

**AGREEMENT BETWEEN CITY OF FRESNO AND  
READING AND BEYOND  
FOR LEAD AGENCY OPERATION OF MOSQUEDA COMMUNITY CENTER**

This Agreement is made and entered into this 1st day of June 2016, by and between the CITY OF FRESNO, a municipal corporation ("CITY") and READING AND BEYOND, a California nonprofit corporation ("USER").

**RECITALS**

A. CITY is the owner of the property located at 4670 E. Butler Ave. and commonly known as the Mosqueda Community Center ("Center").

B. CITY's Director of Parks, After School, Recreation and Community Services Department ("Director") or designee is charged with the responsibility of supervising the implementation and effectiveness of programs offered at the Center.

C. USER is organized as a California nonprofit corporation to provide services and opportunities for all ages with an emphasis on school aged children.

D. USER has an objective of providing education, recreation, and social services to the public.

E. CITY and USER desire to enter into an Agreement to operate the Center, 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 the USER will provide "Community Services." "Community Services" is 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 agree as follows:

**AGREEMENT**

**SECTION 1. TERM OF AGREEMENT.** This Agreement shall be for a term commencing on June 1, 2016, and expiring no later than May 31, 2021 unless terminated pursuant to the provisions of this Agreement. This Agreement may be terminated by the CITY or USER at any time and upon ninety days prior written notice to the other party, as further provided herein. Regardless of the date of executions of this Agreement, the effective date shall be June 1, 2016.

**SECTION 2. CITY'S OUTSOURCING POLICY.**

A. The Center was constructed to provide Community Services and recreation. 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, the Community Services identified in this Agreement. USER acknowledges that its agreement to provide Community Services and programs to the CITY and the community is a material provision of this Agreement. USER understands that CITY will monitor USER in order to verify that Community and recreation services as contained within, and during hours of operations 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 fee rental agreement to be executed by USER and PARCS.

C. CITY may receive requests from the public to rent the Center for an event. The CITY shall refer any such requests to USER. Any third party other than CITY that wishes to rent the Center must do so pursuant to a rental agreement with the USER. USER shall be entitled to collect and retain reservation revenue associated with reservation activity to cover facility costs and event staffing. USER acknowledges that no alcoholic beverages shall be sold, served, or furnished during the rental of the Center.

D. USER agrees to use of Center social hall by Hula O'Hana, Ceramics, Police Activities League, and other programs requested by the PARCS Director, and shall not be required to pay for use of the facility.

### 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 semi-annual reports regarding USER's performance of the Program 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 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, and/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 any subcontracts, invoices, payrolls, records of personnel, conditions of employments, 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 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 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. 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 that includes days and times of operation 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.

USER shall comply with the requirement that the Center shall be made available for the PARCS Senior Hot Meals Program, the Fresno County EOC Sack Lunch Program to provide no-cost snacks and/or lunch during extended school breaks or any other social service programs that the PARCS Director deems appropriate at no cost, and the USER shall cooperate with the provider of those programs.

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.

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.

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.

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 Programs during the term of the Agreement, 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 acknowledges that the Center is one component at the Mosqueda site, and other groups having existing leases or licenses at the Mosqueda site. USER agrees to take reasonable efforts to minimize any disturbance to the operation and/or other uses of the Mosqueda site by CITY, other lessees or licensees, and the public. 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. USER shall have access to the outdoor spaces around the Center; however paid reservations made through the CITY for the use of the outdoor spaces shall be given first priority.

B. Minimum Hours of Operation. USER shall operate the Center at a minimum every Monday through Friday from 3 p.m. to 7 p.m. with educational and recreational activities geared toward school aged children from the surrounding neighborhoods offered during those hours. Any changes to regular operational hours of the Center must be requested and approved by the Director.

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 shall, at a minimum, provide the following:

1. Provide daily homework assistance and/or computer lab access.
2. Provide a variety of indoor and outdoor recreation activities, e.g., arts and crafts, board games and table games.
3. Provide opportunities for community services activities, e.g., neighborhood clean-up, adopt-a-park, emergency shelter operations. etc.
4. Coordinate diverse cultural/holiday activities, e.g., Valentine's, Easter/Spring, Cinco de Mayo, Juneteenth, Fourth of July, Halloween/Harvest, Thanksgiving, and Winter Holiday neighborhood celebrations.
5. Provide access for the PARCS Senior Hot Meals Program, if applicable.
6. Continue partnership with Fresno County EOC to provide no-cost snacks and/or lunch during extended school breaks (Sack Lunch Program).

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's operational obligations shall include reasonable staffing of the Center and running the Community Services Programs in a manner satisfactory to CITY. USER agrees that a minimum of two staff members shall be on the Center premises during all hours of operation.

H. 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 on an annual basis. All Center personnel shall be neatly attired, identifiable and shall conduct themselves at all times in a courteous and businesslike manner.

I. 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 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.

J. 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 with 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.

K. No fees may be charged for the Minimum Program Requirements set forth in Paragraph C of this Section. USER may charge fees for participation in approved Community Serving 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 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 the PARCS Department.

L. USER is herein authorized to retain such collected fees for USER use in meeting programming and operational expenses for Community Serving programs at the Center.

M. CITY agrees that USER may conduct community events and fundraising activities at Center with the prior written approval of PARCS Director, so long as activities do not adversely impact access for the general public to the Center. CITY approval may be contingent upon USER providing appropriate services needed to adequately support the operations at the Center. USER must contact the Director prior





to any outdoor event to ensure that the outdoor space is not already reserved by another group or organization. No alcoholic beverages will be allowed on premises.

N. USER agrees that CITY shall retain two private offices and a customer service/administrative support area at the Center that are necessary for CITY programs. The selection of office locations shall be subject to agreement by both parties. In addition, CITY will retain sole use of two existing modular storage units located on the grounds.

O. USER shall be allowed to post signage to identify its presence at the Center. All signage and its placement will require CITY approval and be in accordance with the CITY sign ordinance.

P. CITY shall have sole rights and responsibility to operate the Swimming Pool, Bike Park and ball field space at Center, subject to availability of funds.

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 A. 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. CITY shall pay 100% of electricity and gas costs for the Center Buildings (main building and annex building), Center alarm, field lighting, swimming pool, bike park, and parking lot and activity lighting beginning June 1, 2016. CITY will pay 100% of existing services for water, sewer, garbage, and pest control. Should USER elect to add additional structures on leased premises, subject to CITY approval, USER shall be responsible for 100% of all additional utility services and installation fees.

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

SECTION 8. MAINTENANCE AND REPAIR. USER shall provide routine janitorial maintenance and repair of the Center necessary through reasonable wear and tear; which includes, at a minimum, vacuuming and mopping. Restroom service will be performed prior to the beginning of the business day and monitored throughout the day for stocking and cleanliness. Routine repairs that are the result of normal wear and tear on the facility will also be the responsibility of USER.

A. CITY shall be responsible for maintain all turf areas, irrigation, and tree trimming at the Center and surrounding grounds, subject to available budgetary resources during the Agreement. CITY shall also maintain all landscape and concrete within the Bike Park and Pool areas. USER shall be responsible for maintaining all non-turf landscape areas including, but not limited to: Butler Street flower beds, bedding areas adjacent and surrounding the Center, courtyard planter boxes, tot lot area, eastern perimeter of park, flower beds and tree wells within parking lot area, and all



concrete and asphalt area maintenance is limited to litter and weed control. The Center will continue to be included in the CITY Adopt-A-Park program.

B. 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 cost thereof shall be borne by USER. The parties acknowledge that if the USER wishes to add a modular structure to the site during the term of this Agreement, that CITY approval must be given.

C. 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 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.

D. 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.

E. 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 preventive 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.

F. No alterations or improvements, including capital improvements and installations of additional phone lines, T1 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 B attached hereto. USER shall be subject to Quarterly Site Maintenance reviews with designated CITY and USER staff.

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, Worker's 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 leasehold or other interest in the property described in this Agreement.

SECTION 13. ASSIGNMENT OF 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 ("DOJ") 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 a 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. All new employees and routine volunteers must be finger printed in the DOJ system.

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 or employees 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 or employees: (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, employees, or agents, from any cause or causes arising at any time because of USER's use of 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.

### **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 designee. At the option of the CITY'S Risk Manager or , 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 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 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 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 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 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 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 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.

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 giving to the other party at least ninety days written notice of termination. In the event such notice of termination is given, this Agreement shall be deemed terminated ninety 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 License Agreement when the facilities are required for public necessity or emergency use.

**SECTION 25. TERMINATION FOR 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, but not limited to, payment of utilities, delivery of reports and program services. The Director is authorized in his or her sole discretion to decide whether this Agreement shall be terminated and to provide 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 thirty 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 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 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 at 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	USER
PARCS Director City of Fresno PARCS 1515 E. Divisadero St. Fresno, CA 93721	Executive Director Reading and Beyond 4670 E. Butler Ave Fresno, CA 93727

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 THE FOLLOWING PAGE.]




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

**USER:**  
READING AND BEYOND  
A Non-Profit Organization

**CITY:**  
CITY OF FRESNO,  
a Municipal Corporation

By:   
Luis Santana, Executive Director

By: \_\_\_\_\_  
Manuel A. Mollinedo, Director  
PARCS

By:   
Name: Rich Coen  
Title: Controller  
(If corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk  
By: \_\_\_\_\_  
Deputy

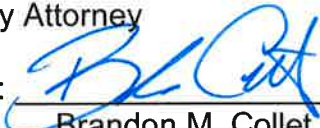
APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney  
By:  6/21/16  
Brandon M. Collet Date  
Deputy City Attorney

EXHIBIT A

~~SEE "AMENDED INVENTORY"~~

Mosqueda Inventory

ITEM	QTY	ITEM	QTY
Pool Tables	2	Storage Cabinets	6
Pool Sticks	4	Bulletin Boards	0
Pool Ball Sets	3	Dry Erase Boards	2
Foosball Table	0	Lab Chairs	14
Ping Pong Table	1	Desks	18
Ping Pong Paddles	4	Microwave Oven	0
Keyboards	24	Book Shelf	5
CPU's	24	Printer	0
Mouse	24	8' Tables	54
Monitors	24	Chairs	69
Safe	1	File Cabinets	36
Credenzas	8	Banquet Chairs	358
Benches	2		

Exhibit B

**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 recreation and enrichment programs offered at the site.

Semi-Annually:

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

Annually:

1. \*A draft annual recreation and enrichment program plan for CITY's approval.
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 of services provided during the preceding year.
- ~~6. \*Proof of Insurance as set forth in Exhibit B.~~

As Modified:

1. Provide CITY with recreation and enrichment 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.

