

LICENSE AGREEMENT

This LICENSE AGREEMENT (“**Agreement**”) is dated as of June 6, 2023, 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 Floral Neighborhood Association (FPNA), a 501(c)3 nonprofit community organization (“**Licensee**”).

RECITALS

A. The City owns or has an easement for public street/road purposes along, above and under the public street commonly known as Broadway (hereinafter “**Street**”), which is adjacent to the Interstate 5 southbound off ramp as depicted on **Exhibit A** (“**License Area**”).

B. Licensee desires to construct, maintain and repair (“**Permitted Uses**”) a wrought iron fence (“**Fence**”) at the License Area as depicted on **Exhibit B**.

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 the date first written above, 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. The initial term of the license shall be three (3) years. At the expiration of the initial term, this Agreement shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year extension then in effect.. 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.

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 by removing the Fence, to the reasonable satisfaction of the City and leaving the License Area in a neat and clean condition, free of trash and debris, and removing 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. **Duties of the Parties.**

A. **Licensee Duties.**

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

a. All work performed by Licensee on the Fence from or within the License Areas shall comply with all applicable City Ordinances, Standards and Specifications currently in effect. The work, including method of installation and limits of construction of the Fence shall be depicted on a plan and shall be subject to review inspection and approval by the City. Any contractor performing work on the Fence shall first obtain all applicable permits from the City. Licensee shall be prohibited from installing signage, structural or decorative elements, symbols, logos, graphics, characters or lettering on the Fence without the advance written approval of the City.

b. Any maintenance or repair of the Fence via the City's Street shall require the Licensee to apply for and obtain all applicable permits from the City.

c. Maintain all frontage trees and landscaping that may interfere with the structural integrity of the Fence.

d. The Fence shall be kept structurally sound, with no peeling or flaking paint, free from graffiti and no rusted or worn finishes at all times.

e. Licensee accepts full responsibility for all damages and restoration to City property caused by Licensee pursuant to Licensee's activities stated herein. In the event that Licensee damages any portion of City Property, 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 direct cost within thirty (30) days of receipt of written demand from City.

f. 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.

g. 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.

h. 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 Licensee's expense, including the current call-out charge.

i. Licensee shall provide plans for the project and shall provide as-built plans when installation is complete.

j. Licensee 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.

B. City Duties.

a. Maintain all frontage trees, landscaping, sidewalk surfaces, and associated irrigation systems within the License Area.

b. In the event the Fence is damaged or obstructed for any reason, the City shall have no obligation or duty to repair the damage or rectify the condition to make the License Area usable or safe.

5. Licensee Parties. Licensee, together with its employees, subcontractors, agents, representatives, 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, at its sole cost, shall construct, maintain and repair a Fence that will provide a community benefit by beautifying the public right-of-way near the intersection of N. Broadway and Santa Clara Street directly adjacent to the Main Street/Broadway exit off the Interstate 5 south freeway. The aesthetic fencing will increase pedestrian safety by preventing unwanted pedestrian movements and guiding pedestrians to formal public right-of-way access points. The City finds that due to the community benefit, and no cost to the City, the Licensee shall pay a total license fee of \$810 for its use of License Area.

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. 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:

a. Commercial General Liability Insurance. Licensee and Licensee Parties shall 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 Licensee Parties use of the License Area, 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 and \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

b. Licensee and Licensee Parties performing fence installation or maintenance activities, shall while performing those activities, maintain Worker's Compensation Insurance as required by California law.

c. Licensee and Licensee Parties performing fence installation or maintenance activities, shall while performing those activities, maintain Comprehensive Automobile Liability Coverage, including as applicable owned, non-owned, and hired autos, in an amount of not less than \$1,000,000 per occurrence, combined single limit, written in an occurrence form.

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: Floral Neighborhood Association
Attn: Jeffrey Katz
1919 N. Heliotrope Drive
Santa Ana, CA 92706

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

Jennifer L. Hall
City Clerk

APPROVED AS TO FORM

Sonia R. Carvalho
City Attorney

LICENSEE

By:  _____

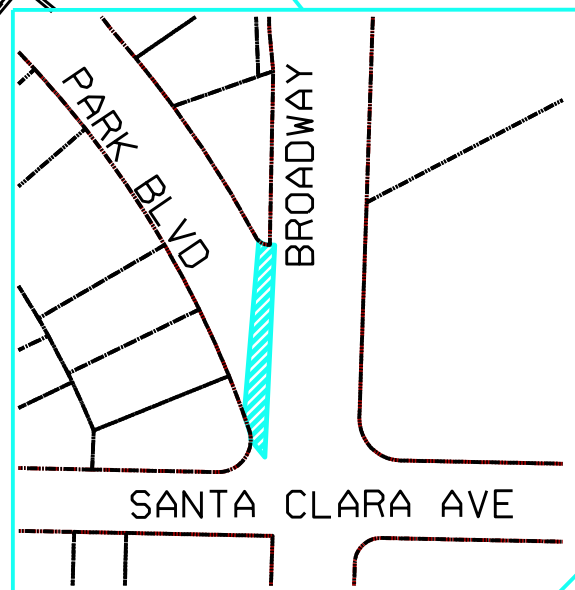
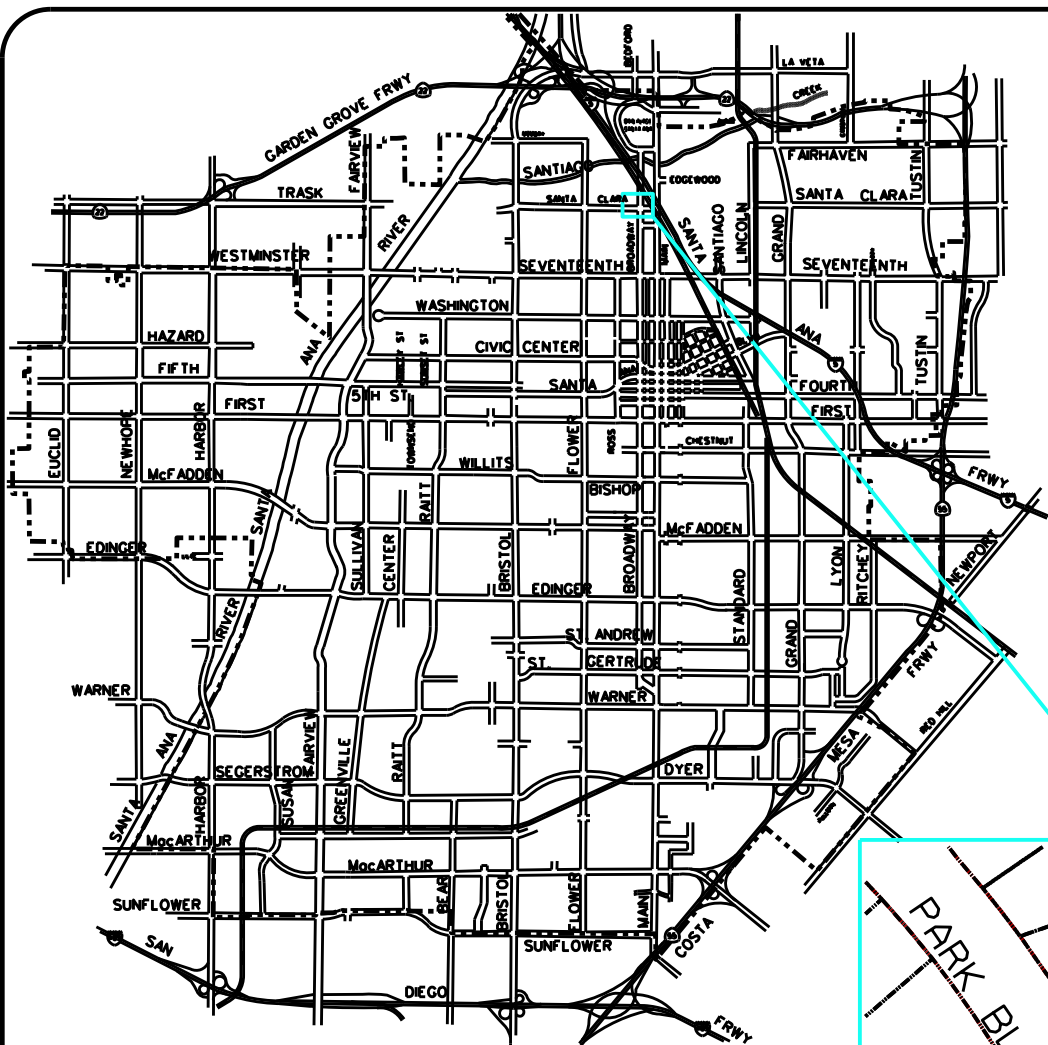
Its: 5/23/2023



Jose Montoya
Assistant City Attorney

RECOMMENDED FOR APPROVAL

Nabil Saba
Executive Director
Public Works Agency



LEGEND:



LICENSE AREA

SANTA ANA



EXHIBIT A
 LICENSE AGREEMENT
 BETWEEN THE CITY OF SANTA ANA
 AND FLORAL PARK NEIGHBORHOOD ASSOCIATION



EXHIBIT B

10' TRANSITION FROM 5' TO 1.5' BEHIND CURB

SEE PAGE 2 OF EXHIBIT FOR FENCE CROSS SECTION AND FENCE DETAILS.

PARK BLVD

FENCE SHOULD BE INSTALLED APPROXIMATELY 4' FROM BACK OF SIDEWALK, EAST OF THE TREE LINE.

BROADWAY

FENCE SHOULD END BEFORE SIDEWALK

SANTA CLARA AVE

NOTE:
FENCE SHOULD NOT PROHIBIT PEDESTRIAN ACCESS
LEGEND:
—— PROPOSED FENCE

