

**FACILITY USE AGREEMENT BETWEEN THE
CITY OF SAN JOSE
AND
THE YOUTH SCIENCE INSTITUTE
FOR USE OF
SCIENCE AND NATURE CENTER AT ALUM ROCK PARK**

THIS AGREEMENT is made and entered into this 10th day of June 2022,
by and between the CITY OF SAN JOSE, a municipal corporation of the State of
California ("CITY") and THE YOUTH SCIENCE INSTITUTE, a California domestic
nonprofit corporation ("CONTRACTOR").

RECITALS

WHEREAS, CITY is the owner of the Science and Nature Center located at 16240
Penitencia Creek Road ("FACILITY"), in San José, California; and

WHEREAS, the FACILITY is located within Alum Rock Park as seen in APPENDIX A;
and

WHEREAS, CONTRACTOR has the exclusive use of the FACILITY set forth in this
AGREEMENT with other facilities at the Alum Rock Park include, but are not limited to
the Visitor Center and classroom, picnic areas, hiking trails and outdoor spaces
(collectively "Park Facilities"), which Park Facilities may be used by CONTRACTOR,
subject to reservation and payment of any applicable fees or charges; and

WHEREAS, CITY's standard fees and charges for use of any of the Park Facilities are
set forth in the Parks, Recreation and Neighborhood Services Schedule of Fees and
Charges ("Fees and Charges"), and may be changed by CITY from time to time. CITY
will determine when applicable fees and charges will apply for Park Facilities. Director
shall notify CONTRACTOR when Fees and Charges have been modified; and

WHEREAS, CONTRACTOR desires to provide instruction on subjects of natural and
animal sciences to the residents of San José through the use of interpretive and

educational displays, school presentations, educational tours and workshops at the FACILITY; and

WHEREAS, CITY'S Director of Parks, Recreation and Neighborhood Services, including the Director's designees ("Director") is charged with the responsibility of supervising the use of CITY'S parks and recreational facilities; and

WHEREAS, CONTRACTOR desires to provide the services listed on EXHIBIT A at the FACILITY at no cost to the CITY in exchange for use of the FACILITY without payment of the CITY'S Facility User Fee;

NOW, THEREFORE, in consideration of these mutual covenants herein, the parties hereto agree as follows:

1. TERM OF AGREEMENT.

The term of this AGREEMENT shall be for a period of no more than one (1) year commencing upon execution and expiring on June 30, 2023, unless terminated earlier in accordance with this AGREEMENT. Regardless of the date of execution of this AGREEMENT, CONTRACTOR agrees to and shall perform all of CONTRACTOR'S obligations under this AGREEMENT from and after the effective date of July 1, 2022. Prior to the expiration date, the parties may mutually agree to extend the term ("Extension Period") of this AGREEMENT on a yearly base for one (1) year up to a maximum of five (5) one-year extensions by written letter signed by both parties prior to the expiration of the term or any extension thereto. Contractor shall provide updated insurance each year the AGREEMENT is extended. All terms and conditions of this AGREEMENT shall apply during the Extension Period, including any amendment of this AGREEMENT executed by the Parties. The Director is authorized to execute extensions and amendments to this AGREEMENT on behalf of the City, with the exception that any amendment of this AGREEMENT which would provide for City compensation of the Contractor shall require City Council approval.

2. USE OF CENTER.

a. CITY hereby grants CONTRACTOR the revocable license to conduct the activities identified on EXHIBIT A at the FACILITY during the term of this AGREEMENT.

b. The FACILITY may be used by CONTRACTOR only for purposes identified on EXHIBIT A and related activities as are permitted by the provisions of this AGREEMENT.

c. A CITY representative designated by the Director shall meet with the CONTRACTOR prior to and after use to confer on maintenance, and repair issues related to the FACILITY.

d. All CONTRACTOR activity shall conform to CITY's rules and regulations for use of the FACILITY. No activities shall occur outside this timeframe without specific written approval from the Director.

e. CONTRACTOR understands and agrees that permission granted by CITY for CONTRACTOR to use and occupy FACILITY is contingent upon FACILITY being CITY-owned property in a safe and usable condition and that if, at any time during the term of this AGREEMENT, FACILITY should no longer be CITY-owned property or should become unsafe or unusable from any cause, CITY shall have no obligation to provide other buildings or facilities. CONTRACTOR shall immediately inform CITY of the existence of any unsafe conditions at FACILITY.

f. CONTRACTOR shall not commit, or suffer to be committed, any waste upon FACILITY, or any public or private nuisance.

g. CONTRACTOR agrees that it will not use or allow the use of the FACILITY for purposes other than those specified herein and that it will not make any structural alteration of the FACILITY or use any portion thereof for any use not authorized by the provisions of this AGREEMENT or authorized in writing by Director.

h. No alteration or modification of the FACILITY is permitted and no equipment may be brought into the FACILITY without the express written consent of Director and as specifically provided into EXHIBIT A of this AGREEMENT or an amendment to this AGREEMENT.

i. All emergency exits and ADA provisions must be maintained by CONTRACTOR. Emergency exits and illuminated exit signage shall not be blocked or visibly obscured. Any electrical alterations or additions to existing electrical

systems must be provided by CITY electricians or licensed electricians providing the electrician follows CITY'S permitting and inspection process. CONTRACTOR agrees to reimburse CITY within thirty (30) days of mailing of an invoice for all associated costs related to electrical alterations or additions requested by CONTRACTOR.

j. CITY, its officers, employees and agents shall have the right at all times to enter FACILITY.

k. CONTRACTOR'S initial schedule of the proposed dates and times by CONTRACTOR of usage of the FACILITY during the term of this AGREEMENT is set forth in EXHIBIT A.

l. CONTRACTOR acknowledges that alcohol and tobacco are not permitted in the FACILITY.

3. SIGNS.

a. The prices of all items offered for sale shall be displayed on a sign located at the respective place of sale. Such display of prices shall be done in a manner to be seen clearly and read by customers. The separation of tax and price of each item shall also be clearly indicated.

b. CONTRACTOR shall not install, erect, affix, paint, or place any sign, lettering or other advertising device in, on, or about the FACILITY without the prior written consent of the Director. Any and all signs, lettering or other advertising device, or a replacement thereof, which may be permitted by the Director shall, at the option of the Director, be removed by CONTRACTOR at CONTRACTOR's sole cost and expense upon the expiration or termination of this AGREEMENT.

c. CONTRACTOR shall provide at least one (1) sign approved by Director, easily visible to the public, which states the name, address and telephone number of at least one (1) individual responsible for responding to emergencies and for servicing of complaints and concerns.

4. AUTHORIZED FEES.

CITY agrees that CONTRACTOR may assess fees for participation in certain CONTRACTOR programs and activities conducted at FACILITY.

5. NO WASTE, NUISANCE OR CONTAMINATION.

CONTRACTOR shall not commit, nor suffer to be committed, any waste upon the FACILITY, nor any illegal activity, nor any public or private nuisance, nor other act or thing which may disturb the enjoyment of any occupant, tenant, or patron..

6. UTILITIES AND CUSTODIAL SERVICE.

a. CITY agrees to bear the cost and expense of water, electric, trash and sewage disposal to the CENTER for CONTRACTOR's use. CONTRACTOR agrees to use its best efforts to conserve water, and electric utilities.

b. CONTRACTOR shall, at CONTRACTOR's, sole cost and expense, provide telephone service, internet service, propane tank rental, and propane delivery service.

c. CONTRACTOR shall, at CONTRACTOR's sole cost and expense, provide custodial services for FACILITY on days CONTRACTOR opens FACILITY to the public to include cleaning the kitchen area, dusting, sweeping, emptying the garbage and mopping and waxing the floors as needed. Such custodial services shall be subject to the Director's approval.

7. PRESERVATION OF RECORDS.

CONTRACTOR shall preserve and make available its records until the expiration of three (3) years from the date of termination or expiration of this AGREEMENT, or for such longer period, if any, as is required by applicable law.

8. RIGHT OF EXAMINATION AND AUDIT.

CONTRACTOR agrees that CITY'S Auditor, Attorney, Manager or the Director, or any duly authorized representatives thereof, shall have access to and the right to examine all facilities and activities of CONTRACTOR engaged in performance under this AGREEMENT, including the right to audit, examine and make excerpts or transcripts of or from such records, and to make audits of all contracts, subcontracts, invoices, payrolls, personnel records, conditions of employment, materials, and all other data or financial records relating to matters covered by this AGREEMENT.

CONTRACTOR agrees that the right of CITY to examine or audit shall continue for three (3) years after the expiration or termination of this AGREEMENT.

9. INDEPENDENT CONTRACTOR.

The parties mutually agree that CONTRACTOR and its employees hired to perform CONTRACTOR covenants made hereunder are and shall be at all times independent contractors and not agents or employees of CITY, and that CONTRACTOR and its employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance, or any other benefit or right connected with employment by CITY, or any compensation other than as prescribed herein; and CONTRACTOR hereby expressly waives any claim it may have to any such rights.

Additionally, CONTRACTOR is solely responsible for the recruitment, training, supervision and compensation of CONTRACTOR'S employees and volunteers at the FACILITY.

10. CONTRACT RIGHTS - - NOT A LEASE.

The rights hereto granted to CONTRACTOR are in the nature of a revocable license only and in no respect shall the same constitute or be construed as creating a leasehold interest in the property described in this AGREEMENT.

11. NONDISCRIMINATION.

In the performance of this AGREEMENT, CONTRACTOR shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

12. INDEMNIFICATION.

CONTRACTOR agrees to defend, indemnify and hold harmless CITY, its officers, agents and employees (collectively referred to hereinafter as "CITY") from and against any and all claims, demands, causes of action, or liabilities incurred by CITY arising, in whole or in part, directly or indirectly, from CONTRACTOR'S acts or

omissions under this AGREEMENT or any act or omission of CONTRACTOR'S officers, agents, employees, contractors, or persons using the CENTER or the Program Premises with the express or implied permission or invitation of CONTRACTOR, except as may arise from the gross negligence or willful misconduct of CITY. In any action or claim against CITY in which CONTRACTOR is defending CITY, CITY shall have the right to approve legal counsel providing CITY'S defense and such approval shall not be unreasonably withheld. CONTRACTOR further agrees to release CITY from any and all claims for any damages, including property damage, injury or death occurring or arising out of use of CITY'S property, except as may be caused by the CITY'S gross negligence or willful misconduct.

CONTRACTOR has reviewed and agrees to abide by CITY rules and regulations pertaining to the use of the facility. CONTRACTOR understands further that CONTRACTOR will be held financially responsible for any damage to facilities or equipment that occurs through the use of the building.

13. INSURANCE REQUIREMENTS.

CONTRACTOR, at CONTRACTOR'S sole cost and expense, and for the duration of this AGREEMENT, shall obtain and maintain in full force all of the insurance requirements set forth in the attached EXHIBIT B, entitled "INSURANCE REQUIREMENTS".

14. LICENSES.

CONTRACTOR represents and warrants that it currently possesses all requisite licenses, including, but not limited to CITY business tax certificate or exemption, if qualified, with the CITY'S Finance Department to operate in the CITY and will maintain all such licenses or exemptions for the term of this AGREEMENT. CONTRACTOR is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.

15. COMPLIANCE WITH THE LAW.

a. CONTRACTOR shall comply with CITY policies and all applicable state and federal laws, regulations and rules related to the use and operation of FACILITY, including but not limited to, laws, regulations and rules applicable to health, safety and equal opportunity employment.

b. CONTRACTOR recognizes and understands that this AGREEMENT may create a possessory interest subject to property taxation and that CONTRACTOR may be subject to payment of property taxes levied on such interest, and that such tax payment shall be the liability of and be paid by CONTRACTOR.

16. ASSIGNMENT BY CONTRACTOR.

This AGREEMENT is not to be assigned by CONTRACTOR and any attempt by CONTRACTOR to assign any rights, duties or obligations arising under the provisions of this AGREEMENT shall be void and of no effect. Further, any assignment or attempt at assignment by CONTRACTOR shall constitute a material breach for which this AGREEMENT is automatically terminated without notice.

17. AUTOMATIC TERMINATION.

The right of CONTRACTOR to use FACILITY shall be automatically terminated without notice on the occurrence of any one (1) of the following conditions subsequent, in which event CONTRACTOR shall forthwith and without demand by the CITY, surrender without delay the possession of FACILITY just as though the AGREEMENT had been terminated by expiration of the term or because of a material breach of covenant on the part of CONTRACTOR:

- a. The appointment of a receiver to take possession of all or substantially all of the assets of CONTRACTOR; or
- b. A general assignment by CONTRACTOR for the benefit of creditors; or
- c. Any action taken or suffered by CONTRACTOR under any insolvency or bankruptcy act; or
- d. The breach of any material term of this AGREEMENT.

18. ELECTIVE TERMINATION.

a. This AGREEMENT may be terminated by either party hereto at any time during the term specified herein, upon giving to the other party thirty (30) days written notice of said termination.

b. In the event such notice of termination is given, this AGREEMENT shall be deemed terminated and at an end, thirty (30) days after said notice is given pursuant to Paragraph 19, below.

c. This AGREEMENT may be terminated without prior written notice upon the mutual agreement of the parties.

d. The Director is authorized to decide, on the part of CITY, that this AGREEMENT is to be terminated and to furnish written notice thereof.

19. SURRENDER OF FACILITY.

On the last day or the sooner termination of the term of this AGREEMENT, CONTRACTOR shall no longer have access pursuant to this AGREEMENT to the FACILITY and shall remove all property owned by CONTRACTOR from the FACILITY. All such property not so removed shall be deemed at the option of CITY to have been abandoned by CONTRACTOR. Any and all equipment paid for by the CITY shall be delivered to CITY by CONTRACTOR at the expiration or sooner termination of this AGREEMENT. CONTRACTOR waives all claims or entitlements to relocation benefits, including any costs or losses arising from the temporary or permanent discontinuation of CONTRACTOR'S use of the Program Premises, finding or establishing an alternate site, moving or replacing equipment, diminished business goodwill, or any other costs or losses arising from early termination of this AGREEMENT and/or business interruption due to CITY.

20. NOTICES.

All notices provided for or required to be given pursuant to this AGREEMENT shall be sufficient if personally delivered or if deposited in the United States postal service in a postage-paid envelope addressed as follows or to such other place as CITY'S DIRECTOR or CONTRACTOR may by similar notice in writing designate. Notice shall be deemed given upon receipt.

CITY:

City of San José - Parks, Recreation and
Neighborhood Services
200 East Santa Clara Street, 9th Floor
San José, CA 95113

ATTN: DAN GREELEY
Interim Park Manager
dan.greeley@sanjoseca.gov

CONTRACTOR:

Youth Science Institute
296 Garden Hill Drive
Los Gatos, CA 95032

ATTN: ERIKA BUCK
Executive Director
erika@ysi-ca.org

21. BACKGROUND CHECKS/CONCESSIONS.

CONTRACTOR shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors for any activity at the FACILITY, who have been convicted of any offense identified in California Public Resources Code Section 5164. CONTRACTOR shall fully indemnify, defend and hold harmless CITY for any such hiring. CONTRACTOR shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.

CONTRACTOR shall also not employ any person who is permitted to provide services requiring contact with minors or providing food concessionaire services or other licensed concessionaire services in the FACILITY, unless CONTRACTOR has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.

Regardless of whether services have been provided prior to full execution of this AGREEMENT, CONTRACTOR certifies to CITY that all activities in the CENTER were provided in full compliance with the terms and provisions of this AGREEMENT.

To give effect to California Public Resources Code Sections 5163 and 5164, CONTRACTOR shall follow the procedures contained in EXHIBIT C attached hereto. In the event CONTRACTOR chooses a different national criminal database for complying with the Federal Bureau of Investigation ("FBI") requirement for

background checks, then such alternative database shall be approved in writing by CONTRACTOR'S liability insurance provider.

22. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

CONTRACTOR agrees that, in the performance of this AGREEMENT, CONTRACTOR shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY'S website at: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

23. Execution in Counterparts and Use of Electronic Signatures.

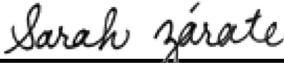
This AGREEMENT may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the CITY.

WITNESS THE EXECUTION HEREOF, the day and year hereinabove written.

CITY OF SAN JOSE,
a municipal corporation

YOUTH SCIENCE INSTITUTE,
a California nonprofit corporation



SARAH ZARATE
Director, City Manager’s Office



ERIKA BUCK
Executive Director

06/10/2022
Date

Jun 9, 2022
Date

FORM OF AGREEMENT APPROVED BY THE OFFICE OF THE CITY ATTORNEY



EXHIBIT A
DATES AND TIMES OF USE, AND DESCRIPTION OF USE

DESCRIPTION OF SCIENCE AND NATURE CENTER AT ALUM ROCK PARK
(FACILITY)

The Science and Nature Center is located within Alum Rock Park and occupies a space of approximately 6,000 square feet within the park. The Facility consists of a 3,200 square foot single story building and a 560 square foot aviary structure. The public restroom attached to the building is not considered as part of the Facility. This space is delineated with a wood fence and the building.

A. CONTRACTOR agrees to operate the FACILITY and to have the FACILITY open to the general public for a minimum of twenty (20) hours per week, to include CITY observed holidays of Memorial Day, Independence Day and Labor Day. CONTRACTOR shall not reduce the hours of operation without the prior written permission of the Director.

B. CONTRACTOR and the Director may agree to close the FACILITY for general maintenance during a two-week period between mid-December and mid-January of each year during the term of this AGREEMENT.

C. CONTRACTOR agrees to provide instruction on the subject of natural and animal sciences to the residents of San José through the use of school presentations, educational tours and workshops. CONTRACTOR shall have the right and the privilege to charge and to collect fees for such school presentations, educational tours, workshops, museum admission, and merchandise provided CONTRACTOR shall have first obtained the written approval of Director. CONTRACTOR shall submit a written list of fees by December 1 each year of the contract for programs for the next calendar year. CITY will review and respond to the fee request within two (2) working weeks.

D. CONTRACTOR agrees that Director may inquire into or observe CONTRACTOR's activities and operations provided that such observations of Director does not infringe upon CONTRACTOR's performance under the provisions of this AGREEMENT.

School and Group Educational Programs

CONTRACTOR will provide hands-on, interactive science and nature programs that complement California State Science Standards to help classroom teachers, from pre-K through 6th grade, meet state and local requirements. Topics include but are not limited to:

- Animals and Their Adaptations
- Moving, Exploding Earth
- Life of an Ohlone
- Five Senses Nature Walk
- All About Owls
- Insects, Spiders, and Other Arthropods
- Life in a Pond
- Physics of Sound and Motion
- Physics of Sight and Sound
- Aquatic Habitat Exploration

Science Safaris

CONTRACTOR will provide a variety of indoor and outdoor programs for the entire family that is presented by specialists in their fields, including interpretive hikes, and programs on specific flora and fauna.

Community Events Coordinated (Wildlife Festival)

CONTRACTOR will provide an annual family-oriented community event that includes live animals, birds and reptiles, crafts and hands-on science activities, food, live animal shows, and stage entertainment.

Science Center Hours of Public Operation

CONTRACTOR will provide public access minimally on the following days:

Monday - closed, but can open at CONTRACTOR'S discretion

Tuesday - closed, but can open at CONTRACTOR'S discretion

Wednesday - 12pm-4pm

Thursday - closed, but can open at CONTRACTOR'S discretion

Friday - 12pm-4pm

Saturday - 10:30am-4:30pm

Sunday - 10:30am-4:30pm

Memorial Day, Independence Day, Labor Day: 10:30am-4:30pm

This will include CONTRACTOR's non-releasable raptors (owls and hawks) that act as teaching ambassadors. Visitors can also observe a variety of live insects, reptiles and mammals, as well as specimen collections and interactive exhibits. Science Center staff will be on hand to answer visitor's questions. CONTRACTOR may provide additional hours or days of operations if funding allows and if there is a community need. When

changing the schedule to allow for additional operating hours, CONTRACTOR will coordinate with CITY to avoid scheduling conflicts and for planning purposes.

Day Camp Programs Offered

CONTRACTOR may provide at its discretion individually-themed camps each summer or seasonally to children in pre-K through entering 6th grade. When funding and registration limitations prevent providing the Day Camp, CONTRACTOR may option to not offer a Camp. When changing adding or removing camps from its schedule, CONTRACTOR will coordinate with CITY to avoid scheduling conflicts and for planning purposes.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

EXHIBIT B

INSURANCE REQUIREMENTS

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property insurance against all risk of loss for Contractor's personal property while in the Facility.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Property: Replacement cost with no coinsurance provision.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees, and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, and agents.
 - b. CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of CONTRACTOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, or agents.
 - d. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Property and Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, and agents.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONTRACTOR shall furnish CITY with certificates of insurance and endorsements affecting coverage required by this AGREEMENT. The certificates and copies of endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT C

SERVICES INVOLVING MINORS

1. If CONTRACTOR provides services involving minors, and as a CITY-approved method of complying with the provisions contained in this AGREEMENT, CONTRACTOR shall conduct a criminal background check through the database of the California Department of Justice **and** a FBI criminal database or equivalent national database, as approved in writing by CONTRACTOR'S liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

2. CONTRACTOR shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, CONTRACTOR certifies to the following: Any and all personnel employed or retained by CONTRACTOR in conducting the operations of CONTRACTOR'S program shall be qualified to perform the duties assigned to them by CONTRACTOR. CONTRACTOR agrees that CONTRACTOR shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors if they have been convicted of any offense identified in California Public Resources Code Section 5164 (copy attached).

3. CITY and CONTRACTOR understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

4. If CONTRACTOR intends to have employees or volunteers under the age of 18 providing services under this AGREEMENT, CONTRACTOR shall maintain and make available to CITY, if requested, guidelines, procedures or policies that safeguard and ensure that no employees or volunteers under the age of 18 will be providing services under this AGREEMENT unsupervised, and further, CONTRACTOR shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

5. CONTRACTOR shall be responsible for ensuring that no person paid or unpaid by CONTRACTOR shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this AGREEMENT, and the person meets the standards set forth above. If requested by City, and to the extent allowed by law, CONTRACTOR shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, certifying that the CONTRACTOR has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this AGREEMENT. Regardless of whether such documentation is

requested or delivered by CONTRACTOR, CONTRACTOR shall be solely responsible for compliance with the provisions of this Section.

6. That no person paid or unpaid by CONTRACTOR shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area unless CONTRACTOR has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this AGREEMENT and every four (4) years thereafter, if the term of this AGREEMENT exceeds four (4) years. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. CONTRACTOR shall keep on file each "Certificate" of clearance for the persons described above and shall also make available a copy of each Certificate to CITY, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

7. CONTRACTOR understands that, if services are rendered on a school site, there may be additional requirements that may apply, including without limitation, requirements under the California Education Code. CONTRACTOR acknowledges that it is CONTRACTOR'S sole responsibility to comply with all applicable laws, regulations, and licensing requirements in CONTRACTOR'S provision of services hereunder.

I, the CONTRACTOR by signing below verify that I have read and agree to the above:

Erika Buck

Erika Buck (Jun 9, 2022 13:21 PDT)

Jun 9, 2022

Signature

Date

Youth Science Institute

(Please print or type name of organization)

CALIFORNIA PUBLIC RESOURCES CODE

SECTION 5164

5164. (a) (1) A county, city, city and county, or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of an offense specified in paragraph (2).

(2) (A) A violation or attempted violation of Section 220, 261.5, 273a, 273d, or 273.5 of the Penal Code, or a sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph(C) within 10 years of the date of the employer's request

(C) A felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of an offense specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, an offense specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or an offense specified in subdivision (c) of Section 667.5 of the Penal Code, provided that a record of a misdemeanor conviction shall not be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of an offense specified in subdivision (a). The county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that person's criminal background.

(2) A local agency request for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. A fee shall not be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

NVF:AXY:SD
5/11/2022

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the county, city, city and county, or special district's costs attributable to the requirements imposed by this section.

SECTION 5163

5163. (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within 30 days of the examination to the local health officer to determine the need for follow up care.

“Certificate” means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

5163.1. The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this section.

5163.2. The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

5163.3. The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

5163.4. Nothing in Sections 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.

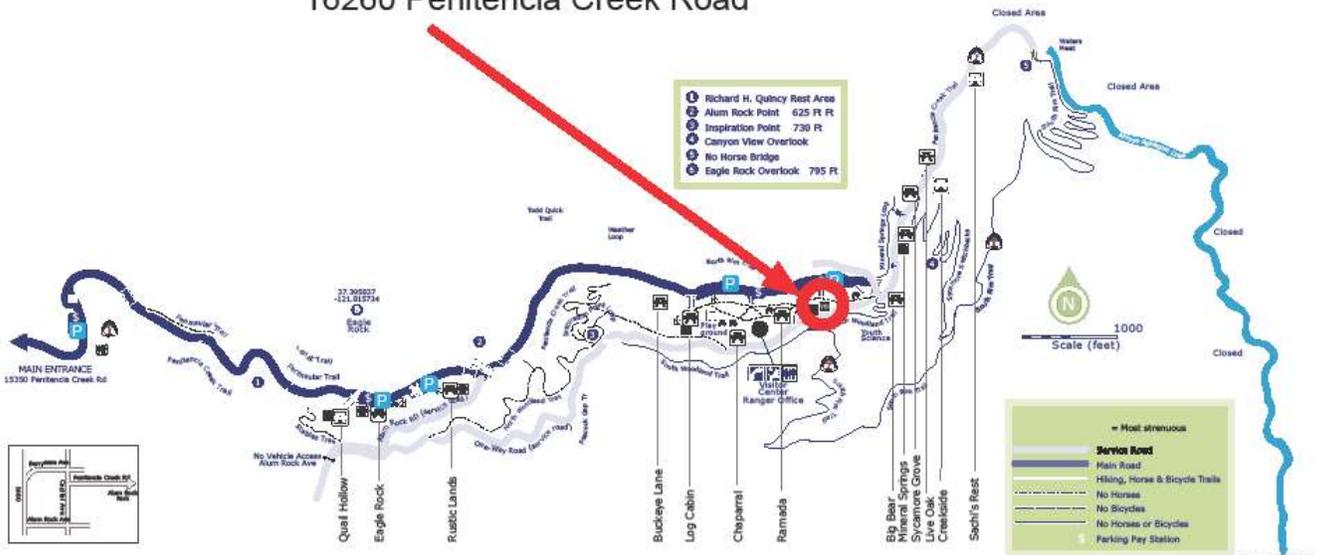
APPENDIX – A

FACILITY MAP

ALUM ROCK PARK

APPENDIX A MAP

Youth Science Institute's Nature Center at Alum Rock Park
16260 Penitencia Creek Road



INSTRUCTIONS FOR INSURANCE APPROVAL:

Forward the following to: **RISK MANAGEMENT**

200 E. Santa Clara St. 2nd Floor Wing
San Jose, CA 95113-1905

1. This form (149-7) completed;
2. Copy of face page of Contract;
3. Copy of insurance requirements included in contract.

Risk Management FAX: 408-286-6492

NOTIFICATION OF CONTRACT BEING PROCESSED

Date: 6/9/2022

Service Provider: **Youth Science Institute**

Address: **333 Blossom Hill Road Los Gatos CA 95032**

Email: **erika@ysi-ca.org**

Phone No.: **650 743-6943**

Fax No.:

Project:

Project Amount: **\$0**

Estimated Start Date **Upon Executio**

Estimated Completion Date **6/3/2023**

Scope of Work:

Facility use of Youth Science Building at Alum Rock Park

The purpose of this agreement allows operation of the Youth Science Center at Alum Rock Park. The contractor will provide instruction on the subject of natural and animal sciences to the citizens of San Jose.

Department **PRNS**

Division **PARKS**

Department Contact: **Dan Greeley**

Ph./Ext: **4088883213**

Department of Parks, Recreation and Neighborhood Services

Contracts Development Unit

Ph: 408-793-4199/ Fax: 408-292-6318

COMPLIANCE WITH INSURANCE REQUIREMENTS

Comments

Signature:

Stephanie Duran

06/09/2022

Risk Management Signature

Date:

FOR RISK MANAGEMENT USE ONLY
Date Forwarded to City Clerk:

COMPLIANCE WITH BOND REQUIREMENTS

Signature:

City Clerk

Date:

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 Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667671-000

Contractor: Youth Science Institute

Address: 333 Blossom Hill Road Los Gatos, CA 95032

Phone: 650 743-6943

Email: erika@ysi-ca.org

Contract Description: The purpose of this agreement allows operation of the Youth Science Center at Alum Rock Park. The contractor will provide instruction on the subject of natural and animal sciences to the citizens of San Jose.

Term Start Date: July 1, 2022 Term End Date: June 30, 2023 Extension: No

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

Agenda Date (if applicable): 06/22/2021

Agenda Item No.: 2.18

Resolution No.: 80104

Ordinance No.: _____

Original Contract Amount: \$0

Amount of Increase/Decrease: \$0

Option #: of Option Amount: _____

NTE/Updated Contract Amount: \$0

Fund/Appropriation: NA

Form 700 Required (Selection mandatory for processing): N/A

Revenue Agreement: No

Tax Certificate No.: 0689101210

Expiration Date: PENDING

Department: PRNS (64)

Department Contact: Stephanie Duran Customer (Finance Only): _____

Notes: DB#647204

Project Manager: Dan Greeley dan.greeley@sanjoseca.gov

Department Director Signature: _____  On behalf of Jon Cicirelli _____ 06/09/2022
Date

Office of the City Manager Signature: _____
Date