



**DATE:** February 6, 2018

**TO:** Mike Osoff, Community Services Manager  
City of Pomona  
505 South Garey Avenue  
Pomona, CA 91769

**FROM:** Mica Olmos, JPA Administrator/Clerk *MO*  
Tri-City Mental Health Authority  
1717 N. Indian Hill Blvd., Suite B  
Claremont, CA 91711

**SUBJECT:** Agreement between the City of Pomona and Tri-City Mental Health Authority for Use of the City's Recreational Facilities

**ENCLOSED PLEASE FIND:** Two (2) original Agreements (including Exhibit A), signed by Tri-City's Executive Director

\_\_\_\_\_ For your files.

\_\_\_\_\_ For your information.

\_\_\_\_\_ In accordance with your request.

  X   Please return a fully executed Agreement to my attention for our files.

\_\_\_\_\_ For your distribution.

\_\_\_\_\_ Please find enclosed per our discussion.

\_\_\_\_\_ Please advise me how you wish to proceed.

**REMARKS:**

*Please note that Notice and Contact Information on page 5 of the Agreement was changed to reflect Tri-City's Administration Office address in Claremont.*

**AGREEMENT BETWEEN THE CITY OF POMONA AND  
TRI-CITY MENTAL HEALTH CENTER  
FOR USE OF THE CITY'S RECREATIONAL FACILITIES**

The City of Pomona (the "City") and Tri-City Mental Health Center ("Tri-City") enter into this Agreement ("Agreement") for Tri-City's use of the City's recreational facilities ("Facilities") for the purpose of providing free classes and services to the community through the City's Recreation Program. City and Tri-City are sometimes hereinafter individually referred to as a "Party" and collectively referred to as "Parties."

**RECITALS**

**WHEREAS**, the City recognizes the need for educational and recreational programming within its community;

**WHEREAS**, at this time, the City is unable to provide such recreational programming through its own resources;

**WHEREAS**, Tri-City employs staff that provide a range of culturally competent, person and family-centered groups, workshops and socialization activities designed to promote increasing independence and wellness for people of all ages;

**WHEREAS**, on March 29, 2017 and May 9, 2017, the City hosted community meetings at the Renacimiento Community Center with local community members regarding re-opening of Renacimiento Community Center;

**WHEREAS**, Tri-City presented at the community meetings regarding the various services they offer for the purpose of gauging community interest;

**WHEREAS**, community members expressed a strong interest in on-site teen support groups and activities;

**WHEREAS**, Tri-City is willing to provide qualified personnel to instruct classes and provide services at Renacimiento Community Center;

**WHEREAS**, the City and Tri-City will continue to work together to provide additional recreation programs at other City Facilities; and

**WHEREAS**, the Parties desire to enter into an Agreement providing for the Tri-City's use of the City's Facilities to provide programs and classes to the community through the City's Recreation Program.

**NOW, THEREFORE**, in consideration of the foregoing recitals and of the mutual promises of the covenants hereinafter contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:



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1. **TERM OF AGREEMENT.** The term of this Agreement shall commence on 4/1/2018 and expire upon termination by either Party pursuant to the provisions of this Agreement.
2. **DEFINITIONS.**

*Facilities.* The Facilities consist of City Recreation Centers used for, and identified in, the City's Recreation Program.

*Recreation Program.* The Recreation Program is developed by the Neighborhood Services Director and Community Services Manager for providing recreation, education and services to the community. The Recreation Program shall be held in accordance with the schedule attached hereto as Exhibit "A" and incorporated herein by this reference. The Neighborhood Services Director and Community Services Manager may revise the Recreation Program as needed to accommodate the City's educational and recreational objectives, as well as the availability of Tri-City's instructors. Tri-City's hours of use will be established by mutual agreement by the Community Services Manager and Tri-City.

*Tri-City Personnel.* Tri-City Personnel shall include, but is not limited to, its paid employees, instructors, agents, contractors, volunteers, or persons designated to act or perform services pursuant to this Agreement on Tri-City's behalf.

### 3. **TRI-CITY SHALL:**

- a. Provide qualified Tri-City Personnel to teach classes and offer services within the City's Recreation Program and at the Facilities.
- b. Provide all materials and equipment necessary for the Recreation Program(s).
- c. Bear the cost of any loss or damage to materials or equipment provided by Tri-City or Tri-City Personnel for use in the City's Recreation Program(s).
- d. Develop curriculum to be taught by Tri-City Personnel.
- e. Tri-City is responsible for leaving each facility used in a clean and orderly manner after each use.
- f. Be responsible for the cost of repair of the Facilities that are necessary as a result of the Recreation Program, except for normal wear and tear.
- g. Ensure that the Tri-City Personnel provided to teach classes and offer services in the City's Recreation Program:
  - i. Meet the same requirements applicable to Tri-City's staff, including the standards required to teach specific subject matter.
  - ii. Follow all standard background check, and fingerprinting practices as required by law and of programs that serve children prior to the commencement of the Recreation Program.

- iii. Use the Facilities in a manner compliant with Federal, State and local laws and regulations.
- iv. Deliver, set up, or break down supplies or equipment used in the Facilities for providing instruction, unless otherwise allowed by the Community Services Manager.
- v. Notify the Community Services Manager of:
  - 1. Damage to the property or unsafe conditions resulting from, or discovered during the City's Recreation Program;
  - 2. Conditions at the Facilities that require repair or maintenance in order to conduct the City's Recreation Program; and
  - 3. Vandalism, damage or unsafe conditions at the Facilities that are discovered by the instructor upon arrival at the Facilities.
- h. Secure Release and Waiver forms for each participant in the Recreation Program. No minor shall be permitted to participate in any activity pursuant to this Agreement, until Tri-City has procured a Release and Waiver of liability form in favor of the City of Pomona and signed by the parent or legal guardian of each participant in the Recreation Program.
- i. Inform the City a minimum of seventy-two (72) hours prior notice, of any scheduling changes including those arising from canceled classes or services, instructor unavailability, and holidays. If seventy-two (72) hours advance notice is not feasible, notice shall be provided as soon as possible to avoid waste of public resources.

**4. THE CITY OF POMONA SHALL:**

- a. Allow Tri-City to use the Facilities at no cost.
- b. Grant Tri-City a revocable, non-exclusive license to use the Facilities to provide classes and services through the City's Recreation Program. It is expressly understood by the Parties that this Agreement does not in any way whatsoever grant or convey an easement, lease, fee or any other interest in real property.
- c. Provide a City staff member to open and close the Facilities on scheduled Recreation Program days.
- d. Assign an alarm access code and provide keys to Tri-City for the Facilities when the City, at its sole discretion, deems necessary. The terms and conditions of Tri-City's alarm access code and possession of keys shall be set forth in a separate usage agreement entered into between the Parties.
- e. If Tri-City is provided keys to a Facility, the City shall provide Tri-City with its own unique alarm code for that Facility.
- f. Allow Tri-City to use the City's desks, tables, chairs, other classroom equipment and electronic equipment (e.g. computers, projectors, etc.), when necessary for providing instruction. In the event electronic equipment is lost, stolen or damaged, Tri-City will be billed the full cost of replacement and/or repair.



- g. To the extent feasible, as determined by the City, provide reasonably secure storage space for Tri-City's materials and equipment necessary for providing classes and services. The City shall not, however, bear responsibility for damage or loss of any materials or equipment stored at the Facilities.
  - h. Keep the Facilities in good repair and in a manner suitable for Tri-City's instructors to use for classes and services, including the City's provision of maintenance and janitorial services.
  - i. Not be responsible for Tri-City participants' lost or stolen items.
  - j. Inform Tri-City of any City special events that fall on programming days, a minimum of seventy-two (72) hours prior notice, in order to reduce any double scheduling. The Community Services Manager has the discretion to change the days, time and area of use by providing notice required by this Section 4.j.
  - k. Permit banners/signage and posters for advertisement purposes, provided they are in compliance with City sign ordinances and banner policies.
  - l. When authorized by the Neighborhood Services Director, arrange transportation for Recreation Program participants in a City vehicle to and from City Facilities and the Tri-City Mental health center located at 2008 N. Garey Ave, Pomona, CA 91767.
    - i. The use of City Vehicles pursuant to this Agreement shall include, but is not limited, to the following:
      - 1. City vehicles shall only be operated by City employees. Tri-City Personnel is prohibited from operating City vehicles. Any liability arising out of the unauthorized use of a City vehicle is the sole responsibility of Tri-City and Tri-City Personnel and its/their personal auto insurance. In such cases, Tri-City will be expected to indemnify and defend City against all claims arising out of the unauthorized use of the vehicle.
      - 2. City employees who operate a City vehicle shall adhere to all City requirements and policies regarding the use of City vehicles.
      - 3. Participants shall be returned to the same place of departure.
      - 4. City shall not make any personal stops for participants.
      - 5. City employees shall adhere to all applicable driving laws.
- 5. TRI-CITY PERSONNEL.** Tri City represents that it has, or will have, secured, at its own expense, all personnel required to perform the classes and services identified in the City's Recreation Program. All such classes and services shall be performed by Tri-City or under its supervision, and all personnel engaged in the work shall be qualified to perform such classes and services. Tri-City reserves the right to determine the assignment of its own employees to the performance of Tri-City's services under this Agreement, but the City reserves the right, for good cause, to require Tri-City to exclude any employee from performing classes and services at City Facilities.

**6. NOTICE AND CONTACT INFORMATION.**

- a. The representatives of the Parties who are primarily responsible for the administration of this AGREEMENT, (including assuring compliance with the rules for use of the Facilities), and to whom formal notice, demands and communications shall be given, are as follows:

To City: Mike Osoff Community Services Manager City of Pomona 505 South Garey Avenue, Pomona, CA 91769 (909) 620-2329	To Tri-City: Antonette Navarro, LMFT Executive Director Tri City Mental Health Services <del>2008 N. Garey Ave.</del> 1717 N. Indian Hill Blvd <del>Pomona, CA 91767</del> Suite B (909) 623-6131 Claremont, CA 91711
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- b. All formal notices, demands, and communications between the Parties shall be given either by (i) personal service, (ii) delivery by reputable document delivery service, such as Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the appropriate Party's representative as stated above.
- c. If classes and services provided through the City's Recreation Program will occur outside business hours of Pomona City Hall or Tri -City's normal business hours, each Party shall provide the other with after-hours emergency contact phone numbers of appropriate supervisory staff, and ensure that the emergency contact information is current. Such lists will also include emergency contact numbers for other facilities which may be utilized in the event of a community emergency.
- d. The Parties shall provide timely notification of circumstances, including, but not limited to:
- Changes to the Recreation Program schedule or curriculum
  - Reporting any damage to the Facilities arising from the City's Recreation provided by Tri-City
  - A change made to a Parties representative.

**7. INDEPENDENT CONTRACTOR.**

- a. Tri-City is an independent contractor. As such, Tri-City shall have no power or authority to incur any debt, obligation or liability on behalf of the City, unless such authority is expressly conferred under this Agreement. Further, Tri-City is not entitled to any benefit typically associated with an employee such as medical, sick leave, retirement, or vacation benefit Tri-City expressly waives any claim to any such rights.



- b. The personnel performing services pursuant to this Agreement on behalf of Tri-City shall, at all times, be under Tri-City's exclusive direction and control. Neither the City, nor any of its employees, shall have any control over the manner, mode, or means by which Tri-City, its agents, or its employees, perform the services required herein, except as otherwise set forth herein. The City shall have no voice in the selection, discharge, supervision or control of Tri-City's employees, representatives, or agents, or in fixing their number, compensation, or hours of service.
  - c. Tri-City shall perform services pursuant to this Agreement as an independent contractor and shall, at all times, remain a wholly independent contractor. The City shall not in any way or for any purpose become or be deemed to be a partner of Tri-City in its business or otherwise a joint venture or member of any joint enterprise with Tri-City.
- 8. **CONFIDENTIALITY.** All data, documents, discussion, or other information developed or received by Tri-City or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Tri-City without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data and any copies thereof shall be returned to City upon the termination or expiration of this Agreement.
- 9. **TERMINATION.** Either Party may terminate this Agreement for any reason upon thirty (30) days' written notice to the other Party. Upon termination, Tri-City shall ensure that equipment and material used by its instructors and stored at the Facilities are removed within the time period agreed upon by the Parties. Tri-City shall also ensure that the Facilities are left in the same or better condition existing at the commencement of this Agreement's term, with the exception of normal wear and tear.
- 10. **INDEMNIFICATION.**
  - a. To the full extent permitted by law, Tri-City shall indemnify, hold harmless and defend the City, its officers, agents, elected and appointed officials, employees, affiliated public agencies and volunteers from and against any and all claims, demands, lawsuits, causes of action, losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from or arising out of any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Tri-City or any of its officers, instructors, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred in the performance of the duty to indemnify the City as described in this Section 10.a.
  - b. To the full extent permitted by law, the City shall indemnify, hold harmless and defend Tri-City, its officers, agents, elected and appointed officials, employees, instructors, affiliated public agencies and volunteers from and against any and all claims, demands, lawsuits, causes of action, losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from or arising out of any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of the City or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable



attorneys' fees incurred in the performance of the duty to indemnify Tri-City as described in this Section 10.b.

- c. In the event that any of the instructor provided by Tri-City to teach classes or provide services through the City's Recreation Program is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Tri-City shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Tri-City or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- d. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Tri-City and any of its employees, instructors, agents, and subcontractors providing services pursuant to this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.
- e. The provision of indemnity set forth in this Section 10 shall not obligate the Parties to pay any liability (including, but not limited to punitive damages), which, by law, would be contrary to public policy or otherwise unlawful.
- f. The indemnification provision of this Section 10 shall apply regardless of whether or not any insurance policies are determined to be applicable to a claim, demand, damage, liability, loss, cost or expense.

## **11. INSURANCE.**

- a. Tri-City shall procure and maintain, during the period of this Agreement, comprehensive public liability insurance coverage, for its acts or omissions described herein in a form satisfactory to the other Party in the following minimum amounts:
  - i. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) in the annual aggregate, including public liability, property damage, automobile liability, and bodily injury.
  - ii. In addition to the general liability insurance required to be provided under the funding agreement, Tri-City shall obtain and maintain sexual molestation and/or physical abuse liability coverage in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
  - iii. Automobile liability insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.



- iv. Worker's Compensation insurance as required by the laws of the State of California.
- b. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- c. At all times during the term of this Agreement, Tri-City shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and, for the general liability and automobile liability policies, naming the City as an additional insured.
- d. The insurance policies required by this Agreement shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Tri-City agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- e. The insurance policies provided by Tri-City shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Tri-City's insurance and shall not contribute with it.
- f. All insurance coverage provided pursuant to this Agreement shall not prohibit Tri-City, and Tri-City's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Tri-City hereby waives all rights of subrogation against the City.
- g. Procurement of insurance by Tri-City shall not be construed as a limitation of Tri-City's liability or as full performance of Tri-City's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

**12. MUTUAL COOPERATION.**

- a. The City shall provide Tri-City with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Tri-City's services under this Agreement.
- b. In the event any claim or action is brought by a third party against either Party relating to the performance of this Agreement, each Party shall render any reasonable assistance that the other Party may require.



13. **SURVIVING COVENANTS.** The Parties agree that the covenants contained in Sections 10 and 12.b shall survive the termination of this Agreement.
14. **ASSIGNMENT.** Neither Party may delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other Party's prior written consent, and any attempt to do so shall be void and of no effect.
15. **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** In the performance of this Agreement, the Parties shall not discriminate against any employee, instructor, subcontractor, or applicant for employment, because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Each Party shall ensure employees, instructors, subcontractors, and applicants for employment are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.
16. **CAPTIONS.** The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
17. **NON-WAIVER.**
  - a. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Tri-City unless in writing. The waiver by City or Tri-City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained.
  - b. The failure of the City or Tri-City to insist upon strict performance of any of the terms, conditions or covenants in this Agreement will not be deemed a waiver of any right or remedy which the City or Tri-City may have, and will not be deemed a waiver of any right or remedy for a subsequent breach or default of terms, conditions or covenants contained in this Agreement.
18. **FORCE MAJEURE.** The respective duties and obligations of the Parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the Party from whom the affected performance was due.
19. **GOVERNING LAW, VENUE, AND COURT COSTS.**



- a. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- b. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing Party will be entitled to recover its reasonable attorney's fees and costs, in addition to any other relief ordered by the court.
- c. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

**20. RESOLUTION OF DISPUTES.**

- a. Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.
- b. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this Agreement, the prevailing Party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

- 21. SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

- 22. ENTIRE AGREEMENT.** This Agreement is intended by the Parties hereto as a the final expression of their understanding with respect to the use of recreational use of Facilities, and is a complete and exclusive statement of the terms and conditions thereof, and supersedes any and all prior and contemporaneous Agreements and understandings, oral or written, in connection therewith. The terms and conditions of this Agreement may be revised or amended in writing as may be necessary from time to time and as mutually agreed by the Parties.

- 23. MUTUAL COOPERATION IN PREPARATION OF THIS AGREEMENT.** Each Party has cooperated in the drafting and preparation of this Agreement. Therefore, this Agreement shall not be construed against any Party on the basis that such Party drafted this Agreement or any provision within it.

**24. EXECUTION.**

- a. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement binding on all Parties hereto.

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- b. The persons executing this Agreement on behalf of the Parties are duly authorized to execute and deliver this Agreement on behalf of said Party, and by executing this Agreement, bind the Parties to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF POMONA

TRI-CITY MENTAL HEALTH  
CENTER

By: \_\_\_\_\_  
Linda Lowry, City Manager

By:  \_\_\_\_\_  
Antonette Navarro, LMFT, Executive Director

**APPROVED AS TO FORM:**  
for Arnold Alvarez-Glasman, City Attorney

**ATTEST:**

\_\_\_\_\_  
Jose Montoya, Deputy City Attorney

\_\_\_\_\_  
Eva M. Buice, MMC, City Clerk



**Exhibit A  
Schedule**

Renacimiento Community Center:

- Teen Support Group: Offered once a week. Date and time to be established by the Community Services Manager and Tri-City.