

Meeting Date: 5/27/2014

Report Type: Consent

Report ID: 2014-00304

Title: Lease Agreement: Mutual Assistance Network for Johnston Community Center

Location: 231 Eleanor Avenue, District 2

Recommendation: Pass a Motion 1) finding that it is in the best interest of the City to continue to lease Johnston Community Center to the non-profit Mutual Assistance Network without competitive bidding, for a monthly rent due to the City of \$1,000, due to the long-term operation and maintenance provided by the Network; and 2) authorizing the City Manager or the City Manager's designee to execute a five-year lease agreement with the Network.

Contact: 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-Johnston Center Lease Agreement

City Attorney Review

Approved as to Form
Sheryl Patterson
5/9/2014 3:09:22 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 5/8/2014 5:29:16 PM

Description/Analysis

Issue Detail: Under City Code Section 3.68.110(E), the lease of City property to a nonprofit tax-exempt community civic organization with a membership comprised predominantly of persons residing in the City may be approved without competitive bidding.

Mutual Assistance Network (MAN), a 501(c)(3) charitable nonprofit organization, was formed in 1994 to serve the community of Del Paso Heights. MAN has leased the City's Johnston Community Center located at 231 Eleanor Avenue since May 2009. The Community Center building is located within a portion of the 27-acre Johnston Community Park. MAN offers free and low cost after-school homework assistance and enrichment classes, youth summer camp and sports leagues, and exercise classes at this Center. MAN currently pays the City \$988 per month to offset the City's costs for all utilities and building services, and MAN is responsible for routine maintenance and janitorial services similar to other City community center leases with non-profit groups. The current lease expires on May 14, 2014. City staff recommends the City Council approve a new lease with MAN for a period of five years at a new lease rate of \$1,000 per month.

Policy Considerations: The operation of Johnston Community Center by MAN is consistent with City Council priorities of preserving and enhancing neighborhoods through strong neighborhood associations and leadership.

Economic Impacts: Not applicable.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that do not constitute a "project" as defined by the CEQA Guidelines Section 15378(b)(2) [Title 14 Cal. Code Reg. 15000 et seq.].

Sustainability: Not applicable.

Commission/Committee Action: None with this item.

Rationale for Recommendation: Since 2009, MAN has managed the Center as a community facility and has offered low cost services mostly focused on youth and their parents, including community classes, after school programs and summer camps. The organization has maintained the facility well, is current with all lease payments, and has been a good partner in managing this facility for the benefit of the Del Paso Heights community.

Financial Considerations: A five-year lease for the period May 15, 2014 through May 14, 2019 will generate annual rent of \$12,000. All funds collected will be deposited in the General Fund, Community Center division and will be used for costs related to the community center utilities and building services that are not the responsibility of the lessee.

Local Business Enterprise (LBE): Not applicable.

LEASE AGREEMENT JOHNSTON COMMUNITY CENTER

THIS LEASE AGREEMENT ("Lease"), is made as of May 15, 2014 ("Execution Date") by and between the CITY OF SACRAMENTO, a municipal corporation ("City " or "LESSOR"), and the MUTUAL ASSISTANCE NETWORK OF DEL PASO HEIGHTS, a California nonprofit corporation ("MAN" or "LESSEE").

BACKGROUND

- A. MAN was formed in 1994 to serve the community of Del Paso Heights, focusing on providing social services and improving health by offering parenting classes, recreational classes, after school enrichment programs, youth sports activities, recreational camps and sponsoring community events.
- B. The Johnston Community Center is within the 27 acre Johnston Community Park. Johnston Community Park offers baseball and soccer fields, playgrounds, and swimming and wading pools.
- C. In 2009, City leased the Johnston Community Center to MAN (City Agreement 2009-0403) to manage and use for providing recreational and enrichment programs to benefit the Del Paso Heights community. Because City charges below market rent under the lease, MAN is able to provide programs at a low cost to benefit the community. This lease is set to expire on May 14, 2014.
- D. Under City Code Section 3.68.110, the lease of City property to a nonprofit tax-exempt community civic organization with a membership comprised predominantly of persons residing in the City may be approved without competitive bidding. CITY and MAN desire to renew the lease of the Johnston Community Center for another five year term.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual commitments as hereinafter set forth, LESSEE and LESSOR enter into this Lease for the purpose of establishing each party's rights and obligations with regard to the occupancy, use and maintenance of the Premises as follows:

1. DESCRIPTION OF PREMISES.

Subject to the terms and conditions hereinafter set forth, LESSOR hereby leases to LESSEE, and LESSEE hereby leases from LESSOR, a portion of the parcel of property owned by LESSOR, located in the City of Sacramento, County of Sacramento, State of California, as depicted in Exhibit "A," and commonly known as the Johnston Community Center located at 231 Eleanor Avenue (the "Premises"), excluding areas for City swimming pool operations.

2. TERM.

The "Term" of this Lease shall be for five (5) years commencing on May 15, 2014 and expiring on May 14, 2019, subject to prior termination by LESSOR or in the event of breach of any the terms and conditions of this Lease pursuant to Sections 22 and 23. If LESSEE shall for any reason holdover beyond the Term with LESSOR's consent, express or implied, such holding over shall not be a renewal of this Lease but shall be a month-to-month tenancy subject to the terms and conditions of this Lease or subject to such other terms as LESSOR may specify.

3. RENT.

- a. LESSEE agrees to and shall pay to LESSOR as designated below, or at such place as LESSOR shall from time to time designate, monthly rent for the Premises. Said payment shall be payable in advance on or before the tenth (10th) day of each month to the City of Sacramento, Revenue Division, 915 Street, 1st Floor, Sacramento, California 95814.
- b. The monthly rental rates for the Lease Term shall be One Thousand Dollars (\$1,000.00) per month.
- c. A late charge ("Late Charge") of six percent (6%) of the amount due shall be added to any amount, which is not received by the LESSOR's Revenue Division on or before ten (10) days after the due date. The rent amount due and Late Charge shall compound at a rate of one and five tenths percent (1.5%) monthly until the outstanding balance is paid in full. Imposition and/or collection of a Late Charge shall in no way be construed as a waiver of any right or remedy available to LESSOR in the event of a default by LESSEE.

4. PERMITTED USE.

- a. The LESSEE shall, during the Term of this Lease, occupy, maintain, and operate the Premises as a community center for purposes of artistic, cultural, educational, recreational, social and commercial activities and other activities of benefit to the community; and the failure of the LESSEE to so occupy, maintain, and operate the Premises shall result in termination of the Lease. The Johnston Community Center shall be operated and maintained by LESSEE only as a non-profit activity in accordance with its 501(c)(3) non-profit status as designated by the Internal Revenue Service.
- b. Because the Premises are a part of publicly owned land, it is agreed by the LESSEE that the Premises shall be available to all persons desiring to use the same; subject, however to necessary rules and regulations invoked by the LESSEE for the purpose of conducting its activities and protecting the

Premises and the rights of all persons who desire to use the facilities in a peaceful and lawful manner.

- c. LESSEE shall neither permit nor carry on any activity nor allow any condition on the Premises which is a public or private nuisance.
- d. LESSEE is permitted to rent rooms within the Premises for community meetings and events for the purpose of generating revenues needed to fund LESSEE's costs to operate and maintain the Premises. LESSEE shall only charge reasonable fees for such rentals and shall provide public notification of the availability of the Premises for rental.

5. LESSOR's RESERVED USE OF PREMISES.

LESSOR reserves the right to enter and use the Premises, and LESSOR shall not be liable to LESSEE for any loss of anticipated revenues or for LESSEE's loss of occupation and quiet enjoyment of the Premises due to entry by LESSOR, under the following conditions:

- a. Meetings and Events – LESSOR may use the Premises for community meetings or events sponsored or co-sponsored by LESSOR up to four times a year at no cost to LESSOR. However, LESSOR may not displace LESSEE's scheduled programs, nor displace persons or groups which have prior rental reservations based on permits or other written confirmations issued by LESSEE with dates or times which would conflict with the date and time of LESSOR's meeting or event. LESSOR shall provide LESSEE with ten (10) days advance written notice of the date, time and room(s) requested and the nature of the LESSOR-sponsored meeting or event. If feasible based on the anticipated number of participants, LESSOR shall use the room(s) as designated by LESSEE rather than the room(s) requested to minimize interference with LESSEE's operations.
- b. Emergency Shelter – LESSOR shall have the right to occupy all or a portion of the Premises in the event of a public emergency which requires shelter be provided to the public due to severe inclement weather (including excessive heat or extremely cold temperatures) 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. LESSOR shall strive to provide at least 24 hours advanced written or oral notice to LESSEE of the date and time and rooms it intends to occupy and the expected duration that the Premises as a shelter would need to remain open to the public, or as an emergency command or service center would remain occupied by LESSOR and other government agencies. LESSOR shall be responsible for any damage caused to the Premises by the public or by LESSOR and

for utility and building service costs during such occupancy period, and LESSOR shall assume the additional janitorial and repair costs needed due to such occupancy to make the Premises suitable again for programs and rentals by LESSEE. LESSOR shall reimburse LESSEE for any lost revenues from rentals which had to be cancelled due to LESSOR's occupancy of the Premises. If LESSOR's occupancy extends for a prolonged period of time and the lost anticipated rental revenue caused by such occupancy could affect LESSEE's 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 LESSEE.

6. LESSOR PROVIDED FACILITIES AND SERVICES AND LESSOR'S MAINTENANCE RESPONSIBILITIES.

- a. LESSOR shall provide and maintain public parking spaces for the use of the general public and patrons of the Premises.
- b. LESSOR shall maintain all landscaped and planted areas within and outside the Premises.
- c. LESSOR shall maintain swimming pool, pool restrooms and pool building areas; however, LESSOR is not required to open the pool for use each summer.
- d. LESSOR will furnish water and sewer services, trash and garbage disposal, gas, electricity, heating, ventilating and air conditioning.
- e. LESSOR shall maintain the roof, exterior walls and the utility systems, pipes and conduits outside the Premises.
- f. If the Premises is significantly damaged or there are building structural or system failures and the costs of the repairs exceeds the resources available to LESSOR to undertake the corrective work, then the Parties shall meet to determine if the Premises without such repairs is or will be unsafe or unsuitable for public use and the Lease must be terminated or if the Lease can be modified to restrict use of certain areas of the Premises until the corrective work can be undertaken. If the Parties are unable to mutually agree to the proper course of action, LESSOR shall have the right to terminate the Lease if it determines in its sole discretion that the Premises is unsafe or unsuitable for public use.

7. LESSEE OPERATION OF PREMISES.

- a. LESSEE shall operate and manage the service and Premises offered in a professional, businesslike manner.

- b. LESSEE shall ensure that LESSEE's employees shall at all times conduct themselves in a professional manner. LESSEE shall maintain a staff adequate to operate and administer the Premises and programs in a safe and orderly manner.
- c. LESSEE agrees that a person shall be in attendance on the Premises during all operation hours who is authorized to make decisions binding on LESSEE regarding the operation of the Premises.
- d. LESSEE shall actively seek to publicize rental of the facilities and participation in activities at the Premises through the Internet, informational flyers, signage at the Premises and/or other media as determined by LESSEE. Hours of operation shall be publicly posted.
- e. If any employees, volunteers or subcontractors of LESSEE who are to perform services at the Premises are in a position to exercise supervisory or disciplinary authority over any minor child, then LESSEE shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers, and 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. LESSEE shall submit proof or certification of such DOJ clearances to LESSOR upon request. 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 LESSEE.
- f. LESSEE shall promptly comply with written reasonable orders that may be issued from time to time by the LESSOR as to matters concerning the operation of the Premises as it may affect the best interests of the public using the Center and the adjacent park.

8. LESSEE'S MAINTENANCE RESPONSIBILITIES.

- a. LESSEE shall be responsible for routine and regular maintenance of the Premises and shall maintain the Premises in a safe, clean, sanitary, orderly and attractive condition.
- b. LESSEE shall cause to be repaired at LESSEE's own expense any and all damage to the Premises (including all LESSOR-provided property, facilities, fixtures, equipment and furnishings) over and above normal use and wear, of any type whatsoever, which is caused by LESSEE or LESSEE's employees, agents, or invitees. LESSEE may request that LESSOR repair such damage, and if LESSOR agrees, LESSEE shall pay LESSOR's cost of repair within

15 days after LESSOR requests payment in writing. LESSOR shall not be obligated to provide such repairs.

- c. LESSEE shall assume the responsibility and expense for janitorial services, including the provision of basic cleaning agents, the monitored security system serving the Premises, and all telephone and computer services.

9. TERMS AND CONDITIONS APPLICABLE TO CONSTRUCTION OF IMPROVEMENTS.

- a. During the Term of this Lease, LESSEE may elect to perform improvements of the Premises, providing that all construction work shall be done in accordance with specifications approved in writing in advance by LESSOR. Any additions to or alterations of the Premises shall be at LESSEE's expense and shall become at once a part of the Premises in which they are situated free from any liens arising out of any work performed, material furnished, or obligations incurred.
- b. In the event LESSEE makes any alterations or improvements to the Premises pursuant to this Section 9, LESSEE shall, at LESSEE's sole cost and expense, be responsible for insuring that such alterations or improvements comply with all aspects of the Americans with Disabilities Act of 1990, any amendment thereto or regulations promulgated thereunder, or state or local ordinances or codes enacted pursuant thereto (collectively, the "ADA")
- c. LESSEE has occupied the Premises since May of 2009 and is fully informed of the condition of the Premises. LESSEE accepts the Premises in its existing condition and agrees that no demands for any alterations, additions, repairs, or replacements are to be made upon the LESSOR, except in accordance with this Lease and as noted in Section 6.

10. SIGNAGE.

LESSEE shall not cause or allow the placement of permanent signage, including, without limitation, directional, commercial and advertising signage, in or on the Premises, except with the prior written consent of LESSOR. Any signage placed in violation of this Section 10 shall be subject to immediate removal by LESSOR without compensation or liability to LESSEE whatsoever, and LESSEE shall be responsible for all costs associated with such removal.

11. NO WARRANTIES BY LESSOR.

LESSOR makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for the specified use. LESSEE represents and warrants that it has independently made a full and thorough investigation

and examination of the Premises and that it is entering this Lease relying only upon facts ascertained from said independent investigation.

12. LESSOR'S RIGHT OF ENTRY.

LESSOR reserves the right to enter the Premises at reasonable times to carry out any building management or business purpose in or about the Premises, without any abatement of rent. LESSOR, at its sole discretion, may make a detailed and formal inspection and evaluation annually to ensure compliance with this Lease by LESSEE. Each such inspection will be followed by a report in writing with a copy given to LESSEE. Deficiencies as defined by LESSOR shall be remedied by the LESSEE within 14 days after written notification by LESSOR.

13. WAIVER.

The waiver by either party of any breach of any term, covenant or condition herein contained 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.

14. TAXES AND ASSESSMENTS.

LESSEE shall pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State of California, County of Sacramento, City, or any tax or assessment levying body upon any interest in this Lease or any possessory right which LESSEE may have in or to the Premises covered hereby or improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances, and equipment owned or used by LESSEE in or about the Premises. The possessory interest created under this Lease is subject to property taxation and LESSEE shall be subject to payment of property taxes levied on the possessory interest by the County of Sacramento.

15. INDEMNITY AND HOLD HARMLESS.

LESSEE shall assume the defense of, and indemnify and save harmless, LESSOR and its' officers, employees, and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, the performance of this Lease by LESSEE. The foregoing includes, but is not limited to, any attorney fees reasonably incurred by LESSOR, whether for outside counsel or the City Attorney.

16. INSURANCE REQUIREMENTS.

During the term of this Lease, LESSEE shall maintain in full force and effect at its sole cost and expense, the insurance coverage specified on Exhibit "B", attached hereto and incorporated herein by reference.

17. REPORTING AND NOTIFICATION REQUIREMENTS.

- a. LESSEE shall, at all times during the Term of this Lease and for a period of three years thereafter, keep true, accurate, and complete financial records and accounts of its operations of the Premises and such other financial or business records as may be required by LESSOR. LESSOR shall have the right at all times to examine and audit said records and accounts.
- b. LESSEE shall annually provide LESSOR's Director of Parks and Recreation or Director's designee with a list of on-site administration officers including names, addresses, and telephone numbers, and shall notify LESSOR of any changes in officers, which information may be provided by submitting a copy of the Statement of Information filed with the Secretary of State. This list shall be provided on or before the thirty-first (31) day of December. LESSEE shall provide immediate written notification of changes in the Center director to the Director or Director's designee.
- c. LESSEE shall provide the Director or the Director's designee with an unaudited annual financial statement indicating revenues produced from the operation of the Premises and the manner in which said revenues were expended or retained. The annual statement shall be submitted on or before September 30 for the previous fiscal year.

18. EQUAL RIGHTS.

- a. LESSEE agrees that it shall not make any discrimination, distinction, or restriction on account of sex, color, race, religion, ancestry, disability, medical condition, age, sexual orientation, marital status, or national origin of a person or group contrary to the provisions of Section 51 of the Civil Code of the State of California, which is incorporated herein by reference as if set forth hereto in full, or any other applicable federal, state, or local law prohibiting discrimination. Upon a final determination by a court of competent jurisdiction that the LESSEE has violated said section, this Lease may, at LESSOR's option, be deemed forfeited.
- b. All provisions of Part 2.8 of Division 3 of Title 2 (Section 12900 through 12996) of the California Government Code (California Fair Employment and Housing Act) are hereby incorporated herein by reference as if set forth hereto in full. Upon any final determination by a commission or court of competent jurisdiction that the LESSEE has violated any of said statutory

provisions in the performance of this Lease, this Lease may, at LESSOR's option, be deemed forfeited.

19. COMPLIANCE WITH LAW.

- a. LESSEE and its agents and employees shall at all times comply with and abide by all pertinent or applicable regulations and ordinances of the City of Sacramento, the County of Sacramento, and the laws of the State of California and the United States insofar as the same or any of them are applicable, including the ADA, and to obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.
- b. LESSEE represents, warrants and covenants that LESSEE and its agents and employees will occupy and use the Premises in compliance with all applicable federal, state and local laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment ("Environmental Laws"), and that LESSEE will not permit to occur on the Premises any release, generation, storage, disposal or treatment of any hazardous material as that term is defined in any of the Environmental Laws. LESSEE shall immediately notify LESSOR of any such release, generation, storage, disposal or treatment and LESSEE shall take such necessary remediation measures at LESSEE's expense to the complete satisfaction of LESSOR. LESSEE shall immediately notify LESSOR of any complaints, citations, inquiries or notices from any governmental entity relating to compliance with Environmental Laws. LESSEE represents, warrants and covenants that all governmental permits relating to the use or operation of the Premises required by applicable Environmental Laws are and will remain in effect, and LESSEE will comply with them.

20. ASSIGNMENT, SUBLET, HYPOTHECATION.

- a. LESSEE shall not directly or indirectly assign, sublet, or hypothecate any interest in the leasehold estate under this Lease. LESSEE is directly responsible for all events, activities, services, or merchandise conducted or provided on the Premises. The conducting of said events and activities and the offering or provision of goods and services must be under the auspices of authorized officers, employees, or volunteers of LESSEE and all revenue realized within the scope of this Lease must be reflected in LESSEE's financial records. Use of the Premises by some other person or organization shall not relieve LESSEE of its obligations under this Lease.
- b. LESSEE shall not directly or indirectly use, or permit to be used, the Premises or improvements for security for any debt. Excepting only a change in name, the term "assignment" shall include any change in the form of business entity of LESSEE, any merger or consolidation of LESSEE

from that of a California nonprofit corporation whether voluntarily or by operation of law providing; however, that a change of status due only to a change in the California Corporation Code shall not be deemed to be an assignment.

21. SURRENDER.

At the end of the Term of this Lease, or at any time this Lease may be terminated, LESSEE shall peaceably vacate the Premises and any and all improvements located thereon and deliver up the same to LESSOR in a reasonably good condition, ordinary wear and tear excepted. Upon surrender of the Premises, LESSEE or its' representatives shall remove, at its sole cost and expense, its own furniture, furnishings, equipment, inventory and trade fixtures and the Premises shall be restored to its original condition, ordinary wear and tear excepted. Should LESSEE fail to remove said items upon surrender of the Premises, LESSEE shall lose all right, title and interest in and to said items, and LESSOR may elect to keep same upon the Premises or to sell, remove or demolish them without the requirement to reimburse LESSEE therefor.

22. TERMINATION.

Notwithstanding Section 2 herein, LESSOR may terminate this Lease if by majority vote the Sacramento City Council determines it is in the best interest of the LESSOR to do so, and upon giving 180 days written notice. LESSEE may terminate this Lease at any time by giving 30 days written notice to LESSOR.

23. DEFAULTS AND REMEDIES

The following rights and remedies shall be available to LESSOR in the event LESSEE commits any act of default during the Term of this Lease. Unless a different time period is set forth elsewhere in this Lease, LESSEE shall be deemed to be in default only after receipt of written notice from LESSOR specifying the nature of the violation and not having cured said violation within thirty (30) days after receipt of the notice; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, then LESSEE shall not be in default under this Lease if LESSEE commences to cure the failure within the thirty (30) day period and diligently and in good faith continues to cure the failure thereafter. 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 LESSEE - The occurrence of any of the following by LESSEE shall constitute an "Event of Default" under this Lease:

- 1) 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 LESSOR to LESSEE;
 - 2) Failure to perform any other obligation under this Lease;
 - 3) Vacating or abandonment of the Premises;
 - 4) Knowingly providing material false financial statements, but inadvertent errors shall not be considered a default or material breach under any circumstances; or
 - 5) Either the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, a general assignment by LESSEE of its assets for the benefit of creditors, or any action taken or suffered by LESSEE under any insolvency or bankruptcy act.
- b. Remedies - If LESSEE commits an Event of Default, then LESSOR 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 LESSEE, and LESSEE shall immediately surrender possession of the Premises to LESSOR. LESSOR shall be entitled to recover from LESSEE all damages incurred by LESSOR by reason of LESSEE's 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 LESSOR to mitigate the damages caused by LESSEE's breach of this Lease shall not waive LESSOR's right to recover damages. Nothing in this Section 23 shall affect the right of LESSOR 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 LESSOR - LESSOR shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that LESSOR 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 LESSEE to LESSOR. If the default cannot reasonably be cured within thirty (30) days, then LESSOR shall not be in default of this Lease if LESSOR commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

24. NOTICES.

- a. Except as otherwise in this Lease specifically provided, all notices and demands herein required to be given by LESSOR to LESSEE or by LESSEE to LESSOR shall be in writing and delivered in person or by registered or certified mail.

- b. Notices and demands delivered to LESSOR by mail shall be addressed to it at the following address:

Department of Parks and Recreation
City of Sacramento
915 I Street, 3rd Floor
Sacramento, CA 95814
Attention: Department Director
(916) 808-8526

- c. Notices and demands delivered to LESSEE by mail shall be addressed to it at the following address:

Mutual Assistance Network
811 Grand Avenue, Suite #A-3
Sacramento, CA 95838
Attn: Executive Director
(916) 927-7694

25. ATTORNEY FEES.

In any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to reasonable attorney fees and costs of suit, whether for outside counsel or the City Attorney.

26. AMENDMENT IN WRITING.

Any amendment to this Lease shall be in writing and signed by both parties.

27. NO JOINT VENTURE.

The parties to this Lease do not constitute a joint venture, partnership or association other than that of landlord and tenant pursuant to this Lease.

28. TIME OF THE ESSENCE.

Time is of the essence in the performance of LESSEE's obligations under this Lease.

29. EXCUSABLE DELAYS

If the performance of any act required by this Lease to be performed by either LESSOR or LESSEE 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 29 shall excuse the prompt payment owed by LESSEE as required by this Lease or the performance of any act rendered difficult solely because of the financial condition of LESSEE.

30. ENTIRE AGREEMENT.

This Lease constitutes the entire agreement and supercedes any prior written or oral agreements between the parties with respect to the matters contained herein.

[signature page follows]

IN WITNESS WHEREOF, LESSOR and LESSEE have executed this Lease on the date hereinabove first written.

LESSOR: CITY OF SACRAMENTO

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

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST:

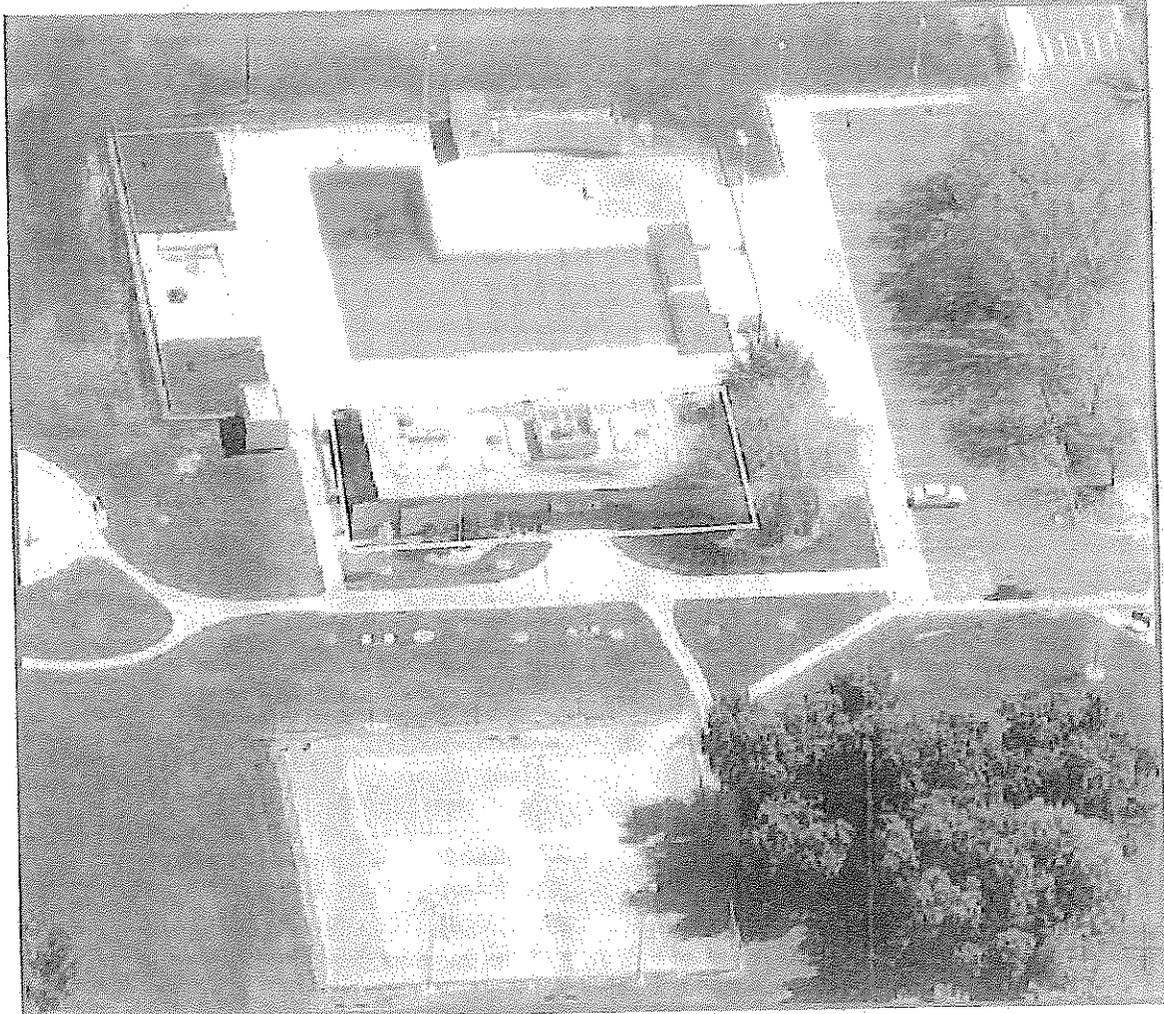
By: _____
City Clerk

LESSEE: MUTUAL ASSISTANCE NETWORK

By: 
Richard Dana, Executive Director

Attachments:
Exhibit A: Diagram of Premises
Exhibit B: Insurance Requirements

EXHIBIT A: DIAGRAM OF PREMISES



CITY OF SACRAMENTO



**Johnston Community Center
231 Eleanor Avenue
Sacramento, CA 95815**

DEPARTMENT OF
PARKS AND
RECREATION

- (3) Workers' Compensation Insurance is required with statutory limits, including a waiver of subrogation in favor of LESSOR and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000).

No Workers' Compensation insurance shall be required if LESSEE completes the following certification:

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

- (4) All Risk Property Insurance including coverage for special perils is required for all LESSEE improvements, fixtures and equipment located on or about the Premises against loss of damage including fire, flood or other acts of nature and vandalism. LESSEE's improvements, fixtures and other equipment shall be insured for replacement value. The proceeds from any such policy shall be used by the LESSEE for replacement of personal property and restoration of LESSEE's improvements or alterations, and City shall be named as a loss payee to insure the insurance proceeds are used for such purposes.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of LESSEE, including products and completed operations of LESSEE and premises owned, leased or used by LESSEE.
- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

- (1) LESSEE's insurance shall be primary as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or

volunteers shall be in excess of LESSEE's insurance and shall not contribute with it.

- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (3) Coverage shall state that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the foregoing requirements must be declared to and approved by the City Risk Management Division.

E. Verification of Coverage

LESSEE shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City's representative. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (1) LESSEE shall provide initial insurance documents to City's representative upon request, prior to execution of the Lease. All future insurance renewal documents shall be sent to:

EBIX BPO
212 Kent Street
Portland, MI, 48875
Phone: (517) 647-1700
Fax: (517) 647-7900
Email: CertsOnly@periculum.com

- (2) LESSOR may withdraw its offer or cancel this Lease if the certificates of insurance and endorsements required have not been provided prior to execution of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by LESSEE of this Lease.

E. Contractors

LESSEE shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A, C and D above.