

COOPERATIVE AGREEMENT BETWEEN CITY OF TEMECULA AND OUR NICHOLAS FOUNDATION

THIS AGREEMENT is made and effective as of this **9th** day of **July, 2019** by and between the **City of Temecula**, a municipal corporation (hereinafter referred to as "City"), and **Our Nicholas Foundation**, a California nonprofit corporation (hereinafter referred to as the "Nonprofit"). In consideration of the mutual covenants, conditions and undertakings set forth herein, the parties agree as follows:

1. RECITALS

This Agreement is made with respect to the following facts and purposes which each of the parties acknowledge and agree are true and correct:

- a.) The Nonprofit will host an Autism Christmas Event in December at a City Facility.
 - i. The Event will offer children with autism and their families a Christmas Party with arts and crafts, activities, gift giving, refreshments, and a visit from Santa.
- b.) The Nonprofit will cohost a Special Needs Park Program beginning in July through August and on the 2nd Saturday of each month beginning September through June (excluding November, December, January and February).
 - i. The program includes social skill activities, arts & crafts, and peer development.
- c.) Alcohol will not be served at any of the above mentioned events/programs.
- d.) The City desires to be a Co-Sponsor of all the above mentioned events/programs, providing in-kind support including facilities, staff support, materials, and advertising as described in Exhibit B.

2. TERM

This Agreement shall commence on **July 9, 2019**, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2020 unless sooner terminated pursuant to the provisions of this Agreement.

The City may, upon mutual agreement, extend the contract for two one-year terms. In no event shall the contract be extended beyond June 30, 2022.

3. CONSIDERATION

- a. As a **Co-Sponsor** the City shall receive sponsor benefits as listed in **Exhibit A**.

4. WRITTEN REPORT

Within ninety (90) days after the conclusion of the Event, the Nonprofit shall prepare and submit to the **Assistant City Manager** a written report evaluating the Event, its attendance,

media coverage, and description of the materials in which the City has listed as a **Co-Sponsor**. The report shall also include samples of media, press clippings, flyers, pamphlets, etc.

5. MEETING ATTENDANCE

The Nonprofit shall attend all City pre-event planning meetings and event recap meetings if warranted.

6. INDEMNIFICATION

The Nonprofit shall indemnify, protect, defend and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its elected officials, officers, employees, volunteers, and representatives from any and all suits, claims, demands, losses, defense costs or expenses, actions, liability or damages of whatsoever kind and nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of the Nonprofit's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement.

7. INSURANCE

The Nonprofit shall secure and maintain from a State of California admitted insurance company, pay for and maintain in full force and effect for the duration of this Agreement an insurance policy of comprehensive general liability against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by **July 25, 2019**, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Recipient owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Recipient has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

b. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: Two million (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: One million (\$1,000,000) per accident for bodily injury and property damage.

3) Worker's Compensation insurance is required only if Consultant employs any employees. Consultant warrants and represents to the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency that it has no employees and that it will obtain the required Worker's Compensation Insurance upon the hiring of any employees.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed Twenty Five Thousand Dollars and No Cents (\$25,000).

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as insured's, as respects: liability arising out of activities performed by or on behalf of the NonProfit; products and completed operations of the Recipient; premises owned, occupied or used by the Nonprofit; or automobiles owned, leased, hired or borrowed by the Nonprofit. The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

2) For any claims related to this project, the Nonprofit's insurance coverage shall be primary insurance as respects the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

4) The Nonprofit's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this agreement shall be endorsed to state: should the policy be canceled before the expiration date the issuing insurer will endeavor to mail thirty (30) days prior written notice to the City.

6) If insurance coverage is canceled or, reduced in coverage or in limits the Nonprofit shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Nonprofit shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City

before work commences. As an alternative to the City's forms, the Nonprofit's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

8. GOVERNING LAW

The City and the Nonprofit understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

9. LEGAL RESPONSIBILITIES

The Nonprofit shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Nonprofit shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Nonprofit to comply with this section.

10. ASSIGNMENT

The Nonprofit shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

11. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

Mailing Address: City of Temecula
Attn: City Manager
41000 Main Street
Temecula, CA 92590

To Recipient: Our Nicholas Foundation
Attn: Mark Anselmo
31493 Rancho Pueblo Rd #205
Temecula, CA 92592

12. INDEPENDENT CONTRACTOR

a. The Nonprofit shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of the Nonprofit shall at all times be under the Nonprofit's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Recipient or any of the Nonprofit's officers, employees, or agents except as set forth in this Agreement. The Nonprofit shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. The Nonprofit shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to the Nonprofit in connection with the performance of this Agreement. Except for the fees paid to the Nonprofit as provided in the Agreement, City shall not pay salaries, wages, or other compensation to the Nonprofit for performing services hereunder for City. City shall not be liable for compensation or indemnification to the Nonprofit for injury or sickness arising out of performing services hereunder.

13. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

14. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of the Nonprofit warrants and represents that he or she has the authority to execute this Agreement on behalf of the Nonprofit and has the authority to bind the Nonprofit to the performance of its obligations hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA

OUR NICHOLAS FOUNDATION

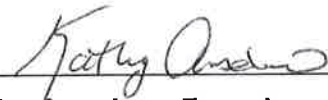
(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)

By: _____
Michael S. Naggar, Mayor

By: _____
Mark Anselmo, Founder

ATTEST:

By: _____
Randi Johl, City Clerk

By: _____
Kathy Anselmo, Founder

APPROVED AS TO FORM:

By: _____
Peter M. Thorson, City Attorney

NONPROFIT

Our Nicholas Foundation
Mark Anselmo
31493 Rancho Pueblo Rd. #205
951-303-8732
TeamONF@gmail.com

PM Initials: 
Date: 

EXHIBIT "A"

CITY OF TEMECULA SPONSORSHIP BENEFITS

CO-SPONSOR

Our Nicholas Foundation shall provide the following benefits and services for the citizens of the City of Temecula:

- City of Temecula logo/name on advertisements
- City of Temecula name on all press releases
- City of Temecula logo/name on event poster
- City of Temecula logo/name on event flyers
- City of Temecula logo/name on event t-shirt if applicable
- Enrichment Activities at Special Needs Park Program for City of Temecula and park users
- Christmas Event to benefit children and families affected by Autism

****Press Releases** will be distributed to all local media, however, publication cannot be guaranteed. Press Releases can also be provided to all sponsors for distribution to their clients, agents, employees, etc.

EXHIBIT "B"
IN-KIND SERVICES

ESTIMATED VALUE OF CITY SUPPORT SERVICES AND COSTS PER YEAR

Based on the input from City departments we received estimated cost projections for the **Autism Christmas Party events**. The following expenses can be anticipated for the event:

Community Services Facility Rental:	\$ 138.00
Community Services Staff Hours:	\$ 116.00
Community Services Material Costs:	<u>\$ 500.00</u>

TOTAL:	\$ 754.00
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**ESTIMATED VALUE OF PROMOTIONAL SERVICES
PROVIDED BY THE CITY OF TEMECULA**

The estimated value for in-kind promotional assistance provided by The City of Temecula for Our Nicholas Foundation events and programs is as follows:

<u>Item</u>	<u>Value</u>
Cable Channel Event slide appears approximately once per hour for 30 seconds	\$ 5,100.00
City Website Event listing on the City of Temecula's event calendar	\$ 2,200.00
Promotional Poster 42X66 poster located in the concourse at the Civic Center	\$ 1,000.00
TOTAL VALUE:	<u>\$ 8,300.00</u>