

**2009  
CONTRACT FOR PURCHASE OF SERVICES**

Between  
Warner Park Community Recreation Center  
and  
Madison Metropolitan School District

1. **PARTIES.**

This is a contract between the City of Madison, Wisconsin, hereafter referred to as the "City", and the Madison Metropolitan School District on behalf of Madison School & Community Recreation, hereafter referred to as "Contractor".

2. **PURPOSE AND AUTHORIZATION.**

The purpose of this contract is as set forth in Section 3 and authorization is provided by Resolution No. \_\_\_\_\_ ID No. \_\_\_\_\_, adopted on \_\_\_\_\_.

3. **SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

Contractor will perform the services and be paid according to the schedule contained in the Scope of Services, Attachment A, attached hereto and incorporated herein.

4. **EFFECTIVE DATE, TERM AND RENEWAL**

This contract shall be effective upon execution by the Mayor, on behalf of the City. Services under this contract shall commence on January 1, 2009 and end on December 31, 2009 unless terminated on a different date as elsewhere provided in this contract.

5. **ENTIRE AGREEMENT.**

The entire agreement of the parties is contained herein and this contract supersedes any and all oral contracts and negotiations between the parties.

6. **ASSIGNABILITY/SUBCONTRACTING.**

Contractor shall not assign or subcontract any interest or obligation under this contract, without the City's prior written approval. The City of Madison reserves the right to partner with other community agencies that may expand programmatic opportunities to the Northside community.

7. **DESIGNATED REPRESENTATIVE.**

A. Contractor designates Lucy Chaffin as Contract Agent. Contract Agent shall have primary responsibility for the performance of this contract. Contractor shall designate another Contract Agent within seven (7) days of the date the Contract Agent's death, disability, resignation or termination, and shall immediately notify the City of such designation using the procedure set forth in Section 15, Notices.

B. In the event of the death, disability, resignation or termination of any Contract Agent, the City may accept another person as the Contract Agent, or may terminate this contract under Section 25B.

8. **COMMENCEMENT AND REPORTING**

A. Contractor shall complete the services under this agreement within the time for completion specified in the Scope of Services, including any amendments. Contractor's services are completed when the City notifies Contractor in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to Contractor, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of Contractor. If at anytime Contractor believes that the time for completion of the work should be extended because of unavoidable delay

caused by an unexpected event, or because of a delay attributable to the City, Contractor shall notify the City as soon as possible, but not later than seven (7) days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.

- B. Services by Contractor shall proceed continuously and expeditiously through completion of each phase of the work.
- C. Progress reports documenting the extent of completed services shall be prepared by Contractor and submitted to the City according to the schedule contained in the Scope of Services, Attachment A, and at such other times as the City specifies.
- D. Contractor shall notify the City in writing when Contractor has determined that the services under this contract have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to Contractor, acknowledging formal acceptance of the completed services.

9. **AMENDMENT.**

This contract shall be binding on the parties hereto, their respective heirs and successors, and cannot be varied or waived by any oral representations or promises of any agent of the parties. Any change in any provision of this contract may only be made by a written amendment, signed by the duly authorized agent or agents of the parties.

10. **EXTRA SERVICES.**

The City may request that Contractor perform extra services or decreased services, according to the procedure set forth in Section 22. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total contract price, as set forth in Section 21, unless the contract is amended as provided in Section 9 above.

11. **NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. **NON-DISCRIMINATION.**

In the performance of work under this contract, Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

13. **SEVERABILITY.**

It is mutually agreed that in case any provision of this contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

14. **NOTICES.**

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY: Kevin Briski, Parks Superintendent  
Madison Municipal Building  
210 Martin Luther King, Jr. Blvd., Rm. 104  
Madison WI 53701-2987

FOR THE CONTRACTOR: Lucy Chaffin, Director, MSCR  
MSCR @ Hoyt Building  
3802 Regent Street  
Madison WI 53705

15. **STATUS OF CONTRACTOR/INDEPENDENT/TAX FILING.**

It is agreed that Contractor is an independent contractor and not an employee of the City, and that any person Contractor utilizes and provides for services under this contract are employees of Contractor and are not employees of the City. Contractor's taxpayer identification number is 39-6003002. Contractor is informed that as an independent contractor, it may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this contract and that no amounts will be withheld from payments made to Contractor for these purposes and the payment of taxes and the making of social security payments are solely the responsibility and obligation of Contractor. Contractor is further informed that it may be subject to civil and/or criminal penalties if it fails to properly report income and pay income and/or social security taxes on the amount received under this contract.

16. **THIRD PARTY RIGHTS.**

This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

17. **AUDIT AND RETAINING OF DOCUMENTS.**

Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this contract. Any other reports or documents shall be provided within five (5) working days after Contractor receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this contract shall be retained by Contractor for a period of three (3) years after completion of all work under this contract, in order to be available for audit by the City or its designee.

18. **CHOICE OF LAW AND FORUM SELECTION.**

This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

19. **COMPLIANCE WITH APPLICABLE LAWS.**

Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of Contractor, its agents and employees.

20. **CONFLICT OF INTEREST.**

- A. Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this agreement.
- B. Contractor shall not employ or contract with any person currently employed by the City for any services included under the provisions of this agreement.

21. **COMPENSATION.**

It is expressly understood and agreed that in no event shall the total compensation for services under this contract exceed that specified in the Scope of Services.

22. **BASIS FOR PAYMENT**

A. GENERAL

- (1) The City will pay Contractor for the completed and accepted services rendered under this contract on the basis and at the contract price set forth in Section 21 of this contract. The City will pay Contractor for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this contract. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.
- (2) Contractor shall submit invoices, on the form or format approved by the City, specified in the Scope of Services, Section 3 of this contract. The City will pay Contractor in accordance with the schedule set forth in the Scope of Services. The final invoice shall be submitted to the City as specified in the Scope of Services.
- (3) Should this agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as the City's acceptance of unsatisfactory or defective services or improper materials.
- (5) Final payment of any balance due Contractor will be made upon acceptance by the City of the services under the agreement and upon receipt by the City of documents required to be returned or to be furnished by Contractor under this agreement.
- (6) Compensation in excess of the total contract price will not be allowed unless authorized by an amendment under Section 9, AMENDMENT.
- (7) The City will not compensate for unsatisfactory performance by Contractor.

B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.

- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in Section 14, NOTICES.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 10 of this contract. Unless Contractor believes the extra services entitle it to extra compensation or additional time, Contractor shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 3 of this agreement, including any amendments under Section 9 of this agreement.
- (3) If in Contractor's opinion the order for extra service would entitle it to extra compensation or extra time, or both, Contractor shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 14 of this agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
- (4) The City shall review Contractor's submittal and respond in writing, either authorizing Contractor to perform the extra service, or refusing to authorize it.

Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

23. **DEFAULT/TERMINATION.**

- A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Contractor under this contract.
- B. Notwithstanding paragraph A., above, either party may without any reason, terminate this agreement at any time by furnishing the other party with thirty (30) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by Contractor and accepted by the City.

24. **INDEMNIFICATION.**

The City shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment, in accordance with sec. 895.46(1), and 893.80 Wis. Stats. MMSD shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment, in accordance with sec. 895.46(1) and 893.80, Wis. Stats. The obligations of the parties under this paragraph shall survive the expiration or termination of this contract.

25. **INSURANCE.**

The Contractor will insure against the following risks to the extent stated.

General Liability

Covering as insured the Contractor with no less than the following limits of liability: Bodily injury, death and property damage of \$1,000,000 in the aggregate.

26. **AUTHORITY**

Contractor represents that it has the authority to enter into this Contract. If the Contractor is not an individual, the person signing on behalf of the Contractor represents and warrants that he or she has been duly authorized to bind the Contractor and sign this Contract on the Contractor's behalf.

27. **CHOICE OF LAW AND FORUM SELECTION.**

This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.



## ATTACHMENT A

### SCOPE OF SERVICES

#### MADISON METROPOLITAN SCHOOL DISTRICT / MADISON SCHOOL & COMMUNITY RECREATION

#### Warner Park Community Recreation Center Program for the period January 1, 2009 through December 31, 2009

##### **I. Community Opportunity:**

The Warner Park Community Recreation Center (WPCRC) is a gathering place that provides innovative growth and enrichment opportunities for the Madison community and connects people of all ages, races and cultural backgrounds. The affiliation with the Madison Metropolitan School District's Madison School & Community Recreation (MSCR) is an opportunity to maximize resources, expertise, and coordination of citywide recreational services.

##### **II. Project Goal:**

The goal of this project is to provide quality, accessible recreational services that are integrated into the broader recreational system in the City. In that vein, the City and MSCR agree to collaborate to implement the goal by providing the following services:

- a) The City will coordinate the use and scheduling of the WPCRC and assist in developing a recreational plan. Provide office space for MSCR staff and equipment as approved.
- b) MSCR will provide its recreational expertise, assistance in developing a recreational plan, management of the recreation programs at WPCRC, including a playroom and summer camp for youth, recreational materials and supplies.

##### **III. Project Activities / Timetable:**

1. MSCR will work with the City of Madison Parks Division ("Parks Division") to develop an annual Recreation Plan with three program sessions (summer, fall, and winter) for the WPCRC. The Plan shall provide a listing of the programs to be offered, (as in the program guide distributed three (3) times annually), hours

of each program, the target population of each program, the number anticipated to be served by each program and the proposed fees for each program. The Parks Division shall approve the Plan at least 60 days prior to implementation. The WPCRC Recreation Plan will meet the needs of a broad range of individuals, including but not limited to individuals of different ages, income groups, and backgrounds. The City, through its services at the WPCRC, is committed to serving the entire community and is committed to achieving the goals established for the funding of the WPCRC through federal Department of Housing and Urban Development (HUD) and Community Development Block Grant (CDBG) agreements. The parties wish to continue to attract persons of all economic levels to the WPCRC through the offering of quality recreational and social programs. MSCR shall strive to maintain, through HUD/CDBG documented reporting, at least a 55% participation rate by low or moderate-income individuals for MSCR program participants and registrations.<sup>1</sup>

2. MSCR will work with the Parks Division to coordinate proposed WPCRC programs with other activities at the WPCRC as well as other recreational offerings in the area. MSCR planned recreation programs shall not interfere with the City's priority to rent out the WPCRC in order to produce revenue that is necessary to the Center's continued operation.

#### **IV. Fiscal and Program Management:**

1. Administrative Fee. For calendar year 2009 the City agrees to pay to MSCR a program administration fee of \$23,500 (\$11,750 will be paid to MSCR before June 30, 2009 and \$11,750 will be paid prior to December 31, 2009).

2. Registration and Fee Handling Process. Persons interested in MSCR programs at WPCRC submit registration forms and payments by mail, fax or in person, to WPCRC and WPCRC date stamps and transmits those materials to MSCR for processing. This includes MSCR handling of HUD/CDBG income reporting requirements. Once MSCR completes registration, MSCR returns all

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<sup>1</sup> The HUD documented participation rate of low or moderate-income individuals on December 31, 2008 was 61%.



program fees to WPCRC and WPCRC is responsible for cash reconciliation and deposit of monies. By the seventh workday following each even-numbered month, WPCRC remits all fees collected to MSCR and shall provide accounting details of funds remitted, for each of the following areas:

Fees for 50+ (formerly Goodman Rotary)

Camps

Recreation Programs

Fitness

Sports and Leagues

MSCR donations

Fellowship Funds

WPCRC will assist in program registration and fee collection duties upon request from MSCR. City staff will ensure that registrations accepted by City staff at the WPCRC front desk are complete with HUD information, signatures and other pertinent information.

3. ID Cards. City staff shall have primary responsibility for the issuance and collection of fees for ID cards and for checking all patrons, including MSCR class participants, for ID cards at the front desk.

4. Surcharge Fees. A non-resident surcharge fee will be assessed to program participants living outside the City. A non-resident surcharge fee will be assessed to program participants living outside the MMSD.

5. Reproduction of Printed Material. MSCR shall provide to WPCRC a minimum of ten (10) cases of copy machine paper to offset the cost of reproducing MSCR related printed material and will pay for ½ of the annual copy machine lease fee of \$1,965 = \$982.5. The charge can be transferred from the MSCR revenue directly into the City/WPCRC miscellaneous account). MSCR agrees to act in good faith by doing as much as possible of its high quality reproduction of printed material at a non-City site.

6. Scholarship Support. The Parks Division will provide scholarships of 50% of the program fee or the difference between the participant contribution and the total fee, whichever is less, in accordance with MSCR's scholarship policy.

MSCR program fees will be reduced or waived upon request for those persons meeting the criteria for free or reduced lunch, or who meet the Federal Poverty Level guidelines. Participants are encouraged to pay at least 50% of the program fee. All participants requesting a scholarship are required to complete a WPCRC Fellowship Fund application.

City will provide up to six thousand dollars (\$6,000) per fiscal year in scholarships to persons participating in a variety of MSCR programs. Three thousand dollars (\$3,000) shall be provided by the end of June and three thousand dollars (\$3,000) by the end of December. MSCR shall provide WPCRC Administration with hard copies of the WPCRC approved scholarship form and a detailed bi-monthly report of scholarships issued to each participant/family and a list of activities registered.

7. Office Space. The City of Madison will provide MSCR office space and storage space for necessary program equipment. The office space will include wiring to facilitate computer and phone communication between MSCR administrative offices and WPCRC. A .70 FTE Program Supervisor and a .85 FTE clerical position will be stationed at the WPCRC and will be hired, paid for, and supervised by MSCR.

8. Middle School Socials. The City agrees to allow usage of WPCRC premises for up to nine (9) school socials without charge to MSCR for use of space. MSCR staff and volunteers shall clean premises to its original condition (approved by Facility Manager or his/her designee) immediately following the event or in the alternative pay a \$100 cleaning fee to WPCRC.

9. MSCR Training. MSCR shall pay the City \$100 per full day for operational maintenance and custodial service to support MSCR use of WPCRC building for MSCR staff training when more than one room is used by MSCR.

10. The City/WPCRC fixed asset or capital equipment budget will not be used for replacement and/or purchase of any equipment or furnishings which would serve to exclusively benefit MMSD/MSCR and/or the programs and/or services they offer at WPCRC.

## **V. Recreation Program**

1. MSCR will administer the recreation program at the WPCRC, as outlined in the Recreation Plan. MSCR will support the City's policy relating to identification (ID) card requirements and WPCRC policies and behavior guidelines as established by the Board of Park Commissioners. The recreation program shall include a full 12-month schedule of activity and a minimum of 3,000 recreational hours. Other components of the recreation program administered by MSCR will include, but not be limited to, the following functions:
  - a. Initiate program outreach to North Side Community prior to each session.
  - b. Attendance and participation in all related WPCRC Advisory Committee meetings.
  - c. Recruitment, hiring, orientation, training, supervision and evaluation of program leaders and instructors.
  - d. Registration of program participants and ensure the completion of the required HUD/CDBG data, on Exhibit A, attached.
  - e. Processing of Instructors' payroll.
  - f. Program evaluation.
  - g. MSCR shall provide clerical support at the customer service desk the two busiest evenings of the first two weeks of new program sessions.
2. MSCR shall ensure that the approved Recreation Plan is implemented in an efficient and effective manner. MSCR program staff shall communicate to WPCRC any program revisions or modifications.
3. MSCR and City staff at the WPCRC shall meet not less than quarterly on programming, scheduling and participation issues. In the event that any such issues remain unresolved beyond the intra-building meeting stage, a formal joint referral of the issue(s) shall be made to the Executive Director of MSCR and the Park Superintendent or their designees for resolution.

#### **VI. Warner Park Child Care:**

1. MSCR shall provide child care in the WPCRC playroom and shall utilize various areas of WPCRC for a MSCR summer camp for youth that meets the following criteria:

a. MSCR policies regarding child care programs and staff.

2. The City shall reimburse MSCR for playroom staff salaries for open playroom hours up to a maximum of six thousand dollars (\$6,000). Playroom expenses shall include materials, supplies, and staff salaries. MSCR shall provide materials and supplies for open playroom hours and the City shall provide capital equipment as needed for the playroom. A variety of playroom management options shall be reviewed and analyzed by MSCR and City staff and MSCR shall provide quarterly reports regarding the use of the playroom.

3. The City recognizes the value of quality summer programs in the Warner Park area and supports MSCR providing this service. To accomplish this, MSCR agrees to be primary and City will assist with the completion of the following tasks during camp:

a. Cleaning all tables and chairs prior to “tearing down” after each day’s activities.

b. Keeping the childcare room and the infant room neat and orderly.

c. Cleaning all tables and chairs in the dry craft room, when used for camp activities.

d. Wiping down all stainless steel counters and tables in the kitchen, when used for camp activities.

e. Wiping down the stovetop when used for camp activities.

h. Ensuring main hallway is free of children’s belongings i.e. backpacks,

lunch boxes, arts and crafts, etc., upon conclusion of daily program.

4. City agrees to be primary and MSCR shall assist in the completion of the following tasks during camp:

a. Setting out tables and chairs for each day’s activities.

b. “Tearing down” all tables and chairs prior to 4:00 p.m. each day when the space is needed for other classes or rentals.

- c. Providing necessary waste receptacles for camp activities.
- d. Putting down tarps on wooden floor in community room #1.
- e. Picking up and sweeping of tarps at 4:00 p.m. each day, if needed.
- f. Cleaning day care bathroom daily.
- g. Sweeping and mopping the kitchen floor after camp activities at end of each camp day.
- h. Sweeping and mopping the dry craft room after camp activities at end of each camp day.

## **VII. Marketing**

MSCR shall market all MSCR programs at the WPCRC in coordination with the Parks Division and subject to Parks Division review prior to release. All marketing efforts will include the information that WPCRC programs are a joint effort of the City of Madison and MSCR. MSCR will include the City of Madison/WPCRC logo in all of its publicity related to programs offered at the WPCRC.

## **VIII. Program Reports and Oversight:**

1. MSCR shall submit to the City Facility Manager program reports upon completion of each seasonal session. MSCR shall also submit detailed progressive attendance reports to the Facility Manager for inclusion in the monthly administrative report submitted by the Facility Manager to the WPCRC Advisory Committee. Dates for submission of the monthly reports in 2009 are: January 9, February 13, March 13, April 10, May 8, June 12, July 10, August 14, September 11, October 9, November 13, December 11.
2. WPCRC Advisory Committee of the Board of Park Commissioners and the Madison Common Council have oversight of WPCRC operations. The Common Council, through the Parks Division, shall review the recreational program and offerings at the WPCRC. The Madison Metropolitan School District Board oversees MSCR and the recreational offerings at the WPCRC. The WPCRC Advisory Committee shall include one (1) MSCR-appointed position.