

Meeting Date: 8/9/2016

Report Type: Consent

Report ID: 2016-00714

Title: Lease Agreement for Robertson Community Center

Location: District 2

Recommendation: Pass a Motion: a) finding that it is in the best interest of the City to lease the Robertson Community Center per City Code Section 3.68.110 E; b) approving the Lease Agreement with Mutual Assistance Network for youth and family service programs at the Center for a three-year term with reimbursement of annual utility and building service costs of \$43,200; and c) authorizing the City Manager or his designee to execute the Lease Agreement.

Contact: Shannon Brown, Operations Manager, (916) 808-6076, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Fiscal And Management Services

Dept ID: 19001011

Attachments:

1-Description/Analysis

2-Exhibit A

City Attorney Review

Approved as to Form

Sheryl Patterson

7/27/2016 1:30:22 PM

Approvals/Acknowledgements

Department Director or Designee: Christopher Conlin - 7/21/2016 5:45:47 PM

Description/Analysis

Issue Detail: On May, 9, 2016, a Request for Proposals was issued to solicit proposals from community based non-profit organizations (CBOs) to operate the Robertson Community Center at Robertson Park to provide recreational and/or enrichment programs that benefit the public. On June 6, 2016 staff received one proposal from Mutual Assistance Network (MAN).

MAN is a 501(c)(3) charitable nonprofit organization that was formed in 1994 to serve the communities of Del Paso Heights and North Sacramento. MAN currently leases the City's Johnston Community Center providing enrichment programs for youth and adults. MAN's proposal for the Robertson Community Center is to offer free and low cost after-school homework assistance and enrichment classes, youth summer camp and sports leagues, and the Reduction in African American Child Death program for adults. Also the center (weight room and teen spot room) will be open for public use during the week. MAN will pay \$3,600 per month to offset the City's costs for utilities and building services and will be responsible for routine maintenance and janitorial services similar to the terms of other City community center leases. MAN will also oversee public use and rentals of the center. The lease term is for three years.

The Robertson Community Center building is located within a portion of the 9.18 acre Robertson Community Park. The Robertson Community Center is approximately 13,500 sq. ft. and includes a multipurpose room, full service kitchen, weight room, office with reception area, Teen Spot room, along with an open courtyard design. The City has previously leased the Robertson Community Center to Gateway Charter School and community programs since 2011, and that lease expired in June, 2016.

Policy Considerations: The operation of Robertson Community Center as proposed by MAN is consistent with City Council's budget priority to continue to keep park and recreation facilities open to the public. The primary goal is for a CBO to provide recreational and youth programs that will benefit the residents in the surrounding community with services focused primarily on youth. The City has partnered with non-profit organizations at the City's Clunie, Johnston, Robertson, Slider, and Southside centers. Also the Sierra II and Shepard's Garden and Arts centers have been under long term leases with CBOs.

Economic Impacts: Not applicable.

Environmental Considerations: The lease to allow continued use of the Robertson Community Center by MAN for community service programs and is exempt from environmental review under the CEQA Guidelines Section 15301, Existing Facilities.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: City Code 3.68.110 E allows for leasing of City facilities to non-profit organizations without competitive bidding. The lessee will be responsible for payment of utility and building service costs, janitorial services, minor repairs, replacement of furniture, fixtures and equipment, and overseeing use of the center by the public.

MAN will manage the Center as a community facility and will offer free and low cost programs mostly focused on youth and their parents, including community classes, after school programs and summer camps.

Financial Considerations: A three-year lease for the period September 1, 2016 through August 31, 2019 will generate annual revenue of \$43,200, for a total of \$129,600. The funds will reimburse the Department of Parks and Recreation for utilities and building services and maintenance of the exterior landscaping.

Local Business Enterprise (LBE): Not applicable.

ROBERTSON COMMUNITY CENTER LEASE

This LEASE AGREEMENT (“Agreement”) is made and entered into as of _____, 2016 (“Effective Date”) by and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”), and the MUTUAL ASSISTANCE NETWORK, a California non-profit corporation (“ORGANIZATION”), with regard to the possession, use, operation and maintenance of the Robertson Community Center (“Center”) located at Robertson Community Park.

Background

- A. Due to CITY’s budget shortfall, CITY desires that the Center remain open to the public as a place for the residents in the neighborhood to gather for social events, to participate in recreational and enrichment programs targeted at youth, and as a safe place for rest and relaxation and use of the recreational equipment and facilities located at the Center by the public at no cost or by payment of minimal user fees.
- B. ORGANIZATION is a community group established in 1994 that offers neighborhood based recreation and education programs which benefit the community consistent with its charitable mission. ORGANIZATION is willing to serve as the “Center Lessee” to assume primary responsibility to keep the Center open to the public on specified days and times in consideration for CITY granting ORGANIZATION the right to use the Center for its events and programs in consideration for reimbursement of CITY’s facility costs and assumption of maintenance of the building.
- C. ORGANIZATION is willing to work with other community groups and neighborhood representatives to accommodate events and programs at the Center by other groups, so long as such other activities do not interfere with the ORGANIZATION’s programs scheduled for the Center.
- D. The Parties also acknowledge that ORGANIZATION may charge user fees for the public to participate in the events and programs it sponsors and to rent the Center for use by other groups to defray ORGANIZATION’s costs to serve as the Center lessee.
- E. ORGANIZATION understands that the Center is a public facility paid for by the CITY taxpayers and that it is the CITY’s desire that the Center continue to be used in a manner that benefits the community. ORGANIZATION is willing to allow the Center to be open to the public to use the equipment, facilities and rooms at times when they are not in use or occupied by the ORGANIZATION’s sponsored events and programs or by other community groups. In this regard, ORGANIZATION’s role will be as a monitor to insure that the public’s use will not damage the equipment, facilities, furniture and fixtures and to control the public’s access into the Center only at times when the ORGANIZATION’s members or adults from other community or neighborhood groups are available and on-site to supervise the public’s use of the Center.

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

AGREEMENT

1. TERM

This Agreement shall be effective on September 1, 2016 and shall expire on August 31, 2019, unless extended by mutual agreement or sooner terminated by either Party by providing at least sixty (60) days advance written notice to the other Party in the manner specified in Section 5 and specifying the date of termination. At the end of the Term of this Agreement, ORGANIZATION shall surrender to CITY the Center and all fixtures, furniture and equipment, and any improvements located thereon in condition equal to or better than that existing on the Effective Date, ordinary wear and tear excepted.

2. CENTER USE AND OPERATIONS

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

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

Facility and Adult Services – Operation of the Reduction in African American Child Death (RAACD) for the Del Paso Heights and North Sacramento neighborhoods, when the Center is open to the public.

College and Sports Academy – Operation of an after school youth program that offers homework and academic assistance, physical fitness, recreational sports, medical physicals, nutrition education, and “in season” athletic league practices.

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

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

<u>Program</u>	<u>Days of the Week</u>	<u>Hours</u>
(a) College and Sports Academy (school year)	Monday - Friday	3 pm to 6 pm
(b) College and Sports Academy (school breaks)	Monday - Friday	8:30 pm to 6 pm
(c) In Season Athletic Leagues	Monday - Friday	after 5 pm
(d) Facility and Adult Services	Monday - Friday	10 am to 1 pm 6 pm to 8 pm
(e) Other Activities and Classes (TBD)	Saturday	TBD

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

<u>Programs/Rooms</u>	<u>Days of the Week</u>	<u>Hours</u>
(a) General Access (weight room)	Monday - Friday	10 am to 1 pm 6 pm to 8 pm
(b) Teen Spot, Teen Center	Monday – Friday Saturday	3 pm to 6 pm 2 pm to 7 pm

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

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

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

ORGANIZATION shall not use or allow any use of the Center that would constitute a nuisance by permitting or creating offensive odors, loud sounds, a dangerous or noxious trade or business, or an unlawful use. ORGANIZATION shall to take all reasonable and appropriate actions to prevent any groups or members of the public from loitering or engaging in any nuisance or unlawful conduct in or about the Center. In no event shall ORGANIZATION or any of its permitted community groups be allowed to sell alcoholic beverages at the Center at any time without the CITY's prior written consent, which consent it may withhold in its sole and exclusive discretion. Alcohol beverages may be served at the Center when it is rented if the renter provides insurance that includes liquor liability coverage and obtain all required permits, including an ABC license if applicable.

E. User Fees - ORGANIZATION may charge community groups a rental fee for use of rooms and the equipment and facilities at the Center to defray ORGANIZATION's costs for the utilities, services, maintenance and janitorial services required for operation of the Center and a proportionate share of ORGANIZATION's administrative costs to manage and supervise the use of the Center by others. ORGANIZATION may charge the public a user fee to participate in recreational,

athletic, enrichment, day care, meals and similar types of programs and events at the Center sponsored by the ORGANIZATION or by other groups commensurate with the costs for providing such programs and events. ORGANIZATION may also charge the public a fee for access to the equipment and facilities at the Center to defray ORGANIZATION's cost to supervise the public's use of the Center and to maintain such equipment and facilities, except during the times when CITY is responsible for such supervision as provided in Section 2.F and 2.G, below.

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

- F. CITY Events – CITY reserves the right to use the Center for City-sponsored public events during days and hours when the Center, or rooms therein, have not been previously scheduled for use by ORGANIZATION or other groups by providing ORGANIZATION with ten (10) days advanced written notice. CITY shall be responsible for clean-up and must leave the Center in its prior condition at the conclusion of each event. If CITY imposes a fee to attend such events, CITY may retain all proceeds that it collects.
- G. Emergency Shelter - CITY shall have the right to occupy all or a portion of the Center 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 ORGANIZATION of the date and time and rooms it intends to occupy and the expected duration that the Center 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 Center 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 Center suitable again for Rentals. CITY shall reimburse ORGANIZATION for any lost revenues from Rentals which had to be cancelled due to CITY's occupancy of the Center. If CITY's occupancy extends for a prolonged period of time and the lost anticipated rental revenue caused by such occupancy could affect ORGANIZATION's ability to meet its financial obligations under this Agreement, the Parties shall meet to determine how to address that shortfall to avoid a default by ORGANIZATION.
- H. Compliance with Laws; Nondiscrimination – In its occupancy and use of the Center as provided under this Agreement, ORGANIZATION shall comply with all applicable federal, state and local laws, regulations and ordinances. If any failure by

the ORGANIZATION to comply with such laws, regulations and ordinances results in any fine, penalty, cost or charge being assessed against CITY, ORGANIZATION shall reimburse and indemnify CITY for such cost.

ORGANIZATION shall not discriminate against any member of the public or community group on the ground of sex, color, race, religion, national origin, ancestry, sexual orientation, marital status, disability or medical condition, genetic information, citizenship, primary language or immigration status of a person or group with regard to ORGANIZATION's occupancy, use and management of the Center including, without limitation, any person who may wish to participate in the programs and events sponsored by ORGANIZATION at the Center. The foregoing is based on Section 51 of the Civil Code of the State of California, which is incorporated herein by reference as if set forth herein in full, and includes any other applicable federal, state, or local law prohibiting discrimination.

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

- I. Background Checks – With regard to any volunteers and employees of ORGANIZATION who are to perform services at the Center in a position having supervisory or disciplinary authority over any minor, ORGANIZATION shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers. The ORGANIZATION must submit fingerprints of such persons in a manner authorized by the DOJ and that proof of such DOJ clearance must be provided to the CITY Contract Manager specified in Section 3.I, below, prior to any volunteers or employees working with minors at the Center. ORGANIZATION shall also provide to CITY a list of the names of its volunteers and employees who work at the Center and certify that those volunteers and employees have received a DOJ clearance. Any person who has been convicted of an offense listed in Public Resources Code Section 5164 shall be prohibited from working or performing services at the Center.

- J. CITY Access – ORGANIZATION shall permit CITY and its employees and authorized agents to enter the Center at all reasonable times during usual Center hours of operation or upon twenty-four (24) hours advance notice for the purpose of inspecting the Center and determining compliance by ORGANIZATION and its authorized groups and tenants with the requirements of this Agreement.

- K. Books and Records – All books, contracts, records, documents and other related papers including, without limitation, financial records (“Books and Records”) of the ORGANIZATION with respect to its occupancy, use and rental of the Center shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the City or its agents. The Books and Records of the operation of the Center by ORGANIZATION shall be kept in accordance with generally accepted accounting principles. ORGANIZATION shall provide City with access to the Center and its Books and Records during reasonable hours for the purpose of reviewing ORGANIZATION's compliance with the terms of this Agreement.

- L. Reporting - ORGANIZATION shall provide the CITY Contract Manager, specified in Section 3.I, below, with a list of the names of its volunteers and employees who work at the Center and all other organizations which have been permitted to use the Center on a regular basis (i.e., excluding renters). ORGANIZATION shall also contact the CITY Contract Manager in the event of the discovery of any health or safety hazard, any incident of injury or illness, or any improper or illegal action of any person which occurs at the Center.
- M. Safety - ORGANIZATION shall conduct its activities in a safe and professional manner and in accordance with all applicable laws, codes, orders, regulations and ordinances of all governmental authorities having jurisdiction over the Center and the activities therein.
- N. Contamination – ORGANIZATION shall not deposit, spill, pour, discharge or otherwise release into, or through the soil or groundwater on the Center or park property any hazardous materials. The terms “hazardous materials” shall include any substance, waste, material, or pollutant which poses a hazard to the environment.
- O. Rules - ORGANIZATION shall promptly comply with reasonable written orders that may be issued from time to time by CITY as to matters concerning the operation of the Center as it may affect the best interests of the public using the Center and the adjacent park.

3. BUILDING UTILITIES, SERVICES AND MAINTENANCE

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

- A. Utilities - ORGANIZATION shall pay CITY \$3,475 monthly for the costs of water, sewer, electricity and gas services (collectively “Utilities”) provided for the Center. This amount is based on CITY’s average annual cost for utilities for the Center of approximately \$41,700 (“Base Annual Rate”).

If ORGANIZATION’s use of the Center results in a total average annual cost for Utilities which is at least 10% less than the Base Annual Rate, CITY will notify ORGANIZATION and adjust the monthly utility charge accordingly. If ORGANIZATION’s use of the Center results in a total average annual cost for Utilities which is at least 10% more than the Base Annual Rate, CITY shall notify ORGANIZATION, which may either agree to reduce its use of the Center so as to lower the cost for utilities or pay the higher monthly utility charge.

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

- B. Garbage - ORGANIZATION shall comply with all applicable provisions of the Sacramento City Code related to refuse garbage storage, removal and collection. ORGANIZATION shall tie all trash bags prior to placing them in garbage receptacles. ORGANIZATION shall ensure that the lid on the garbage receptacle is closed at all times. ORGANIZATION shall ensure that trash is not dragged on any surfaces within the Center or the park. ORGANIZATION agrees to arrange and pay for commercial trash removal services on a regular schedule of at least once every week, or more frequently if, in CITY's reasonable discretion, odor, health, or safety problems have been caused by ORGANIZATION's garbage storage and removal practices.
- C. Services - ORGANIZATION shall also pay CITY \$125 monthly for the costs of pest control, security alarm monitoring, Ansell system maintenance (if applicable), and fire extinguisher maintenance services (collectively "Building Services") provided for the Center. If the rates for the Center Building Services paid by CITY are increased by the service providers during the Term of this Agreement, CITY may adjust the monthly charge for Building Services accordingly after providing prior written notice to ORGANIZATION.

ORGANIZATION shall arrange for separate telephone service and computer Internet services to be billed directly to ORGANIZATION. ORGANIZATION shall provide CITY Contract Manager, specified in Section 3.I, below, with copies of all of its service contracts for the Center prior to ORGANIZATION's possession of the Center under this Agreement, and within thirty (30) days after execution of any new service contracts for the Premises.

- D. Maintenance - ORGANIZATION shall be solely responsible for maintenance, repair and replacement of the following Center systems, fixtures and components necessitated by the normal use and wear of the building and facilities, but excluding damages caused by vandalism:
- (1) Furniture, fixtures and equipment in the Center building in a condition and repair equal to or better than existing on the Effective Date, reasonable wear and tear excepted. All broken or damaged items shall be removed and, if appropriate, replaced by ORGANIZATION within thirty (30) days.
 - (2) Security Alarm System.
 - (3) Lighting bulbs and fixtures.
 - (4) All interior improvements including walls, ceiling tiles, flooring and window coverings, doors and windows, including glass replacement.
 - (5) Painting the interior of the Center and graffiti removal.
 - (6) Telephone and computer-related wires and systems.
 - (7) Minor plumbing (e.g., toilet malfunction) and incidental expenses.

ORGANIZATION shall first notify CITY Contract Manager, specified in Section 3.I, below, of the required maintenance work and the estimated costs of the repairs and ORGANIZATION's schedule for completion of the work. If ORGANIZATION fails or refuses to maintain, repair or replace any of the foregoing items in a manner reasonably satisfactory to CITY so that the systems remains

operable and the Center remains in good condition; after providing prior written notice to ORGANIZATION, CITY may elect to perform such maintenance and to make the necessary repairs or replacements on ORGANIZATION's behalf. In such event, ORGANIZATION shall refund to CITY the cost of such work as "Maintenance Charges" within ten (10) days after receipt from CITY of an invoice specifying said work and its cost.

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

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

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

E. Janitorial - ORGANIZATION shall be solely responsible for arranging for custodial and janitorial services to maintain the Center in a safe, sanitary and neat condition. Such services shall include, without limitation, routine trash and garbage removal, mopping and waxing floors, vacuuming carpets, dusting furniture and window sills, washing windows, and cleaning drapes, upholstery, tables and chairs and other furniture and fixtures (collectively "Janitorial Services"). If any event of pest or vermin infestation is found in the Center, ORGANIZATION shall immediately contract with a bonded, professional pest-and-sanitation control operator to immediately remedy such infestation.

F. Reporting - ORGANIZATION will report to the CITY Contract Manager, specified in Section 3.I, below, as soon as any of the following are observed:

- (1) Graffiti, vandalism or other illegal activity in or around the building and adjacent parking lot and park facilities;
- (2) Exterior building or parking lot lighting is inoperable;
- (3) Parking lot pavement cracking and uplifting presents a safety hazard;
- (4) Roof leaks, electrical system default, plumbing system pipe ruptures, or if HVAC system becomes inoperable; and
- (5) Any other problems which may pose a health or safety hazard.

G. Suspension of Use – Whenever the condition of the Center and/or the exterior areas surrounding the building could expose the public to safety or health hazards or could cause damage to their personal property, ORGANIZATION shall immediately discontinue use of the Center and shall prevent public entry until the defects can be remediated and the threat of injury or damage to the public and property no longer exists. If CITY discovers such safety or hazardous conditions at or near the Center, CITY shall have the right to order the Center immediately closed until such conditions are remedied or removed by ORGANIZATION and/or by CITY.

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

- (1) CITY Events - If CITY uses the Center for City-sponsored public events more frequently than once a month, CITY will pay ORGANIZATION a proportionate share of ORGANIZATION's monthly cost for Utilities, Building Services and Janitorial Services for that month based on a percentage measured by the total number of days CITY used the Center as compared to the total number of days that the Center was open that same month.
- (2) Emergency Shelter – CITY reimbursement of ORGANIZATION's costs if the Center is used as an emergency shelter is addressed in Section 2.G.
- (3) CITY Payment – If CITY is obligated to pay a portion of ORGANIZATION's costs for Janitorial Services, ORGANIZATION shall send CITY copies of its invoices for such expenses. CITY will make payment to ORGANIZATION for CITY's share of the monthly cost for Utilities, Building Services and Janitorial Services by deducting CITY's total cost from the amount ORGANIZATION owes CITY for Utilities and Building Services on a monthly basis. If CITY's costs would exceed the amount ORGANIZATION owes to CITY for Utilities and Building Services, CITY shall make payment to ORGANIZATION within thirty (30) days from the date of receipt of an invoice.

CITY's financial obligations to maintain and repair the Center pursuant to this Agreement are subject to CITY's discretionary annual budgetary allocation and CITY reserves the right not to undertake the maintenance and repair work or any major building repairs or system replacements. If the Center requires significant repairs or system replacements, the Center is damaged or in disrepair, there are building structural or system failures, or upgrades are required to comply with ADA laws, and the costs have not been budgeted and the CITY is unwilling to fund the necessary corrective work, then ORGANIZATION shall have the right but not the obligation to perform such repairs or replacements, and such action shall not be construed as constituting a duty to undertake such work as may be needed in the future. If both CITY and ORGANIZATION elect not to make such repairs or replacements, then the Parties shall meet to determine if the Center without such repairs or replacements is or will be unsafe or unsuitable for public

use and the Agreement must be terminated, or if the Agreement can be modified to restrict use of certain areas of the Center until the corrective work can be undertaken. If the Parties are unable to mutually agree to the proper course of action, CITY shall have the right to terminate the Agreement with ten (10) days advance written notice if it determines in its sole discretion that the Center will be unsafe or unsuitable for public use without such repairs or replacements. Upon CITY's election not to perform its maintenance or repair obligations under this Agreement or with the mutual agreement of the Parties, CITY shall allow ORGANIZATION to perform such work after CITY approval of the scope of work and ORGANIZATION's obtaining all necessary permits.

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

Kimberly Rhodes, Administrative Analyst
City of Sacramento
Department of Parks and Recreation
915 I Street, 3rd floor
Sacramento CA 95814
Phone: (916) 808-6316
E-mail: krhodes@cityofsacramento.org

4. IMPROVEMENTS, LIENS AND TAXES

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

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

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

5. NOTICE

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

CITY: City of Sacramento
Parks and Recreation Department
Attn: Christopher Conlin, Director
915 I Street, 3rd Floor
Sacramento, CA 95814
Phone: (916) 808-8379

ORGANIZATION: Mutual Assistance Network
Attn: Richard Dana, Executive Director
811 Grand Avenue, Ste A3
Sacramento CA 95838
Phone: (916) 927-7694

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

6. NO JOINT VENTURE

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

7. INDEPENDENT CONTRACTORS

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

8. INSURANCE

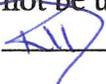
During the Term of this Agreement, ORGANIZATION shall, at its sole cost and expense, maintain in full force and effect to following insurance coverages:

- A. Commercial General Liability Insurance providing coverage at least as broad as ISO CGL From 00 01 on an occurrence basis for bodily injury, including death, of one or

more persons, property damage and personal injury, and premises owned, leased or used by the ORGANIZATION with limits not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability, and products and completed operations coverage.

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

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

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

- C. Workers Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation in favor of the CITY.

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

9. INDEMNITY

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

not apply to Liabilities arising from the sole negligence or willful misconduct of CITY, its officers, employees or volunteers. This indemnity provision shall survive the termination of this Agreement.

10. NO WARRANTIES REGARDING SUITABILITY OF PREMISES

CITY makes no representation or warranty of any kind, express or implied, as to the suitability of the Center for the permitted uses. ORGANIZATION represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering this Agreement relying upon facts ascertained from said independent investigation.

11. RELEASE FROM LIABILITY

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

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

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

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

12. NON-WAIVER

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

13. DISPUTES

The Parties shall attempt to resolve any disputes they may have in good faith, beginning with the representatives listed in Section 5. Should they be unable reach resolution, they shall refer the dispute to the chairs of their respective governing boards, which may appoint a designee, to meet in an attempt to resolve the dispute. Should they be unable to reach

resolution, they shall refer the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon the mediator, the Parties will request appointment of a mediator by the American Arbitration Association. Each Party shall pay its own costs and be responsible to pay one-half of the mediator's costs. If a Party is not satisfied with the result of the mediation process, it then may file suit in a court of competent jurisdiction in Sacramento County.

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. TIME OF THE ESSENCE

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

16. ASSIGNMENT PROHIBITED

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

17. ENTIRE AGREEMENT; MODIFICATION

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

18. AUTHORITY

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

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

CITY OF SACRAMENTO,
a municipal corporation

ORGANIZATION,
a California non-profit corporation

By: _____
Christopher Conlin,
Director of Parks and Recreation
For: John F. Shirey, City Manager

By: 
Richard Dana
Executive Director

Attest:

By: _____
Assistant City Clerk

Approved As To Form:

By: _____
Senior Deputy City Attorney