

Attachment C  
EXEMPLAR AGREEMENT

**AGREEMENT BETWEEN CITY OF SAN JOSE AND  
[REDACTED]  
FOR LEAD AGENCY OPERATION OF COMMUNITY CENTER**

This Agreement is made and entered into this [REDACTED] day of [REDACTED], 20 [REDACTED], by and between the **CITY OF SAN JOSE**, a municipal corporation (“CITY”) and the [REDACTED], a [REDACTED] nonprofit corporation (“USER”).

**RECITALS**

- A. CITY is the owner of that property located at \_\_\_\_\_ (“Center”).
- B. CITY’s Director of Parks, Recreation and Neighborhood Services (“Director”) (including Director’s designated representatives, “CITY REPRESENTATIVE”) is charged with the responsibility of supervising the use of CITY’s parks and recreational facilities.
- C. USER is organized as a [REDACTED] nonprofit corporation to provide services and opportunities for all ages with an emphasis on [REDACTED].
- D. USER has an objective of providing community services to the public.
- E. On [REDACTED], the CITY’s Department of Parks, Recreation and Neighborhood Services issued a Request for Qualifications (“RFP”) seeking applicants to provide community services in the Center. USER submitted a proposal to the RFP dated [REDACTED] which was selected as most advantageous by the CITY. CITY and USER desire to enter into an Agreement to operate the Center, pursuant to the terms hereof.
- F. The right to use and operate the Center without payment of full fair market value rent conveys a valuable benefit. In agreeing to enter into this Agreement, USER

agrees to follow the provisions of City Council Policy Free Use of Community Center Reuse Sites in exchange for “Community Services” that Primarily benefit San Jose Residents,” copy attached, (referred to as “CITY’s Reuse Policy; City Council Policy 7-12”). Pursuant to the terms of the CITY’s Reuse Policy, CITY intends to grant use of certain recreational facilities, such as the Center, to nonprofits on the condition that the USERS will provide a minimum amount of “Community Services”. The Reuse Policy broadly defines “Community Services” as including programs, services and activities that align to the PRNS Mission, Vision and Core Services; those services identified in an attachment to the Reuse Policy; services identified during past Community Center Reuse public input sessions, and other services as may be identified in the future. .

In view of the above, the parties hereto do hereby agree as follows:

**SECTION 1. TERM OF AGREEMENT.** This Agreement shall be for a term commencing on [REDACTED] and expiring no later than [REDACTED], unless sooner terminated pursuant to the provisions of this Agreement. This Agreement may be terminated by the CITY or USER at any time and upon 90 days prior written notice to the other party, as further provided herein. Regardless of the date of execution of this Agreement, the effective date shall be [REDACTED].

**SECTION 2. CITY’S REUSE POLICY .**

A. City’s Reuse Policy The Center was constructed to provide Community Services, and as a site available for reservation for meetings, special events, and similar activities. This Agreement grants certain use and operation of the Center without payment of facility use fees.

In conformance with the CITY’s Reuse Policy , in exchange for the authority to use and operate the Center as set forth herein, USER agrees to provide, at a minimum, the Community Services identified on **Exhibit A** , including the units of service set forth In **Exhibit C**. USER acknowledges that its agreement to provide at least the minimum level of Community Services and programs to the CITY and the community is a material

provision of this Agreement.

B. USER understands that CITY is relying upon USER actually delivering the program of Community Services described to the CITY as a part of USER's response to the CITY's RFP.

C. USER acknowledges that it shall not use the Center to promote religious or political purposes.

D. USER shall provide CITY REPRESENTATIVE on an annual basis, with the following:

1. An organizational chart of the USER along with a list of staff employees (by title) and salary.
2. Names and addresses of current members of the Board of Directors.
3. A schedule of the USER's Board of Directors meetings and the Board's meeting minutes for the past year.
4. A current annual financial report of the USER or Group including sources of funding and any constraints on receivable or received funds.
5. Proof that their service is still available and quantitative reports of services provided during the preceding year.

### **SECTION 3. - MONITORING AND EVALUATION**

A. USER shall be subject to the standards of performance as set forth in the attached **Exhibit A** "Scope of Services" (alternatively referred to as "Program"), **Exhibit B**, entitled "Performance Standards," and **Exhibit C**, "Units of Service." USER shall furnish data, statements, records, information, and reports necessary for CITY to

monitor, review and evaluate the performance of the USER. Unit of Service is defined on **Exhibit B**.

B. At any time during normal business hours, and as often as may be deemed necessary, USER agrees that CITY or its authorized representatives shall have access to and the right to examine its offices and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement.

#### **SECTION 4. PROGRAM COORDINATION**

A. Each year in August during the term of this Agreement, USER shall provide City with a draft annual program plan for City's approval, Upon approval of the annual program by the CITY REPRESENTATIVE, USER (or User's approved subcontractors) shall offer the Community Services described in the Program to the public in accordance with the approved written plan which plan is further described on the Exhibit A Scope of Services.

B. NOTE TO PROPOSERS – THIS SUBSECTION B ONLY APPLIES TO NORTHSIDE USER and also acknowledges that USER shall comply with the requirement that the Center shall be made available to organizations, businesses and residents located in the Japantown Redevelopment Area no less than 45 days per year, which is set forth in a use covenant required by the Redevelopment Agency of San Jose as a condition to its contribution toward the construction costs for the Center. USER shall include written details in the draft annual plan of the necessary actions to achieve the requirement that the Center shall be made available to organizations, businesses and residents located in the Japantown Redevelopment Area. This does not limit the CITY's ability to independently conduct actions to publicize that the Center shall be made available to organizations, businesses and residents located in the Japantown Redevelopment Area.

C. THIS PROVISION MAY BE MODIFIED BY CITY DEPENDING UPON EXTENT OF USER'S PROPOSAL AND OPERATIONS - USER represents that USER shall employ, at its sole cost and expense, [a full-time (40 hours per week) administrator] who shall act as the director of the Program and shall have overall responsibility for the progress and execution of this Agreement, as well as supervise the

operation of the Program. USER shall provide CITY with the contact information for USER's Program Director upon execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program director, USER shall notify CITY REPRESENTATIVE immediately of such occurrence. USER's staff shall cooperate fully with CITY REPRESENTATIVE with respect to all matters related to this Agreement.

D. USER's staff shall attend meetings as required or requested by CITY REPRESENTATIVE.

E. The parties agree that USER shall be solely responsible for the recruitment, training, supervision and compensation of USER's employees, including Program employees. The parties further agree that USER shall be solely responsible for the recruitment, training and supervisions of volunteers to assist in the operation of Center or the Program.

E. USER shall submit semi-annual reports regarding USER's performance of the Program and other requirements hereunder, in accordance with the schedule set forth in **Exhibit D**. USER's reports must be on a form approved by the CITY REPRESENTATIVE.

## **SECTION 5. OPERATION OF CENTER.**

A. CITY grants permission to USER to conduct the Program during the term of the Agreement, and pursuant to the terms of this Agreement, including without limitation, USER's compliance with the terms of the CITY's Reuse Policy. The use of the Center by USER shall not be exclusive, and CITY shall have the right at all times to enter upon the Center for any purpose and to use the same for any purpose not inconsistent with USER's obligations hereunder. USER shall not pay facility use fees to CITY for USER'S Community Services Program activities which have been expressly approved by CITY'S REPRESENTATIVE, subject to the provisions of this Agreement, provided that other costs and charges as set forth herein, may apply. [For Northside

and Alma - USER understands and acknowledges that the Center programs includes a Senior Nutrition Program which has been run by the City during the following time periods:

A.1. Alma Senior Center

Senior Nutrition Lunches: Monday – Friday, 12 Noon – 1:00 pm.

A.2 Northside Community Center

Senior Nutrition Lunch: Monday – Thursday & Sunday, 12 Noon – 1:00 pm,

City intends to seek proposals to take over the Senior Nutrition Program. USER understands and acknowledges that the City (or such other City and County approved provider of the Senior Nutrition Program) shall be provided access to all portions of the Center reasonably necessary to conduct the Senior Nutrition Program at no cost, and that USER shall cooperate with the provider of the Senior Nutrition Program.

B. USER shall be responsible for conducting services at the Center consistent with CITY's policies and procedures for facility operation, including without limitation, nondiscrimination, recycling practices and procedures and as further set forth in **Exhibit A**. USER'S operational obligations shall include reasonable staffing of the Center, running the Community Services Programs in a manner satisfactory to CITY, . "Reasonable staffing" shall be defined as equal to existing staffing levels as identified in Exhibit A Scope of Services.

C. USER agrees that it will not suffer nor allow Center, nor any portion of Center, to be used for any purposes other than those specified and authorized by the terms of this Agreement or in writing by the CITY REPRESENTATIVE. USER understands that the City, through the PRNS Property Management Group, may take reservations and book persons or groups in the Center during available hours, and USER shall not interfere with such other activities in the Center. CITY shall retain all revenues from additional bookings in the Center. The Center shall function in a manner similar to other CITY-owned community centers, by CITY making rooms and space available for use by the public upon payment of facility use fees and upon signature of a City-approved form of facility use agreement.

D. CITY agrees that USER may assess fees for participation in the approved Community Serving program held by USER at CENTER, provided that no interested public participants shall be denied participation because of inability to pay such assessed fees. CITY reserves the right to disallow any fees assessed for participation in USER programs and activities which the CITY deems to be excessive.

E. USER is herein authorized to retain such collected fees for USER use in meeting programming and operational expenses for Community Serving programs at the CENTER.

F. CITY agrees that USER may conduct fundraising activities at CENTER with the prior written approval of Director. All proceeds from use of the CENTER shall be identified in USER'S reports to CITY, and shall be dedicated by USER solely towards subsidizing and reducing the direct costs of providing CITY-approved Community Services programs held at the Center and CITY-approved services to the community provided at the Center. Allowable expenditures by USER of revenues from the Center include USER'S costs of intake and processing of program applications from participants, costs of providing staff oversight of the programs at the Center during hours of operation, maintenance of the facility's website. Subject to the CITY's prior approval, proceeds may be used to acquire equipment, supplies, and services that USER demonstrates to CITY as reasonably necessary to enhance and/or expand the Community Services provided by USER.

G. USER shall collect, safeguard all program fees and charges and other revenues generated from the Center, and shall account for the revenues and costs arising from the Center through generally accepted accounting principles and standards. USER further agrees that an accounting detailing fees and charges, revenues and expenditures shall be included in the financial reporting by USER made to the CITY REPRESENTATIVE on a semi annual basis as described in Section 11 of this Agreement. Any fees and charges or other revenues collected by USER and not expended in accordance with the provisions of this Agreement by the expiration or termination of this Agreement shall be paid to CITY by USER within thirty (30) days after the expiration or sooner termination of this Agreement.

H. USER shall not charge fees and/or any other charges or costs associated with the use of the Center to CITY programs, which may be run by the CITY staff or through a contract with a third party programs, using the Center (collectively, "CITY Programs"). CITY Programs include, but are not limited to, Strong Neighborhood Initiative groups, meetings of the San José Redevelopment Agency, San José BEST, CDBG, Office on Aging, and San José Afterschool programs and such other programs as determined by CITY. USER will maintain a minimum of 8 hours per month dedicated to CITY Programs at such times as are mutually agreed by the parties.

I. USER agrees that a minimum of [1] full time paid staff member shall be on the Center premises during all hours of operation. NOTE - THIS PROVISION MAY VARY DEPENDING UPON THE FACILITY

J. USER agrees that any and all personnel, either paid or volunteer, whom USER utilizes in conducting the Program shall be qualified to perform the duties assigned to them. USER shall provide CITY with job descriptions of all volunteer and paid positions. All Center personnel shall be neatly attired and shall conduct themselves at all times in a courteous and businesslike manner.

K. USER understands and agrees that the permission granted herein by the CITY to USER to use and occupy the Center is contingent upon the Center being CITY-owned property in a safe and usable condition and that if, at any time during the term of this Agreement, the Center should no longer be CITY-owned property or should become unsafe or unusable for any cause or if CITY terminates for any other reason, CITY shall have no obligation to provide other facilities. USER further affirms and acknowledges that USER has no relocation rights with respect to the Center or the Program if this Agreement is terminated for any reason.

L. PREVAILING WAGE/LIVING WAGE. Some activities of USER under this Agreement may be subject to, and USER agrees to comply with, provisions of the CITY's prevailing wage policy and Living Wage policy (which are set forth collectively in City Council Resolutions 61144, 61716, 68900, and 71584), which provisions are specifically incorporated herein by reference as though set forth herein in their entirety. USER shall expressly require compliance with the provisions of this "Wage Provision" in all agreements with contractors and subcontractors for the performance of any



maintenance services, or construction activities or other activities covered by the prevailing wage or living wage policy hereunder and further agrees to the related provisions set forth on **Exhibit G**. Further information on the CITY's Prevailing Wage and Living Wage may be obtained from the CITY's Office of Contract Compliance.

M. While it is anticipated that USER may apply for grants from various sources to assist in running USER's programs, nothing herein obligates the CITY to provide any funding to USER in the operation of any program within the Center. Furthermore, nothing herein grants USER any priority or special consideration from the CITY when the CITY is considering the distribution of grant funding to non profits and similar entities.

**SECTION 6. INVENTORY AND USE OF EQUIPMENT.** CITY may agree to make available to USER, at CITY's sole discretion, certain CITY-owned equipment and furnishings for USER's use in the conduct of Program. An inventory of such CITY-owned equipment and furnishings in the Center as of the effective date of this Agreement is included in **Exhibit F**. USER agrees to maintain all CITY equipment and furnishings in good condition and working order to return same to CITY in the same condition as when received by USER, reasonable wear and tear excepted. USER agrees to reimburse CITY for any and all repairs made necessary to any or all of CITY's equipment and furnishing except that occasioned by such reasonable wear and tear. USER further agrees to maintain all such equipment and furnishings in good and safe working condition and not to permit the use of such equipment and furnishings unless so maintained.

**SECTION 7. UTILITIES SERVICE.**

A. CITY shall be responsible for reasonable utilities including water, gas and electricity.

B. USER shall be responsible for responding to alarm calls at all times throughout the 24-hour day. CITY agrees to provide outside garbage and refuse containers at the Center for the deposit of refuse collection services.

C. USER, at USER's sole cost and expense, shall arrange and pay for the monthly telephone and internet service charges.

**SECTION 8. MAINTENANCE AND REPAIR.**

A. CITY shall provide routine custodial maintenance and repair of the Center and of the landscaping and grounds of the Center necessary through reasonable wear and tear. "Routine maintenance" is defined by the Reuse Policy as two (2) days of custodial service per week, which includes servicing recycle stations, spot vacuuming and mopping, and restroom service, but does not include direct custodial service to USER's staff areas, except recycle stations and restrooms.

Routine repairs that are the result of normal wear and tear on the facility will also be completed. USER shall make no alteration or change in any manner to the Center or the surrounding grounds, including electrical, gas, or plumbing equipment or facilities. If USER requests repainting of the facility for its own purposes, or if USER wants to alter, modify, change, or relocate any utility, equipment or facilities or of any part or portion of the Center, such action shall be subject to the prior approval of CITY and the costs thereof shall be borne by USER. USER has inspected the Center and agrees to use and occupy the Center in "as-is" condition as of the date of this Agreement. Any costs of maintenance and repair incurred by CITY beyond normal wear and tear or caused by misuse or negligence of USER (including USER's agents, subcontractors, invitees, and employees) shall be billed by the CITY to USER. USER shall make payment to the CITY within thirty (30) days after CITY's billing for any of the aforementioned costs which are to be borne by USER.

B. The USER shall hold the City harmless against claims if the City determines that it must temporarily shut down the Center to perform major system repairs, such as replacement of air conditioning systems.

C. CITY shall be responsible for structural, equipment repair and other long term capital repairs of the Center, except to the extent such repair may be caused by the misconduct or negligent actions or omissions of USER or USER's invitees. City shall conduct preventive maintenance in a manner consistent with the majority of other similar City community center facilities. Enhanced maintenance requested by USER above the City's minimum level of services may result in additional costs to the USER.

D. No alterations or improvements, including capital improvements and installations of additional phone lines, T1 lines, and electrical lines shall be made to the CENTER without the CITY's prior written approval. If the CITY provides written approval, the USER shall be responsible for obtaining all CITY permits through the City of San José Public Works Department necessary for the construction of any alterations or improvements. USER will be responsible for meeting all permit requirements at no cost to the CITY.

The USER will not be required to make any capital improvements. If capital improvements are required for the proposed use of a facility, the CITY, in its sole discretion, may elect to make such improvements, terminate further property use negotiations, or terminate the property use agreement.

If the USER proposes to fund the capital improvements, the CITY may consider such requests. The CITY may review and consider all capital improvement requests pursuant to the CITY's Capital Improvement Program process. Any agreement by CITY to expend funds shall be subject to appropriate CITY approvals, must be set forth in a written agreement and shall be subject to appropriation of funds by City Council, which shall be made in CITY's sole discretion. Permission to install capital improvements may

require a separate agreement between CITY and USER which may include bidding and bonding requirements, among other requirements.

**SECTION 9. NO WASTE OR NUISANCE.** USER shall not commit, or suffer to be committed, any waste upon the Center, or any public or private nuisance.

**SECTION 10. ACCOUNTING AND FINANCIAL RECORDS.** PROPOSERS - THE FOLLOWING PROVISIONS APPLY TO LEAD OPERATOR AT NORTHSIDE COMMUNITY CENTER AT A MINIMUM. THE CITY MAY CONSIDER REVISIONS TO THIS LANGUAGE FOR ALMA YOUTH CENTER AND LOS PASEOS YOUTH CENTER

**A. Fiscal Responsibility of USER.** USER shall:

1. Appoint and submit to CITY the name of a fiscal contact who shall be responsible for the financial and accounting activities of the USER, including the receipt and disbursement of USER funds.
2. Establish and maintain a system of accounts that shall conform to generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of CITY.
3. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation, evidencing in proper detail the nature and propriety of all charges.
4. Submit quarterly financial reports at the end of each quarter in such form as CITY shall require.
5. Certify insurability subject to CITY approval as outlined in **Exhibit E.-**
6. Submit to CITY at such times and in such forms as CITY may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.

**B. Records, Reports and Audits of USER:**

1. Establishment and Maintenance of Records. USER shall maintain records, including but not limited to, books, financial records, supporting

documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:

- a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the relation to USER'S use and operations of the Center, its performance of the Program and of any other grant agreement with CITY; and
- b. All other matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the CITY.

2. Preservation of Records. USER shall preserve and make available its records:

- a. for the period of four (4) years from the date of termination or expiration of this Agreement; or
- b. for such longer period, if any, as may be required by applicable law.

3. Examination of Records and Facilities. At any time during normal business hours, and as often as may be deemed necessary, USER agrees that CITY, and/or any of its respective authorized representatives shall have access to and the right to examine any of its plants, offices and/or facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. USER also agrees that the CITY, or any of its authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. CITY may examine records or facilities pursuant to this Section throughout the term of this Agreement and

- a. for a period of four (4) years after termination or expiration of this Agreement; or,
- b. for such longer period as may be required by applicable law; or

- c. if this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting settlement.

**C. Audits:**

1. Independent Audits.

USER shall submit an agency audit that conforms to generally accepted auditing standards and shall include the following minimum components:

- a. Balance Sheet or Statement of Financial Position;
  - b. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement of Activities;
  - c. Statement of Functional Expenses;
  - d. Independent Auditor's Report. If the audit includes a Management Letter, this must also be submitted to the CITY.
  - e. Schedule of Government Financial Assistance which identifies the gross amounts of grants obtained from the CITY and other governmental sources and shows the amount received and disbursed under each grant during the audited fiscal year;
  - f. A statement showing the source of all non governmental revenues and income received by USER; and
  - g. Report on Compliance and on Internal Control over Financial Reporting based on an Audit of Financial Statements performed in Accordance with Government Auditing Standards indicating that a review of internal controls was performed and identifying material weaknesses and/or reportable conditions, if any.
2. If USER expends \$500,000 or more in a year in Federal awards, USER shall submit an audit report that conforms to the requirements of OMB Circular A-133 for Non-Profit Institutions. Funds may be set aside in USER's budget in an amount equal to CITY's fair share of the USER's cost of an A-133 independent audit, if required.
  3. The USER's contract with its independent auditor shall require that the audit ascertains and determines that no services provided by the USER pursuant to an Agreement with the CITY, are duplicative of services

- provided to another agency from which USER receives funding and are not being reimbursed from funding received from another agency.
4. USER shall also submit a written agency management response to the findings of the Internal Control Report, if required.
  5. USER shall obtain three (3) bids for an outside auditor to conduct the agency audit. The agreement with an outside auditor can span a term of multiple years but it is highly recommended that the USER rotate independent auditors every three years.
  6. USER shall enter into an agreement with an outside auditor no later than sixty (60) days before the end of each Fiscal Year calling for a financial and compliance audit of USER's Fiscal Years that are covered by this Agreement and no later than sixty (60) days prior to the expiration of this Agreement if expiration of the term occurs on other than the end of a Fiscal Year. The written agreement may be in the form of an engagement letter prepared by the auditor and approved by USER. USER shall provide CITY with a copy of the scope of the audit to be prepared by the outside auditor, which shall be subject to the prior approval of CITY. Unless expenditures for this audit are an allowable expense under a grant award to USER, USER shall pay for the costs of this audit at USER's sole cost and expense.
  7. The audit report must be completed and sent to the CITY's Parks, Recreation and Neighborhood Services Department, Administrative Services Division staff within one hundred fifty (150) days of the end of each of the USER's Fiscal Years covered by this Agreement and within 150 days of the expiration or termination of this Agreement.
  8. Should USER not enter into an agreement with an outside auditor or should an audit not be done on a timely basis, the CITY, at its discretion, may enter into an Agreement with an independent auditor to do the audit at USER's expense.
  9. The USER shall submit to the CITY copies of management letters the auditor prepares for the USER as part of the audit engagement.

10. All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. USER must have Auditor's proof of current licensing on file in USER's office. USER must submit to CITY REPRESENTATIVE a copy of Auditor's certification to practice in California with the audit.

**D. CITY Audits.** The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. USER will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. ***Costs of such audits will be borne by the CITY, unless the audit has been initiated by CITY in response to a default hereunder by USER, in which event USER shall be responsible for such audit cost.***

#### **SECTION 11. REPORT OF OPERATIONS.**

A. On a semiannual basis, no later than 15 calendar days after the end of each January and June during the term of this Agreement, USER shall submit to the CITY REPRESENTATIVE a semi-annual written report describing the content of the Program offered during the immediately preceding six-month period, all sources of funding received during the period and all expenditures made during the period with detail providing the funding source used to pay for such expenses, among other information. USER's report shall be in a format provided by the CITY REPRESENTATIVE and shall, in addition to providing an overview of the Program's activities, provide information on topics related to the Program as required by the CITY REPRESENTATIVE. An outline of report contents, required documentation, and a schedule of reporting deadlines is included in **Exhibit D**. USER's semiannual report shall be used by CITY as one element in evaluation of USER's Program.

B. Within 30 days of the end of each fiscal year, and within 60 days of termination of this Agreement, USER shall submit to the CITY REPRESENTATIVE, an annual report of operations, services and financial transactions performed under the provisions of this Agreement. USER's annual report shall be used by CITY as one element in evaluating USER's activities at the Center and USER's Program and shall be



submitted by USER in such format acceptable to the CITY REPRESENTATIVE.  
USER'S obligation to deliver such reports survives termination of this Agreement.

**SECTION 12. PRESERVATION OF RECORDS.** USER shall preserve and make available its records until the expiration of four (4) years from the date of termination or expiration of this Agreement, or for such longer period, if any, as is required by applicable law.

**SECTION 13. INDEPENDENT CONTRACTOR.** The parties mutually agree that USER and its employees are and shall be at all times independent contractors and not agents or employees of the CITY, and that USER and its employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance, or any other benefit or right connected with employment by CITY, or any compensation other than as prescribed herein and USER expressly waives any claim it may have to any such rights.

**SECTION 14. LICENSE RIGHTS/NOT A LEASE.** The rights granted to USER under this Agreement are non-exclusive license rights only and in no respect shall the same constitute or be construed as assignment of a leasehold or other interest in the property described in this Agreement.

**SECTION 15. ASSIGNMENT OR SUBLEASE BY USER.** This Agreement shall not be assigned by USER in whole or in part nor subleased or subcontracted in any respect without the written authorization of CITY, which may be withheld in CITY'S sole discretion. Notwithstanding the foregoing, if USER'S proposal includes subcontractor's to provide Community Services and such proposal was accepted by City, then those subcontractors should be identified here:

**SECTION 16. NONDISCRIMINATION.** In the performance of this Agreement, including without limitation, the programs and services provided at the Center, USER shall not discriminate against any employee or applicant for employment because of

race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

**SECTION 17. COMPLIANCE WITH LAWS/BACKGROUND CHECKS/REPORT OF CHILD ABUSE.**

A. USER shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

B. USER shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of USER's business.

C. Without limitation of any other provision herein, if the services provided hereunder (i) involve direct contact with minors or if minors are supervised as a part of the services provided hereunder, or (ii) if services provided hereunder include services in the human services field and involve the care and security of children, the elderly, the disabled, or the mentally impaired, then USER represents and warrants to CITY that prior to services being provided hereunder by any personnel or volunteers retained by USER that the USER has or will conduct a criminal background check as provided in California Penal Code Section 11105.3, as well as an FBI criminal database background check and, has or will verify prior to services being provided that the personnel or volunteers do not have any criminal record for the offenses listed in California Penal Code Section 11105.3, which include, certain offenses related to the possession or use of controlled substances, sex offenses or any criminal offense involving violence.

D. USER shall comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 et seq.

USER shall also request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

E. No person whether paid or not paid by USER shall be permitted to provide services described in Paragraph C above unless, unless, prior to commencing services hereunder, USER shall deliver a letter to CITY listing such person and certifying that the USER has conducted a proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. If requested by City during the term of this Agreement, USER shall provide an updated certification letter verifying that the background checks for each of the named persons is current and in compliance with this provision.

**SECTION 18. WAIVER OF CLAIMS.** USER, as a material part of the consideration to be rendered to CITY under this Agreement, hereby waives all claims or causes of action against the CITY, its officers or employees which USER may now or hereafter have for damages to goods, wares, merchandise or other property in, about or upon the Center or any portion of building in which Center is located, and for injuries to persons in or about the Center, from any cause or causes arising at any time. In particular, but not by way of limitation, USER hereby waives any and all claims or causes of action which USER may now or hereafter have against the CITY, its officers or employees: (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any service or system serving Center or any portion of building in which Center is located and (b) for any loss or damage to the property of, or injury or damage to USER, USER's officers, employees, or agents, from any cause or causes arising at any time because of USER's use or occupancy of the Center or any portion of building in which Center is located.

**SECTION 19. INDEMNIFICATION AND HOLD HARMLESS.** USER agrees to defend, indemnify and hold harmless CITY, its officers, agents, employees and invitees, from any and all loss or damage and from any and all liability or suits brought by any and all persons because of or arising out or resulting from the doing by USER of any or all things permitted by this Agreement, or because of or arising or resulting from any acts, activities or errors or omissions of USER, its agents, employees, invitees, or

subcontractors arising out of or resulting from the performance of this Agreement. This Agreement to defend, indemnify and save harmless CITY shall, in its entirety, extend to any loss or suit arising or resulting from any dangerous or defective condition arising from any cause in, around or upon the Center used by USER, its agents, employees or subcontractors.

**SECTION 20.**        **INSURANCE REQUIREMENTS.** USER agrees to have and maintain the policies set forth in the attached **Exhibit E**, entitled "INSURANCE." All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's Authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. USER agrees to provide CITY with a copy of the required policies, certificates and/or endorsements upon execution of this Agreement.

**SECTION 21.**        **COMPLIANCE WITH LAWS.** USER shall comply with CITY policies and all applicable state and federal laws, regulations and rules related to the use of the Center and the operation of the Program, including but not limited to, laws, regulations and rules applicable to health, safety and equal opportunity employment.

**SECTION 22.**        **POSSESSORY INTEREST TAX.** USER understands and agrees that this Agreement may create a possessory interest subject to property taxation and that USER may be subject to payment of property taxes levied on such interest, and that any such tax shall be the liability of and be paid by USER.

**SECTION 23.**        **TIME OF ESSENCE.** Where performance of a covenant is specified herein to be performed on or before a certain date, time shall be of the essence of said covenant. Performance by USER of each and every covenant of this Agreement is material, the breach of which shall constitute a material breach of this Agreement for which the CITY may terminate this Agreement.

**SECTION 24.**        **EFFECT OF WAIVER.** The waiver by CITY of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition of waiver of any subsequent breach of such term, covenant/or condition. The consent or approval by CITY to or of any act by USER requiring CITY's approval or consent shall not be deemed to waive provisions for CITY's approval or consent to any such subsequent acts by USER.

**SECTION 25.**        **AUTOMATIC TERMINATION.** The right of USER to use the Center described herein shall be automatically terminated without notice on the occurrence of any one of the following conditions subsequent, in which event USER shall forthwith and without demand by the CITY, surrender the Center without delay.

- A.     The appointment of a receiver to take possession of all or substantially all of the assets of USER;
- B.     A general assignment by USER for the benefit of creditors;
- C.     Any action taken or suffered by USER under any insolvency or bankruptcy act;
- D.     The suspension, revocation or lapse of USER's nonprofit incorporated status; or
- E.     Failure to comply with any material term of any other agreement between USER and CITY, including without limitation, any grant agreement .

**SECTION 26.**        **ELECTIVE TERMINATION.**





This Agreement may be terminated by either party at any time during the term for any reason, upon giving to the other party at least ninety (90) days written notice of termination. In the event such notice of termination is given, this Agreement shall be deemed terminated and ninety (90) days after delivery of notice is given pursuant to Section 29. The parties acknowledge that CITY may terminate this Agreement under this provision without cause, notwithstanding USER'S compliance with the terms of this Agreement including payment of utilities, delivery of reports and program services.

B. The DIRECTOR is authorized to decide, on the part of CITY, that this Agreement is to be terminated and to furnish written notice thereof to USER.

**SECTION 27. TERMINATION UPON DEFAULT.** In the event of any default on the part of USER in USER's performance of or compliance with any of the terms, conditions and covenants of this Agreement, CITY shall have the right, in addition to or as an alternative to any other right it may have at law or in equity or pursuant to this Agreement, to terminate this Agreement; provided, however, that CITY shall first give written notice to USER of such default and USER shall thereafter have a period of seven (7) days to correct the default. Nothing herein limits CITY's right to terminate this Agreement for any reason, upon 30 days prior written notice.

**SECTION 28. SURRENDER ON TERMINATION.** On the last day or the sooner termination of the term of this Agreement, USER shall quit and surrender Center in good condition and repair (reasonable use and wear and tear, and damage or deterioration caused by the elements, earthquake, flood, and fire not caused by the negligence of the USER excepted), and remove all property owned by USER from the Center. All such property not so removed shall be deemed at the option of CITY to have been abandoned by USER.

**SECTION 29. NOTICES AND REPRESENTATIVES.** All notices required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by U.S. mail, postage prepaid addressed as follows:

<u>CITY:</u>	<u>USER</u>
Director of Parks, Recreation and	
Neighborhood Services	
200 East Santa Clara Street	
San José, CA 95113	

The parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this Section.

**SECTION 30. CONFLICT OF INTEREST.**

USER shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. USER is familiar with conflict of law provisions set forth in California Government Code Sections 87100 et seq. and Government Code Section 1090. USER certifies that it does not know of any facts which constitute a violation of such section. USER further certifies that it shall not assign any personnel to provide services under this Agreement which would be cause for a violation of any conflict of interest law.

**SECTION 31. GIFTS.**

A. USER is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.

B. USER agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by USER. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

**SECTION 32. DISQUALIFICATION OF FORMER EMPLOYEES.**

USER is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code (“Revolving Door Ordinance”). USER shall not utilize either directly or indirectly any officer, employee, or agent of USER to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 33. SAN JOSE MUNICIPAL LOBBYING.**

A. USER is familiar with the Lobbying registration requirements and prohibitions set forth in Chapter 12.12 of the San Jose Municipal Code.

B. USER agrees not to perform any services as prohibited by Section 12.12.510 of the San Jose Municipal Code.

C. The performance of any services prohibited by Section 12.12.510 of the San Jose Municipal Code shall constitute a material breach of this AGREEMENT by USER. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT

**SECTION 34. MISCELLANEOUS PROVISIONS.**

A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.



B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

C. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement. This Agreement may only be amended by formal written agreement executed by both parties.

Exhibit A	Scope of Services
Exhibit B	Performance Standards
Exhibit C	Units of Service
Exhibit D	Reporting Requirements
Exhibit E	Insurance
Exhibit F	Inventory of CITY Owned Furnishings
Exhibit G	Remedies for Breach of Liquidated/Prevailing Wage Provisions

D. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

E. Where this Agreement refers to CITY and no officer of the CITY is named, CITY's Manager shall have the authority to act on CITY's behalf.

RN:AH:BKJ  
12/23/09

WITNESS THE EXECUTION HEREOF, the day and year hereinabove written

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation

\_\_\_\_\_  
BARBARA K. JORDAN  
Senior Deputy City Attorney

\_\_\_\_\_  
[INSERT USERS NAME \_\_\_\_\_], a  
\_\_\_\_\_ nonprofit corporation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Fed. Identification. No. \_\_\_\_\_

**Exhibit A**  
**SCOPE OF SERVICES**

USER shall provide the minimum of Community Services set forth below. Community Services are defined in the Community Re Use Policy 7-12, that primarily benefit San José residents.

**I. Target Population and Service Area [THIS PARAGRAPH I IS ONLY APPLCIABLE TO NORTHSIDE COMMUNITY CENTER]**

USER shall provide services and activities for the public providing that the multipurpose meeting and activity space located within the Center will be made available to organizations, businesses, and residents located in the Japantown Redevelopment Area for a minimum of 45 days per year.

Special emphasis shall be placed on the delivery of linguistically-appropriate programs that promote positive recreational, social and educational experiences for adults age 55 years and older. Other community-serving programming for parents, adults, and families may be provided at the Center with approval from CITY REPRESENTATIVE. Such programs and services shall be age and gender appropriate to ensure fair and safe use by all program participants. ]

**II. Center Operations**

USER will operate the Center and serve the residents and communities of San José within the following specifications and guidelines.

**A. Annual Operation Schedule: First Year during the Term of this Agreement**  
THIS SECTION SHOULD DESCRIBE THE MINIMUM NUMBER OF UNITS OF SERVICE OF COMMUNITY SERVING PROGRAMS REQUIRED HEREUNDER PER YEAR AND A LIST OF EACH OF THOSE PROGRAMS THAT ARE A MINIMUM REQUIREMENT FOR THE FREE USE OF THE FACILITY

Hours for Community Serving programs shall be submitted to CITY REPRESENTATIVE on a quarterly basis. USER shall post for public display Community services hours of the Center, and provide, at a minimum, quarterly program marketing publications detailing programs, services, events, and hours of operation.

CITY may make the Center available for reservation and use by the Public and for City programs at all times outside of the approved hours of USER's Community Serving

programs, THE FOLLOWING IS ONLY APPLICABLE TO NORTHSIDE A minimum of 45 days per year shall be made available for public use by the residents of the Japantown Redevelopment Area and/or Northside neighborhood.

**B. Holiday Closure Days for Alma Youth/Senior Center, JTS Northside and Los Paseos Youth Center**

USER will not be required to provide services at the Center on CITY holidays as listed below, however, USER may chose to do so at its discretion.

New Year's Day  
Martin Luther King's Day  
President's Day  
Cesar Chavez Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving  
Christmas  
Winter Furlough

**C. Modifications and Operating Schedules**

USER or its subcontractors will provide the Community Serving programs described in this Exhibit. In the event USER desires to modify the services, USER shall apply to CITY REPRESENTATIVE in writing setting forth the requested modifications.

Modifications to the times and dates of Program or Services which do not affect the total units of services to be provided by USER do not require a formal an amendment to this Agreement but a record of the change should be in writing signed by both parties.

USER will provide quarterly calendars of services to CITY REPRESENTATIVE.

The following change may be authorized by written agreement signed by the Director of Parks, Recreation and Neighborhood Services provided that it is approved by the CITY Attorney's Office, and further provided that a copy of this modification is provided to the CITY Clerk as an amendment to the terms of this Agreement.

A reduction in the total number of units of service by an amount not to exceed 10% of the units of service specified in **Exhibit D**.

For the term of this Agreement and as a condition to the CITY's permission to use and operate the Center, USER shall provide at a minimum, all of the Community Serving programs listed above at the Center, as USER'S minimum community contribution as a part of USER's compliance with the CITY's Reuse Policy . USER shall be obligated to provide these programs and services in exchange for the rights granted hereunder, and no CITY funds of any shall be used to offset the costs of providing these programs and services kind (other than use of the a Grant Award pursuant to a separate City grant review process ). USER shall be solely responsible for securing non CITY sources of funding for the minimum required activities.

The following services shall also be provided by USER in exchange for use of the Center:

- Outreach and marketing to promote USER programs. Activities shall include maintaining the facility's website.
- Oversight of the services provided by USER and USER'S subcontractors in the Center for minimum of [40] hours per week during regularly scheduled hours of operation. NOTE THIS AMOUNT MAY VARY DEPENDING UOPN THE FACILITY

#### **IV. Outreach and Recruitment Methods**

**FOR NORTHSIDE FACILITY** In addition, USER shall establish a Facility Advisory Committee, that shall be composed of persons other than members of the Board of Directors of USER, to provide input into the development, delivery, and evaluation of Center services and programs. This Committee shall include representation in the following areas: 1) program participants; 2) Marbury Court staff or resident; 3) the Japantown Business Association; and the 4) Northside Neighborhood Association. USER will assist and coordinate the meetings the Facility Advisory Committee with CITY REPRESENTATIVE or his or her designated staff. USER will participate as a member of the Community Advisory Committee at monthly meetings.

#### **V. Evaluation and Reporting Requirements**

USER will use specific performance measures and targets as specified in **Exhibit B** . These performance standards and targets will be used in the evaluation of the USER's performance. Methods of data collection and reporting intervals will be consistent with those of PRNS.

USER shall cooperate with CITY in the conduct of any evaluation of USER's services. USER recognizes and agrees that an evaluation of the USER's services may be completed after the expiration of the term of this Agreement.

USER will provide reports to the CITY on the due dates specified in **Exhibit D**. The reports shall be provided in a format specified by CITY and contain performance

measurement results, workload data, budget expense and revenue data, and adequate narration to describe and support measurement data. The CITY will provide the reporting templates to USER.

**VI. Sublease of Facility**

CITY reserves the right to sublease any or part of the Facility. Prior to the execution of a sublease, the CITY agrees to meet with USER and the LESSEE to coordinate activities at the facility. If the sublease results in a reduction of program space available to USER, CITY and USER shall meet to discuss whether this Agreement should be amended to provide for an adjustment of the a proportional reduction in the minimum Community Services programmatic requirements imposed upon USER by this Agreement. An adjustment shall be set forth in writing signed by the City and USER. City's Director or if applicable, City Council approval, shall be required to approve reductions in the required Community Serving programs.

CITY may approve or reject requests from USER to sublease a portion of the Center, in its sole discretion.

**Exhibit B**  
**PROGRAM PERFORMANCE STANDARDS**

USER shall utilize performance measures consistent with the performance standards set forth below – performance reporting shall consist of two categories: Performance Measures in **Exhibit B** and Units of Service in **Exhibit C**. Performance Measures utilize “Key Measurement Areas” standards and measure service quality verses costs. Workloads provide direct outputs related to the sum units of services and units of participation. For the purposes of this Agreement, all performance and workload standards are considered deliverables of this Agreement unless specified as Baseline Data.

USER will utilize performance measures within the “Key Measurement Areas” of Quality, Customer Satisfaction, and Cost. The definitions and Performance Targets for these key measurement areas and performance targets are as follows:

**Quality:** The positive effect of programs and services on the attitude, behavior, and condition of participants. Attitude is defined as an understanding and/or possession of knowledge. Behavior is defined as the actions, conduct, and/or demeanor of the participant. Condition is defined as an impact of the participant's attitude and/or behavior on the home and/or neighborhood where the participant resides (Community Impact).

**Customer Satisfaction:** The opinion/perception of participants utilizing the facilities, programs and/or services defined as a positive experience by the participant and the opinion/perception of the immediate community as to the value and quality of the facility and its program and services.

**Cost:** The cost per a defined unit of participant service. A units of service is one hour of eligible services given to an unduplicated client. The unit of service is not increased or multiplied if more than one staff person provides the service during the hour. A unit of service is focused on the number of hours of service a client actually received.

**PERFORMANCE MEASUREMENTS**

<b>Service</b>	<b>Performance Measure</b>	<b>Method of Reporting</b>
Customer Service (all Center programs)	80-85% of participants will rate services as “good” or excellent	Client satisfaction survey
Senior Support Services	80-85% of participants will report that programs contribute to keeping body and/or mind active for seniors and persons with disabilities	Client satisfaction survey

Target Clients Served	75% of participants served will be San José residents	Client satisfaction survey
Target Clients Served	40% of participants served will be from the Northside Community	Client satisfaction survey
Target Clients Served	CENTER is made available to organizations, businesses, and residents located in the Japantown Redevelopment area for a minimum of 45 days per year.	Client Intake Survey



**Exhibit C**  
**UNITS OF SERVICE**

<b>Total Unduplicated Participants Served:</b>	
--	--

	Specific Services Will need to be revised Based on required February 1, 2006 report	Number of Participants Served		Session Implementation Schedule (include the projected # of sessions the activity will be provided each month)												Projected Total Number of Sessions	Average Hours Per Session	Projected Total Units of Service (Hours)	Program Schedule (Days of the week and hours of the day)	Program Location
		Participants	Projected Average Participants Per Session	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN					
1	Homework Center	TBD	TBD	0	0	16	16	16	8	16	16	16	16	16	12	Varies	1.5	4/week	M-Th, 2:30-4:00	Northside
2	Teen Sports	TBD	TBD	8	8	8	8	8	8	8	8	8	8	8	8	Varies	2.0	2/week	M/W, 1:30-3:30	Northside
3	Recreation/Social/Educational Services	TBD	TBD	21	21	21	21	21	21	21	21	21	21	21	21	Varies	Varies	5-6/week	M-F, 2:30 – 5:30	Northside
4	Senior Programs (not incl. Senior Nutrition )	TBD	TBD	100 Hours per month												Varies	Varies	25/week	M-Th & S, 9:00 am - 12 Noon & 1:00 - 3:00 pm	Northside
5																				

**Exhibit D**

**REPORTING SCHEDULE**

<b>Period Begin</b>	<b>Period End</b>	<b>Report Due</b>	<b>Report Requirements</b>
N/A	Period Since last audit	150 Days after the end of each fiscal year	Independent Audit of USER as required by Section 10 if applicable
Jan 1 & July 1	June 30 & January 31	15 days after June 30 or January 31	Semiannual report to include funds received and expenditures made
Start of FY	End of FY	August 1, 2010	Annual Report of Operations

## Exhibit E

### INSURANCE REQUIREMENTS

OPERATOR, at OPERATOR'S sole cost and expense, shall procure and maintain for the duration of this 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 and use of program premises hereunder by OPERATOR, its agents, representatives, employees or subcontractors. The cost of such insurance shall be born by the OPREATOR

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including but not limited to premises liability, fire legal liability, products and completed operations, contractual liability, personal injury, sexual conduct, corporal punishment, and/or wrongful acts; and
2. ***Applicable only if vehicles used in the course of training and/or OPERATOR's driving to and from City of San Jose during instructions-***

The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. ***Applicable only if Professional services rendered by the OPERATOR and its employees are in individual, family or group therapy, interview or counseling sessions. Such programs may include but are not limited to drug and alcoholism rehabilitation ; state or federal social service referral agencies; community service agencies; agencies involved with individual and family therapy; domestic counseling and group therapy; child guidance clinics, etc.***

Professional Liability Errors and Omissions.

5. Property Insurance Property Insurance: Property insurance against all risks of loss to any betterments, OPERATOR's furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by OPERATOR, in the leased premises.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

**B. Minimum Limits of Insurance**

OPERATOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, \$100,000 fire Legal Liability. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.
5. Property Insurance: Full replacement cost with no coinsurance penalty provision.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or OPERATOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, OPERATOR; products and completed operations of OPERATOR; premises owned, leased or used by OPERATOR; and automobiles owned, leased, hired or borrowed by OPERATOR. The coverage shall

contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. OPERATOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of OPERATOR's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by OPERATOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that OPERATOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

## 2 Workers' Compensation and Employers' Liability

Coverage shall be endorsed to state carrier waives its right of subrogation against the City its officials, employees, agents and contractors

## 3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY except that ten (10) days ' prior written notice shall apply in the event of cancellation for non-payment of premium.

### E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

### F. Verification of Coverage

OPERATOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to:  
[Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address

RN:AH:BKJ  
12/23/09

(or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources  
Risk Management  
200 East Santa Clara St., 2nd Floor - Wing  
San Jose, CA 95113-1905

G. **Subcontractors**

OPERATOR shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**Exhibit F**

**INVENTORY OF CITY OWNED EQUIPMENT AND FURNISHINGS**

CITY agrees to make available to USER, subject to the provisions of Section 6 the following CITY-owned equipment and furnishings for USER's use in the conduct of programs at the Center :

Description Of Item	Total Qty

**Exhibit G**

**Remedies For USER's Breach Of Prevailing Wage/Living Wage Provisions.**

**A. General:** USER acknowledges that it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage for certain activities covered by this Agreement ("Wage Provision") and to submit certain documentation to the CITY establishing its compliance with such requirement. ("Documentation Provision.") USER further acknowledges the CITY has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects CITY job opportunities and stimulates the CITY's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the CITY by fostering high turnover and instability in the workplace.
3. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose

because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.

4. It increases competition by promoting a more level playing field among USERS with regard to the wages paid to workers.

- B. Withholding of Payment.** USER agrees that the Documentation Provision is critical to the CITY's ability to monitor USER's compliance with the Wage Provision and to ultimately achieve the Goals. USER further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision.

In light of the critical importance of the Documentation Provision, the CITY and USER agree that USER's compliance with this Provision, as well as the Wage Provision, is an express condition of CITY's obligation to make each payment due to the USER pursuant to this Contract. The CITY is **not** obligated to make any payment due the USER until USER has performed all of its obligations under these provisions.

Any payment by the CITY despite USER's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this USER or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

- C. Liquidated Damages for Breach of Wage Provision:** USER agrees its breach of the Wage Provision would cause the CITY damage by undermining the Goals, and CITY's damage would not be remedied by USER's payment of restitution to the workers who were paid a substandard wage. USER further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The CITY and USER mutually agree that making a precise determination of the amount of CITY's damages as a result of USER's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, USER shall pay to the CITY as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

- D. Audit Rights.** All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made



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12/23/09

available for audit at no cost to the CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to CITY for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at USER's address indicated for receipt of notices in this Contract.