



City of Sacramento City Council

9

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 9/27/2011

Report Type: Consent

Title: Lease Agreement: Elmo Slider Clubhouse

Report ID: 2011-00776

Location: 7851 35th Avenue, District 6

Recommendation: Adopt a Resolution: 1) finding that it is in the best interest of the City, pursuant to Sacramento City Code section 3.68.110E, to lease the property located at 7851 35th Avenue, commonly known as Elmo Slider Clubhouse, without bidding; 2) authorizing the City Manager or the City Manager's designee to execute a nearly two-year lease agreement with Root Causes for the Elmo Slider Clubhouse; 3) authorizing the City Manager or his designee to establish revenue and expenditure budgets as required within the Parks and Recreation Department, Teen and Community Recreation Division General Fund Budget; and 4) authorizing the City Manager or the City Manager's designee to execute such additional documents and to take such additional actions as necessary to implement the lease agreement for the property.

Contact: Dave Mitchell, Operations Manager, (916) 808-6076; Jim Combs, Director, (916) 808-8526, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Recreation Administration

Dept ID: 19001411

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Exhibit A

City Attorney Review

Approved as to Form
Sheryl N. Patterson
9/14/2011 1:43:42 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/12/2011 10:44:33 AM

Approvals/Acknowledgements

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk
John F. Shirey, City Manager

Russell Fehr, City Treasurer

Department Director or Designee: Jim Combs - 9/13/2011 3:57:49 PM



Description/Analysis

Issue: With significant challenges to the General Fund, the Parks and Recreation Department analyzed the possibility of leasing out community centers and clubhouse facilities to maximize their use by the public, and mitigate facility closures. As discussed at the June 7, 2011 Council budget hearing, the Department has been working to secure nonprofit organizations and other community partners to assume responsibility for operations at the community centers. Root Causes is interested in entering into a lease agreement with the City for the Elmo Slider Clubhouse to provide services to the community for at-risk youth and their families.

Policy Considerations: This recommendation is consistent with the provisions of the Sacramento City Code section 3.68.110E, which provides if the City Council finds it in the best interests of the City it may lease City-owned property without bidding to a non-profit tax-exempt community civic organization with a membership comprised predominately of person residing in the City, so long as the lease term does not exceed ten (10) years.

Environmental Considerations: The leasing of existing public structures or facilities involving negligible or no expansion of use is exempt from CEQA under the Class 1 Categorical Exemption in Guidelines Section 15301.

Sustainability: None with this item.

Commission/Committee Action: None with this item.

Rationale for Recommendation: This report recommends executing a lease agreement between the City and Root Causes for the Elmo Slider Clubhouse following reasons:

- Root Causes has the capacity to deliver much needed services to at-risk youth and their families.
- Root Causes presence will allow for the on-going operation of the building and will prevent vandalism and other potential problem associated with facility closure.
- Utility and maintenance costs for the Clubhouse will be paid by Root Causes so no General Fund support will be required.

Financial Considerations: The term of the recommended lease agreement between the City and Root Causes will be in effect for nearly two years, from September 27, 2011 through June 30, 2013. Lease revenue will be \$609 per month or \$7,308 annually, which will fund City's utility and building services direct costs. Annual adjustments will be made based on prior year expenses. Root Causes will be responsible for building repairs and maintenance in consideration of the waiver of building rent payments. Revenue and expenditure budgets will be established for FY2011/12. Based on most recent cost projections, lease revenue for the approximate two-year term will be \$12,789 and will be credited to the General Fund (Fund 1001) in the Parks and Recreation Departments Community Center operation to offset facility operating and maintenance on-going utility and service costs.

Emerging Small Business Development (ESBD): Purchase of supplies and equipment will be made in accordance with the City's Emerging and Small Business Development program requirements.



Background

In the Spring of 2011, Root Causes approached the City with the concept of operating the clubhouse to provide health and welfare and education programs to the community with an emphasis on serving at risk youth and their families. City staff have been working with Root Causes over the past few months to evaluate the feasibility of leasing the Elmo Slider Clubhouse for the purposes stated above and have come to agreeable terms outlined in the lease agreement

Root Causes is a non-profit community-based organization dedicated to examining identifiable root causes of behaviors that result in homelessness, gang association, prostitution, truancy and drop outs in adolescence then connecting both child and family to appropriate services that have the most impact in changing negative outcomes.

In an effort to provide services in the South Sacramento area, Root Causes is offering their program to the community including but not limited to the following: Job programs, Summer youth/employment programs, tutoring and mentoring services, Friday night programs, gang intervention for youth and parents, free lunch, clothes closet, substance abuse services, parenting classes, youth leadership and entrepreneur training and community self help investment programs.

Root Causes will also coordinate use of the Clubhouse by groups for events which do not conflict with the Root Causes operation. In addition, under the lease the City reserves the right to use the Center for City-sponsored public events during days and hours when the Center has not been previously scheduled for use by Root Causes.

In August of 2010, the Department of Parks and Recreation starting exploring the possibility of working with local non-profits to operate buildings and deliver services to the surrounding communities as an alternative to building closures.

At the June 7, 2011 Council Budget hearing, the Department was directed to secure nonprofit organizations and other community partners to assume the responsibility for operations at the community centers.

On August 23, 2011, staff provided a report back to Council regarding the operational plan for community centers which included a proposal that recommended the leasing of the Elmo Slider Clubhouse to Root Causes.

On August 30, 2011 Council approved the first lease initiated as part of the operational plan for community centers for Robertson Community Center.



RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

September 27, 2011

APPROVING LEASE AGREEMENT FOR ELMO SLIDER CLUBHOUSE WITH ROOT CAUSES

BACKGROUND

- A. City Code Section 3.68.110E allows for the lease of City property without bidding when the lease is with a nonprofit tax-exempt community-based organization with a membership comprised predominately of persons residing in the City and when the City Council finds that such action is in the best interest of the City.
- B. In August of 2010, the Department of Parks and Recreation starting exploring the possibility of working with local nonprofit organizations to operate community centers and clubhouse buildings to deliver services to the surrounding communities as an alternative to building closures due to budget constraints.
- C. At the June 7, 2011 City Council Budget hearing, the Department was directed to secure nonprofit organizations and other community partners to assume the responsibility for operations at the community centers.
- D. 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 Elmo Slider Clubhouse to Root Causes.
- E. Root Causes is interested in entering into a lease agreement with the City for the Elmo Slider Clubhouse located at 7851 35th Avenue under which Root Causes will assume responsibility for building repair and maintenance and reimburse City for its direct utility and building service costs.
- F. Root Causes is a nonprofit community-based organization which provides services to the community for at-risk youth and their families.
- G. Leasing the Elmo Slider Clubhouse to Root Causes will generate General Fund revenue to off-set the City's utility and building services costs, thereby preventing the potential closure of this facility, and provide a programs to benefit the community which will be open to the public.

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

- Section 1. Pursuant to Sacramento City Code 3.68.110E, the City Council finds that it is in the best interest of the City to lease the property located at 7851 35th

Avenue, commonly known as Elmo Slider Clubhouse, to a non-profit community-based organization without bidding.

- Section 2. The City Manager or his designee is authorized to execute the Memorandum of Understanding and Lease of the Elmo Slider Clubhouse (“Lease Agreement”) with Root Causes for the City property located at 7851 35th Avenue, under which the lessee will pay the City’s utility and building service costs in the amount of \$609.00 per month plus assume building repair and maintenance obligations for a term from September 27, 2011 to June 30, 2013, which agreement is attached as Exhibit A.
- Section 3. 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 Clubhouse’s utility and building service costs.
- Section 4. The City Manager or his designee is authorized to execute such additional documents, subject to approval of the City Attorney, and to take such additional actions as may be necessary to implement the Lease Agreement.
- Section 5. The agreement described in Section 2 is attached as Exhibit A and made a part of this Resolution.

Table of Contents:

Exhibit A - Memorandum of Understanding and Lease of the Elmo Slider Clubhouse



**MEMORANDUM OF UNDERSTANDING
AND LEASE OF THE ELMO SLIDER 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 ROOT CAUSES, a California non-profit corporation (“ORGANIZATION”), with regard to the possession, use, operation and maintenance of the Elmo Slider 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 in accordance with the terms provided below.

C. ORGANIZATION is willing to allow the public 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 September 27, 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:

As the Center Sponsor of the facility, working in collaboration with other agencies, and in accordance with ORGANIZATION's purpose as provided in its bylaws, the goal is to use the Clubhouse as a safe meeting place for youth and community associations and organizations. Once established in the community, ORGANIZATION will evaluate at-risk youth in that geographical location to determine if there are indicators of "root causes" present. When predictors are identified, ORGANIZATION will connect the child and family to service providers, create necessary community programs, or take other appropriate actions to address those issues. ORGANIZATION's objective is to provide resources to the child and family throughout the child's developmental journey. ORGANIZATION is in the process of establishing a Memorandum of Understanding with intervention programs to further this objective and develop access to services.

B. Schedule - The days and hours which ORGANIZATION intends to keep the Center open are as follows:

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

<u>Days of the Week:</u>	<u>Hours:</u>
Monday -Friday	2-3 hours per day

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

Days of the Week: Hours:
Not Applicable.

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

Days of the Week Hours:
Not Applicable.

(4) For access and use by the general public (when such use does not conflict with the use by ORGANIZATION and other community groups):

Days of the Week Hours:

Only available with facility use permit for private rental issued by ORGANIZATION.

C. Notification – ORGANIZATION shall publish and post notices of the actual days and hours when the Center is open to the general public and of the programs and events that are available for public participation and attendance. 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; and
- 4) Having a building supervisor on-site at all times when the Center is open to the general public.

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.

- F. 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.
- G. 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.
- H. CITY Offices – Intentionally Omitted.
- I. 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 being 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.

- J. 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.

- K. 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.
- L. 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.
- M. 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 \$ 245.00 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 \$2,940.00 (“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 \$ 364.00 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 a 60 day 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 existing service contracts for the Center upon the ORGANIZATION's acquisition of service agreements, and within thirty (30) days after execution of any new service contracts for the Center.

- 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. CITY shall prorate the monthly fees.

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.G and 2.H, 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 – Intentionally Omitted.
- (3) CITY Offices – Not Applicable.
- (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: Bonnie Williamson, Administrative Officer
Phone: (916) 808-2348
e-mail: bjwilliamson@cityofsacramento.org
Address: City of Sacramento
Department of Parks and Recreation
915 I Street, 3rd 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 possessory interest tax 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, 5th Floor
Sacramento, CA 95814
Phone: (916) 808-6076

ORGANIZATION: Root Causes
Stephen Streeter, CEO
8212 Burloak Way
Elk Grove, CA 95758
Phone: (916) 769-8741

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." R.C. (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."
R.C. (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

ROOT CAUSES,
a California non-profit corporation

By: _____

By: Stephenson R. Streeter
Name: Stephenson R. Streeter
Title: C.E.O.

For: John F. Shirey, City Manager

By: Stacy Brown
Name: Stacy Brown
Title: Treasurer

Attest:

By _____
City Clerk

Approved As To Form:

By _____
Senior Deputy City Attorney