

LICENSE AGREEMENT WITH NOVA ACADEMY

This LICENSE AGREEMENT ("**Agreement**") is dated as of April 19, 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 NOVA Academy, a California non-profit corporation ("**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 210 N. Birch Street, also known as Birch Park, and 502 W. Santa Ana Boulevard, also known as Sasscer Park, as depicted in **Exhibit A** ("**License Area**").

B. Licensee desires to use the License Area for purposes of an evacuation relocation site for Licensee in the event of an emergency and for emergency drills as they may be scheduled by Licensee from time to time 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 April 19, 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, 2025. The term of this License may be extended for two (2) one-year periods upon a writing executed by the Executive Director of the Parks, Recreation, and Community Services Agency, or his or her designee. The License may be terminated by City 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.

To facilitate NOVA's Permitted Use under this License, City will provide the Administrative Director of Licensee five (5) keys for the gate at Birch Park to be distributed to and used by Licensee personnel designated by the Administrative Director of Licensee. These keys shall be returned to City at the expiration or earlier termination of this License.

2. Restoration and Clean Up. At its sole cost, Licensee shall, after each 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, students, 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. Because the City finds the protection of students in the event of an emergency to be of public benefit, City shall not charge and Licensee shall not pay a fee for this License.

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. NOVA Academy shall procure and maintain for the duration of this License insurance against claims for injuries to persons or damages to property that may arise from or in connection with NOVA's use under this License. Such insurance coverage shall be at least as broad as:

8.1 **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 **\$1,000,000** 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.

8.2 **Workers' Compensation:** as required by the State of California, with statutory limits, and employer's liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.3 **Broader Coverage:** if 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 the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

8.4 **Primary Coverage:** for any claims related to this license, the Licensee's coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects to the City, its officers, officials, employees, agents and volunteers.

8.5 **Notice of Cancellation:** each insurance policy required shall not be canceled, except with thirty (30) days written notice to the City.

8.6 **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 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.

8.7 **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.

8.8 **Acceptability of Insurers:** insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

8.9 **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) a copy of the Declarations and Endorsement page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the use contemplated by the License begins shall not waive the Licensee's obligation to provide them.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements require by these specifications at any time.

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 9 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 Licensee: NOVA Academy
Attn: Renee Lancaster, CEO
500 W. Santa Ana Blvd.
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.


[signature page to follow]

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

CITY OF SANTA ANA

LICENSEE

Kristine Ridge
City Manager

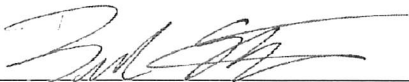


Renee Lancaster
CEO/Founder

ATTEST

Daisy Gomez
Clerk of the Council

APPROVED AS TO FORM
SONIA R. CARVALHO
City Attorney

By: 

Brandon Salvatierra
Deputy City Attorney

RECOMMENDED FOR APPROVAL

Lisa Rudloff
Executive Director
Parks, Recreation, and Community Services
Agency

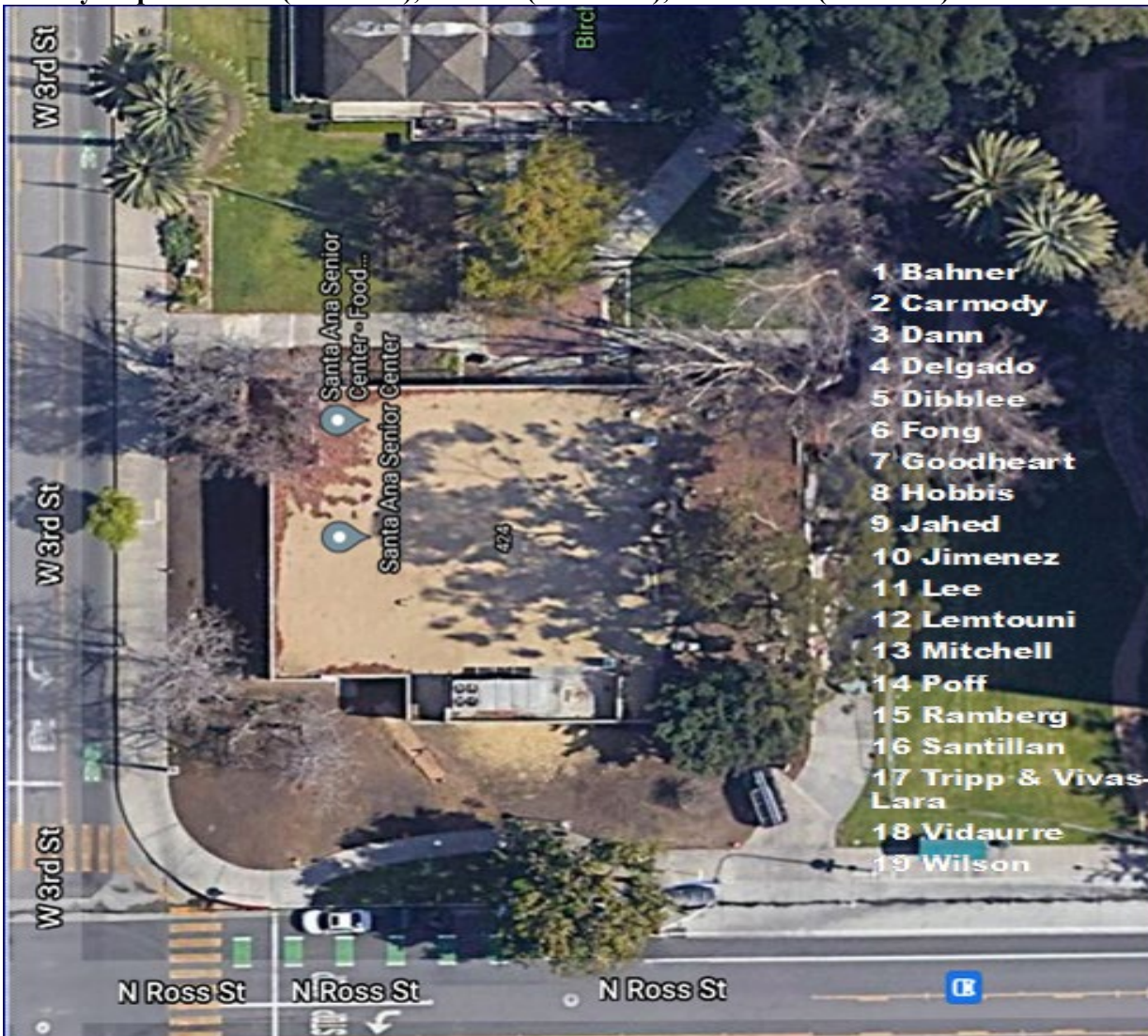
EXHIBIT A

Secondary Reunification Point: Senior Center

Exit the building using the nearest stairwell.

Make sure your entire class makes it safely across the street.

Safety Captains: Lee (2nd floor), Bahner (3rd Floor), Goodheart (4th Floor)



- | | | |
|--------------|--------------|------------------------|
| 1. Bahner | 8. Hobbis | 15. Ramberg |
| 2. Carmody | 9. Jahed | 16. Santillan |
| 3. Dann | 10. Jimenez | 17. Tripp & Vivas Lara |
| 4. Delgado | 11. Lee | 18. Vidaurre |
| 5. Dibblee | 12. Lemtouni | 19. Wilson |
| 6. Fong | 13. Mitchell | |
| 7. Goodheart | 14. Poff | |

Command Center:

- Office Staff
- Counseling Staff
- Support Staff
- Business Office Staff

SASSCER PARK

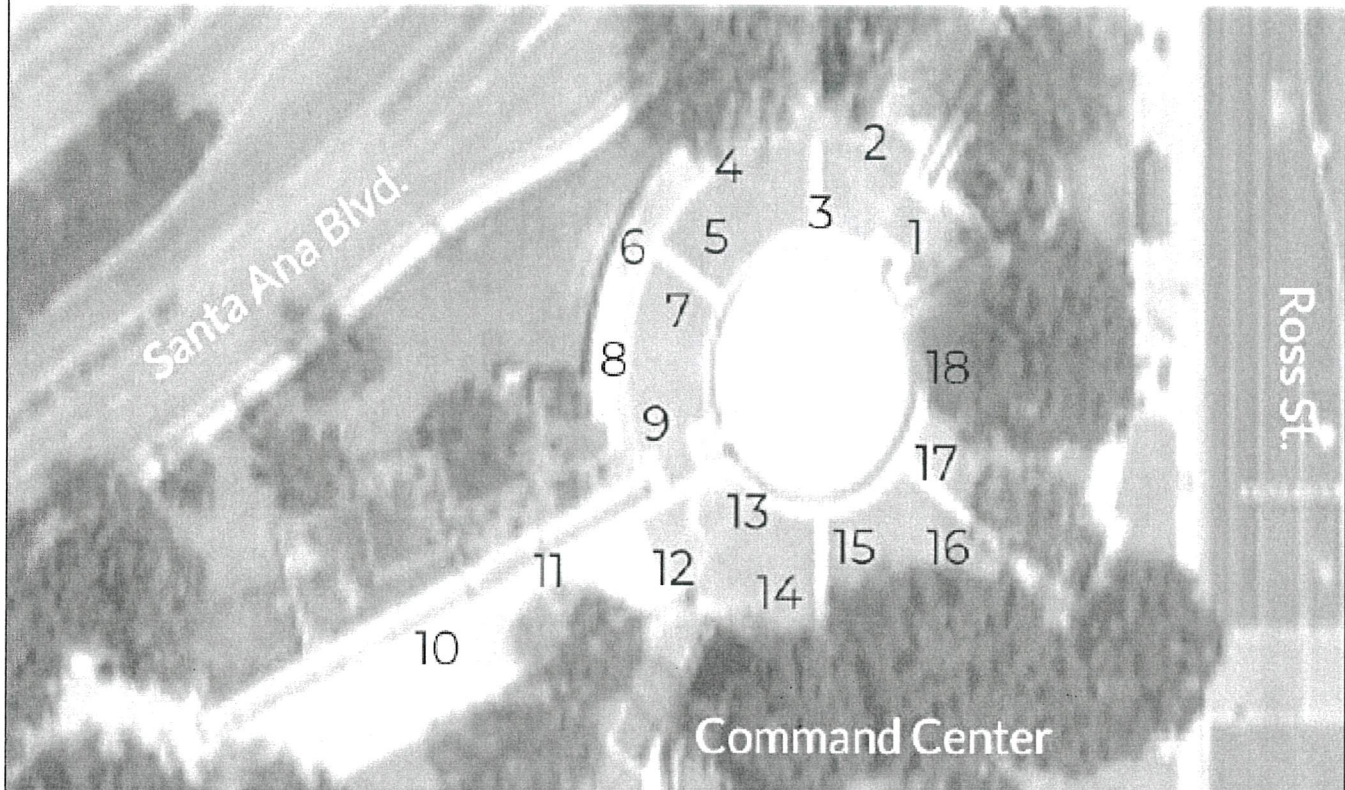
Primary Reunification Point: Sasscer Park Fountain

Exit the building using the nearest stairwell.

Make sure your entire class makes it safely to the fountain.

Safety Captains: Lee (2nd floor), Bahner (3rd Floor), Goodheart (4th Floor)

Evacuation Area Sasscer Park Fountain



1. Bahner
2. Carmody
3. Dann
4. Delgado
5. Dibblee
6. Fong
7. Goodheart

8. Hobbis
9. Jahed
10. Jimenez
11. Lee
12. Lemtouni
13. Mitchell
14. Poff

15. Ramberg
16. Santillan
17. Tripp & Vivas-Lara
18. Vidaurre
19. Wilson

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- Support Staff
- Business Office Staff