

AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into this 1st day of July, 2013, by and between the City of Overland Park, Kansas (the "CITY"), and the Johnson County Park & Recreation District (the "DISTRICT").

WHEREAS, the City of Overland Park is receiving an entitlement grant from the Department of Housing and Urban Development for fiscal year 2013, said grant being designated as CFDA 14.218 - Community Development Block Grants/Entitlement Grants, and

WHEREAS, the DISTRICT provides quality parks and supervised year-round recreational programs and leisure services for Johnson County citizens of all ages; and

WHEREAS, the DISTRICT had previously awarded day camp scholarships for low- to moderate-income residents through the Johnson County Community Block Grant program; and

WHEREAS, the CITY is a CDBG entitlement city and Overland Park residents are not eligible for day camp scholarships through the Johnson County Community Block Grant program; and

WHEREAS, the CITY has approved and proposes to make a grant from the Community Development Block Grant ("CDBG") program to provide scholarship assistance for the DISTRICT's summer day camp program for lower income Overland Park working families, as described in the grant proposal for the 2013 Program Year.

NOW, THEREFORE, in consideration of the promises and covenants of this Agreement, the parties hereto agree as follows:

I. STATEMENT OF SERVICES

The DISTRICT shall use the CDBG grant solely for the purpose of providing lower income Overland Park working families' scholarship assistance for the DISTRICT's summer day camp program.

The DISTRICT shall provide eligibility determination for applicants for the scholarship program funded by this grant. The following factors will be used to determine eligibility:

- a. The applicant is the parent or legal guardian of the scholarship recipient(s) and is a resident of the CITY; and
- b. The scholarship recipient(s) resides with the applicant; and
- c. The total income for all members of the applicant's household does not exceed 80% of the median income of the Kansas City metropolitan area, as determined by the Secretary of Housing and Urban Development; and
- d. The applicant is ineligible to receive financial assistance for child care through Social Rehabilitation Services or other social service programs.

II. TERM

The term of this Agreement shall be for the period commencing on July 1, 2013, and ending June 30, 2014, subject to the terms and conditions hereinafter contained.

III. FUNDING

The CITY agrees to disburse to the DISTRICT a grant of up to \$27,660 from fiscal year 2013 CDBG funds, payments subject to conditions hereinafter stated and those applicable regulations as established by the Department of Housing and Urban Development, Catalog of Federal Domestic Assistance Number 14-218.

The CITY agrees to disburse the CDBG funds on the following schedule:

- a. Funds shall be disbursed by the CITY upon request by the DISTRICT, based on funds expended and costs incurred quarterly. Final request for funds is to be made within thirty (30) days of the termination of this Agreement. The grant will continue for the term specified as long as the DISTRICT is operational and the CITY has not exercised any right to terminate early.
- b. The DISTRICT shall provide to the CITY, within thirty (30) days of the termination of this Agreement, a full accounting of the expenditure of all grant funds. All grant funds unexpended as of the end date of this agreement, shall be retained by or returned the CITY as unexpended funds.

Any program income derived from the Community Development Block Grant shall be reported to the CITY and shall be used by the DISTRICT for purposes as outlined in this Agreement and subject to the requirements and conditions herein specified and with applicable federal requirements.

The cost and liability to the CITY for work under this Agreement shall not exceed the amount of fiscal year 2013 CDBG funds authorized and available to the CITY for this project and shall be subject to the release of funds by the Department of Housing and Urban Development.

IV. RECORDS AND REPORTS

The DISTRICT agrees to maintain records and submit a report covering the period of every payment request to the CITY with each payment request and within thirty (30) days of the termination of this Agreement. Such records and reports, at a minimum, shall include services provided and client totals by low/moderate income, race as defined by HUD, ethnic group, head of household, city of residence and other information as may be required by the CITY and shall be in a form as approved by the CITY. These records shall also include all documentation pertaining to the applicant's eligibility for the scholarship program funded by this grant.

The DISTRICT shall provide the CITY with the DISTRICT policy and procedure for determining dollar amounts to be distributed to clients. The DISTRICT shall provide the CITY with access to all records upon request. The DISTRICT agrees to maintain all records for five (5) years following the termination of this Agreement.

V. SPECIAL REQUIREMENTS

The DISTRICT agrees to comply with applicable CITY zoning ordinances, building code requirements and other applicable CITY and state codes, ordinances, or licensing requirements.

The DISTRICT understands that execution of this Agreement is in no way a waiver or approval of any provision that may be required under applicable law or rules and regulations of the Department of Housing and Urban Development.

The DISTRICT understands and agrees that the administration and expenditure of funds from this grant shall be in compliance with CDBG regulations; provided further, the DISTRICT agrees to be solely responsible for ensuring said compliance. The DISTRICT further certifies that it will comply with the applicable provisions of the Code of Federal Regulations 24 CFR, Part 570, to include, but not limited to, 24 CFR, Section 570.502, and Office of Management and Budget Circulars, to include, but not limited to, Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997; provided further, that the DISTRICT agrees to comply with applicable federal law and regulations described in 24 CFR, Part 570, Subpart K including the Conflict of Interest provisions at 24 CFR Part 570, Subpart K, 570.611.

The DISTRICT understands that, as a sub-recipient, if it expends \$500,000 or more in federal awards during the sub-recipient's fiscal year that it must meet the audit requirements of Circular A-133 for that fiscal year. If the funds passed through to the sub-recipient are the only federal funds it receives, then the sub-recipient may qualify for a program-specific audit instead of a single audit.

On or before the beginning date of this agreement, the DISTRICT agrees to complete and submit a "Certification of Audit Requirement and Schedule of Federal Expenditures" to CITY. A sample form is attached to this agreement. If the DISTRICT meets the conditions above, the DISTRICT agrees to submit the most recent A-133 audit available at the beginning date of this agreement and to provide City a copy of any A-133 audit completed during the agreement period within 30 days of its completion.

Title 31 U.C.S., Section 1352, requires all sub-grantees, contractors, subcontractors, and consultants who receive federal funds via the CITY to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

In addition, contract applicants, recipients, and sub-recipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the Agreement period.

Necessary forms are available from the Grant Program Coordinator, Community Planning and Services, Department of Planning and Development Services of the CITY, and must be returned to the CITY with other contract documents. It is the responsibility of the general contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the CITY with the same.

VI. NON-DISCRIMINATION

A. Non-Discrimination. The DISTRICT agrees that:

1. During the performance of this Agreement or any subcontract resulting thereof, the DISTRICT, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, *et seq.*) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
2. In all solicitations or advertisements for employees the DISTRICT, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. If the DISTRICT, a subcontractor or vendor fails to comply with the manner in which the

DISTRICT, subcontractor or vendor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the DISTRICT, subcontractor or vendor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the CITY;

4. If the DISTRICT, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, the DISTRICT, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the CITY;
5. The DISTRICT shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. Age and ADA Discrimination. The DISTRICT further agrees that the DISTRICT shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*), and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

VII. GENERAL ADMINISTRATION

- A. It is understood and agreed that the written terms and provisions of the Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the CITY and the DISTRICT, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way, the written Agreement.
- B. The parties agree that neither party shall assign or transfer their interest in this Agreement without the written consent of the other.
- C. The failure of the CITY or the DISTRICT to insist on strict performance of any of the terms and conditions herein shall not be deemed a waiver of the right to demand strict performance of that or any other provision at any time thereafter.
- D. The DISTRICT agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of the DISTRICT or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this Agreement, provided, however, that in no event shall the DISTRICT be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, and amendments thereto.
- E. The DISTRICT shall maintain, either through traditional insurance, in whole or in part, or through a risk management reserve fund, in whole or in part, coverage of the types and in such amounts as may be necessary to protect itself and the CITY against all hazards or risks of loss as hereinafter specified, whether such hazards or risks of loss be generated by the DISTRICT, its officers, employees, or agents, and shall provide the CITY with evidence of such coverage. Provided that in no event shall the DISTRICT be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, and amendments thereto.

VIII. TERMINATION

A. Termination for Convenience

The CITY may, when the interests of the CITY so require, with sixty (60) days' notice, terminate this Agreement in whole or in part, for the convenience of the CITY. The CITY shall give written notice of the termination to the DISTRICT, specifying that the Agreement, or a designated part thereof, shall be terminated. In the event the Agreement is terminated for convenience of the CITY, the CITY will disburse funds for costs incurred and funds expended by the DISTRICT prior to the date of termination.

B. Termination for Default

If the DISTRICT is violating any of the conditions of this Agreement or is executing the same in bad faith, the CITY may serve written notice on the DISTRICT of its intention to terminate the Agreement and unless, within seven (7) days after the serving of the notice, a satisfactory arrangement has been made for the continuance thereof, this Agreement shall terminate. The CITY retains the right to withhold the grant or any portion thereof for damages incurred as a result of the DISTRICT's breach of this Agreement.

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

X. WAIVER

The CITY's failure to act with respect to a breach by the DISTRICT does not waive its right to act with respect to subsequent or similar breaches. The failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CITY and the DISTRICT for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the CITY and the DISTRICT with respect to this Agreement.

XII. GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas.

The remainder of this page left blank intentionally.

Executed in triplicate the date first above written.

CITY OF OVERLAND PARK, KANSAS

JOHNSON COUNTY PARK AND RECREATION
DISTRICT

By _____
Carl Gerlach, Mayor

By _____
Nancy Wallerstein, Board Chair

ATTEST:

ATTEST:

Marian Cook, City Clerk

William Flohrs, Board Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Stephen B. Horner, Senior Assistant City Attorney

Bill Tuley, District Legal Counsel