

AGREEMENT TO PROVIDE AFTER SCHOOL PROGRAMS,

FOR THE JOINT-USE OF REAL PROPERTY AT  
SUN VALLEY ELEMENTARY SCHOOL

Between the  
SAN RAFAEL SCHOOL DISTRICT  
And the  
YMCA OF SAN FRANCISCO

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THIS AGREEMENT is made this 14th day of August, 2017, by and between the SAN RAFAEL ELEMENTARY SCHOOL DISTRICT, a California public school district of Marin County, California ("District") and THE YMCA OF SAN FRANCISCO, [a California non-profit] ("Contractor/Tenant"), referred to collectively as the "Parties" ("Agreement").

## RECITALS

**WHEREAS**, District owns Sun Valley Elementary School, located at 75 Happy Lane, San Rafael, Marin County, California;

**WHEREAS**, as part of its educational program, the District provides access to after school programs and services at schools within the District;

**WHEREAS**, District desires to provide access to after school programs and services at the School Site as part of the District's educational program;

**WHEREAS**, the delivery of after school programs and services constitutes professional services that are a form of special services exempt from public bidding pursuant to Government Code section 53060 and Public Contract Code section 20111, subdivision (c);

**WHEREAS**, the District has determined that entering into an agreement for the provision of after school programs and services at the School Site is compatible with the educational purpose of the District and is a benefit to the pupils who will attend the school and their families;

**WHEREAS**, Contractor/Tenant is a provider for these services at other District School Sites and is already working with the community served by the District;

**WHEREAS**, District is in need of such special services;

**WHEREAS**, Contractor/Tenant requires space to operate its after school programs and services and directly-related activities, including educational, recreational and child development services for K-8 children, as defined herein and in **Exhibit A**;

**WHEREAS**, District has designated a portion of School Site which is further depicted on **Exhibit A**, upon which the District has One dedicated classroom and up to two transitional classroom spaces as available and agreed to by District with all utilities, infrastructure, furniture and equipment appurtenant thereto, including shared use of available multi-purpose room, and outdoor play area (collectively the "Improvements");

**WHEREAS**, District desires to allow Contractor/Tenant use of the Improvements on the Premises in which Contractor/Tenant shall provide the Program as further detailed in this Agreement including **Exhibit A**;

**WHEREAS**, District, pursuant to section 17527(a) of the Education Code, is authorized "to enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals,

including during normal school hours if the school is in session";

**WHEREAS**, District intends to utilize a portion of the School Site for other purposes during the term of this Agreement;

**WHEREAS**, District, pursuant to section 17529 of the Education Code, has determined that leasing the Premises to Contractor/Tenant will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;

**WHEREAS**, District has determined the facility use described within **Exhibit A**, shall comply with the terms, conditions as outlined within Board Policy #1330, Use of School Facilities.

**WHEREAS**, District has determined that the Contractor/Tenant's Program and/or Activities are valuable to District students. As described in **Exhibit A**, Contractor/Tenant may charge a Program Fee but also agrees to work with District to provide scholarships to families that cannot afford to pay this fee.

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, District and Contractor/Tenant agree as follows:

## **AGREEMENT**

### **1. Use of Property.**

District agrees to allow Contractor/Tenant to perform the Program and Activities, as more fully described in **Exhibit A**, attached hereto and made a part of this Agreement. The Premises subject to this Agreement are described in **Exhibit A**, attached hereto and made a part of this Agreement. Contractor/Tenant shall have use of the Improvements and the Premises to perform the Contractor/Tenant's Activities only, subject to modification by the Parties.

### **2. Condition of Premises.**

The Premises are leased to Contractor/Tenant on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Contractor/Tenant accepts the Premises in "AS IS" condition. Contractor/Tenant acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of Contractor/Tenant's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind District, and Contractor/Tenant expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

### **3. Title to School Site.**

The Parties acknowledge that title to the School Site is held by District.

### **4. Term.**

4.1 The term of this Agreement shall be for two (2) year(s). The commencement date shall be August 23, 2017 ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2019 ("Term").

4.2 At District's sole discretion, this Agreement may be extended on mutually agreed upon terms and conditions beyond the Term described in Section 4.1 for two (2) additional two (2) year term.

4.3 This Agreement can only be renewed by a separate writing executed by both Parties that complies with all of the following provisions:

4.3.1 It specifically authorizes further tenancy by Contractor/Tenant and specifies the terms of that tenancy, and

4.3.2 It is approved by District's governing board.

### **5. Security Deposit.**

5.1 Upon execution of this Agreement, the District may require Contractor/Tenant to deposit with District a Five Hundred Dollars (\$ 500.00) ("Security Deposit").

5.2 If required, the Security Deposit shall secure the timely, full and faithful performance by Contractor/Tenant of each term, covenant and condition of this Agreement. If, at any time, Contractor/Tenant shall fail to make any payment or fail to keep or perform any term, covenant or condition on its part to be made or performed or kept under this Agreement, District may, but shall not be obligated to, without waiving or releasing Contractor/Tenant from any obligation under this Agreement, use, apply or retain the whole or any part of the Security Deposit:

5.2.1 To the extent of any sum due to District;

5.2.2 To make any required payment on Contractor/Tenant's behalf; or

5.2.3 To compensate District for any loss, damage, attorneys' fees or expense sustained by District due to Contractor/Tenant's default.

In such event, Contractor/Tenant shall, within five (5) days of written demand by District, remit to District sufficient funds to restore the Security Deposit to its original sum. No interest shall accrue on the Security Deposit. District shall not be deemed a trustee of the Security Deposit, and may deposit the Security Deposit with District's other funds. Should Contractor/Tenant comply with all the terms, covenants, and conditions of this Agreement and at the end of the term of this Agreement leave the Premises in the condition required by this Agreement, then the Security Deposit, less any sums owing to District, shall be returned to Contractor/Tenant within thirty (30) days after the termination of this Agreement and vacancy of the Premises by Contractor/Tenant.

5.3 District may require Contractor/Tenant to deposit \$50.00 for each set of keys issued to Contractor/Tenant for the Premises ("Key Deposit"). District shall provide Contractor/Tenant with a reasonable number of sets of keys in proportion to the square footage or number of classrooms within the Premises. Contractor/Tenant shall return each set of keys to District upon Contractor/Tenant's vacancy of the Premises. Contractor/Tenant's failure to return each set of keys shall result in District retaining the Key Deposit. If Contractor/Tenant was not required to

make a Key Deposit, the District may reduce the Security Deposit by the amount of the Key Deposit multiplied by the number of sets of keys that Contractor/Tenant failed to return to District.

## **6. Rent.**

6.1 For and in consideration of the use of the Premises for the Term of this Agreement, Contractor/Tenant agrees to pay the District the sum outlined in Board Policy 1330 Use of School Facilities. Rent for the first month shall be due upon commencement of this Agreement. Rent shall be due on the first of each month until the expiration or termination of this Agreement.

6.2 Contractor/Tenant shall pay promptly to District, the monthly Rent on the first day of each month in advance during the term of the Agreement, without deduction, setoff, prior notice or demand.

6.3 If District does not receive any installment of Rent or any other sum due from Contractor/Tenant by 4:00p.m. within fifteen (15) days after such amount is due, Contractor/Tenant shall pay to District, as additional rent ("Additional Rent"), a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Contractor/Tenant. Acceptance of such late charge by District shall in no event constitute a waiver of Contractor/Tenant's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

6.4 All taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, which, prior to or during the Term of this Agreement, are assessed, levied, or imposed upon the School Site, the District, or Contractor/Tenant or become due and payable which Contractor/Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Contractor/Tenant's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Contractor/Tenant or failure on Contractor/Tenant's part to comply with the terms of this Agreement, shall be deemed to be Additional Rent and, in the event of nonpayment by Contractor/Tenant, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the Rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.5 Any amount due to District not paid when due shall bear interest at one and one-half percent (1.5%) per month commencing thirty (30) days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges

owing pursuant to this Agreement, shall constitute Additional Rent and shall not excuse or cure any default by Contractor/Tenant under this Agreement

## **7. Utilities.**

District shall make all necessary payments for all utilities for the Premises. Contractor/Tenant is responsible for any cost associated with their installation and maintenance of telephone, data, internet, cable, etcetera. Contractor/Tenant is also responsible for providing their own special custodial services and may be responsible for any additional custodial expenses they incur related to any shared space.

## **8. Maintenance and Repairs.**

8.1 District shall maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery. Contractor/Tenant acknowledges and accepts that the Premises are leased in "AS IS" condition.

8.2 District makes no representations or warranties for the condition of the Property as it exists.

8.3 Contractor/Tenant shall have no maintenance or repair obligations with respect to the Premises. Contractor/Tenant hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of said Civil Code.

## **9. Use of the Premises.**

9.1 Contractor/Tenant shall use the Premises solely for the purpose of the Program described in **Exhibit A**. Contractor/Tenant shall not use the Premises for any use other than that specified in this Section without the prior written consent of the District.

9.2 Contractor/Tenant agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and to the operation of the Program, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Program. The execution of this Agreement shall be subject to the Contractor/Tenant obtaining any and all permits or approvals which may be required in order for the Contractor/Tenant to operate the Program on the Premises. Contractor/Tenant shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto. Contractor/Tenant shall indemnify, defend, and hold District harmless against any loss, expense, damage, claims, attorneys' fees, or liability arising out of failure of Contractor/Tenant to comply with any applicable law, regulation, rule, or ordinance.

9.3 Contractor/Tenant shall not commit or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse

shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.

9.4 Any uses which involve the serving and/or sale of alcoholic beverages or illegal drugs and/or the conducting of games of chance are prohibited on the Premises. Contractor/Tenant shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises at all times. Contractor/Tenant shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and/or welfare or morally objectionable as unsuitable for a public educational facility. Contractor/Tenant agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.

9.5 If required, Contractor/Tenant shall obtain a use permit from the City of San Rafael for Contractor/Tenant's use throughout the term of this Agreement. Contractor/Tenant shall require all subcontractors, licensees, and invitees, to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.

9.6 Contractor/Tenant represents that it is qualified to administer and operate the Program. Contractor/Tenant shall be solely responsible for the administration and operation of the Program, including the hiring and supervision of all employees. Contractor/Tenant shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with Contractor/Tenant's activities on the Premises.

9.7 Contractor/Tenant's use of the Outdoor Area shall be limited to playground use for its students during the operation of the Program as described in **Exhibit A**. Contractor/Tenant may provide its own play equipment that is not of any permanent nature and/or is not affixed to the Outdoor Area in any manner whatsoever. Contractor/Tenant must remove its play equipment at the end of Agreement term. The District is in no manner responsible for damage or theft of Contractor/Tenant's Improvements, including but not limited to its play equipment. Contractor/Tenant must maintain and repair any damage to the Outdoor Area to at least as good a condition as the Outdoor Area existed as of the Commencement Date of this Agreement.

9.8 Contractor/Tenant may arrange with the District for shared, non-exclusive use or for short term or occasional use of other portions of the School Site, including but not limited to the playground and parking portions of the School Site, subject to the provisions of Education Code section 38130, et seq., the "Civic Center Act", and District policy and regulations regarding the same.

## **10. Qualifications / Performance of Services.**

10.1 Contractor/Tenant Qualifications. Contractor/Tenant is specially trained, experienced, competent and fully licensed to provide the Program services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local and District laws, ordinances, policies and regulations, as they may apply.

10.2 Standard of Care. Contractor/Tenant represents that Contractor/Tenant has the qualifications and ability to perform the Program services in a professional manner, without the advice, control or supervision of District. Contractor/Tenant's services will be performed in accordance with all applicable laws, ordinances and regulations, District policies and regulations, and generally and currently accepted principles and practices.



## **11. Inspection of Premises.**

Contractor/Tenant agrees to provide District with a set of keys for any Improvement installed on the Premises. Contractor/Tenant shall permit District and/or its agents to enter the Premises and Improvements at any reasonable time for the purpose of inspecting the Premises and/or Improvements and/or exhibiting the Premises to prospective lessees, occupants, purchasers or mortgagees.

## **12. District's Evaluation of Contractor/Tenant and Contractor/Tenant's Employees and/or Subcontractors.**

The District may evaluate Contractor/Tenant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

12.1 District employee(s)' evaluation of Contractor/Tenant and its employees and subcontractors and each of their performance.

12.2 Announced and unannounced observance of the Program, Contractor/Tenant and its employee(s), and/or subcontractor(s).

12.3 Review of Contractor/Tenant documents and plans, including but not limited to Program plans, maintenance plans and records and financial statements.

12.4 This right to evaluate shall not confer upon District any liability for any Activity conducted by Contractor/Tenant. If the District obtains any confidential information, including but not limited to, personnel or student information, in the process of evaluation, it shall maintain the confidentiality of that information to the extent allowed by law.

## **13. Holding Over and Surrender of Premises.**

13.1 This Agreement is not renewable except as set forth in **Section 4**. At the end of the Term or renewal term, the Contractor/Tenant shall be a hold-over Contractor/Tenant and subject to eviction, an unlawful detainer action, and/or all other remedies available to the District. Should Contractor/Tenant hold over in possession after the expiration of the original term or any extended term of this Agreement, the holding over shall not be deemed to extend the Term or renew the Agreement, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth at one hundred fifty percent (150%) of the annual rental (Holding Over Rent) of the last expiring Term unless Contractor/Tenant and District mutually agree to a different rental amount.

13.2 On the last day of the Term hereof, or on sooner termination of this Agreement, Contractor/Tenant shall surrender to District the Premises and any existing Improvements that District agrees to accept in its sole discretion in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. This condition shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to the District of any Improvements identified by the District to remain on the School Site.

13.3 At the end of the Term or on sooner termination of this Agreement, Contractor/Tenant shall remove from the Premises all of Contractor/Tenant's personal property, trade fixtures, and any Improvements which District agreed would be removed by Contractor/Tenant. All property and Improvements not so removed shall be deemed abandoned by Contractor/Tenant.

13.4 In the event that Contractor/Tenant fails to timely remove any Improvements or personal property that District has not accepted ("abandoned property"), District, upon fifteen (15) days written notice, may either (1) accept ownership of the abandoned property with no cost to the District, or (2) remove the abandoned property at Contractor/Tenant's sole cost. In the event that District chooses to accept ownership of the abandoned property Contractor/Tenant shall execute any necessary documents to effectuate the change in ownership of the abandoned property. In the event that District removes the abandoned property, Contractor/Tenant shall pay all invoices for the removal of the abandoned property within thirty (30) days of receipt of such invoices. If the Premises are not so surrendered at the expiration or termination of this Agreement, Contractor/Tenant shall indemnify District against any loss or liability resulting from delay by Contractor/Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding Contractor/Tenant or losses to District due to lost opportunities to lease to succeeding Contractor/Tenants.

#### **14. Termination.**

##### **14.1 Termination for Convenience.**

14.1.1 The District may terminate this Agreement by written notification to Contractor/Tenant ninety (90) days prior to the effective date of the termination.

14.1.2 The Contractor/Tenant may terminate this Agreement by written notification to District one hundred and twenty (120) traditional school days prior to the effective date of the termination. The Contractor/Tenant acknowledges that this one hundred and twenty (120) school day notice period is acceptable so that the District can attempt to find another Contractor/Tenant.

14.1.3 Neither Party shall be required to provide just cause for termination in the written notification.

14.2 Termination for Cause. Either party may terminate this Agreement immediately for cause. Cause shall include, without limitation:

14.2.1 Material violation of this Agreement by the Contractor/Tenant or District;  
or

14.2.2 Any act by Contractor/Tenant exposing the District to liability for personal injury, physical injury, including death, or property damage; or

14.2.3 Contractor/Tenant is adjudged a bankrupt, Contractor/Tenant makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor/Tenant's insolvency.

14.2.4 If the District terminates for cause, Contractor/Tenant's rights in the Premises shall terminate upon Contractor/Tenant's receipt of notice of termination from the District. Upon receipt of the District's notice of termination, Contractor/Tenant shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining Improvements or property and eject Contractor/Tenant or any of Contractor/Tenant's subcontractors, assignees or other person or persons claiming any right under or through Contractor/Tenant or eject some and not others or eject providing for termination. Any termination under this Section shall not

release Contractor/Tenant from the payment of any sum then due to District or from any claim for damages or Rent previously accrued or then accruing against Contractor/Tenant.

14.3 The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District.

14.4 Upon termination of this Agreement, Contractor/Tenant shall be responsible to restore the Premises and any other portions of the Property used by Contractor/Tenant to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted as set forth in Section 13.

## **15. Title to and Removal of Contractor/Tenant's Personal Property.**

15.1 Title to removable furniture, equipment and/or other personal property placed by Contractor/Tenant onto the Premises, but not affixed thereto, shall be held solely by Contractor/Tenant. These items shall remain the personal property of Contractor/Tenant and shall not be treated as real property or become a part of the School Site unless District accepts or Contractor/Tenant abandons any of this personal property at the end of the Term.

## **16. Tuberculosis, Fingerprinting and Criminal Background Verification.**

Contractor/Tenant shall ensure any employee, representative or consultant providing services shall have been tested and found free of active tuberculosis pursuant to Ed. Code 49406. Contractor/Tenant shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). Contractor/Tenant shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any Contractor/Tenant activity and prior to permitting contact with any District pupils.

## **17. Indemnification.**

To the fullest extent permitted by California law, Contractor/Tenant shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the operation of the Program and/or the, condition, use or occupancy of the Premises, all Improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District, Contractor/Tenant shall defend the same at Contractor/Tenant's expense. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the Contractor/Tenant, its agents, officers, employees, licensees and invitees. Contractor/Tenant shall keep the School Site clear of all liens, encumbrances and/or clouds on the District's title to any portion of the School Site.

## **18. Insurance.**

18.1 Contractor/Tenant shall place all insurance with insurers with a current A.M. Best insurance rating of no less than A-minus: VII. Contractor/Tenant shall furnish District with the

original certificates and amendatory endorsements effecting coverage's required. The insurance carrier, deductibles and/or self-insured retentions shall be approved by District. Prior to the Commencement Date Contractor/Tenant shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that:

- 18.1.1 The policies shall not be canceled or altered without thirty (30) days prior written notice to District;
- 18.1.2 The coverage is primary and any coverage by District is in excess thereto;
- 18.1.3 The policies contain a cross liability endorsement; and,
- 18.1.4 The policies name District and its trustees, officers, employees, representatives and agents as additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, Contractor/Tenant shall deliver to District a new certificate of insurance and endorsements consistent with all of the terms and conditions required in connection with the original certificate of insurance and endorsements described above.

18.2 Contractor/Tenant acknowledges that the District's insurance of the School Site will not insure any of Contractor/Tenant's property or Improvements made by Contractor/Tenant. Contractor/Tenant shall insure all Improvements and personal property on the Premises or used in connection with the Program or the Agreement.

18.3 Contractor/Tenant shall, at Contractor/Tenant's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Contractor/Tenant against claims and liabilities arising out of the operation of the Program and/or the condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Contractor/Tenant's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non--owned. Contractor/Tenant's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than **Two Million dollars (\$2,000,000)** for bodily injury or death and property damage as a result of any one occurrence and a **Two Million dollar (\$2,000,000)** general aggregate policy limit. In addition, Contractor/Tenant shall obtain a products/completed operations aggregate policy in the amount of **Two Million dollars (\$2,000,000)**.

18.4 During the term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the leased Premises or any contents, each of the parties hereto, and all persons claiming under each of the parties, shall look first to any insurance in its favor before making any claim against the other party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions waiving any claim against the other party for loss or damage within the scope of the insurance and each party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other party.

18.5 During the term of this Agreement, Contractor/Tenant shall comply with all provisions of law applicable to Contractor/Tenant with respect to obtaining and maintaining workers' compensation insurance.

**19. Signs.**

Contractor/Tenant shall, at Contractor/Tenant's cost, have the right and entitlement to place Contractor/Tenant's signs on the Premises, and otherwise to advertise its services, provided Contractor/Tenant obtains the approval and written consent of District. Any signs shall be at Contractor/Tenant's cost and in compliance with any local ordinances pertaining thereto. In connection with the placement of such signs, District agrees to cooperate with Contractor/Tenant in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement Contractor/Tenant shall, at its sole cost and expense, maintain the signage and all Improvements and appurtenances in good condition and repair. At the termination of this Agreement, Contractor/Tenant shall remove any signs which it has placed on the School Site in which the Premises are located, and shall repair any damage caused by the installation or removal of those signs.

**20. Surrender of Agreement Not Merger.**

The voluntary or other surrender of this Agreement by Contractor/Tenant, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

**21. Notice.**

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

**SAN RAFAEL SCHOOL DISTRICT**

310 Nova Albion Way

San Rafael, CA 94903

Attn: Assistant Superintendent, Business  
Services

**YMCA of SAN FRANCISCO**

1500 Los Gatos Drive

San Rafael, CA 94903

Attn:

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service with proof of delivery. Any notice given by certified or registered mail shall be effective five (5) business days after deposit in the United States mail.

**22. Subcontract, Assignment and Sublease.**

Neither party shall assign its rights, duties or privileges under this Agreement, nor shall either party attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other party. Contractor/Tenant shall not sublease any portion of the Premises without the prior written consent of the District.

**23. No Rights in Third Parties.**

This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

**24. Joint and Several Liability.**

If Contractor/Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Contractor/Tenant hereunder.

**25. Drug-Free / Smoke Free Policy.**

No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants, employees, or contractors are to use drugs on these sites.

**26. Anti-Discrimination.**

It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore Contractor/Tenant agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900, Labor Code Section 1735, and District policy. In addition, Contractor/Tenant agrees to require like compliance by its subcontractor(s), if any.

**27. Independent Contractor Status.**

This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

**28. Limitation of District Liability.**

Other than as provided in this Agreement, District's financial obligations shall be limited to those expressly provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue arising out of or in connection with this Agreement for the services performed in connection with the Program and this Agreement.

**29. Entire Agreement of Parties.**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

**30. California Law.**

This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Marin County, California.

### **31. Compliance with all Laws.**

31.1 Contractor/Tenant shall at Contractor/Tenant's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises and/or Program, and shall faithfully observe in Contractor/Tenant's operation of the Program and/or use of the Premises and operation of the Program, all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations) in its use of the Premises, and all District policies, rules and regulations.

31.2 The judgment of a court of competent jurisdiction, or Contractor/Tenant's admission in an action or a proceeding against Contractor/Tenant, whether the District be a party to it or not, that Contractor/Tenant has violated any law or regulation or ordinance in Contractor/Tenant's operation of the Program and/or use of the Premises shall be considered conclusive evidence of that fact as between the District and Contractor/Tenant. If Contractor/Tenant fails to comply with any such law, regulation or ordinance, the District reserves the right to take necessary remedial measures at Contractor/Tenant's expense, for which Contractor/Tenant agrees to reimburse the District on demand.

31.3 Contractor/Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and/or any Improvements by Contractor/Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Contractor/Tenant shall comply with all Hazardous Materials Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Laws" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

### **32. Cooperation with Other Occupants of the Property.**

It is understood and recognized by Contractor/Tenant that the School Site, of which the Premises is a part, will be used by other parties, including District, and Contractor/Tenant shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, policing of common areas, custodial services, and security measures.

**33. Attorneys' Fees.**

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**34. Waiver.**

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**35. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

**36. Counterparts.**

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**37. Captions.**

The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

**38. Severability.**

Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

**39. No Subordination.**

Contractor/Tenant agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Contractor/Tenant's leasehold interest hereunder or upon the Improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

**40. Incorporation of Recitals and Exhibits.**

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

ACCEPTED AND AGREED on the date indicated below:

Dated: \_\_\_\_\_, 20\_\_ Dated: \_\_\_\_\_, 20\_\_

**SAN RAFAEL SCHOOL DISTRICT**

**YMCA OF SAN FRANCISCO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Douglas Marquand

Print Name: -----

Print Title: Asst. Supt. Business Services

Print Title: \_\_\_\_\_



## **EXHIBIT “A”**

### **YMCA RESPONSIBILITIES:**

- \* Operate every school day after school from dismissal until 6:30pm.
- \* Take accurate attendance; document and monitor children's schedules, arrivals and departures.
- \* YMCA will adhere to the SRCS Board policies
- \* Offer academic support and enrichment.
- \* Open program to all students, although YMCA will establish an initial capacity for the program of approximately 100 Sun Valley Students
- \* Collect all appropriate program fees.
- \* Comply with the terms and conditions of SRCS Board Policy 1330 Use of School Facilities. Based on the YMCA program fee structure, the use of facility fees will be classified as a Group 3. The current rate for classroom use is \$9.00 per hour. **Estimated cost of facility use shall not exceed \$1,300 per month for facilities outlined in this Agreement during 2017-18.**

### **The Sun Valley School Site:**

- \* Facility use – Exclusive use of One (1) classrooms. Non-exclusive use of boys and girls bathroom facilities.
  - \* Provide non-dedicated space, based on availability, from school dismissal until 6:30pm to support the after school program. This includes, but is not limited to, additional classrooms, multi-purpose room, library, and the athletic fields.
  - \* Promote linkage between after school provider staff and school day administration and teachers regarding homework, curricula, and facilities for a seamless program.
  - \* Assist in obtaining information exchange agreements from parents of participating students to facilitate academic and/or social emotional support.
  - \* Provide space for Site Director and associated staff members to perform work duties during prep time approximately 30 minutes before the beginning of YMCA afterschool program.
- Assist in student recruitment and facilitation of member registration
- \* Allow YMCA staff and members upon supervision to utilize schools guest Wi-Fi while on Sun Valley Site. Assist in connection to guest Wi-Fi if problems arise.
  - \* Sun Valley will provide facility space on site for YMCA to facilitate registration days and assist with parent/ guardian communication for annual registration.
  - \* YMCA recognize that the SRCS District are not responsible for the program fee. The Program fee is the responsibility of the parent/guardian of the program participant.

### **Joint Responsibilities:**

- \* Representatives from all parties will meet each semester to provide ongoing evaluation of the program.

- \* Club, Site and District staff will collaborate in training opportunities.

**Program Fees:**

- \* The YMCA registration information, annual membership fees, monthly program fee, hours of operation, behavior expectations, are materially outlined in the YMCA document titled “Ensure a Brighter Future” 2017-18 YMCA Youth Development Admission Information.
- \* The 2017-18 full-time program fee defined as program participants having the ability to attend the program every school day, will be up to \$362 per month.
- \* The 2017-18 part-time program fee, defined as program participants having the ability to attend the program any one through four days each week during the month, shall be from up to \$106 to \$302 per month.
- \* YMCA reserves the right to remove program participants for failure to pay the agreed-to program fee upon registration in the program if the program fee is not received within two weeks of the due dates.
- \* YMCA recognize that the SRCS District are not responsible for the program fee. The Program fee is the responsibility of the parent/guardian of the program participant.

**Tenant's Activities and Program**

The "Activities" for which Contractor/Tenant is permitted to use the Premises are limited to the activities included in the YMCA document titled, “Ensure a Brighter Future”. Any additional activities shall only be permitted with the prior express written approval and consent of the District.

1. Program Specifications:
  - a. The Program provided by Contractor/Tenant shall conform to the following specifications:
  - b. Contractor/Tenant shall accept applicants for its Program or Activities to be provided on the Premises on the basis of a priority placement:
    - i. Children of employees of the District who attend Sun Valley Elementary School shall have the first priority.
    - ii. Any other children attending Sun Valley Elementary School shall have the next priority. If space is limited, acceptance priority shall be in the following priority order: continuing participants; siblings of continuing participants; Kindergarten students; children requiring full-time care.