

## MERLO GYMNASIUM AGREEMENT

This Merlo Gymnasium Agreement ("AGREEMENT"), made and entered into in the City of Stockton, County of San Joaquin, State of California, this 17 day of July, 2015 by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("CITY"), and the TABLE COMMUNITY FOUNDATION (TCF), a California non-profit 501 (c) (3) Public Benefit Corporation, duly organized and recognized by the State of California; for the operation management and maintenance of Merlo Gym, located at 2021 Anne Street in Stockton , CA.

### BACKGROUND

CITY is the owner of Merlo Gym ("Facility"). The Facility consists of an approximately 15,000 square foot "joint use" gymnasium, shared with the Stockton Unified School District. The gymnasium includes bleachers, wood flooring/regulation size basketball court, kitchen facilities, men's and women's restrooms, a gender neutral ADA restroom, lobby with reception counter, an office, two class rooms/community rooms with a partition, site lighting, landscaped areas, seven equipment storage areas, a janitorial room, a security system, paved and striped parking lot, field entrance gate, and maintenance gates ("Facility Improvements").

CITY desires to have a recreation facility with measurable programming goals and objectives, additional opportunity for special events on a regular basis, and an operator with vision and tangible community leadership skills will help the City address crime and poverty and improve the quality of life for residents. Accordingly, the City has determined that the mission of the Facility is to improve the quality of life of youth and adults by providing a local venue for recreational and educational family programming that supports and strengthens the community.

Table Community Foundation ("TCF") is a non-profit foundation which has agreed to manage the facility, provide services to the community, fundraise, implement a marketing strategy, and engage the community to understand and meet neighborhood needs.

CITY desires to engage TCF, and TCF desires to accept such engagement to promote, operate, and manage the Facility on behalf of the CITY, on the terms and conditions set forth herein. CITY will work cooperatively with TCF in order to ensure the use and enjoyment of the facility as contemplated pursuant to this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises, covenants and agreements herein contained the parties hereby agree as follows:

#### 1. DEFINITIONS.

In addition to capitalized terms defined elsewhere in this AGREEMENT, the following terms have the meanings referred to in this Section 1:

"Annual Program Plan" means the TCF shall present, on an annual basis, a program operation plan for the City's review and approval. The purpose of this Annual Program Plan is to ensure Facility is used to its full potential and achieve the City's goal to serve the needs of the Community. The Annual Program Plan shall be received by October 31 of each year. At a minimum, the Plan shall include:

2015-06-23-1M9

- A report on all Management policies in place;
- Narrative description of proposed use (day to day operations and schedule, listed hours of operation, a complete listing of activities, including classes, special events, community outreach programs, sporting events, facility rentals, clinics, community workshops, trainings, and other opportunities);
- Quarterly Report Format (identified goals, measurable objectives, program descriptions with categorized activity listings, monthly utilization data, demographic data, program implementation data);
- A Security Plan;
- A Summary Profit Loss Statement, including Budget vs Actual Expenditures and Revenue for the prior year of operations;
- An Annual Inventory of the Facility and equipment;
- A Finalized annual calendar of the prior year events and activities; and
- A Capital Improvement Plan (recommendations for capital improvements and capital equipment for 1 and 3 years).

**“Agreement”** means this operations, maintenance, and management agreement.

**“Authorized Representative”** means the person named by either party to be its authorized representative under this AGREEMENT who shall be the liaison for such part with the other party on all matters related to this AGREEMENT.

**“Calendar”** means the monthly calendar with contains 100% of all activities and events held and/or booked at the facility. This document shall be published monthly and amended at the end of the month to incorporate final changes to events calendar. On an annual basis, the City shall receive a final summary and detailed listing of all events at the complex.

**“Capital Improvements”** means any and all furniture, fixtures, machinery, equipment, either additional or replacement, having a per item original cost of \$5,000 or more and all building additions, alterations, renovations, repairs or improvements with a useful life of more than one year.

**“CITY”** means the City of Stockton, CA

**“Concessions”** means the business of selling food, merchandise, and beverages to patrons of the complex at or in connection with Events.

**“City Events”** means all revenue or non-revenue producing sports, entertainment, civic, and other activities sponsored by the City according to the terms of the agreement.

**“ Director of Community Services”** means the Director of Community Services of the City of Stockton, CA, or the Director’s designee.

**“Event(s)”** means all revenue or non-revenue producing sports, entertainment, civic, and other activities conducted at the Complex.

**“Facility Use Agreements”** means the rental agreement TCF prepares to be entered into by users of the facility.

**"Fiscal Year"** means a one-year period beginning July 1 and ending June 30.

**"Laws"** means all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.

**"Operating Expenses"** means any and all expenses and expenditures of whatever kind or nature incurred by TCF directly or indirectly in promotion, operating, maintaining, and managing the facilities without limitation.

**"Operating Revenue"** means any and all revenues of every kind or nature derived by TCF directly or indirectly, from operating, management, promoting the complex. Operating Revenue may include: fees, sales, rental costs.

**"Security Plan"** means the security plan to be written and updated by TCF as a component of the Annual Plan due; submitted to City for review and acceptance.

**"Quarterly Report"** means a quarterly report written by TCF and approved by CITY which identifies goals, measurable objectives, program descriptions, categorized activity listings, activity usage data, demographic data, budget information, and expense/revenue projections. This report shall be established by mutual agreement and may be changed by mutual agreement.

**"Shared Calendar"** means the calendar managed by TCF and inclusive of all activities at the gym (including SUSD and City activities). This calendar will be updated and maintained on behalf of the City.

## 2. TERM AND TERMINATION

### 2.1 Term of Agreement

The parties hereto enter into this AGREEMENT for a term of three (3) years beginning on July 1, 2015 and ending on June 30, 2018 with two additional one year mutual options. The effective date of this AGREEMENT shall be July 1, 2015 regardless of the date of execution of this AGREEMENT; TCF agrees to and shall perform all of TCF'S obligations under this AGREEMENT.

- Initial Term of Agreement July 1, 2015 to June 30, 2018

Funding under this AGREEMENT will terminate without penalty at the end of the fiscal year in the event funds are not appropriated for the next fiscal year. If funds are not appropriated for a portion of the fiscal year, funding of this AGREEMENT will terminate without penalty, at the end of term for which funds are appropriated. If funds are not appropriated, TCF will be notified of related City Council action.

### 2.2 Mutual Options of Agreement

The parties agree that the AGREEMENT shall have two additional one (1) year mutual options. No later than January 15, 2018 (prior to the expiration of the initial term of this AGREEMENT), TCF shall provide a letter of intent to enter into the mutual option Year 1, and include any potential request financial assistance from CITY for that option, or shall advise CITY in writing that TCF intends to terminate its services at the expiration of the initial term of this AGREEMENT. If the AGREEMENT term is extended for Year-One mutual option, no later than January 15, 2019, TCF shall provide a letter of intent to enter into the mutual option Year 2, , or shall advise CITY in writing that TCF intends to terminate its services at the

expiration of the Mutual Option Year 1. If no such notice is received by TCF, the parties agree that this AGREEMENT shall terminate on the last day of the initial term of agreement.

- Year One Mutual Option            7-1-2018 to 6-30-2019  
*letter of intent received by January 15, 2018*
- Year Two Mutual Option            7-1-2019 to 6-30-2020  
*letter of intent received by January 15, 2019*

### **2.3 Termination of Agreement**

Notwithstanding the term of AGREEMENT and extension options above, this AGREEMENT may be terminated without cause in the sole discretion of either party by giving at least two months (60 days) prior written notice to the other party of election to terminate this AGREEMENT. The Director of Community Services is hereby authorized to give written termination on behalf of the CITY.

## **3. COMPENSATION**

### **3.1 Compensation**

City will pay TCF in quarterly installments for the management, maintenance, and operation of the Facility as follows:

Year 1: (7-1-2015 through 6-30-2016)	\$ 85,000
Year 2: (7-1-2016 through 6-30-2017)	\$ 85,000
Year 3: (7-1-2017 through 6-30-2018)	\$ 85,000

As it is the intent of TCF to reduce or eliminate any CITY subsidy after three years of operation, there is no provision for subsidy in the mutual option terms.

### **3.2 Facility Revenue**

TCF shall receive 100% of proceeds from all TCF related income producing activities associated with Facility, including but not limited to the following: rental fees, concessions (excluding CITY exclusive right to vending), fund raising, etc.). TCF shall report 100% of income related to Facility pursuant to Section 10.13 below.

## **4. MANAGEMENT, OPERATION AND STAFFING OF FACILITY**

### **4.1 Management Responsibilities**

TCF owes to CITY the duty to perform its obligations under this AGREEMENT and to conduct the management, operation, and maintenance of the Facilities at all times with integrity and good faith consistent with the wellbeing of the greater Stockton Community in a manner consistent with industry practices and all applicable laws, permits, and requirements. TCF shall follow policies and guidelines established by the CITY that are applicable to the operation and maintenance of the Facilities. TCF shall not enter into any material contracts which extend beyond the term of this AGREEMENT and any extensions thereto.

#### **4.2 Booking and Scheduling**

TCF is responsible for marketing, booking, and scheduling all non-school events held at the Facility. All activity, booking, and scheduled events shall be included in the monthly and annual calendar and online calendar.

#### **4.3 Non Discrimination**

In performing services under this AGREEMENT, TCF shall not discriminate in the employment of TCF employees or in the engagement of any subcontractors on the basis of race, color, religion, sex, marital status, national origin, ancestry, age or any other criteria prohibited by law.

#### **4.4 New Hire, Recruitment, and Staffing Guidelines**

TCF shall hire, supervise, and manage all personnel necessary for the management, operation, and maintenance of Facility and shall comply with CITY's administrative directive with respect to fingerprinting TCF employees and volunteers. Any individual who has been convicted of certain criminal offenses as set forth below, is not eligible to work or volunteer under this AGREEMENT.

TCF shall comply with the relevant portions of CITY's Administrative Directive HR-40 regarding who must be fingerprinted and what offenses or disqualifiers will prohibit an individual from working at Facility. TCF employees and volunteers, if applicable, are required to submit fingerprints in a manner authorized by the State of California Department of Justice. TCF and all applicable employees/volunteers shall submit fingerprints prior to the start of work pursuant to this AGREEMENT. TCF is responsible for all costs of fingerprinting and background check. Any individual who has been convicted of certain specified criminal offenses is not eligible to work at Facility. The disqualifying criminal convictions are as follows: Any of those offenses identified in City of Stockton Administrative Directive HR-40, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference, California Public Resources Code, Section 5164, except for those provisions contained in California Penal Code Sections 211, 215, 236, 240, provided, however, that any individual who has been convicted of violating Penal Code Section 211, 215, 236, or 240 may, in the sole discretion of the CITY, nevertheless be ineligible to work or volunteer at the Facility.

In addition, if any TCF employees assigned to work at the Facility are subsequently found to have a disqualifying conviction, TCF expressly agrees to remove those employee immediately from the Facility and take all necessary actions to ensure that they are not permitted to perform any further work under this AGREEMENT. Additionally, should any officers of TCF be subsequently found to have any of the disqualifying convictions set forth above, the contract may be immediately terminated by CITY at the CITY's sole discretion. TCF shall certify in writing to CITY before the first day of operation that neither the TCF Officers nor any of TCF's employees have been convicted of any of the specified disqualifying criminal offenses set forth above.

#### **4.5 Relationship of Parties**

Nothing contained in this AGREEMENT shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture of any nature between CITY and TCF or its agents, employees, or contractors. TCF shall not be considered a tenant, and shall gain no right to occupy facilities as a tenant or any other property right or interest in the Facility by virtue of this AGREEMENT. In performing the obligations set forth in this AGREEMENT, TCF shall have the status of an independent contractor and neither TCF nor its officers, employees or agents shall be considered to be employees of CITY nor be entitled to any of the rights, benefits, or privileges of CITY employees, including but not limited to

medical, unemployment, or worker's compensation for any purpose. TCF by virtue of this AGREEMENT, has no authority or responsibility to exercise any rights or powers vested in CITY other than as expressly set forth herein. All persons working for or under the direction of TCF are its agents and employees and are not agents or employees of City. Except as CITY may specify in writing, TCF shall have no authority to act as an agent of CITY or bind CITY to any obligation. Nothing in this AGREEMENT, either express or implied, is intended to confer upon any person or entity, other than CITY and TCF and their respective officers, directors, employees, and agents providing services under this AGREEMENT any rights, remedies, obligations or liabilities or by reason of this AGREEMENT.

#### **4.6 Control**

Neither CITY nor its officers, agents, or employees and/or volunteers shall have sufficient control over the conduct of TCF or any of TCF's employees, except as herein set forth herein and TCF shall determine the method, details and means of performing the work and services to be provided by them pursuant to this AGREEMENT. TCF expressly agrees not to represent that TCF or any of TCF's agents, servants, or employees, to be deemed the agents, servants, or employees of CITY

#### **4.7 Operations and Permits**

TCF shall at its sole expense, obtain and maintain in full force and effect throughout the Term of AGREEMENT and any extension thereto, any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, including without limitation, a CITY business license.

#### **4.8 No Third Party Beneficiaries**

No person or entity, other than TCF shall be deemed to be a third party beneficiary hereof.

### **5. PROMOTION OF FACILITY AND FACILITY ACTIVITIES**

#### **5.1 Cooperative Promotion**

CITY and TCF will actively cooperate to promote the Facility and related educational and recreational programs, events, and activities. CITY will provide marketing assistance and information through CITY resources. CITY will communicate marketing deadlines and opportunities through CITY publications and social media.

#### **5.2 Use of Logos**

CITY may use TCF logo when advancing the purposes of this AGREEMENT with prior approval of each use by TCF. TCF may use CITY logos on flyers and marketing items in addition to TCF logo with prior approval of each use by the City Public Information Officer.

### **6. FACILITY REGULAR PROGRAMMING AND MONTHLY CALENDAR**

#### **6.1 Weekly Programming and Set Hours of Operation**

TCF shall set and maintain a weekly programming schedule where Facility is open. Weekly hours shall be set in Program Plan, and reported in the Quarterly Report and Annual Report.

#### **6.2 Reporting of Activities in Monthly Calendar**

Monthly, TCF will submit a complete and accurate monthly report of all activities booked at the Facility in a manner agreeable to both parties. In addition, a final accounting of the month's activities shall be received within 10 days after the last day of the month.

**6.3 Reporting of Quarterly Goals and Objectives**

TCF will turn in quarterly reporting of goals, activities, and key performance measures quarterly, in a manner mutually agreeable to both parties,

**6.4 Quarterly Meetings**

TCF and CITY agree to meet quarterly to discuss issues of Facility operations, maintenance, and repair. Depending on any issues identified in the meetings, additional meetings may be schedule as necessary during the term of this AGREEMENT. Both parties acknowledge that additional meetings, over and above the quarterly meeting, may need to be schedule during each season for each year of the term of this AGREEMENT.

**7. AGREEMENT AUTHORITY AND RESPONSIBILITIES**

The following expenses are the responsibility of the identified parties below:

**7.1 CITY Responsibilities**

CITY shall have the sole responsibility for providing and paying for the following services:

1. Water, Sewer, Electric/Gas, and Garbage service
2. Pest Control
3. Exterior maintenance
4. Landscaping
5. Two phone lines
6. Maintenance and repairs not related to vandalism or lack of supervision
7. Security monitoring system
8. Weekly janitorial service (2 hours)

**7.2 TCF's Responsibilities**

TCF shall have the sole responsibility for providing and paying for the following services and equipment:

1. Telephone/communication and telecommunication equipment
2. Internet Service, including any additional wiring if needed
3. Computers and related services as needed to perform
4. Daily janitorial service
5. Cash registers
6. Daily Maintenance of Facility including to any maintenance and repairs related to vandalism and lack of supervision
7. Sport equipment, operational supplies and all equipment for business at Facility
8. Daily operation of scoreboard and sound system and performance of any equipment related repairs due to neglect, vandalism, or inappropriate use, handling, or storage

**7.3 Utilities**

CITY shall furnish TCF with electrical connections, adequate hot and cold water, adequate sewage facilities and appropriate drainage to permit activities in the normal and customary manner. The cost of monthly Facility utilities including gas, electric, sewer, water, storm drain, telephone shall be the responsibility of CITY. Cable, internet, satellite, and similar utilities shall be the responsibility of TCF.

**7.4 Concessions**

TCF and CITY will meet and discuss a plan for operations and supervision of any proposed concessions activity on site. The need, demand, nature, extent and supplies/vendor of such optional services shall

be determined at the sole discretion of the Director of Community Services or designee. Should any sponsorship agreements with beverage or food service companies, including sales clauses be considered, CITY and TCF will meet and confer prior to the execution of any agreement for the purposes of getting approval from the Director of Community Services, which approval shall not be unreasonably withheld. TCF shall also obtain prior written approval from CITY before any sale of food or beverages is conducted on site. No concessions equipment shall be installed without prior written permission from the CITY. CITY maintains the right to provide an exclusive vending agreement at the location. The sale or use of alcoholic beverages is strictly prohibited in Facility. Any concessions activity must not conflict with the Joint Use Agreement and Land Lease between the City of Stockton with Stockton Unified School District ("Joint Use Agreement") a copy of which is attached hereto as Exhibit 3 and Incorporated herein by reference. TCF shall provide copies of all related concession licenses for CITY review and approval prior to the commencement of any concession contract. It shall be the sole responsibility of TCF to ensure that all food and beverage products sold by TCF or its concessionaire(s) shall conform to all applicable federal, state and local laws, including the California Health and Safety Code, and other requirements.

#### **7.5 Naming Rights**

The CITY maintains the right to name the Facility in accordance with current or future CITY policies.

#### **7.6 Possessory Interest**

TCF recognizes and understands that this AGREEMENT may create a possessory interest subject to property taxation and that if such an interest is created, TCF shall be solely liable and responsible for the payment of any such property taxes levied.

### **8. FACILITY MAINTENANCE, MANAGEMENT, AND REAL PROPERTY**

#### **8.1 Acceptance of Condition of Facility**

TCF accepts the Facility and all equipment provided by the CITY hereunder in their present 'as is' condition.

#### **8.2 Joint Use Agreement and Lease with Stockton Unified School District**

As set forth in Section 7.4 above, the Facility is subject to a primary use related to the Joint Use Agreement Stockton Unified School District ("SUSD"). Terms and conditions of the Joint Use Agreement By signing this AGREEMENT, TCF specifically acknowledges that pursuant to the Joint Use Agreement, the Facility provides SUSD primary access and first right of refusal for use of the Facility. It is expected that TCF will cooperatively support school use as the primary use pursuant to the terms of the Joint Use Agreement.

#### **8.3 Notice of Cancellation of Facility Hours**

If TCF must shut down Facility during regularly scheduled hours, TCF must send a press release to Community Services Department at least 72 hours in advance unless the closure is due to an emergency.

#### **8.4 Janitorial Services, Maintenance, and Security of Facility**

TCF shall be responsible for the safety and sanitary conditions of their use of the Facility and shall remedy without delay any defective, dangerous, or unsanitary conditions therein. In addition, TCF shall be responsible for the housekeeping of the facility and all adjacent areas, keeping them in a safe, clean, wholesome, and sanitary condition. TCF shall ensure that at all times during the term of this AGREEMENT that Facility shall be kept free of trash, garbage, and obstructions of any kind. And ensure

that all trash resulting from cleaning shall be placed in appropriate containers. Facility shall be kept in compliance with any and all applicable present and future laws relating to sanitation, public health, safety, or welfare or any general rules and regulations of any governmental authority in force now, or at any time, during the term of this AGREEMENT.

#### **8.5 City Ownership**

CITY shall retain ownership of Facility and adjoining real property. TCF shall not be considered a tenant, and shall gain no right to occupy facilities as a tenant or any other property right or interest in the facilities by virtue of this AGREEMENT.

#### **8.6 TCF Improvements**

TCF may propose or make recommendations to the Director of Community Services with respect to proposed additions or repairs to structures, or improvements to the facility to increase facility usage and service to the community. No TCF proposed improvements, temporary alterations, expansions, or changes may be made to the facility without prior written approval by the CITY and must follow any regulatory requirements and obtain any necessary approvals and permits. Any such improvement shall be at TCF's sole cost and expense and improvements shall be the property of TCF during the term of the AGREEMENT. Title to such improvements shall vest in CITY upon expiration or termination of this AGREEMENT.

**8.7 Emergency Contacts** TCF will provide CITY with emergency phone numbers of key staff and Board Members. TCF shall ensure that CITY representatives have the ability to communicate with said persons twenty-four hours a day when emergency maintenance or conditions occur.

#### **8.8 Non Urgent and Emergency Maintenance**

It shall be the responsibility of TCF to notify the Director of Community Services immediately of any urgent or emergency maintenance required, as provided by the CITY, to avoid harm to the interior and or exterior of the building, its contents, or other persons. If TCF fails to immediately notify CITY of urgent or emergency maintenance do so, TCF shall reimburse CITY for any costs related to TCF's failure to comply with this requirement. Including but not limited to, additional repair costs incurred because of delayed notification.

For non-urgent facility maintenance issues, TCF will utilize the City Work Order process for orderly management of facility issues. For urgent maintenance issues after hours, TCF may utilize the "Firecom" 24 hour line at (209)937-8341.

#### **8.9 Signage**

TCF agrees to submit all proposed signage, and or sponsorships to the CITY for review and approval. CITY maintains the sole right to deny logos, pictures, or other signage that fails to comply with existing CITY policies.

#### **8.10 Security**

TCF shall be responsible for determining the security needs of the Facility, arrange for security for all events at the Facility and for general Facility security when events are not in progress. Each year, TCF, CITY, and SUSD representatives shall meet and update a written security plan for events which will outline day to day security of the Facility. The security plan shall include both emergency and non-emergency procedures and protocols to be followed by TCF and or any contractor or Facility user. CITY has installed and shall maintain at its' sole expense and cost, a security system for the Facility.

**8.11 Right of Entry, Keys, and Security Codes**

Installation of locks and keys will be the responsibility of the CITY. TCF shall furnish a list of key holders and persons eligible for a security code to City Authorized Representative. Any changes to list must be communicated to City Representative within 24 working hours. TCF shall follow the City key policy. City shall maintain right to enter to inspect or repair the facility. Upon termination of AGREEMENT, TCF shall surrender all sets of keys to the Facility and any Facility Improvements, to CITY.

**8.12 Vacation of Premises**

TCF agrees to vacate the Facility at the termination of this AGREEMENT and failing to vacate as herein provided, agrees that CITY or its authorized agents, may enter upon the premises and remove all personal property and TCF improvements therefrom. In this event, TCF waives any and all claims for damages against CITY, its agents or employees. Nothing herein shall be deemed a waiver of rights of CITY to demand and obtain possession of the premises in accordance with the law in the event of a violation of TCF's part of any of the terms or conditions hereof.

**9. FACILITY SPECIAL EVENTS, CITY EVENTS, AND PRIVATE RENTALS****9.1 City Events**

CITY shall have the ability to schedule seven (7) CITY activities at no cost to the City. City and TCF shall coordinate schedules, as appropriate. On the occasion that the CITY uses the facility for special events, CITY shall be responsible for performing the housekeeping of the area in a timely manner.

**9.2 Facility Use Agreements**

TCF shall be responsible for entering into Facility Use Agreements with all renters and users of the Facility for non-school activities. TCF shall be responsible for developing the form of each Agreement and complying with all requirements established by CITY Risk Services and contract compliance requirements for users of the Facility.

**9.3 Prohibited Activities**

As the Facility is a joint use facility with SUSD, the Facility is in an enhanced school zone. Accordingly, there is a zero tolerance policy for drugs, alcohol, weapons or tobacco. The following categories of products or activities are inappropriate for use at the Facility:

- Tobacco products without exclusion
- Alcohol products without exclusion
- Weapons
- Political parties and signage
- Pornographic media or related activities
- Possession or sale of drugs, pharmaceutical drugs, marijuana (including medical marijuana)

**10 GENERAL PROVISIONS****10.1 Laws, Rules, Regulations, Licenses, Permits, and Special Uses**

TCF shall obtain own expense any and all permits and licenses which may be required by law or ordinance to operate the Facility as contemplated under this AGREEMENT. If any event is scheduled which expands beyond the use permit of the Facility and requires a special event permit, TCF will comply with all applicable state and local laws, including CITY's Special Events Permit Process and notify the CITY's authorized representative of such potential activity according to the policies and guidelines. All

users of the Facility shall be required to adhere to CITY, TCF, and the SUSD Joint Use Agreement policies, procedures, rules, and regulations now and hereafter adopted by CITY for use and control of the Facility. TCF shall have sole responsibility for enforcing all applicable rules and regulations and will be responsible for asking those individuals who are in violation of the rules to leave the premises.

#### **10.2 Indemnity and Hold Harmless**

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

#### **10.3 Tender of Claims**

Pursuant to the obligation created by Indemnity clause above, TCF shall accept tender of any third party claim submitted to it by CITY as a result of TCF's obligation herein within 30 days of such tender.

#### **10.4 Insurance Requirements**

TCF shall not commence any services before obtaining, and shall maintain in force at all times during the duration and performance of this AGREEMENT, the policies of insurance specified in Exhibit 1, attached hereto and incorporated by this reference. For purposes of Exhibit A, the word "Operator" shall mean TCF.

#### **10.5 Assignment**

TCF may not assign, transfer, or otherwise alienate its rights and obligations pursuant to this AGREEMENT, without written consent of the Director of Community Services.

#### **10.6 Notices**

All written notices and communication required to be given under the provisions of this AGREEMENT shall be delivered personally, or mailed and addressed as follows:

TO CITY:	Director of Community Services City of Stockton 605 N. El Dorado Street Stockton, CA 95219
PHONE	(209) 937-8257
FAX	(209) 937-8663
TO COMMUNITY TABLE FOUNDATION:	Tyronne Gross, Founder Table Community Foundation 3201 W. Benjamin Holt Drive Suite #119 Stockton, CA 95219
PHONE	(209) 993-6241

**10.7 Waiver**

Any waiver by CITY of any obligation or condition in this AGREEMENT must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of TCF or to pursue any remedy allowed under this AGREEMENT or applicable law. Any extension of time granted to TCF to perform any obligation under this AGREEMENT shall not operate as a waiver or release from any of its obligations under this AGREEMENT. Consent by CITY to any act or omission by TCF shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

**10.8 Applicable Law, Resolutions of Disputes, Forum, and Attorney's Fees**

This AGREEMENT shall be interpreted under and be governed by the laws of the State of California. Any lawsuit pertaining to any matter arising under, or growing out of, this AGREEMENT shall be instituted in San Joaquin County, California. If any claim at law or otherwise is made by either party to this AGREEMENT, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

**10.9 Severability**

The provisions of this AGREEMENT are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

**10.10 Integration and Modification**

This AGREEMENT represents the entire integrated agreement between TCF and CITY and supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by written instrument signed by TCF and the Director of Community Services, or designee.

All Exhibits and this AGREEMENT are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this AGREEMENT and the attached Exhibits, the terms of this AGREEMENT shall prevail.

**10.11 Title of Parts and Sections**

The Title of parts and sections of this AGREEMENT are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

**10.12 Language Construction**

The Language of each and all paragraphs, terms and/or provisions of this AGREEMENT, shall, in all cases and for any and all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity and status of any person

**10.13 Records, Audits, Reports**

TCF shall keep true and correct records of all gross receipts operating revenue and expenditures and submit an annual report to the City by October 31 of each year of term. Records shall include all items reasonably necessary to verify TCF's annual Profit and Loss Statement. All records shall be kept for not less than five (5) years after delivery of required annual report. The CITY shall have the right, at reasonable time and from time to time after giving reasonable notice, to do any of the following: audit

records, cause an audit at CITY's expense, make abstracts from records, copy records, and examine all permits and licenses.

**10.14 Condemnation**

If the whole or any substantial part of the Facility shall be taken by any paramount public authority under the power of eminent domain, then this AGREEMENT shall be terminated as to such Facility from the day when the possession of that part shall be taken for said public purpose. All damages awarded for this taking shall belong to and be property of CITY, and all agreements pertaining to that sale. However, CITY shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to TCF, if any.

**10.15 Discretion of the CITY**

CITY's execution of this AGREEMENT in no way limits the discretion of CITY in the permit and approval process in connection with any improvements by TCF.

**10.16 Authority of Parties**

Each individual executing this AGREEMENT on behalf of the respective Parties represents and warrants that he/she is duly authorized to execute this AGREEMENT on behalf of the respective Parties.

**10.17 Non-Liability of City Officials**

No member, official, employee or agent of CITY shall be personally liable to TCF in the event of any default or breach by CITY or for any amount which may become due to TCF or its successor or on any obligation under the terms of this AGREEMENT.

**10.18 Law Abiding Conduct**

TCF agrees that it will comply with all the applicable laws and ordinances, administrative regulations and orders of appropriate government authority in the conduct of its business and further agrees that CITY shall have the right to enter upon said premises at reasonable times for the purpose of inspection and ensure enforcement of this AGREEMENT and ordinances and laws governing TCF's use of Facility.

**10.19 Conflict of Interest**

TCF covenants that other than this AGREEMENT, TCF has no financial interest with any official, employee, or other representative of the City. TCF and its principals do not have any financial interest in real property, sources of income, or investment that would be affected in any manner of degree by the performance of TCF's services under this AGREEMENT. If such an interest arises, TCF will immediately notify CITY.

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**AUTHORITY AND EXECUTION**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this AGREEMENT. This AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

ATTEST:



CITY OF STOCKTON

BY: Thomas Castro

BY: Gavin Nord

For  
BONNIE PAIGE  
CITY CLERK, CITY OF STOCKTON

for  
KURT WILSON  
CITY MANAGER, CITY OF STOCKTON

APPROVED AS TO FORM:

JOHN LEUBBERKE  
CITY ATTORNEY, CITY OF STOCKTON

PROFESSIONAL

BY: [Signature]  
CIT  
Susana Alcala Wood  
Assistant City Attorney

BY: [Signature]  
TYRONNE GROSS, FOUNDER  
TABLE COMMUNITY FOUNDATION

**Exhibit 1:**  
**Insurance Requirements**  
**(Merlo Gym Facility Operator)**

Operator shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Operator's operation and use of the leased premises. The cost of such insurance shall be borne by the Operator.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal & advertising injury, and sexual abuse and molestation coverage, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for operators with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Operator maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

**Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Operator including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Operator's insurance (**at least as broad as ISO Form CG 20 10 11 85**).

***Primary Coverage***

For any claims related to this contract, the Operator's insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers shall be excess

of the Operator's insurance and shall not contribute with it. The City of Stockton does not accept primary endorsements limiting the Operator's insurance coverage to sole negligence.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

***Waiver of Subrogation***

Operator hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Operator may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Operator to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

***Verification of Coverage***

Operator shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Operator's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time, for any reason or no reason.

***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

***Certificate holder address***

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N. El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037  
City of Stockton Risk Services Fax: 209-937-8558

***Maintenance of Insurance***

If at any time during the life of the Contract or any extension, the Operator fails to maintain the required insurance in full force and effect, the CITY may terminate this Contract.

***Subcontractors***

If the Operator should subcontract all or any portion of the work to be performed in this contract, the Operator shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.