

AGREEMENT FOR USE OF CITY FACILITIES AND FOR PROVISION OF REGISTRATION AND MARKETING SERVICES FOR MARIACHI CLASSES

This Agreement for Use of City Facilities and for Provision of Registration and Marketing Services for Mariachi Classes ("Agreement") is entered into effective September 4, 2019 (the "Effective Date"), by and between the City of Carson, a municipal corporation ("Licensor" or "City") and the Asociacion Cultural de South Bay of Greater Los Angeles, DBA Asociacion Cultural Los Angeles, DBA Mariachi Academy, a 501(c)(3) nonprofit organization ("Licensee"). Licensor and Licensee may be referred to, individually or collectively, as a "Party" or the "Parties."

RECITALS

WHEREAS, Licensee is a 501(c)(3) nonprofit organization that provides a variety of instructor-led classes, lessons, and training and instructional sessions, including music lessons geared towards teaching participants to play mariachi music, to paying members of the public who wish to register for and participate in such classes; and

WHEREAS, for a number of years, Licensee has used rooms located in City's Juanita Millender-McDonald Community Center, also known as the Carson Community Center ("Community Center") for the purpose of conducting classes; and

WHEREAS, for a number of years until June 30, 2019, City's City Council consistently granted Licensee a waiver of the rental fees the City normally charges for use or rental of rooms at the Community Center; and

WHEREAS, Licensee wishes to continue to use the Community Center (and, in one case, wishes to use City's Dominguez Park) to conduct classes, but also wishes to engage City to provide certain marketing and registration-related services to Licensee in connection with such classes. Specifically, Licensee desires Licensor to: (1) perform all duties and responsibilities related to registration of members of the public for participation in the classes; and (2) market, promote, or publicize the classes to the public in a manner that is generally commensurate and consistent with the City's efforts in that regard pertaining to its own recreational classes, programs, or events; and

WHEREAS, Licensor is agreeable to providing the foregoing services to Licensee, and to granting Licensee a license to use the aforementioned facilities as reasonably necessary to conduct classes, in exchange for entitlement to a percentage of the revenues generated by the classes, on the terms and conditions set forth herein, and Licensee is also agreeable to such arrangement; and

WHEREAS, the Parties agree that this Agreement is intended to obviate and supersede any Community Center room rental fees or charges that Licensee would otherwise be required to pay in the absence of this Agreement during the Term hereof.

NOW, THEREFORE, the Parties agree as follows:

OPERATIVE PROVISIONS

1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein by this reference.
2. **Grant of License.** Licensor grants Licensee a license to use room(s) at the Community Center as necessary to conduct the following classes throughout the Term of this Agreement (hereinafter, "Class" or "Classes"):

a. Mariachi Academy of Carson (Youth Classes):

- i. Instrument Instruction; Wednesdays, 4:15 p.m. – 7:15 p.m.
- ii. Ensemble; Saturdays, 8:15 a.m. to 11:45 a.m.
 1. Note: These ensemble classes will be held at Dominguez Park.

b. Mariachi for Adults:

- i. Harmony; Thursdays, 4:45 p.m. – 6:15 p.m.
- ii. Trumpet; Thursdays, 5:45 p.m. – 7:15 p.m.
- iii. Violin; Thursdays, 6:45 p.m. – 8:15 p.m.

c. Mariachi Mass:

- i. Tuesdays, 3:15 p.m. – 4:45 p.m.

The specific room(s) within the Community Center to be used for the Classes shall be determined by the Contract Officer in his or her sole discretion, provided that the Contract Officer should take into consideration the preferences of Licensee as well as the feasibility of placing the Classes in room(s) where the music will not cause a disruption to other members of the public who are using the City's facilities. Licensor's premises or facilities or portions thereof that are used to conduct the Classes, as set forth in this Section, shall be referred to collectively as the "Licensed Premises."

3. **License Fee.** In consideration of the license granted pursuant to Section 2, Licensee agrees that Licensor shall be entitled to a license fee equivalent to twenty-two percent (22%) of the gross revenue generated by the Classes ("License Fee").
4. **Term.** This Agreement shall continue in full force and effect for one year from the Effective Date (the "Term").
5. **Renewal.** Any renewal of the license granted by this Agreement upon or after expiration of the Term, whether such renewal is on the same or different terms as this Agreement, shall require approval and execution of a written agreement by the Parties.

6. **Registration and Promotional Services.** As further consideration for the License Fee, the City shall provide the following services for the benefit of Licensee:

- a. Registration Services. City staff will perform all services reasonably necessary to allow members of the public to register to participate in the Classes. Registration services shall be provided only in-person at the Community Center, unless other registration methods are pre-approved in writing by the Contract Officer. City staff will be made available during normal City business hours to provide the registration services, which shall include, without limitation: (i) accepting, processing and accounting for cash payments; (ii) maintaining lists of all registered Class participants; and (iii) managing or limiting Class registration availability as necessary to ensure that class sizes do not exceed the limits set forth in this Agreement. For Class participants who are under eighteen (18) years of age, a parent or legal guardian shall be required to register on behalf of the Class participant. Absent prior written consent of the Contract Officer, Licensee shall not perform, or cause or allow the performance of, any of the Class registration services set forth in this Section during the Term of this Agreement.
- b. Promotional, Marketing or Publicity Services. City staff will make reasonable efforts to market, promote or publicize the Classes to members of the public within the City in a manner that is commensurate and consistent with those efforts of the City pertaining to classes, events, or programs offered by the City's Parks and Recreation Department. Such efforts shall include, without limitation, referencing or providing information relevant or related to the Classes in the City's quarterly Community Services Guide. Other such efforts may include preparing or disseminating flyers or feature recreation guides regarding the Classes. Licensee shall have editorial review rights over all materials created or promulgated by City pursuant to this Section insofar as they relate to the Classes, including discretion to prevent dissemination of specified materials or portions thereof, and Licensee's written approval shall be required before release or circulation of any such materials. In the event Licensee makes substantive edits to materials created or proposed by City, and City, upon reviewing the edits, deems it necessary to seek legal review of the edited content by the City Attorney's office, City reserves the right to conduct such legal review and to prevent release or dissemination of any content that the City determines, in its sole discretion, may constitute a violation of applicable laws, rules or regulations or expose the City to risk of legal liability.

7. **Payment Procedures.**

- a. All Class revenues collected by Licensor in the course of providing Class registration services pursuant to Section 6(a) during any given calendar month shall be held by the City in a separate liability account until on or before the 28th day of the following

calendar month, at which point the City shall allocate and disburse the amount collected during said preceding month, net of the License Fee, to Licensee. Specifically, City shall allocate and disburse to Licensee seventy-eight percent (78%) of the total amount collected, and shall withhold and retain the remaining twenty-two percent (22%) as payment of the License Fee, which the City may then use, deposit or expend at it sees fit, subject to applicable laws, rules and regulations.

- b. In connection with each monthly disbursement, City shall provide Licensee with a written statement containing the following information with respect to the relevant collection period: (i) the total amount of Class registration revenues collected; (ii) the amount disbursed to Licensee net of the License Fee; (iii) and the amount retained by City as the License Fee.
 - c. In the event the 28th day of any calendar month falls on a Friday, Saturday or Sunday, City shall make the disbursement and provide the statement to Licensee pursuant to subsections (a)-(b) of this Section on or before the Thursday preceding said Friday, Saturday or Sunday.
 - d. In the event Licensee believes City has failed to comply with any provision of subsections (a)-(c) of this Section in connection with any required disbursement or statement, Licensee shall provide written notice of the alleged default to City, and shall allow no less than 30 days from City's receipt of such notice for City to cure such alleged default prior to initiating any legal or administrative action or proceeding related to such default or dispute.
8. **Equipment.** Each of the Classes typically requires 25-30 chairs, 25-30 music stands, and two tables. Licensor shall provide the foregoing equipment for the Classes, to the extent necessary. Licensor has no obligation under this Agreement to provide any additional or different equipment not specified in this Section.
9. **Class Size Limits.**
- a. Maximum Class Sizes. Youth Classes shall be limited to no more than 15 students per level, per instrument (i.e. 15 students each for beginning violin, intermediate violin, beginning guitar, intermediate guitar, beginning trumpet, and intermediate trumpet). Adult classes shall be limited to no more than 30 students.
 - b. Minimum Class Sizes. If any Class does not have the required minimum number of participants (as set forth in this subsection) registered as of the time the Class is scheduled to commence, the Class will be canceled and any amounts paid by registered participants will be refunded to the participants and not counted toward License Fees or Class revenues. The minimum number of students for any

Class is 70% of the maximum Class size set forth in subsection (a) of this Section. For Classes that accommodate 15 students, the minimum will be 11 registered students. For Classes that accommodate 30 students, the minimum will be 21 registered students.

10. **Termination.** Either Party may terminate this Agreement at any time, for any reason or no reason, upon 30 days' written notice of termination to the other Party.
11. **Representative of Licensee.** Raquel Beltran, President, is hereby designated as being the representative of Licensee authorized to act on its behalf with respect to this Agreement and all decisions in connection therewith. All employees or agents of Licensee making use of the Community Center for the Classes ("Personnel") shall be under the exclusive direction of the representative of Licensee. Licensee shall notify City of the identities of all of its Personnel upon execution of this Agreement, and Licensee shall provide advance notice to City of any changes to its Personnel. Licensor may designate a different representative pursuant to this Section upon 30 days' written notice to City.
12. **Contract Officer.** Adrian Reynosa, Community Center Manager, or such other person as may be designated by the City Manager, is hereby designated as being the representative authorized to act on Licensor's behalf with respect to this Agreement and all decisions in connection therewith ("Contract Officer").
13. **Independent Status.** Neither Licensee nor its Personnel (nor any other agents or employees of Licensee) shall be deemed agents or employees of the City. City shall not have or exercise any control over the manner, mode or means by which Licensee or its Personnel prepare for, perform or conduct the Classes. Conversely, neither City nor any of its staff or other agents or employees shall be deemed agents or employees of Licensee, and Licensee shall not have or exercise any control over the manner, mode or means by which City staff performs the functions or services set forth in this Agreement. Nothing in this Agreement shall prevent Licensee or any of its Personnel or other agents or employees from conducting or participating in any classes, lessons or training sessions or otherwise engaging in any business endeavors that are separate from the Classes. Licensee shall not at any time or in any manner represent that it or any of its Personnel or other agents or employees are agents or employees of City, or that Licensee is a member of a joint enterprise with City. City shall not in any way or for any purpose become or be deemed to be a partner of Licensee in its business or otherwise or a joint venturer or a member of any joint enterprise with Licensee.
14. **Waste; Nuisance.** Licensee shall not commit, suffer, or permit any waste or nuisance by Licensee or the Class participants in or about the Licensed Premises in connection with

Licensee's use thereof pursuant to this Agreement. Licensee agrees not to use any of the utilities furnished by Licensor in a wasteful, unreasonable, or hazardous manner.

15. **Compliance with Laws, Rules and Regulations.** Licensee agrees not to violate any applicable law or City policy, rule or regulation in connection with its use of the Licensed Premises. Licensee represents and acknowledges that it has received, read and understands Licensor's Community Center rules and regulations, and agrees that it will comply with said rules and regulations in connection with its use of the Licensed Premises.
16. **Release.** Licensee hereby waives, releases and discharges Licensor, including its officials, officers, agents and employees, from and against any and all claims or liabilities to Licensee or any other person or entity, including but not limited to claims or liabilities for bodily injury, death, or property damage, arising from or related in any way to Licensee's use of the Licensed Premises, including those involving negligence of the City or Class participants, and Licensee agrees to waive its rights to make any such claims through any action or proceeding against the City. However, Licensee understands that this Section is not intended to release any party from any act or omission of "gross negligence."
17. **Indemnification.** Neither Licensor nor any official, officer, employee, or agent of Licensor shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of Licensee or any of its officers, employees or agents under or in connection with this Agreement. Licensee shall fully indemnify, defend, and hold harmless Licensor and its officials, officers, employees and agents from any claim, action, proceeding, damage, injury, loss, cost, expense, fee (including litigation expenses and attorneys' fees), penalty, obligation, forfeiture or liability, of every nature (including but not limited to property damage, bodily injury, or death) arising out of or related to any act or omission of Licensee or any of its officers, employees or agents under or in connection with this Agreement, except for such claim or liability which was caused by the sole negligence or willful misconduct of Licensor. The indemnity obligation set forth in this section shall survive termination or expiration of this Agreement.
18. **Insurance.** Licensee, at its sole cost and expense, shall secure and maintain, throughout the Term of this Agreement, the following policies of insurance: (1) commercial general liability and property damage insurance with a limit of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; and (2) if Licensee has any employees, worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Licensee against any loss, claim or damage arising

from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Licensee in the course of conducting the Classes.

Licensee's insurance shall: (1) name Licensor as an additional insured; (2) contain a severability of interest clause and a provision that such policy shall be primary and non-contributing with respect to any policy carried by Licensor and that any coverage carried by Licensor shall be in excess of and non-contributing unless the policy limit of Licensee's insurance is exceeded; and (3) be written by companies rated "A" or better in the most recent edition of Best's Insurance Guide and authorized to do business in California, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against City, its officers, employees and agents and their respective insurers. A Certificate of Insurance and endorsements documenting the above insurance coverage must be supplied to Licensor PRIOR to Licensee's use of the Licensed Premises pursuant to this Agreement.

19. **Condition of Premises.** Licensee represents it has inspected the Licensed Premises and has found the same to be satisfactory, and agrees to make use of the Licensed Premises in their present condition.
20. **Transfer; Assignment.** Neither Party may transfer or assign its interest in this Agreement, or any part thereof, without the prior written approval of the other Party. Any transfer or assignment without such approval shall be void and unenforceable.
21. **Prevailing Party Attorneys' Fees.** The prevailing party in action or proceeding initiated by either Party pursuant to this Agreement, in addition to any other relief which may be granted, shall be entitled to recovery of reasonable attorney's fees.
22. **Notice.** Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give pursuant to this Agreement shall be in writing and either served personally or sent by prepaid, first-class mail, addressed as follows:

To Licensor: City of Carson
Attn.: Adrian Reynosa, Community Center Manager
801 E. Carson Street
Carson, CA 90745
(310) 830-7600

To Licensor: Mariachi Academy
Attn.: Raquel Beltran, President

19203 Cliveden Avenue
Carson, CA 90746
(323) 419-2272

Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

23. **Legal Action.** In addition to any other rights or remedies, and except as otherwise provided in Sections 7(d), 16 and 17 of this Agreement, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Licensee shall file a statutory claim pursuant to Government Code Sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.
24. **Covenant Against Discrimination.** Licensee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement.
25. **Conflict of Interest.** No official, officer or employee of Licensor has or shall have any financial interest, direct or indirect, in this Agreement, nor shall any such official, officer or employee participate in any decision relating to this Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5.
26. **Representation and Warranty of Non-Collusion.** Licensee represents and warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. Licensee further warrants and represents that it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result or consequence of obtaining any agreement. Licensee is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money,

consideration, or other thing of value will render this Agreement void and of no force or effect.

Licensee's Authorized Initials _____

27. **Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
28. **Integration; Amendment.** This Agreement is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Parties. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.
29. **Waiver.** Waiver by any Party of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
30. **Severability.** Any term or condition of this Agreement that is deemed invalid or unenforceable by a court of competent jurisdiction shall be severed from the remainder of this Agreement, and the remaining terms and conditions hereof shall nevertheless remain in full force and effect, and shall be construed so as to effectuate the intent of the Parties.
31. **Governing Law.** This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California.

32. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
33. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
34. **Authority.** The persons executing this Agreement on behalf of the Parties warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

[signatures on the following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first above written.

LICENSEE

**Asociacion Cultural de South Bay of
Greater Los Angeles,
DBA Asociacion Cultural Los Angeles,
DBA Mariachi Academy,
a 501(c)(3) Nonprofit Organization**

Raquel Beltran, President

Name:

Title:

LICENSOR

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

Sunny K. Soltani City Attorney
[BRJ]

Two corporate officer signatures required when Licensee is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. LICENSEE'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO LICENSEE'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

☐
☐
☐
☐
☐

PARTNER(S) ☐ LIMITED
☐ GENERAL

ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

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COUNTY OF LOS ANGELES

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☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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