



Draft

FACILITIES USAGE AGREEMENT  
(Children's Bureau of Southern California)

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of July, 2014, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and Children's Bureau of Southern California, a non-profit 501(C)3 entity, hereinafter referred to as "TENANT."

RECITALS

- 1) CITY owns a park building, known as the "Magnolia Park Family Resource Center," located at 11402 Magnolia Street (the "Center").
- 2) TENANT wishes to lease facilities at the Center to provide differential response programs and services.
- 3) CITY desires to allow TENANT to lease facilities at the Center to provide said services upon the terms and conditions herein set forth.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) TERM. This Agreement shall commence on the 1st day of July 2014, and shall continue through June 30, 2015 (the "Term"), unless sooner terminated by either party.
- 2) FACILITY USE. TENANT agrees to lease two cubicles at the Center, to be assigned by the CITY ("Facilities"). TENANT shall use the Facilities for office-related uses, for providing differential response programs and services to families referred by the Social Services Agency, and for individual meetings with clients. TENANT intends for two full-time staff members to occupy the Facilities at the Center and for the placement of two computer terminals at the Facilities, to be provided at TENANT's expense. TENANT may have non-exclusive access to the counseling room and other shared areas at the Center, based on availability and subject to any policies that may be applicable at the Center. However, should TENANT decide to hold any classes or any other events, TENANT must obtain the express written permission of the CITY, to be granted at City's sole discretion.
- 3) RENT. TENANT shall pay to CITY quarterly rent during the Term of this Agreement, in the amount of \$500.00 for a total amount of \$2,000. The rent shall be due on October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup>, and June 1<sup>st</sup>. This amount includes the lease of the Facilities as outlined in Section 2, the use of a shared copier machine at the Center, and utilities services, including internet, phone, sewer, electrical and water.

4) TERMINATION.

- a) TERMINATION WITHOUT CAUSE. Either party may terminate this Agreement without cause by giving written notice of such termination at least thirty (30) days prior to the intended date of termination.
- b) TERMINATION FOR CAUSE. Either party may terminate this Agreement upon any material breach by the other party by providing written notice specifying the nature of said breach. Unless the Section of this Agreement that is the subject of the breach provides for a grace period for performance or specifies a longer cure period, the breaching party shall have thirty (30) days to cure the breach.

5) NONPROFIT STATUS. TENANT shall at all times during the term of this Agreement, maintain California non-profit corporate status, and shall adhere to all laws and regulations related to such status.

6) FACILITY MAINTENANCE, REPAIRS AND ALTERATIONS. CITY shall provide interior maintenance for other areas not occupied by TENANT, and exterior maintenance and building repairs.

- a) CITY OBLIGATIONS. CITY shall keep the Center, including the building and common areas, in good condition and repair. City will provide custodial services (including, but not limited to, cleaning of all restrooms, upholstery, carpeting, emptying trashcans and windows). However, CITY shall not be obligated to repair or replace any improvements that are not ordinarily a part of the building or that exceeds building code standards.
- b) ALTERATIONS. TENANT shall make no additional alterations, structural modifications, remodeling, or change in use of any portion of the Center without the prior written permission of CITY, which will not be unreasonably withheld.
- c) CONDITION UPON TERMINATION. On the last day of the Term hereof, or on any sooner termination, TENANT shall surrender the Center space to CITY in the same or reasonably similar condition as received, ordinary wear and tear excepted, clean and free of debris. TENANT shall repair any damage to the Center occasioned by the installation or removal of TENANT's alterations, furnishings and equipment.

7) INSURANCE REQUIREMENTS.

- a) COMMENCEMENT OF ACTIVITY. TENANT shall not commence activity under this Agreement until all insurance certificates and endorsements have been received and approved by CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY of any material

change, cancellation, or termination at least thirty (30) days in advance. TENANT shall further agree to give CITY at least thirty (30) days in advance of any material change, cancellation, or termination of any insurance required under this Agreement.

- b) **WORKERS' COMPENSATION INSURANCE.** For the duration of this Agreement, TENANT shall maintain and ensure that all of its contractors and subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law, if applicable. TENANT shall provide and shall ensure that each of its contractors and subcontractors provide a waiver of subrogation from Carrier waiving its subrogation rights against the City, its officers, officials, agents, and volunteers.
- c) **INSURANCE AMOUNTS.** TENANT shall maintain the following insurance for the duration of this Agreement:
  - i) Commercial general liability in the amount of \$1,000,000.00 per occurrence (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by CITY.
  - ii) Automobile liability in the amount of \$1,000,000.00 combined single limit (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by CITY.
  - iii) Professional liability in the amount of \$1,000,000.00 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, TENANT shall obtain continuing insurance coverage for the prior acts or omissions of TENANT during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.
  - iv) Sexual Misconduct coverage in an amount not less than \$1,000,000.00 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement for the policy under Section 7(c)(i) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or

on behalf of TENANT. TENANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

An Additional Insured Endorsement for the policy under Section 7(c)(ii) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the TENANT. TENANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

An Additional Insured Endorsement for the policy under section 7(c)(iv) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising under the sexual misconduct policy. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, TENANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of TENANT's insurance and shall not contribute with it.

- 8) INDEPENDENT CONTRACTOR. It is agreed that in the performance of the services to be performed by TENANT, TENANT shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY's employees.
- 9) NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY. No official or employee of CITY shall be personally liable to TENANT in the event of any default or breach by CITY, or for any amount, which may become due to TENANT, or any obligation under the terms of this Agreement.
- 10) NON-DISCRIMINATION. TENANT covenants there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, handicap, sexual orientation, national origin or ancestry, in any action or activity pursuant to this Agreement.
- 11) GENERAL PROVISIONS.
  - a) COMPLIANCE WITH LAWS. Both parties shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local governments.
  - b) DISCLOSURE OF DOCUMENTS. All data, documents, or other information developed or received by either party are deemed confidential and not to be disclosed without authorization of the disclosing party, unless disclosure is required by law.

- c) CONFLICT OF INTEREST AND REPORTING. TENANT shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.
- d) NOTICES. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - i) Address of TENANT is as follows:  
Children's Bureau of Southern California  
50 South Anaheim Blvd., Suite 241  
Anaheim, CA 92805-2961  
Attn: Lyn Brammer, MSW
  - ii) Address of CITY is as follows:  
City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840  
Attn: Community Services Director
- e) LICENSES, PERMITS, FEES AND ASSESSMENTS. At its sole expense, TENANT shall obtain all licenses, permits, and approvals as may be required by this Agreement.
- f) FAMILIARITY WITH WORK. By executing this Agreement, TENANT warrants that:
  - i) It has investigated the work to be performed;
  - ii) It has investigated the site of the work and is aware of all conditions there;
  - iii) It has considered how the work should be performed; and
  - iv) It understands the facilities, difficulties, and restrictions of the work under this Agreement.
- g) TIME OF ESSENCE. Time is of the essence in the performance of this Agreement.
- h) LIMITATIONS ON SUBCONTRACTING. The experience, knowledge, capability, and reputation of TENANT were a substantial inducement for CITY to enter into this Agreement. TENANT shall not contract with any other entity to perform the services required without written approval of CITY. If TENANT is permitted to subcontract any part of this Agreement, TENANT shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of TENANT. CITY will deal solely and directly with TENANT.
- i) AUTHORITY TO EXECUTE. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of the entity for

which they are signing, and that by executing this Agreement, the party for which each is signing is bound by this Agreement.

- j) INDEMNIFICATION. TENANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by TENANT, TENANT's agents, officers or employees, contractors, subcontractors, or independent contractors. The only exception to TENANT's responsibility to protect, defend and hold harmless CITY is due to the negligence of CITY, or any of its elective or appointive boards, officials, officers, agents, employees, or volunteers, in the case of which CITY agrees to protect, defend, and hold harmless TENANT and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by CITY, CITY's agents, officers or employees, subcontractors, or independent contractors.
- k) MODIFICATION. This Agreement constitutes the entire Agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by TENANT and CITY.
- l) WAIVER. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY or TENANT, as appropriate.
- m) CALIFORNIA LAW. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the central or main branch of the Orange County Superior Court.
- n) INTERPRETATION. This Agreement shall be interpreted as though prepared by both parties.
- o) CITY'S REPRESENTATIVE. The City Manager of CITY, or his or her designee, shall serve as CITY's representative in carrying out any CITY responsibility under this Agreement.
- p) PRESERVATION OF AGREEMENT. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provisions interpreted, and all remaining provisions shall remain enforceable.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first referenced herein.

CITY OF GARDEN GROVE

\_\_\_\_\_  
City Manager Date: \_\_\_\_\_

ATTESTED:

\_\_\_\_\_  
City Clerk Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney Date: \_\_\_\_\_

CHILDREN'S BUREAU OF SOUTHERN CALIFORNIA

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

Name: Lyn Brammer, MSW

Title: Orange County Director

Tax ID No. \_\_\_\_\_

*If TENANT is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to City.*