

AGREEMENT FOR THE USE OF A WII SYSTEM

This agreement for use of a Wii System (“Agreement”) is made and entered into this 7th day of June, 2011 (“Effective Date”), by and between the City of Redlands (hereinafter “City”) and the County of San Bernardino, through its Department of Aging and Adult Services (hereinafter “Department”). The City and the Department are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

RECITALS

WHEREAS, the Department desires to allow City the use of the Department’s Wii System (hereinafter referred to as the “Equipment”); and

WHEREAS, it is to the mutual benefit of the Parties that the City be entitled to use of the Equipment;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

I. DEPARTMENT SHALL:

A. Commencing on July 1, 2011, allow the City to use, at no cost to the City, the following Equipment owned by the Department:

Unit	Wii	Wiimote(1)	Wiimote(2)	Wiimote(3)	Wiimote(4)
A	341034	341033	341032	341031	341030
B	341261	341260	341257	341259	341258

Unit	Nun chuck(1)	Nun chuck(2)	Nun chuck(3)	Nun chuck(4)	Wii sport Game	Mario&Sonic Game
A	341029	341028	341027	341026	341025	341024
B	341253	341254	341255	341256	341252	n/a

- B. Place an identification tag on all of the Equipment to be used by the City.
- C. Designate a Department staff member as the coordinator for use of the Equipment.
- D. Provide the City with instruction, if needed, for use of the Equipment.
- E. Remove the Equipment when deemed appropriate by the Department.

F. Deliver and set-up the Equipment on a mutually acceptable date.

II. CITY SHALL:

A. Supervise use of the Equipment by City staff and others.

B. Keep daily sign-in/out sheets of persons using the Equipment.

C. Submit the names of those individuals using the Equipment to the Department by the 5th day of the month following the month of use.

D. Allow the Department to remove the Equipment when deemed appropriate by the Department.

E. Maintain care and control of the Equipment used by the City.

F. Provide for the orientation of persons using the Equipment.

G. Comply with the following indemnification and insurance requirements:

1. Indemnification – The City agrees to indemnify, defend and hold harmless the Department and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of the negligent acts, omissions or willful misconduct of the City.
2. Waiver of Subrogation Rights – The City shall require the carriers of required coverages to waive all rights of subrogation against the Department, its officers, employees, agents, volunteers. All general liability insurance coverage provided shall not prohibit the City and City's employees or agents from waiving the right of subrogation prior to a loss or claim. The City hereby waives all rights of subrogation against the Department.
3. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Department.
4. Severability of Interests – The City agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the City and the Department or between the Department and any other insured or additional insured under the policy.
5. Proof of Coverage – The City shall furnish Certificates of Insurance to the Department evidencing the insurance coverage, including endorsements, as required, prior to taking possession of Equipment hereunder, which certificates shall provide that such insurance shall not be terminated or

expire without thirty (30) days written notice to the Department, and City shall maintain such insurance for the entire duration of time City has possession of Equipment.

6. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers with a minimum “Best” Insurance Guide rating of “A- VII.”
7. Failure to Procure Coverage – In the event that any policy of insurance required under this Agreement does not comply with the requirements, hereof is not procured, or is canceled and not replaced, the Department has the right but not the obligation or duty to terminate this Agreement.
8. Insurance Review – Insurance requirements are subject to periodic review by the Department. The Department’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever that Director determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Department. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Department, inflation, or any other item reasonably related to the Department’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. City agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the Department to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Department.

9. The City agrees to provide insurance set forth in accordance with the requirements herein. If the City uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the City agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided, and in addition thereto, the City shall secure and maintain throughout the term of this Agreement the following types of insurance with limits as shown:

- a. Commercial/General Liability Insurance – The City shall carry General Liability Insurance covering all operations performed by or on behalf of the City providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence and two million dollars (\$2,000,000) aggregate. The policy coverage shall include:
- b. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- c. Excess Liability Insurance – The City may comply with the coverage requirements by self-insuring and procuring an excess liability policy.

H. Permit and encourage seniors to participate in the use of the Equipment.

- III. This Agreement shall take effect on the Effective Date. The City’s use of the Equipment shall commence on July 1, 2011, and shall remain in effect for three years thereafter; provided, however, this Agreement may be terminated by either Party after giving the other Party thirty (30) days prior written notice of the Party’s intention to so terminate.
- IV. This Agreement may, at any time, be altered, changed, or amended by mutual written agreement of the Parties.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties hereto, the day and year first above written.

COUNTY OF SAN BERNARDINO

CITY OF REDLANDS

By: _____
Leo Gomez
Purchasing Department

By: _____
Pete Aguilar, Mayor

ATTEST:

Sam Irwin, City Clerk