

**NON-EXCLUSIVE LICENSE AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
[INSERT]**

THIS NON-EXCLUSIVE LICENSE AGREEMENT ("Agreement") is made and entered into effective on the [] day of [], 2016, by and between the City of Desert Hot Springs, a California municipal corporation located in the County of Riverside, State of California ("City"), and [INSERT ENTITIES LEGAL NAME], a [INSERT FORM OF BUSINESS; e.g. corporation] ("Licensee"), with City and Licensee sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties," with respect to the following:

RECITALS

WHEREAS, the City owns the improvements that comprise of a [BRIEFLY DESCRIBE WHICH CITY-OWNED, OPERATED OR LEASED PREMISES PREMISES] ("Premises"), located at _____ St, Desert Hot Springs, California, 92240; and

WHEREAS, Licensee desires to provide [BRIEFLY DESCRIBE HOW PREMISES WILL BE USED] ("Permitted Use"), as more particularly described in the Facility Use Permit and Application Documents, attached hereto and incorporated herein by this reference as Exhibit "A" (collectively, "Use Permit"); and

WHEREAS, Licensee desires to use the Premises for the Permitted Use from [INSERT DATES]. ("License Period"); and

WHEREAS, the City Council approved this Agreement during its meeting on [INSERT DATE]; and

WHEREAS, the City intends to allow Licensee to use the Premises for the aforementioned Permitted Use for the License Period.

Now therefore, in consideration of the covenants, conditions and promises contained herein, the parties agree as follows:

AGREEMENT

Section 1. RECITALS

The Recitals set forth above are hereby incorporated into this Agreement by this reference, as though fully set forth herein.

Section 2. **GRANT OF NONEXCLUSIVE LICENSE AND TERM**

The City hereby grants to Licensee a revocable, nonexclusive right, privilege, and permission to enter onto and use the Premises for the Permitted Use for the duration of the License Period, in accordance with this Agreement and the Use Permit ("License").

Section 3. **USE OF PREMISES**

a. Licensee's Use. During the License Period, Licensee shall be permitted to use the Premises only for the Permitted Use in accordance with this Agreement and the Use Permit. The Permitted Use must be in a form consistent with the normal use of the Premises and must be done in a safe manner. Licensee shall neither make nor cause to be made any alterations, additions or improvements in, on or to the Premises without the prior written approval of the City. Licensee covenants and agrees that Licensee shall not cause any disruption or annoyance that may interfere with the normal operations of the Premises.

b. City's Use. The City hereby retains any and all rights for the City to use the Premises in any lawful manner, even though that use may interfere with the Permitted Use of the Premises.

c. Keys. The City shall provide to Licensee the use of ____ key to gain access to the Premises. Such key shall not be duplicated. Such key shall immediately be returned to the City upon termination of Licensee's Use of the Premises, or abandonment of the Premises, or upon termination of this Agreement, whichever occurs earliest.

Section 4. **SUPERVISION**

_____[IF SUPERVISION IS REQUIRED (IE-LIFEGUARD, SECURITY, ETC)]

Section 5. **Reserved.**

Section 6. **COMPLIANCE WITH TERMS AND CONDITIONS OF FACILITY USE PERMIT**

Licensee hereby represents and warrants that Licensee understands and agrees to comply with all terms and conditions set forth in the attached Use Permit, related to use of the Premises; provided, however, in the event any conflict exists between the Agreement minus the Facility Use Permit, on the one hand, and the Facility Use Permit, on the other hand, the former shall supersede.

Section 7. **DEPOSIT**

a. Licensee covenants and agrees to pay the City a minimum deposit ("Deposit") of [SPELL OUT DOLLAR AMOUNT] Dollars and Zero Cents (\$____,____.____), immediately upon execution of this Agreement, as pursuant to the Use Permit (Exhibit A). These funds can be used to cover operations and maintenance costs of the Premises, including the cost to repair any damage and/or cost of replacement of anything damaged (including City's administrative time), when such damage is caused by any Licensee Party, as defined below, or by any person allowed on the premises with Licensee's (or any Licensee Parties') consent or invitation ("Maintenance Costs").

b. In the event at any time during the License Period the Deposit is drawn down _____ Dollars and Zero Cents (\$____00) or less, immediately upon notice from the City, Licensee covenants and agrees to pay to the City such funds necessary to replenish the Deposit to an amount of no less than [SPELL OUT DOLLAR AMOUNT] Dollars and Zero Cents (\$____,____.____). Such funds will be used to cover Maintenance Costs.

Section 8. INSURANCE

a. Policies.

(1) General Liability Coverage. Licensee shall procure and maintain at its own expense, during the License Period, general liability insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, insuring its interests against claims for personal and bodily injury, death and property damage occurring as a result of the use of the Premises under this Agreement by Licensee, its officers, employees, servants, volunteers, agents, and independent contractors (collectively, "Licensee Parties" or individually as "Licensee Party").

(2) Worker's Compensation Coverage. Licensee shall procure and maintain at its own expense, for the duration of the License Period, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by the Licensee pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Licensee shall provide adequate insurance for the protection of such employees to the satisfaction of the City. Licensee agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the City and to require any and all subcontractors and any other person or entity involved with the Permitted Use to do the same.

(3) Automobile Liability Coverage. Licensee shall further procure and maintain at its own expense for the duration of the License Period, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, covering any vehicle utilized by Licensee or its

officers, employees, servants, volunteers and agents and independent contractors in performing the Permitted Use.

b. Insurance Documentation.

(1) Licensee shall secure from a good and responsible company or companies authorized to do insurance business in the State of California, and possessing a Best's rating of no less than A:VII, the policies of insurance required by this Agreement and furnish to the City certificates of said insurance with original endorsements on or before the commencement of the term of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

(2) Each policy required herein must be endorsed to provide that the policy shall not be cancelled or reduced in coverage by either Party (except by paid claims) unless the insurer has provided the Foundation with thirty (30) days prior written notice of cancellation or reduction in coverage.

(3) All insurance policies required to be provided by Licensee or any other Party must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the City, and its officers, employees, servants, volunteers, agents and independent contractors. Any insurance maintained by the City, including any self-insured retention the City may have shall be considered excess insurance only and shall not contribute with it.

(4) Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies shall bear an endorsement whereby it is provided that the City and their officers, employees, servants, volunteers and agents and independent contractors are named as additional insureds.

(5) Licensee shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and their officers, volunteers, employees, contractors and subcontractors.

(6) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to the City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Consultant agrees to ensure that the most current certification of insurance is on file with the City at all times during the term of this Agreement.

e. Imposition of Insurance Requirements. Licensee covenants and agrees to require that all parties with whom Licensee enters into contracts or whom Licensee hires or retains pursuant to or in any way related to the performance of this Agreement, including any and all Licensee Parties, provide the insurance coverage required herein, at minimum, and name as additional insureds the City of Desert Hot Springs, and the Parties to this Agreement. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

f. Maintain Coverages. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Licensee agrees to maintain all coverages required herein until the City provides written authorization to terminate the coverages following the City's review and determination that all liability posed under this Agreement as to the Party providing insurance has been eliminated.

g. Failure to Obtain Coverages. Licensee agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any Licensee Parties or others involved in any way with the Permitted Use, Licensee shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City and their officers, employees, servants, volunteers, agents and independent contractors.

Section 9.

NO REPRESENTATIONS OR WARRANTIES

Neither the City nor the City's agents or attorneys have made any representations or warranties with respect to the Premises, except as expressly set forth herein, and no rights, easements or leases are or shall be acquired by Licensee by implication or otherwise.

Section 10.

COMPLIANCE WITH LAWS

Licensee shall comply with all local, state and federal laws, rules, regulations,

policies, and procedures applicable to use of the Premises, including, but not limited to, obtaining a business license from the City.

Section 11. **HOLD HARMLESS; INDEMNIFICATION**

a. Licensee shall defend, indemnify and hold harmless the City and their officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of the use of the Premises by any of the Licensee Parties, except to the extent any such claim may arise out of the gross negligence or willful misconduct of the City and their officers, agents, employees or volunteers.

b. The City does not, and shall not, waive any rights that it may have against Licensee under this section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

Section 12. **WAIVER OF RIGHTS**

a. Licensee agrees to waive all rights it may have against the City and its officers, agents, employees and independent contractors to pursue any actions, suits, proceedings, claims, demands, losses, judgments and costs and expenses of every type and description, including settlement costs, legal costs and attorneys' fees, resulting from or arising out of, or otherwise in connection with any injury or damage sustained by any Licensee Parties that may arise from this Agreement.

b. Licensee expressly waives any and all rights and benefits conferred upon Licensee by the provisions of section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected. Licensee further represents and warrants that Licensee understands this waiver and that if it does not understand this waiver, Licensee shall seek the advice of a qualified attorney before executing this Agreement.

Initials

Section 13. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the City:

[INSERT NAME], [INSERT TITLE]

City of Desert Hot Springs
65-950 Pierson Blvd.
Desert Hot Springs, CA 92240
Telephone: (760) 329-6411
Facsimile: (760) 288-3129
Email: [insert]@cityofdhs.org

To Licensee:

[INSERT ENTITY NAME]

Attn: _____

Telephone: (760) _____

Facsimile: (760) _____

Email: _____

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 14. ATTORNEY'S FEES AND LITIGATION EXPENSES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 15. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the Parties

when at least a copy hereof shall have been signed by both Parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 16. **TERMINATION OR EXPIRATION**

a. This Agreement may be terminated or suspended without cause by either Party at any time provided that the respective Party provides the other Party at least ten (10) calendar days written notice of such termination or suspension.

b. This Agreement may be terminated by the City in the City's sole and absolute discretion immediately if the City determines Licensee to be in violation of the terms of this Agreement or any of the rules or regulations that govern the Premises.

c. Upon termination or expiration of this Agreement, Licensee shall immediately cease all use of the Premises, and cause any and all Licensee Parties to immediately cease all use of the Premises. City shall withdraw funds from the Deposit for such Maintenance Costs incurred through date of expiration or termination.

Section 17. **REPRESENTATIONS AND ACKNOWLEDGMENTS
REGARDING STATUS OF LICENSEE**

a. Licensee represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Licensee or its employees in order for Licensee to perform its services.

(2) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Licensee on a continuing basis after termination of this Agreement.

(3) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Licensee to perform the services described in this Agreement.

(4) Licensee shall not at any time or in any manner represent that it or any of its officers, employees, or agents are "employees" of the City.

b. The City represents and acknowledges the following:

(1) The City will not hire, supervise or pay any assistants working for Licensee pursuant to this Agreement.

(2) Nothing in this Agreement shall be interpreted to imply that Licensee must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(3) Licensee is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(4) Nothing in this Agreement shall be interpreted to preclude Licensee from working for other persons or firms, provided that such work does not create a conflict of interest.

(5) Licensee is not required to perform the Permitted Use set forth in this Agreement in any particular order or sequence.

Section 18. NOT AGENT

a. Nothing contained in this Agreement shall be deemed, construed or represented by the Licensee or City or by any third person to create the relationship of principal and agent.

b. Licensee shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Licensee have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 19. EQUAL OPPORTUNITY EMPLOYMENT

Licensee represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race; denial of family and medical care leave; religious creed (including religious dress and grooming practices); color; national origin (including language use restrictions); ancestry; physical disability or mental disability (including HIV and Aids); medical condition (cancer and genetic characteristics); genetic information; military or veteran status; marital status; gender, gender identity, and gender expression; sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding); age or sexual orientation. Unless otherwise permitted under the law, Licensee shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

Section 20. CONFLICTS OF INTEREST

Licensee covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Permitted Use under this Agreement. In the event the City officially determines that

Licensee must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Licensee shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

Section 21. **LICENSING AND PERMIT REQUIREMENTS**

Licensee represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for the Permitted Use described in this Agreement, including a City business license.

Section 22. **TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

Section 23. **CONFIDENTIALITY**

Licensee shall not use the City's insignia or photographs relating to the Licensee's Permitted Use, or any publicity pertaining to the Licensee's Permitted Use under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

Section 24. **MODIFICATIONS AND AMENDMENTS**

This Agreement may be modified or amended only by a written instrument signed by both Parties.

Section 25. **BACKGROUND CHECKS**

At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Licensee's personnel who perform work required related in any way to the Permitted Uses, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of the Premises. If the City makes a reasonable determination that any of Licensee's prospective or then current personnel is deemed objectionable, then the City may notify Licensee of the same. Licensee shall not use that personnel to perform work related to the Permitted Use, and if necessary, shall replace him or her with another suitable worker.

Section 26. **ENTIRE AGREEMENT**

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Licensee with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 27. AMBIGUITIES

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Section 28. NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer or employee of the City shall be personally liable to Licensee, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Licensee or to its successor, or for any breach of any obligation of the terms of this Agreement.

Section 29. REVIEW BY ATTORNEYS

Each Party hereto has had its attorneys review this Agreement and all related documents. Each Party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

Section 30. WAIVER

a. No waiver shall be binding, unless executed in writing by the Party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 31. ASSIGNMENT AND SUBCONTRACTING

The experience, knowledge, capability and reputation of Licensee, its principals and employees were a substantial inducement for the City to enter into this Agreement. Assignments of any or all rights, duties or obligations of the Licensee under this Agreement will be permitted only with the written consent of the City.

Section 32. NO DAMAGES RELIEF AGAINST CITY

Notwithstanding anything else in this Agreement to the contrary, Licensee acknowledges that the City would not have entered into this Agreement had it been exposed to damage claims from Licensee for any breach hereof. As such, the Parties agree that in no event shall Licensee be entitled to recover damages of any kind whatsoever against City for breach of this Agreement.

Section 33. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 34. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein..

Section 35. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 36. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise

by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

Section 37. **VENUE**

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 38. **EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Licensee, and approved as to form by the City Attorney, and executed by the Mayor or his or her designee.

Section 39. **NO THIRD PARTY BENEFICIARIES**

The Parties do not intend the benefits of this Agreement to inure to any third party, other than the City, nor shall any provision of this Agreement be so construed.

Section 40. **LABOR LAWS**

a. All work performed within the State of California pursuant to this Agreement by Licensee, Licensee's employees and independent contractors, or contractor's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

b. Documentation must be promptly submitted to the City at any time, at the request of the City, for the purpose of determining whether or not the work performed under this Agreement by Licensee or any and all Licensee Party is in compliance with this section.

Section 41. **REPRESENTATIONS OF PARTIES AND
PERSONS EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 42. CONFLICT WITH EXHIBIT A

Should any portion of the body of this Agreement conflict with the Exhibit A attached hereto, which is incorporated, the language of the body of this Agreement shall prevail.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the City and Licensee have executed this Agreement as of the date first written above.

“Licensee”

[INSERT BUSINESS NAME]

Name, Title

“City”

City of Desert Hot Springs

Charles L. Maynard, City Manager

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney

EXHIBIT “A”

CITY OF DESERT HOT SPRINGS FACILITY USE PERMIT

[SEE ATTACHED]