

JOINT USE AGREEMENT

AGREEMENT, Made this ____ day of _____, 2016, by and between the City of Saint Paul, a Minnesota municipal corporation (hereinafter “City) and Keystone Community Services, (formerly known as St. Paul Community Services, Merriam Park Community Center, and Merriam Park Community Services) a Minnesota nonprofit corporation (hereinafter “Keystone”),

WHEREAS, City is the owner of real property described in the attached Exhibit A on which is situated a Facility known as Merriam Park Community Center (2000 St. Anthony Ave., St. Paul, MN 55104); and

WHEREAS, in 1950 the City granted consent to Keystone Community Services to construct a recreation and community center on parkland owned by the City, with the building to be transferred to the City subject to the reservation of free and exclusive occupancy, management, control, use and maintenance to Keystone Community Services; and

WHEREAS, Keystone Community Services raised funds and built Merriam Park Community Center in 1952. The Center was transferred to the City of St. Paul in 1958 and the City granted Keystone right to manage, operate and control the facility into the future in accordance with the 1950 agreement; and

WHEREAS Keystone constructed a gymnasium in 1958, which was conveyed to the City, with Keystone retaining free and exclusive occupancy, management, control and use of the gymnasium; and

WHEREAS, by Agreement dated August 21, 1970 Keystone was authorized to construct an addition to the building, and transfer ownership of the addition to the City reserving to Keystone free and exclusive occupancy, management, control, use and maintenance of Center Addition. At the same time the City constructed a warming house addition, management and operation of which stayed with the City; and

WHEREAS, Keystone and the City desire to enhance joint utilization of the Facility; and

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, the City and Keystone agree as follows:

- I. Term, Renewal, and Payment. Parties agree, subject to Keystone’s underlying right to the free and exclusive occupancy, management, control, use and maintenance of the Center and Center Addition, to share use of the Facility in a manner which allows Keystone to continue to deliver community based human services and programs and permits City to utilize portions of the Center and Center addition. Entry to the City Addition will utilize the Center front doors and reception area. Operating costs will be shared by the City and Keystone per this agreement.

- A. Initial Term. The initial term of this Agreement takes effect beginning on June 1, 2016, and continues through May 31, 2021, unless earlier terminated in a manner for reasons permitted by this Agreement.
- B. Renewal Terms. By mutual assent of the City and Keystone, this Agreement may be renewed on the same terms (unless otherwise agreed by the parties) for a five-year term beginning on June 1, 2021 ("First Renewal Term"). If this agreement is extended through the First Renewal Term, then by mutual assent of City and Keystone, at the conclusion of the First Renewal Term, this Agreement may be renewed on the same terms for another five-year term beginning on June 1, 2026 ("Second Renewal Term").
- C. Keystone shall pay rent to the City in the amount of one (1) dollar per year.

II. Operating Costs and Building Maintenance.

The Parties agree that the costs of operating and maintaining the Facility under this Agreement shall be as follows:

Total operating costs x percentage of the building x time occupied

Keystone is responsible for:

- A. Cleaning of Facility (except for gymnasium, gym office, multi-purpose meeting room, mezzanine spaces and warming house).
- B. Waste Removal.
- C. Litter Control inside the building.
- D. Landscaping the front gardens.
- E. Snow Removal. (except for parks trails and perimeter walks)
- F. Utilities.
- G. Cost of Alarm System. Keystone is responsible for the monitoring costs of the alarm system. Keystone is also responsible for burglar alarm costs and false alarm charges which are the result of Keystone employees or their agents.
- H. Staffing.
 - 1. Keystone shall at its own expense be responsible for sufficiently staffing the reception desk during the hours of its operations.

2. Should the City require reception desk staffing at times that are outside of normal business hours, Keystone will provide on-site reception desk staffing and the City shall reimburse Keystone for the actual costs of such additional staffing.
3. The City can request the building be staffed outside of hours referred to in H(1) and H(2), subject to Keystone staff availability.

The City is responsible for:

- A. Litter Control outside of the building.
- B. Cleaning of the Parking Lot.
- C. Mowing.
- D. Cleaning gymnasium, gym office, mezzanine spaces, multi-purpose meeting room, and warming house.
- E. Maintaining all HVAC systems, the elevator, sprinkler systems, water, gas, and electrical services.

In the event other center repairs are needed to other Facility systems, City and Keystone shall share the costs as follows:

1. Keystone will be responsible for repairs up to \$5,000.
2. For repair costs exceeding \$5,000, City and Keystone will each pay half of the total exceeding \$5,000, up to \$15,000.
3. The City will be responsible for any additional costs exceeding \$15,000, as funding becomes available and is prioritized in the City's Capital Improvement Budget.

III. Insurance Keystone is required to carry insurance of the kind and in the amounts shown below for the life of the Agreement.

- A. Comprehensive General or Business 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; \$2,000,000 aggregate. Such insurance shall (a) name the City as additional insured; (b) be primary with respect to City's insurance or self-insurance; (c) not exclude explosion, collapse, or underground property damage; (d) be written on an "occurrence" form policy basis. Said policy must include an "all services, products, or completed operations" endorsement.
- B. Workers Compensation and Employer's Liability Insurance per Minnesota Statute. Said employer's liability policy shall have minimum limits of \$500,000 per disease policy limit. If Keystone is exempt from the requirement of carrying Workers Compensation it shall be required to provide the City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.

C. General Insurance Requirements.

- a. The policy is to be written on an occurrence basis or as acceptable to the City. The Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors and omissions coverage.
- b. Keystone must not work under this Agreement until a Certificate of Insurance covering all of the insurance required is submitted. Insurance must remain in place for the duration of the original contract and any extension periods.
- c. The City reserves the right to review Keystone's insurance policies at any time, to verify that City requirements have been met.
- d. Satisfaction of policy and endorsement requirements for General Liability Insurance, of "each occurrence" and "aggregate" limits can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

- D. Indemnification. Keystone shall defend and indemnify City and its officers, agents, and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including City, resulting from any act or omission by Keystone or Keystone's employees or agents in carrying out the terms of this Agreement. Likewise, the City shall defend and indemnify Keystone and its officers, agents, and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including Keystone, resulting from any act or omission by City or City's employees or agents in carrying out the terms of this Agreement

IV. Casualty Loss to Facility.

- A. Limited Damage to Facility. If all or part of the facility is rendered unsuitable for its anticipated use by damage from fire or other casualty which in the reasonable opinion of an architect selected by Keystone and approved by the city, can be substantially repaired under applicable laws and governmental regulations within 120 days from the date of such casualty (employing normal construction methods without overtime or other premium) City shall at its own expense, repair such damage.
- B. Major Damage to Facility. If all or a substantial part of the Facility is rendered unsuitable for its anticipated use by damage from fire or other casualty to such a material extent that in the reasonable opinion of an architect selected by Keystone and approved by the city, the Facility cannot be substantially repaired under applicable laws and governmental regulations within one year from the date of such casualty (employing normal construction methods without overtime or other premium), then City may elect to terminate this Agreement as of the date of such casualty by written notice delivered to Keystone not more than 120 days after the date of such casualty.

a. Damage Due to Keystone's Negligence. Notwithstanding the foregoing, if the damage is due to willful or negligent actions or omissions of Keystone or its agents, it will be the determination of the City as to whether to repair or restore the Facility and whether to terminate this Agreement.

V. Miscellaneous

A. Scheduling. Keystone will be responsible for scheduling the Community Center space in cooperation with Parks and Recreation.

i. Keystone and the City shall utilize an agreed upon scheduling software to manage reservations throughout the facility.

B. Dispute Resolution. The parties to this agreement encourage the prompt and equitable settlement of all controversies and claims between the parties. The parties agree to negotiate disputes directly and in good faith for a period of no less than thirty (30) days after written notification of the existence of a dispute. If the dispute is not resolved within that thirty (30) days, the parties agree to submit their dispute to an experienced mediator to work with them to resolve the matter using non-binding mediation. If after that non-binding mediation the dispute remains unresolved, the parties are free to exercise all other legal and equitable remedies.

VI. Cancellation and Termination. This agreement shall be subject to cancellation and termination by either Party without cause with one year's notice. Upon termination of this agreement for any reason, the terms of the relationship between Keystone or its successor shall revert back to the terms of the resolutions adopted on March 3, 1950, and May 20, 1958, and the Agreement dated August 21, 1970, both of which are herein incorporated by reference, under which Keystone is entitled to "the free and exclusive occupancy, management, control, use and maintenance" of the Center and Center Addition.

VII. Administration. For the purpose of the administration of this Agreement, City's representative shall be the Administration Finance and Planning Manager, and Keystone's representative shall be Keystone's President and CEO.

VIII. Notices. Any notice, statements, bills, or other communications required to be given under this Agreement will be deemed to be duly delivered if in writing and delivered to the other Party personally, sent by facsimile with confirmed delivery sheet, sent by electronic mail with confirmation of receipt, or sent by certified mail address to the other return-receipt postage prepaid as follows:

AS TO CITY: Director of Parks and Recreation
 City of Saint Paul
 400 City Hall Annex
 25 W. 4th Street
 Saint Paul, MN 55102

AS TO KEYSTONE: President and CEO
 Keystone Community Services

Merriam Park Community Center
2000 St. Anthony Avenue
St. Paul, MN 55104

Or to such other subsequent address as the respective parties shall designate in writing. The time of giving such notice or communication shall be deemed to be the time when the same is actually delivered to the other party.

IX. Assignment. This Agreement may not be assigned without the consent of the other Party and any attempt to assign without such consent will render the Agreement void.

X. Amendments. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduce to writing and duly signed by the parties.

XI. Captions and Headings. The captions and headings used herein are intended only for the convenience of the reader and are not to be used in construing this Agreement.

XII. Entire Agreement. This Agreement contains the entire understanding between City and Keystone, and supersedes any prior negotiations or agreements. There are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Agreement in whole or in part unless such an agreement is in writing and signed by duly authorized individuals of each party hereto.

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed and delivered as of the date appearing on the first page hereof.

KEYSTONE COMMUNITY SERVICES CITY OF SAINT PAUL

Name, Chief Executive Officer

Mayor, City of Saint Paul

Name, Title

Director of Parks and Recreation

Director of Financial Services

Approved as to form:

Assistant City Attorney