

LICENSE AGREEMENT

This LICENSE AGREEMENT ("**Agreement**") is dated as of August 29, 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 The Legacy Fund ("**Licensee**"), a California non-profit public benefit corporation.

RECITALS

A. Licensee owns that certain real property located at 921 North Main Street and 1000 North Main Street, described as Parcel 2 of Lot Line Adjustment No. 2014-01, Instrument Number 2014000501842, Official Records, Orange County (APN 005-185-34), and a portion of Lot 9 of the Columbia Tract, Book 7, Page 17 of Miscellaneous Maps, Official Records, Orange County (APN 398-562-09), which is occupied by Licensee as part of the Orange County School of the Arts (hereinafter OCSA) campus.

B. City owns or has an easement for public street/road purposes along, above and under the public street commonly known as Tenth Street (hereinafter "**Street**"), which was granted or dedicated to the City on documents recorded in Book 105, Page 369 of Deeds, and as Instrument Number 2009000365812 of Official Records, and as Instrument Number 2009000365808, of Official Records, all in the Office of the County Recorder of County of Orange, State of California (hereinafter "**Public Right-of-Way**").

C. The Street is located between Sycamore Street and Main Street, which abuts the OCSA Campus, as depicted on **Exhibit A** (hereinafter "**License Area**").

D. Licensee desires to use the License Area for purposes of installing the Area Improvements (as defined below) and allowing OCSA students, faculty and school staff to occupy License Area to eat lunch, rest in between classes, present outdoor performances, host festivals and school club activities, conduct campus emergency drills, and facilitate community engagement activities ("**Permitted Uses**"). Area Improvements include the installation of trees, painted graphics over street surfaces, traffic gates, placement of moveable outdoor furniture, equipment, and materials (hereinafter "**Area Improvements**") as set forth and identified in **Exhibit B**, attached hereto and incorporated herein by this reference.

E. 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 August 15, 2023, for the Permitted Uses described in **Recital D**, 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 August 14, 2033, unless extended in writing by the Executive Director of the Public Works Agency, or his or her designee. The License may be extended up to five years, up to two times. In no case, under this agreement, shall the license be extended beyond August 14, 2043. 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.

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 Area Improvements 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 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 10th street 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 Area Improvements shall be depicted on a plan and shall be subject to review inspection and approval by the City, at its reasonable discretion. Any contractor performing work in the License Area 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 City trees, light poles and traffic signal poles without the advance written approval of the City.

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

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

d. 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.

e. 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.

f. 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.

g. 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 sole cost and expense, including the current call-out charge.

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

B. City Duties.

a. In the event the Area Improvements are 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 shall pay City an annual License Fee of \$3,000 for the term of the License, or a pro-rated portion thereof, for any extension of the Agreement pursuant to Section 1. The continued use of the License Area by Licensee will protect OCSA students from vehicular traffic, and the Area Improvements will have a positive impact on student learning and improve the quality of life for the community.

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 procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Licensee, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be *at least as broad as*:

- **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including 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.

- **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.
- **Workers' Compensation** insurance 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.

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 the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Licensee to 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.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts or equipment furnished in connection with such work or operations.
2. For any claims related to this contract, the **Licensee's insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, agents, and volunteers.
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents, and employees for losses paid under the terms of any policy which arise from work performed by the Recipient for the City. This provision also applies to the Licensee's Workers' Compensation policy.
4. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

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.

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

Special Events Coverage for Contractors

Special events coverage is available for an additional fee to provide the liability insurance required by this agreement. Licensee can obtain additional information and cost from the City.

Subcontractors

Licensee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that City is an additional insured on insurance required from subcontractors.

Special or Low Risk Activities

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. The City reserves the right to modify or waive insurance requirements for certain low risk recreational activities.

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 Liens. Licensee 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. Licensee 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 Licensee 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 judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to City, as applicable, by Licensee upon written demand.

10.3 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.

10.4 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.

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

10.6 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.

10.7 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.

10.8 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: The Legacy Fund
Attn: Steve Wagner
1010 N. Main Street
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

10.9 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

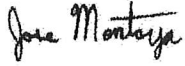
Kristine Ridge
City Manager

Jennifer L. Hall
Clerk of the Council

[Signatures continued on the following page]


APPROVED AS TO FORM

Sonia R. Carvalho
City Attorney



Jose Montoya
Assistant City Attorney

RECOMMENDED FOR APPROVAL


Nabil Saba
Executive Director
Public Works Agency

LICENSEE

By:

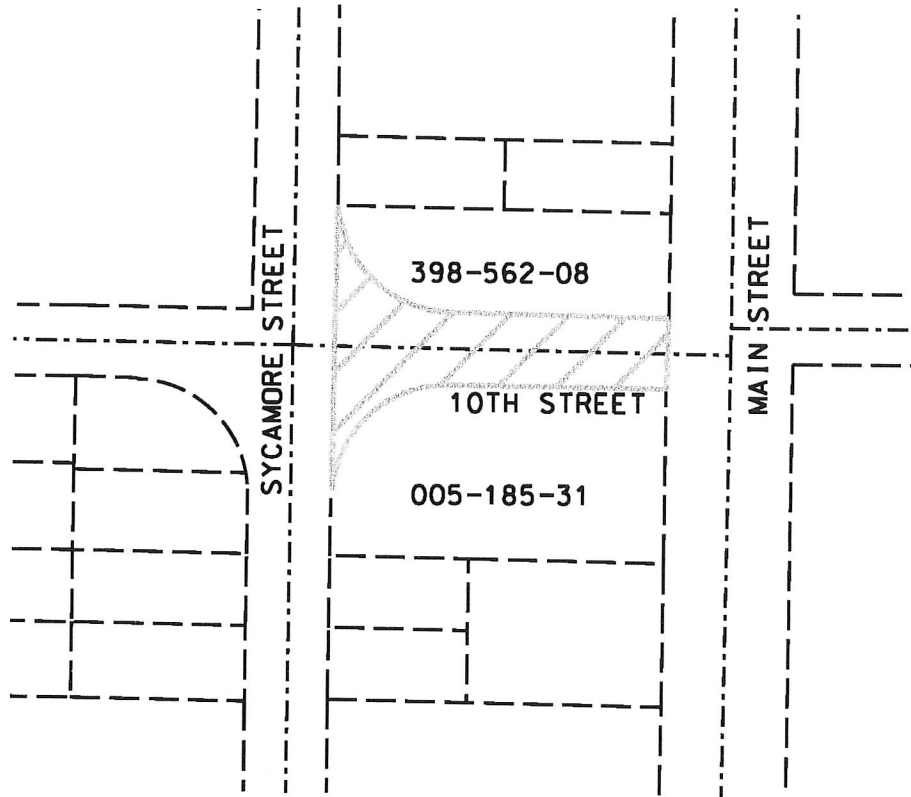


Name:

STEVE WAGNER

Its:

C.O.O



LEGEND:



PROPOSED LICENSED AREA

SANTA ANA



EXHIBIT 1

LICENSE AGREEMENT
WITH THE LEGACY FUND



1 SITE PLAN

- E1. E3 TREE PROTECT IN PLACE
- E2. E4 PLANTING OIL LUMBA, REPAIR AND REPAIRNT ANY DAMAGE AREA FROM PULVERIZING
- E3. E5 FULLY PULL BACK, PROTECT IN PLACE AND ACQUITT LED TO GRACE,
- E4. E6 FRESH INTERMPT, PROTECT IN PLACE
- E5. E7 PLU BERRAGE, PHOTO OF IN PLACE
- E6. E8 CLASH PROTECT IN PLACE