
AMENDED AND RESTATED MASTER SERVICES AGREEMENT

**CITY OF SEATTLE DEPARTMENT OF
PARKS & RECREATION**

AND

**THE ASSOCIATED RECREATION
COUNCIL**

**Dated as of
March 29, 2019**

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**CITY OF SEATTLE DEPARTMENT OF
PARKS & RECREATION
AND
THE ASSOCIATED RECREATION COUNCIL**

THIS AMENDED AND RESTATED MASTER SERVICES AGREEMENT (this "Agreement") is made and entered into effective as of this 29th day of March 2019 (the "Effective Date"), between The City of Seattle (the "City"), by and through the Superintendent of its Department of Parks and Recreation ("DPR"), and The Associated Recreation Council, a Washington nonprofit corporation ("ARC"), collectively, the "Parties."

RECITALS

WHEREAS, for several decades, with the encouragement of DPR, Advisory Councils ("ACs") in various Seattle communities have been sponsoring programs and activities at DPR facilities and thereby have increased educational and recreational opportunities for Seattle residents; and

WHEREAS, ARC was established on September 23, 1975 to provide financial management, accounting, and material support for Advisory Councils (ACs) and to perform other services requested by the ACs or DPR; and

WHEREAS, on July 2, 1976, the City adopted Ordinance 105655, now codified in part at SMC Chapter 18.04, which authorizes the Superintendent of DPR (the "**Superintendent**"), among other things, to recognize ACs to assist in planning and implementing public recreational activities; to furnish ACs with certain necessary services, supplies and facilities; and to promulgate rules and regulations concerning ACs and for contracting for services and recreational programs; and

WHEREAS, Ordinance 105655 (SMC 18.04.010) also authorizes the Superintendent to contract with ARC as he or she deems appropriate for the purposes of increasing educational and recreational opportunities for Seattle residents, providing greater public use and enjoyment of the City's parks and recreation system, establishing a variety of activities and, through a sound system of accounts and records, preserving public confidence in programs and activities offered at City facilities; and

WHEREAS, ARC has been providing financial management, accounting, and other support for certain programs offered at facilities owned by DPR since 1976 ARC evolved to become the governing body for the AC system; and

WHEREAS, during this period, the scope of and revenues from such programs have experienced dramatic growth; and

WHEREAS, DPR, ARC and the ACs undertook a Partnership Modernization Project, the purpose of which was to develop a mission, vision and strategic plan to strengthen ARC's role as a "voice for the system as a whole" and to increase responsiveness to system issues; and

WHEREAS, upon completion of the strategic planning process, DPR and ARC entered into a Master Services Agreement for the delivery of services that was authorized by the City Council in Ordinance 122588 (the "2008 Agreement"); and

WHEREAS, the 2008 Agreement was for an initial term of 10 years and allowed for two extended terms of five years, each; and

WHEREAS, the first 5-year extension is currently in effect and the Parties now wish to amend and restate the 2008 Agreement to reflect certain changes in program delivery and management and to memorialize certain principles by which DPR, ARC and the ACs will work together to provide recreation and life-long learning programs and services to increased numbers of residents, improve connections to neighborhoods and communities, develop infrastructure systems that support the effective delivery of such programs and services, and develop sustainable financial resources, all in accordance with the mission of "building community through citizen engagement and participation in recreation and lifelong learning programs," and the vision of providing "equitable, dynamic and responsive recreation and lifelong learning programs that are a part of the life of every Seattle resident"; and

WHEREAS, the strategic planning process established that DPR would be "accountable to the City's elected officials for the success of all recreation services and the management and maintenance of facilities," that ARC would "provide marketing, development of Recreation, special events, SAC and Pre-School programs and central financial services for all recreation programs" and that ACs would "provide connection to the community and advocate for the success of recreation services"; and

WHEREAS, the Parties and the public they together serve have benefited from the flexible and collaborative approach to problem solving that historically has defined their relationship and wish to perpetuate and memorialize that approach in this Agreement;

WHEREAS, the DPR/ARC relationship has yielded many successes, including the growth of licensed school-age care and pre-school programs, jointly stabilizing building operations and program staff during the Great Recession, and increased program delivery to underserved communities;

WHEREAS, the Parties understand that a successful partnership is achieved when both DPR and ARC have sustainable funding streams in order to meet the challenges of both Parties;

WHEREAS, the Parties embrace the value of urban recreation, the need to collaborate on meeting the needs of a growing City, and that ARC's mission and values should seamlessly align with these and other DPR priorities as they emerge in a changing metropolitan region.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the Parties agree as follows:

DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

- (1) "AC Bylaws" mean the bylaws of an ARC-recognized Advisory Council adopted as required under this Agreement.
- (2) "AC Charter" means the charter of an ARC recognized Advisory Council issued by ARC on behalf of the Superintendent, as provided in this Agreement.
- (3) "Advisory Council(s)" or "AC(s)" mean Advisory Councils in various Seattle communities that support, and advocate for, programs and activities at Department of Parks and Recreation facilities and recognized by ARC as provided in this Agreement.
- (4) "Agreement" means this Master Services Agreement.
- (5) "Annual Services Agreement" or "ASA" means the mutually acceptable agreements entered into each year this Agreement remains in effect addressing the matters identified herein in addition to such other matters as the Parties may from time to time agree.
- (6) "ARC" means the Associated Recreation Council, a Washington nonprofit corporation.
- (7) "School-Age Child Care Programs" or "SAC" means those licensed programs subject to the Child Care Programs Services Agreement (Appendix I hereto).
- (8) "City" means The City of Seattle, Washington
- (9) "DPR" means the Department of Parks and Recreation of The City of Seattle.
- (10) "Equity Fund" means funds dedicated for internal grants supporting equity programs and activities
- (11) "Joint Planning Committee" is the joint ARC/DPR committee established under this Agreement.
- (12) "Operating Agreement" means the agreement between an ARC-recognized Advisory Council and ARC providing for Advisory Council operations, as required under this Agreement.
- (13) "Original Agreement" means the Memorandum of Agreement dated as of August 17, 1976 entered into by the Associated Recreation Council and the Department of Parks and Recreation.

- (14) "Parties" means the City's Department of Parks and Recreation and the Associated Recreation Council.
- (15) "Preschool Programs" means programs for youth ages 3 to 5 years old both licensed and recreational.
- (16) "Programs" means the Child Care Programs and the Youth & Adult Programs.
- (17) "Superintendent" means the Superintendent of the Department of Parks and Recreation.
- (18) "Youth & Adult Programs" means programs that enrich and support youth and adult recreation and life-long learning programs other than the SAC Programs and Preschool Programs.

AGREEMENT

I. Responsibilities of ARC.

ARC shall undertake the responsibilities set forth in this Section 1.

A. Programs.

ARC shall:

- (1) Manage and operate school readiness programs for children ages 3-5 (Preschool Programs); and licensed child care programs for elementary school-age youth (SAC Programs); ("**Child Care Programs**") as agreed by ARC and DPR pursuant to a Child Care Programs Services Agreement (attached hereto as Appendix I).
- (2) Support youth, teens, and adult recreation and life-long learning programs ("**Youth & Adult Programs**") by providing instructors and fiscal management services as agreed by ARC and DPR in this Agreement and in Annual Services Agreements. Both Parties understand that DPR manages, operates, and holds final-decision making authority with respect to ARC's role if any on all programs not outlined in section I.A.1.
- (3) Ensure ARC operates SAC and the Youth & Adult Programs (when referred to collectively, the "Programs") in compliance with all applicable laws and regulations, and City and DPR policies, procedures and business practices, and that all Programs are open to the public and conform with DPR's goals, objectives and purposes. ARC will endeavor to remain aligned with DPR's mission and vision as it changes to meet the dynamic needs of the City.
- (4) Support DPR in opening DPR facilities beyond normal hours of operation to expand the Programs and increase public participation in the Programs. When DPR budgeted resources constrain facility operating hours, ARC can reimburse the City under reimbursement procedures mutually agreeable to the Parties for hours worked by City staff to admit Program participants to DPR facilities during times when such facilities

are not normally open to the public. Reimbursement shall be at an hourly rate comparable to the hourly rate for the job classification that DPR determines applies to the work, including Federal and State taxes, but excluding any incremental cost of benefits. The maximum total amount of any such reimbursement by ARC for City staff time as provided under this section will be determined by and reflected in the Parties' respective annual budgets. To offset, in whole or in part, the cost of such reimbursements, ARC may charge a supplemental Program fee acceptable to the Superintendent (or Designee) for participation in Programs scheduled to be provided outside normal hours of facility operation. Any such supplemental Program fees will be addressed in the Parties' Annual Services Agreement for the year during which such fees will be charged.

- (5) With reasonable promptness following the effective date of this Agreement, propose for collaborative review, and DPR approval, basic program evaluation methodology and procedures, including the type and basic form of evaluation questions to be asked and an outline of an evaluation summary to be prepared based on the information gathered, for all Pre-School and SAC programs. Such basic program evaluation methodology and procedures are subject to periodic collaborative review by the Joint Planning Committee. Revisions shall be reflected in Annual Services Agreements for implementation during the year for which the Annual Services Agreement is effective. Annual Services Agreements shall include a mutually agreeable evaluation plan that includes the scope of evaluations to be undertaken during the year. All evaluations will be undertaken pursuant to the DPR-approved methodology and procedures. The Annual Services Agreement effective for the year immediately following the effective date of this Agreement shall implement the requirements of this Section I(A)(5) to the maximum extent practicable.
- (6) Prepare reports regarding Programs in a form and as frequently as the Superintendent (or Designee) reasonably requests, subject to the accessibility routinely afforded and the quality of data provided by DPR and ARC systems. The Parties will agree on the number, scope and content of reports to be routinely provided to the Superintendent (or Designee) via the Annual Service Agreements. The Superintendent (or Designee) may require reports in addition to those routinely provided when reasonably necessary to fulfill his or her responsibilities or as specific circumstances may require.
- (7) In collaboration, DPR and ARC shall implement modifications to the Programs including, but not limited to, their staffing, that both reflect the results of completed program evaluations and are consistent with the financial requirements and standards of this Agreement. In addition, as necessary or desirable, the Parties also may take actions affecting specific programs or employees or contractors as otherwise provided under this Agreement or as soon as appropriate, following completion and review of any program evaluation.

- (8) Ensure that all participants in Programs are properly registered through the CLASS, Active Net, or other applicable DPR system by having all instructors take attendance prior to start of each program session and admitting only properly registered individuals.
- (9) Cooperate with ACs and DPR to develop an annual schedule and budget for ARC Programs. Details to be outlined in ASA. ARC is responsible for budgeting licensed SAC and Pre-School programs; DPR staff responsible for budgeting all other recreation programs, including Enrichment Programs.
- (10) In ARC's discretion, undertake fundraising campaigns benefiting DPR facilities or properties or new or expanded programs. Such fundraising shall be only for projects, programs, or initiatives that the Superintendent (or Designee) has approved in advance and shall be carried out consistent with the provisions of the ARC Fundraising Protocol (attached hereto as Appendix II).
- (11) In ARC's discretion, subject to the Superintendent's (or Designee's) prior approval, provide or facilitate provision of project advisory and financial management services including, but not limited to, fiscal sponsorship, to facilitate capital projects or other fundraising campaigns proposed by AC's.
- (12) Ensure that neither ARC nor any AC engages in activities not permitted to be carried on by: (a) a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law); and/or (b) a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law).

B. Advisory Councils.

ARC shall:

- (1) Represent the ACs in system-wide financial and programmatic discussions with DPR. To this end, ARC shall regularly garner input from and communicate with individual ACs through a variety of means including, but not limited to, surveys, newsletters and meetings. In consultation with DPR, ARC shall develop agendas for AC Presidents' Council meetings
- (2) Administer the process for recognition of ACs and the appointment of their members on behalf of the Superintendent (or Designee). Under this Agreement, ARC assumes responsibility for chartering ACs, including chartering of existing ACs. The charters should reflect that the purpose of ACs is to represent the interests of a neighborhood or community by advising DPR and ARC of ways to meet public recreational needs consistent with the goals and objectives of DPR. The form of the ARC AC Charter and an Operating Agreement incorporating model AC Bylaws is subject to review and approval by DPR. Provisions of the Operating Agreement and the model Bylaws may be modified on a case-by-case basis in the discretion of ARC after consultation with DPR to

reasonably accommodate unique circumstances but such modifications shall not alter or compromise the basic structure of the relationships between DPR, ARC and the ACs embodied in this Agreement or materially affect ARC or AC obligations or responsibilities under the Operating Agreement. With the prior approval of the Superintendent (or Designee), a new charter shall be issued by ARC to an existing AC when the AC duly authorizes and executes an Operating Agreement with ARC and adopts Bylaws acceptable to ARC. ARC may charter new ACs only with the prior approval of the Superintendent (or Designee) when the prospective AC has duly authorized and executed an Operating Agreement with ARC and adopted Bylaws acceptable to ARC. If the ARC Executive Director is concerned that an AC may be materially violating provisions of its Operating Agreement or its Bylaws, he or she shall work with the affected AC to take corrective action to address the Executive Director's concerns. The ARC Executive Director may withdraw the Charter of any AC after consultation with the ARC Board of Directors and the approval of the Superintendent (or Designee).

- (3) Manage the process for appointment and removal of AC members on behalf of the Superintendent (or Designee). Consistent with the model AC Bylaws, ARC shall provide ongoing leadership for recruiting and training new members in partnership with DPR and appoint all the members of all ACs. Prospective members shall be vetted with DPR pursuant to procedures to be determined by ARC and DPR in the ASA. ARC shall also provide leadership on managing AC concerns and issues, as they arise. AC members may be removed by ARC as provided in the model Bylaws.
- (4) Oversee AC compliance with the Operating Agreement and AC Bylaws and work with affected ACs to take corrective action to address concerns that an AC may be materially violating provisions of its Operating Agreement and Bylaws. With reasonable promptness following the effective date of this Agreement the Parties shall develop and implement a protocol for presentation to any AC of any DPR or ARC concerns regarding the AC's compliance with its Operating Agreement and Bylaws, including the manner and timeframe to respond and timing for implementation of any corrective action needed. At a minimum, the protocol shall require ARC to respond with a plan to address DPR concerns regarding AC compliance within seven (7) business days after ARC is notified of the concern. Unless impracticable, ARC shall not implement any corrective action under this section without first having notified DPR of the proposed action.
- (5) Recruit manage and coordinate AC member activities (including orientation, training and periodic workshops for AC members and budget preparation).
- (6) As soon as practicable after the end of each calendar year, provide DPR with an annual report on AC individual performance and ARC administrative performance that identifies the past year's fundraising efforts, programming, budgeted income and expenses versus actuals, and any compliance issues. In addition, for each AC, ARC shall provide DPR with a current roster showing the name, address, telephone number and term of each AC member. This shall be separate from ARC's general Annual Report.
- (7) Notify DPR of all ARC and AC meetings at which business is to be conducted. The AC

meeting schedule should be communicated to site and Geo leadership and the ARC Board meeting schedule should be communicated to the Recreation Division Director or Deputy.

- (8) Maintain the official books and records of each AC, including minutes of AC meetings, in a manner that is consistent with the Washington State Public Records Act, Chapter 42.17 RCW.
- (9) Perform such other functions or provide such other services as delineated in the Operating Agreement.

C. Financial.

ARC shall:

- (1) Ensure all funds generated by ARC and/or the ACs benefit activities and projects designed to serve the general public and that support the DPR mission.
- (2) Recommend fees for Programs. In aggregate, fees, for programming shall be set at a level that will cover expenses and provide a reasonable program support margin to ARC, as shall the fees for each specific program. New, undersubscribed or other specific programs not projected to cover expenses may be provided on a case-by-case basis as included in the annual ARC budget or after consultation with DPR. The Joint Planning Committee shall develop program budgeting standards and principles to ensure uniformity in scope and content across Programs. By applying the agreed upon budgeting standards and principles, program fees shall reasonably reflect program scope and content and be used as a tool to achieve comparability among reasonably similar programs offered at multiple locations, to the maximum extent practicable.
- (3) In consultation with DPR, prepare and submit to DPR no later than November 1st of each year during the Term of this Agreement for the upcoming year, a draft annual operating budget for the Programs that includes scholarship allocations for programs as described in Section I(C)(4), a capital budget for projects in the fundraising stage and/or the development process, new restricted-fund proposals, and an administrative budget describing ARC staffing and related expenses and system-wide administrative expenses, and which describes any currently restricted funds. The ARC annual budget is subject to the Superintendent's (or Designee's) review and approval prior to its final adoption by the ARC Board. In developing the approved budget, ARC and DPR, informed by program evaluation reports, will make decisions regarding
 - a. discontinuation of programs that do not generate a reasonable program support margin or the circumstances under which such programs may be continued;
 - b. discontinuation of previously cancelled programs due to under-subscription or the circumstances under which they may be reinstated;
 - c. expansion of fully or oversubscribed programs; and
 - d. such other program measures that may contribute to maximizing utilization of DPR space. Both parties share a commitment to addressing the changing needs of an urban metropolitan region as it relates to program delivery and access.

- (4) In cooperation with DPR, make a good faith effort within reasonably available resources to ensure that no member of the public is unreasonably denied access to recreational opportunities solely as a result of the inability to pay program fees. In consultation with DPR, ARC shall establish realistic and sustainable goals for scholarship funding for both Youth & Adult Programs and Child Care Programs on a biennial basis. Biennial goals shall be subject to the review and approval of the Superintendent (or Designee). Specific amounts of scholarship funding for both Youth & Adult Programs and Child Care Programs shall be reflected in ARC annual budgets and Annual Services Agreements. Participants will be approved for these scholarships in accordance with the process established and the income guidelines utilized by DPR's Youth Scholarship Office, or another work unit as assigned by DPR Superintendent (or Designee).
- (5) All ARC scholarship funds will be awarded to program participants consistent with eligibility guidelines established by the DPR's Youth Scholarship Office or another work unit as assigned by DPR Superintendent (or Designee). ARC shall consolidate unrestricted fund balances as of the date of this Agreement, including fund balances identified with specific Advisory Councils, into a single Consolidated Fund Balance. Unrestricted fund balances include all fund balances held by ARC derived from funds generated by or for the support of ARC or AC programs and from other funds not formally or legally restricted by sponsors, donors and others for specific purposes. ARC shall retain a reasonably prudent Consolidated Fund Balance sufficient to sustain the ongoing operations of ARC and AC's chartered under this Agreement. During 2019 and each fiscal year thereafter, the ARC Consolidated Fund Balance shall be not less than 25 percent of ARC's audited operating expenses for its immediately preceding fiscal year. DPR and ARC shall work jointly to use consolidated funds to such standard for the enrichment of Operations and Programs, including implementing the Equity Fund; and capacity building for ARC to meet operational demands including but not limited to program and participation enhancements benefiting underserved communities and groups. All allocation processes any such funds shall be reflected in the ARC annual budget and Annual Services Agreement, as appropriate, to ensure full transparency of funds allocation. AC efforts to raise funds from sources other than fees generated by the Programs shall be subject to the Superintendent's (or Designee's) prior approval, as provided in Section I(F) of this Agreement
- (6) Provide input to DPR regarding the City's capital improvement plan with respect to DPR's recreation facilities.
- (7) Within available resources and subject to DPR approval, fund capital improvements on DPR property or in DPR facilities, as provided in the ARC Fundraising Protocol.
- (8) Maintain a workable structure for the exchange of payments with DPR, including through business services agreements entered into from time to time with DPR or Annual Services Agreements.
- (9) Maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently

applied (except as noted therein), and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

- (10) Obtain, at no cost to DPR, an annual independent audit of its books by a certified public accountant. In addition, ARC shall permit the City, from time to time as the City Auditor or the Superintendent (or Designee) deems necessary (including after the expiration or termination of this Agreement), to inspect and audit at any and all reasonable times in King County, Washington, or at such other reasonable location as the City Auditor selects, all of ARC's pertinent books and records to verify the accuracy of accounting records and shall supply the City with, or shall permit the City to make, upon request, a copy of any books and records.
- (11) As soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of ARC, and in any event within forty-five (45) days thereafter, furnish DPR with an unaudited balance sheet of ARC as of the end of each such quarterly period, and a statement of income of ARC for such period and for the current fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied (except as noted therein), with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made.
- (12) As soon as practicable after the end of each fiscal year of ARC, and in any event within one hundred fifty (150) days thereafter, furnish DPR with a balance sheet of ARC, as at the end of such fiscal year, and a statement of income and a statement of cash flows of ARC, for such year, all prepared in accordance with generally accepted accounting principles consistently applied (except as noted therein) and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants selected by ARC's Board of Directors.
- (13) As soon as practicable after the end of each month, and in any event within thirty (30) days thereafter, furnish each AC and the appropriate lead DPR staff member with AC-specific financial monitoring reports reflecting budgeted versus actual amounts for the period.
- (14) DPR and ARC's organizational growth should remain aligned. DPR and ARC leadership will meet regularly to communicate and coordinate organizational changes as they arise.

D. Human Resources

ARC General Human Resource Role.

ARC shall:

- (1) Recruit qualified applicants and hire, supervise, evaluate and, as needed, discipline and/or terminate all ARC employees and contractors. Continued employment of ARC employees and contractors shall be informed by program evaluations

performed and reviewed pursuant to Section I(A)(5) of this Agreement as well as other relevant information. To the extent practicable, ARC agrees to convert the current ARC employees in the categories identified on Appendix III to independent contractor status within an appropriate time consistent with applicable State and Federal guidelines from the effective date of this Agreement, but in no even later than one year from the effective date of this Agreement. The Parties shall continue to work together to resolve to their mutual satisfaction employment issues that may arise over time.

- (2) Staff SAC and Pre-School Programs with ARC employees or contractors in consultation with DPR staff, as more specifically provided in the Child Care Programs Services Agreement.
- (3) Recruit and maintain rosters of qualified instructors and other service delivery staff for Youth & Adult Programs. ACs may offer recommendations to ARC for instructors or staff to be included on ARC rosters. ARC shall propose a pool of qualified instructors or staff from its rosters for each ARC Youth & Adult Program to appropriate DPR professional staff for the site at which the program is to be provided. DPR professional staff shall select an instructor or staff person from the proposed pool. ARC shall execute contracts with the selected instructors to perform the designated services.
- (4) City employees may also be ARC employees or contractors if such City employees have cognizable special skills needed for the ARC positions which they hold. A City employee shall not be employed by ARC to provide services at a DPR facility at which he or she is employed by the City. Employment by ARC of a City employee shall be subject to such other specific limitations or conditions as the Parties may periodically mutually determine. Prior to hiring a City employee, ARC shall consult with DPR to ensure the proposed hire is consistent with the requirements of this Agreement.
- (5) Provide field supervision for ARC employees with DPR consultation on proposed organizational structure to be outlined in ASA.
- (6) Establish policies and procedures to promptly investigate and address concerns that DPR staff or citizens raise regarding ARC employees and/or contractors. DPR site staff, report non-compliance to employment or independent contractor services agreement terms and conditions. ARC shall promptly notify DPR of any pending or completed personnel issue concerning an ARC employee or contractor involving licensure compliance or the potential for physical harm to program participants or DPR employees. The City may request that ARC exclude any instructor from a City facility or program for material reasons related to the health and safety of program participants or DPR employees. ARC agrees to comply with any such City request within twenty-four (24) business hours after receiving it. ARC shall promptly develop and provide to the Superintendent (or designee) information regarding any instructor whom the City has requested be excluded that ARC reasonably believes suggests that the instructor either should not be excluded or that he or she should be reinstated. The decision of the Superintendent (or designee) shall be final.

- (7) Provide compensation and benefits programs for ARC staff, as determined by ARC in its reasonable discretion.
- (8) Provide comments to DPR regarding DPR staff performance as it relates to the operation and efficient running of ARC programs.
- (9) In compliance with state and local laws concerning criminal history background checks, investigate all current and new hires, contractors, volunteers and any other persons whom ARC allows to assist or participate in providing recreation programs to determine whether their backgrounds and employment histories make them persons of suitable character and demeanor to interact with program participants. The requirements of this section include complying with all federal, state, and local background check laws and licensing requirements; developing specific questions for employment applications; and obtaining the signatures of persons to be investigated, signifying that they have received notice of the requirement for a background check. ARC shall request a background check of each new employee and contractor from the Washington State Patrol (or its functional successor) or, for those potential employees or contractors whose primary identification is from other than Washington State, the Washington State Patrol's functional equivalent in the relevant state, prior to allowing such person to provide services to the public. To the fullest extent permitted by law, ARC shall make such background information available to the City upon request.
- (10) Request the Superintendent's consent before subcontracting any of the work or services covered by this Agreement, except as is expressly allowed herein. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

E. Marketing.

ARC shall:

- (1) Consistent with reasonably available resources, serve as the exclusive provider of marketing services for all DPR and ARC recreation and life-long learning programs offered at community centers, pools, environmental learning centers, rowing and sailing centers, the tennis center, city-wide athletics, and any other DPR work unit providing recreation programs.
- (2) Develop and implement an annual marketing plan, subject to review and approval by DPR, that ensures a satisfactory level of program enrollment is continuously maintained, that availability of opportunity for enrollment is announced through local resource and referral agencies, and that appropriate advertising is purchased in local periodicals.
- (3) ARC should also develop a comprehensive, 3-year plan in consultation with DPR that reduces reliance on printed paper media, notably the quarterly program brochure.
- (4) Employ marketing professionals and staff or engage marketing and advertising firms to assist in the implementation of the marketing plan.

- (5) Provide the concept and basic content of ARC-sponsored mass media advertising campaigns to DPR for prior DPR review and approval.
- (6) Provide and maintain electronic communication capabilities closely coordinated with DPR, including, when permitted by City information technology guidelines, reciprocally-linked websites and pages. ARC will work with DPR to continuously and cooperatively upgrade DPR's electronic communication capabilities in mutually supportive ways, including facilitating interrelated and interaction capabilities to enable on-line access and utilization by prospective enrollees in their respective programs that is consistently as state-of-the-art as possible.

F. Development.

ARC shall:

- (1) Solicit grants and donations in support of DPR and ARC recreation programs. When grants or donations are for major new capital assets or improvements that would become City property as provided in the ARC Fundraising Protocol, such grants or donations shall be subject to the City's gift acceptance policies. ARC shall obtain the Superintendent's (or Designee's) approval prior to soliciting grants or donations for new programmatic initiatives, lines of business or capital projects.
- (2) Coordinate any solicitation of grants or donations by ACs and assist with preparation of such solicitations, as appropriate.
- (3) Maintain a database of potential donors and grant funders, subject to procedures acceptable to DPR to maintain prospective donor confidentiality, if ARC reasonably determines such confidentiality would be desirable.

G. Program Coordination and Integration.

- (1) With reasonable promptness after the effective date of this Agreement, ARC shall, in consultation with the Joint Planning Committee, propose for DPR review and approval (i) a naming convention for the-Programs to ensure a-consistent approach-to the naming of recreational activities and programs; and (ii) standards for setting fees for Programs and activities. The Parties shall make a good faith effort to complete the naming convention and common fee-setting standards for implementation of either or both in 2019, but in no event, later than 2020.
- (2) To the extent possible, ARC shall support DPR through close integration of financial systems and routine reporting germane to ARC's role and relationship with DPR, including prompt provision of accurate information reasonably requested by DPR.
 - a. Performance Management and Reporting. ARC shall produce performance management outcome data to be included in the future City Performance Dashboards and other public reporting outlets. These data should stem from the strategic planning efforts outlined in section I.(G).(2).b. below.
 - b. Strategic Planning and Prioritization of Funding. At its own expense, ARC shall

implement strategic planning that is aligned with DPR's desired programmatic outcomes and performance measures noted in section 1.h above. ARC will update this strategic plan every 2 years, to ensure DPR and ARC remained aligned with evolving organizational priorities, the City's two-year budget process, and ARC's annual budget timeline. Both Parties agree that any changes to budget allocations or priorities must focus on both sustainability of DPR and ARC staff, programs, and facilities. DPR will work jointly with ARC to define these evolving priorities.

II. Responsibilities of DPR.

DPR shall undertake the responsibilities set forth in this Section 2.

A. Use of Premises and Support Services.

DPR shall:

- (1) Provide office space and storage space in its facilities to ARC for its management personnel together with appropriate support staff in reasonably close proximity to DPR personnel with lead responsibility for DPR management of the relationship with ARC and the implementation of this Agreement as DPR and ARC shall agree upon and specify in the Annual Services Agreements. Gross and per person square feet provided shall be consistent with City standards for office space for comparable City personnel. In the event space is provided in City-owned facilities at which DPR would pay no rent or other costs of occupancy, ARC will not be charged rent or other occupancy charges. If space is provided in facilities for which DPR itself would pay rent or other costs of occupancy, ARC shall have the option of paying comparable rent or charges for the DPR-provided space or securing alternate space at its own expense. DPR will maintain the spaces it provides at the same level as other similar DPR spaces.
- (2) Subject to periodic review by the Parties as technology and circumstances change, provide ARC access to City services and infrastructure, including-utilities, land-line phone/fax/data service, and access to the information technology network of the City and support from the City for information technology services including maintenance of the ARC-owned server, subject to City-wide and DPR policies concerning access to and use of the City's information technology systems. Such services shall be provided at no cost to ARC for those of its management personnel and support staff whom DPR is providing with office space. For any other services that ARC receives from the City, ARC shall pay the full costs of such services directly to the City department that provides them. ARC recognizes that its use of City services has a direct impact on DPR's budget and therefore ARC agrees to use commercially reasonable best efforts to minimize its use and impacts.
- (3) Provide ARC with access to the DPR CLASS and Active Net registration systems, and any functional successor.
- (4) Provide space at DPR facilities for Programs and other Superintendent-approved ARC and AC activities at no cost to ARC or the ACs, as agreed to in the Annual Services Agreement. In cooperation with ARC & AC's DPR's periodical review of site utilization information to identify underutilized space, scheduling limitations, undersubscribed or

unsubscribed programs or other obstacles to maximizing utilization of space in DPR facilities. The Parties will develop plans to maximize the utilization of space in DPR facilities through measures to address such obstacles. The Parties shall cooperate in scheduling programs, classes and other activities to maximize community use, space utilization and revenue generation in DPR recreation facilities. In the event of potential conflicts between DPR and ARC in the use of specific DPR facilities, appropriate DPR and ARC representatives shall make a good faith effort to identify and implement a workable solution that reasonably accommodates both uses, to the extent practicable under the circumstances.

- (5) Operate and maintain all DPR facilities used by ARC consistent with all applicable laws and regulations, including providing space for SAC and Pre-School Programs consistent with applicable licensing requirements.
- (6) Provided there is no cost to DPR, actively support and participate in the marketing of recreation programs, including but not limited to (i) posting DPR-approved signage; (ii) distributing DPR-approved announcements, program offerings and promotions; and closely coordinating electronic communication capabilities, including reciprocally linked websites and pages, as City policy permits. As funding allows, DPR will work with ARC to continuously and cooperatively upgrade their electronic communication capabilities in mutually supportive ways, including facilitating interrelated and interactive capabilities to enable on-line access and utilization by prospective enrollees in their respective programs that is consistently as state-of-the-art as practicable.
- (7) Include ARC in strategic discussions regarding recreation programs, including ARC participation in any proposed programs that would be new to DPR and/or ARC in the DPR facilities identified individually or by type in the list of Facilities to Be Programmed under this Agreement (attached hereto as Appendix IV). DPR will determine and develop new program opportunities and work with ARC where appropriate. DPR and ARC shall collaboratively consider the appropriateness and viability of programming for any new DPR facility. The Superintendent (or Designee) may modify Appendix IV in his or her sole discretion, after providing ARC with reasonable advance notice of a proposed change and providing ARC an opportunity to comment on the proposed change.
- (8) Cooperate with ARC to expand Programs and increase public participation in Programs through expanded hours of operation of DPR facilities. When staffed by DPR, such expanded hours can be financially supported by ARC when sustainable resources are available and implemented by DPR staff trained and authorized to provide meaningful services to the public and funded through DPR budgeted resources, to the maximum extent possible. ARC funding of expanded programming will be based on a partnership approved budgeting tool that supports a sustainable plan.
- (9) DPR, in consultation with ARC, will annually review facility utilization and consider measures to enable the Parties to provide continued and expanded programming and increased public participation on a sustainable basis. Measures to be considered include, but are not limited to, more centralized programming when possible without materially deterring participation and the approval by the Superintendent (or Designee) of a

supplemental Program fee to support appropriate DPR staffing of facilities during expanded hours of operation for which DPR budgeted resources are unavailable. DPR will also work with representatives of appropriate collective bargaining units representing DPR employees to identify and implement mutually agreeable solutions to appropriately staff facilities during expanded hours of operation of its facilities to reasonably accommodate public demand for Programs beyond the normal hours of operation possible within DPR budgeted resources.

B. Advisory Council Recognition.

DPR has final authority with respect to the recognition of ACs and will approve the form of Charter for all ACs and the form of an ARC/AC Operating Agreement incorporating model AC Bylaws, as well as appropriate modifications thereto, in its reasonable discretion.

C. Programs.

DPR shall:

- (1) Have final decision-making authority for all programs, classes and activities occurring at DPR facilities. DPR shall oversee ARC's delivery of the Pre-School and Child Care Programs pursuant of section I.(A).1. As outlined in section I.(A).2, DPR holds all decision-making authority for all other programs.
- (2) Approve ARC's program evaluation plan for School-Age Care and Pre-School programs and participate in Program evaluations, including but not limited to supporting ARC in surveying program participants for joint review by ARC and DPR to assist in the evaluation and management of recreation programs and in the development of refined and new program offerings. All details will be outlined in future ASAs.
- (3) Have the right to terminate any Program after providing ARC with reasonable advance notice of a proposed termination and providing ARC a reasonable opportunity to comment. If requested by ARC, DPR shall consider measures by ARC to address DPR concerns in lieu of program termination.

D. Financial.

DPR shall:

- (1) Collect all fees and charges for ARC programs. ARC and DPR shall remit and account for all funds collected in accordance with the procedures described in Appendix V. Collection of fees and charges is the exclusive responsibility of DPR.
- (2) In consultation with ARC, review financial plans for Programs, provided, that the Superintendent (or Designee) shall have final decision-making authority with respect to the amount of fees charged to the general public for participation in any program or activity undertaken pursuant to this Agreement.

- (3) To the extent possible, support ARC through close integration of financial systems and routine reporting germane to ARC's role and relationship with DPR, including prompt provision of accurate information reasonably requested by ARC.
- (4) To the extent possible, inform ARC of financial issues that may affect the Programs. To the extent possible, also provide ARC with notice of and an opportunity to comment on City financial decisions that might affect the Programs and consult with ARC regarding appropriate responses. DPR also will work with ARC to mitigate any adverse financial and other consequences of such decisions.

E. Human Resources - Compliance with Anti-Harassment and Federal, State, and Local Employment Laws.

DPR shall:

- (1) Promptly investigate and address concerns that ARC staff, customers, or residents raise regarding DPR employees. ARC may suggest that the City remove a City employee from a City facility or program for material reasons related to the health and safety of program participants or ARC employees. DPR shall consider any such suggestions consistent with City personnel policies.
- (2) DPR shall consider any such suggestions consistent with City personnel policies.

F. Additional Client-Provider Opportunities.

DPR shall hold full, autonomous authority to enter into client-provider relationships other than those relationships involving ARC under this Agreement to meet service needs as they arise. These decisions will be at the sole discretion of the Superintendent (or Designee) and may include consultation with ARC leadership. All client-provider opportunities will be measured against the longstanding provider relationship held by ARC and DPR. Adequate consideration of any change to existing programming effecting timing and impacts on participants, families and staff will be discussed and a DPR/ARC communication strategy will be developed.

G. Annual Services Agreements.

ARC and DPR shall enter into a mutually acceptable Annual Services Agreement each year during which this Agreement is in effect. The Superintendent (or his or her functional successor or Designee) is authorized to negotiate and execute the Annual Services Agreements on behalf of the City and DPR. To the extent possible, the Annual Services Agreement should attempt to plan for and address biennial budget issues. The Annual Services Agreement shall include but not be limited to the following matters:

- i. Participation Fee and Other Fees.** Determination of the Participation Fee and other fees to be paid by ARC to the City for reasonable City overhead, contract management and other services associated with implementation of this and related agreements, consistent with maintaining the affordability of the Programs and the reasonable sustainability of ARC. The amount of the fee shall be reflected in both the ARC and City DPR budgets.

- ii. **Capital Improvements and Fundraising Initiatives.** Identification of any ARC-funded capital improvements to DPR property or facilities proposed by ARC and approved by DPR.
- iii. **Program Evaluation Plan.** ARC's approved annual program evaluation plan as described in Section I(A)(5).
- iv. **Annual Budget.** The approved annual operating budget as described in Section I(C)(3).
- v. **Fee Schedule.** DPR review and approval of the fee schedule for ARC programs to be offered during the affected year, including any supplemental Program fee authorized under Section I(A)(4).
- vi. **Joint Planning Committee Referrals.** The upcoming work plan for the Joint Planning Committee referenced below in Section III (A).
- vii. **Marketing.** DPR review and approval of the annual marketing plan, including available plans for mass media advertising campaigns, covering Programs as well as such other DPR recreational activities and programs as the Parties may determine. This also includes DPR review and approval of the comprehensive marketing plan outlined in section I.(E).3.

III. General Terms & Conditions

A. Joint Planning Committee.

The Parties shall establish and jointly charter an advisory Joint Planning Committee. The Superintendent (or Designee) shall name the DPR staff who will represent DPR on the Committee; the ARC Executive Director shall name ARC and AC representatives. The purpose of the Joint Planning Committee will be to facilitate communication between the Parties' representatives serving at various levels of the organizations; provide a vehicle for the discussion and preliminary resolution of issues referred to it by the Superintendent (or Designee) or by ARC with the consent of the Superintendent; and serve as a forum for vetting relevant policy matters and framing preliminary recommendations to the ARC Executive Director and the Superintendent (or Designee). The Joint Planning Committee shall meet formally at least once quarterly and more frequently as its workload requires. The Joint Planning Committee shall perform the functions specifically identified in this Agreement and such other responsibilities and such other tasks the Parties may refer to it from time to time.

B. Organizational Development and Workplace Relationships.

The Parties shall hold joint responsibility on building employee morale, improving workplace relationships between DPR and ARC staff, and foster a stronger understanding of the DPR and ARC relationship. The tasks involved will include, but are not limited to: joint trainings and celebrations for DPR and ARC staff, issuing joint communications on the accomplishments and benefits of the relationship outlined in this Agreement, establishing the Joint Planning Team as outlined above, and creating opportunities and

expectations for field staff to interact and collaborate, Additionally, ARC agrees that its employees will be trained on, and regularly engage with, the City's Race and Social Justice Initiative in a similar fashion to DPR employees. This includes using the Racial Equity Toolkit and other tools to further the City's efforts to dismantle institutional racism.

C. Advisory Council Support and Enrichment.

Both parties shall develop systems outlining how ACs can support and enrich programs and facility operations. These details will be outlined in the ASAs, but will include funding occasional, reasonably-budgeted staff celebrations to recognize programmatic successes.

D. Communications About Organizational Changes.

In conjunction with section 6 above, both parties agree to formally notify each other within seven (7) business days in writing when respective policy changes are made that affect the DPR and ARC working relationship. Communication should occur prior to changes taking effect.

E. Waivers.

As appropriate, ARC or DPR shall require and staff shall obtain a signed consent, release and waiver of liability, assumption of risk and indemnity agreement from adult and age appropriate minor participants and a parent/guardian of minor participants in all Programs determined by DPR to warrant that such an agreement should be required. Any such agreement shall benefit both Parties to this Agreement and be in a mutually acceptable form.

F. Nondiscrimination/Compliance with Laws.

ARC shall: (a) comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended, and rules, regulations, orders, and directives of the associated administrative agencies and their officers; (b) file all required reports and pay all filing fees. and federal, state, and local taxes applicable to ARC's business as the same shall become due; and (c) pay all amounts required under local, state, and federal workers' compensation acts, disability benefit acts, unemployment insurance acts, and other employee benefit acts when due. Without limiting the generality of the foregoing, ARC shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. ARC shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

G. Notices.

All notices and requests required or permitted to be given in connection with this Agreement shall be in writing and shall be deemed given as of the day they are received either by messenger, express delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows, or to such other address as the party to receive the notice or request so designates by written notice to the other consistent with this Section:

DPR: Seattle Department of Parks & Recreation
 Attn: Superintendent
 100 Dexter Avenue North
 Seattle, WA 98109-5102

ARC: The Associated Recreation Council
 Attn: Executive Director
 8061 Densmore Ave N
 Seattle, WA 98103

H. Insurance.

Throughout the term of this Agreement, ARC will maintain comprehensive general liability insurance covering claims for injuries arising out of any negligent act or omission of ARC or of any of its employees, agents, or subcontractors, with as outlined in Appendix III. ARC will submit certificates verifying such coverage to DPR promptly after the Effective Date and upon request thereafter. The City shall be named as an additional insured on such insurance. All insurance certificates shall provide that the insurance carrier will give the City at least thirty (30) days' notice of any cancellation of the policy.

I. Indemnification.

(1) Right to Indemnification. To the extent permitted by law, ARC agrees to indemnify, defend, and hold the City harmless from and against, and to reimburse the City with respect to, any and all losses, damages, liabilities, claims, judgments, settlements, fines, costs, and expenses ("**Indemnifiable Amounts**") of every nature whatsoever incurred by the City by reason of or arising out of or in connection with any breach or default in the performance of any obligation on ARC's part to be performed under the terms of this Agreement or arising out of or relating to any actual or alleged negligent act or omission or willful misconduct of ARC, or any of ARC's officers, agents, employees or contractors ("**indemnifiable Events**").

To the extent permitted by law, the City agrees to indemnify, defend, and hold ARC harmless from and against, and to reimburse ARC with respect to any and all losses, damages, liabilities, claims, judgments, settlement, fines, costs, and expenses ("**indemnifiable Amounts**") of every nature whatsoever incurred by ARC by reason of or arising out of or in

connection with any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement or arising out of or relating to any actual or alleged negligent act or omission or willful misconduct of the City, or any of the City's officers, agents, employees or contractors ("**indemnifiable Events**").

The indemnifications to be provided pursuant to this subsection shall survive the expiration or earlier termination of this Agreement.

- (2) **Procedure.** With respect to any claims or demands by third parties that relate to Indemnifiable Events and/or Amounts, whenever either party (the "**Indemnified Party**") shall have received a written notice that such a claim or demand has been asserted or threatened, the Indemnified Party shall deliver notice to the other party (the "**Indemnifying Party**") of such claim or demand and of the facts within the Indemnified Party's knowledge that relate thereto within the earlier of (a) fifteen (15) days after receiving written notice of the claim or demand, or (b) with respect to arbitration, litigation, or similar proceedings, not less than ten (10) days before the initial date by which the Indemnified Party would be required to file its first substantive response to such action, but in no event less than the amount of time that the Indemnified Party is given to respond to the action. The Indemnifying Party shall then have the right and the obligation to contest, defend, negotiate or settle any such claim or demand through counsel of its own selection, solely at its own cost, risk, and expense.

J. Term and Termination.

This Agreement shall commence on January 24, 2008 and shall expire on January 23, 2028. Notwithstanding the foregoing, this Agreement may be terminated by written notice under the following circumstances: (a) a party has breached its obligations hereunder and such breach remains uncured for one hundred twenty (120) days after the non-breaching party has given notice to the breaching party describing such breach or, in the case of a breach by ARC, such other period as the Superintendent (or Designee) may reasonably determine; or (b) either party has defaulted in its obligations under this Agreement on three or more occasions during any consecutive 12-month period.

K. Self-Help.

In the event the Superintendent (or Designee) reasonably believes that ARC has caused or permitted any condition to exist that presents an imminent danger to the health and safety of program participants or DPR employees, the Superintendent (or Designee) shall provide notice of such condition to ARC. Within twenty-four (24) business hours following receipt of any such notice or such other period determined by the Superintendent (or Designee), ARC shall correct or mitigate the condition to the reasonable satisfaction of the Superintendent (or Designee). If ARC either intentionally or negligently fails to satisfactorily correct or mitigate the condition within the prescribed time for performance, DPR may itself undertake the prescribed correction or mitigation. ARC shall reimburse DPR for DPR's cost of performing the correction or mitigation. Failure by ARC to correct or mitigate a condition giving rise to the need for DPR self-help as provided herein or failure to reimburse DPR for its costs of performing the correction or mitigation shall represent a default under this Agreement for purposes of possible termination as provided in Section III(J).

L. Review and Amendment.

At least every five (5) years during the term of this Agreement, ARC and DPR will review the terms and conditions of this Agreement and consider in good faith whether any amendments might be necessary to further the purposes of this Agreement.

M. Further Documents or Necessary Action.

The Parties shall cooperate and take such action as each party deems appropriate to effectuate the transactions contemplated by this Agreement. The Parties agree that authorization for all such action is included in their approval of this Agreement.

N. Authorization and Authority.

The governing bodies of the City and ARC have authorized the execution of this Agreement by the Parties and have granted specific authority to the Superintendent (or Designee)' and the ARC Executive Director (or Designee), respectively, to make such determinations, issue such notices, and negotiate and enter into the further agreements contemplated hereby. In addition, from time to time as circumstances warrant, the Parties may negotiate and implement without additional ordinance authority mutually acceptable changes to Agreement appendices that are consistent with this Agreement. DPR and ARC therefore represent and warrant that all necessary corporate or statutory actions have been duly taken to permit DPR and ARC to enter into this Agreement and that each undersigned agent has been duly authorized and instructed to execute this Agreement.

O. Legal Relationship.

This Agreement does not constitute ARC as the agent or legal representative of the City for any purpose whatsoever. ARC has no express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

P. Public Disclosure Requests.

ARC shall establish and train its employees in a protocol for responding to any public disclosure requests that ARC or its employees may receive that ensures such requests are transmitted to the Superintendent's office within twenty-four (24) hours of receipt.

Q. Termination of the Original Agreement.

The Original Agreement is terminated and superseded by this Agreement when this Agreement becomes effective.

R. Governing Law.

This Agreement shall be governed by and interpreted under the laws of the State of Washington applicable to agreements made and to be performed in Washington, exclusive of its conflict of law rules.

S. Consistency with Labor Agreements.

The Parties intend that this Agreement be construed consistent with applicable City labor agreements as they now exist or may be negotiated in the future. In the event of conflict, the provisions of any such labor agreement shall control.

T. Entire Agreement.

This Agreement, including all appendices and the Annual Services Agreements, when executed, contain the entire understanding between the Parties and their successors in interest, to the extent permitted herein, with respect to the subject matter hereof, and supersedes any promises or conditions in any other oral or written agreement. No provision of this Agreement may be amended or supplemented except by a written agreement signed by the Parties hereto or their respective successors in interest. In the case of any specific conflict between this Agreement and the Child Care Programs Services Agreement, the Child Care Programs Services Agreement shall control. Provisions contained in any Annual Services Agreement shall control over specifically conflicting provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement as of the day and year stated above.

DPR:
CITY OF SEATTLE DEPARTMENT OF
PARKS AND RECREATION



Christopher Williams
Interim Superintendent, City of Seattle,
Department of Parks & Recreation

3/29/2019

Date

ARC:
THE ASSOCIATED RECREATION COUNCIL



Jonathan Hartung, President of the
Associated Recreation Council Board

3/29/2019

Date

APPENDIX I

CHILD CARE PROGRAMS SERVICES AGREEMENT

CHILD CARE PROGRAMS SERVICES AGREEMENT (this "Agreement") is made and entered into effective as of this day March 29, 2019 (the "Effective Date"), between the City of Seattle (the "City"), by and through its Department of Parks and Recreation ("DPR"), and the Associated Recreation Council ("ARC"), a Washington nonprofit corporation collectively, the "Parties." Except where the two agreements conflict, this Agreement incorporates the terms and conditions of the Master Services Agreement (MSA) entered into effective as of March 29, 2019, by and between the Parties. This Agreement controls in the event of specific conflict with the MSA.

A. Responsibilities of ARC.

- (1) **General.** ARC shall provide such developmentally appropriate programs (the "Child Care Programs") as the parties shall from time to time agree upon at facilities (the "Facilities") specified in the Master Services Agreement. Such programs currently include the following:
 - (a) Unlicensed play-based school readiness preschool programs for youth from ages three to five;
 - (b) Unlicensed Seattle Preschool Pathway programs for youth from ages three to five;
 - (c) Licensed Seattle Preschool programs for youth from ages three to five;
 - (d) Licensed school age care programs for elementary school-age youth.
- (2) **Licenses.** ARC shall comply with the terms and conditions of all applicable licenses necessary for the operation of the Child Care Programs, specifically including but not limited to the staffing and operational requirements in "Child Care Center Licensing Rules" (Preschool) " and "School- Age Child Care Licensing Rules" (School-age)," or any successor publication or other applicable requirements of the Washington State Department's of Children, Youth, and Families (DCYF). and Social and Health Services (DSHS) including component agencies.
- (3) **Seattle Preschool Program Initiative.** ARC shall comply with the terms and conditions of all applicable contractual requirements in the implementation of SPP programs as established and set forth by City of Seattle Department of Education and Early Learning. Any applications to provide SPP or Pathway programs must be reviewed and approved by Out of School Time Manager prior to submittal.

(4) Program Operations.

- (a) Program Standards. ARC shall conduct all aspects of the Child Care Programs, including ARC's program planning and purchase and handling of food and programmatic materials, in accordance with DPR adopted Qualitative Standards ("Qualitative Standards") and amendments thereto.
- (b) Programming. When designing its programs, ARC shall reflect DPR's program emphasis areas as established by the Mayor and DPR from time to time. These program emphasis areas will be identified periodically and included in the Qualitative Standards. Current program emphasis areas are environmental stewardship, healthy activities and cultural relevancy.
- (c) Facilities. ARC shall notify both the Facility supervisor and the DPR Out of School Time ("OST") Manager immediately if ARC believes a Facility is out of compliance with licensing requirements or otherwise requires maintenance.
- (d) Hours of Operation. ARC shall provide the Child Care Programs during such hours as are agreed to and specified in this Agreement. Unless the Parties agree otherwise, the daily hours of operation for each program shall be as follows, subject to such policies as the Superintendent of Parks and Recreation (the "Superintendent") may approve for special circumstances, such as early release days, in-service days and weather-related school closures:
 - i.** Play-based School readiness and Seattle Preschool Pathway programs for youth from ages three to five: each daily program shall be no longer than three and a half hours and shall be conducted between the hours of 8:00 a.m. and 6:00 p.m.
 - ii.** Seattle Preschool programs for youth from ages three to five: each daily program shall be no longer than six hours and shall be conducted between the hours of 8:00 a.m. and 6:00 p.m. Wrap-around care programming requires approval of DPR, will be fee based and shall be conducted between the hours of 8:00 a.m. and 6:00 p.m. before or after regular SPP program hours.
 - iii.** School age care programs for elementary school-age youth:
 - a. Before School Programs: Hours as established yearly and documented in the School-age Care memo.
 - b. After School Programs: Hours as established yearly and documented in the School-age Care memo.
 - c. Day Camps: Eleven hours (7:00 a.m. - 6:00 p.m.) each day, unless a program site has requested and been approved for early arrivals and/or late departures.

- d. Out-of-school camps for middle school-age youth: camps will be between four and ten hours each day.
 - iv. Closing Program: Any closure of an existing program can be proposed by either party with justification provided. Both parties must agree to closing a program. A plan will be developed to limit impact to participant families.
- (e) Ratios. Staff-to-child ratios shall at all times meet or exceed ratios contained in applicable licensing requirements and Qualitative Standards.
- (f) Scholarships.
 - i. Reimbursement. ARC shall supply DPR with attendance documentation in a timely manner in order to obtain scholarship reimbursement from DSHS and other agencies or sources. ARC shall create a retention and storage protocol to ensure attendance records are complete and accessible upon request of the OST office.
 - ii. ARC Scholarship Funds. As required under the Master Services Agreement, ARC shall establish, in consultation with DPR, realistic and sustainable biennial goals for scholarship funding to be reflected in ARC annual budgets beginning in 2019.
- (5) Human Resources. High-quality staff and low employee turnover are of the utmost importance in creating a beneficial environment for children. Staff salaries, benefits, training and working conditions shall reflect a concern for the recruitment and retention of high-quality personnel. Consistent with these principles, ARC shall:
 - (a) Recruit, hire, supervise, evaluate and, when appropriate, discipline and/or terminate ARC employees.
 - (b) In addition to the requirement that all ARC Child Care Program staff have passed a Washington State Patrol background check (or its equivalent) as provided in Section I(D)(10) of the Master Services Agreement, ensure that all staff employed in any DSHS licensed Child Care Program also have passed a DSHS background check. If a new staff person has passed the Washington State Patrol background check, such staff may begin work as soon as complete DSHS background check materials have been submitted, but continued employment is subject to passing the pending DSHS background check within the time reasonably expected for (DSHS) processing.
 - (c) Provide supervision for ARC Child Care Program staff in compliance with local, state, and federal requirements. At a minimum, each Facility shall have a Child Care Program Director or staff person designated as Program Lead who shall be on-site at all times when the program is operating to act on ARC's behalf.
 - (d) Routinely solicit comments from appropriate Advisory Councils regarding ARC staff performance for use in ARC staff evaluation and employment procedures.

(6) **Supplies.** ARC shall provide all supplies such as toys, art supplies and curriculum materials, and food. The City may, at its option provide additional equipment, materials and supplies to support the programs. All supplies, equipment and materials that ARC purchases for a Facility shall remain with that Facility and be surrendered to the City at the expiration or termination of this Agreement, unless the Parties agree otherwise. Food and other programmatic materials shall meet Qualitative Standards and, where applicable, licensing requirements. The cost of providing consumables shall be included in the program fees.

(7) **Safety and Security.** ARC shall comply with all safety and security policies and procedures now in effect or hereafter promulgated by DPR, the City, or Washington State. Relevant policies and procedures include, but are not limited to, the following: (i) incident and accident reporting; (ii) trip and travel guidelines; (iii) emergency management procedures; fire and evacuation drills; (v) maintaining and assuring accessibility of medical and emergency contact lists for both participants and staff; (vi) review and monitoring of sex offender bulletins; (vii) notification of Facility maintenance needs; and (viii) transporting program participants.

(8) Quality Assurance.

(a) **Program Evaluations.** ARC shall develop and implement an annual evaluation plan of Child Care Programs by Advisory Councils, DPR staff, and participant parents and guardians through customer satisfaction surveys in a manner consistent with the requirements and procedures of the Master Services Agreement.

(b) **Annual Report.** On or before October 31 of each year thereafter, ARC shall submit to DPR an annual report describing the immediately preceding school year and summer programs. In addition to such other specific information as the Superintendent (or Designee) may require, the report shall include, at a minimum: (i) enrollment and attendance data; (ii) a summary of Child Care Programs marketing activities; (iii) program staffing information such as turnover rates and vacancy rates, participation in professional development and training programs, and pay ranges; (iv) a summary of ADA accommodation or special needs requests and actions; (v) a scholarship funding report; and (vi) a summary of applicable program evaluations.

(c) **Program Audits.** ARC shall participate in and promptly take all necessary actions to resolve issues identified through DPR or third-party program audits.

(d) **Notification.** ARC shall notify DPR's designee within one business day of any ADA accommodation requests in order to develop a coordinated resolution. Recognizing DPR is the license holder and therefore the primary point of contact with DSHS/DCYF and other reporting agencies, ARC shall provide the DPR designee with advance notice of any impending visits or requests for information from licensing agencies. When advance notice is not practicable, ARC shall notify the DPR designee at the time of any such visit or request is made. ARC shall promptly notify DPR of any reports, findings, action plans or other official communications received from

licensing agencies.

- (e) Requests for Information. ARC shall supply DPR with such other information relating to the operation of the Child Care Programs as the Superintendent (or Designee) may reasonably request from time to time, within ten business days of the request or such other time period as the Parties may agree.

(9) Finances.

- (a) ARC shall provide a detailed line item accounting of revenue and expenses by program type for child care programs.
- (b) ARC shall recommend program fees to ensure child care programs operate sustainably and meet licensing and quality standards. Fees will be reviewed and approved by DPR Recreation Director and Manager of Out of School office. Fees will be updated in the Preschool and School Age Care memo.

B. Responsibilities of DPR.

- (1) **Licenses.** Except for ARC's business license, the City shall secure and maintain during the term of this Agreement, all licenses, permits and similar legal authorizations necessary to conduct the Child Care Programs.
- (2) **Facilities.** DPR shall operate and maintain all Facilities consistent with applicable licensing requirements, DPR's customary standards for such Facilities, and DPR's licensed childcare operating agreement with DSHS/DCYF.
- (3) **Qualitative Standards.** DPR shall identify to ARC the Qualitative Standards, including program emphasis areas that govern Child Care Programs. DPR may amend the Qualitative Standards only after consulting ARC and offering ARC a reasonable opportunity to comment on proposed changes.
- (4) **Scholarships.** DPR shall fund Child Care Program scholarships at a level established by the Mayor and City Council in DPR's biennial budget. DPR shall qualify all participants for scholarship and coordinate the reimbursement process for all child care scholarships utilizing attendance and other required data provided by ARC.
- (5) **Program Audits.** DPR reserves the right to arrange program audits to ensure compliance with applicable licensing requirements and Qualitative Standards. In a timely manner, DPR shall provide ARC with audit results. Corrective action necessary to resolve audit findings shall be promptly implemented by the Parties consistent with their respective responsibilities under any applicable licensing requirements and the Qualitative Standards.

C. Coordinated Activities.

- (1) Enrollment.** DPR shall establish enrollment policies and shall register participants and confirm receipt of completed registration packets for child care programs and ensure appropriate ARC staff have access to participant registration packets. ARC staff shall provide parents and guardians interested in enrolling their children in Child Care Programs with intake services consisting of, among other things, a program orientation, an explanation of child and parent expectations, and paperwork and payment requirements for enrollment. Registration packets shall be returned to the front desk of the facility at which the program is provided for processing by DPR. Once DPR receives a complete enrollment packet and completes registration, DPR will provide access to the relevant documentation to ARC.

Admission to all programs shall be on a "first come, first served" basis based on DPR's receipt of complete enrollment packets and payment in full, or as established in the scholarship allocation policy. DPR shall establish and maintain enrollment and scholarship waiting lists and enroll from the lists as slots become available.

ARC shall track attendance for all Child Care Programs and shall not serve participants who are not included on the participant list maintained in the City's registration system, have not paid enrollment fees in full and have not completed registration packets. Enrollees may be considered paid in full if they are on an approved accounts receivable payment plan and are current in making expected payments, payment is confirmed to be made from an approved scholarship provider, or there is a current DSHS authorization on file for the requested program period.

DPR shall have final decision-making authority with respect to participation in all Child Programs.

- (2) Fees Development and Approval.**

Fees will be developed on a mutually agreed upon timeline outlined in the ASA, that allows for adequate review and approval. If DPR disagrees with any element of ARC's fee proposal, the Parties shall collaborate to resolve DPR concerns. In the event the event that a mutually agreeable fee proposal is not achieved, the Superintendent (or Designee) shall make the final decision. ARC may at any time petition DPR for changes in Child Care Program fees to maximize participation; encourage access to Child Care Program for underserved children; preserve Child Care Program viability; or for other good and appropriate reasons.

- (3) Monthly Coordination Meetings.** Representatives of the Parties shall conduct coordination meetings quarterly. ARC may propose discussion topics for such meetings and DPR will establish the agendas.

- (4) Termination.** This Agreement may be terminated by written notice under the following circumstances: (a) a party has breached its obligations hereunder and such breach remains uncured for one hundred twenty (120) days after the non-breaching

party has given notice to the breaching party describing such breach or, in the case of a breach by ARC, such other period as the Superintendent (or Designee) may reasonably determine; or (b) either party has defaulted in its obligations under this Agreement on three or more occasions during any consecutive 12-month period.

- (5) **Self Help.** In the event the Superintendent (or Designee) reasonably believes that ARC has caused or permitted any condition to exist that presents an imminent danger to the health and safety of program participants or DPR employees or that violates any material license term, the Superintendent (or Designee) shall provide notice of such condition to ARC. Within twenty-four (24) hours following receipt of any such notice or such other period determined by the Superintendent (or Designee), ARC shall correct or mitigate the condition to the reasonable satisfaction of the Superintendent (or Designee). In the event that ARC either intentionally or negligently fails to satisfactorily correct or mitigate the condition within the prescribed time for performance, DPR may itself undertake the prescribed correction or mitigation. ARC shall reimburse DPR for DPR's cost of performing the correction or mitigation. Failure by ARC to correct or mitigate a condition giving rise to the need for DPR self-help as provided herein or failure to reimburse DPR for its costs of performing the correction or mitigation shall represent a default under this Agreement for purposes of possible termination as provided in Section 4(b).
- (6) **Amendment.** This Child Care Programs Services Agreement may be amended by mutual agreement of the Parties. The Superintendent (or Designee) is authorized to negotiate and execute amendments on behalf of the City and DPR.

APPENDIX II

ARC FUNDRAISING PROTOCOL

A. Capital Improvements and Alterations.

- (1) **Improvements and Alterations, Generally.** In the Associated Recreation Council (ARC)'s discretion and following project approval by the Department of Parks and Recreation (DPR), ARC may undertake fundraising for capital projects benefiting DPR facilities or properties and provide financial management services, including but not limited to fiscal sponsorship, to facilitate such capital projects proposed by "Friends of" or similar groups, when possible.
- (2) **DPR Design Standards and Approval.** Any designs for alterations or capital improvements to DPR facilities or DPR property undertaken or facilitated by ARC shall be designed to DPR standards and are subject to prior DPR design review and approval, pursuant to then-current applicable DPR procedures. All costs of design review and project management shall be included in project expenses and paid out of project funds.
- (3) **Limitation on Fundraising for Capital Improvements and Alterations.** ARC shall not under any condition commence any fundraising for any capital improvement or alteration to DPR facilities or DPR property that is subject to the approval of any other City of Seattle (City) department, commission or agency, when such approval has not been obtained.
- (4) **Title to Improvements.** Except as otherwise provided in this Agreement, all appurtenances, fixtures, improvements, equipment, additions and other property attached to or located in City premises during the term of the Master Services Agreement shall be and remain the property of City and shall not be removed by ARC without approval of the Superintendent of Parks and Recreation (Superintendent).
- (5) **ARC's Personal Property.** All equipment, furnishings, materials and supplies related to ARC's administrative functions shall remain ARC property.

B. Other Fundraising.

In ARC's discretion and with DPR's prior approval, ARC may undertake fundraising activities benefiting DPR programs or new recreation program initiatives and provide financial management services, including but not limited to fiscal sponsorship, to facilitate such fundraising activities proposed by "Friends of" or similar groups, when possible.

C. Approval Process.

Whenever ARC or a member Advisory Council is considering funding a new capital improvement or programmatic initiative, the ARC Executive Director shall provide the Superintendent with a written proposal that includes: (a) the purpose of the improvement or initiative; (b) a development plan, including any fundraising and

sponsorship proposals; (c) a marketing and communications plan for disseminating information about the improvement or program; (d) a project timeline; and (e) a sustainability/financing plan to assure the continuing viability of the improvement or program. In determining whether to approve any new initiative, DPR may consider, among other things, the operations and maintenance impact of the project on DPR's budget; financial sustainability; the equity of the proposal from a system-wide perspective; and consistency of the project with DPR's mission, vision and goals.

APPENDIX III

ARC EMPLOYEE AND CONTRACTOR TITLES¹

Accounting Analyst	Grants Administrator	Preschool Assistant Director
Accounting Director	HR Coordinator	Preschool Director
Accounting Manager	HR Generalist	Preschool Lead
Accounting Supervisor	HR Recruiter	Production Assistant
Admin Assistant	Instructor	Production Supervisor
AP Specialist	Instructor-Small craft ctr	Program Assistant CC
Area Operations Supervisor	Instructor-Small Craft Specialized	Program Substitute Supervisor
Community Center Monitor	Lead Concierge	RecTech IT Support Coordinator
Concierge Supervisor	Lead Environmental Educator	RecTech Site Lead
Deputy Director	Licensed Preschool Assistant	SAC Asst Director
Development Coordinator	Licensed Preschool Assistant Director	SAC Counselor
Development Director	Licensed Preschool Director	SAC Director
Director of Field Operations	Licensed Preschool Lead	SAC Lead Counselor
Director of Rowing	Marketing Coordinator	SAC Substitute Counselor
Diversity Recruiting Manager	Marketing Specialist	Scorer/Timer CC
Early Learning Program Manager	Official CC	Scorer/Timer CW
Employee Relations Manager	Official CC Solo	Senior Area Operations Supervisor
Enrichment Instructor	Official CW BBall	Small Craft Maintenance
Enrichment Lead Program Aide	Official CW BBall Solo	Special Populations Program Lead
Enrichment Program Administrator	Official CW Flag Football	Special Populations Program Mgr
Enrichment Program Aide	Official CW Track	Specialty Camp Asst Director
Environmental Edu Director	Official CW Volleyball	Specialty Camp Counselor
Environmental Educator	Official Differential CC	Specialty Camp Director
Executive Assistant	Official Differential CW BBall	Specialty Camp Instructor
Executive Director	Payroll Administrator	Specialty Programs Administrator
Field Supervisor	Preschool Assistant	Teen Camp Assistant Director

¹ Additional titles maybe added upon mutual agreement of parties.

APPENDIX IV

FACILITIES TO BE PROGRAMMED UNDER THE MASTER SERVICE AGREEMENT

Alki Community Center
Ballard Community Center
Bitter Lake Community Center
Camp Long Environmental Learning Center
Carkeek Park Environmental Learning Center
Delridge Community Center
Discovery Park Environmental Learning Center
Garfield Community Center
Green Lake Community Center
Green Lake Small Crafts Center
Hiawatha Community Center
High Point Community Center
International District/Chinatown Community Center
Jefferson Community Center
Lake City Community Center
Laurelhurst Community Center
Loyal Heights Community Center
Magnolia Community Center
Magnuson Community Center
Meadowbrook Community Center
Miller Community Center
Montlake Community Center
Mount Baker Rowing and Sailing Center
Northgate Community Center
Queen Anne Community Center
Rainier Community Center
Rainier Beach Community Center
Ravenna-Eckstein Community Center
South Park Community Center
Southwest Teen Life Center
Van Asselt Community Center
Yesler Community Center

All satellite program sites associated these listed Advisory Council

ARC will also play a support role in the following facilities and program areas:

Amy Yee Tennis Center
City Wide Lifelong Recreation Programs
City Wide Special Populations Programs
City Wide Sports Program

Appendix V

ACTIVE Net SYSTEM AND FINANCIAL MANAGEMENT

SECTION 1: PURPOSE OF APPENDIX

The purpose of this Appendix is to clarify roles and responsibilities for financial management and cash-handling of program activities that are administered by the Associated Recreation Council (ARC) in Department of Parks and Recreation (DPR) facilities pursuant to the Master Services Agreement, including public registration, facility rentals, membership sales, point-of-sale transactions, transaction fees, and programming fees.

SECTION 2. ROLES OF PARTIES

The parties will work together mutually to ensure that the ACTIVE Net system serves the interest of both parties and more particularly as follows:

Program Fees

- DPR will have the responsibility to configure, maintain, operate, and support ACTIVE NET for programs, spaces, and items sold that are administered by ARC. To the extent possible, DPR will use coding provided by ARC to facilitate its financial reporting requirements.
- Fees will be charged to the public in accordance with established guidelines. DPR shall have the responsibility to collect the appropriate fees from the public and account for these in a transparent and auditable manner.
- Fees associated to ARC-delivered programs will be remitted to ARC pursuant to revenue recognition rules configured in ACTIVE Net. Generally, the program registration revenue will be recognized upon commencement (first session) of the program, point of sale transactions on the day the transaction is made, and facility rental fees on the day(s) the booking occurs.
- Amounts due ARC will be remitted electronically by DPR to ARC twice a week pursuant to the MSA. DPR will have been deemed to satisfy this requirement if 90% of payments due during the year are made within the established timeframes.

Program Scholarship Processes

As envisioned in the MSA, ARC and DPR will identify opportunities to increase access to programs through subsidies and scholarships. Scholarships will be transparently managed in ACTIVE Net in an auditable and agreed upon manner by both parties. The scholarships are managed by DPR's OST (Out of School Time) office. A list of scholarship and subsidies will be included in the ASA.

Collection of Amounts Due from Customers

DPR will have responsibility to ensure that fees charged to program participants are collected in full and shall bear the cost of collection and charge-offs for fees not collected, including credit card chargebacks and NSF fees, and will retain all refund fees. ARC will be responsible for unreimbursed amounts charged to DSHS, DDD, DVR, or DEEL for its programs, as outlined above, but will not be responsible for underpayment from these or other third-party organizations arising out of DPR staff errors, or for cash shortages and overages unless caused by ARC staff. ARC will be responsible for revenue reductions related to program withdrawals and point of sale returns where a refund is fully or partially issued, subject to the provision Program Withdrawal Fees (BSC Revenues) outlined below.

ARC Expense Reimbursements to Parks

DPR will invoice ARC on a quarterly basis for fees that are to be reimbursed pursuant to the Annual Services Agreement. ARC will pay these amounts within thirty (30) days of billing. Generally, these fees include the following:

- ACTIVE Net fees. These fees (including ACTIVE Net transaction, refund, credit card, and electronic check processing fees) will be allocated to ARC in accordance with the percentage of ACTIVE Net revenue that is attributable to ARC
- ARC Cellphone Usage Fees
- Building Monitor Costs (staff employed by DPR to be present during ARC programs)
- Program Support and Staffing Costs
- Participation (PAR) fees

Parks Expense Reimbursements to ARC

ARC will invoice DPR for fees that are to be reimbursed pursuant to the Annual Services Agreement. DPR will pay these amounts within thirty (30) days of billing.

Program Withdrawal Fees

Participants registered for ARC-delivered programs will be assessed a withdrawal fee should they request to cancel participation. DPR will process refunds relating to customer withdrawals from programs or other types of cancellations of services; ARC may retain the associated program costs, as provided in DPR policies, and any refund fee \$50 or higher to cover the times when a participant's late withdrawal impacts the program budget. DPR will retain all refund processing fees under \$50, and all non-refundable program deposits. DPR shall remit ARC's portion of their withdrawal fees within ninety (90) days after the close of each year.

ARC Capital Contributions

DPR will invoice ARC for agreed upon capital contributions pursuant to the Annual Services when the underlying project is substantially complete. ARC will pay these amounts within thirty (30) days of billing.

Admissions, Sales, and Use Taxes

ARC will be responsible for the payment of all applicable Admissions, Excise, Sales, and/or Use Taxes that are attributable to its revenues and operations.

Access, Ownership & Use of Data

DPR will provide and maintain read-only access to ACTIVE Net for authorized ARC employees. Authorized ARC employees may receive or have access to Data and Personal Information of customers in Active Net. ARC shall comply with the terms and conditions set forth in this agreement in its collection, receipt, transmission, storage, disposal, use and disclosure of such Data and Personal Information and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Personal Information under its control or in its possession by all authorized ARC employees. ARC shall be responsible for, and remain liable to, City for the actions and omissions of all Authorized Persons, employees, Subcontractors, and any other parties under ARC's control or direction concerning the safeguarding and treatment of Personal Information. ARC may use the Data strictly as necessary to carry out its obligations under this agreement, and for no other purpose. City Data and Personal Information is deemed to be Confidential Information of the City. In the event of a conflict or inconsistency between this Section and any other section or exhibit related to confidentiality and compliance with laws, the terms and conditions set forth in this Section shall govern and control. For the avoidance of doubt, all City Data and Personal Information collected by ARC as a result of this Contract is owned by the City.

ARC agrees that it shall: (i) keep and maintain all Data and Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure; (ii) use and disclose Data solely and exclusively for the purposes for which the Data, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data or Personal Information for Vendor's own purposes or for the benefit of anyone other than the City, in each case, without the City's prior written consent; and (iii) not, directly or indirectly, disclose Data

or Personal Information to any person other than Authorized Persons, including any, subcontractors, agents, service providers, or consultants (an "Unauthorized Third Party") without express written consent from the City, unless and to the extent required by government authorities, to the extent expressly required, by applicable law. In which case, ARC shall (i) notify the City before such disclosure or as soon thereafter as reasonably possible; (ii) be responsible for and remain liable to City for the actions and omissions of such Unauthorized Third Party concerning the treatment of such Personal Information as if they were Vendor's own actions and omissions; and (iii) require the Unauthorized Third Party that has access to Personal Information to execute a written agreement agreeing to comply with the terms and conditions of this Contract relating to the treatment of City's Data and Personal Information.

ARC may only use the City Data and Personal Information to communicate with End Users who have initiated a request for information from ARC as part of their use of the Services; in response to or to receive information regarding an ARC transaction; and as otherwise permitted by applicable law. For the avoidance of doubt, the provisions of this agreement do not apply to data obtained by ARC separate and apart from this agreement (e.g., where an individual has contacted unrelated to the Services).

ARC shall not use ACTIVE Net Data to engage or enable another party to engage in marketing or targeted advertising without permission from DPR.

Other Services and Items

DPR and ARC will work together to ensure that new and already established programming is set up accurately and are accounted for in ACTIVE Net and improve reporting methods and procedures.

DPR and ARC will agree on any supplemental services to be provided to the other and the method of payment at the time of agreement.

ARC will be entitled to reasonable access to the ACTIVE Net system implemented by DPR. Access will be on a read-only basis and be available from ARC owned computers. DPR is not obligated to provide information to ARC that is not reasonably accessible to DPR. DPR will make its best effort to provide ARC with reporting capabilities to conduct its business including, to the extent reasonably feasible to:

- Allocate revenue by type of revenue (account) and location of service (site)
- List activity participants (for sign-in sheets)
- Report on enrollment figures by activity and activity type of class based on categories used by both organizations that are coded in ACTIVE Net
- Generate detailed and summarized financial reports
- Generate facility utilization reports.

While DPR will have final authority regarding configuration of the ACTIVE Net software, DPR will make reasonable accommodations for ARC coding requests.

DPR will include appropriate ARC staff in deciding new or revised ACTIVE Net policies or

procedures that impact ARC and will make ACTIVE Net training available for appropriate ARC staff.

DPR will absorb the following other costs related to managing the ActiveNet system related to operating the single bank account including, but not limited to:

- Accounting costs for collecting, processing, reconciling and reporting of ARC revenue.
- Transmitting funds to ARC
- Collecting of dishonored payments.
- Reconciling deposits
- Researching and resolving cash-handling problems
- Maintaining the ACTIVE Net system
- Providing ACTIVE Net training for all ACTIVE Net staff users

For year-end invoices that are dated as of the last day of the year, but prepared and transmitted to the other party after that date, the transmittal date will be used for calculating the invoice due date.

APPENDIX VI

INSURANCE REQUIREMENTS AND TRANSMITTAL FORM

City of Seattle

Attachment

This Insurance Requirements and Transmittal Form shall serve as an attachment and/or exhibit form to the ("Contract"), and shall be interpreted and applied together as a single contractual instrument between the City of Seattle ("City") and ("Vendor").

VENDOR: SEND THIS FORM TO YOUR INSURANCE PROFESSIONAL TO COMPLETE THE GREEN BOX AND TO ENSURE COMPLIANCE WITH ALL THE COVERAGE REQUIREMENTS, TERMS AND CONDITIONS REQUIRED BY THE CITY OF SEATTLE.

INSURANCE AGENT/BROKER:

• PLEASE COMPLETE THESE FIELDS SO THAT WE MAY CONTACT YOU IF NECESSARY.

*REQUIRED FIELDS

*NAME: TITLE:

*NAME OF COMPANY

*EMAIL: *TELEPHONE: FAX:

• SEND ORIGINAL CERTIFICATION WITH COPY OF CGL ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED POLICY WORDING AND APPLICABLE ENDORSEMENTS THAT EVIDENCES THE COVERAGE REQUIRED TO:

THE CITY OF SEATTLE PURCHASING SERVICES DIVISION

ATTN:

PO Box 94687

SEATTLE, WA 98124-4678

1. In the "Certificate Holder" field of the certificate of insurance, write "Attention: City of Seattle."
2. Upon award of the Contract, Vendor shall, at its sole expense and for the entire term of the Contract, provide insurance coverage to the City of Seattle ("City") as checked below:

COMMERCIAL GENERAL LIABILITY (CGL), MARINE GENERAL LIABILITY (MGL) OR EQUIVALENT INCLUDING:

PREMISES

PRODUCTS-COMPLETED OPERATIONS

CONTRACTUAL LIABILITY

STOP GAP/EMPLOYER'S LIABILITY (UNLESS NO OBLIGATION TO INSURE WA STATE WC)

MINIMUM LIMITS OF LIABILITY SHALL BE:

\$1,000,000 EACH OCCURRENCE COMBINED SINGLE LIMIT BODILY INJURY AND PROPERTY DAMAGE (CSL)

\$2,000,000 PRODUCTS/COMPLETED OPERATIONS AGGREGATE

\$2,000,000 GENERAL AGGREGATE

\$1,000,000 EACH ACCIDENT/ DISEASE—POLICY LIMIT/ DISEASE—EACH EMPLOYEE STOP GAP/EMPLOYER'S LIABILITY

Sexual misconduct liability at a limit of \$2,000,000 per occurrence/aggregate - CGL shall neither exclude nor sublimit sexual and/or physical molestation claims.

BUSINESS AUTOMOBILE LIABILITY INSURANCE FOR OWNED, NON-OWNED, LEASED AND HIRED VEHICLES AS APPROPRIATE written on a form CA 00 01 or equivalent WITH MINIMUM LIMITS OF LIABILITY OF \$1,000,000 CSL.

NOTE: GARAGE LIABILITY WITH APPROPRIATE COVERAGES AND LIMITS OF LIABILITY MAY SUBSTITUTE FOR CGL AND AUTOMOBILE INSURANCE:

Garage Keeper's Legal Liability (GKLL) insurance to cover vehicles in vendor's bailment. Minimum limit of liability of \$ each vehicle and \$ each occurrence.

"On-Hook" GKLL coverage required with minimum limit of liability of \$ each vehicle.

WORKER'S COMPENSATION INSURANCE FOR WASHINGTON STATE AS REQUIRED BY TITLE 51 RCW.

UMBRELLA/EXCESS/BUMBERSHOOT LIABILITY INSURANCE OVER CGL/MGL/AUTOMOBILE LIABILITY MINIMUM LIMIT OF LIABILITY SHALL BE \$9,000,000 CSL (\$10,000,000 MINIMUM TOTAL LIMITS REQUIREMENT)

PROFESSIONAL LIABILITY INSURANCE WITH MINIMUM LIMIT OF LIABILITY \$ EACH CLAIM

WATERCRAFT/P&I LIABILITY INSURANCE WITH MINIMUM LIMITS OF LIABILITY \$

SHIP REPAIRER'S OR MARINA OPERATOR'S LEGAL LIABILITY INSURANCE COVERING THE VENDOR'S LIABILITY FOR LOSS OR DAMAGE, INCLUDING LOSS OF USE, TO OWNERS OF WATERCRAFT WHILE IN THE VENDOR'S CARE, CUSTODY AND CONTROL FOR THE PURPOSE OF BEING REPAIRED OR SERVICED. MINIMUM LIMITS OF LIABILITY SHALL BE \$ EACH VESSEL

Statutory Workers' Compensation, Employer's Liability Insurance, Jones Act Liability, including an extension for U.S. Longshore & Harbor Workers Act. Policy shall contain an Alternate Employers endorsement in favor of Owner

and its partners. Such insurance shall provide statutory limits for compensation coverage and with minimum limits of \$1,000,000.00 for employers liability.

- CRIME FIDELITY, THEFT, DISAPPEARANCE & DESTRUCTION LIABILITY (TO INCLUDE EMPLOYEE THEFT, WIRE TRANSFER, FORGERY & MAIL COVERAGE, AND CLIENT COVERAGE): WITH MINIMUM LIMIT \$1,000,000 PER OCCURRENCE AND IN THE AGGREGATE.** The policy shall cover "client's property," not just when legally liable and shall have a Joint Loss Payee Endorsement in favor of the City of Seattle.
- TECHNOLOGY ERRORS & OMISSION / PROFESSIONAL LIABILITY INSURANCE WITH AN AGGREGATE LIMIT OF LIABILITY NOT LESS THAN \$ _____ MILLION DOLLARS (\$ _____,000,000).** Such insurance shall cover any and all errors, omissions or negligent acts in the delivery or performance of products, services and/or licensed programs under this agreement. Such Professional Liability insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, identity theft, invasion of privacy, damage/loss/theft of or to data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress. The Professional Liability Insurance retroactive coverage date shall be no later than the effective date of this agreement. Supplier/Vendor shall continuously maintain such insurance or purchase an extended reporting period providing that claims first made and reported to the insurance company within three (3) years after termination of the agreement will be deemed to have been made during the policy period.
- INFORMATION TECHNOLOGY –CYBER LIABILITY (NETWORK SECURITY LIABILITY AND PRIVACY LIABILITY) WITH MINIMUM LIMIT \$ _____ PER OCCURRENCE AND IN THE AGGREGATE.** This shall include, but not be limited to, coverage for any actual or alleged breach of duty, neglect, error, act, mistake, omission, or failure arising out of Vendor's Internet and Network Activities including coverage for, but not limited to, the following events:
An attack that has the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access or unauthorized use of Vendor's computer system; Computer Crime or Information Theft; Denial of Service; Extortion; Introduction, implantation, or spread of a Computer Virus; Loss of Service; Identity Theft; Infringement; Electronic data loss and restoration; Unauthorized Access or Use, including the gaining of access to Vendor's computer systems by an unauthorized person or persons or an authorized person in an unauthorized manner.
- SUBMIT FOR NOTIFICATION COSTS: \$ _____ PER OCCURRENCE**

TERMS AND CONDITIONS:

1. **City of Seattle as Additional Insured:** The CGL/MGL insurance shall include "the City of Seattle" as an additional insured for primary and non-contributory limits of liability.
2. **No Limitation of Liability:** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only; they shall not be construed to limit the liability of Vendor or any insurer for any claim that is required to be covered hereunder to less than the applicable limits of liability stated in the declarations. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by vendor, whether those limits are primary, excess, contingent or otherwise. Vendor expressly understands and agrees that this provision shall override any limitation of liability or similar provision in any agreement or statement of work between the City and Vendor.
3. **Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited:** Vendor's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Vendor's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Vendor's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Vendor's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Vendor or reduced and/or offset against the Contract.
4. **Claims Made Form:** If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this contract. Claims made coverage shall be maintained by the Vendor for a minimum of three (3) years following the expiration or earlier termination of this contract, and the Vendor shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Vendor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.
5. **Deductibles and Self-Insured Retentions:** Any self-insurance retention or deductible in excess of \$ 25,000 that is not "fronted" by an insurer and for which claims the vendor or its third-party administrator is directly responsible for defending and indemnifying must be disclosed on the certificate of liability insurance. Vendor agrees to defend and indemnify the City under its self-insured or deductible layer and upon City's request advise the full delivery address of the individual or department to whom a tender of a claim should be directed.
6. **Notice of Cancellation:** Under RCW 48.18.290 ("Cancellation by insurer") applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than 45 days prior to cancellation (10 days as respects non-payment of premium). As respects

surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium).

7. **Qualification of Insurers:** Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.
8. **Changes in Insurance Requirements:** The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Vendor. Should Vendor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.
9. **Evidence of Insurance:** Vendor must provide the following evidence of insurance:
 - a. A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
 - b. An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL/MGL (and if required Contractor's Pollution Liability insurance policy).
 - c. A copy of all other amendatory policy endorsements or exclusions of Vendor's insurance CGL/MGL policy that evidences the coverage required.

At any time upon the City's request, Vendor shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, Vendor shall also cause a complete and certified copy of the requested policy to be timely furnished to the City.

Send evidence of insurance to the City at the addresses at the top of this form.