

## **AGREEMENT**

This Agreement is made and entered into on \_\_\_\_\_ 2021, between the City of Clearwater, a municipal corporation of the state of Florida, whose address is Attn: Parks and Recreation Director, Post Office Box 4748, Clearwater, FL 33758- 4748, as "City", and Martin Luther King Jr. Neighborhood Family Center, Inc. ("MLKNFC"), a Florida Not-For-Profit Corporation, whose address is 1201 Douglas Avenue, Clearwater, FL 33755, as "Provider" or "Agency" (each individually referred to herein as "Party" or collectively as the "Parties").

**WHEREAS**, it has been determined to be highly desirable and socially responsible to provide activities to build and foster the confidence, educational, cultural and social skills and good habits in young people, adults and families; and

**WHEREAS**, the City desires to provide programs and activities as a means to help young people, adults and families; and

**WHEREAS**, the City owns the North Greenwood Aquatics and Recreation Complex, ("Center"), located at 900 N. Martin Luther King Jr. Ave., Clearwater, Florida; and

**WHEREAS**, MLKNFC desires to partner with the City in providing educational, motivational and cultural programs (the "Services", as more particularly described herein) at the Center by offering programming primarily for elementary age children, adults and families; and

**NOW, THEREFORE**, the parties agree as follows.

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated in and form a part of this Agreement.

2. **LICENSE.** That the City does hereby provide to MLKNFC, a License to enter upon and operate the Services at the following premises: office space consisting of approximately 900 square feet within the Center (as reflected in Exhibit "A" attached hereto and incorporated herein). MLKNFC shall have exclusive use of the office space. In addition, MLKNFC shall also be permitted use of the Center common facilities, programming facilities, swimming pool and other services as described herein. MLKNFC hereby acknowledges and agrees that its use of the facilities and services are non-exclusive and are subject to use preference as determined by the City in its sole discretion.

Such property shall hereinafter be referred to as the "Licensed Premises".

3. **TERM.** The term of this Agreement shall be for 5 years; which term shall commence on the 1st day of October, 2021, and shall continue until midnight on the 30th day of September 2026 ("Initial Term"). This Agreement may be renewed for one

(1) additional five (5) year period, under the terms and conditions provided for herein, if mutually agreed to in writing by the Parties. However, nothing in this Agreement shall be deemed a waiver by the City of its right to cancel or not to renew this Agreement as otherwise provided herein.

4. **LICENSE FEE.** As consideration for the mutual benefits and obligations herein, MLKNFC agrees to pay and the City agrees to accept a License Fee for the first five years in the amount of twenty thousand dollars (\$20,000) per year payable in quarterly payments of \$ \$5,000 on Oct. 1, Jan 1, April 1 and July 1 for each year. At the end of each five year term the License Fee will be adjusted to reflect applicable changes in License Premises use or the cost of operating the facility. This recalculation will occur no later than July 1, 2026.

#### **5. CITY IN KIND SERVICES AND USE OF FACILITIES.**

a) The City agrees to provide maintenance of all major capital components of the License Premises including air conditioners, roof, painting, plumbing, and electrical, as well as all custodial maintenance for the common facilities portion of the Center to be used by the Licensee. In addition, City will provide all utilities necessary for the operation of the Licensee's office.

b) The City shall not make any monetary contributions as a part of this Agreement.

c) City Programs. The City has the right to run contracted programs or other programs in the facility as long as they do not unreasonably interfere with the Services offered by the Licensee.

d) City staff will be responsible to coordinate all scheduling for use of the facility, including MLKNFC programs and Services. The City will manage all rentals and special events that are hosted at the Center.

e) This Agreement and any other agreement associated with the Center will be managed by the City or City Staff located at the Center.

f) The City will gift to the Agency as determined by the City in its sole discretion upon inventory of existing furnishings remaining in the Center's office and teen room. Agency will be responsible for maintenance and replacement of items, if necessary.

#### **6. AGENCY PROGRAMS AND USE OF FACILITY.**

a) **MLKNFC Services/Programs.** MLKNFC shall provide, at a minimum, the following services:

Conduct educational, cultural and motivational programs at the Center for the benefit of neighborhood and Clearwater area youth (primarily elementary age children), adults, and families. The core programs shall include but not be limited to:

- i) Parent support groups and skills training
- ii) Family literacy services
- iii) Job counseling and related economic development activities
- iv) Child development activities
- v) Linkages to the health care system and other community services
- vi) Outreach (including home visits when appropriate)
- vii) Childcare for parents who are attending classes or participating in activities on site
- viii) A Family Support Worker position intended to assist families and children in the Clearwater area with the resolution of problems that lead to financial adversity, unemployment, child maltreatment, and the disruption of the family unit. The position compliments the Neighborhood Family Center's capacity under its obligation to provide family support services which benefit Clearwater area residents. The position is responsible for services in the areas of parenting, family literacy, linking to health care systems, job counseling, other related economic development activities, and outreach to underserved populations.

b) **MLKNFC Employees.** MLKNFC agrees to employ staff ("MLKNFC Staff"), at its expense, to execute the Services provided in accordance with this Agreement. Such individuals shall not be considered City employees under any circumstance, including but not limited to; payroll taxes, worker's compensation, or other liability, and are subject to the supervision, personnel practices and policies of MLKNFC. Unless otherwise approved, all MLKNFC Staff shall meet minimum requirements and qualifications to coordinate and fulfill MLKNFC Services.

c) **Rules for Use.** Rules and regulations applicable to and governing the use of the Center by MLKNFC may be established by the MLKNFC, providing said rules and regulations are not in conflict or inconsistent with the law, ordinances, policies or operating rules of the City, the Center, or this Agreement.

d) **General Adherence to the Law.** Notwithstanding any limitations implied by the provisions above, MLKNFC promises to comply with all statutes, ordinances, rules, orders, regulations, and requirements of federal, state, county and City government and their respective agencies which are applicable to the Services to be provided by MLKNFC and the use and occupancy of the Licensed Premises, including but not limited to; the disclosure of confidential information related to programs involving and serving children and mandatory background checks for employees and volunteers who may interact with children. MLKNFC will defend, indemnify and save the City harmless from any and all fines, penalties, costs, expenses, or damages resulting from MLKNFC's failure to observe and perform the undertakings contained in this section.

e) **No Unlawful Use.** MLKNFC promises and agrees that it will make or allow

no unlawful, improper or offensive use of the premises. Further, MLKNFC understands and agrees that this provision specifically prohibits, among other acts, the sale, consumption or use of alcoholic beverages or controlled substances anywhere in, on or around the Center and those adjacent areas used by MLKNFC.

f) **Signage.** MLKNFC, at its sole expense, may place an identification sign on the Center or in the park according to City codes with the prior written approval of the City.

g) **Use of Aquatics Center.** The City, in its sole discretion, opens and operates the Aquatics Center during certain months of the year (generally May through August). At such times as the City chooses to open the Aquatics Center, MLKNFC shall be allowed to have access to the pool twice a week, for two (2), two-hour time blocks, (for a total of four (4) hours of non-exclusive pool usage per week). Additional rates may apply for additional pool use, if available. Swim lessons are available, but MLKNFC shall be required to cover the City's direct expenses in requesting and utilizing said swim lessons.

h) **Use of Center for rental or special event.** MLKNFC may, in accordance with the City's rental or special event policies, request to utilize areas of the Center otherwise offered for rental or special event use. MLKNFC must pay all direct expenses associated with any rental or special event use of the building.

i) **Plus Passes** In consideration of MLKNFC Staff providing Services at the Center, MLKNFC Staff will each be granted a City of Clearwater Recreation Plus Pass to be used during their employment at the Center.

j) **Room Set Up.** MLKNFC shall assist City staff with the set-up, clean-up and break-down of rooms to be used by MLKNFC in fulfilling the Services.

## **7. MAINTENANCE OF THE CENTER BY MLKNFC.**

a) **Custodial Maintenance.** MLKNFC shall maintain the Center and adjacent areas used by MLKNFC in a clean and orderly condition in accordance with City standards for the facility as determined by the City in its sole discretion. The City shall provide the daily day to day maintenance of the floors, restrooms and other building common areas and components.

b) **Repair of Damage.** MLKNFC understands and agrees that it is responsible for and will cause to be repaired at MLKNFC's expense, damage to the Center other than normal wear and tear caused by MLKNFC Staff or participants.

c) **Building Upgrades or Modifications.** MLKNFC understands and agrees that it is responsible for any new upgrades or modifications to the building that are required to meet their programming needs, with any such permanent improvements, upgrades or modifications being subject to City written approval as provided for herein.

8. **PAYMENT FOR ALL PROGRAM OPERATING EXPENSES.** MLKNFC is responsible to pay all operating expenses associated with their Services and operations held at the Center including expenses for all office supplies, telephones, internet connections, etc.

9. **PAYMENT FOR FEES AND TAXES.** MLKNFC shall obtain all required licenses at its own expense and shall be responsible for all personal property taxes as may be assessed against the Licensed Premises during the Agreement term, and shall promptly pay same when due.

10. **SCHEDULED REPORTS OF MLKNFC ACTIVITIES.** MLKNFC shall furnish the City Parks and Recreation Department with an annual report of activities conducted within 60 days of the end of MLKNFC's fiscal year. Each report is to identify the number of clients served, the type of activities, projects and programs offered and costs of such services.

11. **CREATION, USE AND MAINTENANCE OF FINANCIAL RECORDS.** MLKNFC shall create and maintain financial and accounting records, books, documents, policies, practices, procedures and any information necessary in accordance with generally accepted accounting principles to reflect fully the financial activities of MLKNFC. Such records shall be available and accessible at all times for inspection, review, or audit by authorized City representatives. Records must be made available in accordance with applicable law, including Chapter 119, Florida Statutes. MLKNFC shall retain said records for a period of five (5) years after termination of this Agreement, unless the requirements of an audit have not been resolved, in which case said records shall be maintained until resolution.

12. **ASSIGNMENT OR SUBLEASE.** This Agreement may not be assigned by MLKNFC. Any attempted assignment of the rights and obligations provided for herein shall be of no force or effect and shall upon such attempted assignment or transfer, render this Agreement null and void in its entirety.

13. **ALTERATIONS AND IMPROVEMENTS.** Any modifications or improvements to any portion of the Center to be used by MLKNFC hereunder, must be approved in writing in advance by the Parks and Recreation Director, to the extent that the Parks and Recreation Director has the authority to so approve, or by the Clearwater City Council. Any improvements shall become the property of the City upon expiration or termination of this Agreement.

14. **RISK OF LOSS.** MLKNFC is responsible to insure its personal property. All personal property placed or moved in the Center premises shall be at the risk of MLKNFC or owner thereof. The City shall not be responsible or liable to MLKNFC for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying the premises or adjoining premises or any part of the premises adjacent to or connected with the premises or any part of the building which the Licensed Premises are a part or for any loss or damage resulting to MLKNFC or its property from bursting, stopped up or leaking water, gas, sewer or steam pipes unless the same is due to the negligence of the City, its agents, servants or employees, to the extent of Florida Statute 768.28.



**15. RIGHT OF ENTRY.** The City, or any of its agents, shall have the right to enter said premises, including the area designated for MLKNFC's exclusive use hereunder during all reasonable hours, to examine the same to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof. Right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions, which do not conform to this Agreement. City agrees to give reasonable notice to MLKNFC before entry to their office area.

**16. RESTORING PREMISES TO ORIGINAL CONDITION.** MLKNFC represents that the premises licensed are in good, sanitary and tenantable condition for use by MLKNFC. MLKNFC's acceptance or occupancy of the licensed premises shall constitute recognition of such condition. MLKNFC hereby accepts the premises in the condition they are in at the beginning of this Agreement and agrees to return the premises to their original condition at the expiration of the term, excepting only reasonable wear and tear arising from the use thereof under this Agreement.

**17. INSURANCE.** MLKNFC shall independently procure at its own expense and maintain during the term of this Agreement insurance as shown below:

a) A Comprehensive General Liability policy covering claims for injuries to persons or damage to property which may arise from or in connection with use of the Center premises by MLKNFC including all activities occurring thereon. This coverage should include liability coverage for actual, threatened or alleged acts of physical abuse, sexual abuse, sexual molestation or sexual misconduct caused by MLKNFC and to include this coverage for their volunteers and subcontractors.

b) A Business Automobile Liability Policy covering claims for injuries to persons or damage to property that arise from or in connection with use of a motor vehicle owned by MLKNFC.

c) Insurance procured in accordance with sections 17 (a) and (b) shall have minimum coverage limits of \$1,000,000.

d) Except for worker's compensation, each insurance policy issued as a requirement of this Agreement shall name the City of Clearwater as an additional named insured. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers.

e) MLKNFC shall furnish the City with Certificate(s) of Insurance with all endorsements affecting coverage required by this section. These forms shall be received and approved by the Parks and Recreation Director before execution of this Agreement by authorized City officials.

f) **Worker's Compensation:** MLKNFC shall provide worker's compensation insurance for all their employees in an amount at least equal to the statutory limits of coverage according to applicable State and Federal laws. In addition, the policy shall include employer's liability coverage with a limit of \$500,000 per occurrence.

**18. LIABILITY AND INDEMNIFICATION.** MLKNFC shall act as an independent contractor and agrees to assume all risks of occupying the Licensed Premises, or other use of the center as provided for hereunder, and all liability therefore, and shall defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims of loss, liability, and damages of whatever nature, to persons and property, including, without limiting the generality of the foregoing, death of any person and loss of the use of any property, except claims arising from the negligence or willful misconduct of the City or City's agents or employees. This includes, but is not limited to matters arising out of or claimed to have been caused by or in any manner related to MLKNFC's activities or those of any approved or unapproved invitee, contractor, subcontractor, or other person approved, authorized, or permitted by MLKNFC in or about the premises whether or not based on negligence. Nothing herein shall be construed to waive or modify the provisions of Section 768.28, Florida Statutes or the doctrine of sovereign immunity. Nothing herein shall be construed as allowing for a claim by a third party to this Agreement. This provision shall survive termination of this Agreement.

**19. NON-DISCRIMINATION.** Notwithstanding any other provisions of this Agreement during the term of this Agreement, MLKNFC for itself, agents and representatives, as part of the consideration for this Agreement, does covenant and agree that:

a) **Non-discrimination:** MLKNFC agrees that no person shall, on the grounds of race, color, sex, handicap, national origin, religion, citizenship, disability, marital status, age or political belief, be excluded from participation in, denied the benefit(s) of, or be otherwise discriminated against as an employee, volunteer, or client of the provider, except that programs may designate services for specific client groups as defined by the program guidelines. MLKNFC agrees to maintain access to handicapped persons in accordance with applicable law.

b) **Breach of Non-discrimination Covenants:** In the event of conclusive evidence of a breach of any of the above non-discrimination covenants, the City shall have the right to terminate this Agreement immediately upon the giving of notice, as the giving of notice is required herein.

**20. SUBORDINATION.** This Agreement and the rights of MLKNFC hereunder are hereby made subject and subordinate to all bona fide mortgages or other instruments of security now or hereafter placed upon the said premises by the City provided, however, that such mortgages and other instruments of security will not cover the equipment and furniture or furnishings on the premises owned by MLKNFC. MLKNFC further agrees to execute any instrument of subordination, which might be required by mortgagee of the City.

## **21. DEFAULT, REMEDIES, TERMINATION.**

**For Cause:** Failure to adhere to any of the provisions of this Agreement by MLKNFC shall constitute a Default hereunder and shall be cause for termination. Should MLKNFC fail to cure said Default within a period of thirty (30) days after notice in writing by the city, this Agreement shall terminate.

**For Municipal Purpose:** In addition to the right to terminate for cause, the City may terminate this Agreement in the event it determines that the Licensed Premises is required for any other municipal purposes by giving sixty (60) days written notice of such intended use, following which this Agreement shall terminate.

In the event of termination in accordance with a municipal need as described herein, the City represents that it will make its best effort to make available to MLKNFC, facilities comparable to that currently enjoyed by MLKNFC in exchange for comparable financial support.

**Funds availability:** In the event funds to finance this Agreement become unavailable, either Party, as determined necessary in its sole discretion, may terminate this Agreement upon no less than twenty-four hours notice in writing to the other party. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Each Party shall endeavor, whenever possible and consistent with its legal obligations and principals of prudent management to provide thirty (30) days notice for termination for Lack of Funds.

MLKNFC may terminate this Agreement with sixty (60) days written notice without any further obligation. Upon such termination, the MLKNFC shall remit to the City all monies due hereunder within fifteen (15) days.

## **22. MISCELLANEOUS.**

a) This Agreement shall bind the City and its assigns or successors, and MLKNFC and assigns and successors of MLKNFC, as permitted hereunder.

b) It is understood and agreed between the parties hereto that time is of the essence of this Agreement and this applies to all terms and conditions contained herein.

c) The rights of the City under the foregoing shall be cumulative, and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

d) It is understood that no representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing executed by both Parties.



**23. RADON GAS NOTIFICATION, AS REQUIRED BY FLORIDA STATUTE 404.056(8):**

**Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.

**24. NOTICE.** Any notice required or permitted to be given by the provisions of this Agreement shall be conclusively deemed to have been received by a party hereto on the date it is hand-delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid), when actually received or on the fifth (5th) business day after the day on which such notice is mailed and properly addressed, whichever is earlier.

a) If to City, addressed to Parks and Recreation Director, P.O. Box 4748, Clearwater, FL 33758.

b) If to MLKNFC, addressed to Martin Luther King Jr. Neighborhood Family Center, Inc., 1201 Douglas Avenue, Clearwater, FL 33755.

**25. SEVERANCE.** The invalidity or unenforceability of any portion of this Agreement shall in nowise affect the remaining provisions and portions hereof.

**26. CAPTIONS.** The paragraph captions used throughout this Agreement are for the purpose of reference only and are not to be considered in the construction of this Agreement or in the interpretation of the rights or obligations of the parties hereto.

**27. NO HAZARDOUS MATERIALS.** MLKNFC herewith covenants and agrees that no hazardous materials, hazardous waste, or other hazardous substances will be used, handled, stored or otherwise placed upon the property or, in the alternative, that such materials, wastes or substances may be located on the property, only upon the prior written consent of the City hereunder, and only in strict accord and compliance with any and all applicable state and federal laws and ordinances. In the event such materials are utilized, handled, stored or otherwise placed upon the property, MLKNFC expressly herewith agrees to indemnify and hold City harmless from any and all costs incurred by City or damages as may be assessed against City in connection with or otherwise relating to said hazardous materials, wastes or substances at anytime, without regard to the term of this Agreement. This provision shall survive the termination hereof.

**28. GOVERNING LAWS.** The laws of the State of Florida shall govern this Agreement; any action brought by either party shall lie in Pinellas County, Florida.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date set forth above.

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
Frank V. Hibbard

Mayor

By: \_\_\_\_\_

Micah Maxwell

Interim City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Owen Kohler

Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call

City Clerk

Martin Luther King Jr. Neighborhood Family Center, Inc.

\_\_\_\_\_

Lisa Harris, President



Martin Luther King Jr.  
Neighborhood Family Center

Exhibit "A"

