

DEPARTMENT OF
PARKS AND RECREATION

Office of Human Services

CITY OF SACRAMENTO
CALIFORNIA



6005 FOLSOM BLVD..
SACRAMENTO, CA
95819

3.12

May 12, 2004

City Council
Sacramento, California

Honorable Members in Session

SUBJECT: AGREEMENT FOR THE USE OF FACILITIES AT CALIFORNIA STATE UNIVERSITY, SACRAMENTO FOR PROGRAMS SPONSORED BY THE DEPARTMENT OF PARKS AND RECREATION

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

Staff recommends that the City Council approve an agreement between the Department of Parks and Recreation and California State University, Sacramento for use of University facilities by the City for various Access Leisure recreation programs.

CONTACT PERSONS: Ralph Pettingell, Recreation Manager, 277-6173
Alan Boyd, Recreation Superintendent, 277-6077

FOR COUNCIL MEETING OF: May 25, 2004

SUMMARY:

This report provides information on a Joint Use Agreement for the use of facilities at California State University, Sacramento (CSUS) by programs and activities sponsored by the Access Leisure section of the Department of Parks and Recreation.

COMMITTEE/COMMISSION ACTION:

The Parks and Recreation Citizens Advisory Committee reviewed and supported this recommendation on May 6, 2004

BACKGROUND INFORMATION:

This agreement (Exhibit A) , patterned after the agreements with the public school districts in Sacramento, begins to develop a partnership with CSUS for joint usage of facilities and for the cooperative development of programs and activities between the two entities. This specific agreement is for programs and activities sponsored and organized by the Access Leisure section of the Department of Parks and Recreation for people with disabilities. It is anticipated that additional agreements and/or a master agreement will be developed between the City and the University to cover a broader range of program areas and opportunities.

FINANCIAL CONSIDERATIONS:

Fees for facility usage are waived by the execution of this agreement.

ENVIRONMENTAL CONSIDERATIONS:

There are no environmental considerations with this report.

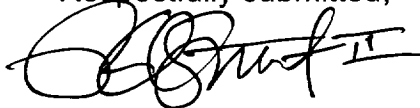
POLICY CONSIDERATIONS:

The recommended action support's the City's Strategic Plan goals of establishing and strengthening partnerships to enhance the quality of life and the Department's mission of Optimizing the Experience of Living.

ESBD CONSIDERATIONS:

Not applicable

Respectfully submitted,



Robert G. Overstreet, Director

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

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RESOLUTION NO:
ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON DATE OF _____

**RESOLUTION APPROVING THE AGREEMENT WITH
CSU, SACRAMENTO FOR FACILITY USAGE
BY THE DEPARTMENT OF PARKS AND RECREATION**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. The agreement with California State University, Sacramento for facility usage by Access Leisure Programs of the Department of Parks and Recreation is hereby approved.

2. The City Manager is authorized to execute the agreement.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

Resolution No; _____

Date Adopted: _____

PROGRAM USE

Goal Ball - Sport for people that are blind or visually impaired
Every Sunday - 2 hours
April 4, 2004 through March 2, 2005
Yosemite Hall Room 100 or Room 171

W.A.V.E. Camp - Residential aquatics camp for youth with physical disabilities
July, 20, 21, 22, 26, 27, 28, 2004
Times: 8:30am to 11:30am and 1pm to 5pm
Location: Both the lap pool and the dive well pool

20th Annual A.C.T. Games practices and event - Track and field for children with physical disabilities

Practice dates: Saturdays, September 4, September 25, October 2, 2004
Time: 8:30am to 11:30am
Location: Either the practice track or the main track

Event date: Saturday, October 16, 2004
Time: 5:30 am to 5 pm
Location: Main track only

Wheelchair Basketball Championships
Dates: Saturday & Sunday, January 21-22, 2005
Time: 8am to 6pm
Location: Main gym (first choice) or practice gym

Power Soccer - Soccer for people that use power wheelchairs
Saturdays, October 23, 2004 and March 19, 2005
Time: 11 am to 7pm
Location: Either the main gym or the practice gym

NOTE: Specific rooms/locations and time of usage subject to availability and the permitting process.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding made and entered into April 1, 2004, by and between the City of Sacramento, Department of Parks and Recreation ("PROVIDER"), and California State University, Sacramento ("INSTITUTION") on terms as provided below.

Background

- A. PROVIDER operates and provides various recreational and human service programs to the Sacramento Community including, but not limited to, people with disabilities ("PROGRAMS").
- B. INSTITUTION has available space and other resources that will assist PROVIDER in the effective operation of the PROGRAMS. The College of Health and Human Services shall serve as the sponsor of INSTITUTION's support for the PROGRAMS and PROVIDER'S use of INSTITUTION's facilities.

Understandings

1. Duties and Responsibilities of PROVIDER. PROVIDER shall be responsible for the overall operation of the PROGRAMS, including but not limited to the following:

- a. Establishing program policies and procedures
- b. Program operations directed by a Program Supervisor and/or Program Coordinator
- c. Development of program content
- d. Preparation and distribution of promotional materials
- e. Scheduling and registration services
- f. Participant billing and collections
- g. Program materials and supplies

2. Duties and Responsibilities of INSTITUTION. INSTITUTION agrees to provide the following in-kind support for the PROGRAMS:

- a. Classroom and activity space for each program as described on Exhibit A, which is hereby incorporated into this Memorandum of Understanding.
- b. Physical activity equipment that is in safe good working order
- c. Free parking for program staff and program participants
- d. Program coordination services of Scott Modell, Professor of Kinesiology
- e. Students from the Departments of Kinesiology, Social Work, Nursing and Recreation and Leisure Services to serve as Program Aides
- f. Student and faculty participation in Research/Grant Project Development and data collection and analysis as appropriate.

In performing the foregoing, it is understood that the PROGRAMS will be operated in accordance with PROVIDER's reasonable policies and procedures.

3. Licensed Premises. INSTITUTION hereby grants non-exclusively licenses to PROVIDER and PROVIDER hereby licenses from INSTITUTION certain space within the campus of the California State University at Sacramento located at 6000 J Street, Sacramento, California (the "PREMISES") as designated in Attachment A. A specific use permit for each program detailing all proposed usages including dates and hours will be submitted to the INSTITUTIONS Space Management office.

4. Term. The term of this Memorandum of Understanding will commence April 1, 2004 and terminate March 31, 2005. It will be renewable for subsequent one-year terms upon mutual written agreement of the parties and by the provision of a new Attachment A for each year.

5. Use. PROVIDER will use the PREMISES only for the purpose of the PROGRAMS described in Attachment A. PROVIDER will not use or occupy the PREMISES for any other purposes without prior written consent of INSTITUTION. Should the PROVIDER want to use the PREMISES for additional PROGRAMS during the year of this agreement, they must receive the written permission of the College of Health and Human Services and those programs are subject to all of the understandings of this agreement and are limited to two (2) such additional PROGRAMS.

6. Indemnification. THE INSTITUTION shall defend, indemnify, and hold THE PROVIDER, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of THE INSTITUTION, its officers, employees or agents.

THE PROVIDER shall defend, indemnify, and hold THE INSTITUTION, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of THE PROVIDER, its officers, employees or agents.

7. **Insurance.** It is understood and agreed that THE INSTITUTION and THE PROVIDER maintain self-insurance programs to fund their respective liabilities. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this agreement.

8. **Utilities.** Electricity, natural gas, water, heating, air-conditioning, telephone and ordinary and customary janitorial services furnished to the PREMISES by INSTITUTION and charges for such utilities will be paid by INSTITUTION.

9. **Condition and Care of Premises.** INSTITUTION at its own expense, agrees to keep and maintain the PREMISES and the fixtures therein in good, clean and sanitary order and condition. Notwithstanding the foregoing, PROVIDER agrees to be responsible for all repairs to the PREMISES, which are made necessary as a result of any misuse or neglect by PROVIDER or by its agents or employees or visitors while on the PREMISES. All such repairs will be performed by PROVIDER's personnel and be at least equal in quality to the condition of the PREMISES prior to the misuse or neglect.

10. **Alterations.** PROVIDER will make no alterations, additions or improvements to the PREMISES or any part thereof without obtaining the prior written consent of INSTITUTION, which consent will not be unreasonably withheld.

11. **Rules and Regulations.** PROVIDER and its servants, employees, agents, representatives, visitors, and invitees will comply strictly with the INSTITUTION's rules and regulations for the PREMISES.

12. **Entry By INSTITUTION.** INSTITUTION will have the right to enter the PREMISES, with notice to PROVIDER, to inspect the same; to supply janitorial services and any other services to be provided by INSTITUTION to PROVIDER hereunder; and to alter, improve or repair the PREMISES, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that PROVIDER's PROGRAM will not be interfered with unreasonably. PROVIDER hereby waives any claim for damages for any injury or inconvenience to, or interference with, PROVIDER's PROGRAMS, and loss of occupancy or quiet enjoyment of the PREMISES, and any other loss occasioned thereby, resulting from the reasonable exercise of INSTITUTION's right to entry pursuant to this Paragraph.

13. Assignment and Sublicensing by PROVIDER. Without INSTITUTION's prior written consent, PROVIDER and its successors or assigns will not, either voluntarily or by operation of law, sell, assign, transfer, encumber or hypothecate any or all of its interests under this Memorandum of Understanding, or sublicense without INSTITUTION's prior written consent, which may not be unreasonably withheld, the PREMISES or any part thereof or permit the PREMISES or any part thereof to be occupied by anyone other than PROVIDER or PROVIDER's employees or agents. INSTITUTION's consent to any one assignment or sublicensing, each of which will require INSTITUTION's consent in accordance with the foregoing.

14. Notices. Any notice required or permitted to be given hereunder may be given by personal delivery or by mail; and if by mail, notice will be deemed sufficiently given if sent by registered or certified mail at the address of the PROVIDER or to INSTITUTION at the address designated below:

INSTITUTION: 6000 J Street
Sacramento, CA 95819
Attention: David Shannon, Procurement/Contracts Manager

PROVIDER: Department of Parks and Recreation
6005 Folsom Blvd
Sacramento, CA 95819
Attention: Alan Boyd, Recreation Superintendent

Either party may, by written notice to the other party, specify a different address for notice purposes.

15. Successor and Assigns. Except as otherwise provided in this Memorandum of Understanding, all of the covenants, conditions and provisions of this Memorandum of Understanding will be binding upon and will only inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

16. Waivers. No covenant, term or condition or the breach thereof will be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition will not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition of this Memorandum of Understanding. Acceptance by INSTITUTION of any performance by PROVIDER after the time the same will have become due will not constitute a waiver by INSTITUTION of the breach or default of any covenant, term or condition of this Memorandum in Understanding unless otherwise expressly agreed to by INSTITUTION in writing.

17. Conflict of Laws and Interpretation. This Memorandum of Understanding will be governed by and construed in accordance with the laws of the State of California.

18. Dispute Resolution. In the event that any dispute arises between PROVIDER and INSTITUTION arising out of or related to the validity, interpretation, enforcement or performance of this Memorandum of Understanding, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within 45 days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The cost of such arbitration shall be shared equally by PROVIDER and INSTITUTION, provided that each party shall pay its own legal expenses.

19. Entire Agreement. This Memorandum of Understanding, together with any later written modifications or amendments hereto, will constitute the entire agreement between the parties relative to the subject matter hereof and will supersede any prior or contemporaneous agreements or understandings, if any, whether written or oral, which parties, their agents or representatives may have had relating to the subject matter hereof. No modification, alteration or waiver of any term, condition or covenant of this Memorandum of Understanding will be valid unless in writing.

20. Severability. If any term or provision of this Memorandum of Understanding shall, to any extent, be determined by a court of competent jurisdiction to be valid or unenforceable, the remainder of this Memorandum of Understanding will not be affected thereby, and each term and provision of this Memorandum of Understanding will be valid and be enforceable to the fullest extent permitted by law.

21. Counterparts. This Memorandum of Understanding may be executed in multiple counterparts, each of which will be deemed an original, and such counterparts will together constitute one and the same instrument.

22. Headings. The headings of sections in this Memorandum of Understanding are for reference only and are not to be construed in any way as part of this Memorandum of Understanding.

23. Recitals and Exhibits. The recitals and exhibits are hereby incorporated into this Memorandum of Understanding by this reference.

24. Third Party Beneficiaries. Unless otherwise expressly provided, this Memorandum of Understanding will not create any third-party beneficiary rights for any person or entity.

24. Third Party Beneficiaries. Unless otherwise expressly provided, this Memorandum of Understanding will not create any third-party beneficiary rights for any person or entity.

25. Execution. By their signatures below, each of the following represent that they have the authority to execute this Memorandum of Understanding and to bind the party on whose behalf their execution is made.

INSTITUTION:

California State University, Sacramento

By: _____

Print Name: Patricia Clark-Ellis

Its: Associate Dean, College of Health & Human Services

Approved as to From by Procurement:

By: _____

Print Name: David D. Shannon

Its: Procurement/Contracts Manager

Approved as to Form:

By: _____
Attorney for INSTITUTION

PROVIDER

City of Sacramento

By: _____

Print Name: Robert Thomas

Its: City Manager

Attest:

By: _____
City Clerk

By: _____
Senior Deputy City Attorney
Attorney for PROVIDER