

## FACILITIES USE AGREEMENT

This Facilities Use Agreement (“**Agreement**”) between CITRUS DEVELOPMENT LLC, a California limited liability company (“**Owner**”), and the CITY OF FONTANA, a California municipal corporation (the “**City**” and with Owner, the “**Parties**”) is effective on the \_\_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”) and sets forth the terms under which the Owner will permit the City to use certain facilities and resources located within Fontana Square (the “**Facilities**”), at the northwest corner of Citrus Avenue and South Highland Avenue, in the City of Fontana, CA (“**Fontana Square**”).

WITNESSETH: In consideration of the mutual covenants and conditions contained herein, the parties do hereby contract and agree as follows:

1. The Parties. Fontana Square is owned by Citrus Development LLC. Owner hereby grants to City, City’s employees, agents, independent contractors, and invitees (collectively referred to as “City”) a license to use the Facilities of Fontana Square, as defined below, subject to the terms and conditions contained herein and rules generally applicable to the Facilities imposed by Owner.

2. Facilities. The “Facilities” shall include the 28,000-square foot banquet hall, conference center, entrance area, and adjacent common area hallways and bathrooms of Fontana Square.

3. Purpose. Owner hereby grants to City the right to use the Facilities for City-hosted meetings, symposiums, and conferences (together “**Events**”), and grants permission to City’s invitees and their guests who attend the Events (together “**Attendees**”) to use the Facilities in connection with such Events. These Events may only be hosted by City. The Events shall be related to City business or to matters of public concern. This Agreement is not intended and does not confer any right or obligation upon Owner regarding the conduct or content of the Events, beyond the granting of a license to use the Facilities at Fontana Square set forth herein, and shall not be construed as a promise, guarantee, or other entitlement by City for the provision of Events. Owner’s grant of license to City for use of the Facilities shall not be construed as an endorsement by Owner of any Events held pursuant to the license. For purposes of this Agreement, City shall bear sole responsibility and have sole discretion regarding the content and execution of the Events, subject to additional terms and conditions outlined herein.

4. Hourly and Daily Limits. The Facilities shall be available for use by City and Attendees when requested by the City, subject to availability. Owner shall not prevent City’s use of the Facilities or otherwise unreasonably withhold the Facilities from use by the City. The Facilities shall be available for use by City and Attendees subject to the same date and time restrictions imposed by Owner on all other users of the Facilities, and Owner shall not attempt to limit the dates or times that City may use the Facilities beyond the date and time restrictions Owner imposes on all users of the Facilities. City shall notify Owner in writing of the date and time of Events the City intends to host at the Facilities at least thirty (30) days in advance, which advance notice requirement may be waived by Owner, and the Facilities shall be available for use by City and Attendees on the date and at the time specified in such notice, plus a reasonable

amount of time prior to and after these times to allow for setup and cleanup. Upon receipt of such written notice from City of City's intent to use the Facilities for an Event, Owner shall not enter into an agreement with or otherwise allow another individual, organization, or other entity to use the Facilities during any portion of the time required for the Event as indicated in City's notice.

5. Materials. Unless otherwise indicated, City and Attendees will be allowed to use equipment and materials that are available in the Facilities, including but not limited to tables, chairs, computers, or televisions (together, "**Equipment**"). City will be responsible for returning Equipment to its original placement at the end of each Event and for any loss, damage or harm to any of Equipment caused by City's or Attendees' use of the Facilities under this Agreement. City and Attendees are allowed to bring and use any additional Equipment, for the purpose of the Event, but assume all risk of loss, damage, or harm to such Equipment brought to the Facilities.

6. Access to Facilities. Owner's representatives shall at all times have access to the Facilities, whenever any Event is in progress.

7. Supervision. City shall assume responsibility for supervising the conduct of Attendees during Events. City acknowledges and agrees that any Attendee found to have violated the terms of this Agreement or the rules of conduct for Fontana Square will be asked to leave the Facilities immediately.

8. Term. The term of this Agreement shall begin on \_\_\_\_\_ and shall run for five (5) years, terminating on \_\_\_\_\_. The term of the Agreement may be extended by up to two periods of five (5) years each (for a total of ten (10) years) by written agreement of the Parties.

9. Fees and Utilities. Owner shall not charge a fee to City or to the Attendees for the use of the Facilities to conduct and attend Events under this license. Owner shall pay for the ordinary utilities associated with the use of the Facilities to conduct the Events. City shall pay for expenses incurred due to loss, damage or harm to the Facilities, including Equipment in the Facilities, caused by City's or Attendees' use of the Facilities during the Events, including any costs incurred for clean-up and returning the Facilities and its materials to its original placement or condition, excepting reasonable wear and tear caused by the ordinary and reasonable use of the Facilities.

10. License; No Vested Property Interest. Owner's grant to City and to Attendees hereunder is a license to use the Facilities at Fontana Square. City shall not be deemed a tenant of Fontana Square or of Owner. Attendees who do not otherwise reside at Fontana Square are not tenants of Fontana Square or of Owner. This Agreement shall not create a vested right of any nature in any party to this Agreement, except as expressly granted by this Agreement and subject to the terms and conditions set forth herein.

11. No Employment. City is solely responsible for its own actions or omissions, and for the official acts or omissions of any of its individual representatives under this license. City and City's individual representatives are not Owner's employees for any purpose, and Owner and its employees, agents, and representatives shall not be employees of City. Any additional

individuals performing services under this Agreement on behalf of City shall also not be employees of Owner, shall at all times be under City's direction and control, and shall comply with all terms and conditions of this Agreement. City has no authority, express or implied, to act on behalf of Owner, as an agent or representative of Owner under this Agreement, or to bind Owner to any obligation. City shall pay all wages, salaries, and other amounts due to such individuals in connection with his/her performance of this Agreement and as required by law.

12. General Compliance With Laws. The Parties shall comply with all federal, state, and local laws, statutes, rules, and regulations in any manner affecting the performance of this Agreement. Owner agrees and warrants that Owner is solely responsible for the ordinary maintenance and improvement of Fontana Square, including the Facilities, in accordance with Owner's obligations to the residents of Fontana Square and any and all other applicable state and local laws, rules and regulations.

13. Americans With Disabilities Act. City agrees that it shall make every attempt to accommodate people with physical and / or mental disabilities in the preparation and planning of its Events. Provided, however, that ultimate responsibility for the Facilities' compliance with all accessibility laws, including but not limited to the Americans With Disabilities Act (42 U.S.C. § 12101), shall lie with Owner.

14. Hold Harmless and Indemnification. City shall defend, indemnify, and hold harmless Owner, its employees, agents, and independent contractors (together, the "**Owner Parties**"), from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or in equity to property or person, including wrongful death (together, "**Claims**"), in any manner arising out of or incident to City's use of the Facilities pursuant to this Agreement, except to the extent of any Owner Party's negligence or willful misconduct.

Owner shall defend, indemnify, and hold harmless City, its elected and appointed officials, employees, agents, independent contractors, Attendees, and volunteers (together, the "**City Parties**") from and against any and all Claims arising out of or incident to Owner's negligence or willful misconduct in connection with Owner's obligations to maintain and improve Fontana Square and the Facilities, including but not limited to building and fire safety conditions and all other applicable state and local laws and regulations.

15. Insurance. City agrees that Owner will be included as an additional insured on City's liability insurance, but only with respect to Events under this Agreement. Prior to the commencement of this Agreement, City shall provide proof to Owner that Owner is an additional insured party on City's liability insurance and provide to Owner, on an annual basis thereafter, a certificate of insurance proving such additionally insured status.

16. Modification. No waiver, modification, or termination of this Agreement is valid unless made in writing and signed by City and Owner.

17. Non-Assignment. The Parties shall not have any right to assign and / or transfer any rights and / or obligations under this Agreement without the prior written consent of the other Party.

18. Termination. This Agreement may be terminated by either Party for cause or for no cause at all upon 30 days' written notice. Both parties shall perform in accordance with this Agreement prior to the effective termination date.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the date first set forth hereinabove.

CITRUS DEVELOPMENT LLC, a California limited liability company

By: \_\_\_\_\_  
NAME

By: \_\_\_\_\_  
NAME

Date: \_\_\_\_\_

CITY OF FONTANA

By: \_\_\_\_\_  
Matthew Ballantyne, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney