

**LICENSE AGREEMENT BETWEEN CITY AND SANTA ANA UNIFIED SCHOOL
DISTRICT FOR USE OF PARKING LOT AT MEMORIAL PARK**

This LICENSE AGREEMENT ("**Agreement**") is dated as of February 1, 2022, and entered into by and between the CITY OF SANTA ANA, a charter city and municipal corporation existing under the Constitution and laws of the State of California ("**City**"), and the Santa Ana Unified School District ("**Licensee**").

RECITALS

A. The City is the owner of that certain real property located in the City of Santa Ana, County of Orange, California, more specifically identified as 2102 S. Flower Street (APN # 015-160-01) ("**the Property**") also known as Memorial Park. City will allow Licensee to use a portion of the Property consisting of the east side parking lot, with approximately forty-six (46) parking spaces as depicted on Exhibit A ("**License Area**") during the term of this License Agreement.

B. Licensee desires to use the License Area for purposes of parking during the License period ("**Permitted Uses**").

C. The City has agreed to grant Licensee a license to use the License Area, on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **License.** The City hereby grants to Licensee a nonexclusive license for the right to enter and use the License Area beginning on February 2, 2022 for the Permitted Uses described in Recital B, upon the terms and conditions set forth herein ("**License**"), subject to Licensee's performance of all of its obligations under this Agreement. This License shall remain in effect until June 30, 2023. The License may be terminated by the City or Licensee upon thirty (30) days written notice. This Agreement is intended and shall be construed only as a revocable license to use the License Area and not as a lease or grant of any possessory or other interest. Licensee agrees to the following obligations during the term of this License:

- 1.1 Licensee will have access to the License Area, Monday- Friday 6 a.m. to 6 p.m.;
- 1.2 Licensee will be responsible for paying the License fee set forth in Section 6 of this Agreement, regardless of how many parking spots are actually used on a daily basis;
- 1.3 Licensee will be responsible for opening and closing the gates to the License Area Monday- Friday during the term of the License Agreement;
- 1.4 Licensee will be responsible for any loss, theft and/or vandalism to vehicles and parking lot area during usage time and
- 1.5 Licensee shall be responsible for parking logistics.

2. Restoration and Clean Up. At its sole cost, Licensee shall, after use of the License Area, restore the License Area to its original condition in which it existed immediately prior to the Agreement, leave the License Area in a neat and clean condition to the sole satisfaction of the City, free of trash and debris, and remove all property and materials of Licensee. Licensee shall cause the License Area to be cleaned, with such work to be completed no later than the times specified in the License as stated in paragraph 1 above, and the License shall be extended to such time for the limited purpose of allowing the cleaning work to be completed.

3. Compliance with Laws. Licensee shall cause all activities of Licensee under this Agreement and all activities on the License Area to be performed in compliance with all applicable federal, state, and local laws, ordinances, and regulations, and permits.

4. Damage. In the event that Licensee damages any portion of the License Area or the improvements or equipment therein, Licensee shall immediately repair the damage at Licensee's sole cost. Alternatively, the City may, at its election, repair the damage in which case Licensee shall reimburse the City for its cost within fifteen (15) days of receipt of written demand from City.

5. Licensee Parties. Licensee, together with its employees, subcontractors, agents, representatives, invitees, and all persons entering the License Area, by or through or at the direction of Licensee, are collectively referred to herein as the "**Licensee Parties.**" Licensee shall be responsible for the Licensee Parties and shall cause the Licensee Parties to comply with the terms of this Agreement.

6. Fee. As consideration for this Agreement, Licensee shall pay City a total license fee of thirty-nine thousand one hundred dollars (\$39,100) over the term of the License. Licensee shall pay two thousand and three hundred dollars (\$2,300) per month starting February 1, 2022 and on the first of every month thereafter during the term of this License. Payment shall be made to "City of Santa Ana" and mailed to:

City of Santa Ana
Parks, Recreation and Community Services Agency
Attention: Administrative Services Division
20 Civic Center Plaza, M-23
P.O. Box 1988
Santa Ana, CA 92702

7. AS-IS Condition. City makes no representation or warranty of any kind as to the condition of the License Area or any other matter relating to Licensee's use of the License Area. Licensee hereby disclaims and waives any and all objections to the physical and other characteristics and conditions of the License Area. Licensee acknowledges and agrees that the use of the License Area will be on the basis of Licensee's own investigation of the condition of the License Area. The license to use the License Area shall be granted on an "AS-IS," "WITH ALL FAULTS" basis, without representation or warranty expressed or implied by City, or by operation of law. City expressly disclaims, which Licensee hereby acknowledges and accepts, any implied warranty of condition or fitness for a particular purpose or use. Licensee's use of the License Area shall be subject to the License Area being in a usable and safe condition at the time of Licensee's

use and Licensee shall be responsible for determining whether the License Area is in such condition. In connection therewith, in the event that the License Area or access thereto is damaged or obstructed or the use by Licensee is otherwise impaired, prevented or limited, City shall have no obligation or duty to repair the damage or rectify the condition to make the License Area usable or safe.

8. Insurance.

8.1 Licensee shall secure or cause its agents or contractors performing any entry onto the License Area to secure, prior to commencing any activities under this Agreement, and maintain or cause to be maintained during the term of this Agreement, insurance coverage as follows:

8.1.1 **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

8.1.2 **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Licensee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

8.1.3 **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

8.3 The insurance policies are to contain, or be endorsed to contain, the following provisions:

8.3.1 **Additional Insured Endorsement-** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of Licensee Parties use of the License Area. General liability coverage can be provided in the

form of an endorsement to the Licensee's insurance.

- 8.3.2 Primary Coverage- For any claims related to this License, the Licensee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
- 8.4 Notice of Cancellation- Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- 8.5 Waiver of Subrogation- Licensee hereby grants to City a waiver of any right to subrogation, which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- 8.6 Self-Insured Retentions- Self-insured retentions must be declared to and approved by the City. The City may require the Licensee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- 8.7 Acceptability of Insurers- Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- 8.8 Verification of Coverage- Licensee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all ~~ply~~ endorsements to City before work begins. However, failure to obtain the required documents prior to the work

beginning shall not waive the Licensee's obligation to provide them.

- 8.9 The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 8.10 Special Risks or Circumstances- City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

9. Indemnity. Licensee shall indemnify, defend, and hold harmless City, and its respective agents, representatives, employees, subsidiaries and affiliates ("Covered Parties") from and against any and all actions, suits, claims, demands, judgments, losses, expenses, or liabilities, injuries and damages to persons and property, including death, arising out of or related to Licensee's use of the License Area, the entry by any Licensee Party on the License Area or surrounding property, or Licensee's breach or default in the performance of any of its obligations under this Agreement; provided, however, that Licensee will not be obligated to indemnify the Covered Parties from any claims arising solely from the gross negligence or willful misconduct of a Covered Party. If any action or proceeding is brought against any Covered Party by reason of any such claim, Licensee, upon receipt of written notice from Covered Party, shall defend the same at Licensee's expense with legal counsel reasonably acceptable to Covered Party. Payment shall not be a condition precedent to recovery under any indemnification in this Agreement, and a finding of liability or an obligation to indemnify shall not be a condition precedent to the duty to defend. The provisions of this Section 10 shall survive the termination or expiration of this Agreement.

10. Miscellaneous.

10.1 Entire Agreement, Waiver and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to the subject matter of this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. Any amendment or modification to this Agreement must be in writing and executed by the appropriate authorities of the City and Licensee.

10.2 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of one or both parties has been materially altered or abridged by such holding.

10.3 No Assignment. Licensee shall not assign or transfer or otherwise convey any interest in this Agreement to any party without the express prior written consent of City, which consent may be withheld in City's sole and absolute discretion.

10.4 Applicable Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California.

10.5 Litigation Expenses. If either party to this Agreement commences an action against the other party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing party.

10.6 Authority. The persons executing this Agreement on behalf of the parties hereto represent and warrant to the other party that they are duly authorized to execute and deliver this Agreement on behalf of such party, and by so executing this Agreement, said party is formally bound to the provisions of this Agreement.

10.7 Notices. Any notices, requests, or approvals given under this Agreement from one party to another shall be in writing and shall be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, by certified mail, return receipt requested, to the addresses of the other party as stated in this section, and shall be deemed to have been received at the time of personal delivery or three (3) days after the deposit for mailing. Notices shall be sent to:

If to Licensor: Santa Ana Unified
School District
Attn: Jeremy Cogan
Director of Facilities Planning
1601 East Chestnut Avenue
Santa Ana, CA 92701

If to City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza
(M-30)
P.O. Box 1988
Santa Ana, CA
92702-1988

10.8 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both of the parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, City and Licensee have entered into this Agreement as of the day and year first written above.

CITY OF SANTA ANA

ATTEST

Kristine Ridge
City Manager

Daisy Gomez
Clerk of the Council

[Signatures continue on the next page]

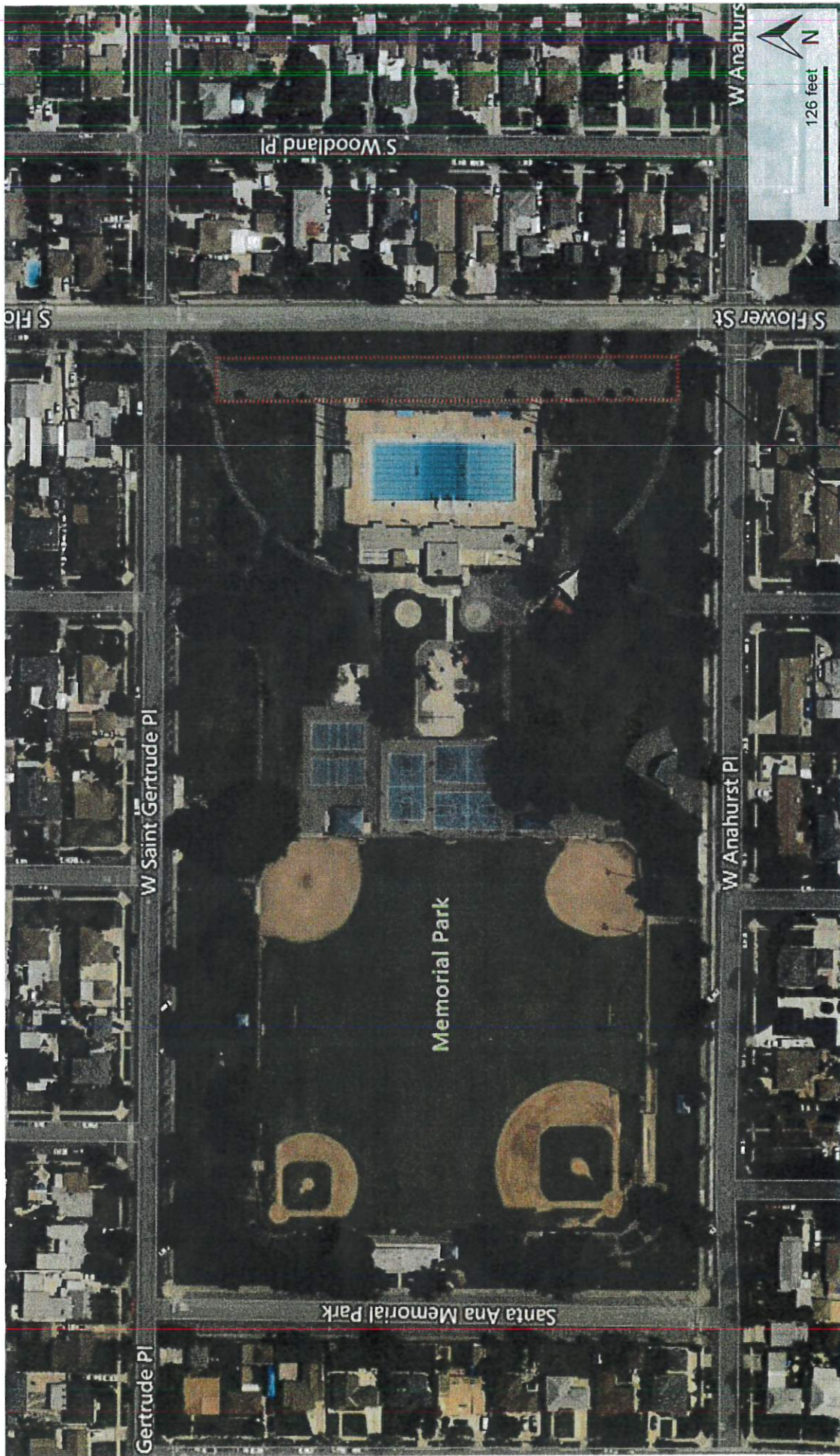
Sonia R. Carvalho
City Attorney

Laura A. Rossini
Chief Assistant City Attorney

By:

Its:

Lisa Rudloff
Executive Director
Parks, Recreation and Community Services
Agency



License Area

