



City of Sacramento City Council

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

Meeting Date: 10/2/2012

Report Type: Consent

Title: Agreements: Clunie Community Center

Report ID: 2012-00807

Location: 601 Alhambra Boulevard, District 3

Recommendation: Pass a Motion: 1) finding that it is in the best interest of the City to lease designated portions of the property at 601 Alhambra Boulevard, commonly known as the Clunie Community Center, without bidding, pursuant to Sacramento City Code section 3.68.110E; 2) authorizing the City Manager or the City Manager's designee to execute a Lease Agreement for Clunie Community Center with Friends of East Sacramento; 3) authorizing the City Manager or City Manager's designee to execute a Memorandum of Understanding and Operating Agreement for Clunie Community Center with the Sacramento Public Library Authority and Friends of East Sacramento; and 4) authorizing the City Manager or the City Manager's designee to execute such additional documents and to take additional actions necessary to implement the lease agreement for the property.

Contact: Nell Hessel, Program Analyst, (916) 808-5762; Lori Harder, Support Services Manager, (916) 808-5172, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Fiscal And Management Services

Dept ID: 19001011

Attachments:

- 1-Description/Analysis
- 2-Lease Agreement
- 3-Memorandum of Understanding and Operating Agreement

City Attorney Review

Approved as to Form
Sheryl Patterson
9/26/2012 4:29:25 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/20/2012 10:13:15 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 9/25/2012 5:11:50 PM

Sandra Talbott, Interim City Attorney

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

Russell Fehr, City Treasurer



Description Analysis:

Issue: As a result of severe budget reductions over the last several years, the Department of Parks and Recreation (Department) can no longer afford to keep the Clunie Community Center (Center) open to the public on a full-time basis. The Clunie Community Center is located in McKinley Park at 601 Alhambra Boulevard in the East Sacramento Community Plan Area (PA6). The building is generally closed to the public, with the exception of some recreational classes by instructors whose City contracts expire later this year.

The Sacramento Public Library Authority (Authority) operates the McKinley Library (Library) in the northern wing of the Center as a neighborhood branch library. The Library occupies three rooms at the Center and has been in operation for 76 years. The Library portion of the building remains open 36 hours a week.

In 2010, the Department of Parks and Recreation began exploring the concept of leasing out community centers and clubhouse facilities to local nonprofits and community partners to assume responsibility for operations and service delivery to maximize facility use by the public and mitigate closures. At the June 7, 2011, City Council Budget hearing, the Department was directed to secure nonprofit organizations and other community partners to assume responsibility for operations at community centers and clubhouses to lessen the impact to the General Fund.

The Friends of East Sacramento (FOES) is a charitable nonprofit community organization which benefits its members and the East Sacramento community through the coordination of community events at McKinley Park as well as other activities such as park beautification, community volunteerism and fundraising. FOES has proposed to assume the responsibility for the operation and management of the Center so that it can continue to be used for recreational and educational programs and for rentals to conduct meetings and social events. FOES is undergoing a fundraising campaign and has received donations to help fund the costs to operate the Center and renovate some of the rooms.

FOES plans to sublease portions of the Center for office use and arrange for a coffee cart vendor. The City Council's approval of the Lease will allow for such incidental uses notwithstanding the park property's R-1 zoning. In consideration that no rent shall be charged, FOES commits to continuing use of the Center for recreational classes and educational and social events through rentals of the Center to benefit the public. The funds generated by the subleases and rentals are estimated by FOES to cover its costs to manage the Center and for building maintenance and utility costs.

The attached Lease Agreement (Lease) designates those portions of the Center that FOES has the exclusive right to occupy and manage and pre-approves the planned restoration work subject to obtaining required permits. FOES will assume routine maintenance costs

and the City will pledge up to \$25,000 for the first year to cover major repairs for the building structure and HVAC systems. In the future if major repairs are required, the parties would meet and confer to determine if funding is available to cover such costs.

The attached Memorandum of Understanding and Operating Agreement (MOU) addresses the respective rights over use and maintenance of the Center's common areas, which includes the outdoor patio and lobby area, and payment for shared utilities and building services.

Staff is recommending the City Council authorize the City Manager or his designee to enter into the Lease with FOES and execute the MOU with the Authority and FOES for the Clunie Community Center.

The City and FOES entered into a License Agreement for the McKinley Park Rose Garden dated April 9, 2012 (City Agreement No. 2012-0303) and the proposed Lease does not encompass or modify that separate agreement. The term of the Lease is the same initial five year period as the License Agreement, with subsequent five year extension options subject to City Council approval. The MOU term is co-terminus with the Lease as long as the Authority continues to operate the Library at the Center.

Policy Considerations: This recommendation is consistent with: 1) the provisions of City Code Section 3.68.110E, which stipulates if the City Council finds it is in the best interest of the City, it may lease City-owned property without bidding to a nonprofit tax-exempt community civic organization with a membership comprised predominantly of persons residing in the city; 2) City Council direction to keep community centers and clubhouses open without impacting the City's General Fund; 3) City Council priorities of preserving and enhancing neighborhoods through strong neighborhood associations and leadership; and 4) Policy 4.1, of the *Parks and Recreation Master Plan 2005-2010, 2009 Technical Update*, to maximize space/facility utilization, while balancing revenue generation with community use, generally giving preference to City residents.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): The leasing of existing public structures or facilities involving negligible or no expansion of use is exempt from the CEQA under the Class 1 Categorical Exemption as defined by the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.), Section 15301, "operation of existing public structures or facilities involving no expansion of use."

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: FOES had demonstrated its commitment to the community and its capacity to operate and manage a City facility. Leasing the Clunie Community Center to FOES will prevent the final closure of this community facility to the public by the end of this year due to budget constraints. FOES assumption of the building's utility and service costs and routine maintenance costs will off-set expenditures which would otherwise be supported by the General Fund if the City continued to operate this community center.

Financial Considerations: The initial term of this lease begins on the date of lease commencement and expires on May 31, 2017, with the option to extend the term of the lease for three additional five-year terms. Lease revenue will be \$710 per month or \$8,520 annually. Lease revenue for the initial 5-year term will be approximately \$39,760 and will be used to offset facility operating and maintenance costs.

Emerging Small Business Development (ESBD): Not applicable.

LEASE AGREEMENT FOR CLUNIE COMMUNITY CENTER

THIS LEASE AGREEMENT (“Lease”) is made as of October ____, 2012 by and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”), and FRIENDS OF EAST SACRAMENTO, a 501 (c)(3) California non-profit corporation (“FOES”), who agree as follows.

1. LEASE SCOPE. Subject to the terms and conditions hereinafter set forth, CITY hereby leases to FOES, and FOES hereby leases from CITY, a portion of a building located at 601 Alhambra Blvd (the “**Building**”) as more particularly described below under Section 2, which is located within McKinley Park (APN 003-0010-002) in the City of Sacramento and commonly known as the Clunie Community Center.

A set out below in Section 2, the definition of the term “Building” under this Lease includes the two outdoor patios attached to the Building, but does not include the surrounding open space areas, the adjacent pool, or any other portion of the park. The Building does not have a parking lot and only on-street parking is available. Any alterations or improvements FOES desires to make to the park property is subject to separate CITY approvals, permits, or agreements.

CITY and FOES have entered into a License Agreement for the McKinley Park Rose Garden dated April 9, 2012 (City Agreement No. 2012-0303) and this Lease does not encompass or modify that separate agreement.

2. DESCRIPTION OF PREMISES. CITY leases to FOES, and FOES leases from CITY, on the terms and conditions set forth below, the those portions of the Building as depicted on Exhibit A attached hereto (the “**Premises**”) which lease rights are more particularly described and limited as follows:

- A. The exclusive right to occupy, and to sublet, license, rent and manage use of by third parties and the public, the following portions of the Building as denoted on Exhibit A: (i) on the first floor, the Auditorium, also referred to as the Grand Hall, and including the attached Kitchen and the adjacent outdoor patio facing the pool; (ii) the room off the mid-level stairway landing referred to as the East Sacramento Room; and (iii) the entire second floor which includes rooms B and C that together are referred to as the Alhambra Room, and two small offices which may be combined by FOES in the future into one larger office.
- B. The non-exclusive right to occupy the following portions of the Building as denoted on Exhibit A and referred to as the “**Common Areas**,” which are: (i) the Lobby on the first floor, which includes the restrooms, and (ii) the outdoor patio in the front of the Building (the “**Patio**”). CITY, FOES and the Sacramento Public Library Authority (“**Authority**”) have or will concurrently enter into a Memorandum of Understanding (the “**Library MOU**”) with regard to the respective rights and obligations for use and maintenance of the

Common Areas. If the Authority creates a new public entrance to the Library at a location that does not require access through the Common Areas, in that event FOES shall have exclusive right to occupy, and to sublet, license, rent and manage use of by third parties and the public the Patio and Lobby as of the date the Authority ceases use of the Common Areas.

No other portions of the Building, including, without limitation, the Library (as depicted in Exhibit A), the aquatics room, and the basement boiler room, are intended to be leased to FOES. However, FOES has the right to store materials and equipment in the basement below the stage in the Auditorium if such storage does not interfere with CITY's access to the boiler room and the utilities located in the basement. In addition, FOES and its employees, agents and invitees shall have the right to enter McKinley Park as necessary to gain ingress, egress and access to and from the Premises along sidewalks, pathways and other paved areas during hours when the park is open to the public and along the paved paths leading to the Building when the park is closed to the public.

3. TERM. This Lease shall be effective upon execution by both parties. The date of execution by both parties shall be known as the "Lease Commencement Date." The "Term" of this Lease shall include the Initial Term and the Extended Term(s), which are defined as follows:

- A. The Initial Term of this Lease shall commence on the Lease Commencement Date and shall expire on May 31, 2017 (the "**Initial Term**").
- B. FOES is entitled to three (3) additional five (5) year options to extend the Term of the Lease (each the "**Extended Term**") by giving written notice to CITY at least ninety (90) days, but not more than one (1) year, before the expiration of the Initial Term and each subsequent Extended Term.
- C. If FOES has been in default in the payment to CITY of its share of the monthly utility and building service costs as provided in Section 11 more than one time in the one-year period prior to the date each Extended Term is to commence, then CITY, at its sole discretion, may deny commencement of the Extended Term, at which point this Lease shall expire at the end of the Initial Term or the Extended Term, as applicable. If FOES is not in default of its obligations under the Lease, other than payment to CITY of utility and building service costs, at the time CITY receives the written notice requesting an extension, or if such default is remedied within thirty (30) days or such longer period as may reasonably be needed to correct the default, then CITY's approval of the Extended Term shall not be unreasonably withheld, conditioned or delayed.
- D. FOES shall have the right to terminate the Lease for its convenience at any time during the Term by providing CITY with at least ninety (90) days prior written notice and specifying the effective date the Lease will terminate. CITY, in its sole discretion, may allow a shorter notice period for FOES to terminate the Lease for its convenience.

E. CITY shall have the right to terminate the Lease for its convenience (1) as expressly set forth herein if Major Repairs are required for continued use of the Building by FOES and the parties do not have sufficient funding to undertake such repairs after a meet and confer period as provided in Section 13, or (2) as expressly set forth herein if the Building is substantially damaged by fire or other casualty and neither party elects to undertake that repair work as provided in Section 23.

4. **OCCUPANCY**. FOES intends to commence occupancy of the leased Premises as of October 8, 2012, subject to approval and execution of this Lease by CITY and FOES and FOES submittal of the required insurance certificate prior to the date of occupancy. The rental proceeds now held or hereafter received by CITY for Building rentals and programs occurring on or after October 8, 2012 will be transmitted promptly to FOES once it commences occupancy of the Building.

5. **RENT**. In consideration of FOES agreement as set forth in this Lease to manage the Building for programs, classes, meetings, and events (collectively "**Activities**") to benefit the public, and to assume maintenance of the Premises and payment of utilities and building service costs as set out in this Lease; no rent shall be due or payable during the Lease Term.

6. **PERMITTED USE**. FOES may use the Premises during the Lease Term as follows:

A. **FOES Rules** - Because the leased Premises are part of a publicly owned building and located within a CITY park, and CITY desires as wide a use of the Premises as possible, it is agreed by FOES that the Premises shall be available to all persons desiring to rent rooms; subject, however, to necessary rules and regulations invoked by FOES for the purpose of conducting its activities and protecting the Premises and the rights of others to use the Premises in a peaceful and lawful manner.

B. **Rentals** - FOES shall during the Term of this Lease, occupy, maintain, and operate the Premises as a community center for the purposes of artistic, cultural, educational, recreational, social and commercial activities and other activities of benefit to the community. FOES shall operate its allocated portion of the Building in a manner intended to optimize public use to benefit the community. FOES may issue permits or licenses ("**Rentals**") of the Premises for short term periods (e.g., portions of days or regularly scheduled dates and times) for Activities for revenue generating purposes and for the general interest and benefit of the community. FOES shall not discriminate against any member of the public on the ground of their race, color, religion, sex, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation with regard to Rentals of the Premises. CITY will promptly refer to FOES all persons desiring to use or rent any portion of the Premises.

- C. Rental Rates - FOES may set rates for Rentals based on the type, date, and duration of the Activities as it deems appropriate, including allowing certain types of Activities at no cost. FOES shall adopt and apply policies and procedures designed to ensure that similarly situated persons or groups allowed to use the Premises at no cost or minimal cost are treated fairly and equitably. FOES may charge participants an entry fee for Activities sponsored by FOES. FOES may also use the Premises for Activities sponsored by FOES as part of its non-profit operation and mission at no cost to FOES and/or to the participants, even though other non-profit groups may be charged a rental fee for similar Activities at the Premises.
- D. Subleases and Vendors - In order for FOES to meet the intent of the foregoing objectives to manage the use of the Building in a manner that benefits the community, and to meet its maintenance obligations as set forth in this Lease, FOES will need to sublet portions of the Premises and hire commercial vendors to generate revenue. CITY permits FOES to enter into subleases of the second floor offices and to enter into agreements with commercial vendors to allow use of the Kitchen, Lobby and Patio for retail purposes, and FOES may retain all revenues from such subleases and vendor agreements for use in operating the Premises and otherwise subject to the provisions of this Lease.
- E. Other Uses - FOES shall not use or permit the Premises, or any part thereof, to be used for any purpose(s) other than as set forth in this Lease without CITY's prior written consent.
- F. Terms of Rentals, Subleases and Vending Agreements - In order to insure that the rights conveyed to third parties to use the Premises are consistent with the terms of this Lease, such agreements shall include the following provisions: (i) the term may not extend beyond the Initial Term initially, and that any extension would be contingent on CITY's approval of each Extension Term; (ii) standard insurance coverages and include CITY as an additional insured, except for Activities for which CITY would not impose insurance requirements if the third party was renting other CITY community centers; (iii) defend and indemnify CITY for any third party claims arising from their occupancy and operations at the Premises; (iv) use restrictions and requirements to obtain CITY, county and state permits for certain activities (i.e., alcohol sales, entertainment events open to the public, food sales, etc.), along with business licenses and other required permits for compliance with applicable state and local laws and regulations; (v) Department of Justice clearance for all employees and volunteers working with minor children if and to the extent required under Section 9.F; and (vi) waive any claims against CITY for damages arising from the condition of the Premises, from excessive noise associated with operation of the adjacent Clunie Center pool and the surrounding park, and from any interference caused by CITY's occupancy of the Premises as permitted in Section 8. CITY approval of the Rental form and each sublease and vending agreement shall be required prior to

execution by FOES, which approval shall not be unreasonably withheld, conditioned or delayed.

7. NO WARRANTIES BY CITY. CITY makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for the uses specified in Section 6. In particular, CITY makes no guarantee as to the amount of revenues FOES may expect to receive from the Rentals, subleases and vending agreements, nor the costs to maintain the Premises. FOES represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering into this Lease relying only on the facts ascertained from said independent investigation.

8. CITY'S RIGHT OF ENTRY AND RESERVED USE. CITY reserves the right to enter and use the Premises, and CITY shall not be liable to FOES for any loss of revenues from third parties or for FOES' loss of occupation and quiet enjoyment of the Premises due to entry by CITY, under the following conditions:

- A. CITY Maintenance - CITY may enter the Premises at reasonable times to carry out Building inspections, maintenance and repairs, and to post notices of non-responsibility, after providing at least twenty-four (24) hours advanced written or oral notice to FOES and subject to non-interference with any planned Activities and minimizing any interference with the operations of office sublessees and commercial vendors. However, notwithstanding the foregoing, CITY may enter the Premises without prior notice if there is an emergency or the need for immediate maintenance and repairs to protect the Building from damage or to protect the public.
- B. CITY Inspection - CITY may also, at its sole discretion, make a detailed and formal inspection and evaluation of the Premises annually to ensure compliance with this Lease by FOES. CITY shall provide FOES with ten (10) days advance written notice of the date and time of the inspection and subject to non-interference with any planned Activities and minimizing any interference with the operations of office sublessees and commercial vendors. Each inspection will be followed by a report in writing with a copy given to FOES. Deficiencies as defined by CITY which are FOES responsibility under this Lease shall be remedied by FOES within thirty (30) days after issuance of a written directive by CITY. If FOES objects to any item listed by CITY as a deficiency for which FOES is responsible to correct, the parties shall meet and confer for up to a thirty (30) day period to determine if an amicable resolution is feasible. CITY may terminate the Lease if FOES refuses to remedy a defect or damage for which FOES is liable for under the terms of this Lease.
- C. Meetings and Events - CITY may use the Great Hall, East Sacramento Room and/or the Alhambra Room for Activities sponsored or co-sponsored by CITY up to four times a year at no cost to CITY. However, CITY may not displace persons or groups which have prior Rental reservations based on permits or other written confirmations issued by FOES with dates or times which would

conflict with the date and time of the CITY event. CITY shall provide FOES with ten (10) days advance written notice of the date, time and room(s) requested and the nature of the CITY-sponsored event. If feasible based on the anticipated number of participants, CITY shall use the room(s) as designated by FOES rather than the room(s) requested to minimize interference with FOES' Building operations.

- D. Training - In addition to the rights provided in paragraph C above, CITY shall have the right to use the Great Hall for training lifeguards on three days during the first two weekends in June each year, subject to completion of such training by noon each day and the right of FOES to instead assign CITY to use the East Sacramento Room and the Alhambra Room as alternate locations if FOES has prior Rental reservations for the Great Hall during such dates and times. On such dates for lifeguard training, CITY shall also have the right to access the Kitchen to obtain large quantities of ice from the ice machine therein. FOES acknowledges that during the first two weekends in June, there will be approximately 70 lifeguards using the Clunie pool for training in the afternoons and such activities may create noise which could be disruptive to Activities held concurrently in the Premises. FOES shall advise its renters, sublessees and vendors of this potential interference with their use and enjoyment of the Premises.
- E. Emergency Shelter - CITY shall have the right to occupy all or a portion of the Premises, but excluding the second floor offices under a sublease, in the event of a public emergency which requires shelter be provided to the public due to inclement weather (including excessive heat) or natural disasters, or in the event of other calamities that create a need to use this CITY building for public shelter and/or for public safety operations to minimize the potential loss of life. CITY shall strive to provide at least 24 hours advanced written or oral notice to FOES of the date and time and rooms it intends to occupy and the expected duration that the Building as a shelter would need to remain open to the public, or as an emergency command or service center would remain occupied by CITY. CITY shall be responsible for any damage caused to the Premises by the public or by CITY and for utility and building service costs during such occupancy period, and CITY shall assume the additional janitorial and repair costs needed due to such occupancy to make the Premises suitable again for Rentals. CITY shall reimburse FOES for any lost revenues from Rentals which had to be cancelled due to CITY's occupancy of the Premises. If CITY's occupancy extends for a prolonged period of time and the lost anticipated rental revenue caused by such occupancy could affect FOES' ability to meet its financial obligations under this Lease, the parties shall meet to determine how to address that shortfall to avoid a default by FOES.

9. FOES OPERATIONS OF PREMISES. The allocated portion of the Clunie Center (the Premises) granted to FOES to manage under this Lease shall be operated and maintained by FOES in accordance with the terms of this Lease and as follows:

- A. Non-Profit Purposes – FOES shall conduct its activities only in accordance with its 501(c)(3) non-profit status as designated by the Internal Revenue Service.
- B. Laws and Regulations - FOES activities shall be in accordance with all applicable regulations and ordinances of the City and County of Sacramento and the law of the State of California and the United States, except to the extent that compliance will require FOES to undertake Major Repairs as defined in Section 13 and/or otherwise expressly provided in this Lease.
- C. Environmental Laws - FOES shall not cause and shall not expressly permit to occur on the Premises any release, generation, storage, disposal or treatment (“**Release**”) of any hazardous material as that term is defined in any federal, state and local laws regarding public health and safety and protection of the environment (collectively, “**Environmental Laws**”). FOES shall immediately notify CITY of any such Release if and to the extent that FOES becomes aware of same, and FOES shall take such necessary remediation measures at FOES’s expense to the complete satisfaction of CITY if and to the extent that FOES has caused or expressly permitted any such Release. FOES shall immediately notify CITY of any complaints, citations, inquires or notices from any governmental entity relating to compliance with Environmental Laws with respect to the Premises. FOES represents, warrants and covenants that all governmental permits required relating to the use or operation of the Premises by FOES as required by applicable Environmental Laws will be obtained and FOES will comply with them.
- D. Zoning Regulations - Since the Building is owned by the CITY, the City Council in approving this Lease hereby permits FOES to enter into subleases for office uses and agreements for retail vending as described herein as ancillary uses within the Clunie Center, notwithstanding that the existing R-1 zoning designation for the Building does not allow for office and commercial establishments.
- E. Directives – FOES shall promptly comply with written reasonable orders that may be issued from time to time by the CITY Director of the Parks and Recreation Department (the “**Director**”) as to matters concerning the operation of the Premises as it may affect the best interests of the public using the Building and the adjacent park.
- F. DOJ Clearances – If any employees, volunteers or subcontractors of FOES who are to perform services at the Premises are in a position to exercise supervisory or disciplinary authority over any minor child, then FOES shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers, or require such clearance be provided by its subcontractors and their employees and volunteers, prior to any such persons exercising such supervisory or disciplinary authority over minors at the Premises. FOES must submit proof or certification of such DOJ clearances to CITY. 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 Premises. Violations of this requirement by a subcontractor who fails to obtain DOJ clearances for its employees and volunteers shall not constitute a breach of this Lease by FOES.

- G. Revenues – FOES shall use the revenues received from Rentals, subleases and vending agreements as described in this Lease to fund FOES obligations under this Lease, including without limitation to manage and oversee the uses of the Premises by third parties, to sponsor Activities that benefit the public, to pay utility and building service charges as set forth in Section 11, and to pay maintenance costs as set forth in Section 13. After meeting the foregoing obligations, FOES may allocate the remaining revenues (the “**Excess Revenues**”) into the following segregated accounts, with the amounts as determined by FOES: (i) operating reserve, (ii) maintenance reserve, and (iii) capital improvement reserve. FOES may not charge against the revenues received the costs to manage its non-profit organization which are not directly connected to its obligations under this Lease.
- H. Audit - From time to time during the Term (but not more often than annually), CITY shall have the right to review FOES’ books and records with respect to amounts of revenues collected and use of such proceeds, and FOES shall maintain its books and records in accordance with generally accepted accounting and/or bookkeeping practices, as applicable.
- I. Insurance Hazards – If fire and casualty insurance is obtained and maintained by either party with respect to the Building during the Term, and if a copy of such policy is provided to the other party, then, other than the approved uses set forth in Section 6 or elsewhere in this Lease, no use shall be made in the Premises which will increase the existing rate of such insurance for the Building in which the Premises is located, or cause a cancellation of any such insurance policy covering the Building, nor shall FOES sell, or permit to be kept, used, or sold, in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. FOES shall, at its sole cost and expense, comply with any and all reasonable requirements pertaining to the Premises of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering the Building and its appurtenances.

10. REPORTING AND NOTIFICATION REQUIREMENTS. FOES shall provide CITY with the following information during the Term of this Lease:

- A. Financial Reports - By the last day of September each year, FOES shall provide the Director with a report for the prior year on the Rentals, including types of uses and permit fees collected, and complimentary uses where no fee was imposed, and the amounts collected under subleases and vending agreements. Such financial reports may be unaudited annual financial statements indicating all revenues produced from the operation of the Premises and the manner in which said revenues were expended or retained.

- B. Activities - FOES shall make available to CITY information regarding any Activities at the Premises that will be open or available to the public, whether or not fees are imposed for participation or entry, which obligation may be satisfied by FOES posting such information on the FOES website for inspection and review by CITY. CITY may publish such information in its newsletters and on its website. FOES shall also provide CITY notice of other Activities not open to the public, such as private Rentals, which obligation may be satisfied by postings on the FOES website as a room reservation without details regarding the planned use. Until FOES website is established, FOES shall provide CITY with the booking information for scheduled public and private Activities on a quarterly basis. FOES shall have no obligation to format the interim booking information in any particular manner.
- C. Officers - FOES shall annually provide the Director with a list of the names and contact information of the officers of FOES' organization, which information may be provided by submitting a copy of the Statement of Information filed with the Secretary of State.

11. UTILITIES AND SERVICES. The costs of utilities and services for the Premises shall be allocated as follows, and all payments due to CITY by FOES shall be made within thirty (30) days from the date of receipt of the invoice:

- A. Wet Utilities - CITY shall pay for water, sanitary sewer and storm drainage services that are associated with FOES' use of the Premises, subject to FOES reimbursement of its allocated costs for these services at the rate of Eighty-Five Dollars (\$85) per month.
- B. Garbage - FOES shall contract with a commercial garbage service for dispose of the garbage and recycling materials generated from FOES use of the Building.
- C. Building Services - CITY shall pay the costs of pest control, security alarm monitoring, fire alarm monitoring, and fire extinguisher maintenance services that are associated with FOES' use of the Premises, subject to FOES reimbursement of its allocated costs for these services at the rate of One Hundred and Twenty-Five Dollars (\$125) per month. Alternatively, with thirty (30) days prior written notice to CITY, FOES may contract with service providers to assume some or all of these services and CITY shall reduce this rate according to the reduction in CITY's costs under the CITY's master contracts for such services. FOES shall be responsible to arrange for all other building services (excluding utilities, which are otherwise covered by this Section 11), including, without limitation, janitorial services.
- D. Electrical Service - CITY shall pay utility provider for the cost for electric services for the Premises until such time as a separate meters are installed for the Building so that all of the Premises is connected to one meter. Until such occurrence, which may not occur during the Term due to the significant

costs and difficulty in rewiring the Building circuits, CITY shall use reasonable efforts to cause submeters to be installed on the separate circuits that apply to those portions of the Building that comprise the Premises in order to measure the amount of electricity used by FOES within the Premises. CITY will pay the cost of installing the submeters to the electric panel circuits. It is acknowledged and understood that even after installation of the submeters, FOES electric usage will be based on periodic meter reading surveys during each year and there will still be the need to allocate non-metered usage based on the areas reasonably attributable to be part of the Premises.

Until the submeters are installed and the survey of usage conducted, which may take as long as a year to complete, FOES shall pay CITY Five Hundred Dollars (\$500) per month for electricity. Once the electric utility services are submetered, then FOES shall pay the costs of such service based on a periodic survey of the amount of electricity used within the Premises.

- E. Rate Increases - CITY may increase the foregoing costs during the Term (1) for utilities based on the increase in rates charged by the utility companies and (2) for building services based upon the rates charged by the building service providers under CITY's master contracts. Should the rate charged by a building service provider increase more than five percent (5%) in any calendar year, CITY shall provide FOES with thirty (30) days advance notice of such increase before the additional charge is imposed.
- F. Gas Service - FOES shall pay the Authority for its share of the gas service costs for the Premises in accordance with the term of the Library MOU. If the Authority ceases to operate the Library at the Clunie Center, FOES shall pay for gas services for the entire Building until a new tenant takes occupancy of the Library portion of the Building. CITY shall require any new tenant in the Building to pay FOES for its share of the gas costs based on allocation of the total Building square footage, or such other allocation as mutually agreed by the parties.
- J. Other Services - FOES shall pay all charges and assessments for telephone, internet, and television services, and any other services for the Premises which FOES determines is needed for operation of the Premises.
- H. Late Payments - In the event that a payment owed by FOES under the foregoing paragraphs is not received by CITY within thirty (30) days after issuance of the invoice, the amount owed shall be increased by ten percent (10%) as a "**Late Fee**." The Late Fee shall be in addition to and not in lieu of all other remedies of CITY for failure to make timely payment of amounts owed by FOES pursuant to this Lease. In addition to the Late Fee, CITY may declare that FOES is in default under this Lease if during any calendar year Late Fees are imposed more than four times. All monetary obligations of FOES to CITY under the terms of this Lease, including but not limited to Late Fees, are deemed to be rent.

12. CONDITION OF BUILDING. Prior to the Commencement Date, FOES has obtained and provided to CITY an inspection report of the Building condition and an HVAC equipment survey. CITY has determined that at the time of delivery of the Premises to FOES, no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilation and air conditioning, life-safety or other systems of the Building and the structure or exterior appearance of the Building. FOES accepts the Premises “AS-IS, WHERE-IS, IN ITS CURRENT CONDITION, WITH ALL FAULTS” and in reliance on FOES’ own investigations.

13. MAINTENANCE OF PREMISES. After occupancy and throughout the Term of the Lease, FOES shall, at its sole cost, keep and maintain the Premises in a safe, clean, sanitary, orderly and attractive condition and maintain the entirety of the Premises, including its allocated portion of the Building, the outdoor patios, and all of the furniture, fixtures and equipment located therein, in condition equal to or better than the condition of the Premises as of the first day of the Lease Term, but subject to the following:

A. Furniture, Fixtures and Equipment - With regard to all of the furnishings, fixtures or equipment (“**FF&E**”) existing in the Premises as of the Commencement Date, FOES shall maintain such FF&E in condition equal to or better than received by FOES. All broken or damaged items shall be removed and replaced by FOES within thirty (30) days. FOES shall not remove or replace any undamaged FF&E without the prior written consent of the Director. FOES is hereby authorized to make the following FF&E changes:

- (i) to dispose of the tables and chairs in the Great Hall, or as stored in the outdoor patio and in the basement, and the tables and chairs in the Alhambra Room, so long as FOES has ordered and paid for replacement of such furniture, and ownership of such furniture is transferred to CITY upon expiration or termination of this Lease;
- (ii) to remove the glass enclosures for the lighting fixtures in the Great Hall if packaged for removal and provided to CITY for collection and storage;
- (iii) to remove the equipment and furniture on the stage in the Great Hall which is not affixed to the walls and dispose of it if CITY declines to take them to storage;
- (iv) to remove the stage curtains and/or the sound system so long as FOES has ordered and paid for replacement curtains and equipment and ownership of the curtains and equipment is transferred to CITY upon expiration or termination of this Lease;
- (v) to relocate the sculpture within the Lobby as long as it remains within that room for public display;
- (vi) to remove the other equipment in the Lobby that is not affixed to the walls unless such items are required to be retained per the terms of the Library MOU;
- (vi) to remove the cubicles and desks in the second floor offices, and to dispose of them if CITY declines to take them to storage;

(vii) to relocate the bicycle racks from the Patio to a concrete pad to be located adjacent to the Building entrance on the north and to remove the book bins and install a book drop in the side of the Building in accordance with the terms of the Library MOU; and
(viii) to replace the outdoor lighting fixtures on the patios with fixtures that are complimentary to the period when the Building was erected, but subject to the approval of the CITY Preservation Director of the replacement fixtures.

B. FOES Routine Maintenance - Excluding damages caused by vandalism, FOES shall be solely responsible for maintenance, repair and replacement of the following within the Premises necessitated by the normal use and wear of the building and such facilities (herein "**Routine Maintenance**"):

- (i) security alarm system if the repairs are not covered under CITY's service contract;
- (ii) interior light bulbs and light fixtures;
- (iii) all interior improvements including walls, ceiling tiles, flooring and window coverings, all interior doors and windows, and all interior finishes of all exterior doors and windows, including glass replacement for all such doors and windows;
- (iii) painting the interior of the Building and graffiti removal in the interior of the Building and the exterior patios;
- (iv) telephone and computer-related wires and systems; and
- (v) minor plumbing (e.g., toilet malfunction), minor electrical, hardware and equipment repairs, and incidental and routine expenses.

C. CITY Routine Maintenance - If FOES fails to perform Routine Maintenance in a manner reasonably satisfactory to CITY, then CITY may elect to perform such Routine Maintenance and to make the necessary repairs or replacements on FOES behalf. CITY must provide FOES with written notice of its election to undertake Routine Maintenance at least thirty (30) days prior to undertaking the work, unless there is a need to immediately make repairs to the Building to prevent damage or for public safety. FOES shall refund to CITY the cost of performing such work within ten (10) days after receiving from CITY an invoice specifying the work performed and including appropriate supporting documentation for the cost of materials and labor.

If FOES is unable to fund the costs of Routine Maintenance in a manner reasonably satisfactory to CITY, the parties shall meet and confer to determine if: (i) there are any Excess Revenues available to fund such costs in- lieu of building restoration and capital improvement projects, (ii) the scope of the maintenance work can be modified to reduce costs or delayed until revenues becomes available to FOES, and/or (iii) CITY has funding to undertake Major Repairs, as defined below, which would result in reduced Routine Maintenance costs.

- D. CITY Major Repairs. CITY shall be solely responsible to undertake “**Major Repairs**,” which excludes Routine Maintenance and generally means the replacement, repair, or maintenance of all other portions of the Building and its systems, including, without limitation, the following:
- (i) the structure of the Building (walls, foundations, roof, including roof and window leaks, defects and weather-proofing etc.);
 - (ii) the Building systems (HVAC system, and electrical and plumbing wires and pipes inside interior walls, etc.);
 - (iii) the fire alarm system;
 - (iv) painting and caulking the Building exterior to the extent of deterioration;
 - (v) doors and door hardware including locks; and
 - (vi) elevator repairs.
- E. Notice and Scope of Major Repairs - If any Major Repairs of the Building or Premises are necessary for FOES’ operations or based on a CITY inspection or on FOES reasonable determination, then either party may provide written notice to the other party regarding the defect and the proposed scope of work required to remedy the defect. CITY shall have the right and option, but not the obligation, to undertake the Major Repairs at CITY’s sole cost and based on the scope of work as determined by CITY in its reasonable discretion. CITY shall inform FOES in writing if its proposed scope of work differs from what was recommended by FOES. If CITY declines to undertake the Major Repairs required, then FOES shall have the right, among others as set forth herein, to terminate the Lease or to undertake the Major Repairs at FOES’ sole cost, but subject to approval by CITY as to the proposed scope of work.
- F. Meet and Confer Process for Major Repairs - If neither party elects to undertake the Major Repairs at its sole cost, the parties shall meet and confer in good faith for up to sixty (60) days to determine whether: (i) the Major Repairs can be modified to reduce costs or delayed until funding becomes available; (ii) the parties can share in the costs of the Major Repairs; and/or (iii) the Lease can be modified to restrict use of certain areas of the Premises until the Major Repair work can be undertaken. If the parties determine that the Major Repairs can be modified, delayed or jointly funded, then they shall enter into an agreement addressing such issues and, if applicable, allocating the total cost of the Major Repair to each of the parties.
- G. Termination of Lease if Building Unsafe or Unsuitable - If the parties are unable to develop an alternative for undertaking the Major Repairs required, after completion of the meet and confer process set forth above, and CITY, in its sole discretion, makes a determination the Building or Premises without such repairs is or will be unsafe or unsuitable for public use, then either party shall have the right to terminate the Lease. CITY may not issue a notice of termination until completion of the meet and confer process; however, CITY may direct FOES to discontinue public use or all or a portion of the Premises

which is affected by the defect if such use of the Building in its unrepaired state or unrepaired condition is unsafe or unsuitable for public use.

- H. First Year Funding Commitment for Major Repairs - For the first year of the Lease Term, CITY shall set-aside an amount not to exceed Twenty Five Thousand Dollars (\$25,000) to fund the cost of Major Repairs which CITY determines are needed to protect the Building from deterioration and to keep the Premises in good condition so that it is safe and suitable for public use. CITY shall be obligated to make Major Repairs during the first year of the Lease Term up to the \$25,000 set aside. Thereafter (e.g., after the first year of the Lease Term), CITY shall only be obligated at CITY's sole cost to repair: (i) the fire alarm system, and (ii) the elevator for the remaining term of the existing elevator service contract. City may also elect to make Major Repairs pursuant to the provisions of subsections 13 E and F. CITY, in its sole discretion, may extend or renew the elevator service contract, which contract may include costs for repairs.
- I. Plumbing Damages - The plumbing facilities serving the Premises shall not be used for any other purpose than that for which they are constructed. No foreign substance of any kind shall be thrown in the sinks or other plumbing facilities. The expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by FOES if FOES or its employees, agents, contractors, or invitees shall have caused it.

14. IMPROVEMENTS AND ALTERATIONS. During the Term, FOES intends, but shall have no obligation to, make improvements, upgrades and alterations (collectively "**Changes**") to the existing condition of the Premises as of the Commencement Date. FOES' right to make Changes to the Premises and any other portions of the Building will be subject to the following:

- A. Approvals - FOES, on its behalf and on behalf of its sublessees and vendors, must obtain the Director's written consent prior to making any Changes to the existing interior or exterior fixtures, walls, ceilings, windows, flooring, doors, and fencing, or relocating any equipment that is affixed to the Building, even if such Changes are related to FOES' Routine Maintenance obligations. FOES shall provide CITY with plans, specifications and other information as may be reasonably required to evaluate the proposed Changes, including the timing and cost for performing the work. The Director's consent shall not be unreasonably withheld, conditioned or delayed. The parties acknowledge that this Lease includes the Director's pre-approval for FOES (1) to make the Changes listed in Section 13, paragraph A, and (2) for FOES to undertake those certain Changes which are planned restoration projects, for which FOES has or intends to solicit donations from the community to fund such projects, as listed in Exhibit B, which is attached and incorporated herein.
- B. Permits – Nothing contained herein shall be construed as a waiver of the requirement to obtain CITY permits prior to undertaking any Changes as required under the City Code. The parties acknowledge that such permits

may include, without limitation: (i) a Certificate of Appropriateness for all exterior and interior alterations to this historic building and its original fixtures; (ii) building permits for structural, electrical, and plumbing work; and (iii) sign permits for any new exterior signage, whether located on the Building or in the park. FOES shall be responsible for payment of all fees and charges levied in connection with issuance of permits. CITY shall have no liability or responsibility for making repairs or upgrades to meet the current Building Standards Code (Title 24 of the California Code of Regulations), and as it may be amended, in connection with the construction by FOES of any approved Changes.

- C. Requirements - All Changes which require a contractor's license under state law shall be undertaken by properly licensed contractors and such contractors must perform the work in accordance with all applicable laws and the City Code. FOES shall pay such contractors at its sole cost and shall keep the Building free from any mechanics liens due to non-payment. FOES shall notify CITY prior to commencing work to be performed by a contractor which will exceed \$5,000 so that CITY may post a notice of non-responsibility.

FOES' shall require its contractors to carry worker's compensation insurance covering all the contractors' and subcontractors' employees, and public liability and property damage insurance with limits of One Million Dollars (\$1,000,000), both general and vehicular (all insurance to be written by companies licensed to do business in the State of California), insuring CITY and FOES as well as the contractors.

All construction work required or permitted under this Lease shall be done in a good and workmanlike manner, and in compliance with all applicable laws and ordinances, regulations, and orders of governmental authority and insurers of the Premises. CITY may inspect the FOES' work at reasonable times and shall promptly give notice of any observed defects.

- D. ADA Compliance - CITY shall have no responsibility to FOES to make any improvements to the structure of the Premises, including those required by federal and state disability access laws. CITY has surveyed the Building to identify upgrades needed for compliance with the federal Americans with Disabilities (ADA) Act and to prioritize such work. CITY has determined that the Building meets all applicable federal and state disability access laws at time of FOES occupancy other than the items identified in the CITY's survey. Any of FOES' Changes to the Building that trigger additional requirements under federal and state disability access laws shall be FOES' sole responsibility. Any improvements required for ADA compliance for the condition of the Building prior to FOES occupancy shall remain the CITY's obligation.
- E. Security Devices – FOES may provide at its own expense any legal device, installations, or equipment designed for the purpose of protecting the

Premises from theft, burglary or vandalism; provided, however, that FOES complies with building and fire codes and obtains all required permits.

- F. Signage - FOES shall not place or permit to be placed any sign, decoration, marquee or awning on the front of the Building or any other portion of the exterior of the Building or in the park without the prior written consent of the Director. All signage shall be agreed to between CITY and FOES; however, CITY shall not unreasonably withhold said approval. FOES's signage must meet all applicable governmental codes and regulations. FOES shall have the right, at its own cost, to change or alter such signage at any time during the Term of this Lease provided such signage is in compliance with all applicable governmental codes and regulations.
- G. Ownership of Improvements - All alterations, improvements, additions, or fixtures that are installed in the Premises by FOES which replaced CITY furniture, furnishings, and equipment which existed at the commencement of FOES occupancy of the Building shall be the property of the CITY without any obligation for reimbursement, and at the expiration of termination of this Lease shall remain and be surrendered as a part of the Premises.
- H. No Liability - CITY shall have no liability to FOES for any losses with respect to FOES' personal property and any alterations, improvements, additions, or fixtures that are installed in the Premises by FOES, which losses may be caused by the condition of the Premises or CITY's election not to undertake Major Repairs to remedy any damage.

15. LIBRARY. If at any time the Authority ceases to operate the Library, CITY shall notify FOES in writing of the date when the Authority has planned to cease operation of the Library. If CITY determines to lease this portion of the Building to a third party for commercial uses, then the CITY shall notify FOES of the solicitation process and shall receive, consider and negotiate in good faith any proposals or bids from FOES in accordance with any applicable bid solicitation and selection provisions.

16. TAXES. FOES shall, in addition to other sums to be paid under this Lease, pay to the County of Sacramento all personal property taxes which may be levied against the personal property of the FOES, and any possessory interest tax, per Section 107.6 of the California Revenue and Taxation Code, which may be levied by virtue of this Lease.

17. SURRENDER AT END OF TERM. FOES agrees that on the last day of the Term, or sooner termination, of this Lease, to surrender the Premises with appurtenances to the CITY in broom clean condition reasonable use and wear excepted, and to remove all of FOES' signs and personal property not affixed to the Premises.

18. WASTE AND QUITE ENJOYMENT. FOES shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the Building. CITY further

covenants that if FOES shall discharge the obligations set forth to be performed by FOES, FOES shall have and enjoy during the Term the quiet and undisturbed possession of the Premises and all appurtenances appertaining thereto as contemplated in this Lease.

19. WARRANTY OF TITLE AND LIENS. CITY covenants and represents that it has a fee simple title in the Building of which the Premises is a part, free and clear of all conditions, covenants, restrictions, mortgages and other liens or defects in title of any nature whatsoever affecting the Premises, or the rights granted FOES in this Lease. FOES hereby recognizes the title and interest of CITY in and to the Building and the property where it is located and agrees never to assail or resist said title or interest therein. FOES shall not lien or pledge its interest in this Lease to any third party as security for any loan, mortgage or other financing agreement.

20. ABANDONMENT OF PREMISES. FOES shall not vacate or abandon the Premises at any time during the Term, and if FOES shall abandon, vacate, or surrender said Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to FOES and left on the Premises shall be deemed to be abandoned at the option of CITY.

21. INDEMNITY. This Lease is made upon the express condition that FOES shall indemnify and hold harmless CITY from and against any and all claims, damages, causes of action, suits, or damages (including costs and expenses incurred in connection therewith, including attorney's fees incurred by CITY, whether for outside counsel of the City Attorney) for death or injury to persons or for loss of or damage to property (collectively "Liabilities") arising out of or in connection with the use and occupancy of the Premises by FOES, its agents, servants, employees, or invitees and to the extent not caused by CITY's or CITY's employees' negligence or willful misconduct; provided, however, CITY shall be liable for (1) loss, damages, or injury resulting from structural defects of the Building in which the Premises is situated which are not caused by negligence or intentional act of FOES, its agents, servants, employees, or invitees, (2) liability to third parties for cancellation of Rentals due to CITY's occupancy of the Premises as provided for in Section 8.E, and (3) liability for ADA compliance for the condition of the Building at the time of FOES occupancy and for any alterations of the Building undertaken by CITY. CITY shall indemnify and hold harmless FOES from Liabilities arising out of or in connection with CITY's sole active negligence and/or willful misconduct during those periods when CITY enters and/or uses the Premises as provided for in Section 8.

22. INSURANCE REQUIREMENTS. FOES shall obtain and maintain during the Term of the Lease at FOES' sole cost the following insurance coverages. Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance standards for comparable premises and buildings. By requiring the following insurance coverages, CITY does not represent that the coverage and limits will necessarily be adequate to protect FOES. It is understood and agreed by FOES that the required insurance coverage and limits shall not be deemed as a limitation on FOES' liability under the indemnity provision in Section 21. FOES agrees to waive all rights against

CITY and its officers, employees, volunteers and agents for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this Section.

A. Minimum Scope and Limits of Insurance Coverages:

- (i) General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 or an equivalent form, covering liability arising from premises owned leased or used by FOES, operations, independent contractors, personal injury, products, completed operations, and contractual liability for the term of the policy. The amount of the policy shall not be less than One Million Dollars (\$1,000,000), single limit per occurrence, issued by an admitted insurer, or insurers, as defined by the California Insurance Code. The policy shall include a fire legal liability limit of Fifty Thousand Dollars (\$50,000) per occurrence.

The insurance shall be endorsed to contain the following provisions: (1) CITY, its officers, employees, volunteers and agents shall be named as "Additional Named Insureds;" (2) the policy shall serve and operate as primary insurance and not require contribution from insurance effected by CITY, or other Named Insureds; (3) any insurance or self-insurance maintained by CITY shall be excess of FOES' insurance and shall not contribute with it; (4) FOES will use reasonable efforts to ensure that CITY will be provided with thirty (30) days written notice of cancellation or material changes in the policy terms; and (5) any failure to comply with the reporting provisions of the policy shall not affect coverage provided to CITY, its officers, employees.

- (ii) Automobile Liability Insurance is required if FOES owns or leases automobiles for its operation of the Premises. The coverages shall be at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury of one or more persons, property damages and personal injury with limits not less than One Million Dollars (\$1,000,000) combined single limit. This policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of FOES under this Lease. CITY, its officers, employees, volunteers and agents shall be named as "Additional Named Insureds" under this policy.
- (iii) Workers Compensation Insurance is required if FOES hires five or more employees as part of FOES operation and maintenance of the Premises, with statutory limits including a waiver of subrogation in favor of CITY and Employers Liability Insurance with limits of not less than One Million Dollars (\$1,000,000).

(iv) All Risk Property Insurance is optional, at FOES election, for tenant improvements, personal property and any improvements or alterations constructed by FOES at the Premises.

B. Acceptability of Insurers – Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insurance retentions, policy terms or other variations that do not comply with the requirements of this Section 22 must be declared to the Director and approved by the CITY's Risk Manager.

C. Submittal of Certificates - FOES shall furnish CITY with certificate(s) of insurance and with original endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements are to be forwarded to the CITY's Risk Management Division, 915 I Street, 4th Floor, Sacramento, California 95814, within fifteen (15) days of the execution of this Lease prior to FOES engaging in any operation or activity in the Building as permitted in this Lease. Failure to provide such certificate(s) and keep such certificate(s) updated will be considered a material breach by FOES of this Lease.

23. DAMAGE OR DESTRUCTION OF PREMISES. In the event of a partial destruction of the Premises during the Term of this Lease from any cause and the repairs are the CITY's maintenance responsibility, CITY shall have the option, but not the obligation, to undertake shall the repairs under the provisions applicable to "Major Repairs" as set forth in Section 13. CITY may order FOES to refrain from use of those portions of the Premises which are damaged and deemed unsafe or unsuitable for public use, or to take other measures to protect the public and the Building until such repairs can be made. Partial destruction of the Premises for which CITY and FOES decline to repair shall not annul or void this Lease if CITY and FOES mutually agree that a portion of the Premises is still safe and suitable for public use and the parties execute an amendment to this Lease to redefine the Premises. A total destruction of the Building in which the Premises is situated shall terminate this Lease.

24. ASSIGNMENT OR SUBLETTING. Subject to FOES rights under Section 6 of this Lease, FOES shall not assign this Lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, employees and invitees of FOES excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY, which consent may be withheld in CITY's sole and absolute discretion; provided, however, that CITY will not unreasonably condition or delay its approval of any assignment to an affiliate of FOES. CITY discloses to FOES that CITY does not intend to accept any proposed assignment to any for-profit organization.

A consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void, and shall at the option of CITY, terminate this Lease. This Lease shall not, nor

shall any interest therein, be assignable, as to the interest of FOES, by operation of law, without the prior written consent of CITY.

25. INSOLVENCY AND RECEIVER. Either the appointment of a receiver to take possession of all or substantially all of the assets of FOES, a general assignment by FOES for the benefit of creditors, or any action taken or suffered by FOES under any insolvency or bankruptcy act, shall constitute a breach of this Lease by FOES. Should such action occur against FOES, FOES shall have thirty (30) days to cure the action or suit prior to being considered in default of this Lease.

26. DEFAULTS AND REMEDIES. The following rights and remedies shall be available to CITY in the event FOES commits any act of default during the term. Unless a different time period is set forth elsewhere in this Lease, FOES shall be deemed to be in default only after receipt of written notice from CITY specifying the nature of the violation and not having cured said violation within thirty (30) days after receipt of the notice. These rights and remedies shall not be exclusive, but shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law:

- A. Defaults by FOES - The occurrence of any of the following by FOES shall constitute a default ("**Event of Default**") under this Lease:
- (i) Failure to pay any sum due under this Lease on the date the same first becomes due, if such failure shall continue for more than ten (10) days after written notice from the CITY to FOES;
 - (ii) Failure to perform any other obligation under this Lease if the failure to perform is not cured within thirty (30) days after CITY issues written notice to FOES; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, then FOES shall not be in default under this Lease if FOES commences to cure the failure within the thirty (30) day period and diligently and in good faith continues to cure the failure thereafter;
 - (iii) Vacating or abandonment of the Premises; or
 - (iv) Knowing providing material false financial statements, but inadvertent errors shall not be considered a default or material breach under any circumstances.
- B. Remedies - If FOES commits an Event of Default, then CITY shall have all remedies available at law and/or equity in connection with such Event of Default, including, without limitation, the right to terminate this Lease upon written notice to FOES, and FOES shall immediately surrender possession of the Premises to CITY. CITY shall be entitled to recover from FOES all damages incurred by CITY by reason of FOES' default, including, without limitation, the costs of recovering possession of the Premises, expenses reletting, including necessary renovation and alteration of the Premises, and reasonable attorneys' fees, whether for outside counsel or the City Attorney. Efforts by CITY to mitigate the damages caused by FOES's breach of this Lease shall not waive CITY's right to recover damages. Nothing in this Section 26 shall affect the right of CITY to indemnification against liability

arising from or related to acts or events occurring prior to the termination of this Lease for personal injuries or property damage, or against mechanic's liens or other liens, claims or expenses.

- C. Default By CITY - CITY shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that CITY is obligated to perform and the failure to perform is not cured within thirty (30) days after written notice of default has been given by FOES to CITY. If the default cannot reasonably be cured within thirty (30) days, then CITY shall not be in default of this Lease if CITY commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

27. NOTICES. All notices, consents, approvals and other communications under this Lease shall be in writing and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) day after delivery to any overnight courier service, fee prepaid; or (c) three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as follows:

CITY: City of Sacramento
Attn: Director, Parks and Recreation Department
New City Hall
915 I Street
Sacramento, CA 95814

FOES: Friends of East Sacramento
Attn: Cecily Hastings
3104 "O" Street #222
Sacramento, CA 95816

Any party may change the address for notice by giving written notice to the other party according to this Section.

28. WAIVER. The waiver by either party of any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any delinquent payment by CITY shall not be deemed to be a waiver of any preceding breach by FOES of any term, covenant, or condition of this Lease, other than the failure of FOES to pay the particular payment so accepted, regardless of CITY's knowledge of such preceding breach at the time of acceptance of such payment.

29. NO JOINT VENTURE. It is understood and agreed that each party is an independent corporation and that this Lease shall not create a relationship between CITY and FOES or its individual members of employer-employee, joint venture, partnership, or any other relationship of association. The employees, agents and contractors of FOES shall not be entitled to any benefits payable to employees of CITY.

No party shall have the authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent, nor bind the other party to any obligations whatsoever.

30. BINDING ON SUCCESSORS. The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the parties.

31. TIME. Time is of the essence of this Lease.

32. EXCUSABLE DELAYS. If the performance of any act required by this Lease to be performed by either CITY or FOES is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials or permits, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay. However, nothing contained in this Section shall excuse the prompt payment owed by FOES as required by this Lease or the performance of any act rendered difficult solely because of the financial condition of FOES.

33. ATTORNEYS' FEES. If either party to this Lease commences a proceeding or action against the other party arising out of or in connection with this Lease, whether in tort or otherwise, then the prevailing party shall be entitled to recover the party's reasonable attorneys' fees and costs, including those attorneys' fees and costs of suit incurred on appeal. For purposes of this Lease, the "prevailing party" shall be that party which recovers substantially the relief sought by the party, whether by judgment, settlement or otherwise, in connection with any such action or proceeding.

34. CAPTIONS. The title or headings to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

35. COUNTERPARTS. This lease may be executed in one or more counterparts. Facsimile and PDF (portable document format) signatures on this lease shall be binding as if an original.

36. ENTIRE AGREEMENT AND AMENDMENTS. This Lease contains the entire agreement between the parties with respect to the subject matter set forth in this Lease and supersedes all prior agreements, discussions and understandings, whether oral or written. Lease may be amended only by means of a writing signed by all parties hereto.

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IN WITNESS WHEREOF, CITY and FOES have executed this Lease on the date herein above first written.

FOES:

FRIENDS OF EAST SACRAMENTO,
a California nonprofit corporation

By: 

Name: Cecily Hastings

Its: Co-founder

Approved as to Form:

By: 

FOES Counsel
DIEPENBROCK ELKIN LLP
BY BRADLEY ELKIN

CITY:

CITY OF SACRAMENTO,
a municipal corporation

BY: _____

James L. Combs
Director of Parks and Recreation

For: John F. Shirey, City Manager

Approved as to Form:

By: _____

Senior Deputy City Attorney

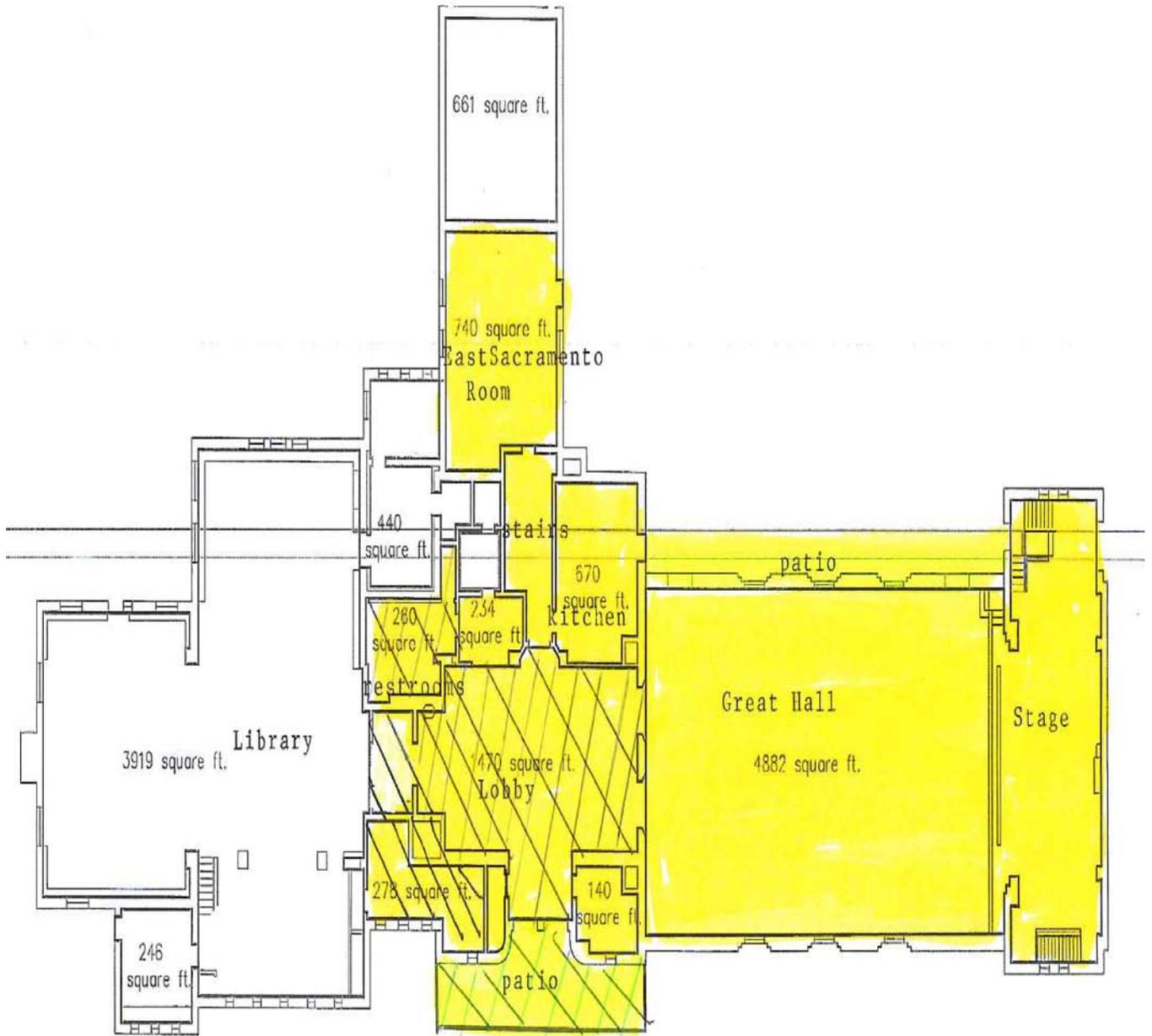
Attest:

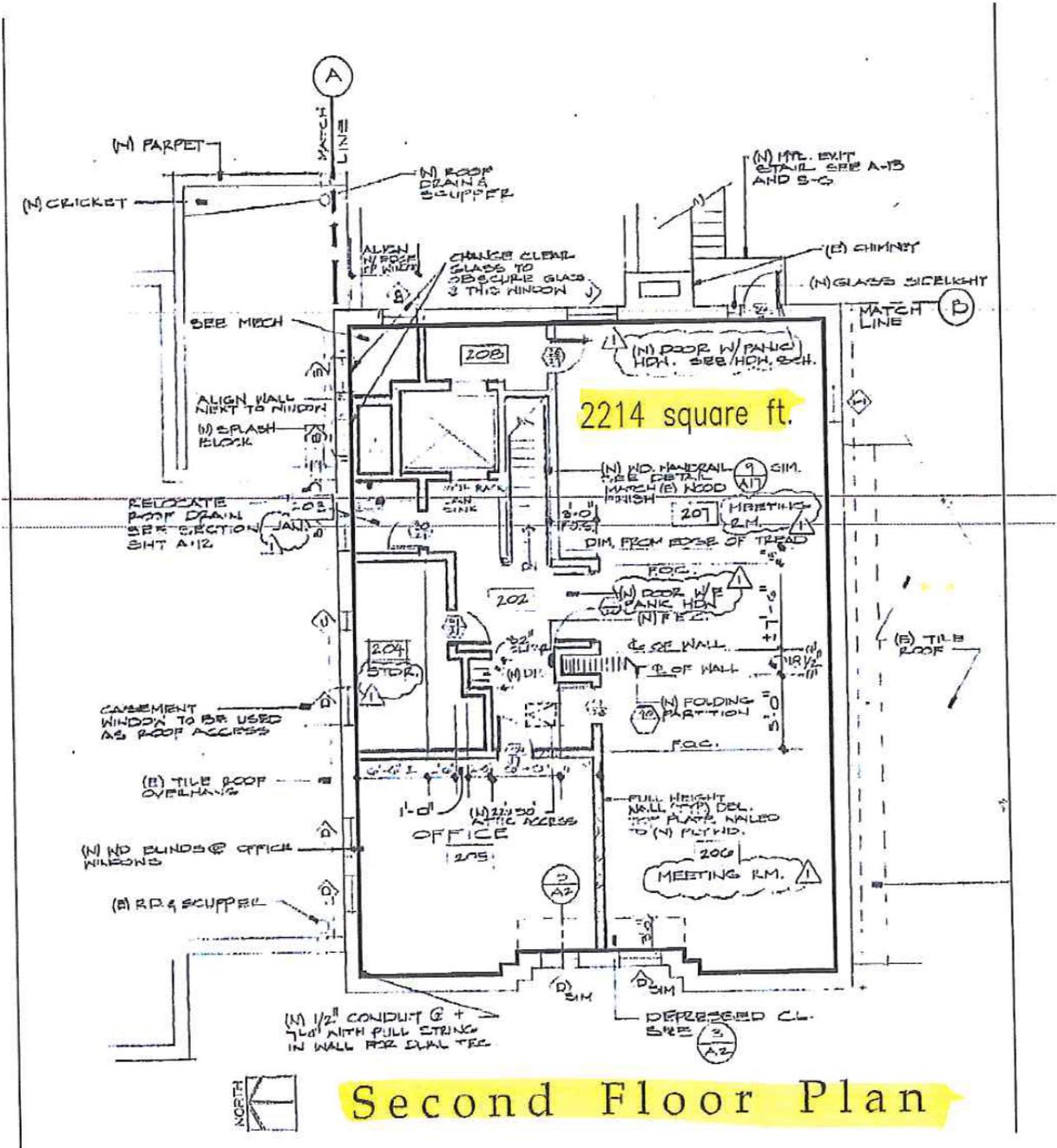
By: _____

Deputy City Clerk

EXHIBIT "A"
DEPICTION OF PREMISES

Clunie Community Center





Second Floor Plan

EXHIBIT "B"
DESCRIPTION OF PRE-APPROVED RESTORATION WORK

Grand Hall: Goal: *The hall is the largest source of revenue for the center. It is used for wedding receptions, memorial services, fundraising events, dinners, parties, dances, and small performances. The stage is the most in need of repair as the wood has been poorly maintained and the finish is completely missing in many areas. The stage floors have been damaged by piano movement over the years. The maple wood floors have been waxed without having been thoroughly cleaned and need to be screened and recoated with new finish. The wall woodwork and window trim is also very damaged by years of sun damage, nicks and gouges. The stage curtains are heavily soiled and need to be replaced. The tables and chairs are old and worn and not of the quality needed for use with higher-end parties and events. The patio adjacent to the hall is underutilized and by adding patio furniture will make the hall more attractive and marketable.*

Repair-Refinish:

Stage Refinish: \$8,000
Floor refinish: \$3,000
Wall woodwork refinish: \$4,000
Stage lighting repair: \$800
Light fixture re-bulbing/cleaning: \$800
Stage Curtain cleaning: \$1,000
Window Coverings: \$1,000
Vent replacement: \$1,000
Wall repainting: \$1,000

Furniture Purchases:

Tables: \$3,600
Chairs: \$5,500
Patio Furniture: \$3,000

Total: \$32,700

Lobby: Goal: *The lobby is dark and uninviting. The historic light fixtures have numerous missing parts and do not provide adequate light. The space is under-utilized and yet holds many possibilities as a community meeting place in conjunction with a coffee cart/shop. Our design is to install a very large (12') community table in middle of the lobby surrounded by a dozen Deco-period metal side chairs. New light fixtures will dramatically light the space and at the same time light up and feature the copper leaf ceiling. The existing bronze child's sculpture will be relocated to the middle of the table and down lighted from the ceiling. The entry doors to the second floor and Grand Hall and the office doors need refinishing to remove excess wear and damage to the finish. An art hanging system will let us securely feature local art on the lobby walls.*

Repairs/Cleaning:

Refinish floor: \$1,800
Refinish Woodwork: \$4,000

Furniture and Fixtures:

Lighting upgrades: \$2,500

Table: \$3,000

Chairs: \$1,800

Door Mat: \$500

Art Hanging system: \$500

Total: **\$13,600**

Entrance and Patio: *Goal: The entrance to the building is in need of help. Our plan is to remove the two metal book return bins by installing an outside book drop in the library wing of the building and relocate the bike racks to a new concrete pad to the left of the entrance in front of the library wing. After cleaning the front patio and restaining and sealing the entry concrete pad we plan to install patio and colorful umbrellas and the same Deco-period metal side chairs as in the lobby. The tables and umbrellas and chairs are taken in when the building is closed. We also plan to install two large brick columns in the planters on each side of the entrance and top them with concrete urns to match the concrete Deco-style details of the building. The planters will have large New Zealand Flax planted in them and new landscape plants around the brick columns. The existing light fixtures are under-sized and do not match the style of the building. We propose installing a pair of refurbished historic fixtures that match what was originally installed on the building, or period replacements fixtures. The front entry doors are in need of refinish and repair. We also need to install a new sign on top of the brick monument sign for the lobby for identification and marketing purposes.*

Refurbish/Repair:

Replant Gardens: \$750

Re-stain/seal concrete entrance: \$1,350

Concrete pad for bike racks and book drops \$1,000

Fixtures/Furniture/Sign:

Tables: \$1,200

Chairs: \$1,500

Pots/Urn: \$1,000

Light fixtures/Repairs: \$1,000

Signage: \$3,750

Total: **\$12,000**

Alhambra Room-Second Floor: *Goal: This room (formerly called the B/C room) is being redesigned to increase the rental revenues by expanding rental uses to include special parties and other events. Designer Janice Stone Thomas has created a special colorful Moroccan-theme design that features a mural of the Alhambra Theatre and movie posters reproductions from a local collector.*

Repairs:

Painting: \$1,500

Carpet Replacement: \$4,000

Furniture/Fixtures/Accessories:

Furniture: \$4,500

Accessories: \$1,200

Light Fixtures: \$2,000

Window Coverings: \$2,800

Mural(s): \$5,000-\$10,000

Total: **\$20,000-\$25,000**

Hallway Renovations: *Goal: This plan extends the paint colors and carpet of the Alhambra Room design into the hallways and stairs.*

Clean/Repair:

Carpet: \$2,500

Paint: \$2,500

Total **\$5,000**

Commercial Kitchen Upgrade: *Goal: This addition transforms the kitchen from a catering use to a kitchen that can accommodate cooking lessons. This also expands the rental income opportunities.*

Upgrade:

Gas Cooktop/Installation: **\$8,000**

(Will need to confirm with Building Division if any additional venting, etc, required to install this fixture.)

GRANT TOTAL: \$111,000-\$116,000

MEMORANDUM OF UNDERSTANDING AND OPERATING AGREEMENT FOR CLUNIE COMMUNITY CENTER

This MEMORANDUM OF UNDERSTANDING AND OPERATING AGREEMENT (“Agreement”) is made and entered into as of _____, 2012 (“Effective Date”) by and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”), the SACRAMENTO PUBLIC LIBRARY AUTHORITY, a joint powers authority (“AUTHORITY”), and FRIENDS OF EAST SACRAMENTO, a California non-profit corporation (“FOES”), collectively referred to as “Parties” and individually as “Party,” with regard to the possession, use, operation and maintenance of the CITY’s Clunie Community Center (the “Center”).

RECITALS

A. The Center is located at 601 Alhambra Blvd in McKinley Park and has been operated by CITY since the 1930s to provide a place for the residents in the neighborhood to gather for social events, for the public to participate in recreational and enrichment programs offered by the CITY at the Center, and to rent rooms at the Center for special events.

B. The AUTHORITY operates a neighborhood branch library known as the “McKinley Library” within the northern wing of the Center. The Library occupies three rooms at the Center with a combined area of approximately 4,681 sq. ft. and has been in operation for seventy-six (76) years. The AUTHORITY uses the Center’s lobby for public entrance to the Library, and the restrooms in the Center lobby have been used by Library patrons, CITY employees and participants in the programs, meetings and events at the Center, as well as the general public. The AUTHORITY also uses the outdoor patio at the front of the building for its two book return receptacles, and the patio includes bicycle parking racks.

C. The CITY and AUTHORITY have shared the costs for the Center’s utilities because there are not separate meters to allocate usage. The CITY pays for electricity, water and sewer services, and the AUTHORITY pays for gas service for the Center and trash and recycling services for the Library. The CITY maintains the exterior of the building, the HVAC system and other building systems, and the interior of the building, with the exception of the interior rooms occupied by the Library. The CITY provides daily scheduled janitorial services for the lobby and the downstairs restrooms.

D. The CITY has experienced budget shortfalls and can no longer afford to keep the Center open to the public. In 2012, the CITY has discontinued allowing for rentals of the rooms at the Center and the building is generally closed to the public, with the exception of the Library area, and some recreational classes are still being held in the Center until the CITY agreements with those instructors expire later this year.

E. FOES is a nonprofit neighborhood organization that arranges for community events at McKinley Park. FOES has proposed to CITY that FOES lease the Center and assume the responsibility for management of the Center, so that it can continue to be used for recreational and educational programs and for rentals for meetings and social events. FOES is undergoing a fundraising campaign and has received donations to help fund the costs to operate the Center and renovate some of the rooms in the Center. FOES plans to arrange to sublease portions of the Center, and to continue recreational classes and rentals at the Center to generate funds to cover its costs to manage the Center and for building maintenance and utility costs.

F. FOES and CITY intend to enter into a long-term lease (the "Lease") to transfer the right to FOES to manage and occupy the Center, but excluding the Library and certain other portions of the building needed by CITY for its aquatic operations. With this transition, the Parties need to address their respective rights over use and maintenance of the Center's common areas, payment of their respective share of the Center's utility and building service costs, and to identify which Party is responsible for maintenance of certain portions 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. COMMON AREA

For the purpose of this Agreement, the "Common Area" is defined as the 1,470 sq. ft. interior lobby at the entrance to the Center, the downstairs restrooms connected to the lobby, and the outdoor brick patio at the public entrance to the Center.

2. ALTERATIONS TO COMMON AREA

After execution of the Lease with the CITY, FOES intends to undertake certain improvements to the Center, which include alterations to the Common Area. Within the lobby, FOES plans to improve the lighting, provide furniture to create seating areas, and arrange for a coffee cart vendor to sell food and beverages to the public. FOES also may install a punch code, keyed or other locking system on the downstairs restroom doors to allow for access control and will provide the code or keys to the AUTHORITY to allow the Library patrons access to the restrooms.

Outside the Center in the park area, FOES plans on improving the landscaping, adding signage, and installing a concrete pad on the north side of the Center entrance to allow for relocation of the bicycle parking racks from the patio. Within the patio area, FOES plans on installing concrete tables and benches, replacing the exterior lighting, and at the building entrance refinishing the wood doors and repairing the concrete.

The Parties approve of these planned alterations to the Common Area. FOES will coordinate with the AUTHORITY in temporarily relocating the book receptacles and scheduling the repair work to the building entrance and the lobby improvements to minimize disruption to Library operations. The book receptacles will remain on the patio until such time as a direct-to-Library book drop slot is installed on the exterior wall of the building or the book receptacles are relocated to the northwest corner of the building near the Library's staff entrance door, at FOES' option. The AUTHORITY will cooperate with FOES to cause the direct-to-Library book drop to be installed or the book receptacles to be relocated within 90 days after the parties have approved plans for same. FOES shall be responsible for 100% of the costs of the work according to the selected and approved plans, and FOES may cause such work to be performed with its own forces. An AUTHORITY representative shall have the right to monitor and/or inspect FOES' work. FOES will coordinate with the AUTHORITY in removing some of the existing posted materials, billboards and newsracks in the lobby area. FOES will allow the AUTHORITY to post signage and notices in the lobby and patio areas with regard to its operations and events.

AUTHORITY shall not be responsible for compliance with requirements under the state and federal disability access laws, including retrofit costs, which are triggered by FOES' renovations or alterations to the Center.

3. COMMON AREA RULES

The Parties agree to the Common Area Rules of Conduct (the "Rules") as set forth in Exhibit A, which is attached and incorporated herein. These Rules may be posted by FOES within the Common Area. Any Party may enforce these rules if violated by an employee, contractor, sublessee or agent of the Parties, or by a member of the public, by requesting they comply with the Rules or leave the Common Area. The Rules may be amended from time to time by mutual written agreement of the Parties without the need for a formal amendment to this Agreement.

In its occupancy and use of the Center, each Party shall comply with all applicable federal, state and local laws, regulations and ordinances, and shall not discriminate against any person on the ground of race, color, religion, sex, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation.

The parties acknowledge that the Leases shall give FOES general rights and responsibilities to manage and maintain the Common Areas.

4. BUILDING MAINTENANCE AND SERVICES

CITY's and FOES' respective obligations with regard to the Center building maintenance and services will be addressed in the Lease, which provisions shall control in the event of any conflicting statements set out in this Agreement. In general, FOES will be responsible for maintenance, repair and replacement of the following systems, fixtures and components necessitated by the normal use and wear of that portion of the Center allocated to FOES (the "Premises") under the Lease, but excluding damages caused by vandalism:

- (1) Security Alarm System (not covered under CITY services contract);
- (2) Interior lighting bulbs and light fixtures;
- (3) All interior improvements including walls, ceiling tiles, flooring and window coverings, and doors and windows including hardware and glass replacement;
- (4) Painting the interior of the Center and graffiti removal;
- (5) Telephone and computer-related wires and systems;
- (6) Minor plumbing (e.g., toilet malfunction), electrical hardware, and equipment repairs; and
- (7) All furniture, fixtures and equipment.

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

- (1) Fire Alarm System;
- (2) Elevators;
- (3) Heating and air conditioning systems;
- (4) Roofing leaks and defects and weather proofing;
- (5) Plumbing and electrical pipes, wires and systems inside the interior walls;
- (6) Building structure; and

- (7) Painting and caulking the exterior of the building if signs of paint deterioration or water intrusion exist.

CITY will also provide for the continuation of the following building services at the Center under CITY's master service contracts: pest control, fire alarm, security alarm, fire extinguisher and elevators. CITY will also maintain the landscaping irrigation system, plantings and lighting in the adjoining park.

As and to the extent set forth in the City's Lease with FOES, CITY or FOES shall continue to arrange for janitorial services to maintain the lobby and the downstairs restrooms in a safe, sanitary and neat condition and to keep the restrooms supplied with paper products.

Except as otherwise provided in this Agreement or the Lease, each party shall be responsible for maintenance, repair and control of their respective equipment and personal properties and portions of the Center and Library under their exclusive control. In addition, each party hereto shall also be responsible for maintenance and/or repair of portions of the Common Areas to the extent damaged or misused by such party.

5. AUTHORITY USE OF THE CENTER

A. Common Areas – AUTHORITY shall be provided a key to the front door of the building to allow entrance to the Library through the lobby area during Library hours of operation. AUTHORITY shall be entitled to post reasonable signage and notices in the lobby and patio areas with regard to Library programs, services and events.

B. Programs and Events - FOES shall make available and reserve use of the Center meeting rooms, at no cost to AUTHORITY, for regularly scheduled Library-sponsored programs and events (e.g., storytime). AUTHORITY may use the Great Hall, East Sacramento Room and/or the Alhambra Room for special events or activities sponsored or co-sponsored by Library up to sixty (60) occurrences a year at no cost to AUTHORITY as long as the date and time of the Library-sponsored special event or activity does not conflict with a prior rental reservation made by FOES. For regularly scheduled Library programs and events, FOES and AUTHORITY shall meet twice a year at prescheduled intervals to develop a master calendar for AUTHORITY use of the Center meeting rooms. The schedule shall be arranged so as not to conflict with prior rental reservations and can be modified by mutual agreement at any time. For special programs and events, AUTHORITY will provide FOES with minimum fourteen (14) calendar days advance written notice of the date, time and room(s) requested and the nature of the program or event. If feasible based on the anticipated number of participants, AUTHORITY shall use the room(s) as designated by FOES rather than the room(s) requested to minimize interference with FOES operation and prior rental reservations. Notwithstanding anything to the contrary in the foregoing, (a) after 5:00pm on weekdays and any time on weekends, free use of the Center by the AUTHORITY shall be limited to the East Sac Room at the election of FOES, and (b) after any and all uses of the Center by the AUTHORITY, the AUTHORITY shall clean the rooms used and return all furnishings to their proper places.

C. Utilities – Until such time as separate gas meters are installed at the Center, AUTHORITY will pay utility provider for the cost of gas services for the Center, not to exceed 6,456 therms annually (the "**Annual Cap**"), beginning the date FOES commences occupancy of the Center as provided in the Lease. FOES shall be responsible for the overages and shall reimburse AUTHORITY for the cost of the gas usage in excess of the Annual Cap at the average price per therm for the prior twelve-month period. The AUTHORITY will send

statements to FOES monthly showing gas usage for the previous month and annual use to date. For purposes hereof, "annually" shall mean the 12-month period commencing of the first (1st) day of of the first (1st) full calendar month after FOES commences occupancy of the Center under the Lease and continuing for 12-calendar months thereafter. At the end of the annual period, AUTHORITY will invoice FOES for any gas usage in excess of the Annual Cap. Such payment will be due from FOES within 30-days after FOES' receipt of an appropriate statement from the AUTHORITY for same. If and to the extent that the AUTHORITY expands its current operating hours of the Library, then the Annual Cap shall be increased proportionately.

Each of FOES and the AUTHORITY shall be responsible for reimbursing the CITY for other utilities (e.g., electric, water) per separate agreements those parties have with the CITY. FOES and AUTHORITY shall each be responsible for trash and recycling services associated with their respective use of the Center.

6. TERM

The term of this Agreement shall commence as of the effective date of the Lease and shall be concurrent with the term of the Lease.

However, notwithstanding any termination of this Agreement, the AUTHORITY shall continue to have rights of access to the Common Area for use by its Library employees and patrons.

If the Lease between FOES and CITY is terminated, this Agreement shall also terminate as of the same date that the Lease expires. In that event, the CITY and AUTHORITY may enter into a separate agreement as may be needed to address their respective rights with regard to use and maintenance of the Center.

If AUTHORITY ceases to operate the Library, its obligations as set out herein shall also terminate as of the date the AUTHORITY vacates the Library at the Center or 60 days after notice of closure from the AUTHORITY to FOES, whichever is later.

7. OTHER CITY AND AUTHORITY AGREEMENTS

Except as expressly set out herein, nothing in this Agreement is intended to modify the terms and provisions of any existing agreement or informal arrangement between the CITY and AUTHORITY with regard to AUTHORITY's right to occupy and use the Library portion of the Center.

8. NO JOINT VENTURE

It is understood and agreed that each Party is an independent public agency or corporation and that this Agreement shall not create a relationship between CITY, AUTHORITY and FOES 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.

9. 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.

10. INSURANCE AND INDEMNITY

FOES agrees that as part of the Lease indemnity and insurance obligations, the AUTHORITY will be named as an additional insured under FOES' CGL policy, so as to protect the AUTHORITY from liability under tort claims arising from the acts or omissions of FOES and for any damage to the AUTHORITY's property caused by FOES possession, use, operation and maintenance of the Center. The AUTHORITY represents to FOES that the AUTHORITY will maintain a liability insurance policy in place during the term of this Agreement with respect to the AUTHORITY's activities at the center in accordance with the AUTHORITY's normal past practices.

Each party shall assume the responsibility and liability for and shall indemnify, defend, and hold harmless the other parties and their agents, officers, and employees, from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses incurred, including attorney fees, to which any or all of them may be subjected as the result of the indemnifying party's performance of this Agreement and/or use or occupancy of the Center, whether or not the matter is litigated, settled or reduced to judgment.

It is the intent of the parties that where the fault is determined to have been contributory as to any liability, claim, loss, damage, charge or expense, principles of comparative fault will be followed and each party shall bear the proportionate cost of any liability, claim, loss, damage, charge or expense attributable to that party's negligence.

The parties shall establish procedures to notify the other party, where appropriate, of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity provision. Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement.

The indemnification provisions contained in the Agreement include, but are not limited to, any violation of applicable law, ordinance, regulation or rule, including whether the claim, loss, damage, charge or expense was caused by deliberate, willful or criminal acts of any party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.

11. NOTICE

All notices, consents, approvals and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) day after delivery to any overnight courier service, fee prepaid; or (c) three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as follows:

CITY: City of Sacramento
Director, Parks and Recreation Department
New City Hall
915 I Street, 5th Floor
Sacramento, CA 95814

AUTHORITY: Sacramento Public Library Authority
Attn: Rivkah Sass, Library Director
828 I Street
Sacramento, CA 95814

FOES: Friends of East Sacramento
Attn: Cecily Hastings
3104 "O" Street #222
Sacramento, CA 95816

with a mandatory copy to:

David A. Diepenbrock, Esq.
Diepenbrock Elkin LLP
500 Capitol Mall, Suite 2200
Sacramento, CA 95814

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

12. GENERAL.

12.1 This Agreement may be amended only by means of a writing signed by all parties hereto. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, discussions and understandings, whether oral or written.

12.2 Time is of the essence in connection with this Agreement. Paragraph headings and captions in this Agreement are for convenience only. This Agreement may be executed in one or more counterparts. Facsimile and PDF (portable document format) signatures on this Agreement shall be binding as if original.

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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

**FRIENDS OF EAST
SACRAMENTO,** a California non-profit corporation

By: _____
James L. Combs
Director of Parks and Recreation
For: John F. Shirey, City Manager

By: _____
Cecily Hastings

Attest:

By _____
City Clerk

Approved As To Form:

By _____
Senior Deputy City Attorney

SACRAMENTO PUBLIC LIBRARY AUTHORITY,
a joint powers authority

By: _____
Rivkah K. Sass
Library Director

EXHIBIT A

CLUNIE BUILDING COMMON AREA RULES OF CONDUCT

Lobby, Rest Rooms and Patio

1. Inappropriate use of restroom facilities is prohibited.
2. Only strollers, carts that fit under the Library tables, and carts to transport books from the outdoor book receptacles into the Library are allowed.
3. No amplified music or sound is permitted unless associated with programs and events at the Center.
4. Dress appropriately.
5. No loud or boisterous behavior, or use of obscene or vulgar language, is permitted within the building or on the patio.
6. Animals are not allowed in the building, unless a service animal.
7. No smoking anywhere in the building or within 20 feet of the front patio.
8. Customers of the coffee cart operator during its operating hours and participants in programs and events at the Center have priority seating in the lobby and patio area.

Individuals or groups in violation of these Rules may be requested to leave the building and patio areas.