

**OPERATING AND LEASE AGREEMENT BETWEEN THE CITY OF ATLANTA AND  
C.T. VIVIAN LEADERSHIP INSTITUTE**

This Agreement ("Agreement") dated \_\_\_\_\_, 2017 is hereby made and entered into by and between the City of Atlanta (the "City"), a municipal corporation of the State of Georgia, and the C.T. Vivian Leadership Institute . ("C.T. VIVIAN LEADERSHIP INSTITUTE "), a non-profit corporation organized and existing under the laws of the State of Georgia (collectively the "Parties", or singularly the "Party").

**WITNESSETH:**

**WHEREAS**, C.T. Vivian Leadership Institute is an Atlanta-based non-profit organization dedicated to the development and sustainability of communities. The Institute offers ~~and~~ classes to individuals~~s~~ and services to communities in the areas of faith based development, personal development, educational and economic development and will operate at the City-owned Lang Carson Recreation Center; and

**WHEREAS**, C.T. Vivian Leadership Institute has agreed to provide programming at and maintain the Lang Carson Recreation Center at no cost to the City, thereby allowing the Center to provide services to the community; and

**WHEREAS**, execution of this Agreement is authorized by resolution number \_\_\_\_\_, adopted by the Atlanta City Council on \_\_\_\_\_, 2017, and approved by the Mayor on \_\_\_\_\_, 2017.

**THEREFORE**, for and in consideration of the mutual agreements between the Parties hereinafter contained, and for other good and valuable consideration, the Parties hereto do agree as follows:

**1. Leased Premises**

The City leases to C.T. Vivian Leadership Institute and C.T. Vivian Leadership Institute leases from the City the Lang Carson Recreation Center (the "Center", "Premises" or "Leased Premises").

**2. Use of Premises**

**2.01 Permitted Uses**

Except as expressly set forth in this Agreement, C.T. Vivian Leadership Institute shall be responsible for operating and maintaining the Center at no cost to the City. The Center shall be used for recreational and educational programming by C.T. VIVIAN LEADERSHIP INSTITUTE . The Premises may also be used by any other entity to whom C.T. VIVIAN LEADERSHIP INSTITUTE rents all or a portion of the Center pursuant to the conditions set forth in this Agreement. Any revenue received by C.T. VIVIAN LEADERSHIP INSTITUTE or other user of the Leased Premises, arising out of use of the Leased Premises that is not

authorized by this Agreement shall inure immediately and completely to the City.

2.01.1 C.T. VIVIAN LEADERSHIP INSTITUTE shall be responsible for providing all supplies necessary to operate the Center and the programming therein consistent with the standards set forth in this Agreement.

2.01.2 C.T. VIVIAN LEADERSHIP INSTITUTE will be allowed to conduct special events in the Center throughout the year as mutually agreed by the Commissioner and C.T. VIVIAN LEADERSHIP INSTITUTE .

2.01.3 C.T. VIVIAN LEADERSHIP INSTITUTE shall be permitted to keep additional equipment and supplies at the Center for use in its programming, including without limitation furniture, phone equipment, art supplies, recreational equipment, office supplies, books and educational materials and program data, which shall remain the property of C.T. VIVIAN LEADERSHIP INSTITUTE .

## **2.02 Restrictions on Use of Premises**

2.02.1 C.T. VIVIAN LEADERSHIP INSTITUTE shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will increase in anyway the rate of fire insurance; or create a nuisance; or in any way obstruct or interfere with the rights of others residing or operating businesses near the Center, or injure them; or allow any sale by auction on the Premises other than charitable auctions for C.T. VIVIAN LEADERSHIP INSTITUTE fundraising; or commit or suffer to be committed any waste upon the Premises; or use or allow the Center to be used for any improper, immoral, unlawful, or objectionable purpose; or place any loads upon the floor, walls, or ceiling which will endanger the structure; or do or permit to be done anything in any way tending to injure the reputation of the City or the appearance of the Center.

2.02.2 C.T. VIVIAN LEADERSHIP INSTITUTE shall not vacate nor abandon the Leased Premises at any time during the term hereof; and, if C.T. VIVIAN LEADERSHIP INSTITUTE shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, any personal property belonging to C.T. VIVIAN LEADERSHIP INSTITUTE and left upon the Leased Premises and any or all of C.T. VIVIAN LEADERSHIP INSTITUTE 's improvements and facilities thereon shall, at the option of the Commissioner, be deemed to be abandoned by C.T. VIVIAN LEADERSHIP INSTITUTE and shall, at the option of the Commissioner, become the property of the City.

~~2.02.3 C.T. VIVIAN LEADERSHIP INSTITUTE shall not knowingly offer programming that conflict with City programming available to the community~~

~~surrounding the Center, including without limitation athletic leagues. Any recreational athletic teams must be registered in a city league. The teams' coaches and volunteers must be registered with the City, must submit to a background check, and must be approved by the Atlanta Police Department prior to coaching or volunteering. In addition, along with or as part of its quarterly calendar, C.T. VIVIAN LEADERSHIP INSTITUTE will submit to the City a list of the types of programming C.T. VIVIAN LEADERSHIP INSTITUTE would like to offer at the Center in the upcoming three months. The City will notify C.T. VIVIAN LEADERSHIP INSTITUTE within five (5) working days if any of the proposed programming conflicts with City programming.~~

**Commented [SPG1]:** Can I remove this entire athletic league section? Yes

#### Additional Use Requirements

2.03.1 The City shall retain a key to the Center and shall have the right to enter the Leased Premises at any time, for any purpose. In the event of an emergency, the City shall have the absolute right to take such action therein as may be required for the protection of persons or property. C.T. VIVIAN LEADERSHIP INSTITUTE shall provide emergency telephone numbers at which C.T. VIVIAN LEADERSHIP INSTITUTE or its agent may be reached on a 24-hour basis, including without limitation the Manager's telephone number. The City will be responsible for any losses or damage to the Center and any property therein, including property of C.T. VIVIAN LEADERSHIP INSTITUTE, to the extent that said losses or damage are caused by the intentional misconduct or negligence of the City, its employees and agents.

2.03.2 The City maintains its right to use the Premises at all times provided that the City's use does not conflict or interfere with C.T. VIVIAN LEADERSHIP INSTITUTE's programming at or use of the Premises. The City Will use reasonable efforts to provide thirty (30) days notice to C.T. VIVIAN LEADERSHIP INSTITUTE, or to provide as much notice as possible once the City's need for such use arises.

2.03.3 At all times when the Center is unlocked, at least one C.T. VIVIAN LEADERSHIP INSTITUTE employee must be present. In addition, where youth are present at the Center, at least one adult (twenty- one years of age or older) C.T. VIVIAN LEADERSHIP INSTITUTE employee and/or volunteer per every fifteen (15) youth shall be present at the Premises.

2.03.4 The City shall provide C.T. VIVIAN LEADERSHIP INSTITUTE with a key to the Premises. The key must be in the possession of an C.T. VIVIAN LEADERSHIP INSTITUTE employee only. Any additional keys, if needed, will be at the expense of C.T. VIVIAN LEADERSHIP INSTITUTE. C.T. VIVIAN LEADERSHIP INSTITUTE shall keep the Premises locked and secured at all times when C.T. VIVIAN LEADERSHIP INSTITUTE is not using the Premises, except for those times when the City is present in the Premises at the time when C.T. VIVIAN LEADERSHIP INSTITUTE leaves the building. C.T. VIVIAN LEADERSHIP INSTITUTE

shall not change or re-key any locks to the Premises except with the prior written consent of the City and with subsequent delivery of a key to the City. In the event that the Premises key is lost or stolen, or the lock is vandalized, C.T. VIVIAN LEADERSHIP INSTITUTE shall notify the Commissioner or her/his designee via phone or email, who shall promptly provide replacements or arrange emergency repairs, as appropriate.

2.03.5 The City shall not be required to provide or pay for any maintenance, janitorial services, staff or supplies at the Center, or for any other costs at or arising from the Center except that, the other terms of this Agreement notwithstanding, the City will be responsible for paying for sanitation and C.T. VIVIAN LEADERSHIP INSTITUTE will be responsible for paying for phone and internet services for the Center.

### 3. **Term**

The Term of this Agreement shall commence on the date that this Agreement is executed, as set forth in the first paragraph hereinabove, and shall continue for two (2) years.

3.01 Inspection of the Premises Prior to the Beginning and Expiration of the Term C.T. VIVIAN LEADERSHIP INSTITUTE accepts the Center in good order and repair. C.T. VIVIAN LEADERSHIP INSTITUTE and the City shall conduct a walk-through inspection of the Center prior to the commencement of the term of this Agreement. Both Parties must sign a walk-through inspection report. A walk through inspection of the Center shall be made by the Commissioner or her designee and a representative of C.T. VIVIAN LEADERSHIP INSTITUTE prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Center. C.T. VIVIAN LEADERSHIP INSTITUTE shall correct or repair any and all deficiencies noted during such inspection.

#### 3.02 Special Right of Termination

The City, by and through the Commissioner, and C.T. VIVIAN LEADERSHIP INSTITUTE shall each have the right to terminate this Agreement without cause at any time during the Term or any extension thereof by giving written notice to the other Party at least 60 days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties.

#### 3.03 Surrender of Premises

C.T. VIVIAN LEADERSHIP INSTITUTE shall yield and deliver peaceably to the City possession of the Center and, to the extent required hereunder, C.T. VIVIAN LEADERSHIP INSTITUTE's improvements, at the end of the Term of this Agreement, whether such end occurs by termination, expiration, or

otherwise. The Premises shall be in a condition similar to that which existed at the beginning of the Term of the Agreement, except for reasonable wear and tear arising from use of the Premises and C.T. VIVIAN LEADERSHIP INSTITUTE 's improvements to the extent permitted elsewhere in this Agreement. Except as otherwise set forth in this Agreement, C.T. VIVIAN LEADERSHIP INSTITUTE shall be liable for any and all damages, caused through its own act or the acts of filly of its officers, employees or agents, or anyone visiting the Center upon the invitation of C.T. VIVIAN LEADERSHIP INSTITUTE , caused to the Center or any portion thereof, or to persons or property for which C.T. VIVIAN LEADERSHIP INSTITUTE is held liable. C.T. VIVIAN LEADERSHIP INSTITUTE shall correct or repair any and all deficiencies noted during the inspection described in section 3.01 above. Except as may be otherwise required by this Agreement, C.T. VIVIAN LEADERSHIP INSTITUTE shall remove its signs and trade fixtures from the Premises and shall surrender the Premises and appurtenances thereto in clean and neat condition. All keys to the Premises shall be delivered to the Commissioner by C.T. VIVIAN LEADERSHIP INSTITUTE . The Commissioner shall reasonably determine whether the Premises are clean, neat, and in good repair as provided in this Section. C.T. VIVIAN LEADERSHIP INSTITUTE can take trade fixtures, furniture and personal property, provided that the same are removed within thirty days.

#### **4. Rental**

C.T. VIVIAN LEADERSHIP INSTITUTE shall not owe rent to the City. In exchange for a waiver of rent, C.T. VIVIAN LEADERSHIP INSTITUTE shall operate and provide substantial youth programming at the Center, and shall provide supplies and maintenance services at the Center, all pursuant to the provisions set forth in this Agreement. Utilities (electricity, water) will be provided by the City of Atlanta.

#### **5. Utilities**

Except as set forth in section 2.03 .5 above, C.T. VIVIAN LEADERSHIP INSTITUTE shall maintain, repair and replace all utilities serving the Premises and pay all charges for utility services (excluding electricity and water) to the Premises promptly when due. C.T. VIVIAN LEADERSHIP INSTITUTE hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, provided that such failures or interruptions were not occasioned by the City's fault or neglect.

#### **6. Maintenance**

Subject to the other terms of this Agreement, C.T. VIVIAN LEADERSHIP INSTITUTE shall be responsible for all repairs and maintenance of the

Premises throughout the term of this Agreement; provided that C.T. VIVIAN LEADERSHIP INSTITUTE will not be responsible for any substantial single repair or maintenance project costing or greater than \$5000, such as but not limited to repair of the HVAC system or roof repair or plumbing. In all other respects, the goal of this Agreement is that C.T. VIVIAN LEADERSHIP INSTITUTE will leave the Leased Premises in better overall condition than it found them. As part of its maintenance of the Leased Premises, C.T. VIVIAN LEADERSHIP INSTITUTE shall provide, among other things, janitorial, and pest control services, and C.T. VIVIAN LEADERSHIP INSTITUTE shall keep and maintain the Premises and all improvements, equipment and fixtures existing thereon in good and sanitary order and repair and in good, safe, and presentable condition all at no cost or expense to the City. Pest control services shall include without limitation termite control services inside the building; the outside premises are handled by the City of Atlanta.

In the event C.T. VIVIAN LEADERSHIP INSTITUTE does not have adequate financial resources to perform the necessary service, C.T. VIVIAN LEADERSHIP INSTITUTE shall consult with the Commissioner and determine what if any financial resources the City may contribute to the project at issue. Except as otherwise contemplated by this Agreement in no event shall the City be required to assist with the payment of any maintenance or repair. Where adequate financial resources on sixty days' notice are not available, the Commissioner, at her/his sole discretion, may terminate this Agreement without cause pursuant to section 3.02 above, and may close the Center. The sixty day notice period shall not apply to the closure of the Center where waiting for the sixty days to expire may result in risk to the safety of people and/or property.

To the extent that a repair is necessitated by the intentional misconduct or negligence of the City, its employees or agents, C.T. VIVIAN LEADERSHIP INSTITUTE shall not be required to pay for the repair (or the portion of the repair attributed to the City). In that event, C.T. VIVIAN LEADERSHIP INSTITUTE shall have thirty (30) days to notify the City of its election to remain a tenant in the Center subject to the terms of this Agreement without requiring the City to complete the repair. If such notice is not delivered to the City within the thirty-day period, the City shall have the option of terminating this Agreement and closing the Center where the City does not have adequate resources to have the repair performed and C.T. VIVIAN LEADERSHIP INSTITUTE is unwilling to provide the required funds.

C.T. VIVIAN LEADERSHIP INSTITUTE shall notify the Department of Parks and Recreation Work Order Desk, either by phone to 404-546-6813 or in writing to [parkscustomerservice@atlantaga.gov](mailto:parkscustomerservice@atlantaga.gov), of all necessary repairs or maintenance, the date by which C.T. VIVIAN LEADERSHIP INSTITUTE intends to perform the work, and shall notify the Work Order Desk when the repair/maintenance has been completed. Where the City intends to financially contribute toward the maintenance or repair, as described above in this section 6, C.T. VIVIAN LEADERSHIP INSTITUTE must indicate as such in its

communication with the Work Order Desk. In that event, the City will respond to such maintenance and repair request in a reasonable manner through its work order system based on the City's adopted budget and the resources available. Where C.T. VIVIAN LEADERSHIP INSTITUTE has more than three repair and/or maintenance requests at one time, C.T. VIVIAN LEADERSHIP INSTITUTE must submit those requests in writing to the Work Order Desk.

Where the cost of a repair or maintenance is substantial, and if after thirty (30) days written notice from the Commissioner, C.T. VIVIAN LEADERSHIP INSTITUTE fails to perform the maintenance or repair, then the City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance or repair, and C.T. VIVIAN LEADERSHIP INSTITUTE shall pay the cost thereof to the City upon demand; provided, however, that if such maintenance or repair cannot be completed within said thirty-day period, then C.T. VIVIAN LEADERSHIP INSTITUTE shall not be in default and the City may not exercise its option herein if C.T. VIVIAN LEADERSHIP INSTITUTE has commenced repairs within said thirty-day period and diligently pursues same to completion.

## **7. Improvements**

C.T. VIVIAN LEADERSHIP INSTITUTE hereby accepts the Leased Premises in their "as-is" condition and shall construct or install all improvements or equipment in the Premises required for the uses and purposes contemplated herein without any cost or expense to the City, subject to prior written approval by the Commissioner of the plans and specifications thereof.

### **7.01 Contractors Hired**

C.T. VIVIAN LEADERSHIP INSTITUTE shall hire contractors who are acceptable to the City. All contractors shall be required to provide the City with certificates of general liability and other insurance coverage in such amounts as City may reasonably require, and with endorsements described in Section 13 here in below. C.T. VIVIAN LEADERSHIP INSTITUTE shall obtain and pay all fees for all permits required by the City or other legal jurisdictions, as applicable, for all improvements to the Premises, and shall furnish copies of such permits to the Commissioner prior to commencement of work.

### **7.02 Documentation of Improvements**

C.T. VIVIAN LEADERSHIP INSTITUTE shall furnish a set of as-built drawings to the Commissioner for all Improvements requiring expenditures

that are substantial. Further, C.T. VIVIAN LEADERSHIP INSTITUTE shall document the costs of its improvements in a form and detail satisfactory to the Commissioner and submit the same within 30 calendar days following completion of the work.

#### 7.03 Removal and Demolition

C.T. VIVIAN LEADERSHIP INSTITUTE shall not remove or demolish, in whole or in part, any improvements upon the Leased Premises without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of C.T. VIVIAN LEADERSHIP INSTITUTE to replace the same by an improvement specified in such consent

#### 7.04 Title

Title to any and all improvements made by C.T. VIVIAN LEADERSHIP INSTITUTE to or upon the Leased Premises shall pass to and be vested in the City upon completion of each improvement.

### **8. Trash and Refuse**

#### 8.01 Removal and Disposal

It is hereby expressly stipulated that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and C.T. VIVIAN LEADERSHIP INSTITUTE shall keep with the current schedule for waste management and arrange for such removal and disposal of same at the expense of the City and in accordance with applicable laws and ordinances, except that where C.T. VIVIAN LEADERSHIP INSTITUTE holds an event at the Center or in the Park as contemplated by section 2.01.10 above, C.T. VIVIAN LEADERSHIP INSTITUTE shall be responsible for the removal and disposal costs. Clippings outside of the center shall be the responsibility of the City.

#### 8.02 Storage Containers

Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened, pending their removal and disposal, and C.T. VIVIAN LEADERSHIP INSTITUTE shall use all reasonable efforts to ensure that such storage does not generate odors, attract rodents or insects, or become offensive in any manner.

#### 8.03 Deleterious Wastes

C.T. VIVIAN LEADERSHIP INSTITUTE shall obey any and all applicable



laws, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems and the required treatment of those products. in the event that C.T. VIVIAN LEADERSHIP INSTITUTE violates this provision, and/or the City is required by any Federal or State agency having jurisdiction in such matters, to pay a fine, penalty, or incur other costs, due to the failure of C.T. VIVIAN LEADERSHIP INSTITUTE to comply with this Subsection, then in such event, C.T. VIVIAN LEADERSHIP INSTITUTE shall reimburse the City the full amount of such fine, penalty, and/or costs promptly upon receipt of invoice therefore from the City, and in addition, the provisions set forth in the first paragraph of section 10.03 (Hazardous Substances Section) below, regarding C.T. VIVIAN LEADERSHIP INSTITUTE 's obligations to the City, shall apply. For purposes of this subsection 8.03, deleterious waste shall not include materials which are deemed hazardous materials, as set forth in section 10.03 below.

## **9. Encumbrances and Liens**

Except for construction or materialman's liens with respect to improvements in process, C.T. VIVIAN LEADERSHIP INSTITUTE shall not encumber C.T. VIVIAN LEADERSHIP INSTITUTE 's interest in the Leased Premises or in any improvements that it places thereon by mortgage, deed or trust, or other instrument without prior written consent of the City. With the exception of the encumbrances referenced above, C.T. VIVIAN LEADERSHIP INSTITUTE shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by C.T. VIVIAN LEADERSHIP INSTITUTE , C.T. VIVIAN LEADERSHIP INSTITUTE 's employees, agents, sublessees, contractors and/or subcontractors. C.T. VIVIAN LEADERSHIP INSTITUTE shall save the City harmless from any such liens (including any encumbrance which did not receive prior written consent of the City) and shall pay to the City, upon demand, the cost of discharging such liens with interest at the rate of seven (7%) percent per annum from the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that C.T. VIVIAN LEADERSHIP INSTITUTE may pay any such liens under protest; and without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

## **10. Compliance with Laws and Regulations**

### 10.01 General Compliance

C.T. VIVIAN LEADERSHIP INSTITUTE shall not omit or fail to do anything, or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises on in any improvement erected thereon,

which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by C.T. VIVIAN LEADERSHIP INSTITUTE which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Leased Premises.

#### 10.02 Drug-Free Workplace Policy

C.T. VIVIAN LEADERSHIP INSTITUTE acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property and thus on the Premises. Violation of this provision of this Lease shall result in immediate termination of the Agreement by the City.

#### 10.03 Hazardous Materials

Except in compliance with all applicable requirements, C.T. VIVIAN LEADERSHIP INSTITUTE shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and stormwater drainage system serving the Premises—C.T. VIVIAN LEADERSHIP INSTITUTE shall not cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises. C.T. VIVIAN LEADERSHIP INSTITUTE hereby indemnifies the City from and against any breach by C.T. VIVIAN LEADERSHIP INSTITUTE of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against C.T. VIVIAN LEADERSHIP INSTITUTE, the City or others for whom the City may be responsible, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the term of this Agreement as a result of such breach. This indemnification of the City by C.T. VIVIAN LEADERSHIP INSTITUTE also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any Federal, State or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or in and around Lang Carson Recreation Center which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on Premises caused or permitted by C.T. VIVIAN LEADERSHIP INSTITUTE results in any contamination of the Premises, C.T. VIVIAN LEADERSHIP INSTITUTE shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Material to the Premises; provided that the City's approval of such actions, and the contractors to be used by C.T. VIVIAN LEADERSHIP INSTITUTE in connection therewith, shall first be obtained.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any governmental authority having jurisdiction over the Premises, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601).

## **11. Non-Discrimination**

C.T. VIVIAN LEADERSHIP INSTITUTE shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, disability, sexual orientation, or gender identity in the selection and treatment of its staff, participants, volunteers, contractors, subcontractors, sublessees, or with regard to parent involvement, participant involvement, or any other decisions or actions arising from this Agreement.

## **12. Transfer of Title or Rights**

### 12.01 Limitations on Assignment, Transfer

C.T. VIVIAN LEADERSHIP INSTITUTE shall not sell, assign, or transfer this Agreement without the prior written consent of the City.

### 12.02 Subletting

C.T. VIVIAN LEADERSHIP INSTITUTE shall not sublease the Leased Premises, or any portion thereof without the prior written consent of the Commissioner. C.T. VIVIAN LEADERSHIP INSTITUTE shall retain any income from subletting and shall utilize said income solely for the maintenance and operation of the Leased Premises and/or for the sole purpose of maintenance, improvement and/or operation of the Center, and/or to benefit C.T. VIVIAN LEADERSHIP INSTITUTE programming at the Center.

## **13. Liability, Indemnity, and Insurance**

### 13.1 City's Liabilities

Except as otherwise set forth in this Agreement the City shall not in any way be liable or responsible for any loss or damage or expense that C.T. VIVIAN LEADERSHIP INSTITUTE may sustain or incur in its occupancy and use of the Leased Premises hereunder.

### 13.2 Indemnification and Hold Harmless

#### (a) Releases and Indemnification:

C.T. VIVIAN LEADERSHIP INSTITUTE hereby releases and shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of C.T. VIVIAN LEADERSHIP INSTITUTE, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.

#### (b) Negligence and Waiver

C.T. VIVIAN LEADERSHIP INSTITUTE's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to the extent that the liability is caused by the willful misconduct or negligence of the party released, indemnified, or held harmless. C.T. VIVIAN LEADERSHIP INSTITUTE specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute. C.T. VIVIAN LEADERSHIP INSTITUTE further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Section 13.2 shall survive any termination or expiration of this Agreement.

### **13.3 Insurance and Bonding Requirements**

### 13.3.1 General Preamble

The following general requirements apply to C.T. VIVIAN LEADERSHIP INSTITUTE , but where appropriate may be satisfied by C.T. VIVIAN LEADERSHIP INSTITUTE 's contractors and sub-contractors who perform work directly or indirectly for C.T. VIVIAN LEADERSHIP INSTITUTE in the Premises. Compliance is required by all sub-lessees of any tier. Insurance requirements are based on information received as of the date of this Agreement. The City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Lease Agreement.

### 13.3.2 Evidence of Insurance Required Before Work Begins

C.T. VIVIAN LEADERSHIP INSTITUTE or sub-lessee shall not allow its contractors or sub-contractors to commence any work of any kind pursuant to this Lease until all Insurance requirements contained in this Agreement shall have been complied with, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The Accord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.

### 13.3.3 Minimum Financial Security Requirements for Insurers

Any and all companies providing insurance required pursuant to this Agreement must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance form. For all contracts, regardless of size, companies providing Insurance or Bonds under this Lease must have a current;

- i. Best's Rating not less than A-; and current;
- ii. Best's Financial Size Category not less than Class IX;
- iii. Authorization issued by the Insurance Commissioner, State of Georgia, to conduct and transact insurance contracts; and, furthermore, all bid, performance and payment bonds must be issued by a U. S. Treasury Circular 570 listed company. If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to C.T. VIVIAN LEADERSHIP INSTITUTE , who shall promptly itself, or require its contractor to, obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

Upon failure of C.T. VIVIAN LEADERSHIP INSTITUTE to furnish, deliver, and maintain

such insurance or bonds as herein provided, this Agreement, at the election of the City, may be declared forthwith suspended, discontinued, or terminated. Failure of C.T. VIVIAN LEADERSHIP INSTITUTE to take out and/or to maintain any required insurance or bonds shall not relieve C.T. VIVIAN LEADERSHIP INSTITUTE from any liability under this Agreement, nor shall these requirements be construed to conflict with the obligation of this Agreement concerning indemnification.

#### 13.3.4 Insurance Required for Duration of Lease Agreement

Any and all insurance required pursuant to this Agreement shall be maintained during the entire term of this Agreement, including any extensions thereto, and until all work has been completed to the satisfaction of the City. The City shall have the right to inquire into the adequacy of the insurance coverage set forth in this Agreement and to negotiate such adjustments as reasonably appear necessary.

#### o **13.3.5 Mandatory 30-day Notice of Cancellation or Material Change**

The City shall, without exception, be given no fewer than 30 days notice prior to cancellation for other than non-payment of premiums or for material change of any insurance or bond required by this Agreement.

Nonpayment

of premiums shall require 10 days prior notice of cancellation.

**Enterprise Risk Management  
68 Mitchell St. Suite 9100  
Atlanta, GA 30303  
Facsimile No. (404) 658-7450**

**Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.**

**Contractor/Consultant shall provide the City with evidence of required insurance prior to the commencement of this agreement, and, thereafter, with a certificate evidencing renewals or changes to required policies of insurance at least fifteen (15) days prior to the expiration of previously provided certificates.**

#### o **13.3.6 City as Additional Insured(Form CG 20 26 07 04 or equivalent)**

The City shall be covered as an Additional Insured as respects the General Liability policy required pursuant to this Agreement, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the Acord Certificate of Insurance and on the General Liability policy.

#### o **Certificate Holder**

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.**

13.3.7 Mandatory Contractor, Subcontractor, and Sublessee Compliance

C.T. VIVIAN LEADERSHIP INSTITUTE shall incorporate a copy of these Insurance and Indemnification and Hold Harmless requirements in each and every contract with each and every Contractor, Subcontractor and/or Sub-lessee of any tier, and shall require each and every Contractor, Subcontractor and/or Sub-lessee of any tier to comply with all such requirements. C.T. VIVIAN LEADERSHIP INSTITUTE agrees that if for any reason any Contractor, Subcontractor, aud/or Sub-lessee fails to procure and maintain insurance as required, all such required insurance shall be procured and maintained by C.T. VIVIAN LEADERSHIP INSTITUTE at C.T. VIVIAN LEADERSHIP INSTITUTE 's expense.

13.3.8 Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. In addition, each every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

**13.4 Workers' Compensation and Employer's Liability Insurance**

C.T. VIVIAN LEADERSHIP INSTITUTE shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and evely employee who is or may be engaged in work under this Lease:

Workers' Compensation .....Statutory Employer's Liability  
Bodily Injury by Accident/Disease \$100,000 each accident  
Bodily Injury by Accident/Disease \$100,000 each employee  
Bodily Injury by Accident/Disease \$500,000 policy limit

**13.5 General Liability Insurance**

C.T. VIVIAN LEADERSHIP INSTITUTE shall procure and maintain General Liability Insurance in an amount not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Accord Certificate of Insurance:

- (1) Comprehensive Form

- (2) Contractual Insurance-(Blanket or specific applicable to this Agreement)
- (3) Personal Injury
- (4) Broad Form Property Damage
- (5) Premises-Operations

### **13.6 Automobile Liability Insurance**

C.T. VIVIAN LEADERSHIP INSTITUTE shall procure and maintain Automobile Liability Insurance with not less than

**\$1,000,000** Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- (1) Comprehensive Form
- (2) Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event C.T. VIVIAN LEADERSHIP INSTITUTE does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either C.T. VIVIAN LEADERSHIP INSTITUTE 's personal automobile policy or the Comprehensive General Liability coverage required under this Agreement.

### **13.7 Property Insurance**

C.T. VIVIAN LEADERSHIP INSTITUTE shall procure and maintain Property Insurance covering all forms of risk on the Premises, on all C.T. VIVIAN LEADERSHIP INSTITUTE 's improvements to the Premises and any other interests of C.T. VIVIAN LEADERSHIP INSTITUTE , if applicable, in or about the Premises, including inventory, supplies, and other property of C.T. VIVIAN LEADERSHIP INSTITUTE located in the Premises, insuring against the perils of fire, lightning, extended coverage, vandalism, malicious mischief, glass breakage, and sprinkler leakage, in an amount equal to the full replacement value of the Premises, and the full replacement value of C.T. VIVIAN LEADERSHIP INSTITUTE 's improvements and any other interests of C.T. VIVIAN LEADERSHIP INSTITUTE in or about the Premises.

### **13.8 Builder's Risk Insurance**

Any Contractor and/or subcontractor performing work on the Premises shall procure and maintain Builder's Risk Insurance which provides "All-Risk" coverage on the buildings, structure or work and property of the City of Atlanta in the EA.KC, custody and control of the Contractor. The Amount of such insurance shall at all times be equal to 100 percent of the value of the contract work at the time of loss or 100 percent of the amount paid to the Contractor for work performed, whichever is greater. The policy or policies shall be in the name of the City and Contractor as their interest shall appear, and this shall be so stated on the Acord Certificate of Insurance.



#### **14. Record Retention and Review**

C.T. VIVIAN LEADERSHIP INSTITUTE shall maintain records and accounts documenting all funds received by C.T. VIVIAN LEADERSHIP INSTITUTE and all costs incurred by C.T. VIVIAN LEADERSHIP INSTITUTE arising from this Agreement, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this Agreement, unless otherwise specified by applicable law. The City or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification.

The City reserves the right to audit C.T. VIVIAN LEADERSHIP INSTITUTE 's records and accounts. Any such audit will be commenced within one year of the expiration of this Agreement.

#### **15. Miscellaneous Provisions**

##### **15.1 Usufruct**

The rights of C.T. VIVIAN LEADERSHIP INSTITUTE hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

##### **15.2 Waivers**

No waiver by either Party at any time of any of the terms, conditions, or covenants of this Agreement, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof by the other.

##### **15.3 Severability**

If any clause or provision of this Agreement is declared illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then, in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby.

##### **15.4 No Joint Venture**

The City and C.T. VIVIAN LEADERSHIP INSTITUTE are not and shall not be deemed to be, for any purpose, partners or joint-ventures with each other.

##### **15.5 Time of the Essence**

Time is expressed to be of the essence with regard to each provision of this Agreement.

##### **15.6 Evidence of C.T. VIVIAN LEADERSHIP INSTITUTE**

C.T. VIVIAN LEADERSHIP INSTITUTE shall deliver to the City such legal documentation to evidence that those signing this Agreement are authorized by C.T. VIVIAN LEADERSHIP INSTITUTE to bind C.T. VIVIAN LEADERSHIP INSTITUTE to the commitments made in this Agreement.

#### 15.7 Applicability of Code Provisions

All terms of this Agreement shall be governed by and shall be subject to all the provisions of the Code of Ordinances of the City of Atlanta now existing and as may be amended from time to time, to the extent they are not in conflict or inconsistent with applicable Federal Laws or State Laws.

#### 15.8 Notices

All notices required to be given to C.T. VIVIAN LEADERSHIP INSTITUTE hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN: [Don Rivers](#)  
C.T. Vivian Leadership Institute

or such other address as may be designated by C.T. VIVIAN LEADERSHIP INSTITUTE by written notice to City. All notices required to be given to City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN:  
Commissioner, Department of Parks and Recreation  
233 Peachtree Street  
17th Floor  
Atlanta, Georgia 30303

or such other address as may be designated by City by written notice to C.T. VIVIAN LEADERSHIP INSTITUTE .

All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.

#### 15.9 Interpretation

The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the City or C.T. VIVIAN LEADERSHIP INSTITUTE . This Agreement shall be construed and performed according to the laws of the State of Georgia. The references to days shall mean calendar days unless otherwise stipulated.

#### **15.10 Section Headings**

The section headings contained herein are for the convenience of reference by City and C.T. VIVIAN LEADERSHIP INSTITUTE and are not to be used to construe the intent of this Agreement or any part hereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

#### **15.11 Integrated Agreement, Modification**

This Agreement contains the entire agreement of the Parties with respect to the Premises and the matters described herein and cannot be amended or modified except by written instrument, signed by the Parties.

#### **15.12 Surrender and Merger**

The voluntary or other surrender or termination of this Agreement by EA.KC, or a mutual cancellation hereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or subtenancies applicable to the Premises, or may, at the option of the City, operate as an assignment to the City of all such subleases or subtenancies.

#### **15.13 Taxes**

Except with respect to real property taxes, C.T. VIVIAN LEADERSHIP INSTITUTE shall pay or cause to be paid, prior to delinquency, any lawful taxes and any assessments levied or assessed during the term hereof (a) on the Leased Premises, (b) on all property interests hereunder or in the Leased Premises, (c) on any improvements, fixtures, and equipment now or hereafter existing on the Leased Premises and on any personal property on, in or about the Premises.

#### **15.14 Holding Over**

Should C.T. VIVIAN LEADERSHIP INSTITUTE hold over said Premises after this Agreement has terminated in any manner, during such holding over C.T. VIVIAN LEADERSHIP INSTITUTE shall be deemed merely a tenant at sufferance, but otherwise on the same terms and conditions as herein provided.

#### **15.15 Notification of Emergency**

C.T. VIVIAN LEADERSHIP INSTITUTE shall notify the Commissioner within three hours or sooner of learning of any emergency event regarding or arising from the Premises, or any

portion thereof, that involves the media, the police or fire departments or emergency medical services.

#### **15.16 Accidents and Injuries**

C.T. VIVIAN LEADERSHIP INSTITUTE shall notify the Commissioner within twenty-four hours of any accidents and/or injuries to staff, participants or visitors that occur at the Premises, or any portion thereof, or that arise from this Agreement.

#### **15.17 Safety and Sanitary Issues**

C.T. VIVIAN LEADERSHIP INSTITUTE will abide to DPR's Safety Assessment Standards (SAS) Program standard that serves as a broad indicator of the site's safety performance.

C.T. VIVIAN LEADERSHIP INSTITUTE shall notify the Commissioner or her/his designee within twenty-four hours upon discovering a safety or sanitary issue that needs to be addressed at or in the Premises, and shall notify the City regarding how and when C.T. VIVIAN LEADERSHIP INSTITUTE intends to resolve the issue.

#### **15.18 Fund Raising**

C.T. VIVIAN LEADERSHIP INSTITUTE shall have primary responsibility for raising additional funds for the programming purposes, and will oversee the use of funds it raises, making certain that the funds are utilized consistent with this Agreement. C.T. VIVIAN LEADERSHIP INSTITUTE may solicit and receive funds from individuals, corporations, and other entities, including potential C.T. VIVIAN LEADERSHIP INSTITUTE sponsors. In the event that a private sponsor requests recognition for its contribution in the form of onsite signs or other notice to the public that shall remain on or in the Leased Premises for greater than six months, C.T. VIVIAN LEADERSHIP INSTITUTE is not authorized to agree to such recognition unless and until receiving approval from the Commissioner and the City Council. Where the sign or other public notice shall remain on or in the Leased Premises for six months or less, C.T. VIVIAN LEADERSHIP INSTITUTE must receive prior written approval from the Commissioner. If multiple signs are used, they shall be consistent in overall shape and dimensions as approved by the Commissioner. In addition to obtaining the approval required pursuant to this subsection, C.T. VIVIAN LEADERSHIP INSTITUTE shall coordinate with the Commissioner or her/his designee the logistics of its receipt of donations of other items that will be affixed to City property.

#### **15.19 C.T. VIVIAN LEADERSHIP INSTITUTE Employees and Volunteers**

Any personnel employed by or volunteering on behalf of C.T. VIVIAN LEADERSHIP INSTITUTE shall be deemed "employees" or "volunteers" respectively of C.T. VIVIAN LEADERSHIP INSTITUTE, and shall not be deemed employees or volunteers of the City. C.T. VIVIAN LEADERSHIP INSTITUTE shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work.

#### **15.20 Alcohol Sales**

C.T. VIVIAN LEADERSHIP INSTITUTE shall not permit the sale or consumption of alcoholic beverages at or on the Premises.

**15.21 Program Review**

C.T. VIVIAN LEADERSHIP INSTITUTE and the Commissioner or her/his designee shall meet annually for planning and review of the recreational programs conducted by C.T. VIVIAN LEADERSHIP INSTITUTE at or on the Leased Premises. C.T. VIVIAN LEADERSHIP INSTITUTE shall report usage and financial program information to DPR on the 5th of each month for the previous month. Reporting shall fields include: average number of youth served, special events and number of participants, and associated revenue. Also if there was a SAS violation for the previous month, what steps were taken to correct the violation.

**16. Termination of MOU**

Upon the execution of this Agreement, the MOU shall be terminated and shall hereinafter be null and void.

This Agreement shall not become binding on the City and the City shall incur no liability upon the same until this Agreement has been signed and attested to by C.T. VIVIAN LEADERSHIP INSTITUTE , executed by the Mayor, sealed by the Municipal Clerk, and delivered to C.T. VIVIAN LEADERSHIP INSTITUTE .

**IN WITNESS WHEREOF**, the City and C.T. VIVIAN LEADERSHIP INSTITUTE have executed this Agreement by their duly authorized officers.

**ATTEST:  
INSTITUTE :**

**C.T. VIVIAN LEADERSHIP**

\_\_\_\_\_  
**CORPORATE SECRETARY (SEAL)**

\_\_\_\_\_  
**C.T. VIVIAN INSTITUTE**

**ATTEST:**

**CITY OF ATLANTA**

\_\_\_\_\_  
**MUNICIPAL CLERK (SEAL)**

\_\_\_\_\_  
**MAYOR**

**RECOMMENDED:**

\_\_\_\_\_  
**COMMISSIONER, DEPARTMENT  
OF PARKS AND RECREATION**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**SR. ASSISTANT CITY ATTORNEY**



