

**FACILITY USE AGREEMENT BY AND BETWEEN THE CITY OF CARSON AND
THE CALIFORNIA STATE UNIVERSITY DOMINGUEZ HILLS FOUNDATION
FOR ART CLASSES CONDUCTED PURSUANT TO THE PRAXIS CITY ArtS PARKS PROGRAM**

This License Agreement ("Agreement") is made and entered into effective the ____ day of ____, 20__, by and between the City of Carson, a municipal corporation ("CITY" OR "LICENSOR") and the California State University, Dominguez Hills Foundation ("FOUNDATION" or "LICENSEE"), a California nonprofit public benefit corporation and auxiliary organization organized under California Education Code §89900 *et seq.* for the benefit of California State University, Dominguez Hills, including specifically its Arts Department (City and Foundation collectively, the "Parties," and each, a "Party").

RECITALS

WHEREAS, the California State University, Dominguez Hills ("University") Arts Department operates a program known as the PRAXIS art engagement program, which launched the PRAXIS City ArtS Parks Program ("Program") in City of Carson ("City") the fall of 2018 to expand narratives of South Los Angeles with afterschool art and mentoring programs in the City. The Program provides an artistic outlet for youth and local communities to aspire and dream, while cultivating pride and specificity of place; and

WHEREAS, on or about May 22, 2019, pursuant to application of the Foundation, the California Arts Council awarded the Foundation a Creative California Communities grant in the amount of \$135,000 for the benefit of the University's Arts Department to continue and expand the Program by providing art workshops taught by working artists at three City parks over a two-year period (the "Grant"); and

WHEREAS, the Parties acknowledge and recognize the mutual benefit to be derived from the continuation and expansion of the Program in the City, which will further integrate the University's arts programming into City communities; and

WHEREAS, the purpose of this Agreement is to implement the Program in three City parks by facilitating the provision of quality art workshops and classes for children and families throughout the City while also providing jobs and training for professional artists and undergraduate students attending the University; and

WHEREAS, the professional artists working in the Program will be compensated by the Foundation with Grant funds to teach the workshops, and will be assisted by University undergraduate students eager to acquire skills in community engagement and youth mentorship, who will be paid a stipend by the Foundation with Grant funds; and

WHEREAS, the Program's benefits are three-fold: (1) it provides job opportunities for working artists; (2) it provides professional development opportunities for undergraduate students; and (3) it provides cultural and critical thinking enrichment for Carson youth (K-6) participants in the classes.

EXHIBIT 1

NOW THEREFORE, in consideration of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 FOR FACILITY USE**
 - a. Licensor hereby grants Licensee, for no fee, payment or cost of any kind, one room or other area or facility, to be determined by the City's Contract Officer in his or her sole discretion, sufficient to accommodate one Program art class or workshop of 12-15 students (hereinafter "Class"), on the days and at the times specified in subsection (b) of this Section, except as otherwise provided pursuant to subsection (c) of this Section, at each of the following City parks:
 - i. Del Amo Park, 703 E Del Amo Blvd, Carson, CA 90746.
 - ii. Carson Park, 21411 Orrick Ave, Carson, CA 90745.
 - iii. Dolphin Park, 21205 South Water Street, Carson, CA 90745.(the "Licensed Premises").
 - b. The Licensed Premises shall be reserved for exclusive Program use on Tuesdays and Thursdays of each week, from 3:30 p.m. to 4:30 p.m., and from 4:45 p.m. to 5:45 p.m., during the weeks and months that coincide with the academic terms or semesters of the public schools in the City, as follows: (i) approximately 17 consecutive weeks from January of 2020 through June of 2020; (ii) approximately 17 consecutive weeks from September of 2020 until late December of 2020; and (iii) from January of 2021 through May of 2021.
 - c. The dates and times set forth subsection (b) of this Section are subject to change by agreement of City's Contract Officer and Foundation's Representative, provided the modified dates and times are memorialized in writing prior to the change taking effect, and provided the total amount of facility use granted, as modified, remains equal to the amount of facility use authorized in subsection (b) of this Section.
3. **CITY RESPONSIBILITIES.** In addition to granting the license pursuant to Section 2, City shall:
 - a. Provide registration services as necessary to register a maximum of 12-15 participants per Class. Children in the levels of kindergarten through sixth grade who are residents of the City of Carson will be eligible to register for the Classes, through a parent or legal guardian;

- b. Make reasonable efforts to market, promote or publicize the Program and/or 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 or Recreation Services Division. Such efforts may include, without limitation, and in City's sole discretion, referencing or providing information relevant or related to the Classes in the City's quarterly Community Services Guide, or preparing or disseminating flyers or feature recreation guides regarding the Classes;
 - c. Subject to compliance with applicable employment-related or other laws, rules, and regulations, endeavor to consider University students who hold or complete Teaching Assistant positions pursuant to this Agreement for subsequent employment or retention by City in analogous or comparable roles, in the event the City establishes a City program for the purpose of continuing art programs or services similar to those rendered pursuant to this Agreement or the Program; and
 - d. Provide "livescan" fingerprinting for all Teachers and Teaching Assistants (as those terms are defined in Section 4) to facilitate criminal history background checks of such persons in accordance with the requirements of California Education Code Section 45125.1 and other applicable law and the City's fingerprint policy, at no cost to the Teachers or Teaching Assistants, prior to such Teachers or Teaching Assistants commencing involvement in Classes under this Agreement.
4. **FOUNDATION RESPONSIBILITIES.** In exchange for the License granted pursuant to Section 2 and the City's responsibilities pursuant to Section 3, Foundation shall:
- a. Provide professional artist teaching staff, which will be employees of Foundation (the "Teachers") to lead and instruct the Classes, and provide University-student teaching assistants (the "Teaching Assistants") to assist in teaching the Classes. One Teacher and two Teaching Assistants shall be present at each Class. All Teaching assistants shall be supervised by a Teacher with respect to the Teaching Assistants' activities and involvement in the Classes. Foundation shall notify City of the identities of all Teachers and Teaching Assistants prior to such persons making use of the Licensed Premises pursuant to this Agreement and sufficiently in advance to facilitate compliance with Section 3(d), and shall provide advance notice to City of any changes to its Teachers or Teaching Assistants sufficiently in advance to facilitate compliance with Section 3(d);
 - b. Using Grant funds, compensate all Teachers and Teaching Assistants for their respective roles in teaching the Classes, in accordance with the terms and conditions of the Grant and/or the Program and this Agreement. Foundation represents and warrants that it will employ and compensate the Teachers with Grant funds, and that it will provide the Teaching Assistants with a stipend using Grant Funds. The parties acknowledge and

agree that all Teachers and Teaching Assistants constitute agents of the Foundation for purposes of this Agreement;

- c. Provide all required, necessary, and appropriate training for Teachers and Teaching Assistants;
 - d. Provide all necessary supplies and materials for the Classes; and
 - e. Develop curriculum and set learning outcomes for the Classes.
5. **EFFECTIVE DATE.** This Agreement shall become effective on the date of full execution hereof (the "Effective Date").
6. **TERM.** The Term of this Agreement shall commence on the Effective Date and continue through June 30, 2021.
7. **TERMINATION.** Either Party may terminate this Agreement for any reason or no reason upon ninety (90) days' written notice to the other Party.
8. **INSURANCE .** By signing this Agreement, the Parties certify they have current insurance policies (or self-insurance) in the following types and amounts of coverage, and that they shall maintain such insurance at all times throughout the term of this Agreement:
- a. Comprehensive General Liability insurance with limits of not less than \$1 million per occurrence, and \$2 million general aggregate.
 - b. Workers' Compensation and Employers Liability Insurance in a form and amount compliant with the California Workers' Compensation Insurance and Safety Act and other applicable law.
 - c. Automobile liability with a minimum of \$1,000,000 combined single limit.

Notwithstanding any other provision of this Agreement, Licensee shall not commence using the Licensed Premises until it has provided the City with the following, to the satisfaction of the City's Risk Management Division: (1) Certificates of Insurance evidencing the above insurance coverages; and (2) endorsements naming the City as an additional insured as to its General Liability and Auto insurance.

9. **INDEMNIFICATION.** Pursuant to Government Code Section 895.4, Foundation shall indemnify, defend and hold harmless City and its elected and appointed officers, employees, and agents from and against all liability, including but not limited to demands, claims, actions, proceedings, damages, fees (including attorney and expert witness fees), costs, expenses, errors, omissions,

and forfeitures, arising from or connected with any acts or omissions by Foundation or its officers, agents or employees (including Teachers and Teaching Assistants) under or in connection with the performance of this Agreement, except for any claim or liability which was caused by the negligence or willful misconduct of City. Foundation shall have no right of contribution from City for payment of any judgment pursuant to Government Code Section 895.6. This provision shall survive termination of this Agreement.

10. **RELEASE.** Licensee hereby waives, releases and discharges City, including its officials, officers, agents and employees, from and against any and all claims or liabilities accruing to Licensee or any of its officers, agents or employees 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 pursuant to this Agreement, including those involving negligence of the City, Teachers, Teaching Assistants, 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."
11. **PHOTO/VIDEO RELEASE.** Each Party, on behalf of itself and its officers, agents and employees using the Licensed Premises pursuant to this Agreement ("P/V Releasing Party"), hereby grants the other Party ("P/V Released Party") the right to photograph or video-record P/V Releasing Party during or in connection with its use of the Licensed Premises pursuant to this Agreement, and to use its photographed or video-recorded likeness, and any image, silhouette, or reproduction of its voice or appearance taken during or in connection with its use of the Licensed Premises pursuant to this Agreement ("Likeness") for any purpose, including publicity and promotion of P/V Released Party and its events, and creation or production of materials in any form for such purpose, with no claim of entitlement to any license fee or royalty of any kind from P/V Released Party. Each Party hereby waives any right to the intellectual property of its Likeness in connection herewith. The rights granted by the Parties hereunder shall not expire.
12. **REPRESENTATIVE OF FOUNDATION.** Michael Williams, Chief Financial Officer, or such other person as may be designated by the Executive Director, is hereby designated as being the representative of Foundation authorized to act on its behalf with respect to this Agreement and all decisions in connection therewith (Foundation's "Representative"). Foundation may designate a different Representative pursuant to this Section upon 30 days' written notice to City.
13. **CONTRACT OFFICER.** Tim Grierson, Recreation Superintendent (or such other person as may be designated by the City Manager), is hereby designated as being the representative authorized to act on City's behalf with respect to this Agreement and all decisions in connection therewith (sometimes referred to herein as the "Contract Officer").

14. **NOTICES.** All notices or other communication provided pursuant to this Agreement shall be given to the Parties addressed as follows:

TO: FOUNDATION

Cal. State University Dominguez Hills Foundation

1000 E. Victoria Street, WH360

Carson, CA 90747

Attn: Jerome Groomes, Interim Executive Director

TO: CITY

City of Carson

701 E. Carson St.

Carson, CA 90745

Attn.: Tim Grierson

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.

15. **GENERAL PROVISIONS**

- a. **Compliance with Law.** Foundation agrees that it will comply with all applicable laws and City policies, rules and regulations in connection with the use of the Licensed Premises pursuant to this Agreement.
- b. **Waste; Nuisance.** Foundation shall not commit, suffer, or permit any waste or nuisance by any of its officers, agents or employees or any Class participants in or about the Licensed Premises pursuant to this Agreement. Foundation agrees not to use any of the utilities furnished by City in a wasteful, unreasonable, or hazardous manner.
- c. **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 "as is," in their present condition as of the effective date of this Agreement.
- d. **Further Cooperation.** The Parties shall reasonably cooperate with one another, and may take additional acts or approve and sign additional documents as may be necessary, appropriate or convenient to effectuate the purposes of this Agreement. The Parties shall work together during the Term of this Agreement to explore opportunities to continue the provision of services substantially similar those offered by the Program as an independent and continuing program in and/or of the City after the expiration of this Agreement, or during the Term of this Agreement but separate and apart from this Agreement.
- e. **Independent Status.**
 - i. City and its agents and employees are, for all purposes, an independent party from Foundation and shall not be deemed employees or agents of Foundation. City and its agents and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Foundation. While

Foundation may be required by this Agreement to carry Worker's Compensation Insurance, in no event shall City or its employees be entitled to unemployment or workers' compensation benefits from Foundation.

- ii. Foundation is for all purposes an independent party from City, and neither Foundation nor any officer, employee or agent of Foundation (including any Teacher or Teaching Assistant), shall be deemed an officer, employee or agent of the City. Foundation and its employees and agents shall at all times act in an independent capacity and not as officers, employees or agents of City. While City may be required by this Agreement to carry Worker's Compensation Insurance, in no event shall Foundation or its employees or agents (including any Teachers or Teaching Assistants) be entitled to unemployment or workers' compensation benefits from City.
 - iii. Neither Party shall at any time or in any manner represent that it or any of its agents or employees are agents or employees of the other Party, or that it is a member of a joint enterprise with such Party. Neither Party shall in any way or for any purpose become or be deemed to be a partner of the other Party in its business or otherwise or a joint venturer or a member of any joint enterprise with such other Party.
- f. **Equal Employment Opportunity.** The Parties covenant and agree, on behalf of themselves and their successors and assigns, that there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability, medical condition or other protected class in connection with the performance of this Agreement.
- g. **Conflict of Interest.** No official, officer or employee of either Party 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.
- h. **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, agent, 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.

- i. **Dispute Resolution.** Any dispute arising under the terms of this Agreement which is not resolved within a reasonable period of time by the Contract Officer and the Foundation's Representative shall be brought to the attention of the City's City Manager (or designee) and the Foundation's Executive Director (or designee) for joint resolution. At the request of either Party, Foundation shall provide a forum for discussion of the disputed incidents, at which time said officials shall meet and confer in a good faith effort to resolve the dispute. If resolution of the dispute through these means is reasonably pursued without success, either party may seek resolution of the dispute by employing whatever remedies exist in law or equity beyond this Agreement.
- j. **Non-liability of City Officers and Employees.** No officer or employee of either Party shall be personally liable to the other Party, or any successor in interest, in the event of any default or breach of this Agreement by such officer or employee's Party.
- k. **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.
- l. **Governing Law.** This Agreement shall be construed in accordance with and governed by 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 or the United States District Court, Central District of California, as applicable.
- m. **Prevailing Party Attorneys' Fees.** The prevailing party in any 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.
- n. **Waiver.** Waiver by any Party of any provision of this Agreement shall not constitute a waiver of any other provision. Waiver by any Party of any breach of any 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.
- o. **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.

- p. **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.
- q. **Amendment.** This Agreement may be amended only by mutual agreement in a writing duly approved and executed by authorized representatives of each Party.
- r. **Entire Agreement.** This Agreement is the entire agreement between the Parties. No other agreements, oral or written, have been entered into with respect to the subject matter of this Agreement.
- s. **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.
- t. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.
- u. **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) 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

CALIFORNIA STATE UNIVERSITY
DOMINGUEZ HILLS FOUNDATION,
a California nonprofit public benefit corporation

LICENSOR

CITY OF CARSON, a municipal corporation

Name: Jerome Groomes
Title: Interim Executive Director

Albert Robles, Mayor

Name:
Title:

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

Sunny K. Soltani City Attorney
[BRJ]

Two corporate officer signatures required for Licensee, 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 ARTICLES OF INCORPORATION, OPERATING AGREEMENT, 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

DESCRIPTION OF ATTACHED DOCUMENT

☐

INDIVIDUAL

☐

CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

NUMBER OF PAGES

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER _____

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE

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	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

TITLE(S)	
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	

SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE