

Attachment A

Agreement
by and between
The City of Kirkland
and
"Operator"
regarding the
lease, use, and occupancy of the
Kirkland Teen Union Building

[Lease start date] through [Lease expiration date]



**AGREEMENT BY AND BETWEEN THE CITY OF KIRKLAND, WASHINGTON
AND "OPERATOR"**

AGREEMENT BETWEEN CITY OF KIRKLAND AND "OPERATOR"
REGARDING THE LEASE, USE, AND OCCUPANCY OF THE KIRKLAND TEEN UNION BUILDING

THIS LEASE, USE, AND OCCUPANCY AGREEMENT ("Agreement") is dated as of _____(the "Effective Date"), and entered into by and between the CITY OF KIRKLAND, a Washington municipal corporation, and "OPERATOR", _____ (hereinafter referred to as "Operator"), a Washington non-profit corporation.

RECITALS:

- A. The City is interested in the health and welfare of its residents; and
- B. Operator is organized to provide _____, meeting the needs of young residents and their families; and
- C. The Kirkland Teen Union Building, located at 348 Kirkland Avenue, Kirkland, Washington 98033, is owned by City is situated upon its real property in King County, Washington, legally described in Exhibit A and incorporated herein by this reference (hereto "KTUB"). KTUB will be vacant beginning in June 2023; and
- D. City and Operator cooperated in a request for proposals and evaluation of proposals process to operate the Facility; and
- E. Both parties agree that KTUB will provide an essential venue for positive and life-enriching programs and activities for teenagers, and thereby fulfill an important public purpose; and
- F. Both parties agree that it would be in the best interests of City, as Landlord, and Operator, as Tenant, for Operator to lease and have exclusive operational control of KTUB subject to the terms of this Agreement, except reserving the right of City to use KTUB consistent with Agreement; and
- G. Both parties intend that Operator operate KTUB in a manner consistent with the important public purpose of providing positive and healthful programs for teenagers; and
- H. The parties hereto desire to document the terms and conditions they have agreed upon with respect to the lease, use, and occupancy of leased premises.

NOW, THEREFORE, in consideration of the mutual undertakings and promises

contained herein, and as a direct benefit to City, the parties agree as follows:

ARTICLE 1 – DEFINITIONS

All words in this Agreement bearing initial capitals, other than proper nouns, article headings, or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them here. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

- 1.1 **"Agreement"** means this Lease, Use, and Occupancy Agreement, as from time to time may be amended in accordance with the terms hereof.
- 1.2 **"Approval"** means the prior written consent of a party hereto or designated representatives thereof.
- 1.3 **"City"** means the City of Kirkland.
- 1.4 **"City Manager"** means the City Manager of the City of Kirkland, or his or her designee.
- 1.5 **"Leased Premises"** means the Kirkland Teen Union Building (KTUB).
- 1.6 **"Operator"** means "Operator", a Washington non-profit corporation.
- 1.7 **"Tenant Improvements"** means all property (such as equipment, fixtures, and furnishings, whether the property is physically affixed to the Leased Premises or not) that is used in the scheduling or presentation of events, classes, and activities at the Leased Premises, including, but not limited to, lighting, sound system, curtains, seating, carpeting, phone system, stage rigging, pool tables, and furniture. Tenant Improvements does not mean the structure and core of the Leased Premises; HVAC, plumbing, electrical, and mechanical systems; elevator; or stage.

ARTICLE 2 – LEASE AND DESCRIPTION OF FACILITY

The City, as Landlord, hereby leases to Operator, and Operator, as Tenant, hereby leases from the City, subject to the terms and conditions hereof, the Leased Premises.

ARTICLE 3 – TERM OF AGREEMENT

- 3.1 Commencement Date. The effective date of this Agreement shall be _____.
- 3.2 Term Expiration. The Term of this Agreement shall expire on _____ 2028, unless terminated earlier pursuant to the provisions hereof.

- 3.3 Option for Extension of Term. City and Operator may mutually agree to extend the term of this agreement for two (2) additional consecutive terms of five (5) years each; provided that prior to such an extension the parties have the option to renegotiate the terms and conditions of this Agreement and to thereby seek to amend the agreement. If the parties fail to agree on the terms and conditions of an extension amendment of this Agreement, the Agreement will terminate upon expiration.

Not later than six (6) months before the expiration of this Agreement, City shall notify Operator that City desires to exercise the option to extend this Agreement. Such notice should provide reasonable information about the extent that the City desires to renegotiate the terms and conditions as part of the extension.

Not later than one (1) year before the expiration of this agreement, Operator shall notify City that Operator desires to exercise the option to extend this agreement. Such notice should provide reasonable information about the extent that the Operator desires to renegotiate the terms and conditions as part of the extension. Notwithstanding any other provision of this Agreement, the option to extend the term of this Agreement shall not be assignable or exercisable by any person or entity other than Operator.

- 3.4 Termination of Agreement. Upon the occurrence of any event of default described in this Agreement, the City may terminate this Agreement. Upon not less than one (1) month's notice to the City, Operator may terminate this Agreement. Upon not less than one (1) year's notice to Operator, City may terminate this Agreement without cause. If this Agreement is terminated, Operator shall surrender the Leased Premises to the City. The City shall not owe Operator any "refund" or other compensation for contributions made by Operator for tenant improvements, prepaid utilities, or other types of service contracts.

ARTICLE 4 – AUTHORIZED USE OF LEASED PREMISES

- 4.1 Exclusive possession and operational control of KTUB. Operator shall have exclusive possession and operational control of KTUB, subject to the terms of this Agreement reserving the right of the City to use KTUB. Operator, upon performing its other covenants and agreements set forth in this Agreement and all extensions thereof, shall peaceably and quietly have and hold KTUB for the term of this Agreement, including, but not limited to, the selection, scheduling, management and operations of services, programs, activities, employees, and agents without hindrance or interference from the City, subject to the terms and provisions of this Agreement.
- 4.2 Operator's Use of KTUB. Operator shall use KTUB for the provision of services, programs, and activities aimed at meeting the needs of Kirkland teenagers, particularly those services, programs, and activities described in Article 31 and Exhibit B. Operator may also use KTUB for meetings of Operator Board members, staff, and other personnel

directly associated with Operator, for Operator classes, and for other Operator educational programs, presentations, Operator fund-raising endeavors, and other related activities, for Operator offices, and for such other activities as are incidental to the foregoing. Operator may use KTUB to engage in concession and catering activity only as provided in this Agreement.

- 4.3 Partnering Organization's Use of KTUB. Operator may partner with other non-profit organizations to provide services, programs, and activities consistent with Article 31 and Exhibit B. Operator may make facility space available to such partnering organizations for the provision of relevant services, programs, and activities aimed at meeting the needs of Kirkland teenagers. Operator may also authorize partnering organizations to use KTUB for meetings of that organization's Board members, staff, and other personnel directly associated with the partnering organization, and for other partnering organization's educational programs, presentations, offices, and other related activities, and for such other activities as are incidental to the foregoing.
- 4.4 Additional Authorized Uses of KTUB. Operator may use KTUB for business and community meetings and activities; provided that, such meetings and activities shall not unduly interfere with the priority use of KTUB for the purposes stated above. In making KTUB facility space available to other business and community organizations, arrangements for such facility use shall be made directly between Operator and the other organizations, except that all such arrangements must protect the City as an additional insured unless the City consents in writing to a different arrangement.
- 4.5 Operator may use KTUB for additional purposes not described herein with the prior written approval of the City Manager.
- 4.6 Additional use of KTUB to advance City of Kirkland Resolution R-5434 (R-5434). Operator shall engage the Black, Indigenous, and People of Color (BIPOC) community to create inclusive programming, consistent with R-5434 (<http://kirklandwa.gov/Assets/CMO/CMO+PDFs/treks/Resolution+R-5434.PDF>). Operator shall create culturally-relevant programmatic and participatory opportunities for the BIPOC community and disadvantaged youth as well as offer a scholarship program for disadvantaged youth.
- 4.7 Public Health Requirements. Operator's use of KTUB must be consistent and comply with any ordinance or order of the City of Kirkland, of any state or federal law, or of any order, proclamation, guidance, advice, or decision of Public Health-Seattle & King County, the Washington State Department of Health, or the Washington State Governor and Legislature. Operator agrees to adhere to all health requirements related to vaccinations, face coverings, gathering size limitations, physical distancing, monitoring of all in attendance for illness, and maintaining clean and sanitized operations throughout use of the Leased Premises.

ARTICLE 5 – RENT

- 5.1 In consideration of the value of Operator’s contribution to the operation of KTUB, the value of Operator’s maintenance and operation of KTUB, the value of Operator’s payments of all taxes, utility charges and fees, and subject to the terms and conditions of this Agreement, Operator hereby covenants to pay monthly rent in the amount of \$____ during the initial term of this Agreement. The amount of the annual rent during additional terms shall be established in accordance with Article 3.3 of this Agreement.

ARTICLE 6 - CITY USE

- 6.1 City reserves the right to use the public program areas of KTUB for various programs on a space available basis. Scheduling and use procedures shall be coordinated by the respective facility managers of City and Operator. In any event, KTUB space for Operator programs will be the priority where scheduling of City's programs and Operator’s programs conflict.
- 6.2 City shall be allowed to use KTUB without rental charge but shall pay operational expenses arising from its use of KTUB, including extra staffing and janitorial services.

ARTICLE 7 – REPORTING

- 7.1 City shall appoint a liaison between City and Operator who will ensure compliance with all record keeping and reporting requirements set forth in this section.
- 7.2 Operator shall maintain books, records, documents, and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles consistently applied (e.g. a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by Operator under this Agreement.
- 7.3 Operator shall provide monthly reports in the first twelve (12) months of operation and quarterly and annual reports thereafter, on a schedule and in a form acceptable to both parties. The reports shall include, at a minimum, program assessment reports, which will include a list and number of programs and services offered and the number of participants, including insofar as practical involved in drop-in programs and activities. Operator is also requested to provide information on efforts to engage with and support the BIPOC community. Reports shall include measurement of progress towards meeting or exceeding mutually agreed upon program outcomes, established on an annual basis and included herewith in Exhibit B. Operator will draft statements of such outcomes an approval by City will not be unreasonably withheld.

ARTICLE 8 – IMPROVEMENTS, ALTERATIONS, AND ADDITIONS TO THE FACILITY

- 8.1 Tenant Improvements. Operator may make Tenant Improvements to Leased Premises with the written consent of the City. If an event of default occurs, if Operator fails to perform its duties under this Agreement, or if this Agreement expires, terminates, or is otherwise not renewed, all Operator-provided or owned Tenant Improvements on the Leased Premises shall remain in place and shall automatically and without further notice or act by the City and without compensation to Operator become the property of the City.
- 8.2 Other Improvements, Alterations, and Additions. Operator shall not alter any structural features of the Leased Premises without written City approval. Operator, at its sole expense, may redecorate any interior surface of walls, ceilings, windows, and doors. Operator may install its own furnishings and equipment on or about the Facility without City's consent, provided Operator shall not install trade fixtures or other items that are physically attached to the Facility without City's written consent, which shall not be unreasonably withheld, conditioned, or delayed. Any improvements will be made in accordance with all licenses, permits, and/or other authorization required.

ARTICLE 9 – FACILITY ACCEPTANCE

- 9.1 Prior to entering and occupying the Leased Premises, Operator shall have an opportunity to inspect the Leased Premises to confirm the general maintenance and upkeep of the Leased Premises. Thereafter, by entering into and occupying the Leased Premises, or any portion thereof, Operator accepts the same in their condition as of the Commencement Date. Operator covenants that no representation, statement, or warranty, express or implied, has been made by or on behalf of City with respect to the condition of the Leased Premises or the use that may be made of the Leased Premises, except as may be contained in this Agreement.

ARTICLE 10 – HAZARDOUS SUBSTANCES

- 10.1 Operator shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Leased Premises, the building, or the common areas, other than in strict compliance with all applicable federal, state and local laws, regulations and orders.
10. The term "Hazardous Materials" refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation, or order.
- 10.3 Operator shall indemnify, defend, and hold harmless the City from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work ("remedial work") required of or

incurred by the City or any nongovernmental entity or person based on a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from Leased Premises that occurred or originated during the term of this Agreement.

- 10.4 The City shall indemnify, defend, and hold harmless Operator from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work ("remedial work") required of or incurred by Operator based on a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Leased Premises that occurred or originated during a time other than the term of this Agreement.
- 10.5 If any remedial work is so required under any applicable federal, state, or local law during the term of this Agreement, Operator shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All remedial work shall be performed by one (1) or more contractors under the supervision of a consulting engineer, each selected by Operator and approved in advance in writing by the City. If Operator does not commence the remedial work in a timely fashion or does not diligently prosecute the remedial work to completion, the City may, but shall not be required to, cause the remedial work to be performed, subject fully to the indemnification of this paragraph.
- 10.6 The foregoing indemnification obligation shall survive termination of this Agreement.

ARTICLE 11 – MAINTENANCE, CLEANING, REPAIR, AND UTILITIES

11.1 City.

11.1.1 The City is responsible for maintenance and repair of the structural components of KTUB, which shall include the roof, the exterior walls, the foundation, and the HVAC system. The City is also responsible for maintenance, which is necessary for the structural integrity of KTUB, including maintenance of load-bearing members, and of main lines of mechanical, electrical, and plumbing systems to the point of entry. City will coordinate a routine meeting with Operator to discuss and schedule future maintenance work.

11.1.2 The City is responsible for and will pay for landscaping and landscape maintenance that meet City standards; provided that, if Operator wants special plantings or landscaping and landscape maintenance at KTUB that exceed City

standards, Operator will be responsible for and will pay for such plantings or features.

11.1.3 Operator shall give the City notice of any repair required to be performed by the City pursuant to this section within ten (10) days after the later of the date (i) the need for such repair arises, and (ii) Operator becomes aware of such required repair. The City shall have a reasonable time in which to complete the repair after receipt of such notice. Notice of maintenance or repairs needs shall be made by Operator to the City's Facilities Services Manager, with a copy to the Parks and Community Services Department.

11.1.3 The City shall strive to coordinate Maintenance work with Operator so as not to interfere with Operator's operations. At minimum, absent an emergency, the City shall give Operator at least twenty-four (24) hours' notice of maintenance or repair work in or at KTUB; provided that, such maintenance and repair work shall not unduly interfere with the use of KTUB for Any of the established programming. In the event of an emergency, however, no such notice or avoidance of interference shall be required.

11.2 Operator.

11.2.1 Operator is responsible for maintenance and repair of the interior of the Leased Premises, which shall include tenant improvements, audio/visual systems, sound system, telephone equipment, lighting, furniture, gaming tables, and plumbing fixtures and appliances.

11.2.2 Operator's responsibility for plumbing fixtures and appliances extends through fixture drain and trap down to the junction with the line into wall or floor and includes attempting to clear clogs by means of plunger and toilet auger.

11.2.3 Operator's janitorial and routine maintenance responsibilities include timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning of seating, curtains, carpets, flooring, and faucets; cleaning of interior and exterior windows; cleaning of the kitchen and restroom facilities and drinking fountain; and cleaning of external patio, entryways, and external back door area.

11.2.4 Except as otherwise specified, Operator shall timely pay all charges for utility and other services to KTUB. Utility charges to be paid by Operator, include, but are not limited to, electricity, telephone, internet, security alarm monitoring, permits, and false alarm charges.

ARTICLE 12 – WAIVER AND INDEMNIFICATION

- 12.1 Lessee's Release of Claims. The City shall not be liable to Operator or Operator's employees, agents, contractors, partners, guests, invitees, or visitors, or to any other person for any injury to person or damage to property on or about the Leased Premises, resulting from and/or caused in part or whole by the negligence or misconduct of Operator and/or its employees, agents, contractors, partners guests, invitees, and visitors, or of any other person entering upon the Leased Premises, or caused by the building and improvements located on the Leased Premises becoming out of repair, or caused by leakage of gas, oil, sewer, or water, or by electricity emanating from the Leased Premises, or due to any other cause (including those described elsewhere within this subsection) except injury to persons or damages to property caused by the sole negligence of the City. In addition, Operator specifically hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Operator or any person claiming through Operator resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of equipment; any failure to make repairs; any defect, failure, surge in, or interruption of facilities or services; broken glass; gas, oil, sewer, or water leakage; the collapse of any component; or any act, omission, or negligence of co-tenants, partners, licensees, or any other persons or occupants of the Leased Premises.
- 12.2 Indemnification. Operator shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Operator's use of the Leased Premises, or from the conduct of Operator's business, or from any activity, work, or thing done, permitted, or suffered by Operator and/or in or about the Leased Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City. In the event it is determined that RCW 4.24.115 applies to this Agreement, the Operator agrees to defend, indemnify, hold harmless the City to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of the City to the full extent of Operator's negligence.
- 12.3 It is further specifically and expressly understood that the indemnification provided herein constitutes the Operator's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated and agreed to by Operator and the City.
- 12.4 The provisions of this section shall survive the expiration or termination of this Agreement.

ARTICLE 13 – FIRE OR OTHER CASUALTY

- 13.1 Effect of Damage or Destruction. Should a substantial portion of the Leased Premises be substantially damaged (as defined in Section 14.2) by fire or other casualty, the City may

elect to terminate this Agreement under the terms specified in this section. When such fire or other casualty renders the Leased Premises substantially unsuitable for their intended use, a just and proportionate abatement of rent shall be made, and Operator may elect to terminate this Lease if: (i) Landlord fails to give written notice within thirty (30) days of intention to restore Premises; or (ii) Landlord fails to restore the Premises to a condition substantially suitable for their intended use within ninety (90) days of said fire or casualty. The City reserves, and Operator grants to the City, all rights that Operator may have for damages or injury to the Premises for any taking, except for damage to Tenant's trade fixtures, property, and equipment.

- 13.2 Definition of Substantially Damaged. The Leased Premises shall be deemed "substantially damaged" under any of the following circumstances: (1) If the building is totally destroyed by fire or other casualty, (2) if the casualty is not insured, or (3) if the cost of restoration would exceed the total insurance proceeds and Operator's available funds.
- 13.3 Operator shall notify the City immediately after a casualty occurs to the Leased Premises.
- 13.4 Tenant's Acts. If such damage or destruction occurs as a result of the negligent or intentional acts of Operator or Operator's employees, agents, contractors, partners, or invitees: (a) Operator's termination right described in Section 18.1 shall not apply; and (b) if the insurance proceeds actually received by the City are insufficient to pay for the repairs of the damage, Operator shall pay at Operator's sole cost and expense the difference between the cost of repairing the damage and the insurance proceeds received by the City.
- 13.5 Tenant's Property. Operator shall repair or replace Operator's property at Operator's sole cost and expense. Operator acknowledges that it is Operator's sole responsibility to obtain adequate insurance coverage to compensate Operator for damage to Operator's property.

ARTICLE 14 – INSURANCE

- 14.1 City will purchase and maintain during the term of the lease all-risk property insurance covering the Leased Premises for their full replacement value without any coinsurance provisions.
- 14.2 Operator shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Operator's operation and use of the Leased Premises. Operator's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Operator to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- 14.2.1 Minimum Scope and Amounts of Insurance. Operator shall obtain insurance of the types described below with the following insurance limits:

- 14.2.1.1 Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Leased Premises and contractual liability. The City shall be named as an insured on Operator's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Facility Form CG 20 11 or a substitute endorsement providing equivalent coverage. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$5,000,000 general aggregate.
- 14.2.1.2 Property insurance shall be written on an all risk basis. Property insurance shall be written covering the full value of Operator's property and improvements with no coinsurance provisions.
- 14.2.2 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:
- 14.2.3.1 Operator's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Operator's insurance and shall not contribute with it.
- 14.2.3.2 Notice of Cancellation. Operator's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. Operator shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.
- 14.2.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- 14.2.4 Verification of Coverage. Operator shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Operator.
- 14.2.5 Waiver of Subrogation. Operator and City hereby release and discharge each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Leased Premises or said building. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

14.3 Failure to Maintain Insurance. Failure on the part of Operator to maintain the insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days' notice to Operator to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

14.4 Full Availability of Operator's Limits. If Operator maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by Operator, irrespective of whether such limits maintained by Operator are greater than those required by this Lease or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Operator.

ARTICLE 15 – SIGNS

Operator may install signs on the exterior of KTUB, identifying the building as the Kirkland Teen Union Building or other mutually agreed upon name, and containing other information related to Operator, including without limitation, program information, fundraising information, and special Operator announcements. The design, installation, and location of said signs shall comply with applicable provisions of the Kirkland Municipal Code, including but not limited to zoning provisions and building regulations, and shall be subject to the written approval of the City Manager, which approval shall not be unreasonably withheld.

ARTICLE 16 - ASSIGNMENT, SUBLEASE, OR TRANSFER

Obligations or rights of Operator under this Agreement may not be assigned, subleased, or otherwise transferred by Operator, without the prior written consent of the City, which consent may be withheld at the sole discretion of the City. The assignment, sublease, or transfer of this Agreement without such consent shall constitute an event of default. Any such assignment, sublease, or transfer shall be specifically subject to all the terms and conditions of this Agreement. In the event of any proposed assignment, sublease, or transfer of this Agreement, Operator shall cause to be delivered to the City simultaneously with such proposed assignment, sublease, or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Agreement.

ARTICLE 17 – CONCESSIONS AND CATERING ACTIVITY

17.1 Definitions. As used in this article, unless the context clearly requires a different meaning:

- 17.1.1 "Concession and catering activity" means and includes the preparation, service, free distribution, or sale of food or any beverage or the free distribution or sale of any concession merchandise or service; and

- 17.1.2 "Concession merchandise or service" means and includes inedible goods and services such as souvenirs, novelties and tickets to events at other venues.
- 17.2 Grant of Right. The City grants to Operator the exclusive right to engage in concession and catering activity and to enter into agreements authorizing one (1) or more concessionaries to engage in such activity for and on the behalf of, or under the auspices of, Operator at KTUB during the term of this Agreement and subject to the terms of this Agreement. If Operator decides to retain any such concessionaire(s), Operator shall select such concessionaire(s). If Operator enters into any such agreement(s), Operator shall remain ultimately responsible for compliance with terms and conditions, and performance of obligations under this Agreement. Any such agreement shall incorporate terms and conditions related to concessions and catering activity under this Agreement. Any such agreement must protect the City as an additional insured unless the City consents in writing to different terms.
- 17.3 Food Service Establishment Permit Required. Operator, or any such concessionaire(s), shall ensure that all food offered for sale on or from KTUB has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Seattle-King County Department of Public Health or its successor.
- 17.4 Licenses and Permits Required. Operator, or any such concessionaire(s), shall be responsible for obtaining and maintaining, at no cost to the City, all licenses, permits, and other authorization required in order to legally conduct the concession and catering activity contemplated herein. The City shall have no obligation to issue such licenses, permits, or other authorization. The City shall issue such licenses, permits, or other authorization in accordance with applicable City rules and regulations. The inability of Operator, or any such concessionaire(s), to secure or to maintain any such license, permit, or other authorization shall not invalidate the concession and catering right granted herein.

ARTICLE 18 – COMPLIANCE WITH LAW

- 18.1 Lawful Use. Operator and the City each agree to abide by, conform and comply with all applicable federal, state and local laws, and obtain all required licenses, permits, and authorizations. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between the City and Operator.

- 18.2 Licenses and Similar Authorization. Operator, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof. The City shall have no obligation to issue such licenses, permits, or authorizations. The City shall issue such licenses, permits, or authorizations in accordance with applicable City rules and regulations.
- 18.3 Taxes. Operator shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Leased Premises pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Leased Premises; taxes levied on Operator property, equipment, and improvements on the Leased Premises; taxes on Operator's interest in this Agreement and any leasehold interest created thereby under RCW 82.29A., if applicable; any utility fees, including KTUB's proportionate share of stormwater utility fees; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking. In the event the State of Washington makes any demand upon the City for payment of any tax resulting from Operator's use or occupancy of the Leased Premises or the conduct of any activity subject to tax, or the State withholds funds due to the City to enforce collection of leasehold excise or any other tax, Operator, at its sole expense, shall contest such action and indemnify the City for all sums expended by or withheld by the State from the City in connection with such taxation; provided, that Operator may pay any such tax in lieu of contesting it or indemnifying the City. The City shall pay, and shall indemnify and hold Operator harmless, for all taxes imposed that relate to City-sponsored events at KTUB (except for taxes imposed on concession sales by Operator or for Operator's benefit), and for all taxes that may be imposed on Operator or Operator use of the Leased Premises resulting from any City use under this Agreement.
- 18.4 Attendance and Safety Standards. The Kirkland Fire Chief or designee shall have the authority to determine, in the reasonable exercise of their discretion, the number of persons that may be admitted to, and safely and freely move about in Leased Premises. Operator shall not sell or issue tickets or credentials for admission to KTUB in an aggregate number that exceeds the Kirkland Fire Chief's determined number. Operator shall not admit to the Leased Premises more people than the number so determined by the Kirkland Fire Chief. Operator shall not permit any chair or movable seat or other obstruction to the erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets, and all ways of access to the Leased Premises shall not be obstructed by Operator or used for any purpose other than for ingress and egress to the Leased Premises for persons or property. The City shall be responsible for assuring compliance with each of the foregoing requirements during periods of City use of the Leased Premises under this Agreement.

- 18.5 Nondiscrimination. Operator shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.
- 18.6 Americans with Disabilities Act. Operator shall comply with all governmental laws, ordinances and regulations applicable to the use of the Leased Premises, including without limitation Title III of the Americans with Disabilities Act.
- 18.7 Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

ARTICLE 19 – ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS

Operator shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of KTUB. The City shall be responsible for all similar royalties, license fees and other charges in connection with the City's use of the KTUB.

ARTICLE 20 – LIENS AND ENCUMBRANCES

Operator shall keep the Leased Premises, Operator's interest in this Agreement, and the Tenant Improvements free and clear of any liens and encumbrances. At the City's request, Operator shall furnish the City written proof of payment of any items that would or might constitute the basis for such a lien on the Leased Premises, Operator's interest in this Agreement, and the Tenant Improvements if not paid.

ARTICLE 21– DEFAULT

- 21.1 Default. The following events shall constitute a default and material breach of this Agreement:
- 21.1.1 The failure to comply with any of the terms of this Agreement regarding insurance;
 - 21.1.2 The material violation of any law, ordinance, rule or regulation which, after notice and reasonable time to cure, remains uncured;

- 21.1.3 The abandonment or vacating of the Leased Premises for a period of twenty (20) days or more;
 - 21.1.4 The absence of any Operator-scheduled classes or activities for a period of ninety (90) days or more, when not due to repair problems or maintenance work for which the City is responsible or to other state-mandated requirements;
 - 21.1.5 The failure to pay any sum of money due to the City within thirty (30) days after such notice from the City that such a payment is overdue;
 - 21.1.6 The dissolution of the Operator or the merger of Operator with another entity without the prior written approval of the City;
 - 21.1.7 The assignment or transfer of this Agreement without the prior written consent of the City as described in Article 16 of this Agreement; and
 - 21.1.8 The failure to perform any other condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by this Agreement, or such other period for remedial action as is expressly otherwise provided for in this Agreement, or agreed upon by both parties.
- 21.2 Extension of Period to Remedy Default. Neither the City nor Operator shall be in default unless such party fails to perform an obligation required of it within thirty (30) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such thirty (30) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days.

ARTICLE 22 – REMEDIES UPON DEFAULT AND MATERIAL BREACH

Upon the occurrence of any event of default by Operator, the City shall have the option to pursue any one (1) or more of the following remedies without notice or demand.

- 22.1 Accelerate all rent payments under this Agreement which shall then become immediately due and payable.
- 22.2 Terminate this Agreement, in which event Operator shall immediately surrender the Leased Premises to the City, and if Operator fails so to do, the City may, without prejudice to any other remedy it may have for possession or unpaid rent, enter upon and take possession of the Leased Premises and expel or remove Operator and any other person who may be occupying such Leased Premises or any part thereof, and Operator agrees to

pay to the City on demand the amount of all loss and damage the City may suffer by reason of such termination, whether through inability to relet the Leased Premises on satisfactory terms or otherwise.

- 22.3 Enter upon and take possession of the Leased Premises and expel or remove Operator and any other person who may be occupying such Leased Premises or any part thereof, and relet the Leased Premises for such terms ending before, on or after the expiration date of the term of this Agreement, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as the City in its sole discretion may determine, and receive the rent therefor; and Operator agrees to pay to the City on demand any deficiency that may arise by reason of such reletting. The City shall have no obligation to relet the Leased Premises or any part thereof and shall not be liable for refusal or failure to relet or in the event of reletting for refusal or failure to collect any rent due upon such reletting. If the City is successful in reletting the Leased Premises at a rental in excess of that agreed to be paid by Operator pursuant to the terms of this Agreement, the City and Operator each mutually agree that Operator shall not be entitled, under any circumstances, to the excess rental, and Operator specifically waives any claim to the excess rental.
- 22.4 Enter upon the Leased Premises and do whatever Operator is obligated to do under the terms of this Agreement. Operator agrees to reimburse the City on demand for any expenses which the City may incur in thus effecting compliance with Operator's obligations under this Agreement, and Operator further agrees that the City shall not be liable for any damages resulting to the Operator from such action, whether caused by the negligence of the City or otherwise.
- 22.5 Whether or not the City retakes possession or relets the Leased Premises, the City shall have the right to recover unpaid rent and all damages caused by Operator's default, including attorney's fees. Damage shall include, without limitation: all rentals lost, all legal expenses and other related costs incurred by the City following Operator's default, all costs incurred by the City in restoring the Leased Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Leased Premises for reletting the Leased Premises for a comparable use, all costs (including without limitation any brokerage commissions and the value of the City's time) incurred by the City, plus interest thereon from the date of expenditure until fully repaid at the rate of eighteen percent (18%) per year.
- 22.6 If Operator does not pay any installment of rent, additional rent or other charges owed the City under this Agreement as and when due, to help defray the additional cost to the City for processing late payments Operator shall pay to the City on demand a late charge in an amount equal to five percent (5%) of the payment. The late charge shall be in addition to all the City's other rights and remedies under this Agreement or at law and

shall not be construed as liquidated damages or as limiting the City's remedies in any manner.

- 22.7 Pursuit of one (1) remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy constitute a forfeiture or waiver of any rent due the City or of any damages accruing to the City by reason of Operator's breach of this Agreement. No act or thing done by the City or its agents during the term of this Agreement shall be deemed a termination of this Agreement or an acceptance of the surrender of the Leased Premises. No agreement to terminate this Agreement or accept a surrender of said Leased Premises shall be valid unless in writing signed by the City. No waiver by the City of any violation or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Agreement. The City's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be deemed or construed as a waiver of such default, or as an accord and satisfaction. Forbearance by the City to enforce one (1) or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of the City's right to enforce any remedies with respect to such default or any subsequent default.
- 22.8 If the City employs the services of an attorney in connection with an event of default by Operator under this Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs.

ARTICLE 23 – SURRENDER OF FACILITY AND REMOVAL OF PROPERTY

- 22.1 Surrender of Leased Premises. Upon termination or expiration of this Agreement, Operator shall surrender to the City the Leased Premises and all keys therefor.
- 23.2 Conditions of Leased Premises upon Surrender. The Leased Premises to be surrendered to City shall be surrendered in as good a condition as on the date of their acceptance by Operator, except for the effects of improvements, additions, alterations, and repairs made with the concurrence of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; reasonable wear and tear, and acts of God.
- 23.3 Removal of Property. Prior to the expiration of this Agreement, or within thirty (30) days after termination in the event of an earlier termination of this Agreement, Operator shall remove from the Leased Premises, at no cost or expense to the City, all personal property owned and placed in or on the Leased Premises by Operator and/or its agents, invitees, employees, contractors, partner organizations, or successors. In removing such personal property, Operator shall take due care to not damage or injure the Leased Premises, and

any such damage or injury shall be immediately repaired by the Operator to the City Manager's reasonable satisfaction, at Operator's sole cost and expense. Structural alterations, additions, and Tenant Improvements shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such thirty (30) day period.

ARTICLE 24 – NO WAIVERS

No action other than a written document by the City Manager or the Operator's ____ specifically so stating shall constitute a waiver by a party of any particular breach or default by the other. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

ARTICLE 25 – REMEDIES CUMULATIVE

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one (1) remedy shall not be taken to exclude or waive the right to use another.

ARTICLE 26 – OBLIGATION OF OPERATOR LIMITED TO CORPORATION

All obligations of Operator under this Agreement are enforceable only against Operator, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon Operator's officers, directors, trustee, members, employees, or agents.

ARTICLE 27 – ADDRESSES

27.1 Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

Lynn Zwaagstra
Parks and Community Services Director
City of Kirkland
123 Fifth Avenue
Kirkland, Washington, 98033-6189

27.2 And to Operator at the following address:

27.3 Either party may change its address for receipt of reports, notices, or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

ARTICLE 28 – TITLES OF ARTICLES

The titles of articles and subsections set forth herein are for convenience only, and do not in any way define, limit, or construe the contents of any article.

ARTICLE 29 – AMENDMENTS

No change, alteration, modification, or addition to this Agreement shall be effective unless it is in writing and properly signed by both parties hereto.

ARTICLE 30 – DISPUTE RESOLUTION

In the event a dispute arises as to whether the parties are complying with the terms of this Agreement, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and the Operator President or their designees will meet within three (3) City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one (1) member selected by the City Manager, one (1) member selected by the Operator Founding Artistic Director, and a third member selected by the first two. The City shall pay any costs or fees associated with the member it selects. Operator shall pay any costs or fees associated with the member it selects. The City and Operator shall each pay one half (1/2) of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within twenty (20) calendar days after the written notice. The decision of the Resolution Panel will be announced within ten (10) City business days.

ARTICLE 31 – CONTRACT FOR SERVICES

Operator shall provide to City and to the residents of City of Kirkland the services as set forth in Exhibit B to this Agreement entitled "Scope of Services", which exhibit by this reference is incorporated herein. City shall pay Operator for completed services rendered under this Agreement, the total sum of \$_____ per operating year, commencing with the Commencement Date. Said amount(s) shall be the total compensation for all services performed by Operator, including all reports, supporting data, supervision, labor, supplies, materials, equipment, or the use thereof and for all other necessary incidentals.

ARTICLE 32 – ENTIRE AGREEMENT

The parties hereto acknowledge that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement

are not to be construed against either party on the basis of that party's having drafted the same. This Agreement, together with all the exhibits attached hereto, embodies the entire Agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties regarding the Leased Premises except as expressly referenced herein.

IN WITNESS, WHEREOF, the authorized representatives of the parties hereto have executed this Agreement by affixing their signatures in the spaces below.

DATED this _____ day of _____, 2020.

CITY OF KIRLAND

OPERATOR NAME

By: _____
Kurt Triplett, City Manager

By: _____
Name, Title

STATE OF WASHINGTON)

COUNTY OF KING)

This record was acknowledged before me on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

DATED: _____

Notary Public in and for the State of
Washington, residing at _____
Print Name: _____
My Appointment Expires: _____

STATE OF WASHINGTON)

COUNTY OF KING)

This record was acknowledged before me on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

DATED: _____

Notary Public in and for the State of

Washington, residing at _____

Print Name: _____

My Appointment Expires: _____

SAMPLE

EXHIBIT A

Legal Description: Kirkland Teen Union Building

A portion of S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 5, Twp. 25 North, Range 5 E.W.M. described as follows: Beginning at a point in the south line of Section 5, Twp. 25 North, Range 5 E.W.M., N. $89^{\circ}39'$ E. 1511.50 ft. from the meander corner between Section 5 and 8, said point being the south-easterly corner of Kirkland Recreation Field and running thence S. $89^{\circ}39'$ W. 84.12 ft., thence N. $0^{\circ}31'40''$ W. 265.23 ft. along existing fence, thence continuing along the existing fence N. $30^{\circ}23'$ W. 243.22 ft., thence N. $0^{\circ}21'$ W.

56.0 ft., thence N. $89^{\circ}39'$ E. 206.29 ft. to a point which bears N. $0^{\circ}21'$ W. from the point of beginning being on the east line of said Kirkland Recreation Field, thence S. $0^{\circ}21'$ E.

531.80 ft. to the point of beginning. Except there from the right-of-way of Kirkland-Redmond Short Line Road.

EXHIBIT B

Scope of Services

[To be developed based on proposal, outlining Operator deliverables including schedules, programs, services, operations, reports, staffing, etc.]

SAMPLE