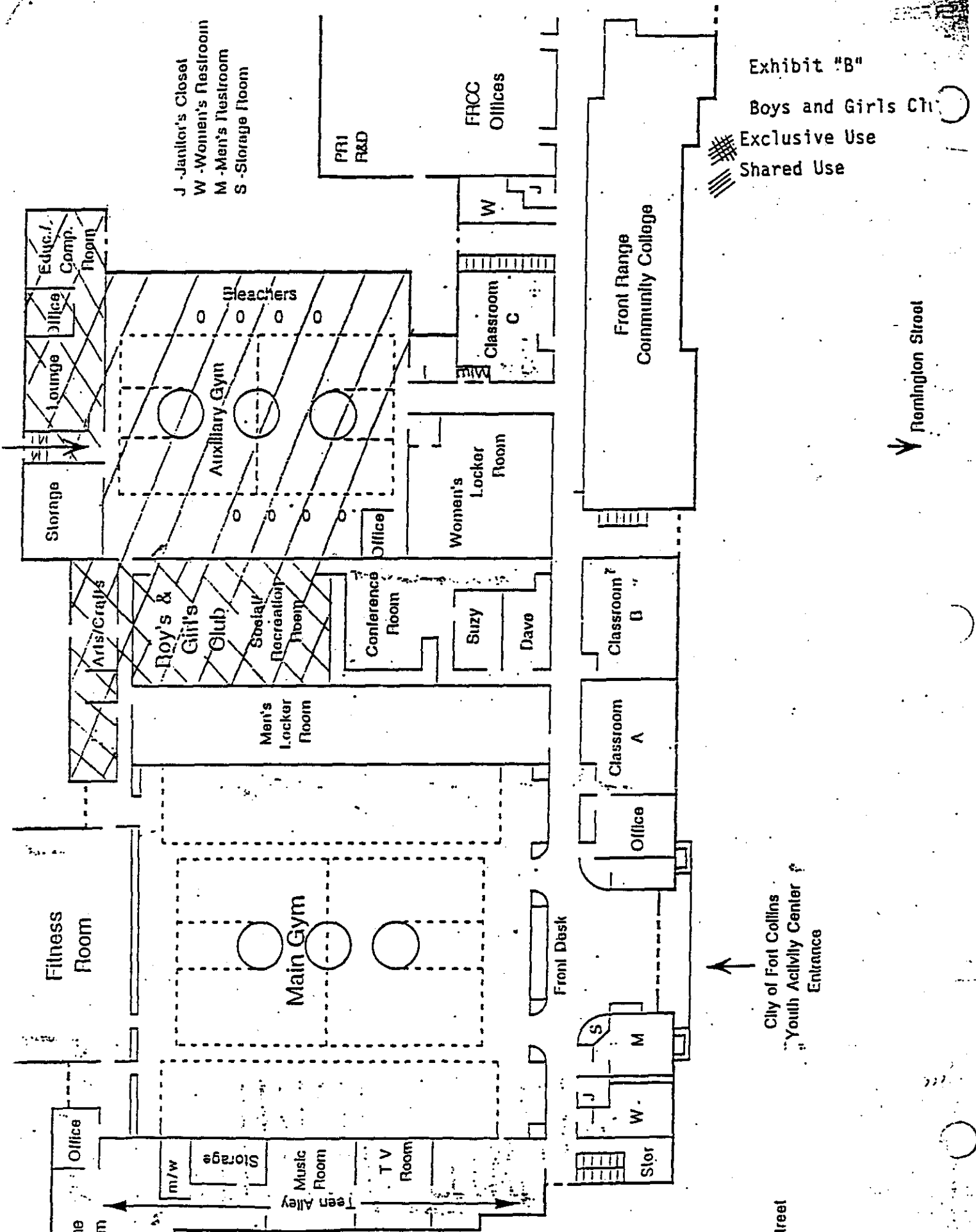


Exhibit "B"

Boys and Girls Club

Exclusive Use
 Shared Use

Front Range
 Community College

Remington Street

City of Fort Collins
 Youth Activity Center
 Entrance

Street

December 18, 1998

John Fischbach
City Manager
City of Fort Collins
300 LaPorte Avenue
Fort Collins, CO 80521

John:

In accordance with paragraph 8 of the Lease Agreement for Use of Space at the Old Fort Collins High School with Colorado State University, the University hereby consents to a sublease with the Boys and Girls Club.

If you have any questions, please call Nancy Hurt at 491-0005.

Sincerely,



Ronald A. Baker
Director, Facilities Management

cc: Nancy Hurt
Jim White
Jean Helburg

