

Memo of Understanding for Licensed use of a City Facility

This Memo of Understanding is entered into as of June 13, 2016 (the "Effective Date"), between the City of Glendale ("City") and Heart For The City (HFTC) for the non-exclusive use of the Rose Lane Recreation Center.

Under this Memorandum of Understanding (MOU), the City of Glendale through its Community Service Department - Parks, Recreation and Neighborhood Services Division authorizes Heart For The City to provide non-exclusive after school recreation and educational programming in accordance with the MOU.

RECITALS

- A. In July 2013, the City issued RFP 14-01 for non-profit operation of the Rose Lane Recreation Center to provide free after-school and summer recreational youth programs and all proposals were deemed non-responsive or incomplete; and
- B. The City of Glendale continues to seek a non-profit partner to provide free after-school and summer recreational youth programs at the Center; and
- C. Heart For The City wishes to obtain from the City the use of the Center; and
- D. The City's approval of such use is contingent upon Heart For The City's adherence to all policies established by the City for such uses.

AGREEMENT

NOW THEREFORE, it is agreed as follows:

1. **RECREATION CENTER.** Subject to the terms of this Agreement and the policies established by the City, the City agrees that HFTC may use the Rose Lane Recreation Center:

The Center and any other mutually agreed upon locations at the Rose Lane Recreation Center. The Center is located at 5003 W. Marlette Avenue, in the City of Glendale.

2. **USE.** HFTC may use the Center for the following purpose or purposes, and for no other purpose or purposes:
 - a. HFTC agrees to offer a diverse selection of free and paid programming
 - b. HFTC agrees to comply with all laws and regulations, permits and the policies and procedures of the City, County and State pertaining to the use and occupancy of the Recreation Center, including, but not limited to sales and tax licenses, food handlers license (if applicable), and other related policies and procedures;
 - c. HFTC agrees to exercise due caution and apply good and diligent care in the use of the Center and to maintain the Center in as good order and condition as it was prior to use;

- d. HFTC agrees not to use or allow the Center to be used for any unlawful purposes and to not commit or allow to be committed any waste or nuisance in or about the Center or subject the Center to any use that would damage the Center or raise or violate any insurance coverage maintained by HFTC or the City;
- e. HFTC must perform background checks on all staff and volunteers. All approved background checks of staff and volunteers must be submitted to the City of Glendale in writing with a detailed explanation of the background criteria and the source(s) used to verify each individuals background history. HFTC must be diligent in their efforts to ensure staff and volunteers are free of any criminal record that includes felonies or any other crime involving children and/or domestic abuse.
- f. HFTC agrees that the City may terminate or preclude any use immediately upon a determination by the City, at its sole discretion and consistent with its police powers, that such a use would endanger the public or be inconsistent with the health, safety and general welfare of the public;
- g. HFTC agrees that nothing within this Agreement shall be construed to have created a tenancy of any type or manner;
- h. HFTC agrees that it is permitted to schedule use of the Center generally during the hours of 7:00 a.m. to 10:00 p.m., any hours outside of after school programming time of 2:00 p.m. to 8:00 p.m. must be submitted in writing and approved by the City prior to use;
- i. HFTC agrees to provide the City an update list of all equipment located in the Recreation Center, provide an accurate and complete inventory by July 1 of each year with photographs. Additionally, the information shall provide enough description for each item to be easily identified by City staff.
- j. HFTC agrees to provide the City an update list of all improvements to be made to the Center interior, provide an accurate and complete inventory by July 1st of each year. Additionally, the information shall be in writing and provide enough description for each item to be easily identified by City staff.
- k. HFTC shall be responsible for all custodial work to the interior of the Recreation Center. HFTC shall provide a written monthly calendar indicating what type of custodial work is to be performed. The written calendar shall be submitted to the City prior to occupying the building and review and updated annually as needed.
- l. Programming Requirements:
 - i. HFTC will use the City's Recreation, Sports and After School operations manual when providing programming, services, events and activities. HFTC may also use their own organizational operations guidelines/manuals, additional best practices and national standards for programming with prior approval by the City.
 - ii. For the purpose of this agreement, HFTC will follow the Glendale Elementary Unified School District calendar. When school is in session, HFTC agrees to provide free, all inclusive programming during the core hours of 2:00 p.m. to 7:00 p.m. Monday through Friday and additional programming may be offered

between 8:00 a.m. to 10:00 p.m. Saturday. Programming during summer and other school break time will be offered between 8:00 a.m. and 10:00 p.m. Monday through Saturday, a majority of which will be free and all inclusive. HFTC will observe all City holidays and be closed on those dates. Programming will include, but not be limited to, recreational programs and services, organized sports programs, special events and programs, youth and teen mentoring and educational and intervention programs.

- iii. HFTC may provide additional fee based programming. Fee based programs should be priced to cover the overhead of programming costs for those programs that take place at the Recreation Center. Fee based programs must be submitted to the City for prior approval and may not be offered during the core programming hours of 2:00 to 7:00 p.m. unless previously approved by the City.
 - iv. Overhead may be defined as, but not limited to materials for events and programs, security and staff, permits, transporting materials, workman's compensation and insurance, utilities and related expenses.
 - m. The initial term of the agreement shall be for one year and commence upon execution, unless sooner terminated pursuant to the provisions contained herein. Both parties may agree to one - one year extension.
 - n. HFTC must provide a written monthly reporting and an updated annual report. Monthly reporting shall include the schedule and fees for all classes/programs conducted on the premises; expenditures, revenues and attendance for all classes/programs conducted on the premises; and annual profit and loss statement submitted no later than March 1st each contract year. The annual report should detail information regarding programs offered, fees, attendance, free programs, scholarships, and other information detailing the relevance of the free and fee based programs. HFTC may provide additional reporting data with prior approval from the City.
3. **USE PERIODS.** HFTC may use the Center listed above which may be subject to change as decided by both HFTC and City. Changes to the use period dates may be required as event/programming scheduling progresses. The Center may be utilized for programs, administration, and other business purposes or duties that are directly related to the programs that take place at the Recreation Center. Any and all changes must be submitted in writing to the City of Glendale thirty (30) days prior for review and approval.
4. **CONDITION OF RECREATION CENTER.** HFTC assumes sole and full responsibility to inspect and investigate the Center to assure its use can and will be conducted in a safe manner. Any deficiency perceived by HFTC shall be immediately brought to the City's attention and submitted in writing. The City may, at its sole option, address the condition of concern or cancel this Agreement. Should the City elect not to correct the condition and decides to proceed with the use, HFTC assumes full responsibility for the condition and indemnifies the City as set forth below.
- a. Structural maintenance must be consistent with the maintenance guidelines prescribed by the City. Examples include leaking faucets, peeling paint, clogged drains, loose light fixtures, etc. A checklist of items to inspect will be provided once the agreement is finalized. As such, HFTC shall perform regular inspections of the structures and provide

the City an inventory of maintenance deficiencies. The City will make every effort to initiate and complete repairs in a timely manner.

b. **Improvements:** HFTC may conduct improvements to the exterior and interior of the Recreation Center. **All funding identified/received for exterior and interior improvements must be made payable to the City who will then use the funds to make the defined improvements.** HFTC must submit an improvement plan in writing for City review and approval 60 days prior to commencement. Improvement plan shall consist of, but not be limited to, materials, quantities of materials, drawings, timelines and estimated costs materials and labor. As a part of the improvement process and before any improvements may commence, HFTC agrees to appear before the City of Glendale Building Standards Committee to explain improvements. All improvements to the building must follow the City of Glendale Building Safety's procedure and direction for plan review and approvals, as well as the City of Glendale procurement code and policies and A.R.S. Title 34. HFTC will be responsible for any/all permit and plan review payments required for the proposed improvements.

5. **INSURANCE REQUIREMENTS.** HFTC shall procure and maintain for the duration of the License, insurance against claims for injury to persons or damage to property that may arise from or in connection with this License.

The *insurance requirements* herein are minimum requirements for this License and in no way limit the indemnity covenants contained in this License. The City of Glendale in no way warrants that the minimum limits contained herein is sufficient to protect HFTC from liabilities that might arise out of this License. HFTC is free to purchase such additional insurance as HFTC determines necessary.

a. **Minimum Scope And Limits Of Insurance:** HFTC shall provide coverage with limits of liability not less than those stated below.

i. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage. The policy shall be endorsed to include coverage for sexual molestation and abuse.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Licensed Premises	\$ 500,000

1) The policy shall be endorsed to include the following additional insured language: ***“The City of Glendale, and its departments, officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the property subject to this License.*** Such additional insured shall be covered to the full limits of liability purchased by the HFTC, even if those limits of liability are in excess of those required by this License.

2) Policy shall contain a waiver of subrogation endorsement in favor of the ***“City of Glendale, and its departments, officers, officials, agents, employees and volunteers”*** for losses arising from License. This provision applies regardless

- 2) If property coverage on the building is required, *"the City of Glendale shall be named as a loss payee."*
- 3) Policy shall contain a waiver of subrogation endorsement in favor of the "City of Glendale, and its departments, officers, officials, agents, employees and volunteers" for losses arising from the License. This provision applies regardless of whether or not the City of Glendale has received a waiver of subrogation endorsement from the insurer.

v. **Professional Liability (Errors and Omissions Liability)**

Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services.

Each Claim	\$2,000,000
Annual Aggregate	\$4,000,000

- 1) In the event that the professional liability insurance required is written on a claims-made basis, any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

- b. **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:
 - i. HFTC's policies shall stipulate that the insurance afforded HFTC shall be primary insurance and that any insurance carried by the City of Glendale shall be excess and not contributory insurance.
 - ii. Coverage provided by HFTC shall not be limited to the liability assumed under the indemnification provisions of this License.
- c. **Notice Of Cancellation:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this Agreement in the insurance policies above shall require (30) days written notice to the City of Glendale. Such notice shall be sent directly to the City.
- d. **Acceptability Of Insurers:** HFTC's insurance shall be placed with companies licensed in the City of Glendale or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The City of Glendale in no way warrants that the above-required minimum insurer rating is sufficient to protect MAC from potential insurer insolvency.
- e. **Verification Of Coverage:** HFTC shall furnish the City of Glendale with certificates of insurance (ACORD form or equivalent approved by the City of Glendale) as required by this Agreement. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Glendale before the License term commences. Failure of HFTC to obtain the required documents prior to the License commencing shall not waive HFTC's obligation to provide them. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the License and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the License.

All certificates required by this Agreement shall be sent directly to the City. *THE CERTIFICATES ARE NOT TO BE SENT TO RISK MANAGEMENT.* The City of Glendale Department, License agreement number and location description are to be noted on the certificate of insurance. The City of Glendale reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

- f. **Approval:** The City of Glendale reserves the right to any modification or variation from the *insurance requirements* in this License based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Such action will not require a formal License amendment, but may be made by administrative action and in consultation with the City Attorney and Risk Management.
6. **INDEMNIFICATION.** HFTC shall indemnify, defend, save and hold harmless the City of Glendale and its departments, officers, officials, agents, and employees (hereinafter referred to as "City") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of HFTC or any of its owners, officers, directors, agents, employees or contractors (sub-contractors), Heart For The City's or sub-licensee, arising out of or related to Heart For The City's management, operation, occupancy and use of the Licensed Premises. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by HFTC from and against any and all claims. It is agreed that the HFTC will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Licensed Premises, Heart For The City agrees to waive all rights of subrogation for the management, operation, use and occupancy of the Licensed Premises, the agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Licensed Premises.

7. PROHIBITIONS.

- a. HFTC shall not permit any advertising/signage to be displayed in or upon the Center without the prior approval of the City, which consent may be granted or withheld at City's sole discretion; HFTC shall make a written request 30 days before the event or date of planned use.
- b. HFTC shall not permit any alcohol to be sold, consumed, stored, or transported in, upon or through the Recreation Center.
- c. HFTC shall not permit any firearms (pursuant to A.R.S 13-3102.01A), other weapons, or dangerous objects or chemicals to be possessed in or upon the Recreation Center.

- d. The City's name shall not be used to suggest co-sponsorship or endorsement of any activity, except with the prior written approval by the City; HFTC shall make its request 60 days before the event or date of planned use.
- e. HFTC shall not admit a larger number of persons than can safely and freely move about in the Recreation Center. The City shall notify HFTC of the recommended capacity of the Center and the decision of the City concerning questions arising under this paragraph shall be final;
- f. HFTC shall not use City's equipment, tools or furnishings, located in or about the Recreation Center, without the prior approval of the City; HFTC shall make a written request 30 days before the event or date of planned use.
- g. HFTC shall not produce or allow amplified sound, live or recorded music or any other noise that might disturb the neighborhoods surrounding or near the Center after 10:00 p.m.;
- h. HFTC will not permit any hazardous substance to be used, stored, generated or disposed of on, in, or about, or transported to or from, the Recreation Center, by HFTC, HFTC's agents, employees, HFTC's invitees, subtenants, or concessionaires without first obtaining City's written consent, which City may give or withhold at its sole discretion, or revoke at any time. If City consents, all hazardous substances must be handled at HFTC's sole cost and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. Without limitation, if HFTC causes or permits the presence of any hazardous substance on, in or about the Center and this results in contamination of any part of the Recreation Center, HFTC will promptly, at its sole cost and expense, take all necessary actions to return the Center and any adjacent facility to the condition existing prior to the presence of any hazardous substance; provided, however, HFTC shall first obtain City's approval for any such remedial action. "Hazardous substance" means any substance regulated by any local government, the State of Arizona or the United States government. Hazardous substance includes any material or substances that are defined as "hazardous material," "hazardous waste," "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local government law. Hazardous substance includes, but is not restricted to, asbestos, polychlorobiphenyls and petroleum.
- i. **Immigration Law Compliance.**
HFTC, or subcontractor of HFTC, warrants, to the extent applicable under A.R.S. § 41-4401, as amended, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

Any breach of warranty of Immigration Law Compliance is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

City retains the legal right to inspect the papers of any HFTC or sub-contractor for HFTC or employee who performs work under this Agreement to ensure that HFTC or any sub-licensee is compliant under A.R.S. § 41-4401.

City may conduct random inspections, and upon request of City, HFTC shall provide copies of papers and records of HFTC demonstrating continued compliance with the warranty under A.R.S. § 41-4401. HFTC agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of A.R.S. § 41-4401.

HFTC agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon HFTC and expressly accrue those obligations directly to the benefit of the City. HFTC also agrees to require any sub- HFTC entities or partners, to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

HFTC's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

The "E- Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

8. **ADDITIONAL USERS.** HFTC understands and agrees that during the term of this Agreement there may be other events taking place in the Center not covered by this Agreement. HFTC shall conduct its activities so as not to interfere with other events.
9. **PARKING RECREATION CENTER.** The City shall make the parking for the Center available for the vehicular traffic and parking necessitated by HFTC's use on a nonexclusive basis.
10. **VIOLATIONS.** If at any time the use of the Center by HFTC violates this Agreement, any and all applicable laws, rules or regulations of the City of Glendale, County of Maricopa, State of Arizona or the United States of America, HFTC shall either cease and desist from continuing such use or shall surrender the Center forthwith upon demand of the City.
11. **CONTROL OF RECREATION CENTER.** In permitting the use of the Center described herein, the City does not relinquish control or custody thereof and does hereby specifically retain the right to enforce any and all laws, rules and regulations applicable thereto. All portions of the Center will and at all times will be under the charge and control of the City. Upon notice, employees, officials, agents or other authorized representatives of the City may enter upon the Center at any and all times to make inspections to ensure compliance with this Agreement.
12. **ASSIGNMENT.** HFTC does not have the right to assign this Agreement or allow any other person or entity to use or occupy any of the Center without the prior written consent of City, which consent may be granted or withheld at City's sole discretion.
13. **DEFAULT AND TERMINATION.** If HFTC fails to pay any fee or other sum required to be paid by HFTC when due, or otherwise fails to comply with or observe any other provision of this Agreement or the City's policies, in addition to any other remedy that may be available to City, whether at law or in equity, City may immediately terminate this

Agreement and all rights of HFTC. Both parties may terminate for convenience, and the terminating party must give the non-terminating party 90 days' notice.

14. **INTERPRETATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Arizona, the courts of which state shall have jurisdiction over its subject matter.
15. **RELATIONSHIP.** Neither HFTC nor any personnel of HFTC will for any purpose be considered employees or agents of City. HFTC assumes full responsibility for the actions of HFTC's personnel, and is solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits. HFTC is an independent contractor and not the agent or employee of the City.
16. **AUTHORITY.** The individual signing below on behalf of HFTC represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of the HFTC and that this Agreement is binding upon HFTC in accordance with its terms.
17. **MISCELLANEOUS.**
 - a. HFTC agrees to comply with all federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.
 - b. This Agreement is subject to A.R.S. §38-511. This Agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of City is an employee, consultant, or agent of any other party to this Agreement.
 - c. If City's performance under this Agreement depends upon the appropriation of funds by the City Council, and if the City Council fails to appropriate the funds necessary for performance, then City may provide written notice of this to HFTC and cancel this Agreement without further obligation of City.

(The remainder of page left blank intentionally. Signatures will appear on the following page.)

Heart for the City



Authorized Agent

Date 7/20/16

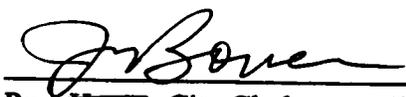
CITY OF GLENDALE



Erik Strunk, Director, Community Services

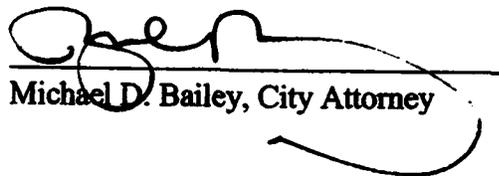
Date 8.8.16

ATTEST:



~~Pam Hanna~~, City Clerk (SEAL)
Julie K Bower

APPROVED AS TO FORM:



Michael D. Bailey, City Attorney

Attachment A

Scope of Work and Services

The City of Glendale is contracting with area community-based organizations to operate our community centers. We believe partnering with an outside organization to manage our community centers may be a viable option to provide needed recreational services to residents, keep the centers open and to reduce expenses at the same time. We are considering entering into an annual professional services agreement with a qualified applicant(s) at no rental or utility cost to the City for the delivery of high quality, youth and community-based activities at each site.

Heart For The City will provide the following programs and services to the Rose Lane Neighborhood at the Rose Lane Recreation Center:

- Free Community based recreational programs and services
- Organized sports programs
- Special events and programs
- Afterschool programming including educational tools and services
- Youth and Teen mentoring
- Safe and positive community destination
- Educational and intervention programs