



LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("**License**") is made and entered into January ____, 2023 ("**Effective Date**"), by and between the CITY OF FULLERTON, (hereinafter referred to as "**Licensor**") and the COUNTY OF ORANGE, a political subdivision of the State of California, (hereinafter referred to as "**County**"), without regard to number and gender. County and Licensor may sometimes hereinafter be referred to individually as "**Party**" or jointly as "**Parties**."

1. DEFINITIONS

The following words in this License shall have the significance attached to them in this Clause 1 (DEFINITIONS), unless otherwise apparent from context:

"Chief Real Estate Officer" means the Chief Real Estate Officer, County Executive Office, Real Estate Section, County of Orange, or upon written notice to County, such other person as shall be designated by the County Executive Officer.

"County Executive Officer" means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to County, such other person or entity as shall be designated by the Board of Supervisors.

"Independence Park Gym" means that certain property located at 801 West Valencia Drive, Fullerton, CA.

2. LICENSE AREA

Licensor grants to County, and its agents and contractors, the right to use the Independence Park Gym, shown on Exhibit A (hereinafter referred to as the "License Area(s)"), which exhibits are attached hereto and by reference made a part hereof, together with non-exclusive, in common use of driveways for vehicle ingress and egress, pedestrian walkways, other facilities, and common areas appurtenant to the License Area. Licensor represents and warrants that, to its actual knowledge, the License Area is free and clear of easements, including utility easements that would impede the County's use of the License Area, as set forth below. The Parties agree that the License Area may be modified by County and Licensor pursuant to the terms herein.

3. PUBLIC USE

- a. County's use of the License Area shall be for housing and shelter purposes for persons experiencing homelessness.
- b. The County's operation within the License Area shall be operated and administered by PATH dba People Assisting the Homeless in accordance with County's Contract with PATH. Their access and operation at the License Area shall be specifically permitted pursuant to this License. No other operator may use the License area without the express prior written approval of the City.



- c. Consistent with the uses outlined in this Clause 3, the County shall be permitted access and use of the License Area 24 hours a day, seven (7) days a week.

4. PARKING

Licensor agrees to provide County, and County's invitees, with non-exclusive right to use the number of parking spaces that City reasonably believes are necessary for County to operate its facility. Licensor agrees to negotiate in good faith with County as part of its process of determining the requisite number of parking spaces.

Licensor will also work with County to attempt to provide non-exclusive access to the number of parking spaces reasonably necessary to comply with the Americans with Disabilities Act, and the California Uniform Building Code, as they are in effect within the City of Fullerton.

5. TERM

This License shall commence on the Effective Date written above and shall continue in effect for 75 days ("**Term**") or as otherwise terminated in accordance with Clause 6 (TERMINATION) of this License. In the event that neither Party has terminated this License at the end of the term, this License shall continue on a month-to-month basis.

6. TERMINATION

This License shall be revocable by either Party at any time; however, as a courtesy, the terminating Party will attempt to give thirty (30) days written notice to the other Party prior to the termination date.

7. LICENSE FEE (SALic-1.7 N)

In consideration of the public benefit of the County's operation of the License Area, there shall be a \$7,500 monthly fee ("License Fee") for this License starting from the Effective Date. In the event the obligation to pay the License Fee begins or terminates on some day other than the first or last day of the month, the fee shall be prorated to reflect the actual period the License is in effect based on a thirty (30) day month. Any requirements within this License for the County to pay Licensee survive the termination of this License and shall be invoiced from Licensor to the County at the address set forth in Section 26, below.

8. UTILITIES, MAINTENANCE AND JANITORIAL (SALic-1.8 S)

- a. Repairs. Licensor shall be responsible to repair and maintain the facilities that are currently existing in the License Area, (including but not limited to: fire alarm, fire extinguisher, landscaping, pest control, plumbing, electrical). County shall reimburse Licensor for its full costs in conducting repairs, to the extent that such repairs were necessary as a result of County's use of the facilities. County shall also reimburse Licensor for Licensor's costs to obtain additional services (e.g. additional trash hauling) and for all labor and materials and any other costs incurred pursuant to this subsection, to the extent such costs were necessary as a result of County's use of the facilities or were requested by the County. The Parties



acknowledge that the HVAC system is not functional prior to the License Term and agree that the Licensor may repair and/or maintain the HVAC system at Licensor's sole discretion and at Licensor's sole cost and expense.

- b. Janitorial. County shall provide all janitorial services for the Licensed Area.

9. ALTERATIONS (SALic-1.9 S)

County may request from Licensor to make improvements and changes (including installation of fixtures), at the County's expense, in and to the License Area, that it deems necessary or appropriate by the County. County shall not make such alterations unless first approved in advance in writing by Licensor, which Licensor may withhold in its sole and unfettered discretion. Any and all improvements installed shall be installed in a manner consistent with all applicable laws, including compliance with the California Building Standards Code, as amended by the City of Fullerton.

It is agreed that any such improvements attached to or placed upon the License Area by County shall be considered as personal property of County, which shall be removed by County upon the termination of the License, unless the City allows the County to abandon such improvements in place. County agrees that the License Area shall be left in as good condition as when received, reasonable wear and tear excepted.

10. OWNERSHIP OF IMPROVEMENTS (SALic-2.0 S)

All improvements (including installation of fixtures) constructed or placed within the License Area by County ("**County Improvements**") must, upon completion, be free and clear of all liens, claims, or liability for labor or material. The County Improvements shall remain property of County and shall be removed by County at the termination of this License, without damage to the License Area. However, the County Improvements may be abandoned in place with Licensor's prior written approval.

11. OPERATIONAL REQUIREMENTS OF COUNTY (SALic-2.1 N)

County shall keep and maintain the License Area and all improvements of any kind in good condition and in substantial repair, normal wear and tear excepted. It shall be County's responsibility to take all steps necessary or appropriate to maintain such standard of condition and repair. Licensor shall endeavor to notify the County when Licensor observes that maintenance is necessary. County expressly agrees to maintain the License Area in a safe, clean, wholesome, and sanitary condition, to the satisfaction of Licensor and in compliance with all applicable laws. County's use of the License shall in all respects comply with the requirements of the Fullerton Municipal Code, including all nuisance regulations.

County shall allow the License Area to be used solely as an emergency shelter for people experiencing homelessness.

12. INDEMNIFICATION (SALic-2.3 S)



- a. County hereby agrees to indemnify, hold harmless, and defend Licensor, its officers, agents, and employees, with counsel approved by Licensor, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of or related to the use of the License Area by County, its officers, agents and employees, except to the extent the liability is caused by the gross negligence or willful acts of Licensor, its officers, agents, or employees.
- b. In the event judgment is entered against County and Licensor because of the concurrent active negligence of County and Licensor, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.
- c. The provisions of this Section shall survive the termination or expiration of this License.

13. INSURANCE

- a. County shall obtain, maintain, and keep in full force and effect during the life of this License self-insurance which is reasonable in scope and reasonable in amount, as approved by Licensor in its reasonable discretion.
- b. Endorsements. To the extent County is able to do so through its self-insurance, the required insurance shall contain or be endorsed to contain the following provisions (in any event the following shall be conditions applied to the County's self-insurance and the County shall administer such self-insurance in compliance with the following):
 - Additional Insureds. "The City of Fullerton and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the County pursuant to its contract with the City; products and completed operations of the County or its agents and assigns; premises owned, occupied or used by the County, its agents officers, or assigns; automobiles owned, leased, hired, or borrowed by the County, its agents, officers or assigns."
 - Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
 - Other insurance: "The County's insurance coverage shall be primary insurance as respects the City of Fullerton, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fullerton shall be excess and not contributing with the insurance provided by this policy."
 - Certificates of Insurance. County shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this License.



- Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this License.

14. ASSIGNMENT AND SUBAGREEMENTS (SALic-2.4 N)

Any assignment of this License or sublicenses under this License requires the prior written approval of Licensor, which approval will not be unreasonable withheld, conditioned or delayed.

15. SIGNS (SALic-2.7 S)

Licensor agrees to allow County to maintain any temporary sign or display upon or in front of the License Area and/or property that may be necessary for the County's use of the License Area with the exception that the signage shall be for safety or official purposes only and shall not describe, label, or otherwise indicate the use of the License Area.

16. AUTHORITY (SALic-2.8 S)

The persons executing the License below on behalf of County or Licensor warrant that they have the power and authority to bind County or Licensor to this License.

17. LICENSE ORGANIZATION (SALic-2.9 S)

The various headings and numbers herein, the grouping of provisions of this License into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

18. AMENDMENTS (SALic-3.0 S)

This License is the sole agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this License shall be in writing and shall be properly executed by both Parties.

19. PARTIAL INVALIDITY (SALic-3.1 S)

If any term, covenant, condition, or provision of this License is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. WAIVER OF RIGHTS (SALic-3.2 S)

The failure of Licensor or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that Licensor or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained.

21. GOVERNING LAW AND VENUE (SALic-3.3 N)

This License has been negotiated and executed in the State of California and shall be governed



by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this License, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

The Parties expressly understand and agree that this License constitutes a license for use of the License Area. This License is not intended by the Parties, nor shall it be legally construed, to convey a leasehold, easement, or other interest in real property. County acknowledges that a license is a valid form of agreement and shall not contest the validity of the form of this License in any action or proceeding brought by County against the Licensor, or by the Licensor against County. Should either Party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other Party's failure or refusal to perform or fulfill any of the covenants or conditions of this License on its part to be performed or fulfilled, the Parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings.

22. ATTORNEYS' FEES (SALic-3.4 S)

In the event of a dispute between Licensor and County concerning claims arising out of this License, or in any action or proceeding brought to enforce or interpret any provision of this License or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

23. TIME OF ESSENCE (SALic-3.5 S)

Time is of the essence of this License. Failure to comply with any time requirements of this License shall constitute a material breach of this License.

24. CONDITION OF LICENSE AREA UPON TERMINATION (SALic-3.7 S)

Except as otherwise agreed to herein, upon termination of this License, County shall redeliver possession of said License Area to Licensor in substantially the same condition that existed immediately prior to County's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war excepted.

25. COMPLIANCE WITH LAWS

Each Party will perform its obligations under this License in strict compliance with all applicable laws, orders or regulations of all appropriate jurisdictions.

26. NOTICES

All written notices pursuant to this License shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed delivered upon personal delivery, delivery by facsimile machine, electronic mail, or seventy-two (72) hours after deposit in the United States Mail. Any written correspondence between the Parties shall be addressed as follows:



To: County

County Executive Office Real Estate
Attention: Chief Real Estate Officer
400 W. Civic Center Dr, 5th Floor
Santa Ana, CA 92701-4539

To: Licensee

City of Fullerton
ATTN: City Manager
303 West Commonwealth Ave.
Fullerton, CA 92832

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IN WITNESS WHEREOF, the Parties have executed this License the day and year first above written.

COUNTY

COUNTY OF ORANGE

BY: _____
Thomas A. Miller, Chief Real Estate Officer
County Executive Office
Per Resolution No. 19-002 of the Board of Supervisors

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

BY:  _____
Deputy

Digitally signed by Michael A. Haubert
DN: cn=Michael A. Haubert, o=County of Orange,
ou=County Counsel,
email=michael.haubert@coco.ocgov.com, c=US
Date: 2023.01.18 16:32:17 -0800



LICENSEE

THE CITY OF FULLERTON

BY: _____

TITLE: _____

BY: _____

TITLE: _____



EXHIBIT A

Depiction of License Area

A portion of Independence Park, located at 801 W. Valencia Drive, Fullerton CA 92832

