

This is an agreement between the **CITY OF SAN JOSE** and the **EVERGREEN SCHOOL DISTRICT** (Owner) to provide certain facilities to be used for after school care.

IT IS AGREED between the parties as follows:

1. **Facilities to be Provided** Owner shall provide the facilities desired below for the City of San Jose R.O.C.K. program use during the term of this Agreement.

Cadwallader School

3799 Cadwallader Avenue, San Jose, CA 951121

Monday-Friday, Bell dismissal until 6:00pm, 180 school days per Evergreen School District Calendar Hours of Operation: Dismissal. – 6:00 p.m.; 1 Classroom

Norwood Creek School

3241 Remington Way, San Jose, CA 95148

Monday-Friday, Bell dismissal until 6:00pm, 180 school days per Evergreen School District Calendar Hours of Operation: Dismissal. – 6:00 p.m.; 2 Classrooms

Holly Oak Elementary School

2995 Rossmore Way, San Jose, CA 95148

Monday-Friday, Bell dismissal until 6:00pm, 180 school days per Evergreen School District Calendar Hours of Operation: Dismissal. – 6:00 p.m.; 1 Classroom

Tom Matsumoto Elementary School

4121 Mackin Woods Lane, San Jose CA 95135

Monday-Friday, Bell dismissal until 6:00pm, 180 school days per Evergreen School District Calendar Hours of Operation: Dismissal. – 6:00 p.m.; 1 Multi-Purpose Room

LeyVa Middle School

1865 Monrovia Drive, San Jose CA 95122

Monday-Friday, Bell dismissal until 6:00pm, 180 school days per Evergreen School District Calendar Hours of Operation: Dismissal. – 6:00 p.m.; 1 Classroom

2. **Access to Facilities:** City of San Jose officers, agents, employees, licensees and invitees shall have all rights of ingress and egress to and from the above indoor facilities (classrooms and/or multi-purpose rooms) over such other portions of Owner's property at the school between the hours starting at **dismissal until 6:00 p.m. on days school is in session (180 school days)** as the City of San Jose deems necessary for the use of the facilities.
3. **General Repairs and Maintenance:** It is expressly understood that the City of San Jose intends to conduct day care classes in the above facilities. Owner

shall, at its own expense, keep the facilities in good repair and maintain them in a condition suitable for the above purposes.

4. **Rent:** The City of San Jose shall pay the Owner Annually:
 - a. the sum of \$7,293.04 per classroom for Cadwallader School
 - b. the sum of \$7,293.04 per classroom for Norwood Creek School
 - c. the sum of \$7,293.04 per classroom for Holly Oak Elementary School
 - d. the sum of \$7,293.04 per Multi-Purpose Room for Tom Matsumoto Elementary School
 - e. the sum of \$7,293.04 per classroom for LeyVa Middle School

Annual invoices will be mailed to:

City of San Jose PRNS
ATTN: Nicholas Georgoff
5730 Chambertin Dr.
San Jose, CA 95118

5. **Prohibited Uses: The following uses are prohibited:**
 - a) the serving and/or sale of alcoholic beverages on the premises
 - b) the conducting of games of chance on the premises
 - c) smoking on school property, both indoors and outdoors
6. **Damage to Premises:** The City of San Jose shall pay Owner for the repair or replacement of any property of facilities of Owner which may be lost, damaged or stolen as a result of the City of San Jose use of Owner's premises, except for those losses which are a result of, or to the extent they are increased by, the Owner's failure to keep the premises in good repair as provided in paragraph 3. The City of San Jose shall not be responsible for normal wear and tear to premises.
7. **Facility Maintenance:** The District shall be responsible for major maintenance and repairs to the premises including, but not limited to, repairs of the roof, exterior walls, exterior windows, major plumbing, major electrical, heating, ventilation system, and vandalism repair. Contractor is responsible for prompt repairing of real and potential maintenance and vandalism problems.
8. **Indemnification:** The parties mutually indemnify, defend and save harmless each other from every expense, liability, or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission of their respective officers, employees or agents, arising out of the performance of this Agreement.

9. **Insurance: The City of San Jose shall keep in force and provide the Owner with a copy, during the term hereof, at the City of San Jose's expense; and Affidavit of Self Insurance from City of San Jose.** General Aggregate Liability Insurance or bodily injury, property damage and personal injury and all risk legal liability coverage in an amount equal to 100 percent of the replacement costs of that portion of premises occupied by the City of San Jose. The City of San Jose's insurance shall be primary and any coverage required to be maintained by the Owner shall be in excess to the coverage required to be provided by the City of San Jose and not contributive to City of San Jose's Insurance. Copies of said policies or certificates thereof shall be deposited with the Owner and the City of San Jose shall obtain the written agreement of the insurers to notify the Owner in writing thirty (30) days prior to any cancellation for reduction of insurance.

The City of San Jose may satisfy such insurance requirements by endorsement to existing policies and shall provide copies of the required endorsements to Owner. The City of San Jose shall not sell, or permit to be kept, used or sold, in or about the premises any article, which may be prohibited, by the standard form of fire insurance policies.

10. **Assignments/ Subcontracts:** This agreement, or any part thereof, may not be assigned or subcontracted by either party hereto, except with the written consent of the other party. Any assignment of subcontract made without such consent shall be void, and shall, at the option of the aggrieved party, terminate the agreement.
11. **Asbestos:** The Owner certifies that it and the leased premises are in compliance with the Toxic Substance Control Act (P.L. 94-469), 15 U.S.C. Section 2601 et seq., as amended by the Asbestos Hazard Emergency Control Act of 1968 (P.L. 99-519), and the implementing regulations, 40 C.F.R. 763.80 et seq., as amended. Specifically, owner certifies that the leased premises have been inspected and re-inspected as required and is, or will be, a part of asbestos management plan of the owner. Owner will indemnify and hold harmless the lessee from all damages, penalties and consequences imposed upon it for any failure of the leased premises to comply with such provisions.
12. **Term:** The term of this Agreement shall be in effect from **August 18, 2021 through June 9, 2022.**
13. **Notices:** Any demand or notice which either party shall be required, or may desire to make upon or give to the other, shall be in writing and shall be delivered personally upon the other, or sent by prepaid registered or certified mail addressed to respective parties as follows:
14. **Alterations, Additions and Improvements:** No structures, improvements,

alterations or facilities shall be constructed, erected, altered, or made on the premises without the prior written consent of District.

15. **Contact Info:**

District:

Evergreen School District
Attn: Victoria Knutson,
Chief Business Officer
3188 Quimby Road
San Jose, CA 95148

Contractor:

City of San Jose
Attn: Jon Cicirelli, Director
Parks, Recreation and
Neighborhood Services
200 E. Santa Clara Street
San Jose, CA 95113

IN WITNESS WHEREOF, the parties have affixed their signatures.

EVERGREEN SCHOOL DISTRICT

CITY OF SAN JOSE

Victoria Knutson
Chief Business Officer

Jon Cicirelli
Director of Parks, Recreation and
Neighborhood Services



8/26/2021

DATE



On behalf of
Jon Cicirelli

8/9/2021

DATE



Evergreen School District

From strong roots grow bright futures

COVID-19
LIABILITY ADDENDUM
EVERGREN SCHOOL DISTRICT (DISTRICT)
AND
CITY OF SAN JOSE R.O.C.K Program (CONTRACTOR)
2021-2022


The **CITY OF SAN JOSE** acknowledges and understands the contagious nature of COVID-19; that the circumstances regarding COVID-19 are changing from day to day and that exposure to COVID-19 may result in personal injury, serious illness, permanent disability, or death. The **CITY OF SAN JOSE** agrees to voluntarily assume any COVID-19 related risk, whether known or unknown, that any employee, volunteer, or subcontractor of the **CITY OF SAN JOSE** may be exposed to or infected by COVID-19 arising out of the use of District property and/or facilities operated by the **CITY OF SAN JOSE**.

The **CITY OF SAN JOSE** shall, in addition to any indemnity agreement and/or insurance requirements in the **CITY OF SAN JOSE'S** agreement with District, hold District, its officers, directors, employees, agents and volunteers harmless from any and all COVID-19 related liability for personal injury, serious illness, permanent disability or death arising out of the **CITY OF SAN JOSE'S** use of District property or facilities or from any and all liabilities, claims, actions, causes of action or expense of any kind arising out of the **CITY OF SAN JOSE'S** use of District property and/or facilities. To the fullest extent permitted by law, the **CITY OF SAN JOSE** further agrees to indemnify and defend the District, its officers, directors, employees, agents and volunteers from any and all COVID-19 related claims by third parties resulting from the **CITY OF SAN JOSE'S** use of District property and/or facilities.

The **CITY OF SAN JOSE** agrees that it shall require any employee, volunteer, subcontractor or any other individual who, on behalf of the **CITY OF SAN JOSE** uses District property and/or facilities, to follow all Centers for Disease Control (CDC) guidelines, state and local health guidelines, or any other reasonable requirements of District, regarding COVID-19 while on District property or in District facilities and the **CITY OF SAN JOSE** shall develop, implement and update, as needed, plans for cleaning and disinfecting District property and facilities to reduce the risk of exposure to COVID-19. In addition, the **CITY OF SAN JOSE** agrees to follow all EPA or California approved disinfecting requirements while on District property or in District facilities. The **CITY OF SAN JOSE'S** failure or inability to follow such cleaning and disinfecting requirements will be considered a breach of this agreement.

ACCEPTED AND AGREED:

EVERGREEN SCHOOL DISTRICT



Signature

8/26/2021

Date

CITY OF SAN JOSE



On behalf of
Jon Cicirelli
JON CICIRELLI
Director, Parks, Recreation
and Neighborhood Services
8/9/2021

Date



Memorandum

TO: Jon Cicirelli
DIRECTOR

FROM: Petra Riguro
INTERIM PROGRAM
MANAGER

SUBJECT: Approval of Retroactivity

DATE: August 26, 2021

Approved /s/ Neil Rufino On behalf of Jon Cicirelli Date 8/9/2021

SUBJECT: APPROVAL OF R.O.C.K. AFTERSCHOOL PROGRAM AGREEMENT WITH THE EVERGREEN SCHOOL DISTRICT TO UTILIZE DISTRICT SCHOOL SITES FOR PROVIDING R.O.C.K. AFTERSCHOOL PROGRAMS TO SAN JOSE YOUTH.

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Department is seeking authorization for the retroactive provision to pay for services in the following agreement.

The justification for the requests detailed below that are to include a retroactivity provision is that the agreements were competitively procured and either:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:

The Department understands that retroactive agreements are to be avoided. However, in this instance, the execution of this contract was delayed due to a last-minute change as mutually agreed upon by the Department and the Evergreen School District for the use of Cadwallader School, Norwood Creek School, Holly Oak Elementary School, Tom Matsumoto Elementary School, and LeyVa Middle School spaces for the R.O.C.K. after school program.

The R.O.C.K. after school program start date is August 18, 2021. The contract was approved and signed by the district on August 12, 2021. Shortly after the initial approval and signature, the Department and the District agreed on the decision to add Leyva Middle School as a program site to the contract. The addition of a program site caused a change in fees, which constituted a revised draft of the agreement. Subsequently, the revised agreement needed to be re-approved and signed by both the Department and District, which resulted in retroactivity of the execution process.

The circumstances of this addendum request have slowed down the execution process as a result. Thus, we are submitting a Retroactive Memo in anticipation of the fast approaching program start date. The R.O.C.K. program provides after school recreation and enrichment activities for youth at school sites across San José. These services are essential for the safety of school age children during afterschool hours. We request an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses.



Petra Riguro
Interim Program Manager
Strategic Partnerships Unit

For questions please contact Molly Vasquez, Analyst, at (408)793-5594,
molly.vasquez@sanjoseca.gov.

June 30, 2021

Attn: Kim McNiven
Cadwallader School
3799 Cadwallader Avenue
San Jose, CA 95121

Re: Statement of City of San Jose Self-Insurance for an agreement between the City of San José and the Evergreen School District to use 4 district sites to conduct R.O.C.K. school programs.

To Kim McNiven:

The City of San José is self-insured covering third party claims arising out of its general operations (by way of example, commercial general liability and automobile liability insurance). Further, the City is self-insured covering workers' compensation claims and has received the necessary consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the City appropriates funds specifically for the purposes of satisfying valid third-party and workers' compensation claims, which may potentially be brought against the City. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/budget/budget-documents>.

Should you need any additional information regarding this letter, please feel free to direct those inquires through the Risk Management Office.

Sincerely,

By *Mina Kim*

Mina Kim
Risk Management



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Molly Vasquez
 EMAIL: Molly.Vasquez@sanjoseca.gov

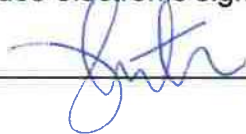
SCANNED SIGNATURE AUTHORIZATION

DATE: 8/26/2021
 To: Victoria Knutson
 EMAIL: vknutson@eesd.org
 PHONE: 408-270-6846

TOTAL PAGES:
 (INCLUDING THIS PAGE) 6
 To: _____
 EMAIL: _____
 PHONE: _____

I agree to use electronic signatures

I agree to use electronic signatures

BY: 

BY: _____

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT **IN BLUE INK**
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to Dept. (circle one)

Insurance Certificates / Waivers
 Business Tax Certificate
 Contacted Clerk re: Form 700
 Supplemental Memorandums (if applicable): Select One

Electronically Signed: Yes
 Audit Trail Attached (if applicable)
 Scanned Signature Authorization

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667107-000

Contractor: Evergreen School District

Address: 3188 Quimby Rd., San Jose, CA 95148

Phone: (408)270-6846

Email: kmcniven@eesd.org

Contract Description: This is a facility use agreement between the CITY and Evergreen School District allowing the PRNS to provide R.O.C.K. after school enrichment activities at five school sites.

Term Start Date: August 18, 2021 Term End Date: June 9, 2022 Extension: No

Method of Procurement: N/A RFB, RFP or RFQ No.: N/A Date Conducted: N/A

Agenda Date (if applicable): 6/22/2021

Agenda Item No.: 2.18

Resolution No.: 80104

Ordinance No.: NA

Original Contract Amount: NA

Amount of Increase/Decrease: 0

Option #: of Option Amount: NA

NTE/Updated Contract Amount: \$43,758.24

Fund/Appropriation: 001-021P

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: NA

Expiration Date: NA

Department: PRNS (64)

Department Contact: Molly Vasquez x35594

Customer (Finance Only):

Notes: PRNS DB# 646688

Project Manager is Evelyn Valdivia x46585

Retroactive

Department Director Signature:  On behalf of Jon Cicirelli

8/9/2021

Date

Office of the City Manager Signature:

Date