

**AMENDMENT NO. 1
TO
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 AMENDMENT TO THE 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 (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and the California State University, Dominguez Hills Foundation (“Foundation”), 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, is effective as of the 30th day of June, 2021.

RECITALS

A. City and Consultant entered into that certain 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 dated January 14, 2020 (“Agreement”), whereby Consultant agreed to provide for public art classes to be conducted at City facilities using grant funds awarded to the Foundation by the California Arts Council pursuant to the PRAXIS City ArtS Parks Program; and

B. Due to the COVID-19 pandemic and no fault of either the City or the Foundation, the classes were not conducted from approximately March of 2020 to January of 2021, and resumed on a virtual-only basis in January of 2021.

C. The Term of the Agreement is set to expire on June 30, 2021.

D. The Foundation has received a grant extension until May 31, 2022, and accordingly, City and Consultant now desire to amend the Agreement to extend the term of the Agreement through May 31, 2022. The Parties also desire to amend the agreement to reflect the current virtual nature of the classes, but to reserve the possibility that the classes may resume in-person at some point between the date of this Amendment and the expiration of the extended term on May 31, 2022.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (additions shown in ***bold italics***, deletions shown in ~~strike through~~).

A. Subsection (a) of Section 2 (“Grant of License for Facility Use”) is hereby amended as follows:

“a. Licensors 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 ~~two one~~ Program art classes or workshops 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. Subsection (b) of Section 2 (“Grant of License for Facility Use”) is hereby amended as follows:

“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; (iv) *from September of 2021 until late December of 2021; and (v) from January of 2022 through May of 2022.*

Notwithstanding the foregoing or any other provision of this Agreement: (i) Classes may be conducted on a virtual-only basis, e.g., via remote video conferencing using electronic software such as Zoom or similar (the “Virtual Classes”) or in-person as mutually agreed upon by the Contract Officer and the Foundation’s Representative based upon consideration of applicable COVID-19 rules, guidelines and recommendations, provided that Classes shall not be conducted in-person when doing so is prohibited by applicable COVID-19-related laws, rules or restrictions promulgated by federal, state or local health authorities; and (ii) City shall not be obligated to reserve or provide facility use for Virtual Classes which have been designated as such pursuant to clause (i) of this paragraph.”

C. Section 6 (“Term”) of the Agreement is hereby amended to read in its entirety as follows:

“6. **TERM.** The Term of this Agreement shall commence on the Effective Date and continue through *May 31, 2022* ~~June 30, 2021.~~”

D. Section 10 (“Release”) of the Agreement is hereby amended to read in its entirety as follows:

“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 *or provision of or engagement in Virtual Classes* 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.’”

E. Section 11, “Photo/Video Release,” of the Agreement is hereby amended to read in its entirety as follows:

“11. **PHOTO/VIDEO RELEASE.** Each Party, on behalf of itself and its officers, agents and employees using the Licensed Premises *or providing or engaging in Virtual Classes* 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 *or provision of or engagement in Virtual Classes* 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.”

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party

represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

John Carroll, Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BRJ]

FOUNDATION:

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

By:_____
Name: Tranitra Avery
Title: Executive Director

By:_____
Name: Cherisse Ross
Title: Controller

Two corporate officer signatures required when Consultant 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. CONSULTANT'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 CONSULTANT'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 document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2021 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	_____
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT _____
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES _____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	DATE OF DOCUMENT _____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		SIGNER(S) OTHER THAN NAMED ABOVE _____

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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: _____

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<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____		DATE OF DOCUMENT _____ _____ _____
		SIGNER(S) OTHER THAN NAMED ABOVE _____