

This Lease and Operating Agreement is entered into this \_\_\_\_\_ day of May, 2017 between the City of Saint Paul, acting through its Department of Parks and Recreation, (“City”) and the Hallie Q. Brown Community Center, Inc., a Minnesota non-profit corporation. (“HQB”)

WHEREAS, City and HQB entered into a Lease dated November 29, 1972 for portions of the Martin Luther King, Jr. Neighborhood Service Center (“Center”) constructed, in part, with funds from the Department of Housing and Urban Development; and

WHEREAS, City and HQB entered into an Operating Agreement dated November 29, 1972 which stipulated that HQB was to pay nominal rent in consideration of the HUD funding and contributions made by HQB to construction of its portion of the Center; and

WHEREAS, the initial term of the Lease was for a period of forty years commencing on September 1, 1972 and allowed for four successive renewal terms of ten years each; and

WHEREAS, parties did not extend the Lease at the expiration of the initial term but treated the Lease as a month to month tenancy while negotiating the percentage split of costs between the parties; and

WHEREAS, parties have reached agreement on the percentage of costs allocated to the parties, and wish to enter into a new Lease and Operating Agreement which incorporates the obligations of both the 1972 Lease and Operating Agreements, and any amendments to either;

NOW, THEREFORE, based on the mutual covenants and conditions set forth parties agree as follows:

**1) Leased Premises.**

- a) City hereby leases to HQB those portions of the premises known as the Martin Luther King, Jr. Neighborhood Service Center which are indicated on Exhibit A, attached hereto and incorporated herein by reference.
- b) City and HQB shall jointly program use of the multipurpose room on the recreation side with the City maintaining the scheduling and on-site staff shall meet quarterly to ensure maximum use of the entire Service Center.
- c) City and HQB shall each permit the other the use of portions of the neighborhood facility under their separate overall control, consistent with their separate programs and without charge or fee.

**2) Term of Lease.**

- a) **Initial Term.** The initial term of this Lease shall be for a period of ten (10) years, unless earlier terminated in accordance with Section 20.
- b) **Commencement Date.** The Lease will become effective on January 1, 2017.

- c) **Option to Extend.** HQB shall have the option to extend the Initial Term for two (2) additional five (5) year terms with all the same terms and conditions applicable during the Initial Term, provided that HQB is not in default of the Lease. Written notice of its election to extend shall be given by HQB to City at least 120 days prior to the end of the expiring term.
- 3) **Use of Premises.** HQB shall use and occupy the Leased Premises for the following purposes: To carry out a program of health, recreation, social or other community services and for no other purpose. No change in the use of the premises may be made which would be inconsistent with such program. HQB shall not enter into any Lease or Agreement transferring to any other organization or entity the control or supervision of its responsibility for services and programs without the prior written consent of the City.
- 4) **Rent, Operating Costs.**
  - a) Consistent with the Operating Agreement, and conditions of the HUD grant, HQB shall pay no rent during the term of this Lease.
  - b) All costs involved in the use, operation, maintenance, repair, and management of the Leased Premises, including but not limited to emergency repairs of any kind, routine maintenance and repair to keep the Leased Premises in good repair, safe and in compliance with applicable fire, health, building and other life-safety codes, staffing and management of programs, shall be the responsibility of the HQB.
  - c) All costs involved in the use, operation, maintenance, repair, and management of the Recreation Center, including but not limited to emergency repairs of any kind; routine maintenance and repair to keep the Leased Premises in good repair, safe and in compliance with applicable fire, health, building and other life-safety codes, staffing and management of programs shall be the responsibility of the City.
  - d) All costs applied to the Center as a whole, to include repair and replacement of the roof, furnace, exterior of the building, main utility service connections, fire and risk insurance, pest control, trash collection and all costs for public utilities such as oil, electricity, gas, steam, water and sewer charges incident to the facility as a whole shall be shared by the parties proportionately, with HQB's share being 56% and the City's share being 44%. The proportionate sharing of operating costs shall not be amended except by mutual agreement of the parties as a result of a significant change in the use of the Center by one party or the other which makes the current proportions inequitable.
  - e) HQB will pay all costs which are to be shared and bill the City for its proportionate share, with the exception of Fire and Casualty insurance, which will be paid by the City.
  - f) HQB shall, within ten days of the effective date of this Agreement, make

arrangements with Xcel Energy and Saint Paul Regional Water Service to change the responsible billing party to Hallie Q. Brown. Any gas, water, electricity and sewer costs prior to the effective date of the Agreement will be allocated apart from this Agreement.

**5. Use of Facility by Others.**

- a) Except for that portion of the facility under overall control of the City, the use of the facility under overall control of the HQB shall be subject to scheduling by the HQB. HQB may enter into subleases or use permits for the space under its control at times other than that required for its own use, or when the City has requested use. All such subleases or use permits must meet the overall purpose for the use of the Service Center.
- b) Agencies making use of a portion of the Service Center shall pay reasonable costs proportionate to their share of the overall space. Such payment may be waived in writing by the parties. Consistent with its use as a neighborhood community facility, any such charge is intended to cover the costs of making the space available and keeping the space maintained and in good repair but not to make a profit for City or HQB.
- c) HQB may serve alcohol at events held by it in the Leased Premises provided that the event is held after general hours, that children are not present, and that all license and permit requirements for the service of alcohol are complied with, which includes liquor liability insurance provided by either HQB or a licensed liquor caterer.
- 6) **Alterations and Improvements.** HQB shall not make any alterations to the Leased Premises without the written consent of the City, such consent not to be unreasonably withheld. To make any such alterations, HQB shall first submit to City for approval an accurate description of said alterations and any additional designs, descriptions or information the City requests in order to make a determination on the request. Any alterations or improvements will be at HQB's expense, and all such work shall be performed in a workmanlike manner and in conformance with applicable building codes, so that the structural integrity and building systems of the building will not be impaired, and that no liens will attach to the premises by reason thereof. The City may require that contracting terms such as payment of prevailing wages, vendor outreach, affirmative action and other such requirements be part of any work done on the Leased Premises by or on behalf of HQB. All alterations made by HQB to the Leased Premises shall become the property of City at the end of the final lease term. Regardless of the cost of the improvements, payment bonds may be required to be posted to ensure that no liens are placed on the property. Minor cosmetic updates such as painting or carpet replacement do not require prior written consent of the City.

7) **Taxes.**

- a) Currently the Martin Luther King, Jr. Neighborhood Service Center is exempt from payment of any real estate taxes, and there are no outstanding assessments against the Center, or HQB. If in the future either party takes actions which result in the Center being subjected to taxes, the party which caused the occurrence will be responsible for all real estate taxes.
- b) If there is a change in the law which results in the entire Center becoming taxable, HQB shall pay such taxes as they become due, and the taxes will be treated as shared costs, with the City paying its proportionate share.
- c) In the event that special assessments are levied against the entire Center, HQB shall pay such assessments either in lump sum or in such installments offered, and will bill the City for its proportionate share.
- d) HQB may at its own expense contest and challenge the imposition or amount of any such tax or assessment as prescribed by law; provided, however, that in the event this Lease is terminated by either party, City may at its option require the HQB to pay such contested taxes pending appeal, to place in escrow a sum sufficient to pay said taxes, or take other action that will remove said contested taxes as an encumbrance to title or as an exception to the transferability of marketable title to the Leased Premises.

8) **Right of Entry.** At all times during the term of this Lease, City shall have the right, by itself, its agents and employees, to enter into and upon the Leased Premises during reasonable business hours or, in the event of an emergency, at any time for any legitimate purpose.

9) **Insurance.**

- a) **HQB'S Insurance.** HQB shall acquire during the term of this lease the following coverage:
  - i) HQB shall be responsible for the self-insurance of, or the acquisition of Commercial Property Insurance on its personal property.
  - ii) COMMERCIAL GENERAL LIABILITY INSURANCE including blanket contractual liability coverage, personal injury liability coverage and broad form property damage liability endorsement with a combined single limit of not less than \$1,500,000 per occurrence, \$3,000,000 aggregate, shall be purchased by the HQB. Such insurance shall: (a) name the City of Saint Paul as additional insured; (b) be primary with respect to CITY'S insurance or self-insurance; (c) not exclude explosion, collapse and underground property damage; (d) be written on an "Occurrence Form" policy basis; and (e) not contain an "aggregate" policy limit unless specifically approved in writing by CITY.
  - iii) WORKERS' COMPENSATION INSURANCE with not less than statutory minimum limits; and EMPLOYERS' LIABILITY INSURANCE with minimum limits of at least \$100,000 per accident and with an all states endorse-

ment.

- iv) HQB shall supply to City current insurance certificates for policies required. The certificates shall certify whether or not the agent has errors and omissions insurance coverage.
- v) Nothing in this contract shall constitute a waiver by City of any statutory limits or exceptions on liability.

b) Fire and Casualty Insurance shall be paid for the entire facility by the City.

**10) Notice.** All notices herein provided to be given, or that may be given by either party to the other, shall be deemed to have been fully given when served personally on City or HQB or when made in writing and deposited in the United States Mail, certified and postage prepaid, and addressed to HQB at 270 Kent Street North, Saint Paul, Minnesota, 55102 and to City at the Department of Parks and Recreation, 400 City Hall Annex, 25 W. Fourth Street, Saint Paul, Minnesota, 55102. The address to which the notice shall be mailed may be changed by written notice given by either party to the other. Nothing herein shall preclude the giving of such address change notice by personal service.

**11) Assignment and Subletting.** HQB shall not assign or sublet this Lease without the written consent of City, which consent must be obtained prior to the execution of any agreement to sublease the Leased Premises.

**12) Surrender of Premises.** HQB, at the expiration of said term, or any sooner termination of this lease, shall quit peacefully and surrender possession of said property and its Tenant Improvements and trade fixtures to CITY in as good order and condition as the property was delivered to HQB.

**13) Indemnity.** HQB agrees to defend and indemnify the City of Saint Paul and any agents, officers and employees thereof from all claims, demands, actions or causes of action of whatsoever nature or character, arising out of or by reason of the Lease of the herein described Leased Premises by City to HQB, or the use or condition of the Leased Premises or as a result of the operations or business activities taking place on the Leased Premises. It is fully understood and agreed that HQB is aware of the conditions of the Leased Premises and leases the same "as is."

**14) Holdover.** Any holdover after the expiration of the Initial Term or additional terms of this Lease shall be allowed only after receiving the written consent of City. Said tenancy shall be deemed to be a tenancy only from month-to-month. All other terms and conditions of this Lease shall be applicable.

**15) Pollution and Contaminants.** HQB agrees to comply with all ordinances, laws, rules and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and the disposal of refuse, solid wastes or liquid wastes.

HQB shall bear all costs and expenses arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify, defend, save and hold harmless CITY from all liability, including without limitation, fines, forfeitures, and penalties arising from the failure by HQB to comply with such ordinances, laws, rules or regulations. CITY has the right to perform cleanup and charge HQB as Additional Rent for such costs should HQB fail to comply.

**16) Destruction.** In the event of damage to or destruction of the Leased Premises or in the event the premises becomes untenable or unfit for occupancy due to such damage during the term of this Lease, CITY may at its option:

- a) terminate the lease upon fifteen (15) days written notice to HQB, or upon receipt of fifteen (15) days written notice from HQB of desire to terminate; or
- b) within fifteen (15) days agree to restore the premises within a reasonable time period following the casualty, charging the costs in excess of the insurance proceeds, if any, to HQB as Additional Rent.

**17) Events of Default.** The occurrence of any of the following events during the term of this Lease shall constitute an event of default by HQB:

- a) the filing of a petition to have HQB adjudicated bankrupt or a petition for reorganization or arrangement under any laws of the United States relating to bankruptcy filed by HQB;
- b) in the event a petition to have HQB adjudicated bankrupt is filed against HQB, the failure to dismiss such petition within ninety (90) days from the date of such filing;
- c) the assets of HQB or of the business conducted by HQB on the Leased Premises be assumed by any trustee or other person pursuant to any judicial proceedings;
- d) HQB makes any assignment for the benefit of creditors;
- e) the failure by HQB to timely pay its proportionate share of costs as required by this Lease;
- f) the failure by HQB to observe and perform any covenant, condition or agreement on its part to be observed or performed as required by this Lease;
- g) the failure by HQB or its surety to discharge, satisfy or release any lien or lien statement filed or recorded against the Leased Premises within sixty days after the date of such filing or recording, whichever date is earlier; or
- h) the failure by HQB to maintain its status as a non-profit.



It is an express covenant and agreement of CITY and HQB that CITY may, at its election, terminate this Lease in the event of the occurrence of any of the events described in this paragraph or in Paragraph 20 relating to liens by giving not less than ten days written notice to HQB; and when so terminated, CITY may reenter the Leased Premises. This Lease and its Leased Premises shall not be treated as an asset of HQB's estate. It is further expressly understood and agreed that CITY shall be entitled upon such reentry, notwithstanding any other provision of this Lease, to exercise such rights and remedies as are provided in Paragraph 21 of this Lease.

**18) Compliance with Laws.** The property described herein may be used for only the purposes stated herein. It is the sole and exclusive responsibility of HQB in the use of the property to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting the use to which the property is proposed to be put.

**19) Non-Discrimination.** HQB for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that:

- a) no person, on the ground of race, sex, color, creed, religion, age, disability, marital status, familial status, status with respect to public assistance, national origin, sexual or affectional orientation or ancestry shall be excluded from participating in, be denied the benefits of or be otherwise subjected to discrimination in the use of said facilities; sexual or affectional orientation;
- b) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors;
- c) that such discrimination shall not be practiced against the public in its access in and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest and recreation) constructed or operated on the Leased Premises; and
- d) that HQB shall use the premises in compliance with all other requirements imposed pursuant to the Saint Paul Legislative Code Chapter 183.

**20) Liens.** HQB shall not permit mechanic's liens or other liens to be filed or established or to remain against the Leased Premises for labor, materials or services furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements made to the Leased Premises, or for any other reason; provided that if HQB shall first notify City of its intention to do so and shall deposit in escrow with City a sum of money or a bond or irrevocable letter of credit acceptable to City equal to the amount of the claim of lien, HQB may in good faith contest any such claims or mechanic's or other liens filed or established and in such event may permit the items contested to

remain undischarged and unsatisfied during the period of such contest. If, in the opinion of City, the nonpayment of any such items subjects the Leased Premises to any loss or forfeiture, City may require HQB to use the escrow account to promptly pay all such unpaid items and if HQB fails to pay from the escrow account, City may pay and charge the HQB as Additional Rent.

**21) Default Remedies.** In the event an Event of Default occurs under Paragraph 17 of this Lease, City may exercise any one or more of the following remedies:

- a) re-enter and take possession of the Leased Premises without termination of this Lease, and use its best efforts to lease the Premises to or enter into an agreement with another person for the account of HQB;
- b) terminate this Lease, exclude HQB from possession of the Premises, and use its best efforts to lease the Premises to or enter into an agreement with another in accordance with applicable law;
- c) exclude HQB from possession of the Premises, with or without terminating this Lease and operate the Premises itself;
- d) terminate the Lease, exclude HQB from possession of the Leased Premises, sell all or any part of the Premises at the best price obtainable (provided such sale is permitted by applicable law,) such sale to be on such terms and conditions as CITY, in its sole discretion, shall determine and apply the proceeds of such sale less any expenses thereof for the account of HQB;
- e) exercise any remedies available to it under the Minnesota Uniform Commercial Code;
- f) take whatever action at law or in equity may appear necessary or appropriate to collect the Basic Rent and Additional Rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of HQB under this Lease;
- g) in exercising any of its remedies set forth in this Section, CITY may, whether or not the Lease is then in effect, hold HQB liable for the difference between the payments and other costs for which HQB is responsible under this Lease.

No remedy herein conferred upon or reserved to CITY is intended to be exclusive of any other available remedy or remedies, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or thereafter existing at law or in equity by statute. No delay or omission to exercise any such right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle CITY to exercise any remedy reserved to it in this Provision, it shall not be necessary to give any notice, other than such



often as may be deemed expedient. In order to entitle CITY to exercise any remedy reserved to it in this Provision, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

22) **Amended.** Anything herein contained to the contrary notwithstanding, this Lease may be terminated, and the provisions of this Lease may be, in writing, amended by mutual consent of the parties hereto.

23) **Security.** HQB shall possess separate keys for the Building rooms and for the Building exterior access. CITY and HQB shall determine the number of keys. In the event a key is lost or stolen HQB shall pay CITY the cost of replacement.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year in this Lease first above-written.

**CITY:**

\_\_\_\_\_  
Mayor

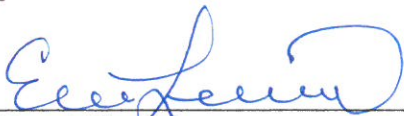
\_\_\_\_\_  
City Clerk


\_\_\_\_\_  
Director - Office of Financial Services

\_\_\_\_\_  
Director of Parks and Recreation

\_\_\_\_\_  
City Attorney (Form Approval)

**HQB:**

  
\_\_\_\_\_  
Its Board Chair

  
\_\_\_\_\_  
Its Executive Director

**Memorandum of Understanding**  
**City of Saint Paul**  
*and*  
**Hallie Q. Brown Community Center, Inc.**

The purpose of this Memorandum is to outline and clarify the agreement between the City of Saint Paul, acting through its Department of Parks and Recreations (CITY) and Hallie Q. Brown Community Center, Inc. ("HQB"). HQB and CITY desire to acknowledge HQB's plan for payment of outstanding invoices relating to expenses from the Martin Luther King, Jr. Neighborhood Service Center for the period from July 1, 2006 through December 31, 2016.

The City will send HQB 3 invoices, which will total \$106,228.16 and represent the total and final outstanding amounts owed to the City.

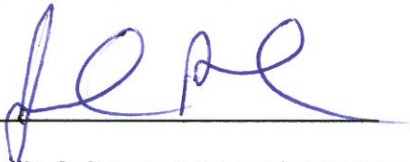
The first is an invoice that was already issued for the 2<sup>nd</sup> half of 2006. The outstanding amount due on this invoice is \$15,938.11.

The second invoice will be for the balance due for 2007-2011. All original bills for this period have been cancelled, with this new bill consolidating the updated amounts onto one invoice in the amount of \$35,420.55.

The final of the three invoices will be for 2012-2016. This invoice will be for \$54,869.50.

HQB acknowledges the amount of the invoices and agrees to pay \$10,000 each year until the outstanding amounts are resolved. HQB may elect to pay back more than \$10,000 in any year(s) to accelerate repayment of the outstanding amount. Any amount the CITY owes HQB in a year will be credited against the outstanding amount up to \$10,000, thereby reducing the payment for that year.

City will not make further collection efforts as long as HQB is current on a yearly basis on repayment of the total amount due. Both parties agree that there will be no further reductions or forgiveness of these agreed upon arrearages.



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Hallie Q. Brown Community Center

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City of Saint Paul