

**CITY OF SEATTLE**

**ORDINANCE 126330**

**COUNCIL BILL 120050**

AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute, for and on behalf of the City, a Use, Occupancy and Maintenance Agreement with Southwest Youth and Family Services to provide family support center programs consistent with Seattle Parks and Recreation purposes.

WHEREAS, for nearly 40 years Southwest Youth and Family Services (SWYFS) has been providing critical services in significantly under-resourced communities of Southwest Seattle; and

WHEREAS, SWYFS and Seattle Parks and Recreation (SPR) share long-term vision and goals with respect to the development and delivery of youth and community-based program initiatives to culturally and economically diverse families; and

WHEREAS, Ordinance 117950, passed in December 1995, authorized the Superintendent of Parks and Recreation (“Superintendent”) to enter into a 20-year Use, Occupancy and Maintenance Agreement (“Prior Agreement,” Attachment A to this ordinance) with SWYFS; and

WHEREAS, as systemic racial and economic inequities continue to create significant barriers to communities of color across the nation, SWYFS remains committed to seeing the diverse community of South Seattle thrive; and

WHEREAS, participants in SWYFS programs are predominately children and youth, people of color, immigrants and refugees, and low-income people; and

WHEREAS, the services SWYFS provides fulfill key SPR values in providing programs, resources, and services for youth in a park facility that is integral to the community it serves without cost to the City; and

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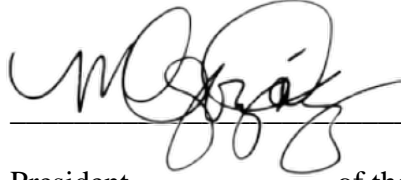
WHEREAS, SPR is entering a new agreement to replace and update the Expiring Agreement, after reassessing the market rate fees and public benefits to be provided, and will ensure the impact of this action will not significantly affect park and recreation revenue to the City; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Superintendent of Parks and Recreation, or the Superintendent’s designee, is hereby authorized on behalf of The City of Seattle to execute a ten-year Use, Occupancy and Maintenance Agreement with Southwest Youth and Family Services, substantially in the form included as Attachment A to this ordinance, which also allows for a ten-year extension.

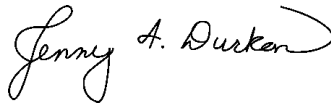
Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

1 Passed by the City Council the 10th day of May, 2021,  
2 and signed by me in open session in authentication of its passage this 10th day of  
3 May, 2021.

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5 President \_\_\_\_\_ of the City Council

6  Approved /  returned unsigned /  vetoed this 13th day of May, 2021.

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8 Jenny A. Durkan, Mayor

9 Filed by me this 13th day of May, 2021.

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11 Monica Martinez Simmons, City Clerk

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15 Attachments:  
16 Attachment A - Use, Occupancy and Maintenance Agreement Between The City of Seattle,  
17 Seattle Parks and Recreation, and Southwest Youth and Family Services

**USE, OCCUPANCY AND MAINTENANCE AGREEMENT**

**Between**

**THE CITY OF SEATTLE**

**Seattle Parks and Recreation**

**and**

**SOUTHWEST YOUTH AND FAMILY SERVICES**

**AGREEMENT NUMBER: \_\_\_\_\_**

THIS AGREEMENT is made and entered into by and between **THE CITY OF SEATTLE** (“City”), acting by and through Seattle Parks and Recreation (“SPR”), the Superintendent of SPR, and **SOUTHWEST YOUTH AND FAMILY SERVICES** (“SWYFS”), a not-for-profit corporation organized under the laws of the state of Washington.

RECITALS

WHEREAS, SWYFS fulfills key SPR values in providing programs, resources, and services for youth in a park facility that is integral to the community it serves; and

WHEREAS, SWYFS provides programs and services to the community it serves without cost to SPR; and

WHEREAS, the City desires to offer various public benefits for its residents, including people of color from culturally and economically diverse families; and

WHEREAS, SWYFS and SPR share a long-term vision and goals with respect to the development and delivery of youth and community-based program initiatives to culturally and economically diverse families; and

WHEREAS, in this Agreement, SPR renews the expiring agreement, reassessing the market-rate fees and public benefits to be provided, and finding the impacts of this action will not significantly affect revenues to SPR;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions, and performances described herein, the parties agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 “Agreement” means this Use, Occupancy and Maintenance Agreement, including all exhibits, attachments and addenda appended hereto, as now existing or hereinafter amended.

1.2 “City” means the City of Seattle.

1.3 “Commencement Date” means the date on which SWYFS is authorized use and occupancy of the Premises under this Agreement. The Commencement Date is the date when this Agreement is executed by both parties.

1.4 “Community Programming” means the essential community programming and public access to be provided by SWYFS to underrepresented and refugee communities which is a key and material deliverable to City under this Agreement

1.5 “SPR” means the City of Seattle’s Seattle Parks and Recreation department.

1.6 “Public Benefit” means programs and services to be provided by SWYFS in exchange for an offset of use fees. Public Benefits can include but are not limited to fee discounts, scholarships, programming and stewardship activities. A Public Benefit may also be Community Programming if approved by the Superintendent.

1.7 “Public Benefit Program Delivery Credits” means credits for the provision of services for youth and families by SWYFS that may be used to offset, in part or whole, the actual payment of use fees due to the City under this Agreement. The availability of Public Benefit Program Delivery Credits is subject to the approval of public benefit services by SWYFS and their dollar value shall be determined in the Superintendent’s sole discretion.

1.8 “Public Benefit Plan” means the document to be drafted by SWYFS and approved by SPR that sets out the planned public benefit programming to be provided by SWYFS, to offset Use Fees. The Public Benefit Plan will be set out in Exhibit D to this Agreement unless SWYFS provides and SPR approves an alternative form of the Public Benefit Plan.

1.9 “Public Benefit Report” means the document to be drafted by SWYFS and delivered to SPR identifying and quantifying delivered public benefit programming. The Public Benefit Report will be set out in Exhibit D to this Agreement unless SWYFS provides and SPR approves an alternative form of the Public Benefit Report.

1.10 “Executive Director” means the Executive Director of SWYFS.

1.11 “Premises” means the old Delridge Community Center as renovated by, and currently in use by SWYFS.

1.12 “Superintendent” means the Superintendent of Parks and Recreation and such official’s designee.

1.13 “SWYFS” means Southwest Youth and Family Services.

1.14 “SWYFS Programming” means those family support programs and other services offered by SWYFS that create a wider community-based participation opportunity for SPR users, as determined by the Superintendent.

## ARTICLE 2. PREMISES

2.1 Premises Description. SWYFS shall be authorized to use and occupy the premises, subject to all the terms and conditions of this Agreement, that certain real property situated in the City of Seattle, King County, Washington, commonly known as the old Delridge Community Center at 4555 Delridge Way SW, Seattle, Washington 98106, and legally described as follows:

A portion of the West ½ of the S.W. ¼ of the S.E. ¼ of Section 13, Township 24 North, Range 3 East, West Meridian, being the same as a parcel of land accepted by City of Seattle Ordinance 30867 more particularly described as follows:

Commencing at the south quarter corner for said section, thence N 0°06'31" W on the north-south centerline of said section a distance of 30 feet, thence S 89°57'40" E a distance of 34.21 feet to the S.W. corner of said parcel, thence continuing S 89°57'40" E on the south line of said parcel a distance of 399.91 feet, thence N 0°00'00" E a distance of 97.00 feet to the True Point Of Beginning of this description, thence continuing N 0°0'00" E a distance of 275.82 feet, thence N 69°44'53" E a distance of 75.62 feet to a point of intersection with a curve on the east line of said parcel from which the radial center bears N 75°13'03" E a distance of 777.97 feet, thence southerly and easterly on the east line of said parcel, being the same as the west marginal boundary of Delridge Ave. S.W., on a curve concave to the N.E. having a radius of 777.97 feet a distance of 122.71 feet to a point of reverse curvature on the east line of said parcel from which the radial center bears S 66°10'50" W a distance of 714.99 feet, thence continuing southerly and westerly on the east line of said parcel, being the same as the west marginal boundary of Delridge Ave. S.W., on a curve concave to the S.W. having a radius of 714.99 feet a distance of 194.55 feet, thence N 89°57'40" W parallel with the south line of said parcel a distance of 165.00 feet to the True Point Of Beginning; Containing approximately 0.15 acres;

Hereinafter referred to as the "Premises."

A site map depicting the location of the Premises is attached as Exhibit A.

## ARTICLE 3. PREMISES TO BE USED AND OCCUPIED ONLY FOR LIMITED PURPOSES; SECURITY SERVICES AUTHORIZED

3.1 Limited Purposes Authorized. The Premises shall be used as a family and youth services program center for SWYFS programming, as a meeting and office facility for SWYFS, and as a facility available for public use under the conditions described herein. SWYFS shall not use the Premises for any other purpose or make any other use of the Premises inconsistent with the foregoing described purpose without the prior written consent of SPR. SWYFS is not authorized to use the Premises for the carrying out of any medical or health-related clinical activity of any kind or nature.

3.2 Security Staff. SWYFS shall have the right, but not an obligation, to hire one or more employee(s) or engage one or more private contractor(s) to provide security services in connection with its use of the Premises.

3.3 Permitted Use. Consistent with the limited purposes authorized by this Agreement, SWYFS shall use the Premises for classrooms, playrooms, meeting rooms, SWYFS programming, storage and administrative offices related to the general operations of SWYFS as a nonprofit organization dedicated to supporting communities in southwest Seattle and King County so that culturally and economically diverse families, youth, and children thrive and prosper. Additionally, SWYFS's Permitted Use may include allowing the public to use the Premises as subordinate users under the terms and conditions of Article 23 when in compliance with this Agreement. SWYFS shall not use the Premises for any other purpose or make any use of the Premises that is inconsistent with the Permitted Use without the Superintendent's prior written consent.

3.4 Required Use. The City's willingness to enter into this Lease is conditioned, in part, on SWYFS' commitment to provide Community Programming. SWYFS must continue providing Community Programming under Article 8 throughout the Agreement Term.

#### ARTICLE 4. TERM; AUTHORIZED PERIOD OF PREMISES USE

4.1 Term of Agreement. The term of this Agreement shall be the period of time commencing when the Agreement has been fully executed and expiring on December 31, 2030 with an option for another 10 years at the mutual consent and agreement of both parties, with additions, modifications, or deletions as the Mayor or Superintendent deems to be in the best interest of the City.

#### ARTICLE 5. USE FEES; REDUCTIONS & OFFSETS THERETO; TAXES

5.1 Use Fee Value. SWYFS shall be responsible for compensating the City for an amount equal to the fair market rental value for the Premises ("Use Fee"). Based on a 2019 fair market rent value assessment of the Premises conducted by a state-certified real estate appraiser, the initial Use Fee shall be \$16,081/month (\$192,972.00 per year). This initial Use Fee is subject to change and has been adjusted pursuant to Article 7.

5.2 Use Fee Payment. In consideration for the use and occupancy of the Premises, SWYFS shall pay each month the monthly Use Fee amount minus any Public Benefit Program Delivery Credits ("Offsets") available pursuant to Sections 5.3 and 5.4. Any Offsets will be prorated on a monthly basis. In no event will there be a negative Use Fee.

5.3 Public Benefit Program Delivery Credits. Subject to Sections 5.4 and Article 6, for the duration of the Agreement, SWYFS shall be entitled to Public Benefit Program Delivery Credits that may be used as an Offset against the Use Fee.

5.4. Offset Subject to limitation. Notwithstanding any other provision hereof, if the amount of the reduction and Offset to be provided pursuant to Subsection 5.3 hereof exceeds the amount of the use fee that is payable to the City by SWYFS at any time, the City shall not be obligated to pay or otherwise compensate SWYFS for such overage at any time whatsoever. Accordingly, the amount or value of any such reduction and Offset shall have no effect on the terms of this Agreement and shall not be the basis for any claim that the term should be extended for any period after the expiration date hereof, nor shall the City be obligated to reimburse SWYFS for any such excess that is not applied against any Use Fee prior to the expiration or earlier termination of this Agreement. Conversely, if the Use Fee payable by SWYFS to the City exceeds the amount of the reduction and Offset to be provided pursuant to Subsection 5.1 hereof, SWYFS shall provide the value of same to the City in cash or, subject to further agreement by SWYFS and the City, in the form of additional program services consistent with parks and recreation purposes. The specific services that may be provided in lieu of a cash payment shall be subject to the approval of the Superintendent.

5.5. Taxes. In addition to the Use Fee provided under Subsection 5.1, SWYFS shall pay to SPR monthly whatever leasehold excise tax is assessed pursuant to RCW Ch. 82.29A for use and occupancy of the Premises by SWYFS under this Agreement. SWYFS is responsible for keeping current, valid leasehold excise tax exemption certificates on file with SPR. If SWYFS fails to provide SPR with the exemption certificate for any period of time, leasehold excise tax may be levied and may not be refundable. In addition, SWYFS shall pay before their delinquency all other taxes that may be due and payable with respect to property owned by SWYFS on the Premises.

5.6. Use Fee Reduction & Offset Inapplicable to Taxes. The reduction and offsetting of any Use Fee pursuant to Subsection 5.1 hereof shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of SWYFS. Unless SWYFS is exempt from the payment of leasehold excise taxes, all such taxes are required.

5.7. Use Fee & Leasehold Excise Tax Payment Date and Address. Any use fee and leasehold excise tax that is due and payable under this Agreement shall be remitted on or before the 10th calendar day of each month during the term of this Agreement to the City of Seattle Treasury, PO BOX 94626, Seattle, WA 98124-6926, or to such other place as SPR may hereafter designate. SPR will send a monthly invoice for any payments due.



5.8. Late & Refused Payments. SWYFS acknowledges that late payment to the City of the Use Fee or any other sum due to the City hereunder will cause SPR to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of legal enforcement of this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, in the event SWYFS fails to pay any sum after such amount is due to the City, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid. Additionally, a twenty-dollar (\$20.00) charge shall be paid by SWYFS to the City for each check refused payment for insufficient funds or any other reason. If any of the aforementioned fees or charges change, SPR shall provide a written explanation to SWYFS of the amount by which such fees and charges have changed.

#### ARTICLE 6. PUBLIC BENEFITS

6.1 Public Benefit Plan. Each year during the Term, SWYFS shall submit no later than October 1<sup>st</sup> annually, 90 days prior to the beginning of their next calendar year a Public Benefits Plan for that year. The Public Benefits Plan will be set out on the form provided in Exhibit D or another form provided by or approved by the Superintendent. The Public Benefits Plan will set out SWYFS's plan to publicize and provide public benefits and programming, as well as the estimated Public Benefit Program Delivery Credit to be earned by these activities. In calculating the value of the expected Public Benefit Program Delivery Credit, SWYFS may consider the value of fee discounts, scholarships, programming and stewardship activities. The Public Benefits Plan will contain enough information for the Superintendent to confirm that the proposed programming is consistent with Agreement goals and City policy and to verify the dollar value of any Public Benefit Program Delivery Credits to be earned by delivery of public benefits. The Superintendent, acting reasonably, shall approve or revise SWYFS' Public Benefit Program Delivery Credit calculation following receipt of the Public Benefit Plan.

6.2 Public Benefit Report. No more than sixty (60) days after the end of the calendar year, annually on March 1, SWYFS will provide a Public Benefit Report with any documentation necessary that demonstrates to the Superintendent's reasonable satisfaction, that SWYFS provided all public benefits described in the Public Benefit Plan for that year. Such summary shall consist of, but not limited to, a Public Benefits Report (Exhibit D), organization brochures and pamphlets, total hours of programming, public service hours, number of programs and scholarships, free services and values for all of the above, demographic of clients, academic impact analysis, and total number of low income and diverse populations served, and other permitted uses, dates, identification of the user/groups, and purposes for non-programming uses.

6.3 City Approval. If Superintendent cannot determine the benefit or value of public benefits set out in either the Public Benefits Plan or Public Benefit Report, Superintendent may

request additional information or documentation within sixty (60) days of receipt. SWYFS will provide any requested information or documentation within sixty (60) days of receiving Superintendent's request. The City shall be deemed to have approved the Public Benefits Plan or Public Benefit Report as delivered unless the Superintendent delivers written objections to the report and Public Benefit Plan within sixty (60) days of receipt of the plan. If the Superintendent delivers written objections within the sixty (60) day period, the Superintendent shall also specify subsequent actions to be taken by SWYFS that will satisfy the Superintendent's concerns. Failure to provide agreed public benefits set out in the Public Benefits Plan will be a breach of this Agreement in addition to making specified Public Benefit Program Delivery Credits unavailable as an offset against use fees. SWYFS must pay to the City the full value of any Use Fee not offset within 30 days of invoice from Superintendent.

6.4 Public Benefit Program Delivery Credits. SWYFS will include in the Public Benefit Report a calculation of Public Benefit Program Delivery Credits earned by SWYFS's reported public benefit programming and activities. This calculation will be made using the value of SWYFS' fee discounts, scholarships, programming and stewardship activities based on the estimated values set out in the Public Benefits Plan. If SWYFS seeks credit for any activity not set out in the Public Benefits Plan or that differs from the estimated value in the Public Benefits Plan, SWYFS will provide a written explanation why the claimed Public Benefit Program Delivery Credits should be available for that activity. The Superintendent will verify the availability and amount of Public Benefit Program Delivery Credits earned and make any adjustments as may be required in the Superintendent's reasonable discretion. If the Superintendent adjusts the Public Benefit Program Delivery Credits available from the amount claimed by SWYFS, Superintendent will notify SWYFS of this adjustment and provide SWYFS an opportunity to clarify or explain the amount of credits claimed. The Superintendent's determination of the value of Public Benefit Program Delivery Credits will be final and binding. Once approved by the Superintendent, SWYFS may offset the approved value of each year's Program Delivery Credits in 12 equal monthly installments on a calendar-year basis.

6.5 Combined Report and Plan. For administrative convenience, after the first year of the Term, SWYFS may combine the Public Benefit Report and Public Benefit Plan into one document ("Combined Report"). If SWYFS notifies SPR that it will be submitting a Combined Report by the due date of the Public Benefit Plan, SWYFS may submit the Combined Report by the due date for the Public Benefit Report. The Combined Report will contain all information required for the Public Benefit Plan and Public Benefit Report and Superintendent reserves the right to seek any additional information reasonably necessary to determine the value of public benefits.

## ARTICLE 7. USE FEE ADJUSTMENTS

### 7.1 Fair Market Rent Appraisal.

SPR will revalue or update through an appraisal of the fair market rent value of the Premises and recalculate the Use Fee to be charged pursuant to Subsection 5.1 hereof, at a minimum every two (2) years after the Commencement Date. Upon such appraisal and recalculation, SPR shall provide a written explanation to SWYFS of the amount by which the Use Fee has increased.

### 7.2 Consumer Price Index Adjustment to Use Fee.

On each Commencement Date anniversary during the Initial Term, the Use Fee will be adjusted by the percentage increase that occurred in the Consumer Price Index for all Urban Consumers (CPI-U I 1982-84 = 100), All Items, for the Seattle-Tacoma-Bremerton Metropolitan Area, as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor (“the Index”) during the preceding calendar year (“the CPI Increase”); provided, however, that the adjustment to the Use Fee shall not exceed 4% in any one year.

Should any year’s CPI percentage change be less than zero, the Use Fee shall not change from that of the prior year. If there is any change in the Index base (1984-82=100) or other modification of the Index, or if the CPI is discontinued, SPR shall select a similar index of comparable statistics on the cost of living for King County as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority.

## ARTICLE 8. SWYFS OPERATION AND SERVICES

8.1 Community Programming Offered. By entering this Agreement, SWYFS commits to continue providing beneficial Community Programming through childhood learning, student success, youth development for culturally and economically diverse families, and other free community programming and public access opportunities to under-represented and refugee communities. Each year during the Term, SWYFS shall provide agreed Community Programming. Community Programming is a required use of the Premises and Public Benefit Program Delivery Credits will not be provided for these activities except as are specifically approved in the Public Benefit Plan and Public Benefit Report.

With prior review and approval by SPR, Community Programming may change over time to meet newly identified demographic needs of the community and provide additional public benefit. The Superintendent will use reasonable discretion to determine whether any change in Community Programming continues to advance City policy and equity goals. Initially, Community Programming shall be within the following categories:

- a. **Public Access.** SWYFS will provide a minimum of forty (40) hours a week of free public access to the Premises (open to the public).
- b. **SWYFS Staff.** SWYFS will target and recruit from under-represented and refugee communities to participate in work parties, groups, and/or group activities to teach, demonstrate, and implement diverse cultural programming.
- c. **Workshops.** SWYFS will provide a minimum of sixty (60) hours of free workshops to low-income families per year on academics, parenting, citizenship, and other related programming. A minimum of 100 duplicated/75 unduplicated individuals will participate in the workshops, including both youth and adults.
- d. **Community Event.** SWYFS will host or participate in an annual community event to celebrate the diverse cultures of underrepresented communities and/or cultural special events. The event is anticipated to attract more than 200 participants of all ages.

8.2 **SWYFS Operation Hours and Closure of Premises.** SWYFS shall post its hours of operation and schedule of Community Programming in a place and manner on the Premises that is readily visible to the public. Subject to the prior written approval of the Superintendent, SWYFS may, for good cause, close the Premises or a portion thereof for a reasonable period during its regularly scheduled hours of operation.

8.3 **Operations Report.** SWYFS shall submit annually to SPR a report of operations, including a summary of Community Programming, maintenance of the premises, approved capital improvements, and other activities and uses of the Premises. This report will be in addition to other reports required by this Agreement, including the Public Benefit Report required in Section 6.2 and reports of subordinate uses and fundraising required in 23.2.

## ARTICLE 9. CARE OF PREMISES

9.1 **SWYFS' General Cleaning & Repair Obligation.** During the term of this Agreement and any extension thereof, SWYFS, at no cost to the City, shall keep the Premises in a neat, clean, and sanitary condition and shall make all necessary repairs to the Premises, including those that may be required as a consequence of any structural defect in any wall, the foundation, or the roof of the Premises. SWYFS shall assume total responsibility for the maintenance and operation of the Premises, including but not limited to, the heating, ventilation, and electrical systems, glass, boiler and plumbing, and light fixtures, and the keeping all of the same in good and proper repair, and in accordance with all applicable statutes, City ordinances, and directions or regulations of the proper public authorities. SWYFS acknowledges that SPR shall not be required to make any repair of any kind to the Premises.

9.2 SWYFS' Custodial & Janitorial Services Obligation. SWYFS shall provide all custodial and janitorial services as may be required in and for the Premises and trash and litter pickup within one (1) foot of the Premises in all directions, in a manner and with a frequency consistent with SPR standards for such work.

9.3 SWYFS' Major Maintenance Obligation. SWYFS shall provide and be responsible for all major maintenance associated with the Premises, including but not limited to electrical and mechanical systems, painting, roof, all at no cost to the City. All major maintenance activity undertaken by or for SWYFS on the Premises shall be subject to review and approval, in writing, by SPR prior to its implementation. SWYFS shall ensure that as a consequence of its major maintenance activity, the Premises and improvements are preserved in good operating condition throughout the term of this Agreement, and that upon the expiration or earlier termination of this Agreement, the Premises and such improvements are turned over to the City in a condition that will not require the performance of any major maintenance with respect thereto for a period of at least two (2) years.

9.4 SWYFS' Preventive Maintenance Obligation. From and after the Commencement Date, SWYFS shall implement, at no cost or expense to the City, a preventive maintenance program that is consistent with SPR standards for such work. Such preventive maintenance shall include a systematic approach to regularly inspecting the equipment, machines, and other assets in the facility in order to reduce breakdowns and failures and to preserve the infrastructure and operating environment of the Premises. SWYFS' preventative maintenance program shall be subject to review and approval by SPR.

9.5 Joint Annual Inspection of Premises; Remedial Action Obligation. SWYFS shall participate in an annual inspection of the Premises with SPR and be responsible for taking any and all action that may be required to maintain and operate the Premises in accordance with SPR standards. SPR shall notify SWYFS ninety (90) days in advance of any proposed SPR standard changes that may affect SWYFS' obligations under this Agreement.

9.6 City Remedy upon SWYFS' Failure to Maintain Premises. In the event SWYFS fails to maintain the Premises in good order, condition, and repair, SPR shall give SWYFS notice to undertake such work as is reasonably required to maintain the Premises. In the event SWYFS fails to commence such work within ten (10) calendar days after SWYFS' receipt of such notice and to diligently prosecute it to completion, then SPR shall have the right at its option and in addition to all other remedies, to undertake such work and to invoice SWYFS for the costs incurred by the City in connection therewith. SPR shall have no liability to SWYFS for any damage, inconvenience, or interference with the use of the Premises by SWYFS as a result of the City's performing any such work.

## ARTICLE 10. UTILITIES AND MAINTENANCE CHARGES

10.1 Responsibility for Utilities. During the term of this Agreement, SWYFS shall pay the costs associated with maintaining the Premises, including the costs of all utilities, utility meters, equipment, infrastructure, and costs and services to maintain the Premises. SWYFS will establish utility accounts with any applicable utility provider, including Seattle Public Utilities, City Light, and Puget Sound Energy so that bills will be sent to SWYFS directly for payment.

10.2 Interruption. City shall not be liable, and SWYFS hereby waives any claim against the City, for the interruption or failure of any utility service to the Premises, for any reason whatsoever.

## ARTICLE 11. INDEMNIFICATION & INSURANCE

11.1 Indemnification. SWYFS shall indemnify the City for and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) arising from or relating to the use and occupancy of the Premises and any portion thereof, and any act or omission of SWYFS or any of its officers, employees, agents, contractors, or volunteers on the Premises, and any claim by a third party arising from any of the foregoing; and in the event any suit or action is brought against the City, SWYFS, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and SWYFS jointly; in the event the City determines one or more principles of governmental or public law are involved, the City retains the right to participate in such action. The above liability shall not be diminished by the fact, if it be a fact, that any death, injury, damage, loss, cost, or expense may have been, or may be alleged to have been, contributed to by the negligence of the City or its officers, employees, or agents; provided, that nothing contained in this section shall be construed as requiring SWYFS to indemnify the City against liability for damage arising out of bodily injury to a person or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents.

11.2 Survival of Indemnification Obligation. The indemnification obligations of SWYFS hereunder shall survive the expiration or earlier termination of this Agreement.

11.3 Insurance to be secured by SWYFS. Prior to the commencement of any activity on the Premises under this Agreement, SWYFS shall secure and shall thereafter maintain in full force and effect at no expense to City, insurance as specified in Exhibit B, Insurance Requirements.

## ARTICLE 12. CITY'S CONTROL OF PREMISES & VICINITY

12.1 All common and other facilities provided by the City in or about the Premises, including parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may do any and all of the following (among other activities in support of Parks and Recreation or other municipal objectives), all without incurring any liability whatsoever to SWYFS:

12.1.1 Change of Vicinity. Increase, reduce or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises;

12.1.2 Traffic Regulation. Regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of SWYFS and its invitees, employees, and patrons;

12.1.3 Display of Promotional Materials. Erect, display and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

12.1.4 Change of Businesses. Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Premises.

## ARTICLE 13. ALTERATIONS OR IMPROVEMENTS

SWYFS shall not make any alteration, addition, renovation, or improvement in or to the Premises without first obtaining the prior, written consent of the Superintendent. All alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of SWYFS and shall remain in and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Agreement, or be removed from the Premises by SWYFS, at the sole discretion of SPR. SPR reserves the right to review and approve SWYFS' plans, specifications, and contractor for any and all such alterations, additions, renovations and improvements. SPR reserves the right to impose restrictions or conditions upon its consent to any aspect of the above work, including the requirement that SWYFS appropriately bond the same, as SPR may deem reasonably appropriate.

## ARTICLE 14. DAMAGE OR DESTRUCTION

In the event the Premises are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, it shall be optional with the City to repair or rebuild the same, and in the

meantime the use fees payable by SWYFS hereunder shall be abated in the same proportion as the unusable portion of the Premises bears to the whole Premises. Unless SPR, within sixty (60) calendar days after the occurrence of any such damage or casualty, gives notice to SWYFS of the City's election to restore the Premises, this Agreement shall terminate. If the City does not terminate this Agreement, it shall remain in full force and effect. The City shall not be required to repair or restore any damage or injury or to replace any equipment, inventory, fixture, or other personal property of SWYFS or others located on the Premises.

#### ARTICLE 15. CONDEMNATION

If any part of the Premises shall be taken or condemned, and a part thereof remains that is susceptible of occupation hereunder, this Agreement shall, as to the part so taken, terminate as of the date title shall vest in the condemner, and the use fee payable hereunder shall be adjusted so that SWYFS shall be required to pay for the remainder of the Term only such portion of the use fee as the number of square feet in the part remaining after the condemnation bears to the number of square feet of the entire Premises immediately prior to the condemnation; but in such event SPR shall have the option to terminate this Agreement by notice to SWYFS within thirty (30) days of the date when title to the part so condemned vests in the condemner. If part or all of the Premises is taken or condemned, all compensation awarded upon such condemnation or taking shall go to the City, and SWYFS shall have no claim to any of the same, and SWYFS hereby irrevocably assigns and transfers to the City any right to compensation or damages payable by reason of the condemnation of all or part of the Premises.

#### ARTICLE 16. COMPLIANCE WITH LAW

16.1 General Requirements. SWYFS, at no cost to the City, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and Municipal Code of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and the officers thereof, as such enactments now exist or are hereafter enacted or promulgated. Whenever SWYFS is informed of any violation of any such law, ordinance, rule, regulation, license, permit or authorization committed by it or any of its officers, employees, contractors, subcontractors, agents or invitees, SWYFS shall immediately desist from and/or prevent or correct such violation.

16.2 Licenses and Other Authorizations. SWYFS, at no cost to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof, and shall submit to SPR evidence of SWYFS' satisfaction of all such requirements prior to the commencement of any modification of the Premises. SWYFS shall be responsible for payment



of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a Certificate of Occupancy prior to the use or occupancy of any modified portion of the Premises.

16.3 Equality of Treatment. SWYFS shall conduct its business in a manner that assures fair, equal and nondiscriminatory treatment at all times in all respects to all persons without regard to race, color, religion, sex, age or national origin. Any failure to comply with this provision shall be a material breach of this Agreement.

16.4 Nondiscrimination. SWYFS shall comply with all state and local laws and ordinances prohibiting discrimination with regard to race, color, national origin, ancestry, creed, religion, political ideology, sex, sexual orientation, marital status or the presence of any sensory, mental or physical handicap. Consistent with that obligation, if SWYFS has three (3) or more employees during the term of this Agreement, the following provisions of SMC 20.44.040 shall be deemed to be incorporated herein:

During the performance of this Agreement, SWYFS agrees as follows:

SWYFS will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. SWYFS will take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their creed, religion, race, color, sex or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SWYFS agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. SWYFS will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to this provision; provided, that nothing herein shall allow an employer to give preference in employment to members of his/her immediate family.

SWYFS will, upon the request of SPR, furnish to the Superintendent on such form as may be provided therefor, a report of the affirmative action taken by SWYFS in implementing the terms of this provision, and will permit access to SWYFS' records of employment, employment advertisements, application forms, other pertinent data and records requested for the purpose of investigation to determine compliance with these provisions.

If, upon investigation, the Superintendent determines that there is probable cause to believe that SWYFS has failed to comply with any of the terms of these provisions, SWYFS shall be so

notified in writing. The Superintendent shall give SWYFS an opportunity to be heard, after ten (10) days' written notice. If the Superintendent concurs that SWYFS has failed to comply with any of the terms of these provisions, the Superintendent may direct SPR to suspend or terminate this Agreement and evict SWYFS in accordance with law.

The foregoing provision shall be inserted in all sub agreements entered into under this Agreement.

#### ARTICLE 17. LIENS AND ENCUMBRANCES

SWYFS shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. If, because of any act or omission of SWYFS, any mechanic or other lien or order for payment of money shall be filed against the Premises, SWYFS shall promptly notify the City of the same and, at SWYFS' sole expense, cause the same to be discharged or bonded within thirty (30) days after the date of notice of such filing. At the City's request, SWYFS shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

#### ARTICLE 18. RECORDS, BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

18.1 SWYFS to Maintain Books & Records. SWYFS shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by SPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract.

18.2 Audit Right to be ensured by SWYFS in Subordinate Use Arrangements. SWYFS shall ensure that such inspection, audit and copying right of the City is a condition of any license, contract or other arrangement under which any other person who is not an SWYFS employee or other entity is permitted to carry on a business or social service activity in, on or from the Premises.

18.3 Overpayments and Underpayments. In the event that through any audit, SWYFS is found to have made any overpayment or underpayment hereunder, the Superintendent shall notify SWYFS of the amount of the overpayment or underpayment. Any overpayment shall be a credit against any fees and charges subsequently due or shall be refunded to SWYFS, at its option; underpayments shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice.

18.4 SWYFS to Assist City in Providing Data to State & Federal Governments. Upon the request of the City, SWYFS shall promptly provide, at SWYFS' sole expense, necessary data to enable the City to fully comply with any and every requirement of the state of Washington or the United States of America for information or reports relating to this Agreement and to SWYFS' use of the Premises.

18.5 Retention of Records. SWYFS shall retain all books, records, documents, and other material relevant to this Agreement for four (4) years after the expiration or termination of this Agreement, and make them available for inspection by persons authorized under this Agreement at such times and on such forms as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

#### ARTICLE 19. ACCESS

SPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, or improving the Premises but nothing contained in this Agreement shall be construed to impose any obligation on SPR to make any repair, alteration, or improvement. SWYFS shall not install any new lock or bolt on any exterior door without SPR's written consent. SPR shall have the right to show the Premises to other prospective users at its convenience.

#### ARTICLE 20. SIGNS OR ADVERTISING

20.1 SWYFS' Signs. SWYFS shall have the right upon written approval from SPR to install a sign on the Premises that identifies the same for SWYFS' purposes. Any such sign shall include the name of the Premises, the name of SWYFS, and shall be constructed in a style and size consistent with the signage policy adopted by SPR.

20.2 Bulletin Boards. SWYFS shall have the right to install bulletin boards within the Premises, and to display community-related notices, posters, and similar materials thereon as related to SWYFS' operation of the Premises under this Agreement.

20.3 No Other Signage on Premises. Other than the approved exterior signage and interior bulletin boards permitted by Subsections 20.1 and 20.2, above, SWYFS shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining SPR's written consent thereto. Any consent so obtained from SPR shall be with the understanding and agreement that SWYFS will remove the same at the expiration or earlier termination of the Term herein created and repair any damage or injury to the Premises caused thereby.

## ARTICLE 21. WASTEFUL AND DANGEROUS USE

SWYFS shall not commit or allow any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Park Code as now existing or hereafter amended or any activity that is inconsistent with the use authorized by this Agreement or that will be dangerous to life or limb, or that will increase any insurance rate upon the Premises.

## ARTICLE 22. INSOLVENCY

Either (i) the appointment of a receiver to take possession of all or any part of the assets of SWYFS, or (ii) the general assignment by SWYFS for the benefit of creditors, or (iii) any action taken or suffered by SWYFS under any insolvency or bankruptcy act shall, if such appointment, assignment, or action continues for a period of thirty (30) days, constitute a breach of this Agreement by SWYFS, and SPR may at its election and without notice terminate this Agreement; and in that event, SPR shall be entitled to immediate possession of the Premises. In the event any provision of this Article is contrary to any applicable law, such provision shall be of no force or effect.

## ARTICLE 23. SUBORDINATE USES

23.1 SWYFS Authorized to Permit Subordinate Uses of Premises. One of the major objectives of this Agreement, in addition to providing family and youth support services and meeting and office space for SWYFS is to provide a community meeting facility that shall be available to the general public. Accordingly, SWYFS shall have the right to allow the subordinate use of the Premises by other groups for small meetings and related activities without cost to the outside organization and without paying any of the fees described in 23.2. Such permitted subordinate use shall not include subleases, except as may be allowed under Section 23.3, and shall not be construed to convey possession of any part of the Premises to a third party.

23.2 SWYFS Fees for Subordinate Uses of Premises. SWYFS shall have the right to establish fees for the subordinate use of the Premises by one or more third parties. Such fees shall be consistent with fees charged by SPR to community groups for similar activities. SWYFS shall remit a report describing ten percent (10%) of any fee collected for use of the Premises by other groups to the SPR Contracts and Administrative Support Office (CASO), 300 Elliott Ave West, Suite 100, Seattle, WA 98119, or to such other place as SPR may hereafter designate within thirty (30) calendar days after the end of the fiscal year. This report can accompany the annual Public Benefit Report due. SPR will then invoice SWYFS for the value of the 10% fee and provide payment instructions on the invoice. The requirement to pay a part of fees collected for use of the Premises by other groups shall not apply to fundraising activities conducted by SWYFS, but the term “fundraising activities” shall not include the imposition of any fee or

charge for the use of the Premises by any person or entity other than SWYFS. Additionally, SWYFS shall deliver to SPR a report of all SWYFS fundraising activities undertaken during the preceding fiscal year. In no event can SWYFS convey occupancy or otherwise proprot to lease space to a third-party user. Any agreement allowing subordinate use of the Premises must be terminable at will by SWYFS. The City reserves the right to require SWYFS to terminate any subordinate use agreement at any time the Superintendent determines, in the Superintendent's sole discretion, that such use is inconsistent with SPR's purposes.

23.3 No Mortgaging or Transferring of Agreement or SWYFS' Interest Therein. Except for the uses permitted herein, SWYFS shall not lease, transfer, assign, mortgage, hypothecate or convey this Agreement or any interest therein, in whole or in part, or lease or license use or occupancy of the Premises or any part thereof or any of the rights or privileges or any portion of the Premises granted under this Agreement to any other person, firm or corporation without the prior written authorization of SPR, which authorization may be granted, withheld, or conditioned in each instance in the sole discretion of the Superintendent. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. The rights and privileges granted hereunder, and the Premises are not assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy, either voluntary or involuntary, or receivership proceedings. Any assignee approved by SPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by SWYFS. Any transfer of this Agreement from SWYFS by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Agreement. SPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through SWYFS.

23.4 Fees Due to City for Subordinate Uses. Except for the subordinate uses permitted herein, if this Agreement is assigned or if the Premises or any portion thereof are occupied by any person or entity other than SWYFS, SPR may collect additional use fees and other charges than those that may be collected by SWYFS from such assignee or other party and may treat the amount collected as additional income above the use fees and other charges reserved hereunder, but such collection shall not constitute consent or waiver of the necessity of consent to such assignment or transfer, nor shall such collection constitute the recognition of such assignee or other party as a tenant or a release of SWYFS from the further performance of all of the covenants and obligations of SWYFS under this Agreement.

## ARTICLE 24. TERMINATION

24.1 SWYFS Defaults in Performance Constitute Material Breach. In the event that SWYFS defaults in the performance of any of the terms, provisions, covenants, and agreements on SWYFS' part to be kept, observed, and performed under this Agreement; or if SWYFS abandons, deserts, vacates, or otherwise removes its operations from the Premises without the prior consent of the Superintendent, then, the City, at the option of the Superintendent at any time thereafter, may declare this Agreement to have been materially breached. Furthermore, if SWYFS becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise, such action shall constitute a material breach of this Agreement.

### 24.2 Process for Termination of Agreement.

24.2.1 For Cause. Either party may terminate this Agreement in the event that the other party has materially breached this Agreement and such breach has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after notice of breach has been provided to such other party; provided, however, that if the nature of such party's obligation is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion.

24.2.2 For Reasons Beyond the Control of the Parties. Either party may terminate this Agreement without recourse by the other party where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as but not limited to: acts of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

24.3 Notice of Termination. Notice of termination pursuant to Subsections 24.2.1 and 24.2.2 shall be given by the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination.

24.4 Re-entry by City Upon Termination. Upon the termination of this Agreement, the City may re-enter said Premises using such force as may be required. Notwithstanding such re-entry and anything to the contrary in this Agreement, in the event of the termination of this Agreement because of the material breach thereof by SWYFS, the liability of SWYFS for the use fees provided herein shall not be extinguished for the balance of the term of this Agreement.

24.5 Superintendent to Determine for City Existence of SWYFS Breach. The Superintendent shall have the right to determine, on the City’s behalf, whether or not SWYFS has defaulted in the performance of its obligations hereunder or has otherwise materially breached any of the terms and conditions of this Agreement.

24.6 City Remedies Upon SWYFS Material Breach. In the event of the City’s termination of this Agreement for cause, SPR, in addition to other rights or remedies that it may have, shall have the right to re-enter said Premises using such force as may be required and to make necessary alterations and repairs to restore the Premises to the condition desired by SPR, and authorize others to temporarily use and occupy the Premises. SWYFS shall pay to SPR, as soon as ascertained, the costs and expenses incurred by SPR in authorizing such other use and occupancy and in making such alterations or repairs.

#### ARTICLE 25. CANCELLATION

25.1 Notwithstanding any other provision of this Agreement, in the event SPR determines, at any time during the term of this Agreement, that the Premises are required for a park use, this Agreement shall be subject to cancellation by SPR upon one hundred (100) days’ prior written notice to SWYFS.

25.2 In the event SWYFS determines, at any time during the term of this Agreement, that the Premises are no longer required for its use, this Agreement shall be subject to cancellation upon thirty (30) days’ prior written notice by SWYFS to SPR.

#### ARTICLE 26. VACATING OF PREMISES

Upon the expiration or earlier termination of this Agreement, all right, title and interest of SWYFS in the Premises including but not limited to the improvements made thereto and fixtures installed therein, and all items acquired by SWYFS with grant funds provided by or through the City, shall vest in the City, without any action of either party hereto. Upon the expiration or earlier termination of this Agreement, SWYFS shall return the Premises, together with all SPR-approved capital improvements made thereto and fixtures installed therein, and all items acquired by SWYFS with grant funds provided by or through the City, in good order and condition, except for normal wear and tear, unless the City otherwise consents, in writing, to their removal by SWYFS. On or before the expiration or earlier termination of this Agreement, SWYFS shall remove from the Premises all items of personal property that are not to become the City’s property pursuant to this Agreement. In addition, any subordinate use allowed under Article 23 is terminated and any third-party users must vacate the building.

## ARTICLE 27. REMOVAL OF SWYFS PROPERTY IN PREMISES

Upon the entry into, or the taking possession of, the Premises following the expiration or earlier termination of this Agreement, SPR shall have the right but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by SPR, including but not limited to a public warehouse, at the expense and risk of the owner(s) of such property, with the right to sell such stored property, without notice to SWYFS or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from SWYFS to the City; the balance, if any, shall be paid to SWYFS.

## ARTICLE 28. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either served upon the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to SWYFS:

Executive Director  
Southwest Youth & Family Services  
4555 Delridge Way SW  
Seattle, WA 98106

If to the City:

Contracts Administration and Support Office  
Seattle Parks and Recreation  
300 Elliott Ave W, Ste 100  
Seattle, WA 98119

or to such other address as either party hereto may specify for itself in a notice to the other.

## ARTICLE 29. MISCELLANEOUS

29.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

29.2 Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or



condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29.3 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns and subsidiaries.

29.4 Applicable Law. This Agreement shall be interpreted under the laws of the State of Washington.

29.5 Jurisdiction & Venue. The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be laid in the Superior Court of the State of Washington for King County.

29.6 No Partnership or Joint Venture Created. The City does not by this Agreement, in any way or for any purpose, become a partner or joint venture of SWYFS in the conduct of its business or otherwise.

29.7 City's Remedies Cumulative. The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

29.8 Amendments. No modification of this Agreement shall be binding upon the City or SWYFS unless reduced to writing and signed by an authorized representative of each of the parties hereto.

29.9 Consumption of Alcoholic Beverages. SWYFS shall not permit the consumption of any alcoholic beverages on the Premises except as approved by the Superintendent in writing prior to any appropriate event.

29.10 Compliance with Funding Agreements. SWYFS shall comply with all provisions of the City agreements under which Community Development Block Grant funds and Enterprise Community funds are provided to SWYFS. A default under either of those agreements shall constitute a default and material breach of this Agreement.

29.11 Force Majeure. Any delay in or failure of performance by City or SWYFS shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure").

29.11.1 Acts of Force Majeure include, but are not limited to:

- (1) Acts of God;
- (2) Acts of war or public rebellion;
- (3) Fire or other casualty for which Contractor is not responsible;
- (4) Quarantine or epidemic;
- (5) Strike or defensive lockout;
- (6) Unusually severe weather conditions which could not have been reasonably anticipated; and
- (7) Unusual and unforeseeable delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to City was available at the time the delay became foreseeable or at any later time when delay could have been avoided by prompt action.

29.11.2 The existence of more than a Force Majeure event on any single day shall not give cause for the extension of the period of performance beyond that one day.

29.12 No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto nor shall any person, firm, organization or corporation other than a party hereto have any right or cause of action hereunder.

29.13 Effectiveness of Agreement. This Agreement shall become effective as an Agreement only upon approval by the Seattle City Council and its execution by an authorized representative of each party.

29.14 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by SWYFS, nor shall such a document waive any failure by SWYFS to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance.

29.15 Appendices & Exhibits. The following documents whether or not attached hereto, are hereby incorporated into this Agreement as if set forth in full herein:

Exhibit A – Site Premises Map

Exhibit B – Insurance Requirements

Exhibit C – SWYFS Public Benefit Requirements

Exhibit D- SWYFS Public Benefit Plan and Report Form

29.16 Entire Agreement. This Agreement and all attachments and exhibits pertaining to same constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties regarding the subject matter hereof. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of the Agreement are not to be construed against any party on the basis of such party’s preparation of the same.

*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement the day and year first above set forth.

**SOUTHWEST YOUTH AND FAMILY SERVICES**

Signed: \_\_\_\_\_  
Steve Daschle, Executive Director

Date: \_\_\_\_\_

**NOTARY**

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public residing at \_\_\_\_\_

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**CITY OF SEATTLE**

Signed: \_\_\_\_\_  
Jesús Aguirre, Superintendent, Seattle Parks and Recreation

Date: \_\_\_\_\_

**NOTARY**

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

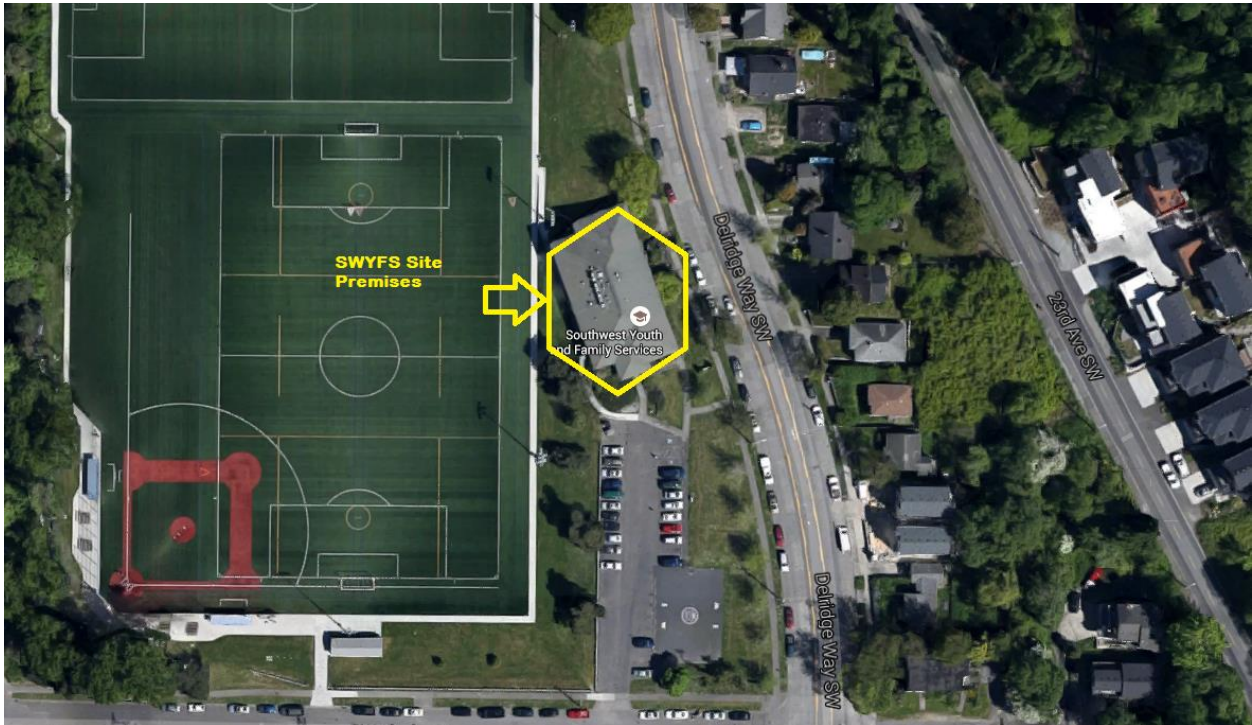
Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public residing at \_\_\_\_\_

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Site Premises Map**



**EXHIBIT B**  
**Insurance Requirements**

**I. INSURANCE**

Provider shall procure and maintain during the full term of this Agreement, at no expense to the City, the insurance enumerated below. The City reserves the right to require the filing of evidence of insurance coverage to determine Provider compliance with these requirements.

- a) Commercial General Liability Insurance including:
  - Premises/Operations Liability
  - Personal/Advertising Injury
  - Contractual Liability
  - Independent Contractors Liability
  - Stop Gap or Employers Contingent Liability
  - Fire Damage Legal

Such policy or policies must provide the following minimum coverages and limits:

Combined Single Limit each Occurrence Bodily Injury and Property Damage

\$1,000,000	Each Occurrence
\$1,000,000	Personal & Advertising Injury
\$ 500,000	Fire Damage
\$1,000,000	General Aggregate

Stop Gap/Employers Liability:

\$2,000,000	Each Accident
\$1,000,000	Disease – Policy Limit
\$1,000,000	Disease – Each Employee

Umbrella Liability Insurance at a limit of \$5,000,000 per occurrence/aggregate – Total limit of Liability coverage \$6,000,000 per occurrence/\$7,000,000 aggregate.

Sexual misconduct liability Insurance at a limit of \$5,000,000 per occurrence/aggregate - CGL shall neither exclude nor sublimit sexual and/or physical molestation claims.

Each policy shall be endorsed (by a blanket endorsement or otherwise) to include The City of Seattle, its employees and agents as additional insured's; shall include a "Separation of Insured's" or "Severability of Interests" clause; and shall provide that its limits of liability shall not be cancelled without forty-five (45) calendar days prior written notice to the City, except for cases of non-payment of premiums, in which case prior notice shall not be less than ten (10) calendar days. In addition, Provider's insurance shall be primary and non-contributory to any coverage maintained by the City. The limits of such

insurance shall not, however, limit the liability of the contractor hereunder. Provider shall promptly notify the City when Provider becomes aware of any material reduction in the aggregate limits of any insurance coverage required under this Agreement.

Business Automobile Liability Insurance: A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles and including cargo legal liability.

Such policy or policies must provide the following minimum limit:

Combined Single Limit each Occurrence Bodily Injury and Property Damage  
\$1,000,000

b) Worker’s Compensation: Worker’s Compensation as required by Washington State Law.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by SWYFS, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by SWYFS regarding this Agreement, nor (2) construed as limiting the liability of any of SWYFS’s insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

The City of Seattle as Additional Insured: The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include “The City of Seattle, its officers, officials, employees, agents and volunteers” as additional insureds. SWYFS insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

Claims Made Form and Deductibles: If any insurance policy is issued on a “claims made” basis, the retroactive date shall be prior to or coincident with the effective date of this Agreement. The policy shall state that coverage is “claims made,” and state the retroactive date. Provider shall either maintain “claims made” forms coverage for a minimum of three years following the expiration or earlier termination of this Agreement, providing the City with a Renewal Certificate of Insurance annually; purchase an extended reporting period (“tail”); or execute another form of guarantee acceptable to the City to assure Provider’s financial responsibility for liability for services performed.

Any deductible or self-insured retention must be disclosed on the required certificate and is subject to approval by the City. The cost of any claim payments falling within the deductible shall be the responsibility of Provider.

Evidence of Insurance: If evidence of insurance coverage is required, Provider shall provide the City’s Risk Management Administrator and SPR with an original standard form ACORD Certificate of Liability Insurance with attached declaration pages signed by a licensed insurance agent or broker authorized to do business in the state of Washington, showing the insuring company and policy effective dates. The City reserves the right to obtain a copy of any policy required by this Agreement, including all forms and endorsements.

Insurance Policy Rating: All policies shall be issued by a company rated A-: VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington (or issued as a surplus line by a Washington Surplus lines broker) and shall be subject to approval by the City.



## EXHIBIT C

### PUBLIC BENEFIT AND REPORTING REQUIREMENTS

Per appraisal conducted by Lamb Hanson Lamb Appraisal Associates, Inc, 2018 plus Consumer Price Index (CPI) adjustments, rent for 2020 is \$16,081/month or \$192,972 annually.

The Southwest Youth and Family Services (SWYFS) facility is managed by the Southwest Youth and Family Services, a 501(c)3 organization, through a long-term agreement with Seattle Parks and Recreation (SPR). The mutually beneficial relationship between SPR and SWYFS aligns with SPR’s vision of creating “healthy people, healthy environment and strong communities.”

SWYFS maintains the facility and also provides free or low-cost youth and community-based programs and services for culturally and economically diverse families. SWYFS expands the reach of SPR by providing services that SPR does not have the capacity to provide and by serving underserved communities.

The partnership with SWYFS saves the City annually in facility maintenance costs (2020 valued at \$84,814, the cost of a full-time SPR laborer for a facility of that size). In exchange, the City allows SWYFS to offset 100% of the rent value by requiring the organization to provide the value of rent (at a minimum) in public benefits for the community.

#### **Public Benefit**

Public Benefit for Southwest Youth and Family Services shall include free or low-cost youth and family programs and services; community events and activities; scholarships; volunteer hours, and community outreach to, and programming for, underserved communities. All of these services are included in the delivery of the public benefits outlined below. SPR-approved capital improvements by SWYFS beyond the required minor maintenance and repairs within the facility shall be reported and valued as public benefit.

### Exhibit C: SWYFS Public Benefits Summary

SWYFS shall provide the services outlined in this agreement to Seattle’s low-income and under-represented youth and families.

#### SWYFS Public Benefits Summary

Public Benefits Category	Description	Applicable Metric	Value of Services
<b>Public Access</b>	251 days per year/40 hours/week/50 weeks per year. Access includes public access to the facility and provision of social services, programs, classes/workshops, trainings, youth programs, community events and other activities at the facility. Examples of public access include access to SWYFS services; meeting space for community groups; restroom access for field users; free computer access in Family Resource Center.		Not valued
<b>Programs</b>	SWYFS will provide programming for almost 50 youth that includes: <b>Education Center:</b> Credit retrieval program for youth who have been expelled from or dropped out of school. <b>Counseling:</b> Individual, family and group behavioral health therapy offered at free or low cost to youth and families. <b>Parent-Child Home Program (PCHP):</b> Home social work visits for families with children aged two to four years and their parents to instruct parents on parent-child communication, developing good reading habits and socialization skills. <b>Community Outreach:</b> outreach to underserved schools and communities. Services include meeting with students, teacher and counselors, group counseling and support services. Outreach activities include meeting with school administrators and	Approx. 50 youth served	\$208,329

Public Benefits Category	Description	Applicable Metric	Value of Services
	<p>teachers to describe services available.</p> <p><b>Scholarships:</b> scholarships for low-income youth, adults and/or families. These scholarships help individuals pay for educational expenses, transportation, registration fees, emergency expenses and other expenses related to their academic advancement and social, mental and physical well-being.</p>		
<b>Community Outreach Events</b>	<p>Outreach to underserved schools and communities. SWYFS will provide services in a minimum of 5 schools and reach at least 100 students through programs and activities presented at the schools or in underserved communities. Services include meeting with students, teacher and counselors, group counseling and support services. Outreach activities include meeting with school administrators and teachers to describe services available. SWYFS' participation in free community events is considered a public benefit; events include Delridge Days, Back to School backpack giveaway</p>	<p>100 students</p> <p>1 Community Event</p>	\$500
<b>Volunteer Service</b>	<p>*Volunteer time is available at SWYFS for board service, tutoring, mentoring, youth development, fundraising and event planning.</p>	1,074 hours	\$35,463
<b>Capital Improvements</b>	<p>The value of capital improvements beyond the required maintenance and repair completed by SWYFS will vary. Capital improvements must be reviewed by SWYFS and mutually agreed to by SPR and SWYFS in advance.</p>	None planned for 2020	N/A
<b>Total Public Benefit Provided</b>			<b>\$244,292</b>
<b>Public Benefit Required to Offset Use Fee*</b>			<b>\$192,972</b>
<b>Public Benefit that Exceeds Requirement</b>			<b>\$51,320</b>

*\*Volunteer value may be reported as Public Benefit and valued at the most current rate for volunteers as listed under the National Value of Volunteer Time on the Independent Sector website: <https://independentsector.org/wp-content/uploads/2018/04/value-of-volunteer-time-state-historical-2001-2019.pdf>. The most current rate available at this time is year-end 2019, \$33.02 per hour.*

## **Exhibit D: SWYFS Public Benefit Plan and Report Form**

*Attach report at signing*

<https://seattlegov.sharepoint.com/sites/pks/team/caso/Documents/Public%20Benefit%20Reporting%20Form%202019.pdf?csf=1&e=7L229U&cid=5a904320-11c7-483b-b0f2-85ac88941bc7>