

EXHIBIT 3

RIGHT OF ENTRY AND LICENSE AGREEMENT

THIS RIGHT OF ENTRY AND LICENSE AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____ 2022 (“Effective Date”) by and between the CITY OF SANTA ANA, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California, (hereinafter referred to as the “**City**”), and the COUNTY OF ORANGE, a political subdivision of the State of California (herein referred to as the “**County**”), with respect to the following:

RECITALS

- A. County owns that certain real property located at 601 N. Ross Street, Santa Ana, CA, described as Parcel 1 of Parcel Map of Parcel Map No. 2016-182 as shown on a map filed in Book 408, Pages 19 - 26 of Parcel Maps, recorded November 4, 2021, in the Office of the County Recorder of County of Orange, California (hereinafter “**Building 16**”), which is occupied by various County agencies.
- B. County also owns that certain property located at 400 W. Civic Center Drive, Santa Ana, CA described as Parcel 2 of Parcel Map of Parcel Map No. 2016-182 as shown on a map filed in 408, Pages 19 - 26 of Parcel Maps, recorded November 4, 2021,, in the Office of the County Recorder of County of Orange, California (hereinafter “**Building 14**”), which is currently being constructed, and will there after also house County agencies.
- C. City owns or has an easement for public street/road purposes along, above and under the public street commonly known as Ross Street (hereinafter “**Street**”), which abuts Building 14 and Building 16 and was recorded on _____ in Book ____, Page ____, of Official Records, in the Office of the County Recorded of County of Orange, State of California (“**City Easement**”).
- D. County has constructed an overhanging roof as a design element at Building 1 and Building 2, both of which encroach upon the City Easement (the “**Overhangs**”).
- E. County desires a license to construct, maintain and repair its Overhangs which are located on building 14 and 16 between the approximate elevations of 86 and 92 feet above the surface of Ross Street, as described in Exhibit A and depicted in Exhibit B, of Attachment 1 (“**License Area 1**”) and in Exhibit A and depicted in Exhibit B, of Attachment 2 (“**License Area 2**”) attached hereto and incorporate by reference. License Area 1 and License Area 2 may be collectively referred to herein as the “**License Areas**.”

NOW, THEREFORE, for good and valuable consideration, County and City do hereby agree as follows:

1. Right of Entry and License.

Provided that all of the terms and conditions of this Agreement are fully satisfied, as of the Effective Date of the Agreement, City hereby grants to County and its employees, agents and contractors the nonexclusive, non-assignable, personal, revocable right and license to use,

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maintain, and repair said Overhangs within the License Areas. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any rights of possession, easement or other cognizable property interest in said Street.

2. County's Duties.

By execution of this Agreement, County agrees for itself and on behalf of its employees, agents, consultants and contractors as follows:

a. All work performed by County on the Overhangs from or within the License Areas shall comply with the current edition of the Standard Specifications for Public Works Construction (Green Book) and all applicable City Ordinances, Standards and Specifications currently in effect. The work, including method of installation and limits of construction of the Overhangs shall be depicted on a plan and shall be subject to review inspection and approval by the City Engineer. Any contractor performing work on the Overhangs shall first obtain all applicable permits from the City.

b. The County shall endeavor to maintain and repair the Overhangs from property owned or controlled by County, if practical. Any maintenance or repair of the Overhangs via the City's Street shall require the County to apply for and obtain all applicable permits from the City.

c. County accepts full responsibility for all damages and restoration to City property caused by County pursuant to County's activities stated herein. In the event that County damages any portion of City Property, County shall immediately repair the damage at County's sole cost. Alternatively, the City may, at its election, repair the damage in which case County shall reimburse the City for its direct cost within thirty (30) days of receipt of written demand from City.

d. All work shall be done by a State Licensed Contractor with the appropriate classification. In addition, the contractor shall possess a current City Business License.

e. Traffic.

- Traffic control shall comply with City Standard Plan No. 1125F and the Work Area Traffic Control Handbook (WATCH). Amber lights must be maintained at night.
- Any street closure shall comply with City Standard Plan No. 1125F.

f. Refuse, rubble, gravel, dirt or unused materials shall be removed on a daily basis and final cleanup shall take place within 3 days after completion of the work. If not removed within 3 days, City may remove such refuse, rubble, gravel, dirt or unused materials at County's expense, including the current call-out charge.

g. County shall provide plans for the project on City Standard Sheets and shall provide as-built plans when installation is complete.

h. County shall cause all activities of under this Agreement and all activities on the License Areas to be performed in compliance with all applicable federal, state, and local laws, ordinances, and regulations, and permits.

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3. General Terms and Conditions.

a. Insurance. The County is self-insured; however, prior to undertaking performance of work under this Agreement, County shall require its contractor(s) to obtain and maintain Commercial General Liability Insurance, which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of County's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate. Such insurance shall be endorsed to (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

- i. The following requirements apply to the insurance to be provided by County's contractors pursuant to this section:
 - County contractors shall maintain all insurance required above in full force and effect for the entire period covered by their activities conducted pursuant to this Agreement.
 - Certificates of insurance shall be furnished to the City prior to any County contractors' performance and shall be approved in form by the City Attorney.
 - Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
- ii. If County's contractors fail or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish City with required proof that insurance has been procured and is in force and paid for, City shall have the right, at its election, to terminate this Agreement, if the County fails to cure within thirty (30) days of written notice received by County from City.

b. County shall not permit any mechanics, materialman's or other liens of any kind or nature ("**Liens**") to be filed or enforced against the License Areas in connection with this Agreement. County shall indemnify, defend and hold harmless City, its officers, employees and agents, free from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens. City reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the License Areas or any portion thereof, notices of non-responsibility or any other notice as may be desirable to protect City against liability. In addition to, and not as a limitation of City's other rights and remedies under this Agreement, should County fail, within ten (10) days of written request from City, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless City from and against any loss, damage, injury, liability or claim arising out of a Lien, then City, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgement related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to City, as applicable, by County upon written demand.

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c. County shall not have any ownership interest in the License Areas or be entitled to any reimbursement or repayment for any work performed upon the License Areas pursuant to this Agreement.

d. County may not encroach upon the License Areas for any other purpose or business than that specified in Paragraph 1, above, other than pedestrian purposes already available to members of the general public, without obtaining the prior written consent of the City's Executive Director of the Public Works Agency.

e. City will not be held responsible for loss of, or damage to, any improvements made by County in the License Areas.

f. This License is made subject and subordinate to the prior and continuing right of City to use the public right-of-way.

4. Indemnity.

County hereby agrees to defend, indemnify and hold the City of Santa Ana and its officers, officials, members, employees, agents and representatives, harmless from and against any and all loss, damage, injury, liability, claim, cost or expense (including, without limitation, reasonable attorneys' fees, expert witness fees, court costs, and expenses) arising from or attributable to the activities of County or any of its employees, agents, consultants or contractors upon the License Areas pursuant to this Agreement, except for loss, damage, injury, liability, claim, cost or expense arising from the negligence or misconduct of the City, its officers, officials, members, employees, agents, or representatives. All use of and entry upon the License Areas shall be at the sole cost, risk and expense of County. County acknowledges and understands that should this Agreement be deemed by the County of Orange to create a possessory interest subject to property taxation, that County shall be subject to the payment of property taxes levied on such interest, and that it shall defend, indemnify and hold the City of Santa Ana and its officers, officials, members, employees, agents and representatives, harmless from and against any and all such claims.

5. License Fees.

At the time of any permit issuance, all outstanding fees associated with the License processing, improvement plan-check and work permit shall be paid in full by County.

6. Notices.

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, to the addresses below:

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TO CITY:

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

County of Orange
Attn: Chief Real Estate Officer
CEO Real Estate
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701

With a copy to:

City of Santa Ana
Attn: Executive Director of the Public Works
20 Civic Center Plaza (M-21)
~~Santa Ana, California~~ 92702

TO COUNTY:

7. Termination of Occupancy.

a. County accepts the License Areas in an "as is" condition and upon termination or revocation of this License, County shall, at its own cost and expense, remove any improvements installed, as stated below, and maintained by County and surrender possession of the License Areas to the City in good order and repair and as nearly practicable to the state and condition in which it existed prior to the grant of the License, to the satisfaction of City. The County shall not be required to remove its Overhangs from the City's Street unless the Overhangs substantially interfere with other City related public projects.

8. Miscellaneous.

a. Choice of Law. This Agreement is to be governed by, and construed in accordance with, the laws of the State of California.

b. Remedies. Either party shall, in addition to all other rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and injunction to enforce its rights hereunder, except to the extent expressly provided to the contrary in this Agreement. All rights and remedies under this Agreement are cumulative and no one of them shall be exclusive of any other, and each party shall have the right to pursue any one or all of such rights and remedies or any other remedy which may be provided by law, whether or not stated in this Agreement, except to the extent expressly provided to the contrary in this Agreement.

c. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

d. Non-Liability of Public Officials. No officer, employee, member, agent or representative of City shall be personally liable to County, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to County or its successor, or for any breach of any obligation of the terms of this Agreement.

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e. Assignment. County shall not record, hypothecate, assign or attempt to record, hypothecate or assign this personal License. Any attempt by County to record, hypothecate, or assign this License shall automatically terminate this License Agreement and render this License void and invalid.

f. 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, then each Party shall bear its own costs including but not limited to attorney fees.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

City of Santa Ana

ATTEST:

Daisy Gomez
Clerk of the Council
City of Santa Ana

APPROVED AS TO FORM:

Jose Montoya
Assistant City Attorney

CITY OF SANTA ANA
a charter city and municipal corporation
organized and existing under the
Constitution and laws of the State of
California

Kristine Ridge, City Manager

APPROVED AS TO FORM:

Deputy County Counsel
Office of the County Counsel
Orange County, California

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COUNTY OF ORANGE

A political subdivision of the State of
California

Thomas A. Miller, Chief Real Estate Officer
County Executive Office Real Estate

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EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF ORANGE, CITY OF SANTA ANA, AND IS DESCRIBED AS FOLLOWS:

SEE ATTACHMENT