

OPERATION AND MANAGEMENT AGREEMENT BETWEEN THE CITY OF ESCONDIDO AND [CONTRACTOR]

This Operation and Management Agreement ("Agreement") is entered into as of the last date of signature below ("Effective Date") by and between the City of Escondido, a California municipal corporation ("City") and [Contractor, entity type] ("CONTRACTOR") for the purposes of providing for professional management and operation of the California Center for the Arts, Escondido. (The City and CONTRACTOR each may be referred to herein as a "Party" and collectively as the "Parties.")

Recitals

WHEREAS, in or about 1994, the City constructed an arts, theatre, and museum complex located at 340 N. Escondido Blvd., Escondido, CA 92025 ("Center") to provide a focal point in southern California for the presentation of a variety of world class, visual and performing art events, to encourage diverse cultural activities in programs, and to provide a venue for local events, educational, opportunities, and presentations; and

WHEREAS, the City desires the Center be managed with special expertise in the field of performing arts, theatre and museum operations; the holding of special events; the attraction of world-class entertainers; and the promotion and support of local cultural programming, all the while affording proper accountability to the citizens of Escondido; and

WHEREAS, the CONTRACTOR is competent to provide professional personnel with such special expertise, interest, and capacity to operate and manage the Center to accomplish the goals of the City, as stated herein; and

WHEREAS, the City and the CONTRACTOR share a common vision and goals for the Center and desire to work in partnership to assist each other in achieving these goals; and

WHEREAS, the Parties desire to commit to writing their respective rights, duties, obligations and promises with respect to the City's desire to have the CONTRACTOR serve, and the CONTRACTOR's agreement, to serve, as the operator of the Center for the term stated in this agreement.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definition of Terms

The following words and phrases in this Agreement shall have the significance attached to them in this Section unless otherwise indicated or apparent from their context.

Agreement. The Agreement shall consist of the recitals, terms, and all documents referenced herein and made a part hereof, including Exhibits and Attachments, if any.

Center or Center Premises. The total complex, located at 340 N. Escondido Blvd., Escondido, CA 92025, consisting of theaters, educational facilities and studios, museum, conference center, administrative offices, immediately adjacent exterior gardens, plazas, and grounds, and a central plant, which are collectively referred to in this Agreement as "the Center." A satellite image outlining the Center Premises is attached as **Exhibit 1** and incorporated by reference. The area commonly referred to as the Great Lawn is not included as part of the Center Premises under this Agreement. The parking lot on the west side of the footbridge by the Center's Administration building shall be for the primary use of the CONTRACTOR; however, the City reserves the right to use that parking area for its use with 30-day

advance notice. The City and Center commit to working together to develop a mutually beneficial and streamlined process for the area of Grape Day Park commonly known as the "Great Lawn" .

City. The City means the City of Escondido, a general law city formed pursuant to the laws of the State of California.

Contract Administrator. The Contract Administrator means the City Manager or his/her designee or, upon written notice to CONTRACTOR, such other person as shall be designated from time to time by City.

Party or Parties. CONTRACTOR or City may be referred to individually as Party or collectively as Parties.

Routine Maintenance. Routine Maintenance as used herein shall refer to the regularized facility maintenance and cleaning services provided by the respective Parties referenced in Exhibit 2, which is attached hereto and incorporated by this reference.

Section 2. Grant of License

2.1 City hereby grants to CONTRACTOR the right to use and operate the Center and Center Premises, as identified in Exhibit 1, and CONTRACTOR so agrees to operate such facilities, subject to the terms and conditions set forth in this Agreement.

Section 3. CONTRACTOR Representation of Nonprofit Good Standing

3.1 CONTRACTOR warrants that it is a validly existing nonprofit public benefit corporation in good standing with the State of California, and that it has provided the City with a current copy of a resolution of the Board of Trustees of the CONTRACTOR Corporation authorizing the execution of this Agreement on behalf of CONTRACTOR. CONTRACTOR also warrants that it has, in conjunction with its execution of this Agreement, provided City with copies of its current Articles of Incorporation, its Bylaws, filings with the Office of the California Secretary of State, liability insurance policies, a list of names of the current members of its Board of Trustees, a list of names of other officers of the corporation, and an organizational chart detailing the CCAE staffing. The CONTRACTOR shall also provide to the City copies of formation documents relating the CCAE Charitable Trust, and other documents as may be public records under California or Federal law. CONTRACTOR agrees that it will provide City with copies of any of the above documents which change in form or scope at any time during the term of this Agreement, and with any other documents which may be reasonably required by City, within 30 days of such change or request.

Section 4. Operation of the Facilities

4.1 Exclusive Right to Center Activities. To further the purposes of the City, the CONTRACTOR shall have exclusive rights to produce, present, or provide a wide variety of performing arts and visual presentations, and to operate a museum and education facilities for a wide variety of events. These presentations will be offered through efforts of the CONTRACTOR or in cooperation with performing artists, other performing arts organizations, or commercial promoters, with the goal that the Center will be operated for the benefit of the public. CONTRACTOR may, at its own discretion, use the theaters, or other parts of the Center, for production of in-house programming. CONTRACTOR shall assemble, safeguard, preserve and conserve objects of art for display at the museum. The City recognizes that a permanent art collection is held in trust by CONTRACTOR. CONTRACTOR has exclusive rights to operate the Conference Center for meetings, banquets, special events and gatherings. CONTRACTOR shall also have the exclusive right to sell, or to contract for the right to sell, beverages, food, confections, clothing, novelties, and publications within the Center as appropriate. These activities

shall be conducted at no financial risk to the City. Any excess revenues received from the production of Center activities may be retained by the CONTRACTOR for funding of additional programming at the Center.

4.2 Right to Rent and Contract for Use. CONTRACTOR shall have the exclusive right to rent and control events at the Center, distribute tickets, operate a ticket office, and charge admission for events at the museum and theaters, as well as to establish pricing and rate structures for all activities at the Center. CONTRACTOR shall use the Center facilities for presentation of performing arts (e.g. dance, music, theater) by outside groups and promotional entities that rent the Center and stage their own productions, and shall have the right to enter into contracts with such groups to fulfill this purpose. CONTRACTOR shall use the Center for rental to outside groups and promotional entities that rent the facility for their own events, for the display of artistic exhibitions and for educational activities, or for other appropriate uses consistent with the purposes of this Agreement.

4.3 Leasing of Center Space. CONTRACTOR may offer space at the Center for lease to other entities sharing CONTRACTOR's vision or purpose. Such leases, if in excess of one year, shall be subject to the City's prior approval and shall be executed by and between the City and the entity selected by CONTRACTOR. Such leases between the City and the entity shall be subject to and in accordance with all the terms and conditions set forth in this Agreement.

4.4 Reservation for City Use. CONTRACTOR understands that the City may occasionally need use of some portions of the Center facilities, subject to the following guidelines: The City may schedule use of Conference Center rooms 12 days per calendar year at no room rental cost. If possible, the use will occur on Monday through Thursday. If the space is needed on a Friday, Saturday or Sunday, the City shall vacate the premises by no later than 4 p.m., to allow the

4.5 CONTRACTOR to rent the facilities in the evening. City shall pay the full market cost of all labor, food, beverages, setup, preparation and any items rented by the CONTRACTOR on behalf of the City. If a potential rental of the space becomes likely, the CONTRACTOR will work with the City to determine if a different room or theater is available that would serve the City's needs and allow the CONTRACTOR to generate more rental income. The Contract Administrator shall be the City's designated agent to coordinate with CONTRACTOR staff for City use of these Center facilities.

4.6 First Amendment and Political Activities. CONTRACTOR has adopted and implemented an Expressive Activities Policy which conforms to state and federal law. Further, the Center shall not be used directly by CONTRACTOR for the purpose of working on or campaigning for the nomination or election of any persons to any public office, whether partisan or non-partisan. However, CONTRACTOR may rent all or part of the Center facilities to persons or entities for political activities at standard, publicly-available (non-preferred) rates.

4.7 Information Technology Policies and Support. The CONTRACTOR shall follow all information and computer technology protocols, guidelines, policies, restrictions and directions from the City if the CONTRACTOR intends to connect its computers to the City's servers. The CONTRACTOR shall employ sufficient staff to provide on-site assistance to the CONTRACTOR employees; however, the City may provide additional assistance to the CONTRACTOR on computer technology access and related questions subject to availability.

4.8 Reasonable Self-imposed Restrictions. Subject to the terms of this Agreement, including but not limited to Section 17, CONTRACTOR may develop reasonable restrictions for the use of the Center which are consistent with and supportive of the rights of the general public, consistent with the requirements of this agreement, and which are designed to enable CONTRACTOR to use these facilities

consistent with the purpose of this Agreement.

4.9 Security. The City and the CONTRACTOR share concerns regarding the security at the Center for both individuals and property, and commit to implementing appropriate security measures. The CONTRACTOR is responsible for maintaining the proper security of the Center Premises, which may include retention of security personnel at the CONTRACTOR's expense. Security personnel may include City Park Rangers, through a separate Memorandum of Understanding.

4.10 City Property. At all times during the term of this Agreement, the Center Premises shall remain the absolute property of the City. No legal title or leasehold interest in the Center shall be deemed or construed to have been created or vested in CONTRACTOR by anything contained in this Agreement or otherwise. Because CONTRACTOR is an operator of a City-owned facility organized for the purpose of reducing the burden on City government, the Parties intend that CONTRACTOR shall have no liability of any sort for payment of property taxes.

Section 5. CONTRACTOR Property

5.1 City agrees that all furniture, equipment, and other similar property of a personal nature which is acquired by CONTRACTOR solely with its own resources shall be and remain the property of CONTRACTOR. All fixtures, including items which are attached to, affixed or otherwise become part of the Center, shall be property of the City.

Section 6. Center Naming Rights

6.1 CONTRACTOR shall have the right to name or change the name of the Center, or a portion of the Center. If the CONTRACTOR has developed a Naming Policy, which has been approved by the City Council, no additional approval is needed. If no such policy has been developed or approved by the City Council, naming rights are subject to the prior written approval of the City. The amount and use of any monetary donation or payment made by a third-party for naming rights to the Center, or a portion thereof, shall also be the subject to prior written approval of the City, unless the aforementioned policy has been previously approved by the City Council.

Section 7. Construction, Improvements, and Alterations

7.1 Protection of Center Facility. CONTRACTOR agrees to use reasonable and professional care and skill to protect the Center Premises at all times. Further, the CONTRACTOR shall use care to protect and preserve all alterations, additions and improvements made by the City to the Center. CONTRACTOR agrees not to alter any existing improvements on the Center Premises, except in accordance with written permission and/or plans and specifications previously submitted and approved in writing by the Contract Administrator or other designated City representative.

7.2 Training and Instructions. Where applicable, City shall provide CONTRACTOR with instructions for use of existing equipment, materials and fixtures and train CONTRACTOR personnel with respect to the care of any new equipment, materials and fixtures installed by or on behalf of the City.

7.3 Use of City Employees and Contractors. City reserves the right to employ its own employees or contractors to perform any repairs, maintenance, alterations and Regular Maintenance to the Center Premises at any time and with reasonable notice to the CONTRACTOR. The City may, at its discretion, chose to pay the CONTRACTOR to complete repairs, maintenance or alterations on Center facilities.

7.4 Recommendations & Responsibility for Improvements. Recommendations for interior decoration and alterations for the accommodation of the ongoing operation of the Center shall be the responsibility of CONTRACTOR. Other than preliminary design sketches intended to provide a conceptual visualization of a proposed change, which will be produced by CONTRACTOR at no cost to the City, no architectural or design work may begin without written approval from the City. No construction related to any plans and/or specifications produced by such architectural or design work can begin without written approval from the City. The cost of architectural, design, and resulting construction shall be the responsibility of the CONTRACTOR, except in the cases of City approved Capital Improvement Projects as described In Section 7.5.

7.5 Capital Improvement Project Funding. CONTRACTOR may request funding from the City for Capital Improvement Projects (CIP) related to the Center. The costs of any such CIPs shall be borne by the City, but only where the City shall have first approved of and prioritized such expenditures in writing. CONTRACTOR shall establish a yearly budget and proposal for any CIP expenses it recommends for the Center Premises and for which it seeks City contribution. The CIP budget shall be submitted to the City not later than April 1 each year to allow the City to review the recommendation and, if approved, to include such amount in its CIP or other budget for City Council consideration for the next fiscal year starting July 1. The City shall provide the format necessary for submittal of CIP requests.

7.6 Quarterly Facility Walkthrough. On a quarterly basis, representatives from the City and the CONTRACTOR shall walk through the premises, including the interior of all the buildings, to identify short and long-term repairs and improvements as well as identifying items that may be included in the City's CIP budget.

Section 8. Waste, Damage or Destruction of Center

8.1 CONTRACTOR shall take all reasonable measures to assure that any tenants, users, contractors or licensees of the Center avoid any form of waste, damage, destruction of the Center Premises and immediately adjacent City property, or make any temporary or permanent alterations of the facilities without the City's prior written consent. Such measures shall include use of written agreements, provision of insurance, and if necessary, on-site monitoring of performances, conferences, events, and other uses of the Center. In the event of any waste, damage or destruction to property under the control of the CONTRACTOR or City, CONTRACTOR shall give immediate notice to the City of any damage to the facilities within not more than twenty-four (24) hours of such damage occurring. CONTRACTOR shall not itself commit or allow any waste or damage to the Center premises or City property, or permit or any nuisance. CONTRACTOR shall keep the Center clean and clear of refuse and obstructions, and shall assure that either itself or all licensees, invitees or users dispose of all garbage, trash, and rubbish and return the Center to the condition prior to use, in a manner satisfactory to City.

Section 9. Routine Maintenance, Repair and Cleaning

9.1 The Parties agree to perform the Routine Maintenance of the Center Premises as provided for in Exhibit 2. City responsibilities shall be completed by City maintenance staff or by qualified contractors hired by the City. CONTRACTOR responsibilities shall be completed by CONTRACTOR staff with the qualifications and certifications necessary to complete the work, or by qualified contractors hired by the CONTRACTOR. CONTRACTOR shall notify the City of any non-emergency repair or maintenance issues which it requests the City to undertake, or which are among the City's responsibilities, within 10 days of discovery of such facility issue. If the maintenance or repair does not clearly fall into a category listed in Exhibit 2, the Parties will meet and confer regarding the respective responsibility for such repair or maintenance under this Agreement. For purposes of carrying out day-to-day responsibilities and in implementing this paragraph, CONTRACTOR staff and City shall regularly meet and discuss those items

of maintenance and repair that both Parties expect CONTRACTOR shall undertake as well as those items of maintenance and repair which the City shall undertake.

Section 10. Obligation of Diligent and Permitted Use

10.1 CONTRACTOR and City covenants to diligently perform all of their obligations under this Agreement, and to use the Center solely for the purposes described in this Agreement.

Section 11. Special Events and Use of Additional City Areas

11.1 Coordination and Permits. The CONTRACTOR may request the temporary use of portions of Grape Day Park, including the area commonly referred to as the Great Lawn, or other City- owned facilities adjacent to the Center Premises, subject to prior written approval of the Contract

11.2 Administrator and any conditions required therein. Any request to use such non-Center areas or facilities shall be coordinated so as not to conflict with other City-sponsored events and shall be accompanied by the necessary no-fee Special Event or no-fee Temporary Use Permits, additional insurance coverage as may be required by the City, and additional permits or authorizations as may be required to conduct the event required by other government agencies. No changes to the facilities or grounds of Grape Day Park may be made by the CONTRACTOR without prior express approval from the City through the permit process. If changes are approved, they must be temporary in nature unless expressly approved as a permanent change by the City prior to the event. If alcoholic beverages will be sold or provided in conjunction with any event covered under this section, a current license (includes 1-day licenses) issued by the California Department of Alcoholic Beverages, shall be held by the Party using the space.

11.3 Parking Area. The portion of the parking lot north of the channel and west of the footbridge by the CONTRACTOR Administration Building is available for general public parking. However, since this is the primary area for Center Patron parking, it is listed as part of the Center premises, under "Definitions". If the City has a need to use or close this area, the Contract Administrator shall contact the primary CONTRACTOR liaison to discuss the impact, identify options and develop a mutually agreeable solution. See Exhibit 1 for map of this area.

Section 12. Production Assistance

12.1 During those periods when CONTRACTOR is not fully utilizing the Center for presentation, production, rehearsal, exhibitions or programs, CONTRACTOR will continue to assist other non-profit or community performing artists or groups producing cultural events. Such assistance may include promotional, production and technical assistance as is appropriate to the particular performing artist or group utilizing the Center. CONTRACTOR may charge fees for production management, labor, lighting design, sound engineering, production design, or other such production or support activities which it provides to performing artists and other organizations.

Section 13. Catering

13.1 CONTRACTOR shall be permitted to use, hire or retain any catering company or caterer it reasonably chooses, consistent with the terms of this Agreement. CONTRACTOR and its caterers and employees shall be required to comply with all state, county and local food handling laws, rules and regulations.

Section 14. Entry and Inspection

14.1 City reserves the right to enter the Center Premises for the purpose of viewing and ascertaining its condition, to protect City's interests in the facilities, or to inspect the operations conducted thereon at any time with reasonable notice to the CONTRACTOR's primary representative, and at a time that does not interfere with Center operations or events. In secure areas (as reasonably designated from time-to-time by CONTRACTOR), City's representatives may be accompanied by CONTRACTOR personnel.

Section 15. Facility Schedule

15.1 Center Program Schedule. CONTRACTOR shall have sole discretion over the Center schedule and content, including but not limited to rental of facilities, presented and produced performances, and museum exhibitions so long as they are consistent with the mission for the Center, as defined in this Agreement. On or about July 15, October 15, January 15, and April 15, CONTRACTOR shall submit to the City for its review, a projected Schedule ("Schedule") which will indicate the various anticipated renting or uses of the Center, including the Conference Center, each theater, and the museums and educational facilities throughout the following three months. The City shall have the opportunity to review the Schedule for the purpose of assuring that the community has appropriate and reasonable access to the facilities, to presentations, and visual arts presentations and that the various parts of the Center are being utilized effectively throughout the year. It shall be the objective of the CONTRACTOR to present at least 2 exhibition rotations in the museums and educational facilities each year. Any substantial modifications to the Schedule shall be subject to the reasonable review of the City.

15.2 CONTRACTOR Program Approval. CONTRACTOR shall have control over leasing details such as artist or group approval, performance schedule and length, and other artistic or promotional matters, including but not limited to artist and performance selection, exhibition theme and schedule, presentation and production specifics, and artistic content.

Section 16. Financial Reporting Requirements

16.1 Price and Fee Schedule. CONTRACTOR shall provide to City, by July 15 of each year throughout the term of this Agreement, a current schedule of prices or fees for all items or facilities sold or rented at the Center. When such prices or fees are changed, CONTRACTOR shall notify the City as soon as is practical of the new fee schedule.

16.2 Periodic Reports to the City Council. The CONTRACTOR shall participate in the City's Center for the Arts City Council Subcommittee meetings, as required and on dates mutually agreeable to the CONTRACTOR and the City. Additionally, the CONTRACTOR Executive Director shall participate in the quarterly financial status updates presented by the City's Finance Department staff to the full City Council. These quarterly reports should include a brief verbal report of the Center's activities and current plans for use of the Center and are intended to provide an opportunity for both City and CONTRACTOR to communicate directly their concerns and expectations with respect to the operations of the facilities, and to provide for public Information and comments.

16.3 Annual Report. Except as provided in Section 16.9, on or before the filing deadline for its Federal Tax Return for each of CCAE's fiscal years (November 15), CONTRACTOR shall submit to City its completed financial statement audited by an independent certified public accountant, who shall be approved by the City. Such audited financial statement shall be generated in accordance with generally accepted accounting principles and include an audited supplemental statement that segregates operations of the theaters, Conference Center, museum and education facilities, and other overall

CONTRACTOR operations. The segregated operations information and records shall include all revenues and expenses with respect to the operation of the theaters, Conference Center, museum and education facilities including the following: 1) Revenues -- for single ticket sales, subscription sales, concessions, rental income, and facility charges; and 2) Expenses -- for payroll, utilities, repair and maintenance of premises, repair and maintenance of equipment and other overhead.

16.4 Supplemental Annual Report. In addition to the Annual Report, CONTRACTOR shall also submit to the City all supplemental or amended annual reports published by the independent certified public accountant including but not limited to the Audit Communication Letter required by Statement of Auditing Standards No. 114, the Report on Internal Control and Management Letter, if applicable.

16.5 Regular Financial Reports. The CONTRACTOR shall submit its monthly regular financial status reports ("Financial Reports"), produced in the normal course of its operations, to the Contract Administrator or designee within one week of such reports being presented to the CONTRACTOR Board of Trustees.

16.6 Operating Budget. City shall have the right to review the CONTRACTOR's proposed annual operating budget in a form agreed to by both Parties for the next fiscal year. The budgeted uses of the Management Fee paid to the CONTRACTOR by the City shall be noted in the budget as a monthly planned expenditure and the City shall be given the opportunity to request changes as it believes are necessary. At the time of the City's quarterly budget report to the City Council, the CCAE will report on deviations from the budgeted uses of the City Management Fee, if any, and explain the cause and/or purpose of the deviations.

16.7 Board and Committee Meetings. CONTRACTOR shall notify the Contract Administrator in advance of all meetings of its Board of Trustees, whether regular or special. The Contract Administrator shall have the right to attend any of such meetings at his/her discretion. The Contract Administrator shall serve as a non-voting member ex-officio of the CONTRACTOR Finance Committee.

16.8 Information Reporting. On an ongoing basis and upon request of the City, CONTRACTOR shall provide such other reports or information reasonably necessary for the City to review the operations of the Center and the manner in which City funds are being utilized. The requests shall be responded to as promptly as reasonably possible depending on the information requested, and all information shall be provided and used consistent with Section 16.11.

16.9 Audit by City Accountant. The City may choose, in its sole discretion, to select, manage and compensate an independent certified public accountant to generate an annual and supplemental financial statement audits of the CONTRACTOR provided for in this Section 16. In such case, CONTRACTOR shall be responsible for the timely and complete submission of all information and records required to perform the audit in the timeframes required by the City. CONTRACTOR staff and CONTRACTOR outside auditors/CPA's will be made available during the audit process and allowed to participate in the process to assist the firm by providing information, documentation, explanations, and preparation of necessary schedules. The preparation of confirmations will be the responsibility of the CONTRACTOR.

16.10 Cooperation. The CONTRACTOR shall fully cooperate with the City and its consultants in the preparation of all audits and reports required by this Section 16 and shall provide all requested information and documentation as is requested in a timely manner satisfactory to the City. A failure to fully and timely cooperate with auditors, consultants and the City in the submission of the financial reports required under this Agreement shall constitute a material breach of the Agreement.

16.11 Confidentiality. Whenever the Parties exchange information which is exempt from public disclosure under the California Public Records Act, Government Code Section 6250 et seq., the Parties shall cooperate with each other in a good faith effort to maintain the confidentiality of such documents, to the extent allowed by law. However, the City and CONTRACTOR shall comply with any lawful order of a court with competent jurisdiction when required to produce documents or information to third parties.

Section 17. CONTRACTOR's Executive Director/CEO

17.1 Executive Director/CEO. The CONTRACTOR shall employ an Executive Director/CEO who shall have the requisite knowledge, background and experience to lead the CONTRACTOR and Center to satisfactorily perform the CONTRACTOR's obligations of this Agreement and who shall serve as the principal liaison for the CONTRACTOR and Center with the City and Contract Administrator. In the event that the CONTRACTOR furloughs staff for any reason, the Executive Director/CEO shall not be furloughed for more hours in a particular month than any other full-time employee of the CONTRACTOR.

17.2 Executive Director Selection. The Contract Administrator may participate with the CONTRACTOR Board of Trustees in the process of selecting a new Executive Director /CEO and in the annual evaluation process of an existing Executive Director. The Contract Administrator may provide final input on any individual selected for the position of CONTRACTOR Executive Director.

17.3 Executive Director Consultation with City. The City may provide input and advice to the Executive Director through the Contract Administrator on operational and financial issues, procedures for submission and approval of expenditures related to this Agreement, the adoption of policies for use of the Center, as well as development of contracts, schedules, fees, and other items necessary to implement the purposes of this Agreement.

Section 18. Future Disposition of the Center

18.1 The City retains the right to dispose of the Center Premises, or a portion of it, to another entity by sale, lease or other transfer of rights during the term of this Agreement. In the event the Center Premises, or a portion thereof, are sold, leased or otherwise disposed of, the City may take any and all steps it deems reasonably necessary to facilitate the disposition, including, but not limited to, the expedited turnover of portions of the Center Premises and the assignment of its rights and duties under this Agreement. City shall comply with Section 29.4 of this Agreement should it chose to implement this provision. In the event that the Center, or a portion thereof, is disposed of, CONTRACTOR and the City shall meet and confer on the impacts of the disposition.

Section 19. Compliance with Law

19.1 CONTRACTOR agrees to comply, and secure compliance from its Board of Trustees, employees and representatives, with all the requirements of all municipal, county, state, and federal laws pertaining to the Center and its operations. The judgment of any court of competent jurisdiction that CONTRACTOR has violated any law, or CONTRACTOR's admission that it has done so, shall be conclusive of that fact as between City and CONTRACTOR. Notwithstanding the foregoing, CONTRACTOR shall not be in breach of this Agreement and City shall have no right to terminate this Agreement in the event of a minor violation of a requirement or statute if CONTRACTOR promptly complies with the requirement or statute upon learning of such violation. CONTRACTOR will not

knowingly take any action that would, in the judgment of the City's Contract Administrator or counsel, adversely affect the CONTRACTOR's nonprofit public benefit status.

Section 20. Nondiscrimination

20.1 CONTRACTOR agrees that it shall abide by all state and federal nondiscrimination laws including, but not limited to, not discriminating in any manner against any person or persons on account of age, race, marital status, gender, religious creed, color, ancestry, national origin, sexual orientation, sexual identity, mental disability, or medical condition in CONTRACTOR's or its renters' use of the Center.

Section 21. Insurance

21.1 Required Insurance Coverage. The CONTRACTOR on behalf of the Center and City shall procure and maintain for the duration of the Agreement insurance coverage against claims for Injuries to persons or damages to property which may arise from or in connection with the Center's operation and use of the Center Premises, as well as its agents, representative, employees, or contractors. The cost of such insurance shall be borne by the Center and the City, as provided for herein. Insurance coverage shall be at least as broad as the following:

(a) Commercial General liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$10,000,000 per occurrence.

(b) Automobile Liability. ISO Form CA 00 01 covering any auto (Code 1), or if the Center has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$10,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation. The Center shall maintain Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(d) Employment Practices Liability. The Center shall maintain Employment Practices Liability Insurance with limits of no less than \$2,000,000.

(e) Directors and Officers Liability. The Center shall maintain Directors and Officers Liability Insurance with limits of no less than \$10,000,000.

(f) Property Insurance. The Center shall maintain property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

(g) Sexual Abuse or Molestation (SAM) Liability. The CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, the Center shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$2,000,000 per occurrence or claim.

21.2 If the Center maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Center.

21.3 Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:

21.4 Premium Payment. The City shall pay 75% and the CONTRACTOR shall pay 25% of the insurance premiums.

21.5 Acceptability of Insurers. Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the City.

21.6 Additional Insured Status. The CGL, Automobile Liability, Employment Practices Liability, Directors and Officer Liability and SAM Liability policies must name the City (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.

21.7 Primary Coverage. The Center's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the City, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, officers, agents, employees, or volunteers shall be in excess of Center's insurance and shall not contribute with it.

21.8 Notice of Cancellation. Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the City.

21.9 Subcontractors. If applicable, the Center shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated in this Agreement, and the Center shall ensure that the City (including its officials, officers, agents, employees, and volunteers) is an additional insured on any Insurance required from a subcontractor.

21.10 Waiver of Subrogation. The Center hereby grants to the City a waiver of any right to subrogation that any insurer of the Center may acquire against the City by virtue of the payment of any loss under such insurance. The Center agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Center, its agents, representatives, employees and subcontractors.

21.11 Legal Liability Coverage. The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.

21.12 Self-Insured Retentions. Self-insured retentions must be declared to and approved by the City. The City may require the Center to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City. Unless otherwise provided for herein, any and all deductibles and SIRs shall be the sole responsibility of the Center who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Policies shall NOT contain any self-Insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

21.13 Certificates of Insurance. CONTRACTOR agrees to deposit with City, on or before the effective date of this Agreement, one certificate of insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Agreement and to keep such insurance in effect during the entire term of this Agreement. This certificate must be reviewed by, and acceptable to, the City Attorney prior to commencement of the Agreement Term. CONTRACTOR will also deposit with the City within 60 days of the Effective Date of this Agreement, an additional insured endorsement naming City specifically and separately as an "additional insured", with the exception of the worker's compensation policy. The appropriate endorsements described above shall follow within 60 days.

21.14 City Review and Approval. City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the City, the insurance provisions in this Agreement do not provide adequate protection for City and for members of the public using the Center, City may require CONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. City's requirements shall be reasonable, but shall be designed to assure adequate protection of the City's interests. The City shall notify CONTRACTOR in writing of changes in the insurance requirements and, if CONTRACTOR does not deposit with City within 60 days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Agreement shall be deemed in default without further notice to CONTRACTOR and may be forthwith terminated by the City.

21.15 Insurance No Limit of Liability. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of Insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury or loss attributable to any act or omission of it or its agents, customers or guests in connection with this Agreement or with use or occupancy of the Center Premises.

Section 22. Indemnification

22.1 City Indemnification. CONTRACTOR shall defend, indemnify, and hold harmless City, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which City, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Center Premises by CONTRACTOR, its invitees, visitors, or any other persons whatsoever. CONTRACTOR further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by City on account of any such claims, demands, or liabilities.

22.2 CONTRACTOR Indemnification. City shall defend, indemnify and hold harmless CONTRACTOR its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which CONTRACTOR, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Center Premises by City, its invitees, visitors, or any other persons whatsoever. City further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by CONTRACTOR on account of any such claims, demands, or liabilities.

Section 23. Risk Management and Accident Reports

23.1 Risk Management. Both parties shall engage in responsible and professional risk management activities to the greatest extent possible to minimize the exposure to claims and liability on behalf of itself and the City. Such risk management efforts shall include, but not be limited to, cooperating with the City's legal and insurance staff as well as the City's building and maintenance officials.

23.2 Timely Notice. CONTRACTOR shall immediately report to City any accident causing property damage or injury to persons on the Center Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information or documentation of the incident.

Section 24. Defense of Third-Party Claims and Litigation

24.1 Notice of Claims & Lawsuits. In addition to the requirements of Section 23, CONTRACTOR shall immediately notify the City (in writing) of any notice, claim, or lawsuit ("Claim") served on or presented to the CONTRACTOR, or its Board of Trustees or employees directly, by third-parties arising out of or related to Center operations which may give rise to liability of the CONTRACTOR or the City. Such written notice to the CITY shall be within 24 hours of CONTRACTOR's receipt of the Claim. CONTRACTOR shall tender the Claim to its insurance carrier provided for in Section 21 and, as appropriate, the insurance carrier for its renter, performer, exhibiter, contractor or subcontractor and seek defense and indemnification of the Claim so presented. If the tender of the defense and indemnification of the Claim is accepted by the insurer, Sections 24.3 and 24.4 shall govern the Parties' obligation as to the payment of the self-insured retention, if any. If the tender of the Claim is not accepted by any insurer, Sections 24.3 and 24.4 shall govern the respective defense and indemnification obligations of the Parties.

24.2 Notice of Government Code Claims. The City shall notify CONTRACTOR of any Government Code Claim ("Claim") presented pursuant to California Government Code section 900 et. seq. to the City arising out of or related to Center operations which may give rise to liability of the CONTRACTOR or the City within 10 calendar days of receipt. The Parties shall meet and confer as to the contents of the Claim and City shall tender the defense and indemnification of the Claim to all appropriate insurers who may cover such Claim. If the tender of the defense and indemnification of the Claim is accepted by the insurer, Sections 24.3 and 24.4 shall govern the Parties' obligation as to the payment of the self-insured retention, if any. If the tender of the Claim is not accepted by any insurer, Sections 24.3 and 24.4 shall govern the respective defense and indemnification obligations of the Parties.

24.3 City Responsibility for Claim. To the extent the Claim relates solely to a fixed, permanent physical attribute of the Center Premises under the responsibility of the City pursuant to this Agreement, the City shall undertake (i) the defense of both the City and CONTRACTOR in the matter and be responsible for the payment of any settlement or judgment on the Claim on behalf of the City and CONTRACTOR, and their respective councils, boards, and employees, and/or (ii) pay the self-insured retention amount necessary to secure insurance coverage.

24.4 CONTRACTOR Responsibility for Claim. To the extent the Claim relates solely to the operation of an event at and/or under the supervision of the Center and its employees, volunteers, patrons, renters, performers, exhibitors, contractors and subcontractors, and unrelated to a fixed, permanent physical attribute of the Center Premises, the CONTRACTOR shall undertake (i) the defense of the City and CONTRACTOR in the matter and be responsible for the payment of any settlement or judgment of the Claim on behalf of the City and CONTRACTOR, and their respective councils, boards and employees, and/or (ii) pay the self-insured retention amount necessary to secure insurance

coverage.

24.5 Shared Responsibility for Claim. To the extent the Claim relates to or arises out of both a fixed, permanent physical attribute of the Center Premises and the operation of an event as described in Section 24.4, the Parties shall meet and confer regarding the joint defense of the Claim including the sharing of resources, potential retention of joint counsel, and sharing in the payment of a settlement or judgment. If the Parties are unable to resolve the dispute between themselves, they may seek appropriate remedies against each other pursuant to this Agreement and state law.

Section 25. Patron Waivers

25.1 City may from time to time require that CONTRACTOR obtain a liability waiver and release from the users of the Center Premises. CONTRACTOR's indemnification obligation provided for herein shall include any claim by the City against the CONTRACTOR for the failure to ensure that any user of the Center executes an enforceable waiver as provided in this Section.

Section 26. No Affiliation

26.1 Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between the City and CONTRACTOR or between the City and any other entity or party, or cause the City to be responsible in any way for the debts or obligations of the CONTRACTOR or any other party or entity.

Section 27. City Payment

27.1 Management Fee. As compensation for the services performed on behalf of the City by the CONTRACTOR provided for herein, the City will pay the CONTRACTOR a Management Fee. This Management Fee is in addition to the other support by the City to CONTRACTOR as provided for in this Agreement. The amount of the Management Fee throughout the term of this agreement is \$55,000 per month. The CONTRACTOR agrees to designate \$100,000 of the total management fee each year to support the following community events: The Annual 4th of July (Independence Day) Celebration, Dia de los Muertos, Musica en la Plaza, and Winter Wonderland. Subject to the federal funding requirements detailed in Section 27.3, below, the monthly Management Fee payment by the City to the CONTRACTOR in a given month will be made by the 5th day of that month.

27.2 Use of Revenues. CONTRACTOR shall use such revenues to pay the expenses of operating the Center in accordance with this Agreement. For purposes of this paragraph, "expenses" shall include employee salaries and benefits and all other expenses of operating/programming the Center. CONTRACTOR agrees that on an annual basis it will provide a report to the City detailing all such revenues and expenses of the Center. Any revenues in excess of those needed to operate the Center shall be used to purchase needed items for the facility or placed in a reserve account to offset future operating expenses. CONTRACTOR shall have the right to conduct special fundraising and seek to thereby obtain revenues over and above revenues derived from the operation of the Center for the purpose of creating and maintaining endowment funds, which shall be and remain the property of CONTRACTOR or the CONTRACTOR Charitable Trust.

27.3 American Rescue Plan Act of 2021 Funds. Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") administrated by the U.S Department of Treasury ("Federal Awarding Agency") and established by the American Rescue Plan Act of 2021 ("ARPA") will be used to fund all or a portion of this Agreement. CONTRACTOR shall comply with all applicable federal law, regulations, executive orders, SLFRF policies, procedures, and directives relating to such funds. In addition to the Financial

Reporting Requirements detailed in Section 16, above, CONTRACTOR shall comply with all the federal funding requirements set forth in this Section 27.3.

27.3.1 SLFRF Eligible Uses. All ARPA funded activities under this Agreement must meet one of the SLFRF fund eligible use categories as specified in the Final Rule adopted by the US Treasury on January 6, 2022, which will become effective on April 1, 2022 ("Eligible Uses"). The Final Rule may be accessed at the following link: <https://www.federalregister.gov/documents/2022/01/27/2022-00292/coronavirus-state-and-local-fiscal-recovery-funds>. CONTRACTOR certifies that all ARPA funded services provided under this Agreement will meet the SLFRF fund eligible use category of Responding to the far-reaching public health and negative economic impacts of the pandemic, by providing assistance to impacted nonprofits. The COVID-19 pandemic forced the closure of the Center, impacting the local community and tourism industry more than most sectors. This resulted in a loss of revenue to the Center and decline in economic activity in the City. CONTRACTOR is a 501c3 organization. Nonprofits are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts. Funding for the Center will be used to encourage tourism and support the local economy, promoting community activity in the downtown area of the City, a Qualified Census Tract.

27.3.2 Budget. CONTRACTOR shall adhere to the budget specified in **Exhibit 3**, which is attached hereto and incorporated herein by this reference ("Budget"). The City may require a more detailed Budget breakdown than what is contained in Exhibit 3, and CONTRACTOR shall provide such supplementary Budget information in a timely fashion in the form and content prescribed by the City. Any changes to the Budget may only be made by written amendment signed by both the City and CONTRACTOR. CONTRACTOR is responsible for complying with the Cost Principles set forth in 2 CFR Part 200 Subpart E. CONTRACTOR must have adequate financial management systems and internal controls in place to account for the expenditure of federal funds. CONTRACTOR must ensure that all expenditures for services provided under this Agreement comply with restrictions related to administrative costs.

27.3.3 General Compliance. Throughout the term of this Agreement, CONTRACTOR shall comply with all requirements applicable to use of SLFRF funds including adherence to future guidelines that may be established by the U.S. Treasury during the term of this Agreement. CONTRACTOR shall comply with all applicable federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. At all times during the term of this Agreement, CONTRACTOR shall comply with the Grant Award Terms and Conditions. CONTRACTOR may request, and CONTRACTOR shall supply to the City, any additional information from the CONTRACTOR as needed to meet any additional guidelines regarding the Eligible Uses and/or use of SLFRF funds that may be established by the U.S. Treasury during the term of this Agreement.

27.3.4 Restricted or Ineligible Uses of SLFRF Funds. If at any time during the term of this Agreement, the City determines that any portion of the services provided by CONTRACTOR hereunder constitute a restricted or ineligible use of SLFRF funds, then the City may terminate or suspend this Agreement as more particularly described in Section 29.4. Within 30 of written notice from the City of the restricted or ineligible use of SLFRF funds, CONTRACTOR shall refund the City all SLFRF funds paid by the City to CONTRACTOR in connection with the restricted or ineligible use. Restricted/Ineligible uses of ARPA funds include, but are not limited to: usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase; damages covered by insurance; usage of funds as a deposit into any pension fund; expenses that have been or will be reimbursed under any federal program; debt service costs; contributions to a "rainy day" fund; and legal settlements.

Attachment "2"

27.3.5 Clean Air Act. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONTRACTOR agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

27.3.6 Federal Water Pollution Control Act. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

27.3.7 Debarment and Suspension.

a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. CONTRACTOR shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONTRACTOR enters into.

c. This certification is a material representation of fact relied upon by the City. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the City the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

d. CONTRACTOR agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

27.3.8 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

a. Prior to entering into this Agreement, CONTRACTOR shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the Federal Awarding Agency.

b. Required Certification. At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the City with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Agreement as **Exhibit 4** and incorporated herein by this reference.

27.3.9 Procurement of Recovered Materials. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement's performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website, located at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. CONTRACTOR shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

27.3.10 Access to Records. The following access to records requirements apply to this Agreement: (1) CONTRACTOR agrees to provide the City, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions; (2) CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed; and (3) CONTRACTOR agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement. In compliance with the Disaster Recovery Act of 2018, the City and CONTRACTOR acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.

27.3.11 Federal Awarding Agency Seal, Logo, and Flags. CONTRACTOR shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.

27.3.12 Records

a. Records Maintenance. Records, in their original form, must be maintained in accordance with requirements prescribed by the City with respect to all matters specified in this Agreement. Original forms are to be maintained on file for all documents specified in this Agreement. Such records must be retained for a period three years after termination of this Agreement and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. Records, in their original form pertaining to matters covered by this Agreement, must at all times be retained within the County of San Diego unless authorization to remove them is granted in writing by the City.

b. Records Inspections. At any time during normal business hours and as often as either the City, Inspector General acting pursuant to the Inspector General Act of 1978, or the Auditor General of the State of California may deem necessary, CONTRACTOR must make available for examination all of its records with respect to all matters covered by this Agreement. The City, Inspector General, and the Auditor General of the State of California each have the authority to audit, examine and make excerpts or transcripts from records, including all CONTRACTOR's invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. CONTRACTOR agrees to provide any reports requested by the City regarding performance of this Agreement. With respect to inspection of CONTRACTOR's records, the City may require that CONTRACTOR provide supporting documentation to substantiate CONTRACTOR's expenses with respect to the CONTRACTOR's use or expenditure of the grant amount.

27.3.12 Administrative Requirements.

a. **Reporting Requirements.** In order to ensure compliance with the existing ARPA guidelines set forth by the U.S. Treasury – while also ensuring that all expenditures within the scope of this Agreement adhere to future guidelines that may be established by the U.S. Treasury during the term of this Agreement – CONTRACTOR, when requesting reimbursement for costs incurred for Eligible Uses, shall provide to the City a comprehensive and detailed list of all such expenditures on an itemized invoice, and shall also provide any backup documentation to support such expenditures. Said invoice must include a statement, signed by the CONTRACTOR, indicating that all expenditures therein comport with guidelines and requirements applicable to SLFRF funds as set forth by the U.S. Treasury. Reimbursement requests shall be submitted to the City no more than once per month.

b. **Timeline Regarding the Dissemination of Funds to Subrecipient.** Upon receipt of the CONTRACTOR's complete reimbursement request, the City shall disseminate funds for all Eligible Uses therein within 30 days of receipt of said reimbursement request. The dissemination of SLFRF funds shall only occur after the City reviews CONTRACTOR's reimbursement request to ensure that all expenditures detailed therein qualify for reimbursement in accordance with all published federal, state, and local guidance regarding the use of SLFRF funds as specified in the ARPA. All payments from the City to CONTRACTOR are contingent on the availability of SLFRF funds to the City, and further subject to all applicable federal, state, and local laws regarding the governance of SLFRF funds within the ARPA.

27.3.12 **Civil Rights.** Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

Section 28. Coordination of Activities

28.1 **Notice to City.** In order to avoid conflicts, CONTRACTOR will notify the City and the City will notify CONTRACTOR within a reasonable time after the approved scheduling of events in and improvements to Grape Day Park or the Great Lawn. City will consult and coordinate with the CONTRACTOR with respect to any facilities maintenance or improvements which may impact or conflict with scheduled CONTRACTOR or Center events and CONTRACTOR will consult with the City in the planning of approved improvements or additions to Center Premises.

28.2 **Outdoor Noise Response.** The CONTRACTOR is responsible for ensuring that its outdoor events are conducted consistent with the City's Noise Abatement and Control Ordinance. CONTRACTOR shall make available during outdoor events an individual to respond to noise complaints from City residents in person and/or by phone. CONTRACTOR shall make public on its website an operable number for the receipt of noise complaints and shall be responsible for the satisfactory resolution of such reports.

Section 29. Term of Operation and Management Agreement

Attachment "2"

29.1 Initial Term. This Agreement shall commence upon the Effective Date and shall expire on [date] unless terminated pursuant to Section 29.4 (the "Initial Term").

29.2 Renewal Option. Within three months before the expiration of the Initial Term, City and CONTRACTOR may, extend the term of this Agreement (Extension Period) upon and subject to all of the provisions contained herein, or as otherwise agreed to by the Parties, for a single, additional one (1) year period.

29.3 Holding Over. At the expiration of the Initial Term and one Extension period provided for herein, in the event the City permits CONTRACTOR to continue to operate the Center, all other terms and conditions of this Agreement shall continue in full force and effect, on a month- to-month basis.29.4

29.4 Termination.

29.4.1 For Cause. This Agreement may be terminated at any time for cause, provided written Notice of Default ("Default Notice") in performance is provided to the other Party. Within 30 days of the date of such Default Notice, the Party receiving the Default Notice shall have the right to cure to the reasonable satisfaction of the other Party the breach or failure of performance under the terms of this Agreement.

29.4.2 For Convenience. Either Party may, at any time during the term of this Agreement, terminate this Agreement for any reason (i.e. without cause) by tendering six months advance written notice to the other Party.

29.4.3 Immediate Termination. City may terminate this Agreement immediately in the event the CONTRACTOR is declared insolvent by a court of competent jurisdiction, or is dissolved, or loses its tax-exempt status.

29.4.4 Existing Obligations. Any termination of this Agreement shall not have any effect on bona fide contracts, entered into in good faith by CONTRACTOR and City shall make reasonable efforts to accept such contracts. CONTRACTOR shall cooperate to diligently and promptly to assign such agreements to the City.

29.4.5 CONTRACTOR Remaining Assets. If, for any reason, the CONTRACTOR is dissolved, any assets remaining, including cash, after satisfaction of all debts and obligations, will be transferred to another nonprofit organization with a similar mission, as required by law.

Section 30. General Provisions

30.1 No Right to Assign or Transfer. As the City has relied on the particular expertise of CONTRACTOR in entering into this Agreement, CONTRACTOR shall not assign, delegate, or transfer any duty or right under this Agreement, except as specifically authorized, and any such purported assignment, delegation, or subletting shall be void, unless the City has approved such action in writing in advance.

30.2 Amendment of Agreement. This Agreement may be amended at any time by the Parties provided that all additions, deletions or changes are made in writing and executed by both Parties. The Contract Administrator may execute implementing MOUs and amendments to this Agreement without further City Council approval for all changes within the authority of the Contract Administrator under the Escondido Municipal Code.

Attachment "2"

30.3 Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the City.

30.4 Merger Clause. This Agreement and its Exhibits, if any, are the entire understanding of the Parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and its Exhibits, if any, the provisions of this Agreement shall prevail.

30.5 Anti-Waiver Clause. None of the provisions contained herein shall be waived because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived, in whole or in part.

30.6 Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

30.7 Costs and Attorney's Fees. In the event that either Party should bring suit against the other Party to enforce any provisions of this Agreement, the prevailing Party in such litigation shall pay the other Party's costs and reasonable attorneys' fees incurred pursuant to said litigation.

30.8 Force Majeure. The time within which the Parties hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, or any other similar cause beyond the reasonable control of either of the Parties.

30.9 Choice of Law. This Agreement shall be governed by the laws of the State of California. Venue for any action arising from this Agreement, including but not limited to matters concerning validity, construction, performance or enforcement shall be heard exclusively in the state court located in North San Diego County, California, or federal courts located in San Diego County, as allowable under federal law.

30.10 Notice to Parties. Any statements, communications or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated below, until such time as notice of any changes of person to be notified or change of address is forwarded to both Parties:

Notice to the City: [address]
[contact name, title]
[phone]
[email]

Notice to Contractor: [address]
[contact name, title]
[phone]
[email]

30.11 Business License. CONTRACTOR shall be required to maintain a City of Escondido Business License during the term of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date.

Attachment "2"

CITY OF ESCONDIDO

Date: _____

Dane White, Mayor

CONTRACTOR

Date: _____

Signature

Name & Title (please print)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

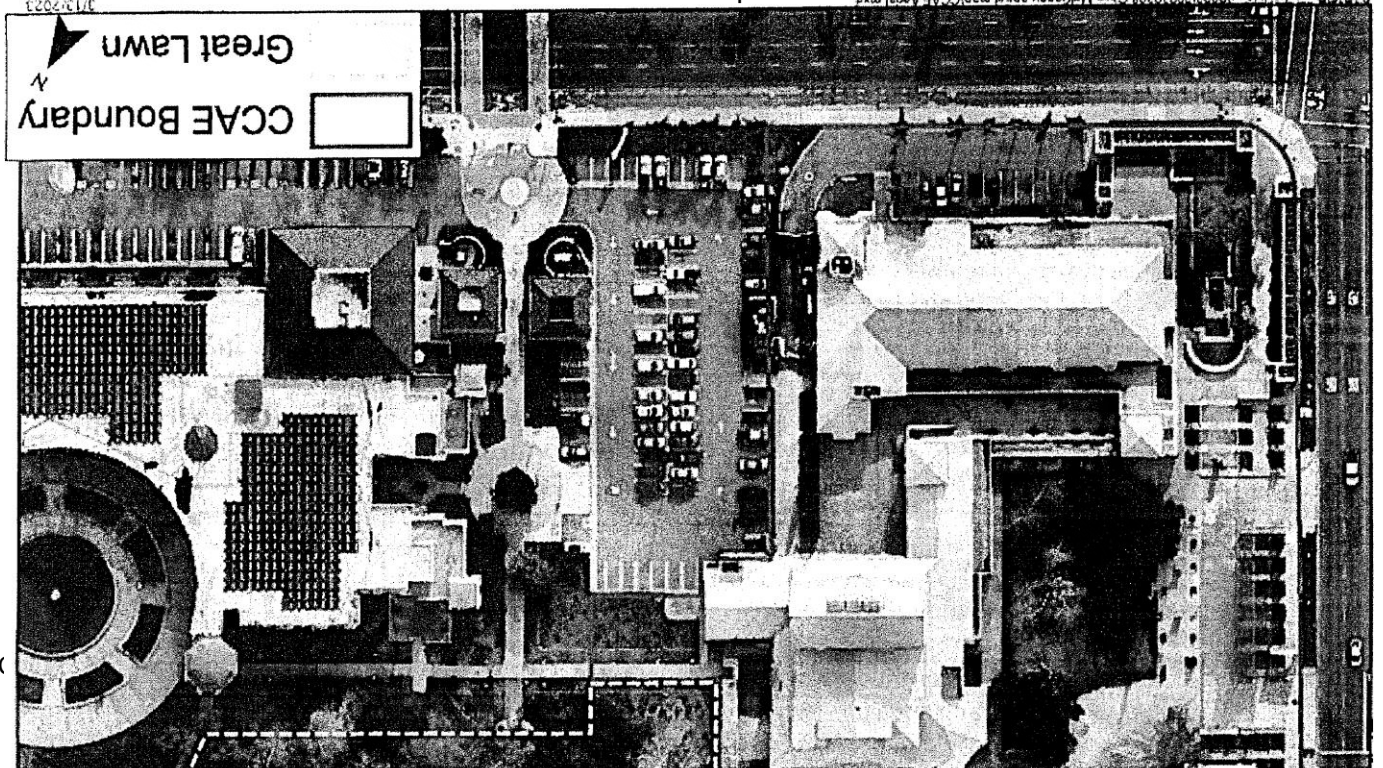
By: _____

Date: _____

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

Exhibit 1

Overhead Photo of Campus Perimeter



Attachment "2"

Exhibit 2

Center Premises Regular Maintenance

The Parties shall be responsible for the following maintenance and cleaning of the Center Premises:

CITY MAINTENANCE RESPONSIBILITIES.

[To be determined based on proposals received in response to RFP No. 24-30]

CONTRACTOR MAINTENANCE RESPONSIBILITIES.

[To be determined based on proposals received in response to RFP No. 24-30]

Attachment "2"

Exhibit 3
Budget

Organization: CONTRACTOR
Project Title: CCAE Management

ITEM (SLFRF Eligible Use)	ESCONDIDO FUNDING	OTHER FUNDS (If Applicable)		PROJECT TOTAL
		AMOUNT	SOURCE	
Total				

Attachment "2"

Exhibit 4

ATTACHMENT 1 - Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Contractor, entity type] ("CONTRACTOR") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of CONTRACTOR's Authorized Official

Name and Title of CONTRACTOR's Authorized Official

Date