

## **FACILITY USE AGREEMENT**

This Facility Use Agreement ("Agreement") is made and entered into this 15<sup>th</sup> day of April, 2014 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Redlands Meals on Wheels, a non-profit charitable organization ("RMOW"). City and RMOW are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

### **ARTICLE 1. PREMISES**

Section 1.01 City agrees to permit RMOW to use the kitchen, consisting of approximately 300 square feet, located at 21 Grant Street at the Joslyn Senior Center, Redlands, California (the "Premises") on the terms and conditions hereinafter set forth.

### **ARTICLE 2. TERM**

Section 2.01. This Agreement shall be for a term of three (3) years, unless earlier terminated as provided for herein.

### **ARTICLE 3. FEE WAIVER**

Section 3.01. Except as provided in Section 4.02, below, City will waive the Fifty One Dollar (\$51.00) fee per day for the use of the Premises, and the Twenty Dollar (\$20.00) per hour staff attendant fee for RMOW's use of the Premises after hours or on a day which the facility is closed during the term of this Agreement.

### **ARTICLE 4. USE OF PREMISES**

Section 4.01. The Premises shall be used for the exclusive purpose of preparing meals by volunteers associated with RMOW, and for gatherings directly associated with said use. RMOW shall not use or permit the Premises to be used for any other purpose without the prior written consent of City.

#### Operation of Business

Section 4.02. During the term of this Agreement, RMOW shall, unless prevented by conditions beyond its control, conduct business of the type and nature specified in Section 4.01 of this Agreement on the Premises in a safe and business like manner. The Premises shall be used only for the time and dates approved for RMOW as identified on City's Facility Rental form. In the event that scheduling modifications are necessary, RMOW shall make a forty-five (45) day advance schedule change request to City indicating the proposed modification. City shall respond to such requests within two (2) weeks of receipt. City may charge RMOW rent in the amount of Fifty One Dollars (\$51.00) per day, for any scheduling changes made by RMOW without the aforementioned forty-five (45) day notice. RMOW shall assume full responsibility

for its personal property used at the Premises, and shall hold City harmless for any theft or damage relating to RMOW's personal property.

#### User Responsibility

Section 4.03. RMOW shall be solely responsible for any set up and cleaning associated with its use of the Premises, and shall maintain the Premises in a clean and litter free manner.

Section 4.04. RMOW shall not commit, or permit the commission, of any acts on the Premises, or use or permit the use of the Premises, in any manner that will increase the existing rates for, or cause the cancellation of, any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. RMOW shall, at its own cost and expense, maintain insurance for all personal property and improvements on the Premises.

#### Waste or Nuisance

Section 4.05. RMOW shall not commit, or permit the commission by others, of any waste on the Premises. RMOW shall not maintain, commit or permit the maintenance or commission of any nuisance on the Premises, and RMOW shall not use or permit the use of the Premises for any unlawful purpose.

#### Compliance with Laws

Section 4.06. RMOW shall, at RMOW's sole cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, federal, state and county or municipal, relating to RMOW's use and occupancy of the Premises for RMOW's operation of business whether those statutes, ordinances, regulations and requirements are now in force or are subsequently enacted. The judgment of any court of competent jurisdiction, or the admission by RMOW in a proceeding brought against RMOW by any government entity that RMOW has violated any such statute, ordinance, regulation or requirement shall be conclusive as between City and RMOW and shall constitute grounds for termination of this Agreement by City.

### **ARTICLE 5. INDEMNITY AND INSURANCE**

Section 5.01. RMOW shall secure and maintain throughout the term of this Agreement the following types of insurance:

A. Comprehensive general liability insurance, with carriers acceptable to City, with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. A certificate of insurance with endorsements evidencing such coverage shall be provided to City prior to RMOW's occupancy of the Premises.

B. Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that RMOW is self-insured or exempt from the workers' compensation laws of the State of California. RMOW shall provide City with Exhibit "A," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.

C. RMOW shall defend, indemnify and hold harmless City, and its elected officials, officers, employees, agents and volunteers, from any and all liabilities for injury to persons and damage to property arising out of any act or omission of RMOW, or its officers, employees, agents or volunteers, in connection with operation of its business at the Premises.

## **ARTICLE 6. TAXES AND UTILITIES**

### Utilities

Section 6.01. City shall pay, and hold RMOW free and harmless from, all charges for the furnishing of gas, water, sewer, electricity, solid waste disposal and other public utilities provided to the Premises during the term of this Agreement. RMOW shall pay, and hold City free and harmless from, all charges for telephone usage by RMOW at the Premises.

## **ARTICLE 7. MISCELLANEOUS**

Section 7.01. RMOW shall not encumber, assign, or otherwise transfer this Agreement, any right or interest in this Agreement, or any right or interest in the Premises or any improvements that may now or hereafter be constructed or installed on the Premises. Any encumbrance, assignment, transfer, or subletting by RMOW without the prior written consent of City, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of City, result in the immediate termination of this Agreement.

Section 7.02. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Party to this Agreement by the other Party to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to the Party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first-class postage pre-paid, addressed to Redlands Meals on Wheels at P.O. Box 929, Redlands, Ca 92373 or to City at 111 W. Lugonia Avenue, P.O. Box 3005, Redlands, CA 92373. RMOW and City may change their respective addresses for the purpose of this section by giving written notice of that change to the other Party in the manner provided in this section.

Section 7.03. This Agreement constitutes the entire agreement between City and RMOW respecting RMOW's use of the Premises, and correctly sets forth the obligations of City and RMOW to each other as of its Effective Date. Any agreements or representations between the Parties respecting the Premises not expressly set forth in this Agreement are null and void.

Section 7.04. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing Party shall, in addition to any costs and other relief be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

Section 7.05. This Agreement may be terminated by either Party by giving ninety (90) days prior written notice to the other Party.

Executed at Redlands, California.

CITY OF REDLANDS

REDLANDS MEALS ON WHEELS

\_\_\_\_\_  
Pete Aguilar, Mayor

\_\_\_\_\_  
Bill Christensen, President

ATTEST:

\_\_\_\_\_  
Sam Irwin, City Clerk

## EXHIBIT "A"

### WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

#### CHECK ONE

\_\_\_\_\_ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

\_\_\_\_\_ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

Redlands Meals on Wheels

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bill Christensen, President