

OPERATIONS AGREEMENT BETWEEN

CITY OF HAYWARD

AND

SOUTHERN ALAMEDA COUNTY COMITE FOR RAZA MENTAL HEALTH, DOING
BUSINESS AS LA FAMILIA COUNSELING SERVICES

AND

EDEN YOUTH AND FAMILY CENTER

THIS AGREEMENT, dated this ___st day of _____ 2018, is by and between Southern Alameda County Comite for Raza Mental Health, a California nonprofit corporation, doing business as La Familia Counseling Service ("La Familia"), Eden Youth and Family Center ("EYFC", and jointly with La Familia, "Operator"), and City of Hayward, a municipal Charter City within the State of California ("City" and, together with Operator each, a "Party" and together, the "Parties").

RECITALS

WHEREAS, City of Hayward ("City") and County of Alameda ("County") intend to plan, develop and construct the South Hayward Youth and Family Center (the "Center") to be located at 680 West Tennyson Road, South Hayward, California (the "Property");

WHEREAS, the construction project for the Center will be financed by the City and County and other private sources, the Center will be owned by the City, and the Center will be exclusively managed and operated by the Operator pursuant to this Agreement;

WHEREAS, the Parties desire for Operator to manage, administer and provide operational oversight of the Center after the completion of construction of the Center;

WHEREAS, City, as landlord, and Operator, as tenant, will also subsequent to this Agreement enter into a Master Lease Agreement concerning the Property (the "Lease") upon completion of the Property construction and issuance of Certificate of Occupancy at a future date to be determined, wherein Operator will be the master tenant of the Property;

WHEREAS, Operator also intends to occupy a portion of the Center, when it is completed, for its own purposes consisting of approximately 4,000 square feet for its programs and approximately 1,000 square feet for its administrative offices (collectively the "Tenant's Premises") wherein Operator will relocate and/or establish its programs related to mental health, substance abuse, disorder treatment and youth and adult programming services;

WHEREAS, pursuant to the terms of the Lease, Operator shall be entitled to sublease a portion of the Center, when it is completed, to certain subtenants (the "Subtenants") in accordance with written sublease agreements between Operator and the Subtenants (the "Subleases").

WHEREAS, Operator is qualified, experienced, and competent to perform the services which will be required by this Agreement; and

WHEREAS, Operator is willing to render such services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Operator and City agree as follows:

AGREEMENT

(1) Purpose. This Agreement governs Operator's provision of facility administration and operational oversight of the South Hayward Family Center ("the Center") after completion of construction. It is the Parties' intention to give Operator substantial discretion in its operation of the Center while jointly setting performance standards to ensure the City's substantial financial investments in constructing the Center is maintained, and that the Center is operated for benefit of the Hayward community. The City and the County shall plan, develop and construct the Center to be

located at the Property. The construction project for the Center shall be financed by the City and County and other private sources, and the construction project shall be overseen, supervised and managed by the City and County. Operator shall not be responsible to develop, build or construct the Center to be located at the Property. However, Operator shall have a formal and meaningful role in the design development process and shall be consulted and included in every phase of the facility's architectural development.

(2) Rights, Obligations and Liabilities. The provisions of this Agreement neither expand nor reduce the Parties' rights, obligations or liabilities contained within other Agreements, Governance MOUs, or Facility Leases entered into by the Parties that may also pertain to the South Hayward Family Center facility, its operations, and/or its construction. Where there is conflict between the provisions of this Agreement and of any other relevant Agreement, the Governance MOU or the Facility Lease shall control, as applicable.

(3) Compensation. Within thirty (30) days after the completion of the new Center construction, Operator hereby agrees to take occupancy of the Center and commence paying rent to City at a rate of \$1 per square foot per year, not to exceed a total of \$36,000 per year. The \$1 per square foot rate shall include the entire square footage of all indoor spaces and facilities that comprise the completed Center, as defined in the final construction documents. Payments shall be made on the first day of each month, commencing thirty (30) days after completion of the new Center construction and issuance of a Certificate of Occupancy. All rent payments made by Operator to City under the terms of this Agreement shall be deposited by City into a segregated and protected Maintenance Fund administered by City, with any and all interest accrued by deposited monies to be immediately folded back into said Maintenance Fund, and withdrawals from said Maintenance Fund shall be limited only to expenses pertaining to the Center's long-term capital maintenance needs as described in Exhibit D.

(4) Effective Date and Term. The effective date of this Agreement is ____, 2018, and it shall terminate thirty-six (36) months after construction of the new Center is completed, or December 31, 2021, whichever comes first, unless the Agreement is renewed by the Parties prior to termination.

(5) Independent Nonprofit Status. It is expressly understood and agreed by the Parties that while engaged in carrying out and complying with any of the terms and conditions of this Agreement, Operator remains an independent nonprofit organization operating under contract, and not an employee nor representative of the City. Operator expressly warrants not representing, at any time or in any manner, that Operator is an employee or representative of the City.

(6) Advice and Status Reporting. Operator shall provide the City with written quarterly reports of all significant developments arising during performance of its services hereunder, including any specific information or details which the City may request. Reports shall be prepared and submitted in a format of City's choosing.

(7) Assignment and Subcontracting. The Parties hereto recognize that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Operator. Neither this Agreement nor any interest therein may be assigned by Operator without the prior written approval of the duly authorized representatives of City. Operator shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the duly authorized representatives of City.

(8) Maintenance, Repairs and Replacement. Except for design and construction errors and defects, Operator is responsible for regular maintenance, repair, and upkeep of all equipment, fixtures and furnishings, and associated permitting following expiration of the contractor's warranty, with equipment and materials of equivalent or better quality, as described in subsections (a) through (m), below. Where replacements cannot be made with the same equipment or materials identified, such changes shall be documented in writing and disclosed to City during the annual maintenance reports called for herein. On a semi-annual basis for the first three years of operation, and then annually thereafter, City shall jointly conduct facility inspections to evaluate conditions and determine immediate and long-term maintenance and repair needs. Except for design and construction errors and defects, Operator is further responsible for site maintenance and landscaping including capital replacement, major repairs to driveways, parking areas and fencing, graffiti removal and plant replacement. Operator is to document maintenance, repair and replacement work and report annually to City on work performing, and anticipated needs for the next year. Operator's maintenance, repair and replacement work shall at minimum conform to the following requirements:

- a. Generally maintaining the Center in good, vermin free, operating condition and appearance.
- b. Furnishing prompt, good quality repair of the Center equipment, and appurtenances.
- c. Furnishing inspections as required by law and preventative maintenance, including, but not limited to, manufacturers recommended servicing of equipment such as elevator (if any), heating, ventilating and air conditioning equipment, fire life-safety systems and fixtures.

- d. Furnishing and promptly replacing any inoperative light bulbs, fluorescent tubes, ballasts, starters, LED drivers and boards, and filters for the heating, ventilating and air conditioning equipment as required.
- e. Painting as necessary to maintain the Center in a neat, clean and orderly condition.
- f. Annual testing and maintenance of all fire extinguishers in or adjacent to the Center.
- g. Repairing and replacing as necessary intra- and inter-building network telephone cable and devices.
- h. Maintenance of onsite solar panels to ensure vendor-specified expected performance, and repair or replacement of any solar panels that are damaged by neglect or abuse. Any replacements shall be made with equal or better-performing solar panels.
- i. Cleaning and repairing floor coverings per manufacturer's specifications and recommended schedule, and as necessary to maintain floor coverings in clean and safe condition.
- j. Maintaining, repairing and/or replacing landscaping and its associated infrastructure with landscaping of an equal or higher quality as landscaping that is installed at the time of construction completion.
- k. Keeping all walkways, parking lots, entrances and auxiliary areas reasonably free of excessive standing water, oil spills, debris or other material which may impact their use.
- l. Replacing all plate and other glass in and about the Center which may become damaged or broken.
- m. Maintaining, repairing, preserving and replacing as necessary fixtures and equipment, including, all computer, telephone and data cabling and equipment, door locks, closing devices, security devices, windows, window sashes, casements and frames, floors and floor coverings, shelving, kitchen, restroom facilities and/or appliances of any kind located within the Center, so as to keep all of the foregoing elements of the Center in good condition and repair.

Such maintenance and repairs shall be performed promptly and with due diligence, and in a first-class and workmanlike manner, by licensed contractor(s) that are selected by Operator. If Operator refuses or neglects to repair or to commence to repair and maintain the Center properly as required hereunder to the reasonable satisfaction of City, then at any time following thirty (30) days from the date on which City makes a written demand on Operator to effect such repair and maintenance, City may enter upon the Center and make such repairs and/or maintenance, and upon completion thereof, Operator agrees to pay to City the reasonable costs for making such repairs within ten (10) days after receipt from City of a written itemized bill therefor, including documentation of all costs.

(9) Operations. Operator to operate facility for benefit of the community in accordance with the broad principles outlined in Governance MOU and Facility Lease, but otherwise has discretion as to programs to be offered and setting appropriate use fees.

- a. Hours. The initial hours of operation of the Center during which the Center shall be open to the general public shall be no fewer than six (6) days and forty-eight (48) hours per week, with no fewer than six (6) hours of public operation on any given open day. Operator shall have discretion to open the Center at other times, but shall provide City with notice of off-hours operations. Any changes to the initial hours of operation, and any subsequent changes, shall be made in writing.
- b. Fees. The Parties acknowledge that funding ongoing operations at the Center will depend significantly on user fees and sub-lease rental revenue generated from use of the Center, and that Operator, therefore, may set user fees at its discretion.
- c. Programs. Operator shall meet at least annually with City regarding programming for the next 12-month period. Operator shall consider City's comments on programming, but final decisions on programming shall be solely made by Operator.
- d. Access. Operator shall make the Center open and available on an equal basis to all persons regardless of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, or political affiliation. Access shall not be limited to residents of the South Hayward community; however, Operator may set fees or provide access or prioritize access to facilities or programs based on whether individuals reside within City of Hayward and/or County of Alameda boundaries to the extent such differentiation is in accordance with applicable law and furthers the purposes for which the Center was constructed.
- e. Operational Changes. Any changes to the operational provisions herein that do not require modification of this Agreement may be made in writing or orally, as appropriate, by officials so designated by Parties acting within the scope of each official's delegation. Any changes that materially alter the operational provisions herein shall be documented as an amendment to this Agreement.

(10) Utilities. Operator to be responsible for the payment of all utilities' costs, except as otherwise provided. Invoices from utilities' providers shall be sent directly to Operator.

(11) City Right of Use. City shall be able to use the shared community room or classroom spaces at no cost for an agreed upon number of days during the year. The number of days of use shall depend on Operator's scheduled use of the facilities and on whether such use will have a significant financial impact on Operator or its ability to operate the Center. During the first year of operation and

except as otherwise provided herein, City shall have use of the shared community rooms or classrooms no less than two times per month for meetings lasting less than a day. City shall, at the beginning of each year of operation, provide Operator with a list of dates it desires to use the multipurpose room or classrooms. Operator shall approve the City's requested dates of use unless such dates interfere with uses previously scheduled by Operator, in which case the Parties will seek an alternative date for the City's use, or the use has a significant financial impact on Operator or its ability to operate the Center. For uses other than as set forth above, City shall pay Operator standard user fee rates for use of the community room, classrooms and/or other facilities at the Center. City's right of use will not relieve City from adhering to Operator's regulations for use of the facilities or insurance requirements.

(12) "Net Zero" and Solar Equipment. The Center will be a "Net Zero Energy" facility. Operator will operate all Center facility systems in accordance with Net Zero Energy procedure manuals, as provided and updated by City, to achieve Net Zero Energy goals. Solar panels and related equipment will be installed per the plans and specifications and will be owned by City, but operated, repaired and maintained by Operator. Operator shall report annually to City on achieving Net Zero energy goals. Operator may be relieved of operating Center facility systems in accordance with Net Zero requirements upon a showing of significant financial hardship not related to lack of technical expertise or inappropriate or incorrect operation of the Net Zero equipment. Operator shall resume Net Zero operations immediately upon the end of any period of financial hardship. Operator shall present City with evidence of a significant financial hardship, and upon such presentation City shall determine in their reasonable discretion whether to relieve Operator of meeting Net Zero operation requirements, which approval shall not be unreasonably withheld.

(13) Parking Operations. Operator may reserve twelve parking spots at the Center for staff or loading, the location of which shall be determined by Operator, but otherwise shall make all parking spots at Center available to Center visitors. At no time shall Operator reduce the number of designated parking spots necessary to serve disabled patrons below the minimum number of spots required under the Americans with Disabilities Act or other legal or regulatory requirements.

(14) Insurance. On or before beginning any of the services or work called for by any term of this Agreement, Operator, at its own cost and expense, shall carry and maintain for the duration of the agreement, such insurance as is acceptable to the City Attorney and under forms of insurance satisfactory in all respects to City as set forth in Exhibit A. Operator shall provide proof thereof. Operator shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Operator has also been obtained for the subcontractor.

- a. Notice of Reduction in Coverage. In the event that any coverage required under this agreement is reduced, limited, or materially affected in any other manner, Operator shall provide written notice to City at Operator's earliest possible opportunity and in no case later than five days after Operator is notified of the change in coverage.
- b. In addition to any other remedies City may have if Operator fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
 - i. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
 - ii. Order Operator to stop work under this agreement or withhold any payment which becomes due to Operator hereunder, or both stop work and withhold any payment, until Operator demonstrates compliance with the requirements hereof;
 - iii. Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Operator's failure to maintain insurance or secure appropriate endorsements.

(15) Indemnification – Operator's Responsibility. It is understood and agreed that Operator has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this Agreement, which the City relies upon the professional skills of Operator to do and perform Operator's work in a skillful and professional manner, and Operator thus agrees to so perform the work.

Acceptance by City of the work performed under this Agreement does not operate as a release of said Operator from such professional responsibility for the work performed. It is further understood and agreed that Operator is apprised of the scope of the work to be performed under this agreement and Operator agrees that said work can and shall be performed in a fully competent manner.

Operator shall indemnify, defend, and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action

arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Operator, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Operator to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this agreement does not relieve Operator from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(16) Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Operator, its employees, agents, or subcontractors by federal or state law, Operator warrants that such license has been obtained, is valid and in good standing, and Operator shall keep it in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

(17) Termination. If, through any cause, the Operator shall fail to fulfill in a timely and proper manner its obligations under this agreement, City shall thereupon have the right to terminate this agreement by giving written notice to the Operator of such termination and specifying the effective date thereof, which shall be at least five (5) days before the effective date of such termination. Without prejudice to the foregoing, the Operator agrees that if, prior to the termination or expiration of this agreement upon any final or interim audit by City, or otherwise, it shall be disclosed to, or determined by the City, that the Operator shall have failed in any way to comply with any requirements of this agreement, the Operator shall forthwith bring itself into compliance and shall pay to the City forthwith whatever sums are so disclosed to be due to the City (or shall, at City's election, permit City to deduct such sums from whatever amounts remain undisbursed by City to the Operator pursuant to this agreement); if this agreement shall have terminated or expired, and it shall be disclosed upon such audit, or otherwise, that such failure shall have occurred, the Operator shall pay to the City forthwith whatever sums are so disclosed to, or determined by City, to be due to City. Anything in this agreement to the contrary notwithstanding, City shall have the right to terminate this agreement with or without cause at any time upon giving the Operator at least thirty (30) days written notice prior to the effective date of such termination.

(18) Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Operator:	[OPERATOR] [ADDRESS] [CITY, STATE, ZIP]
To City:	City Manager 777 B Street Hayward, CA 94541-5007

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(19) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Operator pursuant to this agreement, shall be the property of City at the moment of their completed preparation.

(20) Amendments. This Agreement may be modified or amended only by a written document executed by all Parties and approved as to form by the City Attorney. Such document shall expressly state that the Parties intend to amend the terms and conditions of this Agreement.

(21) Abandonment by Operator. In the event the Operator ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Operator shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incur as a result of such cessation or abandonment.

(22) Waiver. The waiver by any of the Parties of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

(23) No Third-Party Rights. The Parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

(24) Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of any of the Parties to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

(25) Compliance with Laws. In the performance of this Agreement, Operator shall abide by and conform to any and all applicable laws of the United States and the State of California, and the Hayward City Charter and all ordinances of City. Operator warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

(26) Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

(27) Conflict of Interest. Operator warrants and covenants that Operator presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Operator shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this agreement. Operator further warrants its compliance with the Political Reform Act (Gov. Code sections 81000 et seq.) respecting this agreement.

(28) Nondiscrimination. Operator shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis. All nondiscrimination rules or regulation required by law to be included in the agreement are incorporated by this reference.

(29) Nondiscriminatory Employment Practices Provision. Operator shall comply with the "City of Hayward Nondiscriminatory Employment Practices Provision" and "Special Affirmative Action Provision for Supply and Service Contracts," copies of which are attached hereto and incorporated herein by reference as Exhibit B and, where applicable, cause its subcontractors in excess of \$10,000 to do the same.

(30) Nuclear Free Hayward. Operator agrees to comply with the requirements imposed by Ordinance No. 87-024 C.S., establishing a "Nuclear Free Hayward." An executed copy of the Affirmation of Non-Involvement in the Development or Production of Nuclear Weapon is attached hereto as Exhibit C and made a part of, hereof.

(31) Copyright. Upon City's request, Operator shall execute appropriate documents to assign to City the copyright to work created pursuant to this Agreement. The issuance of a patent or copyright to Operator or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves the license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty (50) years from the date of execution of this Agreement unless extended by operation of law or otherwise.

(32) Intellectual Property. The Parties each possess valuable intellectual property. Except as expressly set forth herein, nothing in this Agreement is intended to assign or license the Parties' copyrights, patents, trademarks, or trade secrets (collectively "Intellectual Property") to another Party, and nothing in this Agreement shall create a "work for hire" relationship concerning Intellectual Property. Notwithstanding the foregoing, Operator agrees to grant a worldwide, royalty free license to City to any Intellectual Property specifically created by Operator in connection with this Agreement and for the Center (the "Project Intellectual Property") for a period of fifty (50) years from the date of execution of this Agreement, unless extended by operation of law or otherwise (the "License"). The License will apply even if Operator obtains copyright, patent or trademark registration concerning the Project Intellectual Property. Notwithstanding anything to the contrary in this Section 312, all of the Parties hereto agree to comply with HIPAA and other privacy and data protection laws.

(33) Time is of the Essence. Operator agrees to diligently prosecute the services to be provided under this agreement to completion and in accordance with any schedules specified herein. In the performance of this agreement, time is of the essence.

(34) Whole Agreement. This Agreement has ___ pages excluding the exhibits described on its signature page. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(35) Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the Agreement on file in the office of City's City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Operator has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

SOUTHERN ALAMEDA COUNTY COMITE FOR RAZA MENTAL HEALTH, a California nonprofit corporation, doing business as LA FAMILIA COUNSELING SERVICES

Dated: _____ By _____
Aaron Ortiz, Chief Executive Officer

EDEN YOUTH AND FAMILY CENTER, a California nonprofit corporation

Dated: _____ By _____
Karen Halfon, Executive Director

CITY OF HAYWARD

Dated: _____ By _____
Kelly McAdoo, City Manager

Approved as to form and procedure:

Attest:
City Clerk

City Attorney

City Clerk

Attachments:

- Exhibit A Insurance, consisting of 1 page
- Exhibit B Nondiscriminatory Employment Practices Provision, consisting of 3 pages
- Exhibit C Non-Involvement in the Development of Nuclear Weapons, consisting of 1 page
- Exhibit D Maintenance Fund Affidavit, consisting of 1 page