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LEASE AGREEMENT BETWEEN THE CITY OF MEMPHIS, DIVISION OF PARK SERVICES AND MEMPHIS ATHLETIC MINISTRIES

THIS LEASE AGREEMENT is dated as of this ____ day of _____, 2009, by and between the City of Memphis, through its Division of Park Services ("City") and Memphis Athletic Ministries ("MAM").

RECITALS:

WHEREAS, the City of Memphis owns and operates twenty-eight (28) community centers through its Division of Park Services; and

WHEREAS, these facilities provide a vital purpose within the communities they serve by providing recreational and social opportunities for youth, adults, and seniors; and

WHEREAS, the City verified through an Independent Efficiency Study (hereafter "Efficiency Study") that it operated an excessive number of community centers in certain geographic areas and for purposes of efficiency, should consider closing or disposing of certain surplus centers; and

WHEREAS, based upon the results of such Efficiency Study, City recently issued a Request for Proposals ("RFP") to identify interested parties to operate four community centers identified in the Efficiency Study as Greenlaw, Simon/Boyd-Magnolia, Bethel LaBelle and Hamilton Community Centers (hereafter "Community Centers"); and

WHEREAS, in response to such RFP, MAM was selected based upon its experience in providing organized sports, mentoring, and management of neighborhood youth centers to serve as the operator and lessee of these Community Centers.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties desire to set forth herein the terms and conditions which shall govern MAM's operation and lease of the Community Centers and hereby agree as follows:

SECTION 1 - TERM

1.01. Lease. City hereby agrees to lease to MAM the following community centers for the amount of $1.00 for the sole purpose of operating such Community Centers

in accordance with the terms and conditions set forth herein:

Greenlaw, 190 Mill Avenue
Simon/Boyd-Magnolia, 2130 Wabash Street
Bethel LaBelle, 2698 Larose Avenue
Hamilton, 1363 East Person Avenue

1.02. Initial Term and Renewal Period. The initial term ("Initial Term") of this Agreement shall be for a period of two (2) years which shall commence upon November 1, 2009. At the end of the Initial Term, this Agreement shall be renewed in writing based upon the mutual approval of the parties and upon such terms to be determined by the parties for two (2) consecutive four (4) year periods.

1.03. Termination. This Agreement may be terminated with or without cause by either party by providing written notice within one hundred and twenty (120) days of such termination or within thirty (30) days for failure to maintain insurance in accordance with Section 5.01. Notwithstanding the foregoing, the parties agree to engage in discussions prior to the tender of such formal written notice in an effort to reasonably determine if the parties can avoid termination.

1.04. Contract Commencement Transition Period. The parties agree that MAM will take possession on November 1, 2009, unless approved by City to take possession earlier, and will have up to four (4) months to fully staff and operate all four (4) community centers identified in this Agreement. The City will coordinate as needed with MAM to ensure successful staff and operation transition. City also agrees to work vigorously to resolve any outstanding general maintenance items prior to such transition.

SECTION 2 - OPERATIONS

2.01. Services. In an effort to accommodate and provide activities and services consistent with the mission and vision of the City and the mission of MAM, MAM agrees to use its best efforts to provide or make available through third parties approved by City the following five core services as described within the RFP, attached hereto as Exhibit 1 and incorporated herein by reference, at each of the Community Centers:

I) Health, Fitness and Wellness Services and Programs
II) Educational Development and Training Services
III) Cultural Arts Programming

IV) Dance and Musical Expression
V) Character Building and Social Development

2.02. Facility Rentals. MAM will be responsible for the full and entire operations of each Community Center, which shall include without limitation, all facility rentals. MAM will collect and retain all revenues generated by such rentals. City acknowledges that all facility rentals authorized by MAM shall be based on availability.

2.03. Program Monitoring. In an effort to ensure MAM's continued maintenance of programs within the scope of Section 2.01, MAM shall provide City an annual report reflecting the number of participants for each program activity as well as the level of services provided at each center.

2.04. Access. MAM agrees that each facility shall be open to the public and that no person shall be denied entry into any Community Center except on the basis of improper behavior, failure to adhere to rules, safety, engaging in illegal activities, or failure to satisfy program participation requirements.

SECTION 3- MAINTENANCE

3.01. Maintenance. MAM shall be responsible for the operation of the Community Centers which shall include, without limitation, providing and paying for the following services:

a. Program Services;
b. Telephone Services;
c. Trash Removal
d. Pest Control and Termite Services;
e. General Housekeeping;
f. Facility Cleaning;
g. Electronic Fire Protection and Security System;
h. Routine Preventive Maintenance and Repairs;
i. All operating materials and supply costs;

3.02. Routine Preventive Maintenance and Repairs. City represents as of November 1, 2009, all HVAC, plumbing, roofing and electrical systems shall be in good condition. Thereafter, MAM shall be responsible for Routine Preventive Maintenance and Repairs which shall include, but not be limited to, general incidental repairs, carpentry, replacement of HVAC filters and belts, minor roofing repairs and plumbing, provided that such repairs do not exceed $2500 per event. Any such repairs in excess of $2500 shall be the obligation of the City.

3.03. Non-Routine Capital Maintenance. City shall be responsible for all non-routine capital maintenance repairs which shall include, the repair or replacement of the roof, boilers, chillers, major fixtures (i.e. toilets, sinks, floors, walls, etc.), HVAC system. In addition to the foregoing, City shall make any and all repairs necessary to ensure that all community center equipment and fixtures shall be in good operating condition prior to the commencement of the initial term.

3.04. Grounds Maintenance. Grounds Maintenance shall be provided by the City at Hamilton and Greenlaw and will include any cutting, trimming, pruning, planting or removal of debris necessary to maintain the two facilities.

3.05. Repairs by City. Upon thirty (30) days written notice to MAM, City reserves the right to make any repairs or undertake any maintenance it deems necessary to preserve the integrity of the Community Centers based upon MAM's failure to comply with Section 3.02 set forth herein. In the event that City is required to undertake such action, all resulting costs shall be invoiced to MAM for immediate payment.

3.06. Emergency Repairs by MAM. After reasonable notice to City of an emergency, should City fail to undertake its repair obligations as set forth herein, MAM is hereby authorized to make such repairs or engage the services of a third party to provide such repair service. The parties agree that reasonable notice to City shall depend upon the nature of the emergency and that MAM shall invoice City for all resulting reasonable costs to MAM. Notwithstanding the foregoing, City shall have no obligation to reimburse MAM in the event MAM fails to provide notice to City as required herein.

3.07. Utilities. MAM shall be responsible for the payment and provision of utilities, water, sewer and all utility related costs. City shall invoice MAM for the payment of such utilities.

3.08. Surrender of Lease Premises. Upon the expiration of this Agreement or if terminated sooner, MAM shall deliver each Community Center to City in good condition, reasonable use, wear and tear excepted.

3.09. Right of Entry and Quiet Enjoyment. City reserves the right to enter each Community Center at reasonable times and upon reasonable notice to MAM to make any repairs City deems necessary. Notwithstanding the foregoing, City covenants that MAM shall peaceably hold and enjoy each Community Center, subject to the terms of this Agreement, provided that MAM is not in default hereunder.

3.10. Ownership of the Property and Improvements. MAM agrees that any and all improvements thereto, paid for in whole or in part by MAM, shall become the property of the City upon the expiration or termination of this Agreement. MAM further acknowledges that each Community Center shall remain the property of the City of Memphis and that MAM shall not mortgage or encumber the land. MAM shall not install any fixtures or make any substantial alterations or additions in or about the premises of either Community Center without the prior written approval of City.

3.11. Code Violations. City agrees to correct each cited code violation existing prior to commencement of the initial lease term at City's expense. Any code violation existing thereafter shall be the sole responsibility of MAM.

SECTION 4 – AUDITS AND INSPECTION

4.01. Site Inspections. City shall have the right, through its authorized employees or agents, to inspect the Lease Premises from time to time to determine if it is being operated and maintained in accordance with this Agreement. Upon reasonable notice to MAM, City will be allowed ready entry and access to each facility to conduct such inspections.

4.02. Books and Records. City reserves the right to inspect and audit the records of MAM that specifically relate to MAM's performance under this Agreement. MAM agrees to make such records open and available for examination during regular business by the City or its representatives for the purposes of inspecting, auditing, verifying or copying the same or making extracts therefrom. MAM shall make and keep said records for a period of three (3) years after completion of its contractual obligations under this Agreement.

4.03. Accounting Reports. MAM shall provide City with annual reports on the use and operations of the Community Centers. MAM shall provide City with audited annual financial statements of MAM, prepared in accordance with GAAP, within nine (9) months following each fiscal year ending December 31, and at the same time each fiscal year thereafter.

SECTION 5 - INSURANCE

5.01. Insurance. MAM shall maintain during the term hereof, at its own cost and expense, the following insurance policies issued by insurance companies licensed in the State of Tennessee and acceptable to the City. All such insurance shall be

evidenced by certificates and/or policies, as determined by the City, which shall name the City of Memphis as additional insured and shall be mailed to the City of Memphis, Attn: Risk Management, 2714 Union Extended, Suite 200, Memphis, TN 38112. It is agreed that coverage under this policy shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City of Memphis.

MAM shall not commence any work under this contract until it has obtained all insurance required. MAM's failure to maintain the following insurance coverage during the term hereof, shall be cause for termination of this Agreement. Proof of such insurance shall be provided prior to MAM's execution of this Agreement.

Each certificate or policy shall require and state in writing the following clauses:

"Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager" by registered mail, return receipt requested to the following address.

City of Memphis
Attn: Risk Management
2714 Union Extended, Suite 200
Memphis, TN 38112

"The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance.

WORKERS COMPENSATION:

To the extent applicable, MAM shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employers Liability	$100,000	Each Accident
	$500,000	Disease – Policy Limit
	$100,000	Disease – Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned and hired vehicles with LIMITS OF:

$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage.

$3,000,000	General Aggregate
$1,000,000	Products & Completed Operations
$1,000,000	Personal & Advertising
$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
$ 50,000	Fire Damage any One Fire
$ 5,000	Medical Expense any One Person

PROPERTY INSURANCE:

Any newly constructed improvements shall be added to MAM's property policy at MAM's expense. Additionally, MAM shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors engaged by MAM to do likewise.

City reserves the right to reasonably require increases in coverage limits if same becomes necessary.

SECTION 6 - INDEMNIFICATION

6.01. MAM shall indemnify, defend, save and hold harmless the City against any and all losses, damages (consequential or otherwise), costs, expenses or fees (including reasonable attorneys' fees) incurred by City, its elected or appointed officials, members, agents and employees as a result of any negligent act or omission of MAM, its subcontractors, agents, or employees which occurs pursuant to MAM's performance of this Agreement. This indemnification shall survive the expiration or termination of this Agreement. Neither MAM nor any employees of MAM shall be liable under this section for damages arising out of

injury or damage to persons or property directly caused by the negligence of the City or any of its officers, agents or employees.

6.02. City shall have no obligation to provide legal counsel or defense to MAM or any of its subcontractors or employees in the event that a suit, claim, or action of any kind is brought by any person not a party to this Agreement against MAM or its subcontractors as a result of or relating to MAM's obligations hereunder. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against MAM or its subcontractors or employees as a result of or relating to MAM's obligations hereunder.

6.03. MAM shall immediately notify the City, c/o City Attorney, 125 N. Main St., Suite 336, Memphis, Tennessee, 38103, of any claim or suit made or filed against MAM or its subcontractors or employees regarding any matter resulting from or relating to MAM's obligations under this Agreement, and agrees to cooperate, assist, and consult with the City in the defense or investigation thereof.

SECTION 7 - REPRESENTATIONS AND WARRANTIES

7.01. MAM represents to the City that the execution and performance of this Agreement has been duly authorized by all necessary laws, resolutions, corporate and other action, and this Agreement constitutes the valid and enforceable obligations of MAM in accordance with its terms.

7.02. MAM certifies that it is qualified to do business in the State of Tennessee and that it will take such actions as, from time to time, may be necessary to remain so qualified and obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary for the performance of its obligations hereunder.

7.03. MAM warrants that it has not employed or retained any company or person other than a bona fide employee working solely for MAM, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for MAM any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

SECTION 8 – MISCELLANEOUS

8.01. Assignment. Subletting, assignment or transfer of all or part of MAM's interest in and to this Agreement is prohibited unless by written consent of City.

8.02. Background checks. MAM hereby acknowledges that MAM's staff and any third party engaged to provide the services set forth within Section 2.01 may be required to undergo a background check as required by City.

8.03. Amendment. This Agreement may be modified by amendment made in writing and signed by both parties.

8.04. Notices. All notices and approvals required or permitted hereunder shall be written and shall be delivered by (a) fax or by a nationally recognized overnight delivery service, or (b) by U.S. certified mail, return receipt requested, to the following addresses or such other addresses which either of the parties shall give notice from time to time during the term hereof:

If to the City:
City of Memphis
Director of Park Services
2599 Avery Ave.
Memphis, Tennessee 38112
Fax: (901) 325-5770

With copy to City Attorney
125 N. Main Street, Room 336
Memphis, Tennessee 38103
Fax: 901.576.6524

If to MAM: Memphis Athletic Ministries
c/o President
2107 Ball Road
Memphis, TN 38114
Fax: 901. 744.1600

8.05. Independent Contractor. All persons employed, either on a full or part time basis, during the term of this Agreement or any renewal hereof, will be employees of MAM or will be employees of MAM's contractors and the City shall have no responsibility for the payment of any wages, salary, taxes and other related employment benefits to such employees. Nothing in this Agreement shall be deemed to represent that MAM or any of its employees or agents, are the

agents, representatives, or employees of the City. MAM is and will be an independent contractor with control over the details and means of performing its obligations hereunder.

8.06. Nondiscrimination. MAM hereby agrees, warrants and assures that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subject to discrimination in the performance of MAM's duties under this Agreement. Notwithstanding the foregoing, MAM agrees to observe and comply with all federal, state, local laws and regulations as applicable.

8.07. Choice of Law. MAM is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state and local laws, ordinances, and regulations in any manner affecting the conduct of the work. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, MAM agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the Courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the Courts of the State of Tennessee in Shelby County, Tennessee.

8.08. Prevailing Party. Any party shall be entitled to recover from the other party all costs, including reasonable attorney fees and litigation expenses, incurred by such party in successfully enforcing its rights hereunder.

8.09. Entire Agreement. This Agreement contains the entire understanding of the parties and there are no other promises or conditions in any other prior agreement between the parties hereto, whether oral or written. Except as otherwise provided herein, this Agreement supersedes any prior written or oral agreements between the parties hereto in regard to the subject matter hereof.

8.10. Unenforceability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

8.11. No Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this

Agreement.

8.12. Captions. The headings and captions contained in this Lease are for reference purposes only and shall not limit or extend the meaning or terms of any paragraph or section herein contained.

8.13. Conflict in Terms. To the extent there arises a conflict between the terms set forth herein and the RFP attached hereto, the express terms of this Agreement shall prevail.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

CITY OF MEMPHIS, TENNESSEE

Approved as to Form:

_____
City Attorney

_____
Myron Lowery, Mayor Pro Tempore

_____
City Comptroller

_____
Director, Park Services

MEMPHIS ATHLETIC MINISTRIES

By: _____

Title: _____