

EXHIBIT 2
SAMPLE CONTRACT
FACILITY USE AGREEMENT
FOR THE ARNAIZ STADIUM COMPLEX
BETWEEN THE CITY OF STOCKTON AND
(FIRM NAME)

This Operations and Maintenance Agreement (“Agreement”) is entered into on this _____ day of _____, 2022, by and between the City of Stockton, a municipal corporation (“City”), and (FIRM NAME)(“Operator”) for the exclusive operation, maintenance, and management of Arnaiz Stadium (“Complex”), including the fields and improvements outlined on the attached map marked “Exhibit 2,” located at 3329 East Morada Lane Stockton, CA (APN No. 124-300-02). City and Operator may be referred to collectively as “Parties” or in the singular as “Party” as the context requires.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1: DEFINITIONS

The following terms have the meanings and content set forth in this section wherever they are used in the Agreement or attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 “Annual Program Operation Plan” means a report, to be prepared by Operator, setting forth: participation spreadsheets illustrating the use of the Complex including, but not limited to, number of participants and spectators served, number of games played, number of rentals, and number of tournaments; a listing of all equipment owned by Operator located at the Complex, with the date of acquisition, cost, and accrued appreciation and such other information as mutually agreed upon and as set forth in Section 7.1 Operations Plan.

1.2 “City” means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees, and agents.

1.3 “Complex” means the Arnaiz Stadium, Fields, Softball Complex Buildings and all related improvements. The Complex total area is approximately 9.1 acres improved with four regulation women’s softball fields, permanent bleachers, portable bleachers, central building hosting a concession stand area, outside field fences, equipment, garage, paved and striped parking lots governed by a subdivision agreement, field entrance, gate, maintenance gates, and ingress-egress gate along Morada Lane which is included as Exhibit 2.

1.4 “Prevailing Wage” mean any requirements by the State of California and the Department of Industrial Relations (DIR) by Operator to pay Prevailing Wage rates to all

public works contracts as set forth in Labor Codes Section 1720, 1720.2, 1720.3, 1720.4 and 1771.

1.5 "Quarterly Report" means a report to be prepared by Operator setting forth (a) participation spreadsheets illustrating the use of the Complex, including, but not limited to, the number of participants and spectators served, number of games played, number of rentals, and number of tournaments and (b) any new equipment not yet listed on the Inventory List, in addition to information set forth in Article 7.1 Operations Plan and as mutually agreed upon.

ARTICLE 2: TERM AND TERMINATION

2.1 Term. The term of this Agreement shall begin on the date set forth above. Except as provided in Section 2.2, this Agreement shall remain in effect for five (5) years ending on (DATE) with two (2) possible three (3) year extension(s).

2.2 Holdover. If at the expiration of this term, Operator remains in possession and continues to manage the Complex and follow the terms of this Agreement with the consent of City, the Agreement shall continue month-to-month, subject to all terms and conditions of the Agreement. Thereafter, the period of holdover shall be terminable by either party upon thirty (30) days' written notice.

2.3 Date of Termination of Agreement. This Agreement shall terminate on (DATE) unless extended as provided in Section 2.1 unless sooner terminated as provided elsewhere in Article 2.

2.4 Termination of Agreement Notwithstanding the term of Agreement, this Agreement may be terminated without cause in the sole discretion of either party by giving at least two months (60 days) prior written notice to the other party of election to terminate this Agreement.

2.5 Termination Due to Catastrophic or Natural Disaster. If, because of any catastrophic or natural disaster, it becomes impossible for Operator to render services and perform under this Agreement, City and Operator will meet to discuss termination, closure and Transition of the Complex to the City within ten (10) days of catastrophic cause, or as soon thereafter as practical.

2.6 Vacation of Premises. Operator agrees to fully vacate the Complex at the termination of this Agreement. Should Operator fail to vacate as herein provided, Operator agrees that City or its authorized agents may enter upon the premises and remove all personal property and equipment therefrom and that the cost of removal and any temporary storage or disposal shall be billed to the Operator and shall be the responsibility of Operator. The City shall, within its sole discretion, determine whether any such property or equipment shall be stored or disposed of. Nothing herein shall be

considered a waiver of the City's rights under the law to demand and obtain possession of the in the event of a violation of Operator's part of any of the terms or conditions hereof.

2.7 Miscellaneous. At the termination of the Agreement, the City shall have and assume no liability for costs, expenses, damage or lost profits resulting from contracts entered into by Operator with third parties in reliance upon this Agreement.

2.8 Exclusivity. Subject to the terms and conditions set forth in this Agreement, City hereby engages Operator, on an exclusive basis, to manage, operate, promote, maintain, and repair facilities during the Term, and the Operator accepts such engagement.

2.9 Tax Exempt Bond Financing. Operator acknowledges that the City has financed the purchase of the Complex with tax-exempt bonds ("the Bonds"). Except for any actions that Operator is directed to take by City, Operator agrees that it will not knowingly take any actions that would (i) result in the Bonds becoming "private activity bonds" or (ii) would otherwise cause the interest on the Bonds to become subject to federal income taxes. In the event any term or condition in the Agreement shall cause the City or Operator to violate any covenant or condition associated with the Bonds or related document, the parties agree to amend this Agreement in a manner to avoid violating any underlying covenant or condition associated with the Bonds.

2.10 Planning Documents. Operator will be provided copies of all related assessor documents including parcel maps, subdivision agreements, CC&R's and joint use agreements with co-located school.

ARTICLE 3: COMPENSATION AND REVENUE

3.1 Compensation. Operator will pay the City eight hundred dollars (\$1000.00) a month for the management, maintenance, and operation of the Complex for the first year of the term of the Agreement, nine hundred dollars (\$1100.00) a month for year two of the term of the agreement, and one thousand dollars (1,200.00) a month for all subsequent years.

3.2 Payment Schedule. Operator shall make payments directly to the City Administrative Services Department by the 10th of each month. Operator shall pay a penalty of 5% of the amount owed if the City does not receive payment by the 10th of the month as provided herein. If full payment plus applicable penalty is not made by the 20th of the month, Operator shall pay an additional penalty of 10% of the amount owed to the City. If full payment including all applicable penalties is not made by the last day of the month, Operator shall pay an additional penalty of 5% of the total amount owed to the City. Any such imposed penalties shall be cumulative.

3.3 Revenue. Operator will receive all operating revenue from gate fees, concession sales, sales of advertising/sponsorship banners, scoreboard sponsorship. Operator will

set fees for all Complex use: women's and girls' softball practices, tournaments, clinics, training, exhibition games. Operator will set fees for travel ball. The Operator shall not charge or designated City Events.

ARTICLE 4: SUBMISSION OF REPORTS

4.1 Annual Report. Operator shall submit an Annual Program Operation Plan to the City by October 31 of each year.

4.2 Quarterly Report. Operator shall submit to City a Quarterly Report at the quarterly meetings held between City and Operator.

ARTICLE 5: OPERATION, MANAGEMENT, MAINTENANCE AND STAFFING OF COMPLEX

5.1 Day to Day Management of Complex. Operator will have sole responsibility for the day-to-day operations, management, maintenance and staffing of Complex. Operator agrees that during the term of this agreement, it shall implement women's and girls' softball practices, tournaments, clinics, training, exhibition games and League play for softball. If there are opportunities for activities beyond these responsibilities, Operator agrees to communicate opportunities with City representative.

5.2 Staffing Guidelines and City Fingerprinting Policy. Using terms of this section and Exhibit 4: HR 40- Fingerprinting, Operator shall hire all personnel necessary for the management, operation, and maintenance of Complex to perform services pursuant to this Agreement. Any individual who has been convicted of certain criminal offenses (disqualifiers as set forth below) is not eligible to work or volunteer at the Complex. In addition, if any of Operator' employees or volunteers are subsequently found to have a disqualifying conviction, that employee/volunteer shall not be allowed to perform any further work or volunteer services under this Agreement, and shall be removed immediately.

The disqualifying criminal convictions are as follows: Any of those offenses identified in California Public Resources Code, section 5164 except for California Penal Code sections 211, 215, 236 and 240, provided, however, that any individual who has been convicted of violating Penal Code sections 211, 215, 236 or 240 may, in the sole discretion of Operator or the City, nevertheless be ineligible to work or volunteer for Operator at the Complex.

All employees and volunteers of Operator who will be working/volunteering at the Complex are required to submit fingerprints in a manner authorized by the State of California Department of Justice and Operator shall be responsible for all costs associated therewith. Operator shall confirm in writing to City that its employees and volunteers who will be working/volunteering at the Complex are in compliance with this

section prior to Operator first day of operation, and annually thereafter, and shall confirm to City in writing (Using Exhibit 5: Signature of Compliance for HR40) that any new employees or volunteers at the Complex are likewise in compliance with this section.

In addition, if any of Operator employee(s)/volunteer(s) assigned is/are subsequently found to have a disqualifying conviction, that/those individuals shall be immediately removed from the Complex and shall not be allowed to perform any further work under this Agreement. If Operator is subsequently found to have an employee with a disqualifying conviction, the contract may be immediately terminated by the City. Operator shall certify in writing annually that neither Operator, nor any of the employees or volunteers of Operator has been convicted of any offenses specified in California Public Resources Code section 5164 or Exhibit 4: HR 40- Fingerprinting.

5.3 Use of City Property. Operator shall not use Complex, Improvements (including equipment, instruments and supplies) or City personnel for any purpose other than the performance of the obligations under this Agreement.

ARTICLE 6: PROMOTION OF COMPLEX ACTIVITIES

6.1 City and Operator Cooperative Promotion. City will actively cooperate with Operator to promote Complex and its programs, events, and activities at Complex and will provide marketing assistance and information to the public through use of its resources. City shall communicate marketing deadlines and opportunities so Operator can promote Complex and its activities through the City's available marketing tools and other normal avenues used in promoting City activities.

6.2 Use of Logos. City may use Operator's logo in addition to City logo in documents when describing and advancing the purposes of this Agreement with prior approval of each use by Operator. Operator may use City logo on flyers and marketing items in addition to Operator logo with prior written approval of each use by authorized City representative.

ARTICLE 7: COMPLEX REGULAR PROGRAMMING AND QUARTERLY SCHEDULES; COMMUNITY OUTREACH

7.1 Annual Program Operation Plan. Operator shall provide, on an annual basis, a Program Operation Plan (the "Plan") for the City's review and written approval. The components shall be mutually agreed upon. The purpose of the Plan is to ensure Complex are used to its full potential and achieve City's goal to serve the needs of the Community. The Plan shall be submitted to City by October 31 of each year of the term of this Agreement. The Plan may include, but will not be limited to the following components:

- Management policies
- General operating hours

- Fees
- Security Plan
- Signature of Compliance for HR-40
- Narrative description of proposed use (day to day operations and schedule, listed hours of operation, a complete listing of activities, including classes, special events, community outreach programs, sporting events, Complex rentals, clinics, community workshops, trainings, and other opportunities)
- Quarterly Report Format (identified goals, measurable objectives, program descriptions with categorized activity listings, monthly utilization data, demographic data, program implementation data)
- Annual Inventory List
- Finalized annual calendar of prior year
- Recommendation for Capital Improvements and capital equipment

The City and Operator will meet quarterly review the use of Complex and any maintenance issues. Operator will reach out to local community groups in an effort to maximize the Complex use and offer all organization an opportunity to play at the Complex. City will support Operator in these efforts and encourage all organizations to use the Complex.

7.2 City Events. City shall have the ability to schedule five annual City Events at no cost if the Complex is available. Operator and City representative shall meet to discuss opportunities.

7.3 Facility Use Agreements. Operator shall be responsible for negotiating and entering into Facility Use Agreements with the renters and users of the Complex. Operator shall be responsible for developing the form of each Agreement and following City Risk Services and contract compliance requirements for users at a City property.

7.4 Booking and Scheduling. Operator is responsible for marketing, booking, and scheduling of all events held at the Complex. All activity, booking, and scheduled events shall be included in the monthly and annual calendar.

ARTICLE 8: CONCESSIONS AND EQUIPMENT MAINTENANCE

8.1 Concessions and Equipment Maintenance. Operator shall operate the concession to provide and sell food and beverages, provided it meets the requirements of the City's exclusive beverage contract and adheres to the provisions set forth therein. It shall be the sole responsibility of Operator to ensure that all food and beverage products sold shall conform to all applicable federal, state and local laws, including the California Health and Safety Code, and other requirements. Operator is responsible to timely report and pay all sales tax.

Operator shall provide for the City's review and approval the items it intends to sell at the concession areas. All food and beverages served/sold shall not be beyond their expiration or 'best by' date, and meet all applicable health and safety code requirements.

The concession rooms are equipped with water and electricity hook-ups, counters, ice machines, and miscellaneous hot food machines. Operator may provide at its sole expense, additional equipment for the concession rooms. All equipment on site to be used by Operator is in "AS IS" condition, are not under warranty, and will not be maintained by City during the term of this Agreement.

ARTICLE 9: COMPLEX MAINTENANCE AND EXPENSES

9.1 City Responsibilities. The City shall pay for mutually agreed upon repairs \$10,000 and over if prevailing wage requirements are met and as follow:

9.1.2 As scheduled and coordinated with City, and for repairs and maintenance \$10,000 and over, City shall repair the Complex's fixed structures, excluding structures remodeled or altered or added by Operator. The City shall not be responsible to repair or replace items neglected or by fault of Operator.

9.1.3 The City will be responsible for resurfacing and restriping the parking lots. The City will be responsible to establish shared cost agreements with co-located school for improvements in the parking lot.

9.1.4 The City will be responsible for updating the Operator on a quarterly basis regarding City requirements for landscape maintenance, pest control, and weed control obligations and responsibilities which may be refined from time to time.

9.2 Operator Responsibilities.

9.2.1 Notice to City. Operator shall notify City as soon as practical, concerning any repairs or needed maintenance of the Complex items for which the City has responsibility.

9.2.2 Landscape/Maintenance Minimum Requirements. These minimum requirements will be modified in writing by mutual agreement by both parties if synthetic turf is added.

A. Once each week

- Mow outfield at 1-1/2 to 2 inches. Rake and level base paths
- If artificial turf is installed by Operator, all seams of the synthetic turf infield will be property adhered. There should be a level 3/4 sand and rubber infill mixture throughout the infield area. Any tears in synthetic surface shall be replaced

- Mow all grass areas within the fence line.
- Groom infield: fill in low spots, screen drag. Alternate dragging directions so material is not pushed to one side of the field.
- Inspect field after dragging and remove all stones dislodged by dragging.
- Cut down, rake and/or blow out as necessary “lip” that develops between infield and grass.
- Mow all grass areas from parking lot curb to fence line

B. Screen drag warning track 1st and 3rd full weeks of each month.

C. Edge infield, base paths, and warning track 1st and 3rd full weeks of each month.

D. Spray out foul lines as needed, generally 2 to 3 times a year with a contract herbicide. Coordinate with City staff for proper alignment.

E. Infield, warning track, base paths, pitcher’s mound and any other bare soil areas are to be kept weed free.

F. Regular operation and adjustment of the automatic irrigation system with run times adjusted by time of year. Irrigation must be in compliance with City and State water conservation measures

G. Spray out foul lines as needed, generally 2 to 3 times a year with a contact herbicide. Coordinate with City staff for proper alignment.

H. Infield, base paths, pitcher’s mound and any other bare soil areas are to be kept weed free.

9.2.3 Maintenance Equipment. Operator shall be responsible to provide all maintenance and landscaping equipment.

9.2.4 General Maintenance. Operator shall be responsible for the safety and sanitary conditions of their use of the Complex and shall remedy without delay any defective, dangerous, or unsanitary conditions therein. In addition, Operator shall be responsible for the maintenance and housekeeping of the Complex and all adjacent areas, keeping them in a safe, clean, wholesome, and good condition, and sanitary condition and shall ensure that at all times during the term of this Agreement that Complex shall be kept free of trash, garbage, and obstructions of any kind and ensure that all trash resulting from cleaning shall be placed in

appropriate containers. Complex shall be kept in compliance with any and all applicable present and future laws relating to sanitation, public health, safety, or welfare or any general rules and regulations of any governmental authority in force now, or at any time, during the term of this Agreement.

Operator shall be responsible for general maintenance of the following:

- A. building maintenance,
- B. janitorial,
- C. lighting,
- D. landscaping
- E. removal of garbage, junk, and debris (including parking lot),
- F. graffiti removal,
- G. vandalism repair,
- H. provides and maintains safe and sanitary bathrooms and bathroom maintenance,
- I. clean/blow off the grandstands, bleachers and concourse areas weekly, and
- J. maintain the entire Complex in a clean, safe, and sanitary condition, free from all rubbish and debris.
- K. Painting
- L. Equipment
- M. Hardware
- N. Bleacher repair
- O. Routine preventative maintenance costs for equipment and hardware
- P. All capital costs under \$10,000.

9.2.5 Irrigation Equipment. Operator will be responsible for maintenance and repairs of any irrigation equipment, valves, pipes and sprinkler heads. Operator will be responsible to regularly monitor and test irrigation and controllers to prevent over-spray, excessive run off, pooling, ponding, overwatering, etc.

9.2.6 Electrical Equipment. For electrical equipment, Operator will be responsible for maintenance and repairs to any equipment including the light bulbs. For issues impacting the transformers along the fence line or joint use agreement with co-located school, City and Operator will work cooperatively to address issues of the final obligation when uncertain at inquiry.

9.2.7 Site Inspections. City shall reserve the right to inspect the Complex at any time to ensure all areas are maintained at acceptable standards pursuant to the terms of this Agreement. Upon the finding of any deficiencies, City shall inform Operator of such deficiencies and shall require Operator to correct any deficiencies within a mutually agreed upon time period. Operator failure to adequately maintain the Complex, or correct deficiencies within the required time period shall be grounds for termination of this Agreement. In the event the Agreement is

terminated for failure of Operator to maintain the Complex as required, Operator will be responsible for paying any costs incurred by the City to make any of the repairs.

9.2.8 Landscaping. Monthly landscaping maintenance costs shall be considered operating expenditures will be paid by Operator. These costs include mowing, edging, fertilizing, aerating, trimming, tree trimming, weed control, reseeding, sod and field grounds keeping duties, ornamental plant material, trimming plants, replacing plant material. These duties also include replacement and repair of irrigation lines, valves, and sprinkler heads.

9.2.9 Integrated Pest Management. To the greatest extent practical, Operator will use Integrated Pest Management practices, principles, concepts and the least toxic method to achieve the desired result.

Operator shall comply with all applicable County, State or Federal regulations regarding pesticides, herbicides and fertilizers. Operator shall analyze plant problems and apply correct types and rates of fertilizers, insecticides, fungicides and herbicides. Any insecticides, pesticides, herbicides, fungicides, and/or fertilizers used shall be applied in accordance with manufacturer's instructions.

Operator shall advise the City in writing prior to the application of any insecticides, pesticides, herbicides, fungicides, and/or fertilizers. Operator shall provide City with Material Safety Data Sheets for all insecticides, pesticides, herbicides, fungicides, and/or fertilizers proposed for use prior to their actual use. Operator shall provide a site-specific schedule showing where, when and what insecticides, pesticides, herbicides, fungicides, and/or fertilizers will be applied at least five (5) working days prior to application. Operator is solely responsible for any damages due to Operator's application or misapplication of insecticides, pesticides, herbicides, fungicides, and/or fertilizers.

At least three (3) days prior to a proposed application of a pesticide, a notice shall be posted on City property. The notice shall be conspicuously posted in one or more regular locations at the site of the application. It shall be 8 1/2" by 11" and specify the pest, manner of application, proposed date of application, the time, and location. It shall contain the brand and common name of the pesticide and list the acute effects. The notice shall remain posted for three days after the application.

Pest management schedules, applications, public posting, and Material Safety Data Sheets shall be discussed and reported on during the quarterly meetings.

9.3 Operator Expenses. Operator will pay all electrical services, vendors, and expenses associated with the operation of the Complex. Operator will also be responsible for all maintenance costs related to the Complex including, but not limited to: replacement

of lighting lamps, scoreboard bulbs, scoreboard maintenance, general maintenance, landscaping, and materials.

9.4 Condition of Complex at Termination. Operator shall be responsible for ensuring that all building, grounds and improvements of the Complex will be in good and usable condition at the end of Agreement.

9.5 Keys and Security Codes. Installation of locks and keys will be the responsibility of Operator. Upon termination of the Agreement, Operator shall provide a complete set of keys to Complex to the City.

9.6 Emergency Contacts. Operator will provide City with emergency phone numbers of key staff members and ensure that City representatives have the ability to communicate with said persons twenty-four hours a day in the event of an emergency.

9.7 Security. Operator shall be responsible for determining the security needs of the Complex, arrange for security for all events at the Complex. Each year, Operator will update a written security plan filed with the City of Stockton by October 31. The security plan shall include both emergency and non-emergency procedures and protocols to be followed by Operator and or any contractor or Complex user.

9.8 Compatible Use. Operator agrees not to make use of Complex and property in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Complex as it is intended and according to the terms and conditions of this type of Complex.

9.9 Capital Improvements and Capital Equipment, Repairs, Alterations, Improvements by City. Unless mutually agreed upon for improvements or repairs over \$5,000, City shall not be responsible for any repairs, alterations, changes, or improvements to the Complex during the term of this Agreement. The obligation to pay for, and authority to perform, direct and supervise Capital Equipment and Capital Improvement purchases shall remain with the City and will not be considered Operating Expense. City shall retain the discretion to determine whether and what level to fund Capital Equipment and Capital Improvements purchases for the Facilities. Operator recommendations shall be included in the Annual Plan.

9.10 Defects in Material and Workmanship. Operator warrants that all performance within the term of this Agreement shall be free from defects in workmanship, and Operator, at its own expense, will remedy any defects due to faulty workmanship.

9.11 No Threat. Operator represents and warrants that the work and materials used by Operator or contractors/vendors are not currently known to be harmful to public health and safety. Operator warrants that the work shall not constitute any threat to the safety of persons when used in the manner for which it was designed and agrees to cooperate

with City in making or permitting changes to the if necessary to eliminate hazards which become apparent.

9.12 Water Conservation and Regulations. Operator shall use water/irrigation in compliance with Chapters 13.28 and 13.32 of the Stockton Municipal Code, or any later Council-approved water regulations, unless additional watering is approved annually by the Municipal Utilities Director.

Operator further agrees that all water usage and regulations in connection with Complex be monitored and adhered to, and shall immediately contact Municipal Utilities if there is any discharge or release of water or materials into the storm drains at Complex.

9.13 State of California and San Joaquin County Hazardous Materials Storage, Reporting, and Safety Plan Requirements. Operator shall be familiar with the California Environmental Reporting System requirements, and remain responsible for meeting the state and local requirements for storage of hazardous materials, reporting of hazardous materials, and filing of a Business Plan and or a safety plan if required. Operator may be required to obtain chemical storage permit as required.

9.14 Complex Inspection. The City designated representatives shall have the right to enter and inspect Complex and improvements, observe performance of Operator of its obligations under this Agreement, to install, remove, adjust, repair, replace, or otherwise handle any equipment, utility lines, or other matters in, on, or about the Complex or to do any act or thing which the City may be obligated to have the right to do under this Agreement. In connection with the exercise of these rights, the City will endeavor, but not be required to advance notice to Operator for security purposes and to minimize an interference with or disruption of Operator's work under this Agreement. This is not intended to limit other rights of the City under this Agreement, or impose or construed to impose any independent obligation to construct, maintain, or make repairs, replacements, alterations, additions, or improvements, or create independent liability for any failure to do so. If Operator is not available, City will have right to enter without prior notice to protect health and safety of life or protection of property during an emergency. Under emergency circumstances and entry without Operator, City shall contact Operator at first opportunity to discuss incident.

9.15 Employees. Operator shall hire all personnel necessary for the management, operation, and maintenance of the Complex. It is understood that none of the Contractor's employees are or shall be deemed to be employees, agents, or representatives of the City. Contractor shall furnish a list of employees engaged to work at the Complex to the City. Contractor shall also provide necessary employee identification of personnel while on Complex grounds. Operator shall be solely responsible for their supervision and daily direction and control and for settling and paying as an operating expense of Operator, their compensation (including federal, state and local income tax withhold as well as employee benefits), and all costs related to their employment. All persons required to

have employer/employee relationship with Operator will be maintain personnel matters directly with Operator in accordance with Operator procedures.

ARTICLE 10. INDEMNITY AND INSURANCE

10.1 Insurance Requirements. Operator must obtain and shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in Exhibit 1, attached hereto and incorporated by this reference.

10.2 Proof of Insurance. Operator shall provide proof of insurance in the required form to the City's Risk Manager prior to the first day of operation as evidence that it has complied with the insurance requirements set forth in Exhibit 1.

10.3 Indemnity and Hold Harmless. With the exception that this section shall in no event be construed to require indemnification by Operator to a greater extent than permitted under the public policy of the State of California, Operator shall, indemnify, protect, defend with counsel approved by City and at Operator' sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law, or ordinance, or City Policy, by Operator or Operator' officers, agents, employees, volunteers, or subcontractors. Operator shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Operator to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Operator under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Operator to a greater extent than permitted under the public policy of the State of California, the parties agree that Operator' duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Operator or Operator' officers, agents, employees, volunteers, or subcontractors. Operator' duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined.

Operator shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant, and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Operator for amounts paid in excess of Operator's proportionate share of responsibility for the damages within thirty (30) days after Operator provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Operator is not obligated to defend or indemnify City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Operator to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Operator shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, agents employees, and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Operator, regardless of whether such claim may be covered by any applicable workers' compensation insurance. Operator's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Operator under workers' compensation acts, disability acts, or other employee benefit acts.

10.4 Tender of Claims. Pursuant to the obligation created by Indemnity clause above, Operator shall accept tender of any third party claim submitted to it by City as a result of Operator obligation herein within 30 days of such tender.

10.5 Use of Contractors/Subcontractors. If Operator uses Contractors or Subcontractors for this Complex or Agreement, the Contractor/Subcontractor agrees to be bound to Operator and City in the same manner and to the same extent as Operator is bound to the City under this Agreement, including indemnity and Insurance requirements, with any Subcontractor to the extent they apply to the scope of the Subcontractor's work. A copy of this Agreement and Indemnity and Insurance provisions will be furnished to the Contractor and Subcontractor upon request.

ARTICLE 11: REAL PROPERTY, FIXED, ATTACHED, OR UNATTACHED

11.1 City Ownership. City shall retain ownership of Complex and adjoining real property.

11.2 Attached and Unattached Personal Property. All attached or unattached personal property including but not limited to equipment and furnishings which are

purchased or provided for operation of the Complex pursuant to this Agreement, including any improvements pursuant to Section 12.1 shall remain on the premises and shall be property of the City upon expiration or termination of this Agreement, with the exception of any personal property purchased by Operator which the Parties have agreed as part of the annual Inventory List are to remain the sole and separate personal property of Operator.

11.3 Inventory. City and Operator shall inventory all property including attached or unattached personal property prior to the start of this Agreement, and thereafter on an annual basis throughout the term of this Agreement. Operator shall provide an updated Inventory List as part of the Annual Plan.

ARTICLE 12: PREMISES IMPROVEMENTS/ALTERATIONS

12.1 Additional Improvements to Complex. Operator may propose or make recommendations to the Director of Community Services or designee with respect to proposed additions or repairs to structures, or improvements to the Complex to increase Complex usage and service to the community. No improvements, new construction, temporary alterations, expansions, changes or removal of any existing structures or equipment may be made to the Complex without prior written approval by the City and any such improvements, new construction, temporary alterations, expansions, changes or removal of any existing structures or equipment must follow any regulatory requirements including obtaining any necessary approvals and permits. Any such approved improvement shall be at Operator' sole cost and expense, unless otherwise agreed to in writing between City and Operator. Responsibility for maintenance of any such approved improvements shall rest with Operator. Title to such improvements shall vest in City upon expiration or termination of this Agreement.

12.2 Prevailing Wage. In the performance of the work to be completed on Complex, without limitation of any other provision of this Agreement, Operator shall pay or cause to be paid prevailing wages for all work done under this Agreement if prevailing wage is determined to be required.

12.3 Prior Written Approval of Alterations, Use of Vendor Agreements. It is specifically understood that prior written approval by Community Services Director for addition, removal, alteration, etc. will include specific terms and conditions of the improvement (such as use of specific vendor agreements, approval of vendor insurance) must be met or the failure will be considered a breach of Agreement.

ARTICLE 13: AUTHORITY AND STATUS OF OPERATOR

13.1 Operator Status. Operator is a private organization whose primary function under this Agreement is to provide day-to-day management, operation and maintenance of the

Complex in accordance with the terms of this Agreement and applicable Directives and Policies of the City.

13.2 Maintenance of Licenses and Permits. Throughout the term of this Agreement, Operator represents and warrants that it has or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for Operator to perform under this Agreement as contemplated. Operator further warrants that it shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance, and approvals. Operator further warrants that it shall utilize the best current, generally accepted and professional practices regarding the operation of Complex.

If any event is scheduled which expands beyond the use permit of the Complex and requires a special event permit, Operator will comply with City Special Events Permit Process and notify the Community Services Department of such potential activity according to the policies and guidelines.

13.3 Meetings with City. Operator shall meet with the City representative as necessary on all matters connected with the carrying out of Operator' responsibilities pursuant to this Agreement. Such meetings shall be held at the request of either party.

13.4 City of Stockton Business License. Prior to the City's execution of this Agreement and prior to Operator' engaging in any operation or activity set forth in this Agreement, Operator shall obtain a City of Stockton business license, which must be kept current during the term of this Agreement.

ARTICLE 14: AUDITING

14.1 Records and Auditing. City reserves the right to periodically audit all charges made by Operator to City for services under this Agreement. Upon request, and within 15 calendar days, Operator agrees to furnish City, or a designated representative, with necessary information and assistance. All expenses for City requested audits will be the responsibility of the City.

Operator agrees that City or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Operator agrees to provide City or its delegate with any relevant information requested, and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Agreement. Operator agrees to maintain such records for a period of three years from the date that final payment is made.

ARTICLE 15: NOTICES

All written notices and communication required to be given under the provisions of this Agreement shall be delivered personally, or mailed and addressed as follows:

TO CITY: City Manager
City of Stockton
605 N. El Dorado Street
Stockton, CA 95219
PHONE (209) 937-8212

With a copy to: Community Services Department
Director of Community Services
605 N. El Dorado Street
Stockton, CA 95202

TO OPERATOR: (FIRM NAME)
(STREET ADDRESS)
(CITY, STATE, ZIP)
PHONE (PHONE NUMBER)

ARTICLE 16: GENERAL PROVISIONS

16.1 Waiver. Any waiver by City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Operator or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Operator to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by City to any act or omission by Operator shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City's written consent to future waivers.

16.2 Title of Parts and Sections. The Title of parts and sections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

16.3 Condemnation. If the whole or any substantial part of the Complex shall be taken by any paramount public authority under the power of eminent domain, then this Agreement shall be terminated as to such Facilities from the day when the possession of that part shall be taken for said public purpose. All damages awarded for this taking shall belong to and be property of City, and all Agreements pertaining to that sale including without limitation all related Agreements. However, City shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to Operator, if any.

16.4 Title VI of the Civil Rights Act and Non-Discrimination. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race,

color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funding assistance.” 42 USC Section 2000d. [http: www.dol.gov/oasam/regs/statutes/titlevi.htm](http://www.dol.gov/oasam/regs/statutes/titlevi.htm).

The City of Stockton is committed to complying with the requirements of Title VI in all of its federally funded programs and activities.

In performing services under this Agreement, Operator shall not discriminate in the employment or application of employment of employees or in the engagement of any contractors or subcontractors on the basis of race, color, religion, sex, marital status, national origin, ancestry, age or any other criteria prohibited by law. Operator agrees to comply fully with all applicable federal, state, local laws, ordinances, executive orders and regulations which prohibit discrimination.

The City of Stockton has a Discrimination and Harassment Policy which is attached and as Exhibit 3: HR15, Discrimination and Harassment Policy. The purpose of the policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

16.5 Confidentiality. Operator shall exercise all reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

16.6 Conflict of Interest. Operator covenants that other than this Agreement, Operator has no financial interest with any official, employee, or other representative of the City. Operator and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Operator’ services under this Agreement. If such an interest arises, Operator will immediately notify City.

16.7 No Personal Liability. No official or employee of City shall be personally liable to Operator in the event of any default or breach by City or for any amount due Operator.

16.8 Control. Neither City nor its officers, agents, or employees and/or volunteers shall have sufficient control over the conduct of Operator or any of its employees, except as herein set forth; and Operator expressly agrees not to represent that Operator or any of Operator’ agents, servants, or employees, to be deemed the agents, servants, or employees of City.

16.9 Debt Liability Disclaimer. City will not be liable for any debts or claims that arise from the obligations of Operator.

16.10 No Third Party Beneficiaries. No person or entity, other than Operator shall be deemed to be a third party beneficiary hereof, or a third party of the Complex.

16.11 Possessory Interest, Taxes, Assessments, Permits, Fines. Operator shall pay any and all taxes, including possessory interest, assessments, permits, or fines related to all aspects of operation of the Complex.

16.12 Assignment. Operator may not assign, sublet transfer, or otherwise alienate its rights and obligations pursuant to this Agreement, without written consent of the City Manager, which will not be unreasonably withheld, and upon such terms and conditions as City may set forth in writing. Operator shall be solely responsible for reimbursing vendors, contractors, employees, and subcontractors.

16.13 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Operator or its agents, employees, or contractors. Nothing herein contained is intended to be construed as creating or establishing a relationship of partners, or a joint venture between Operator or City. Operator shall not be considered a tenant, and shall gain no right to occupy facilities as a tenant or any other property right or interest in the Complex by virtue of this Agreement. Neither Operator, its principal, nor any Operator employee is an employee of City and none are entitled to any of the rights, benefits, or privileges of City employees, including but not limited to medical, unemployment, or worker's compensation. Except as City may specify in writing, Operator shall have no authority to act as an agent of City or bind City to any obligation. Nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than City and Operator and their respective officers, directors, employees, and agents providing services under this Agreement any rights, remedies, obligations, or liabilities or by reason of this Agreement.

16.14 Reserved Rights. During the term of this Agreement, there shall be and is hereby expressed reserved to City and its agencies, contractors, agents, employees, representatives, or licensees, the right to use the Complex and Property for any and all purposes which will not unreasonably interfere with Operator' enjoyment of its rights under this Agreement. City reserves the right to make use of the property for such purposes as it may deem necessary or appropriate, if, and whenever in the interest of its service to customers or the public, it shall be appear necessary or desirable to do so. City further reserves the right at any and all reasonable times, to temporarily enter upon said premises for inspection or other lawful City purposes.

16.15 Applicable Law, Resolutions of Disputes, Forum, and Attorney's Fees. Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Operator certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

California law shall govern any legal action pursuant to this Agreement with venue in the San Joaquin County Superior Court and for federal claims in the Federal District court for California, Eastern District, Sacramento Division. The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney's fees expended in connection with such an action.

16.16 Severability. The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

16.17 Language Construction. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity any status of any person.

16.18 Discretion of the City. City's execution of this Agreement in no way limits the discretion of City in the permit and approval process in connection with any improvements by Operator.

16.19 Law Abiding Conduct. Operator agrees that it will comply with all the applicable laws and ordinances, administrative regulations and orders of appropriate government authority in the conduct of its business and further agrees that City shall have the right to enter upon said premises at reasonable times for the purpose of inspection and ensure enforcement of this Agreement and ordinances and laws governing Operator' use of Complex.

16.20 Digital Signature. The Parties agree that this agreement may be signed with a digital signature, which has the same force and effect of a handwritten signature.

6.21 Dispute Resolution. Prior to undertaking any litigation, the Parties shall make reasonable efforts to resolve all disputes informally, including by means of a conference between the senior managers of each Party having authority to resolve the dispute. If any litigation action or proceeding is commenced in connection with this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees (including allocated costs for in-house legal services), costs and necessary disbursements incurred in such action or proceeding.

6.22 Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean earthquake, fire, or other casualty, flood, landslide, epidemic, unforeseeable adverse weather, "acts of God", war, civil disturbance, court ordered injunction, intervention by civil or military authorities or government, strikes, lockouts, boycotts, or other labor disputes, to the extent any of the foregoing are beyond the reasonable control of either

City or Operator and which cause either party to be delayed or hindered in or prevented from the performance of any covenant or obligation under this Agreement other than the payment of money.

If either Operator or City is delayed or prevented from the performance of any act required by this Agreement by reasons of Force Majeure, performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent of the period of such delay. Both parties shall take reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfil contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of the conditions.

ARTICLE 17: ENTIRE AGREEMENT, INTEGRATION, AND MODIFICATION.

This Agreement represents the entire integrated agreement between Operator and City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by written instrument signed by Operator and The City Manager. All Exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached Exhibits, the terms of this Agreement shall prevail.

The following exhibits are included and incorporated into this Agreement by this reference:

- Exhibit 1: Insurance Requirements
- Exhibit 2: APN No. 124-300-02
- Exhibit 3: HR 15- Harassment and Discrimination Policy
- Exhibit 4: HR 40- Fingerprinting
- Exhibit 5: Signature of Compliance for HR 40

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ARTICLE 18: AUTHORITY AND EXECUTION

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and first year hereinabove written.

ATTEST:

CITY OF STOCKTON

BY: _____
ELIZA R. GARZA, CMC
INTERIM CITY CLERK
CITY OF STOCKTON

BY: _____
HARRY BLACK
CITY MANAGER, CITY OF STOCKTON

APPROVED AS TO FORM:
LORI M. ASUNCION
ACTING CITY ATTORNEY,
CITY OF STOCKTON

(FIRM NAME), OPERATOR

BY: _____
DEPUTY CITY ATTORNEY

BY: _____
(FIRM REPRESENTATIVE)

Exhibit 1:
Insurance Requirements

(RESERVED FOR CITY'S INSURANCE PROVISIONS APPROVED BY RISK)

SAMPLE