

NEWBERRY COMMUNITY SERVICES DISTRICT RECREATION SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this 4th day of June, 2009 by and between the Newberry Community Services District, a California Special District, hereinafter referred to as "CSD," and the Newberry Springs Senior Services Association, a 501(C)(3), hereinafter referred to as "NSSSA".

RECITALS

WHEREAS, the CSD, by and through its Board of Directors, desires to have the NSSSA provide programs and services to augment the CSD's own activities, benefiting the residents of the CSD, and the NSSSA desires to perform those services; and

WHEREAS, the NSSSA regularly provides a variety of recreational programs and services to seniors and other community members within the CSD's jurisdiction; and

WHEREAS, the CSD by and through its Board of Directors, desires to have the NSSSA provide specific programs and services to the residents within the CSD's jurisdiction.

NOW, THEREFORE, CSD and NSSSA, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES

1.A. The services to be performed under this Agreement (the "Services") are as follows: NSSSA will plan and execute one recreational community event per calendar month, open to the general public, held within the jurisdictional boundaries of the CSD so as to be conveniently accessible to as many of the CSD's residents as possible, and not designed or executed as a fundraising event for NSSSA. The cost for such an event may be offset by donations to cover the base cost of food and supplies. If for any reason NSSSA fails to execute a scheduled event, the CSD agrees to allow the NSSSA to make up the event as an additional event in the following month without penalty. NSSSA agrees to apply due diligence to provide one event per month.

1.B. Upon request by the CSD, NSSSA shall provide a listing or calendar of events planned under this Agreement at least one month in advance.

2. TERM

The Agreement term will commence on June 4, 2009, and expire on December 4, 2010, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

3.A. CSD agrees to pay NSSSA for Services in accordance with this Agreement. In the interest of ensuring that the CSD's investment in the programs and events of other agencies is a prudent use of public funds, the CSD requires NSSSA to submit a final report on the use of the funds at least quarterly during the term of this Agreement and upon reasonable request by the CSD. In no event will the CSD's obligation to pay the NSSSA under this Agreement exceed, \$20,000 (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms.

3.B. NSSSA must maintain adequate records to permit inspection and audit of NSSSA's charges and payments under this Agreement. NSSSA will make such records available to CSD during normal business hours upon reasonable notice. In accordance with California Government Code Section 8546.7, if the Not to Exceed Amount exceeds TWENTY THOUSAND DOLLARS \$20,000, this Agreement and the NSSSA's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of CSD or as part of any audit of the CSD, for a period of three (3) years after final payment under the Agreement.

3.C. Specific Items to be paid by CSD: in consideration of NSSSA's performance under this Agreement, CSD will pay for the following, up to a cumulative total cost of the Not to Exceed Amount:

- I. Repairs to the roofing system on the building at 33383 Newberry Road, Newberry Springs, CA 92365,
- II. Repair of the floor at 33383 Newberry Road, Newberry Springs, CA 92365,
- III. Cleaning and painting at 33383 Newberry Road, Newberry Springs, CA 92365,
- IV. Repairs to the plumbing and water system at 33383 Newberry Road, Newberry Springs, CA 92365,
- V. Assistance with up to 25% of NSSSA's heating and electric bill due at the time of the execution of this Agreement, and further payment of 15% for the heating and electric utility bill for the remainder of the contract,
- VI. Assistance with payments for liability insurance.

3.D. In the event that the cumulative cost of the items described in 3.C., above, does not reach the Not to Exceed Amount, the CSD, in its sole discretion, may choose to provide funding for additional items as requested by NSSSA in writing, provided that total expenditures by the CSD do not surpass the Not to Exceed Amount.

3.E. Manner of Payment: NSSSA shall submit requests for payment of the items described in 3.C. and 3.D., above, to CSD in writing. Within 14 days, CSD will make

payments in accordance with this Agreement and will provide a photo-static copy of such payment to NSSSA within three business days of making the Payment.

3.F. Additional Funds of NSSSA. As further consideration for the payments to be provided under this Agreement, NSSSA agrees to make reasonable and diligent efforts to engage in best business practices with respect to its other funds and accounts. Specifically, NSSSA agrees to maintain complete and accurate books at all times, making such books available for inspection by the CSD upon reasonable notice during regular business hours.

4. TIME OF COMPLETION

NSSSA must commence performance of the Services upon receipt of written direction to proceed from CSD. NSSSA will complete the Services in accordance with this Agreement by December 4, 2010 (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

NSSSA and CSD agree that the NSSSA will perform the Services as an independent contractor and not as an employee or agent of the CSD. Persons employed or utilized by NSSSA in the performance of the Services will not be employees or agents of the CSD.

6. SUBCONTRACTING

NSSSA may subcontract portions of the Services for the monthly events with upon the prior written approval of the CSD. The NSSSA will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the NSSSA and the CSD.

7. STANDARD OF PERFORMANCE

NSSSA will comply with federal, state and local laws applicable to performance of the Services.

8. INDEMNITY

NSSSA agrees to indemnify, defend, and hold harmless CSD and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including, reasonable attorney's fees and costs) (collectively, "Liability") arising out of or in connection with NSSSA's performance of the Agreement, but only in proportion to and to the extent such liability is caused by or results from the negligent or intentional acts or omissions of NSSSA, or its officers, employees, or agents.

9. INSURANCE

9.A. Before commencing performance of the Services, NSSSA, at its own cost and expense, must: (a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the NSSSA or its agents, representatives, employees, or subcontractors; and (b) submit to the CSD certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. NSSSA must maintain the insurance policies required by this section throughout the Agreement term. NSSSA may not allow any subcontractor to commence work on the Services until NSSSA and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to the CSD.

9.B. If required by law, NSSSA must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by NSSSA. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurance must be endorsed to waive all rights of subrogation against the CSD and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

9.C. Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability.

9.D. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

- I. CSD and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of NSSSA, products and completed operations of NSSSA; premises owned, occupied, or used by NSSSA; and automobiles owned, leased, or used by the NSSSA. The coverage may contain no special limitations on the scope of protection afforded to CSD or its officials, officers, employees, agents, or volunteers.
- II. Required insurance coverage must be primary insurance with respect to the CSD and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the CSD may be called upon to contribute to a loss under the coverage.

- III. Any failure of NSSSA to comply with reporting provisions of the policy shall not affect coverage provided to CSD and its officers, employees, agents, and volunteers.
 - IV. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CSD.
- 9.E. All insurance required under this Agreement must be placed with insurers with a Bests' rating of no less than A:VII unless otherwise approved by the CSD.
- 9.F. The CSD may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the CSD interests are otherwise fully protected.

10. NON-DISCRIMINATION

During the performance of this Agreement, NSSSA will not discriminate against any employee of the NSSSA or applicant for employment because of race, religion, creed, color, national origin, sex, or age. NSSSA will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

11. BUSINESS AND OTHER LICENSES

NSSSA agrees to obtain and maintain during the Term of this Agreement any and all business licenses, health licenses or permits to perform the services required by this Agreement from the appropriate governmental or issuing agencies.

12. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by NSSSA pursuant to this Agreement shall be and remain the property of the CSD. Any modification or reuse of such documents by the CSD without NSSSA's prior written consent will be at the CSD's sole risk. Except as may be otherwise required by law, NSSSA will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the CSD.

13. TERMINATION AND REMEDIES

13.A. CSD may terminate this Agreement for convenience just cause by giving at least 30 days written notice to NSSSA specifying the termination effective date. Upon receipt of such notice, NSSSA may continue performance of the Services through the date of termination. CSD shall pay NSSSA for all Services actually performed in accordance with this Agreement through the termination effective date.

13.B. If NSSSA materially breaches any term of this Agreement, and fails to cure such breach within 14 days of written notice from the CSD of such breach, in addition to any other remedies the CSD may have at law or equity, the CSD may terminate the Agreement and demand payment from NSSSA of all monies expended to date under this Agreement.

14. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon CSD, NSSSA, and their successors. Except as otherwise provided herein, neither CSD nor NSSSA may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

15. REPRESENTATIVES

The CSD representative for purposes of this Agreement will be the appointed NSSSA Liaison. The NSSSA representative for purposes of this Agreement will be the NSSSA President or his/her designee. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

16. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between CSD and NSSSA and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended by a writing signed by a representative authorized to bind the NSSSA and a representative authorized to bind the CSD.

17. CONFLICT OF INTEREST PROHIBITION

17.A. CSD and NSSSA will comply with the requirements of the Political Reform Act (California Government Code Section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, Section 18110 and following of the California Code of Regulations), California Government Code Section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement.

17.B. The NSSSA may not perform services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to the NSSSA's obligations pursuant to this Agreement. The NSSSA agrees to cooperate fully with the CSD and to provide any necessary and

appropriate information requested by the CSD or any authorized representative concerning potential conflicts of interest or prohibitions concerning the NSSSA's obligations pursuant to this Agreement.

17.C. NSSSA may not employ any CSD official, officer or employee in performance of the Services, nor may any official, officer or employee of the CSD have any financial interest in this Agreement that would violate California Government Code Section 1090 and following. NSSSA hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the CSD. If NSSSA was an employee, agent, appointee, or official of the CSD in the previous twelve months, NSSSA warrants that it did not participate in any manner in the forming of this Agreement. NSSSA understands that, if this Agreement is made in violation of Government Code Section 1090 and following, the entire Agreement is void and NSSSA will not be entitled to any compensation for NSSSA's performance of the Services, including reimbursement of expenses, and NSSSA will be required to reimburse the CSD for any sums paid to the NSSSA under this Agreement. NSSSA understands that, in addition to the foregoing, penalties for violating Government Code Section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

17.D. Any violation by the NSSSA of the requirements of this provision will constitute a material breach of this Agreement, and the CSD reserves all its rights and remedies at law and equity concerning any such violations.

18. APPLICABLE LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement.

19. RECOVERY OF ATTORNEY'S FEES

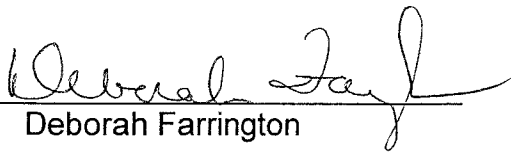
If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

20. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

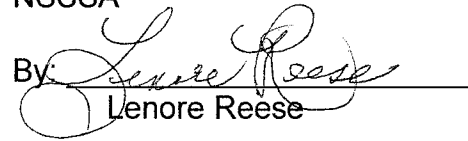
IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this 3rd day of June, 2009.

CSD

By: 
Deborah Farrington

Its: Vice President & Park Liaison

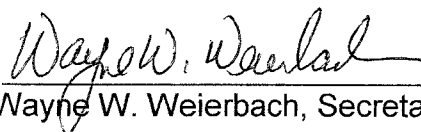
NSSSA

By: 
Lenore Reese

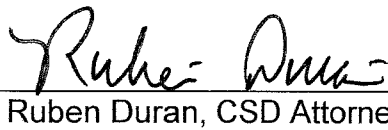
Its: President

ATTEST:

[California All-Purpose Certificate of Acknowledgement Attached]

By: 
Wayne W. Weierbach, Secretary/Treasurer

APPROVED AS TO FORM:

By: 
Ruben Duran, CSD Attorney

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN BERNARDINO

On JUNE 3, 2009 before me, W. W. WEIERBACH
(Here insert name and title of the officer)

personally appeared LENORE REESE

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

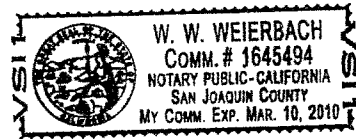
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

W. W. Weierbach

Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ✦ Indicate title or type of attached document, number of pages and date.
 - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT
NEWBERRY COMMUNITY SERVICES DISTRICT

(Title or description of attached document)

RECREATION SERVICES AGREEMENT

(Title or description of attached document continued)

Number of Pages 8 Document Date 6/3/2009

PRINTED ON 1 SIDE EACH PAGE

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
PRESIDENT

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____