

## **RESOLUTION NO. 2011-554**

Adopted by the Sacramento City Council

October 11, 2011

### **APPROVING LEASE AGREEMENT FOR SOUTHSIDE CLUBHOUSE WITH TARGET EXCELLENCE**

#### **BACKGROUND**

- A. In August of 2010, the Department of Parks and Recreation began exploring the possibility of working with local nonprofit organizations to operate community centers and clubhouse buildings that deliver services to the surrounding communities. This approach was an alternative to building closures due to budget constraints.
- B. At the June 7, 2011 City Council Budget hearing, City Council directed the Department to secure nonprofit organizations and other community partners to assume the responsibility for operations at community centers and clubhouses.
- C. On August 23, 2011, staff provided a report back to Council regarding the operational plan for the community centers and clubhouses, which included the leasing of Southside Clubhouse to Target Excellence.
- D. Target Excellence ranked number one of all the proposals received in the Request for Proposals for the Southside Clubhouse.
- E. Target Excellence is interested in entering into a lease agreement with the City for Southside Clubhouse located at 2051 6<sup>th</sup> Street to provide after school programming: beginner reading, tutoring, and a youth business academy.
- F. Target Excellence is a nonprofit community based organization which provides career counseling, parent workshops, SAT/Exit Exam Review, after school education and safety, and professional staff development programs.
- G. Leasing the Southside Clubhouse will generate General Fund revenue to offset the City's utility and maintenance costs. This lease will prevent closure of this community facility and place responsibility for program staffing operational costs on Target Excellence.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL  
RESOLVES AS FOLLOWS:**

- Section 1. The City Manager or his designee is authorized to execute the Memorandum of Understanding and Lease of the Southside Clubhouse ("Lease Agreement") with Target Excellence attached as Exhibit A, for the City property located at 2051 6<sup>th</sup> Street. Under the Lease Agreement, Target Excellence will pay the City's utility and service costs in the amount of \$1,350 per month and assume building maintenance obligations for the period from October 17, 2011 to June 30, 2013, and operate community services.
- Section 2. The City Manager or his designee is authorized to establish revenue and expenditure budgets as required within the Parks and Recreation Department Teen and Community Center Division General Fund Budget to accept the lease payments to fund the Southside Clubhouse's utility and service costs.
- Section 3. The City Manager or the City Manager's designee is authorized to execute such additional documents, subject to approval of the City Attorney, and to take such additional actions as necessary to implement the Lease Agreement.

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Exhibit A - Memorandum of Understanding and Lease of the Southside Clubhouse

Adopted by the City of Sacramento City Council on October 11, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy.

Noes: None.

Abstain: None.

Absent: Mayor Johnson and Councilmember Schenirer

  
Bonnie Pannell, Vice-Mayor

Attest:

  
Shirley Concolino, City Clerk

**MEMORANDUM OF UNDERSTANDING  
AND LEASE OF THE SOUTHSIDE CLUBHOUSE**

This MEMORANDUM OF UNDERSTANDING AND LEASE AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2011 (“Effective Date”) by and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”), and TARGET EXCELLENCE, a California non-profit corporation (“ORGANIZATION”), with regard to the possession, use, operation and maintenance of the Southside Clubhouse (“Center”).

RECITALS

A. CITY is facing a severe budget shortfall and cannot afford to keep the Center open to the public. The Center has been operated by CITY to provide a place for the residents in the neighborhood to gather for social events, to participate in recreational and enrichment programs targeted at youth and senior groups, and as a safe place for rest and relaxation and use of the recreational equipment and facilities located at the Center by the public at no cost or by payment of minimal user fees.

B. ORGANIZATION is a community group that arranges for social and cultural events and programs which benefit its members consistent with its charitable mission. ORGANIZATION is willing to serve as the “Center Sponsor” to assume primary responsibility to keep the Center open to the public on specified days and times in consideration for CITY granting ORGANIZATION the right to use the Center for its events and programs in consideration for reimbursement or assumption of CITY’s facility costs.

C. ORGANIZATION is willing to allow the public to become members of its ORGANIZATION so as to be able to participate in the events and programs that ORGANIZATION may offer at the Center. In addition, ORGANIZATION is willing to work with other community groups and neighborhood representatives to accommodate events and programs at the Center that such other groups may be willing to offer periodically, so long as such other activities do not interfere with the ORGANIZATION’s event and program schedule for the Center.

D. The Parties understand and acknowledge that the events and programs that may be offered at the Center will no longer be the same as what CITY had previously operated. The Parties also acknowledge that ORGANIZATION may charge user fees for the public to participate in the events and programs it sponsors and to rent the Center for use by other groups to defray ORGANIZATION’s costs to serve as the Center Sponsor.

E. ORGANIZATION understands that the Center is a public facility paid for by the CITY taxpayers and that it is the CITY’s desire that the Center continue to be used in a manner that benefits the community. ORGANIZATION is willing to allow the Center to be open to the public to use the equipment, facilities and rooms at times when they are not in use or occupied by the ORGANIZATION’s sponsored events and programs or by other community groups. In this regard, ORGANIZATION’s role will be as a monitor to insure that the public’s use will not damage the equipment, facilities, furniture and fixtures and to control the public’s access into the

Center only at times when the ORGANIZATION's members or adults from other community or neighborhood groups are available and on-site to supervise the public's use of the Center.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual commitments as hereinafter set forth, the Parties enter into this Agreement for the purpose of establishing each Party's rights and obligations with regard to the occupancy, use and maintenance of the Center as follows:

AGREEMENT

1. TERM

This Agreement shall be effective on October 17, 2011 and shall continue from year to year and expire on June 30, 2013, unless sooner terminated by either Party by providing at least sixty (60) days advance written notice to the other Party in the manner specified in Section 5 and specifying the date of termination.

2. CENTER USE AND OPERATIONS

CITY hereby grants to ORGANIZATION the exclusive right to occupy, use and manage the Center, which includes use of the adjacent parking lot, if any, at no rental cost except for reimbursement or assumption of CITY's facility costs, as long as ORGANIZATION complies with its obligations as set out herein. ORGANIZATION agrees that in consideration for the CITY's agreement not to charge rent, ORGANIZATION shall use the Center in a manner which benefits the community at large as described below:

A. Programs - The ORGANIZATION's proposed programming for use of the Center is as follows:

Youth Business Academy (after school)

After School Tutoring Program

Beginners Reading Program

B. Schedule - The ORGANIZATION's planned schedule when the Center will be open is as follows:

(1) For ORGANIZATION's sponsored programs and events:

<u>Days of the Week</u>	<u>Hours</u>
Monday – Friday	2:00 pm – 6:00 pm

(2) For programs and events sponsored by other community groups:

<u>Days of the Week</u>	<u>Hours</u>
Monday – Friday	9:00 am – 6:00 pm

(3) For access by the public to use the Center's equipment and facilities:

<u>Days of the Week</u>	<u>Hours</u>
Monday – Friday	9:00 am – 6:00 pm

C. Notification – ORGANIZATION shall publish and post notices of the days and hours when the Center is open to the public and the programs and events that are available to the public to participate in and attend. If ORGANIZATION changes its planned use and schedule for the Center, ORGANIZATION shall notify CITY's Contract Manager specified in Section 3.H, below, so that the public is kept informed as to the days and hours when the Center is open and the programs and events that are scheduled at the Center which are open to the public.

D. Operations and Supervision – ORGANIZATION shall manage the Center for use by other community groups and the public as follows:

- (1) Arranging for rental of rooms;
- (2) Obtaining evidence of insurance and required permits prior to use by other groups, and requiring that such insurance also name CITY as an additional insured;
- (3) Overseeing the use of the Center by other groups and coordinating the scheduling of their events and programs to maximize the opportunities for use of the Center by as many groups as is reasonably feasible;
- (4) Having a building supervisor on-site at all times when the Center is open to the general public, with the exception of the times when CITY is responsible for public access as set out in Section 2.G, below.

ORGANIZATION shall not use or allow any use of the Center that would constitute a nuisance by permitting or creating offensive odors, loud sounds, a dangerous or noxious trade or business, or an unlawful use. ORGANIZATION shall take all reasonable and appropriate actions to prevent any groups or members of the public from loitering or engaging in any nuisance or unlawful conduct in or about the Center. In no event shall ORGANIZATION or any of its permitted community groups be allowed to sell alcoholic beverages at the Center at any time without the CITY's prior written consent, which consent it may withhold in its sole and exclusive discretion.

E. User Fees - ORGANIZATION may charge community groups a rental fee for use of rooms and the equipment and facilities at the Center to defray ORGANIZATION's costs for the utilities, services, maintenance and janitorial services required for operation of the Center and a proportionate share of ORGANIZATION's administrative costs to manage and supervise the use of the Center by others. ORGANIZATION may charge the public a user fee to participate in recreational, athletic, enrichment, day care, meals and similar types of programs and events at the Center sponsored by the ORGANIZATION or by other groups commensurate with the costs for providing such programs and events. ORGANIZATION may also charge the public a fee for access to the equipment and facilities at the Center to defray ORGANIZATION's cost to supervise the public's use of

the Center and to maintain such equipment and facilities, except during the times when CITY is responsible for such supervision as provided in Section 2.G, below. In no event shall ORGANIZATION impose a rental or user fee to groups or to the public which would exceed the reasonable market value for the use and services received or is a pretext so as to limit use of the Center by persons who are not members of the ORGANIZATION. CITY reserves the right to impose a monthly rental fee for ORGANIZATION's use and occupancy of the Center if it determines, based on an examination and audit of the ORGANIZATION's books and records as provided in Section 2.K, below, that the ORGANIZATION has received more than a ten percent (10%) annualized profit based on the amount of fees and revenues collected in comparison with the total amount of expenses incurred.

- F. CITY Events – CITY reserves the right to use the Center for City- sponsored public events during days and hours when the Center, or rooms therein, have not been previously scheduled for use by ORGANIZATION or other groups by providing ORGANIZATION with ten (10) days advanced written notice. CITY shall be responsible for clean-up and must leave the Center in its prior condition at the conclusion of each event. If CITY imposes a fee to attend such events, CITY may retain all proceeds that it collects.
- G. CITY Offices – CITY staff may occupy a portion of the Center (a room or cubicle) for use as an office by CITY staff as follows:

<u>Program</u>	<u>Room/Cubicle Area</u>	<u>Days of the Week</u>	<u>Hours</u>
Not applicable at this site.			

- H. Compliance with Laws; Nondiscrimination – In its occupancy and use of the Center as provided under this Agreement, ORGANIZATION shall comply with all applicable federal, state and local laws, regulations and ordinances. If any failure by the ORGANIZATION to comply with such laws, regulations and ordinances results in any fine, penalty, cost or charge assessed against CITY, ORGANIZATION shall reimburse and indemnify CITY for such cost.

ORGANIZATION shall not discriminate against any member of the public or community group on the ground of race, color, religion, sex, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation with regard to ORGANIZATION's occupancy, use and management of the Center including, without limitation, any person who may wish to participate in the programs and events sponsored by ORGANIZATION at the Center.

ORGANIZATION is also prohibited from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees of ORGANIZATION.

- I. Background Checks – With regard to any volunteers and employees of ORGANIZATION who are to perform services at the Center in a position having supervisory or disciplinary authority over any minor, ORGANIZATION shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers. The

ORGANIZATION must submit fingerprints of such persons in a manner authorized by the DOJ and that proof of such DOJ clearance must be provided to the CITY Contract Manager specified in Section 3.H, below, prior to any volunteers or employees working with minors at the Center. ORGANIZATION shall also provide to CITY a list of the names of its volunteers and employees who work at the Center and certify that those volunteers and employees have received a DOJ clearance. Any person who has been convicted of an offense listed in Public Resources Code Section 5164 shall be prohibited from working or performing services at the Center.

- J. CITY Access – ORGANIZATION shall permit CITY and its employees and authorized agents to enter the Center at all reasonable times during usual Center hours of operation or upon twenty-four (24) hours advance notice for the purpose of inspecting the Center and determining compliance by ORGANIZATION and its authorized groups and tenants with the requirements of this Agreement.
- K. Books and Records – All books, contracts, records, documents and other related papers including, without limitation, financial records (“Books and Records”) of the ORGANIZATION with respect to its occupancy, use and rental of the Center shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the City or its agents. The Books and Records of the operation of the Center by ORGANIZATION shall be kept in accordance with generally accepted accounting principles. ORGANIZATION shall provide City with access to the Center and its Books and Records during reasonable hours for the purpose of reviewing ORGANIZATION’s compliance with the terms of this Agreement.
- L. Reporting - ORGANIZATION shall provide the CITY Contract Manager, specified in Section 3.H, below, with a list of the names of its volunteers and employees who work at the Center and all other organizations which have been permitted to use the Center on a regular basis ( i.e., excluding special event permit holders). ORGANIZATION shall also contact the CITY Contract Manager in the event of the discovery of any health or safety hazard, any incident of injury or illness, or any improper or illegal action of any person which occurs at the Center.

### 3. BUILDING UTILITIES, SERVICES AND MAINTENANCE

With the exception of structural or system defects and failures which render the Center inoperable or prevent its use as described herein, ORGANIZATION shall be solely responsible for the costs of utilities, services, maintenance and janitorial services for the building and grounds as follows:

- A. Utilities - ORGANIZATION shall pay CITY \$1,262.00 monthly for the costs of water, sewer, garbage, electricity and gas services (collectively “Utilities”) provided for the Center. This amount is based on CITY’s average annual cost for utilities for the Center of approximately \$15,144.00 (“Base Annual Rate”).

If ORGANIZATION’s use of the Center results in a total average annual cost for Utilities which is at least 10% less than the Base Annual Rate, CITY will notify ORGANIZATION and adjust the monthly utility charge accordingly. If ORGANIZATION’s use of the Center results in a total average annual cost for Utilities

which is at least 10% more than the Base Annual Rate, CITY shall notify ORGANIZATION, which may either agree to reduce its use of the Center so as to lower the cost for utilities or pay the higher monthly utility charge.

If the rates for the Center Utilities are increased by the utility providers during the Term of this Agreement, CITY may adjust the monthly charge for Utilities accordingly after providing prior written notice to ORGANIZATION.

- B. Services - ORGANIZATION shall also pay CITY \$88.00 monthly for the costs of pest control, security alarm monitoring, Ansell system maintenance (if applicable), and fire extinguisher maintenance services (collectively "Building Services") provided for the Center. If the rates for the Center Building Services paid by CITY are increased by the service providers during the Term of this Agreement, CITY may adjust the monthly charge for Building Services accordingly after providing prior written notice to ORGANIZATION.

ORGANIZATION shall arrange for separate telephone service and computer Internet services to be billed directly to ORGANIZATION. ORGANIZATION shall provide CITY Contract Manager, specified in Section 3.H, below, with copies of all of its service contracts for the Center prior to ORGANIZATION's possession of the Center under this Agreement.

- C. Maintenance - ORGANIZATION shall be solely responsible for maintenance, repair and replacement of the following Center systems, fixtures and components necessitated by the normal use and wear of the building and facilities, but excluding damages caused by vandalism:

- (1) Security Alarm System;
- (2) Lighting bulbs and fixtures;
- (3) All interior improvements including walls, ceiling tiles, flooring and window coverings, doors and windows, including glass replacement;
- (4) Painting the interior of the Center and graffiti removal;
- (5) Telephone and computer-related wires and systems; and
- (6) Minor plumbing (e.g., toilet malfunction) and incidental expenses.

ORGANIZATION shall first notify CITY Contract Manager, specified in Section 3.H, below, of the required maintenance work and the estimated costs of the repairs and ORGANIZATION's schedule for completion of the work. If ORGANIZATION fails or refuses to maintain, repair or replace any of the forgoing items in a manner reasonably satisfactory to CITY so that the systems remains operable and the Center remains in good condition; after providing prior written notice to ORGANIZATION, CITY may elect to perform such maintenance and to make the necessary repairs or replacements on ORGANIZATION's behalf. In such event, ORGANIZATION shall refund to CITY the cost of such work as "Maintenance Charges" within ten (10) days after receipt from CITY of an invoice specifying said work and its cost.

CITY shall be responsible for maintenance, repair and replacement of the following Center systems, fixtures and components necessitated by the normal use and wear of the building and facilities:

- (1) Heating and air conditioning systems, with the exception of replacement of major system components;
- (2) Roofing leaks and defects and weather proofing, with the exception of roof replacement;
- (3) Plumbing and electrical pipes, wires and systems inside the interior walls; Painting and caulking the exterior of the building if signs of paint deterioration exist;
- (4) Doors and door hardware including locks; and
- (5) Fencing and gates, parking lot pavement, and landscaping irrigation system and plantings.

ORGANIZATION shall contact the CITY Contract Manager, specified in Section 3.H, below, to report any problems with the Center which requires maintenance by CITY. In addition, ORGANIZATION shall provide CITY with a written report quarterly which describes all maintenance work undertaken by ORGANIZATION during the prior period. At least once annually, the parties shall meet to inspect the Center and review the building maintenance work performed by the parties.

- D. Janitorial - ORGANIZATION shall be solely responsible for arranging for custodial and janitorial services to maintain the Center in a safe, sanitary and neat condition. Such services shall include, without limitation, routine trash and garbage removal, mopping and waxing floors, vacuuming carpets, dusting furniture and window sills, washing windows, and cleaning drapes, upholstery, tables and chairs and other furniture and fixtures (collectively "Janitorial Services"). If any event of pest or vermin infestation is found in the Center, then ORGANIZATION shall immediately contract with a bonded, professional pest-and-sanitation control operator to immediately remedy such infestation.
- E. Reporting – ORGANIZATION will report to the CITY Contract Manager, specified in Section 3.H, below, as soon as any of the following are observed:
  - (1) Graffiti, vandalism or other illegal activity in or around the building and adjacent parking lot and park facilities;
  - (2) Exterior building or parking lot lighting is inoperable;
  - (3) Parking lot pavement cracking and uplifting presents a safety hazard;
  - (4) Roof leaks, electrical system default, plumbing system pipe ruptures, or if HVAC system becomes inoperable; and
  - (5) Any other problems which may pose a health or safety hazard.
- F. Suspension of Use – Whenever the condition of the Center and/or the exterior areas surrounding the building could expose the public to safety or health hazards or could cause damage to their personal property, ORGANIZATION shall immediately discontinue use of the Center and shall prevent public entry until the defects can be remediated and the threat of injury or damage to the public and property no longer exists. If CITY discovers such safety or hazardous conditions at or near the Center, CITY shall have the right to order the Center immediately closed until such conditions are remedied or removed by ORGANIZATION and/or by CITY.

G. CITY's Costs - CITY shall be responsible to pay ORGANIZATION if CITY uses the Center for CITY events and/or administration purposes as described in Sections 2.F and 2.G, above, as follows:

- (1) CITY Events - If CITY uses the Center for City-sponsored public events more frequently than once a month, CITY will pay ORGANIZATION a proportionate share of ORGANIZATION's monthly cost for Utilities, Building Services and Janitorial Services for that month based on a percentage measured by the total number of days CITY used the Center as compared to the total number of days that the Center was open that same month.
- (2) CITY Supervised Activities - If a CITY staff person at the Center allows for CITY-supervised public access to the Center on a regularly scheduled basis for more than fifteen (15) hours a week, in that event CITY will pay ORGANIZATION a proportionate share of ORGANIZATION's monthly cost for Utilities, Building Services and Janitorial Services based on a percentage measured by the total hours of such CITY use of the Center on a monthly basis as compared to the total hours that the Center is open for use by the ORGANIZATION, other groups and the public under the ORGANIZATION's supervision on a monthly basis. If the amount of hours of CITY-supervised use varies by month, then the average number of hours per month based on the actual programming of the Center by CITY and ORGANIZATION during the months of June through August shall be used to determine CITY's share of costs.
- (3) CITY Offices - If CITY will have the exclusive right to occupy more than one office/cubicle space at the Center on a permanent basis, CITY will pay ORGANIZATION a proportionate share of ORGANIZATION's monthly cost for Utilities, Building Services and Janitorial Services based on a percentage measured by the amount of space CITY is occupying as compared to the total Center square feet. In addition, ORGANIZATION shall not be responsible for the maintenance, repair or replacement costs for that portion of the Center occupied by CITY unless CITY agrees to reimburse ORGANIZATION for such costs on an as-needed basis.
- (4) CITY Payment - If CITY is obligated to pay a portion of ORGANIZATION's costs for Janitorial Services, ORGANIZATION shall send CITY copies of its invoices for such expenses. CITY will make payment to ORGANIZATION for CITY's share of the monthly cost for Utilities, Building Services and Janitorial Services in the amounts set forth in subsections 3.G (1), (2) and (3) above by deducting CITY's total cost from the amount ORGANIZATION owes CITY for Utilities and Building Services on a monthly basis. If CITY's costs would exceed the amount ORGANIZATION owes to CITY for Utilities and Building Services, CITY shall make payment to ORGANIZATION within thirty (30) days from the date of receipt of an invoice.

H. CITY Contract Manager - All notices and reports with CITY by ORGANIZATION as required under this Agreement shall be made or sent to:

Name: Derrick Lim  
Phone: (916) 808-2260  
e-mail: dlim@cityofsacramento.org  
Address: Neighborhood Services  
New City Hall  
915 I Street Third Floor  
Sacramento, CA 95814

#### 4. IMPROVEMENTS, LIENS AND TAXES

ORGANIZATION shall not undertake any alterations or improvements to the Center building and facilities, install signage, or remove any furniture, fixtures or equipment from the Center without CITY's prior written consent. If CITY permits ORGANIZATION to undertake alterations or improvements to the Center building or facilities, upon expiration or earlier termination of this Agreement, those alterations or improvements which are affixed to the building shall become the property of CITY without any obligation to reimburse ORGANIZATION for said costs. ORGANIZATION shall not create waste, destroy or modify any improvements or fixtures except as approved by CITY in advance in writing.

ORGANIZATION shall pay in full all persons and entities who perform labor or provide materials for the work to be performed by ORGANIZATION at the Center and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against CITY's property for such work or materials. ORGANIZATION shall indemnify and hold harmless CITY from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or arising from such work done, labor performed, or materials furnished.

ORGANIZATION shall be obligated to pay of any levied or assessed by the County Assessor on ORGANIZATION's possessory interest in the Center under this Agreement.

#### 5. NOTICE

Any communication, other than notices and reports to CITY Contract Manager, as required during the term of this Agreement shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

CITY: City of Sacramento  
Parks and Recreation Department  
Dave Mitchell, Operations Manager  
915 I Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814  
Phone: 916 - 808-6076

ORGANIZATION: Target Excellence  
Keith Herron, Executive Director  
7442 Ingalls Way  
Sacramento CA 95831  
1-866-393-4690

Any Party who desires to change its address for notice may do so by giving notice as described above.

#### 6. NO JOINT VENTURE

It is understood and agreed that each Party is an independent government agency or corporation and that this Agreement shall not create a relationship between CITY and ORGANIZATION or its individual members of employer-employee, joint venture, partnership, or any other relationship of association. Except as expressly provided in this Agreement or as the Parties may specify in writing, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent.

#### 7. INDEPENDENT CONTRACTORS

Each Party may assign volunteers and employees or contract with third parties to perform services for the Center to meet their respective obligations under this Agreement at their exclusive discretion and the services of such assigned volunteers, employees and third parties shall be at the sole expense of that Party. The assigned personnel of each Party shall not be entitled to any benefits payable to employees of the other Party. This Agreement is for the sole benefit of the Parties hereto and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any term hereof.

#### 8. INSURANCE

During the Term of this Agreement, ORGANIZATION shall, at its sole cost and expense, maintain in full force and effect to following insurance coverages:

- A. Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, and premises owned, leased or used by the ORGANIZATION with limits not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability, and products and completed operations coverage.
- B. Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the ORGANIZATION at the Center.

No automobile liability insurance shall be required if ORGANIZATION completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." KW (ORGANIZATION initials)

- C. Workers Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's

Compensation policy shall include a waiver of subrogation in favor of the CITY. No Workers' Compensation insurance shall be required if ORGANIZATION completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance."

\_\_\_\_\_ (ORGANIZATION initials)

- D. Additional Insured – The CITY, its officials, employees, volunteers and agents shall be covered by the policy terms or endorsement as additional insureds on the General Liability and Automobile Liability insurance policies, which policies shall be placed with an insurer with a Bests' rating of not less than A.V. CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers. The Coverage shall state that ORGANIZATION'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. The ORGANIZATION's insurance coverage shall be primary insurance as respects the CITY and any insurance or self-insurance maintained by the CITY shall be in excess of the ORGANIZATION's insurance and shall not contribute with it.

## 9. INDEMNITY

ORGANIZATION, on its own behalf and behalf of each of its members agrees to fully indemnify, defend, and save harmless, CITY, its officers, employees and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities arise out of or are in any way connected with ORGANIZATION's performance of its rights and obligations under this Agreement, whether or not such Liabilities are caused in part by CITY, its officers, employees and volunteers; provided that the foregoing indemnity does not apply to Liabilities arising from the sole negligence or willful misconduct of CITY, its officers, employees or volunteers. This indemnity provision shall survive the termination of this Agreement.

## 10. RELEASE FROM LIABILITY

ORGANIZATION, on its own behalf and on behalf of each of its officers, members, employees and volunteers, releases from liability and waives the right to sue CITY, its officers, employees, and volunteers for any claim for any injury, illness, death, or property damage that ORGANIZATION, or any of its officers, members, employees or volunteers may suffer or which may result from its use of the Center and performance of its obligations under this Agreement, wherever or however such loss may occur.

ORGANIZATION, on its own behalf and on behalf of each of its officers, members, employees and volunteers, hereby waives any and all rights or benefits that it may have under Section 1542 of the Civil Code of the State of California, which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

ORGANIZATION and each of its officers, members, employees and volunteers acknowledges that it understands the effect of this waiver pursuant to Civil Code Section 1542, and that it has been provided the opportunity to confer with its counsel with regard to the effect of this release.

11. NON-WAIVER

Waiver of any breach of, or default under, this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

12. DISPUTES

The Parties shall attempt to resolve any disputes they may have in good faith, beginning with the representatives listed in Section 5. Should they be unable reach resolution, they shall refer the dispute to the chairs of their respective governing boards, which may appoint a designee, to meet in an attempt to resolve the dispute. Should they be unable to reach resolution, they shall refer the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon the mediator, the Parties will request appointment of a mediator by the American Arbitration Association. Each Party shall pay its own costs and be responsible to pay one-half of the mediator's costs. If a Party is not satisfied with the result of the mediation process, it then may file suit in a court of competent jurisdiction in Sacramento County.

13. ASSIGNMENT PROHIBITED

ORGANIZATION may not assign any right or obligation pursuant to this Agreement. However, ORGANIZATION may contract with other community groups to undertake some of ORGANIZATION's obligations herein; however, ORGANIZATION shall remain liable to CITY for the actions and omissions of such other groups. Any attempt or purported assignment of any right or obligation of ORGANIZATION with the intent of releasing ORGANIZATION from its obligations to CITY pursuant to this Agreement shall be void and of no effect.

14. ENTIRE AGREEMENT; MODIFICATION

The Parties have each carefully reviewed this Agreement and have agreed to each term herein. No ambiguity shall be presumed to be construed against either Party. This Agreement contains all of the terms and conditions as agreed upon by the Parties, and supersedes any and all oral or written communications by and between the Parties. No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by the Parties. In the event of a conflict between this Agreement and any other contract or understanding executed by the Parties subsequent to the commencement of this Agreement, the terms of this Agreement shall prevail and be controlling unless such other contract expressly provides to the contrary.

15. AUTHORITY

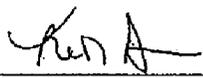
Each of the signatories to this Agreement represents that he/she is authorized to sign the Agreement on behalf of such Party and that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained that no further approvals, acts or consents are required to bind such Party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**CITY OF SACRAMENTO,**  
a municipal corporation

**ORGANIZATION,**  
a California non-profit  
public benefit corporation

By: \_\_\_\_\_  
James L. Combs  
Director of Parks and Recreation

By:  \_\_\_\_\_  
Name: Keith Herron  
Title : Executive Director

For: John Shirey, City Manager

Attest:

By \_\_\_\_\_  
City Clerk

Approved As To Form:

By \_\_\_\_\_  
Senior Deputy City Attorney