

**OPERATIONAL SERVICES AGREEMENT FOR LEAD AGENCY
OPERATION OF GRANNY'S PARK**

This Agreement is made and entered into this 1st day of December 2015, by and between the CITY OF FRESNO, a municipal corporation ("CITY") and BAPTIST TEMPLE CHURCH, a 501C(3) nonprofit corporation ("USER"). CITY and USER are sometimes individually referred to as Party and collectively as Parties.

RECITALS

A. CITY is the owner of the property located at 2024 E. Pontiac Way and commonly known as the Granny's Park ("Center").

B. CITY's Director of Parks, After School, Recreation and Community Services ("Director") (including Director's designated representatives) is charged with the responsibility of supervising the use of CITY's parks and recreational facilities.

C. USER is organized as a nonprofit corporation to provide services and opportunities for all ages with an emphasis on education and community development.

D. USER has an objective of providing recreation, leadership and physical fitness activities to the public.

E. CITY and USER desire to enter into an Agreement to operate the Park, pursuant to the terms hereof.

F. The right to use and operate the Center without payment of full fair market value rent conveys a valuable benefit. CITY intends to grant use of the Center to USER on the condition that USER will provide programming that meets or exceeds a minimum amount of community services set forth in this Agreement ("Program"). Community Services are broadly defined as including programs, services, and activities that are consistent with the CITY's Parks, After School, Recreation and Community Services Department ("PARCS") mission of creating 'community' through people, parks, and programs by enriching the lives of Fresno citizens through investment in park and open spaces for recreation, and providing diverse opportunities for human development and social interaction.

In light of the foregoing, the Parties hereto do hereby agree as follows:

AGREEMENT

SECTION 1. TERM OF AGREEMENT.

This Agreement shall be for a term commencing on December 1, 2015, and expiring no later than November 30, 2018 unless terminated pursuant to the provisions of this Agreement. CITY may extend this Agreement by granting up to two (2) one-year extensions to USER. This Agreement may be terminated by the CITY or USER at any time and upon fifteen (15) days prior written notice to the other party, as further provided herein. Regardless of the date of execution of this Agreement, the effective date shall be December 1, 2015.

SECTION 2. CITY'S OUTSOURCING POLICY.

A. The Center was constructed to provide Community Services. This Agreement grants certain use and operation of the Center without payment of facility use fees. In exchange for the authority to use and operate the Center as set forth herein, USER agrees to provide, at a minimum, the Community Services identified in this Agreement. USER acknowledges that its agreement to provide at least the minimum level of Community Services and Programs to the CITY and the community is a material provision of this Agreement. USER understands that CITY is relying upon USER actually delivering the Program as contained within **Exhibit A**, and during hours of operations that are comparable to those currently operated by the CITY.

B. USER acknowledges and agrees that any religious or political activity is subject to a separate rental agreement to be executed by USER and CITY.

C. CITY shall handle all reservation requests from the public to rent the Center for an event, unless Agreement is amended by both Parties.

D. CITY may add staff/programming to the site at later date. CITY shall pay for a portion of utilities based on square footage of designated usage space.

E. CITY's Director may amend the programming and billing responsibilities, with written consent of both Parties.

F. USER recognizes and has partnered with Every Neighborhood Partnership (ENP), and Care Fresno for daytime use of the facility as a gathering center for community seniors and residents. **Exhibit A** explains the intended use by USER, ENP, and Care Fresno.

SECTION 3. CONTRACT COMPLIANCE AND MONITORING.

A. USER shall be subject to the standards of performance as set forth in this Agreement. USER shall submit an annual report regarding USER's performance of the Community Services, Programs and other requirements necessary for CITY to monitor review and evaluate the performance of the USER. USER's reports must be in a form approved by the CITY.

B. Records, Reports and Audits of USER:

a. Preservation of Records. USER shall preserve and make available its records:

- i. For the period of four (4) years from the date of termination or expiration of this Agreement; or
- ii. For such longer period, if any, as may be required by applicable law.

b. Examination of Records. At any time during normal business hours, and as often as may be deemed necessary, USER agrees that the CITY or any of its respective authorized representatives shall have access to and the right to examine all of USER's records with respect to all matters covered by this Agreement. USER also agrees that the CITY or any of its authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all applicable

contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. CITY may examine records pursuant to this Section throughout the term of this Agreement and

- i. For a period of four (4) years after termination or expiration of this Agreement; or,
- ii. For such longer period as may be required by applicable law; or
- iii. If this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting settlement.

C. CITY Audits. The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. USER will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Costs of such audits will be borne by the CITY, unless the audit has been initiated by CITY in response to a default hereunder by USER, in which event USER shall be responsible for such audit cost.

SECTION 4. PROGRAM COORDINATION.

A. Prior to the Effective Date of this Agreement, and each year thereafter during the term of this Agreement, USER shall provide CITY with a draft annual program plan for CITY's approval. Upon approval of the annual program by the CITY, USER (or USER's approved subcontractors) shall offer the Community Services described in the Program to the public in accordance with the approved written plan.

B. USER represents that USER shall employ, at its sole cost and expense, an administrator who shall act as the director of the Program and shall have overall responsibility for the progress and execution of this Agreement, as well as supervise the operation of the Program. USER shall provide CITY with the contact information for USER's Program Director upon execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program Director, USER shall notify the CITY immediately of such occurrence. Any change in Program Director will be subject to approval by the CITY. USER's staff shall cooperate fully with the CITY with respect to all matters related to this Agreement.

C. USER's staff shall attend meetings as required or requested by CITY or Director, which except in cases of emergency, shall be scheduled with reasonable notice.

D. The Parties agree that USER shall be solely responsible for the recruitment, training, supervision and compensation of USER's employees, including Program employees. The Parties further agree that USER shall be solely responsible for the recruitment, training and supervision of volunteers to assist in the operation of Center or the Program.

E. USER may contract with third-party organizations to provide programming at the Center; however, any such contract shall be subject to advance review and approval by CITY. Subsequent changes and amendments to such contracts shall also be subject to advance review and approval by CITY.

SECTION 5. OPERATION OF CENTER.

A. CITY grants permission to USER to conduct the Program and pursuant to the terms of this Agreement. The use of the Center by USER shall not be exclusive, and CITY shall have the right at all times to enter upon the Center for any purpose and to use the same for any purpose not inconsistent with USER's obligations hereunder. USER shall not pay facility use fees to CITY for USER's Community Service Program activities which have been expressly approved by CITY, subject to the provisions of this Agreement, provided that other costs and charges as set forth herein, may apply.

B. Minimum Hours of Operation. USER shall operate the Center at a minimum every Monday through Friday from 3:00 p.m. to 7:00 p.m. with community services and recreational activities geared toward school aged children, area senior citizens and whole families from the surrounding neighborhoods offered during those hours.

C. A location-specific program calendar shall be submitted to CITY on a quarterly basis and continuously posted for public display at the Center.

D. Minimum Programming Requirements. USER and partners shall, at a minimum, provide the following:

- Recreational programming for youth
- Culturally-based parent leadership/education training
- Life skills training
- Community computer lab, basic computer classes
- Youth enrichment including summer programs
- Health and wellness programs
- Annual special events (TBD)
- Leadership Development
- Tutoring for students
- Volunteer programs
- Saturday sports programming

E. USER shall report any suspicious or illegal behavior or activity at the Center or surrounding grounds to appropriate authorities, including timely reporting of any graffiti or vandalism at or affecting the Center.

F. USER shall be responsible for conducting services at the Center consistent with CITY's policies and procedures for facility operation, including without limitation, nondiscrimination practices and procedures.

G. USER agrees that any and all personnel, either paid or volunteer, whom USER utilizes in conducting the Program, shall be qualified to perform the duties assigned to them. USER shall provide CITY with job descriptions of all volunteer and paid positions. All Center personnel shall be neatly attired and shall conduct themselves at all times in a courteous and businesslike manner.

H. USER understands and agrees that the permission granted herein by the CITY to USER to use and occupy the Center is contingent upon the Center being CITY-

owned property. If, at any time during the term of this Agreement, the Center should no longer be CITY-owned property or should become unsafe or unusable for any cause or if CITY terminates for any other reason, CITY shall have no obligation to provide other facilities. USER further affirms and acknowledges that USER has no relocation rights with respect to the Center or the Program if this Agreement is terminated for any reason.

I. While it is anticipated that USER may apply for grants from various sources to assist in running USER's programs, nothing herein obligates the CITY to provide any funding to USER in the operation of any program within the Center. Furthermore, nothing herein grants USER any priority or special consideration from the CITY when the CITY is considering the distribution of grant funding to nonprofits and similar entities.

J. No fees may be charged for the Minimum Program Requirements set forth in Paragraph D of this Section. USER may charge fees for participation in approved Community Services programming beyond the Minimum Program Requirements. For all programs for which a fee will be charged, USER must submit a detailed description of the program to the Director at least fifteen (15) days prior to the initiation of the program. CITY reserves the right to disallow any fees assessed for participation in USER programs and activities which the CITY deems to be excessive or inconsistent with the mission of CITY's Parks, After School, Recreation and Community Services Department.

K. USER is allowed to retain revenue only up to the amount necessary to reimburse USER for the actual and direct expenses incurred in operating the Center. All excess revenue shall be turned over to the CITY.

L. USER may reserve the CENTER for fundraising activities on the same terms and conditions applicable to the general public.

M. USER agrees that CITY will retain sole use of two existing modular storage units located on the grounds.

SECTION 6. INVENTORY AND USE OF EQUIPMENT.

CITY may agree to make available to USER, at CITY's sole discretion, certain CITY-owned equipment and furnishings for USER's use in the conduct of the Program. An inventory of such CITY-owned equipment and furnishings in the Center as of the effective date of this Agreement is included in **Exhibit B**. USER agrees to maintain all CITY equipment and furnishings applicable to this provision in good condition and safe working order, and to return same to CITY in the same condition as when received by USER, reasonable wear and tear excepted. The use of City equipment for other purposes outside the scope of this agreement is not permissible.

SECTION 7. UTILITIES.

A. USER agrees to pay for the cost for gas, electricity, alarm, water, sewer, pest control. CITY will continue to take advantage of opportunities to implement energy conservation measures at the Center as resources allow.

B. USER agrees to provide outside garbage and refuse containers at the Center for the deposit of refuse collection services.

SECTION 8. MAINTENANCE AND REPAIR.

A. USER shall provide routine janitorial maintenance and repair of the Center necessary through reasonable wear and tear; which includes, at a minimum, spot vacuuming, mopping, and restroom service.

B. CITY shall be responsible for maintaining all turf areas, irrigation, and tree trimming at the Center and surrounding grounds, subject to available budgetary resources during the Agreement. USER shall be responsible for maintaining all non-turf landscape areas including, but not limited to all onsite hardscape, especially sidewalks and parking lots.

C. USER shall make no alteration or change in any manner to the Center or the surrounding grounds, including electrical, gas or plumbing equipment or facilities. If USER desires to alter, modify, change or relocate any utility, equipment, or facilities or of any part or portion-of the Center, such action shall be subject to the prior approval of CITY and the costs thereof shall be borne by USER. The Parties acknowledge that USER contemplates the addition of modular structures to the site during the term of this Agreement, subject to CITY approval.

D. USER has inspected the Center and agrees to use and occupy the Center in an "as-is" condition as of the date of this Agreement. Any maintenance or repairs required as a result of misuse or negligence of USER (including USER's agents, subcontractors, invitees, and employees) shall be corrected within thirty (30) days by USER. USER may make arrangements for CITY to make necessary repairs at USER's sole cost and expense. Failure to complete said repairs within the specified time period may be grounds for termination.

E. The USER shall hold the CITY harmless against claims if the CITY determines that it must temporarily shut down the Center to perform major system repairs.

F. CITY shall be responsible for structural, equipment repair and other long term capital repairs of the Center, except to the extent such repair may be caused by the misconduct or negligent actions or omissions of USER or USER's invitees. USER shall report all necessary facility maintenance and repairs to CITY in a timely manner. CITY shall conduct preventative maintenance in a manner consistent with the majority of other similar CITY community center facilities. Enhanced maintenance requested by USER above the CITY's minimum levels of service are subject to CITY's approval. Should USER elect to erect additional structures on leased premises, subject to CITY approval, USER shall be responsible for 100% of the maintenance and repair costs.

G. No alterations or improvements, including capital improvements and installations of additional phone lines, computer lines, electrical lines, security systems, or changing of locks and keys, shall be made to the Center without the CITY's prior written approval. If the CITY provides written approval, the USER shall be responsible for obtaining all CITY permits through the City of Fresno Public Works Department

necessary for the construction of any alterations or improvements. USER will be responsible for meeting all permit requirements at no cost to the CITY.

SECTION 9. NO WASTE OR NUISANCE.

USER shall not commit, or suffer to be committed, any waste upon the Center, or any public or private nuisance.

SECTION 10. REPORTING REQUIREMENTS.

User shall be subject to the reporting requirements set forth in **Exhibit C** attached hereto.

SECTION 11. INDEPENDENT CONTRACTOR.

The Parties mutually agree that USER and its employees are and shall be at all times independent contractors and not agents or employees of the CITY, and that USER and its employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance, or any other benefit or right connected with employment by the CITY, or any compensation other than as prescribed herein and USER expressly waives any claim it may have to such rights.

SECTION 12. LICENSE RIGHTS/NOT A LEASE.

The rights granted to USER under this Agreement are non-exclusive license rights only and in no respect shall the same constitute or be construed as an assignment of a leasehold or other interest in the property described in this Agreement.

SECTION 13. ASSIGNMENT OR SUBLEASE BY USER.

This Agreement shall not be assigned by USER in whole or in part nor subleased or subcontracted in any respect without written authorization of CITY, which may be withheld in CITY's sole discretion.

SECTION 14. NONDISCRIMINATION.

In the performance of this Agreement, including without limitation, the programs and services provided at the Center, USER shall not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 15. COMPLIANCE WITH LAWS/BACKGROUND CHECKS/REPORT OF CHILD ABUSE.

A. USER shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

B. USER shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of USER's business.

C. Without limitation of any other provision herein, if the services provided hereunder (i) involve direct contact with minors or if minors are supervised as part of the services provided hereunder, or (ii) if services provided hereunder include services in the human services field and involve the care and security of children, the elderly, the

disabled, or the mentally impaired, then USER represents and warrants to CITY that prior to services being provided hereunder by any personnel or volunteers retained by USER that the USER has or will conduct a criminal background check as provided in California Penal Code Section 11105.3, as well as an FBI criminal database background check and, has or will verify prior to services being provided that the personnel or volunteers do not have any criminal record for the offenses listed in California Penal Code Section 11105.3, which include, certain offenses related to the possession or use of controlled substances, sex offenses or any criminal offense involving violence.

D. USER shall comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 et seq.

E. USER shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

F. No person, whether paid or not paid by USER, shall be permitted to provide services described in this Agreement unless, prior to commencing services hereunder, USER shall deliver a letter to CITY listing such person and certifying that the USER has conducted a proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. If requested by CITY during the term of this Agreement, USER shall provide an updated certification letter verifying that the background checks for each of the named persons is current and in compliance with this provision.

SECTION 16. WAIVER OF CLAIMS.

USER, as a material part of the consideration to be rendered to CITY under this Agreement, hereby waives all claims or causes of action against the CITY, its officers, officials, employees, agents and volunteers which USER may now or hereafter have for damages to goods, wares, merchandise or other property in, about or upon the Center or any portion of the building in which Center is located, and for injuries to persons in or about the Center, from any cause or causes arising at any time. In particular, but not by way of limitation, USER hereby waives any and all claims or causes of action which USER may now or hereafter have against the CITY, its officers, officials, employees, agents and volunteers: (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any service or system serving Center or any portion of building in which Center is located, and (b) for any loss or damage to the property of, or injury or damage to USER, USER's officers, officials, employees, agents, volunteers, invitees, consultants, sub-consultants, contractors, subcontractors and vendors, from any cause or causes arising at any time because of USER's use or occupancy of the Center or any portion of building in which Center is located.

SECTION 17. INDEMNIFICATION AND HOLD HARMLESS.

USER shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, USER or any other person, and from any and all claims, demands

and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. USER'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or authorized volunteers.

If USER should subcontract all or any portion of the work to be performed under this Agreement, USER shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

If USER should rent the Center, USER shall require each renter to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement.

SECTION 18. INSURANCE REQUIREMENTS.

Throughout the life of this Agreement, USER shall pay for and maintain in full force and effect all insurance as required in **Exhibit D** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. However, the insurance limits available to CITY, its officers, officials, employees, agents, and volunteers, as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

If at any time during the life of the Agreement or any extension, USER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve USER of its responsibilities under this Agreement.

The fact that insurance is obtained by USER shall not be deemed to release or diminish the liability of USER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by USER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of USER, its principals, officers, agents, employees, persons under the supervision of USER, vendors, suppliers, invitees, USERS, sub-USERS, subcontractors, or anyone employed directly or indirectly by any of them.

Upon request of CITY, USER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If USER should subcontract all or any portion of the services to be performed under this Agreement, USER shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with USER and CITY prior to the commencement of any services by the subcontractor.

If USER should rent the Center, USER shall require each renter to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with USER and CITY two (2) weeks prior to the date(s) of the rental.

SECTION 19. COMPLIANCE WITH LAWS.

USER shall comply with CITY policies and all applicable state and federal laws, regulations and rules related to the use of the Center and the operation of the Program, including but not limited to, laws, regulations and rules applicable to health, safety and equal opportunity employment.

SECTION 20. POSSESSORY INTEREST TAX.

USER understands and agrees that this Agreement may create a possessory interest subject to property taxation and that USER may be subject to payment of property taxes levied on such interest, and that any such tax shall be the liability of and be paid by USER.

SECTION 21. TIME OF ESSENCE.

Where performance of a covenant is specified herein to be performed on or before a certain date, time shall be of the essence of that said covenant. Performance by USER of each and every covenant of this Agreement is material, the breach of which shall constitute a material breach of this Agreement for which the CITY may terminate this Agreement.

SECTION 22. EFFECT OF WAIVER.

The waiver by CITY of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition of waiver of any subsequent breach of such term, covenant or condition. The consent or approval by CITY to or of any act by USER requiring CITY's approval or consent shall not be deemed to waive provisions for CITY's approval or consent to any such subsequent acts by USER.

SECTION 23. AUTOMATIC TERMINATION.

The right of USER to use the Center described herein shall be automatically terminated without notice on the occurrence of any one of the following conditions subsequent, in which event USER shall forthwith and without demand by the CITY, surrender the Center without delay.

- A. The appointment of a receiver to take possession of all or substantially all of the assets of USER;

- B. A general assignment by USER for the benefit of creditors;
- C. Any action taken or suffered by USER under any insolvency or bankruptcy act;
- D. The suspension, revocation or lapse of USER's nonprofit incorporated status; or
- E. Failure to comply with any material term of any other agreement between USER and CITY, including without limitation, any grant agreement.

SECTION 24. ELECTIVE TERMINATION.

This Agreement may be terminated by either party at any time during the term for any reason, upon written notice of termination to the other party no later than the fifteenth (15th) day of the month in which the Agreement is to terminate. In the event such notice of termination is given, this Agreement shall be deemed terminated fifteen (15) days after delivery of notice is given pursuant to Section 28. Notwithstanding the foregoing, the City shall have the right to immediately terminate part or all of this Agreement when the facilities are required for public necessity or emergency use.

SECTION 25. TERMINATION WITHOUT CAUSE.

The parties acknowledge that CITY may terminate this Agreement under this provision without cause, notwithstanding USER's compliance with the terms of this Agreement including payment of utilities, delivery of reports and program services. The Director is authorized to decide, on the part of the CITY, that this Agreement is to be terminated and to furnish written notice thereof to USER.

SECTION 26. TERMINATION UPON DEFAULT.

In the event of any default on the part of USER in USER's performance of or compliance with any of the terms, conditions and covenants of this Agreement, CITY shall have the right, in addition to or as an alternative to any other right it may have at law or in equity or pursuant to this Agreement, to terminate this Agreement upon (30) days prior written notice; provided, however, that CITY shall first give written notice to USER of such default and USER shall thereafter have a period of seven (7) days to correct the default.

SECTION 27. SURRENDER ON TERMINATION.

Upon the expiration or termination of this Lease, USER shall peaceably vacate and surrender the Center to the CITY in good condition (with the exception of ordinary wear and tear and acts of God) and shall surrender all keys to the Center. At CITY's sole option, USER shall either remove USER's property on or before the Termination Date and promptly repair all damage to the Center caused by such removal, or title to such property shall vest in the CITY free and clear at no cost to CITY. If USER abandons or surrenders the Center, or is dispossessed by process of law or otherwise, any of USER's property left on the Center shall be subject to the foregoing option in CITY unless the law or judicial decision of the jurisdiction in which the Center is located provides otherwise. If CITY elects to remove all or any part of such USER owned

property, the cost of removal, including reasonable storage costs and the cost of repairing any damage to the Center caused by such removal, shall be paid by USER.

SECTION 28. NOTICES AND REPRESENTATIVES.

All notices required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by U.S. Mail, postage prepaid, addressed as follows:

CITY Contract Administrator, City of Fresno PARCS 1515 E. Divisadero St. Fresno, CA 93721	USER Senior Pastor Tom Sims Baptist Temple Church 4141 N. Fresno St. Fresno, CA, 93726
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The Parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this Section.

SECTION 29. CONFLICT OF INTEREST.

USER shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. USER is familiar with conflict law provisions set forth in California Government Code Sections 87100 et seq. and Government Code Section 1090. USER certifies that it does not know of any facts which constitute a violation of such section. USER further certifies that it shall not assign any personnel to provide services under this Agreement which would be cause for a violation of any conflict of interest law.

SECTION 30. MISCELLANEOUS PROVISIONS.

A. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be in Fresno County.

B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction

C. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement.

D. This Agreement may only be amended by formal written agreement executed by both Parties.

E. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, The parties hereby execute this Agreement as of the day and year hereinabove written.

CITY:
CITY OF FRESNO,
a California municipal corporation

USER:
WEST FRESNO FAMILY RESOURCE,
CENTER, a non-profit Corporation

By: _____
Manuel A. Mollinedo
PARCS Director

By: _____
Name: Tom Sims

ATTEST:
YVONNE SPENCE, CMC
City Clerk

Title: Senior Pastor
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

By: _____
Deputy Date

By: _____
Name: _____

APPROVED AS TO FORM:
City Attorney's Office

Title: _____
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Brandon M. Collet Date
Deputy City Attorney

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

Addresses:
CITY:
City of Fresno
Attention: Michelle Marchini
1515 E. Divisadero St.
Fresno, CA 93721
Phone: (559) 621-2900
FAX: (559) 457-1575

USER
Baptist Temple Church
Attention: Pastor Tim Sims
4141 N. Fresno St.
Fresno, CA 93726
Phone:
FAX:

- Exhibit A – Granny's Park Program Deliverables Matrix
- Exhibit B – Facility Inventory
- Exhibit C – Summary of Reporting Requirements
- Exhibit D – Insurance Requirements

Exhibit A
Granny's Park Program Deliverables Matrix

Deliverables	BTC	ENP	CARE FRESNO	4141 Ministries Or Other Out-Source
Arts & Crafts			X	X
Community Garden				X
Computer Literacy				X
Family Enrichment				X
Health & Fitness				X
Mentoring	X		X	X
Nutrition				X
Recreation	X	X	X	
Senior Activities	X			
Specialty Classes				X
Sports	X	X	X	
Tutoring	X		X	X
Vocational Development				X
Volunteer Program	X	X	X	X
Youth Citizen/Leadership Development	X			X
Youth Empowerment Services				X

Exhibit B

Granny's Park

EXAMPLE

Description	Qty	Description	Qty
(Inventory in progress)			

Exhibit C

SUMMARY OF REPORTING REQUIREMENTS

Quarterly:

1. A location-specific program calendar shall be submitted to CITY and continuously posted for public display at the Center for community services and recreation programs offered at the site.

Bi-Annually:

1. Submit a report regarding performance of community services and recreation programs offered at the site.

Annually:

1. *A draft annual community services and recreation program plan for CITY's approval. Plan will include specific performance measures that can be used to objectively quantify the effectiveness of the plan.
2. *An organizational chart with a list of staff employees by title.
3. *Names and addresses of current members of the Board of Directors.
4. *A CPA Compiled annual financial report including sources of funding and any constraints on receivable or received funds.
5. Proof that services are still available and quantitative reports/performance measures of services provided during the preceding year.
6. *Proof of Insurance as set forth in Exhibit D.

As Modified:

1. Provide CITY with community services and recreation program job descriptions of all volunteer and paid positions.
2. For all programs for which a fee will be charged, USER must submit a detailed description of the program to the Director at least fifteen (15) days prior to the initiation of the program.

As Required:

1. Staff shall attend meetings as required or requested by CITY or Director.

Note: Asterisk designates items that are first due prior to Agreement commencement date.

Exhibit D

INSURANCE REQUIREMENTS

Service Agreement between City of Fresno (“CITY”)

and BAPTIST TEMPLE CHURCH, a 501C(3) nonprofit corporation (“USER”)

Name of the Project

Granny’s Park

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Educators Legal Liability or a Professional Liability (Abuse & Molestation) Insurance that insures against liability arising out of the bodily injury, personal injury, and third-party property damage occurring because of the wrongful or negligent acts attributable to the institution. This coverage should protect against a wide range of potential claims, including but not limited to athletics, alcohol, campus crime, sexual molestation and other sexual misconducts.

MINIMUM LIMITS OF INSURANCE

USER, or any party the USER subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**
\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.

5. **Educators Legal Liability (ELL) or Professional Liability** (Abuse & Molestation):
 - (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event USER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

USER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and USER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) USER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. USER shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, USER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of USER'S insurance and shall not contribute with it. USER shall establish primary and non-contributory status by using

ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: USER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the ELL or Professional Liability (Abuse & Molestation) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by USER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by USER, USER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. USER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, USER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, USER shall provide a new certificate, and applicable endorsements, evidencing renewal of

such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

VERIFICATION OF COVERAGE

USER shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, USER shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Exhibit E

OPERATIONAL PLAN

Granny's Park 2024 E. Pontiac Way, Fresno, CA 93726

1. Operations

Overview of Organizations' Current Operations:

4141 Ministries/Baptist Temple Church Detail:

4141 Ministries is an off-shoot of Baptist Temple Church, 4141 N. Fresno St., Fresno, CA 93726 and is a 501c(3) in its own right. Its purpose is to broaden the scope of ministry in a non-profit setting rather than a church setting, allowing for self-governance and to develop more flexible funding sources. It has recently obtained its tax free status and the paperwork is back dated to 2011. As a fledgling organization, currently there are only volunteer staff and very little monies. Even though our status seems new and untried, it is being run by the staff of Baptist Temple Church, which has many years of experience in ministry and community outreach and development.

Baptist Temple Church was established in 1954 and began meeting in its current location, at Fresno St. and Ashlan Ave., in 1955. Both ministries currently host a thriving thrift store which gathers the community; helps facilitate development of excellent fellowship/friendship; and provides affordable products to the neighborhood. The store operates Monday through Friday, 10:00 a.m. – 2:45 p.m. The store currently has one full time volunteer as manager, one part time volunteer and five part time employees. The church itself employs one part time pastor.

Key Management/operational staff and their qualifications and certifications

Pastor Tom Sims, Senior Pastor (CEO for 4141 Ministries)
BA., Philosophy, Bluefield College, Bluefield, Virginia
Master of Divinity, Golden Gate Theological Seminary, Mill Valley, California

Andrea Sims, Business Manager (COO for 4141 Ministries)
BA., History, Virginia Polytechnic Institute and State University, Blacksburg, Virginia.

Description of facility management history:

Baptist Temple owns and manages approximately 3 acres with 3 large structures, a sanctuary building and educational wings, and is located in the heart Fresno.

The property is owned by Baptist Temple Church and hosts 4141 Ministries as well as Hmong Baptist Church, Faith Community Baptist Church, Lao Baptist Church (still in mission status), Huge Group Therapy Anger Management, and Caryl's Cottage Thrift Boutique.

The facilities are in use on a daily basis. The staff must work cooperatively with all these groups to assure them a friendly, loving and welcoming place to convene. We have 60 years' experience in the management of public facilities. Our staff is well versed in scheduling and all other duties associated with facility management.

Operational Requirements

Staffing Plans: We are partnering with 4141 Ministries, Care Fresno, Every Neighborhood Partnership and EOC Summer Food Program. We plan to obtain 2-3 missionaries and install them in an apartment located in the Granny's Park Community. Their primary task is to provide leadership and cohesiveness of curriculum to be provided by Care Fresno. Baptist Temple is planning to provide funding for the housing and curriculum expenses. Care Fresno is providing the model of their well-established after school programs that provide homework help and enrichment programs to at-risk youth.

Open/Close/Secure facility: Baptist Temple insures tight security at our location. We will insure that all key holding personnel will be trained in the proper opening, closing, and security of the facility at Granny's Park on a daily basis.

Reporting of suspicious of illegal behavior: Baptist Temple Church exists in a high-crime area as well as co-existing with a growing homeless population. Granny's park is also a part of this environment and all staff must be fully trained in recognizing and reporting any behaviors deemed suspicious or illegal.

Reporting of graffiti/vandalism:

Baptist Temple Church has also been subjected to years of both extreme vandalism and general graffiti. We have worked with the City of Fresno graffiti team to eradicate graffiti (even received a grant at one time to work alongside of the city). We also report the more major vandalism events. We will fully train all staff and volunteers on the reporting of both incidents.

Provide interior janitorial service and maintenance

The staffing and/or volunteers of the community center will provide all necessary janitorial and Basic maintenance as required by the City of Fresno.

Reporting of outside facility maintenance needs to the City in a timely manner:

Baptist Temple Church will be responsible for providing all necessary reporting of facility needs according the procedures established by the City of Fresno.

II. Program Services

Baptist Temple Church has provided a multitude of ministries and services to our surrounding neighborhood throughout the years. We are now embracing 4141 Ministries as our more extensive initiative tool to reach out to the neighborhood. 4141 Ministries mission is to convene congregations, communities, and collaboratives; building people and communities in the name of Jesus Christ beginning in Central Fresno.

Current Programs of Baptist Temple Church:

We are a small congregation with a mighty vision. Currently we provide Sunday worship service; children's worship; and several adult Bible studies throughout the week.

Current Programs of 4141 Ministries:

Caryl's Cottage Thrift Boutique: Caryl's is a community thrift store operated by both volunteer and paid part time staff. We hire people unable to obtain jobs elsewhere and encourage them in gaining monetary and spiritual security. The store is open Monday-Friday, 10:00 a.m. to 2:45. We provide a "third place" or a gathering place for our community. The neighborhood knows they can meet other neighbors there and establish friendships within itself in a safe and healthy environment. Lightly used items and clothing are also available at a price they can afford which allows for provision of each family.

During the summer of 2014, 4141 Ministries in partnership with EOC's summer lunch program provided a children's program, Build a Child. It was 5 days per week, 3 hours per day, for 8 weeks during summer vacation. Children of all ages were encouraged to attend. We enrolled 58 neighborhood children with an average attendance of 28. This summer we are planning a program that will run for three weeks, one day each week lasting two hours each session

4141 Ministries regularly hosts block parties such as summer fun water games; autumn festival on October 31; and other random events as needed.

We are currently collaborating with other churches; encouraging them to join us in reaching our community needs both tangible and spiritual. We have facilitated in establishing 2 new missions on our property and look forward to working with them to overcome the unique social and cultural challenges our neighborhood provides.

Key Programmatic Staff and Qualifications and Certifications:

- Pastor Tom Sims, Senior Pastor, CEO 4141 Ministries
B.A., Philosophy, Bluefield College, Bluefield, Virginia
Master of Divinity, Golden Gate Baptist Theological Seminary, Bluefield, Virginia

- Andrea Sims, COO 4141 Ministries
B.A., History, Virginia Polytechnic Institute and State University, Blacksburg, Virginia

- Tania Weinbrenner,
B.A., Fresno Pacific University, Fresno, CA (graduated Magna Cum Laud),
Teaching credential from Fresno State, Fresno, CA. Currently teaches 6th grade
in the Selma Unified School District, Selma, CA.

- Clifton Weinbrenner
High School graduate, Fresno, CA,
Advanced ministry studies at seminary level, The Well, Fresno, CA
Youth Leader, seven years, The Well, Fresno, CA

- Jeffery Page, missionary provided by 4141 Ministries
Ordained licensed pastor through Set Free Christian Fellowship and the
Southern Baptist Convention

Bachelor in Christian Counseling and Biblical Studies
Registered addiction specialist through the Breining Institute
Christian Drug and Alcohol Addiction Counselor (CDAAC) with family marriage endorsement
Experienced youth and associate pastor

Lisa Page, missionary provided by 4141 Ministries
Experienced Sunday school director and teacher with Set Free Christian Fellowship

Program Partnerships and Accomplishments:

4141 Ministries has evolved from Baptist Temple Church in response to the need to develop meaningful partnerships. It is our desire to optimize resources both monetary and physical in the work of Jesus Christ. Thusly, reducing waste and effecting a greater positive impact on the world. To date we have had several churches at various times sharing our property harmoniously. Currently, we serve together with the Hmong Baptist Church, since 1963, Faith Community Church, and Lao Baptist Church.

Last summer we utilized the Summer Lunch Program provided by the EOC. We participate with ENP in a Saturday Sports Program, previously one at Holland Elementary and currently at Granny's Park. In addition, we had two successful Serve Fresno events this year.

We are also beginning a partnership with FIRM and are co-sponsoring and providing the land for a community garden for African refugees. Care Fresno is also coming on board as a new partner with us, specifically focused on the Granny's Park initiative.

Last summer we sponsored, funded and staffed an eight week children's summer program called Build a Child. The enrollment was 58 and an average attendance was 26. Although we cannot put together something of that scale this year, we have been asked by the neighborhood parents to provide something for the summer. We are continuing the Build a Child format with three sessions at two hours each. The topic is about tolerance and respect. Scripturally based on "Love others as you love yourself."

RFI Requirements

- In conjunction with Care Fresno and ENP, we plan to provide an effective **summer program** at the Granny's Park location. Using the modular unit provided, we will introduce the following services during the hours of 3:00-7:00 pm. Monday-Friday:
- Through our partnership with the EOC Snack Program, we will provide a no-cost afternoon snack. Our organization will ensure that the snack program is run as it is intended and that staff is trained in a satisfactory manner.
- Provide a variety of indoor recreation activities; i.e. arts & crafts, board games and/or table games. Using the curriculum guides lines in our partnership with Care Fresno we will provide their recommended recreational activities. In conjunction with ENP we plan to hold weekly Saturday sports events. We also want to host several block parties to promote community awareness.

- Provide activities to encourage community awareness, such as movie nights, neighborhood cleanup, and parent education. A community working together in healthy activity can promote general improvement in mental health and welfare, uplifting the tenor of the community.
- Beginning in the fall:
We will provide an after school tutoring program and enrichment activities; develop a reading program group and/or individual as needed; encourage and spearhead holiday events such as Harvest Party and Christmas Party.

III. Administrative

Financial Status

Detailed Financial Statements: Attached: Income/Expense Report for the year 2014; Balance Sheet for 2014 for Baptist Temple Church. 4141 Ministries has no active accounting to date.

Most Recent Tax Return: As a local congregation/religious non-profit, no tax returns or 990's are filed.

Identified Funding Sources for Operation of Granny's Park:

Funding for this project will be provided through grants and regular budget items by the following organizations:

Baptist Temple Church
4141 Ministries
Mid-Valley Southern Baptist Association
Care Fresno

Current Insurance & Liability

Current Insurance Policy: Attached: summary of current insurance: General and Worker's Compensation.

Corporate Information

Board of Directors:

Baptist Temple Church
Thomas B. Sims, CEO and pastor
Ann Ehrlich, Treasurer
Andrea Sims, Secretary

4141 Ministries
Thomas B. Sims, CEO
Sara Pomare, Secretary
Andrea Sims, COO and Treasurer

Articles of Incorporation; Governing By-Laws: Attached: Copies of Articles of Incorporation; Constitution/By-Laws for both Baptist Temple Church and 4141 Ministries.

Ongoing Reporting Requirements

As a functioning non-profit organization we understand the need to report our activities and financials. Baptist Temple Church annually provides financial reports to its members, as well as verbal activity reporting both planning stages and accomplishment figures. Business meetings are called on a per need basis due to the small size of our congregation.

4141 Ministries convenes quarterly for board meetings.

Insurance & Liability requirements

4141 Ministries/Baptist Temple Church understands each requirement listed with regard to insurance and liability requirements. As a functioning non-profit organization involved in multiple programs, and specifically with children of all ages, we currently operate with the necessary insurance coverage and screens volunteers who work with children. Any additional fingerprinting by DOJ as required by law is understood and will be fully implemented.