

LICENSE AGREEMENT

CITY OF SAN JOSE R.O.C.K. PROGRAM 2021-2022 SCHOOL YEAR

THIS LICENSE AGREEMENT (“Agreement”) is made and entered into as of July 1, 2021 (“Effective Date”), regardless of the date of execution, by and between the Berryessa Union School District, a California public school district (“Licensor”), and the City of San Jose, a California public entity (“Licensee”).

WHEREAS, pursuant to Education Code section 38131, the Licensor, upon the terms and conditions it deems proper, may enter into a facility use agreement for a child care or day care services program to provide supervision and activities of school children;

WHEREAS, Licensor is the owner of the properties (“Sites”) containing facilities (“Facilities”), which Sites and Facilities are further described in Exhibit A attached hereto and incorporated herein, and Licensee desires to use the Facilities to conduct an after school program (“Program”) for the benefit and use of Licensor and the community of San Jose; and

WHEREAS, Licensee will need a right of entry onto the Sites to carry out the Program.

NOW, THEREFORE, LICENSOR AND LICENSEE HEREBY MUTUALLY AGREE AS FOLLOWS:

ARTICLE I

License

1.1 Grant of License. In consideration of Licensee undertaking to carry out the Program for the benefit and use of Licensor and the community of San Jose, Licensor agrees to grant Licensee a revocable license (“License”) to enter the Sites and use the Facilities for the sole purpose of carrying out the Program. The rights granted to and the obligations imposed on Licensee shall extend to Licensee’s officers, agents, employees, volunteers, and independent contractors.

1.2 Permitted Use/Licensee’s Responsibilities. Licensee shall use the Facilities solely for the purpose of operating the Program, which includes its staff, equipment, supplies, services, and administration of the Program, and shall be responsible for all costs and services relating to said operations.

1.3 Licensee Fee. Licensee agrees to pay, and Licensor agrees to accept a license fee for the use of the Facilities as set forth in Exhibit A for a Term of One (1) year.

(“License Fee”). The License Fee is inclusive of custodial costs, as set forth in Exhibit A hereto. The Annual Fee Schedule, shall be set forth in Exhibit A.

A security deposit of \$_____ (WAIVED) shall be paid by Licensee to Licensor immediately upon full execution of this Agreement. The License Fee is required from Licensee within thirty (30) days of full execution of this Agreement. The Security Deposit shall be held by Licensor, without liability for interest thereon, as security for the full and faithful performance by Licensee of each and every term, covenant and condition of this Agreement to be observed and performed by Licensee. If Licensee fails to perform any of the terms of this Agreement, Licensor may, without prejudice to any other remedy, appropriate and apply the Security Deposit to compensate Licensor toward the payment of any required charges due from Licensee under this Agreement, or toward any loss, damage or expense sustained by Licensor resulting from such default. In such event Licensee shall immediately restore the Security Deposit to the original sum set forth above. In the event Licensee fully and faithfully complies with all of the terms, covenants and conditions of this Agreement, the Security Deposit shall be returned to Licensee within thirty (30) days of the last day of the Term of this Agreement, and, in any event, in accordance with applicable law.

1.4 Termination and Revocation of the License.

(a) This License shall commence on the Effective Date and continue in effect until Friday June 10, 2022 (“Term”), subject to its earlier termination as provided herein.

(b) Either party may terminate the License at any time for convenience. Any such termination shall become effective sixty (60) calendar days following the date the terminating party gives written notice to the other party of the termination.

(c) The License may be terminated by either party at any time for cause. “Cause” shall consist of a material breach of any provision of this Agreement, and the failure of the breaching party to cure the breach within twenty (20) days of being notified of the breach. Such a termination shall become effective immediately upon the giving of written notice of the termination.

If Licensor terminates the License for cause, then Licensor may bring an action to recover from Licensee any unpaid License Fees and any other amount necessary to compensate Licensor for all detriment caused by Licensee’s failure to perform its obligations under this License. Licensor may bring an action, in addition to or in lieu of this action, to reenter and regain possession of the Facilities in the manner provided by the laws of unlawful detainer of the State of California then in effect.

(d) Upon the effective date of termination of the License, Licensee and Licensee’s agents, officers, employees, volunteers and independent contractors shall immediately vacate the Facilities. Upon termination, Licensee shall be responsible to pay for the cost to Licensor for repairs (more than ordinary wear and tear) to the Facilities or Sites caused by Licensee, which costs shall be paid within thirty (30) days of receipt of an invoice for the costs Licensor incurred. Licensor shall make the repairs.

(e) The remedies given to Licensor in this Article shall not be exclusive but shall be in addition to all remedies now or hereafter allowed by law and elsewhere provided in this License Agreement.

1.5 Liens and Claims. Licensee shall promptly pay in full for any equipment, furnishings, and furniture for the Program that Licensee shall cause to be delivered to the Facilities and shall promptly pay in full all persons who perform labor for the Program at Licensee's request. If any mechanics' or materialmen's liens or any other liens or claims for any work done or items furnished at Licensee's request are filed against the Program or the Facilities, Licensee shall remove the liens and claims at Licensee's own expense. If Licensee fails to remove the liens or claims and any judgment is entered thereon or thereunder, Licensee shall pay that judgment. Should Licensee fail, neglect, or refuse to remove any liens or claim, or to pay any judgment, Licensor shall have the right to pay any amount required to release any such liens or claims, or to defend any action brought on the liens or claims and to pay any judgment entered on the liens or claims, and Licensee shall be liable to Licensor for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefor. Licensor may record, post, and maintain upon the Facilities a notice of non-responsibility.

Licensee shall not encumber by any security instrument, all or a part of Licensee's interest under this License without the prior written consent of Licensor, and upon such terms and conditions as Licensor may require.

1.6 Quality of Services. Licensee shall conduct the Program at all times in a respectable, reputable, and lawful manner, and shall provide and maintain a level of service for the Program that is reasonably satisfactory to Licensor. Licensee's breach of this Section 1.6 shall constitute cause for termination by Licensor pursuant to Section 1.4(c).

ARTICLE II

Restrictions and Conditions

2.1 Program. The Licensee shall be responsible for designing and carrying out the Program, and paying for its total cost.

2.2 Licensor Representations. Licensor makes no representations of any kind as to the conditions of, on, or under the Facilities. Licensee has inspected the Facilities and takes the Facilities in their "as is" condition.

2.3 Conditions on Licensee Use.

(a) Licensee shall act in a professional manner and shall not do or permit anything to be done on the Facilities which would obstruct or interfere with the rights of anyone on the Facilities or Sites, or that would injure or annoy them. Licensor shall not permit any nuisance or waste on the Facilities or the Sites.

(b) Licensee shall not obstruct anyone's access to or passage across the Facilities or the Sites

(c) Licensee may place appropriate signs on the Facilities to identify the Program; however, Licensor shall have the right, but not the obligation, to approve any signage in writing in advance of its placement on the Facilities of the Sites.

(d) Licensee shall provide adequate supervision, training, and oversight to its employees and contractors providing services to the Program to ensure the effectiveness of the Program, the safety of students therein, and the protection of the Facilities and the Sites.

2.4 Improvements. No structures, improvements, alterations or facilities (collectively, “Improvements”) shall be constructed, erected, altered, or made on or in the Facilities without the prior written consent of Licensor. Licensee shall obtain any and all approvals and permits which may be required by statute, law, ordinance or regulation of any agency having legal jurisdiction, prior to any construction of any authorized Improvements.

All Improvements constructed by Licensee within the Facilities shall be constructed in strict compliance with detailed plans and specifications approved by Licensor.

All Improvements of any kind which may be erected or installed by Licensee shall be maintained in good condition and substantial repair by Licensee to the satisfaction of Licensor.

All Improvements constructed, erected or installed upon the Facilities must be free and clear of all liens, claims, or liability for labor or material and shall become the property of Licensor, at its election, upon expiration or earlier termination of this Agreement and, upon Licensor’s election, shall remain upon the Facilities upon termination of this Agreement. In the event that Licensor does not elect for the Improvements to remain upon the Facilities, Licensee shall remove such Improvements at Licensee’s sole expense.

Title to all equipment, furniture, furnishings, and trade fixtures placed by Licensee upon, in, or on the Facilities shall remain the property of Licensee and replacements, substitutions, and modifications thereof may be made by Licensee throughout the term of this Agreement. Licensee may remove such fixtures and furnishings upon termination of this Agreement if Licensee is not then in default under this Agreement, provided that Licensee shall repair to the satisfaction of Licensor any damage to the Facilities and any Improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the Facilities upon termination of this Agreement.

2.5 Compliance With Laws.

(a) Licensee shall, at Licensee’s own cost and expense, comply with all applicable statutes, ordinances, regulation, and requirements of all Federal, State, and County or Municipal governmental entities, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted.

If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Facilities or any portion of the Facilities, the Licensee shall procure and maintain it throughout the term of this License. Licensee shall indemnify, defend, and hold Licensor and the Facilities and Sites, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Licensee’s failure to comply with and perform the requirements of this Section.

(b) Licensee represents and warrants that it has the expertise and professional qualifications to operate the Program. Licensee further represents and warrants every individual charged with performance of the Program is duly licensed or certified by the State of California, to the extent such licensing or certification is required by law to perform the Program. At all times during the term of this Agreement, Licensee shall maintain all licenses required for the Program.

2.6 Prohibited Uses. Licensee shall not use or permit the Facilities or any portion of the Facilities to be improved, used or occupied in any manner or for any purpose that is in any way in violation of any law, ordinance, or regulation or any Federal, State, County, or Local Government agency, body or entity.

2.7 Permits and Licenses. The Licensee and all of his/her employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with the furnishing of materials, articles, or services herein listed. All operations and materials shall be in accordance with the law.

2.8 Assessments, Fees, Charges, and Utilities. During the term of this License, Licensee shall pay or cause to be paid, and hold Licensor and the property of Licensor, including the Facilities and Sites, free and harmless from all assessments, fees, and charges related to the Program.

2.9 Maintenance; Repairs. The Licensee shall maintain materials and equipment owned by Licensee situated on the Facilities. The Licensee shall be responsible for the cost of any repairs or maintenance resulting from Licensee's use of the Facilities or otherwise resulting from the action or inaction of Licensee or its officers, employees, or agents or invitees, other than ordinary wear and tear. The Licensee shall contact the Site principal and/or Licensor's maintenance personnel, utilizing Licensor's forms and procedures, regarding any changes, maintenance or repairs needed to the Facilities. Licensor shall provide Licensee with its forms and procedures for such requests prior to commencement of the term of this License. Licensee shall pay for any repairs (more than ordinary wear and tear) arising from any cause other than Licensor's fault, or force majeure, within thirty (30) days of receipt of any invoice for the costs of the repairs. Licensor shall make such repairs.

Licensee expressly agrees to maintain the Facilities in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of Licensor and in compliance with all applicable laws. Licensee further agrees to provide approved containers for trash and garbage and to keep the Facilities free and clear of rubbish and litter.

2.10 Payments by Licensor. Should Licensee fail to pay any assessments, fees or other charges required to be paid by Licensee, Licensor may, without notice to or demand on Licensee, pay, discharge, or adjust that assessment, bill, or other charge for the benefit of Licensee. In that event, Licensee shall promptly, on written demand of Licensor, reimburse Licensor for the full amount paid by Licensor in paying, discharging, or adjusting that tax, assessment, bill or other charge.

2.11 Insurance. Licensee is a self-insured entity covering third party claims arising out of its general operations (by way of example, commercial general liability, environmental restoration, professional liability or automobile liability insurance.) Further, Licensee is self-insured covering workers' compensation claims, and has received the necessary consent of the State Department of Industrial Relations to do so. Proof of insurance shall be provided to the District by way of Letter of Insurance as is issued by the City's Risk Management Department. Licensee's self-insurance shall be sufficient to cover at least (1) One Million Dollars (\$1,000,000.00) for commercial general liability insurance for bodily injury, personal injury, and property damage; (2) One Million Dollars (\$1,000,000.00) for worker's compensation insurance; and (3) Five Hundred Thousand Dollars (\$500,000.00) for automobile liability insurance for bodily injury, personal injury, and property damage. Before the commencement of the License and during the term of the License, Licensee shall be self-insured for at least the foregoing amounts.

In the event that Licensee ceases to be self-insured or if the foregoing amounts of coverage become unavailable at any time during the term of the License, Licensee shall immediately notify Licensor, and shall obtain and maintain, at its expense, comparable insurance.

2.12 No Property Interest Created. The License and this Agreement do not create any interest for Licensee in the Facilities or any property owned or maintained by Licensor, and is not coupled with any property interest or other interest. The License is personal to Licensee and is not assignable. The License does not inure to the benefit of any assignees, heirs, or successors of Licensee.

2.13 Safety. Licensee shall be solely and completely responsible for conditions of the Facilities, including safety of all persons and property. The Licensee, its agents, employees, volunteers and independent contractors shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety. All materials, equipment, and supplies provided for the Program shall fully conform with all applicable State, local and Federal safety laws, rules, regulations, and orders.

2.14 Licensee's Duty to Restore Improvements to Facilities. If at any time during the term of this License, any structures or improvements now or hereafter placed on the Facilities are destroyed in whole or in part due to the fault of Licensee,, this License shall continue in full force and effect and Licensee, at Licensee's own cost and expense, shall be responsible for the cost Licensor incurs to repair and restore the damaged improvements.

2.15 Indemnification. Licensee shall defend, indemnify, and hold harmless Licensor, its Board members, officers, employees, and agents from any and all actions, causes of actions, claims, losses, expenses (including reasonable attorneys' fees and costs) or liability on account of damage of property or injury to or death of persons arising out of or resulting in any way from the subject matter of or performance under this Agreement attributable to the willful misconduct or negligent acts (active or passive) or omissions by Licensee, its officers, employees, or agents, or invitees.

Licensor shall defend, indemnify, and hold harmless Licensee, its officers, employees and agents from any and all actions, causes of actions, claims, losses, expenses (including reasonable attorneys' fees and costs) or liability on account of damage to property or injury to or death of persons arising out of or resulting in any way from the subject matter of or performance under this Agreement attributable to the willful misconduct or negligent acts (active or passive) or omissions by Licensor, its Board members, officers, employees, agents, or invitees.

All obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

2.16 Entry by Licensor. Licensor may enter the Facilities at reasonable hours, which include all normal business hours, or at any time in the case of an emergency, to determine whether Licensor is complying with this Agreement, and to inspect, maintain or repair the Facilities. Licensee waives any claim for damages for injury, inconvenience, or interference with Licensee's business, or any loss of occupancy or quiet enjoyment, caused by such entry. Licensor shall have keys to unlock all doors on the Facilities and the right to enter by any means necessary in an emergency.

2.17 Limitation of Liability. Neither Licensor's officers, agents, employees, nor members of its Board of Trustees (collectively, "Licensor Parties"), shall be personally liable in any manner or to any extent under or in connection with this Agreement and Licensee, its successors and assigns hereby waive any and all such personal liability. Notwithstanding anything stated herein to the contrary. Licensor shall not be liable for any special, consequential, indirect, or incidental damages, including but not limited to lost profits in connection with this Agreement.

2.18 Health and Safety Mandates. District shall have no responsibility for Licensee's maintenance of applicable health measures or standards at the Premises as described below, including but not limited to compliance with Federal, State, and local orders or mandates enacted in relation to COVID-19 or other communicable diseases, with which Lessee shall fully comply at its sole cost and expense. Licensee shall have sole responsibility to provide personal protective equipment ("PPE") or protective barriers that are required by any such orders or mandates.

Licensee's use of the Premises and Program Classrooms shall be subject to the following mandates:

- a. Licensee shall comply with all applicable federal, state, local, and the District laws, regulations, ordinances, policies, procedures, state executive orders and public health orders regarding student health and safety.
- b. Licensee shall submit within three (3) days by mail any accident or incident report to the District Superintendent.

- c. In light of the COVID-19 outbreak, Licensee shall implement, to the extent feasible, social distancing measures and guidelines in adherence with the most current language being disseminated by state and local public health officials. Licensee shall maintain awareness of updated protocols, and shall clearly communicate updated guidelines to District personnel as soon as practicable.
- d. Licensee will provide its staff with information and training in public health measures, hygiene, and sanitation to help prevent the spread of COVID-19. District will provide for Licensee's use the following necessary supplies for preventive sanitation measures: soap and water, disposable towels and hand sanitizer (collectively "Sanitation Supplies").
- e. Licensee will inform District as soon as practicable should Licensee learn of a confirmed or likely coronavirus infection of a Licensee staff member and at which campus or worksite said infection was found.

2.19 Release and Assumption of Risk. Licensee acknowledges that there is presently a significant element of risk of COVID-19 transmission when any group of people gathers. Licensee has reviewed and understands the risks reflected in the local, state, and federal alerts, guidelines and health orders. Licensee assumes all risks, known and unknown, arising from Licensee's use and occupancy of the Premises and/or Program Classrooms, including risks from COVID-19. Licensee assumes full responsibility for any sickness, hospitalization, bodily injury, death, loss of personal property, quarantines, and all related costs and expenses of any person arising from Licensee's use and occupancy of the Premises and/or Program Classrooms.

ARTICLE IV

General Terms and Provisions

3.1 Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter dealt with in this Agreement and all understandings, oral or written, with respect to the subject matter of this Agreement are hereby superseded.

3.2 Future Assurances. Each party hereto shall cooperate and take such actions as may reasonably be required by the other party hereto in order to carry out the provisions of this Agreement and the transactions contemplated by this Agreement.

3.3 Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by both Licensor and Licensee.

3.4 Waiver. The failure by either party to enforce any term or provision of this Agreement shall not constitute a waiver of that term or provision, or any other term or provision. No waiver by either party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

3.5 Severability. In the event any clause, sentence, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of this Agreement shall nonetheless remain in full force and effect.

3.6 Construction of Agreement. The terms and provisions of this Agreement shall be liberally construed to effectuate the purpose of this Agreement. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against either party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement.

3.7 Gender and Number. Wherever the context of this Agreement may so require, the gender shall include the masculine, feminine, and neuter, and the singular shall include the plural.

3.8 Governing Law and Venue. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions, and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara.

3.9 Property Taxes. Notwithstanding anything contained herein to the contrary, Licensee's possession and use of the Facilities under this Agreement may be determined to create a "possessory interest" in said Facilities in Licensee and Licensee may be subject to the assessment of property taxes based upon such a possessory interest. Licensee solely shall be responsible for the payment of any and all such property taxes levied on such interest, including any penalties and interest in connection therewith.

3.10 Licensee's Rights to Assignment. Licensee shall not have the right to assign or sublicense this License or this Agreement or any interest in this License or Agreement, without Licensor's prior written consent. Any assignment or sublicense made without such prior written consent shall be void, and at the option of the Licensor, shall terminate this Agreement. No right under this Agreement, nor claim for any money due or to become due hereunder shall be asserted against Licensor, or persons acting for Licensor, by reason of any assignment or sublicense of this Agreement without Licensor's written consent.

3.11 Binding Effect. The agreements, conditions, and provisions contained in this Agreement shall, subject to provisions for assignment, apply to and bind the heirs, executors, administrators, successors, and assigns of the parties to it.

3.12 Attorneys' Fees. In the event either party to this Agreement shall commence litigation or other legal proceedings against the other to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the prevailing party shall be entitled to recover from the losing party its costs of suit, including, without limitation, reasonable attorneys' fees plus reasonable attorneys' costs and expenses, as shall be determined by a court.

3.13 Independent Contractor. Licensee is an independent contractor, not an officer, employee or agent of Licensor.

3.14 Notices. Any notice required or desired to be given pursuant to this Agreement shall be in writing, duly addressed to the parties below. By written notice in conformance herewith, either party may change the address to which notices to said party must be delivered. Any notice deposited with the United States Postal Service shall be deemed to have been duly given when so deposited certified or registered, postage prepaid, addressed as set forth below or as changed as set forth herein. Notice sent by any other manner shall be effective only upon actual receipt thereof.

Licensor	Licensee
Berryessa Union School District	City of San Jose
Attn: Superintendent	Attn: Director of Parks and Recreation
1376 Piedmont Road	200 E. Santa Clara Street, 9 th Floor
San Jose, CA 95132	San Jose, CA 95113

3.15 Time of Essence. Time is of the essence with respect to the obligations of each party under this Agreement.

3.16 Incorporation of Exhibits. Any exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in this body hereof.

3.17 Headings and References. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement. All uses of the words "Article(s)" and "Section(s)" in this Agreement are references for articles and sections of this Agreement, unless otherwise specified.

3.18 Signature In Counterparts. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute the same instrument. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.

3.19 Conflict of Interest. Licensee shall not employ persons in connection with this Agreement who are officers, agents, or employees of Licensor (a) to the extent that such officers, agents, or employees would have a financial interest in the services to be provided under this Agreement that would be prohibited by California Government Code sections 1090 and following, or sections 87100 and following, or (b) to the extent that such employment with Licensee would be inconsistent, incompatible, in conflict with, or inimical to the officer's, agent's, or employee's duties with Licensor or with the duties, functions, or responsibilities of Licensor.

3.20 Non-Discrimination. No discrimination will be made in the employment of persons under this Agreement because of the age, race, color, national origin, ancestry, religion, disability, sexual preference, marital status, or gender of such person.

3.21 ADA Compliance. Licensee represents and warrants that it has knowledge of the requirements of the federal Americans with Disabilities Act of 1990, and the Government Code and the Health and Safety Code of the State of California, relating to access to public buildings and accommodations for disabled persons, and relating to Facilities for disabled persons. Licensee will comply with such provisions.

3.22 Subject To Approval of Board. This Agreement confers no legal or equitable rights until it is approved by Licensor's Board of Trustees at a lawfully conducted public meeting.

3.23 Warranty of Authority. Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

LICENSOR:

Berryessa Union School District

By:



Roxane Fuentes, Ed.D.
Superintendent

LICENSEE:

City of San Jose

By:



On behalf of 6/24/2021

Jon Cicirelli
Director, Department of
Parks, Recreation and
Neighborhood Services

By:



Jon Calegari
Deputy City Attorney

Board Approval: _____

EXHIBIT A

LICENSE FEE

ANNUAL LICENSE FEE PER FACILITY 2021-22

PAYMENT IS DUE FRIDAY SEPTEMBER 17, 2021

Piedmont Middle School

Mon – Tue – Thurs - Fri (2:30 – 6:00 pm) and Thurs (1:00 – 6:00 pm)
Multipurpose Room, 1 classroom, 1 set of bathrooms, basketball/black top area
1 Custodian

Annual Fee: \$13,840

Noble Elementary School

Mon – Tue – Wed – Fri (2:30 – 6:00 pm) and Thurs (1:00 – 6:00 pm)
Multipurpose Room, 1 classroom, 1 set of bathrooms, basketball/blacktop area
1 Custodian

Annual Fee: \$13,840

Laneview Elementary School

Mon – Tue – Wed – Fri (2:30 – 6:00 pm) and Thurs (1:00 – 6:00 pm)
Multipurpose Room, 1 classroom, 1 set of bathrooms, basketball/blacktop area
1 Custodian

Annual Fee: \$13,840

Brooktree Elementary School

Mon – Tue – Wed – Fri (2:30 – 6:00 pm) and Thurs (1:00 – 6:00 pm)
Multipurpose Room, 1 classroom, 1 set of bathrooms, basketball/blacktop area
1 Custodian

Annual Fee: \$13,840

Majestic Way Elementary School

Mon – Tue – Wed – Fri (2:30 – 6:00 pm) and Thurs (1:00 – 6:00 pm)
Multipurpose Room, 1 classroom, 1 set of bathrooms, basketball/blacktop area
1 Custodian

Annual Fee: \$13,840

Cherrywood Elementary School

Mon – Tue – Wed – Fri (2:30 – 6:00 pm) and Thurs (1:00 – 6:00 pm)
Multipurpose Room, 1 classroom, 1 set of bathrooms, basketball/blacktop area
1 Custodian

Annual Fee: \$13,840

Annual License Fee: \$83,040
District Good Will Discount: (\$65,040)
TOTAL FEE DUE: \$18,000



Memorandum

TO: Jon Cicirelli
DIRECTOR

FROM: Petra Riguro
INTERIM PROGRAM
MANAGER

SUBJECT: Approval of Retroactivity

DATE: August 30, 2021

Approved

On behalf of Jon Cicirelli

Date

8/31/2021

SUBJECT: APPROVAL OF R.O.C.K. BERRYESSA UNION 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 a hold on the release of insurance

requirements which pushed back the Berryessa Union School District's signature approval process to after the contract start date, delaying the execution process of the agreement.

The R.O.C.K. after school program start date is July 1, 2021. The contract insurance requirements could not be fulfilled for the Fiscal Year 2021/2022 until after the approval of the City's adopted budget on June 22, 2021. As a result, the approval and signature of the contract was delayed until the District's board meeting in July. The contract was approved, signed and returned to the Department on July 22, 2021, which resulted in retroactivity of the execution process.

The circumstances of this request have slowed down the execution process as a result. Thus, we are submitting a Retroactive Memo. 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 Rigüero
Interim Program Manager
Strategic Partnerships Unit

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

June 25, 2021

Attn: Bonnie Gregorius
1376 Piedmont Road
San Jose, CA 95132

Re: Statement of City of San Jose Self-Insurance for an agreement between the City of San José and the Berryessa Union School District to use 6 district sites to conduct R.O.C.K. school programs.

To Bonnie Gregorius:

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: August 30, 2021
 TO: Roxane Fuentes, Ed.D. Superintendent
 EMAIL: rfuentes@busd.net
 PHONE: 408-923-1815

TOTAL PAGES:
 (INCLUDING THIS PAGE) _____
 TO: _____
 EMAIL: _____
 PHONE: _____

I agree to use electronic signatures

I agree to use electronic signatures

BY: *Roxane Fuentes*

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: Use of Real Property

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667111-000

Contractor: Berryessa Union School District

Address: 1376 Piedmont Road San Jose, CA 95132

Phone: 408-923-1871

Email: bgregorius@busd.net

Contract Description: This is a facility use agreement for R.O.C.K afterschool program to provide recreation, activities and supervision for school age children on district property.

Term Start Date: Upon Execution Term End Date: 6/30/2022 Extension: No

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

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

Agenda Item No.: 2.18

Resolution No.: 80104

Ordinance No.: NA

Original Contract Amount: \$18,000

Amount of Increase/Decrease: NA

Option #: ___ of ___ Option Amount: NA

NTE/Updated Contract Amount: NA

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:
DB# 646915
Retroactive

Department Director Signature: 

On behalf of Jon Cicirelli

6/24/2021

Date

Office of the City Manager Signature: _____

Date