

PUBLIC PARKING AND OPEN SPACE LICENSE AGREEMENT

This Public Parking and Open Space License Agreement (this "Agreement") is made effective as of September 28, 2023 (the "Effective Date"), by and between the Successor Agency to the Palm Desert Redevelopment Agency, a California public entity ("Licensor"), and the City of Palm Desert, a California charter city ("Licensee"). Licensor and Licensee are sometimes referred to herein, each individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Licensor is the owner of certain real property within the City of Palm Desert, County of Riverside, State of California (the "Property"), as described in more detail on Exhibit A, attached hereto and incorporated herein by this reference.
- B. Licensor and Licensee are processing a Purchase and Sale Agreement ("PSA") relating to the Property and desire to provide for Licensee to acquire the right to enter and use the Property during the intervening period of time until the close of escrow under the PSA.
- C. The Parties now desire to enter into this Agreement to provide Licensee with the right to conduct public parking activities and to maintain open space on the Property upon the terms and conditions, and for the consideration, set forth herein in more detail.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

- 1. Term. The term of this Agreement shall commence on the Effective Date and shall expire two (2) years from the date thereof (the "Term"), unless earlier terminated pursuant to the terms of this Agreement.
- 2. License Fee. As valuable consideration for this Agreement, the receipt and adequacy of which is hereby acknowledged, Licensee shall pay to Licensor within thirty (30) days of the Effective Date and on each subsequent anniversary of the Effective Date during the Term, the amount of One and 00/100 Dollars (\$1.00), in addition to performing Licensee's duties, obligations and responsibilities pursuant to Section 6 of this Agreement.
- 3. Use of Property. Licensor hereby grants to Licensee an exclusive license to use the Property for the duration of the Term for public parking and the maintenance of open space and for any other purpose reasonably related thereto.
- 4. Prohibited Uses. Licensee shall not do anything or knowingly permit others to do anything upon the Property which is in violation of any and all laws, statutes, ordinances and regulations and requirements of federal, state and/or local authorities having jurisdiction over the Property.
- 5. Improvements. Licensee shall not construct any roads, ponds, fences, gates or other structures without the prior written consent of the Licensor.
- 6. Repair and Restoration. If Licensee, its agents or contractors cause any damage to the Property in connection with the exercise of this License, Licensee shall repair and restore the Property to its original condition. Licensee shall perform the repair and restoration required hereunder prior to the expiration of this License, or within ten (10) days of its earlier termination. In the event that repair and restoration is performed following the

termination this License, the Licensee's Indemnity and Insurance obligations in paragraphs 11 and 12 shall continue until repair and restoration is completed as provided herein.

7. Breach and Cure. In the event that Licensee breaches any of its obligations under this License, Licensor shall send Licensee a written notice specifying the nature of such breach. Licensee shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for Licensee's performance, then Licensee shall commence performance within such ten (10) day period and, thereafter, diligently proceed to completion. If Licensee fails to cure or to commence cure within such ten (10) day period, then Licensor shall have the right to terminate this License immediately by serving Licensee with written notice of termination. Licensor shall have all rights and remedies available under California law including, but not limited to, actions for damages and specific performance, for any breach of Licensee's obligations hereunder.
8. Termination. Notwithstanding anything herein to the contrary, either Party shall have the right in its sole and absolute discretion to terminate this Agreement for any or no reason upon thirty (30) days' written notice to the other Party.
9. Assignment. Licensee shall not assign, or otherwise convey all of any part of its rights, duties or interests under this Agreement without the prior written consent of the Licensor, which consent shall not be unreasonably withheld. Any assignment or other transfer made in contravention of this provision shall be null and void, of no force or effect, and shall operate to immediately terminate this Agreement.
10. Hazardous Substances. Except in compliance with applicable laws and regulations, Licensee shall not use, store or knowingly permit hazardous or toxic substances, materials or waste or similar substances as defined under applicable federal and state laws and regulations ("Hazardous Substances"). Licensee shall comply with all applicable federal, state and local environmental protection, occupational, health and safety and similar laws, ordinances, restrictions, licenses and regulations with regard to Hazardous Substances.
11. Insurance. Licensee shall submit a Certificate of Insurance to Licensor for liability with a one million dollar (\$1,000,000) single occurrence limit written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage is required. Licensor, its directors, commissioners, officers, employees, agents and volunteers must be endorsed on the policy as additional insureds as respects to liability arising out of Licensee's performance of this Agreement. If Licensee employs other contractors as part of the services rendered, Licensor's Protective Coverage is required. Licensor may include all subcontractors as insureds under its own policy or shall furnish separate insurance for each subcontractor, meeting the requirements set forth herein.

Licensor shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the Property. Compliance is accomplished in one of the following three manners:

- A. Provide copy of permissive self-insurance certificate approved by the State of California; or
- B. Secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident. The policy shall be endorsed to waive all rights of

subrogation against Licensor, its directors, commissioners, officers, employees, and volunteers for losses arising from performance of this Agreement; or

- C. Provide a “waiver” form certifying that no employees subject to the Labor Code’s Workers’ Compensation provision will be used in performance of this Agreement.

12. No Warranty; Indemnification. Licensee understands that Licensor makes no warranty concerning the safety of the Property for any purpose whatsoever, and that it may use the Property on an “AS IS,” “WITH ALL FAULTS,” and “WHERE IS” basis and also with the Property being in its existing condition as of the Effective Date. Licensee shall indemnify Licensor for any claims made against Licensor to the extent such claims arise from Licensee’s, its agents’, employees’, or independent contractors’ negligence or willful misconduct.
13. No Property Interests. Licensee acknowledges and agrees that any rights created by this Agreement are solely contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any leasehold, covenant, easement or servitude, in the Property.
14. Real Property Taxes. Licensor, at its sole cost and expense and without right of reimbursement from Licensor, shall pay when due all real property taxes assessed, owing and payable concerning the Property.
15. Agents. Where this instrument grants rights to either Licensor or Licensee, such rights shall extend to the agents, employees, or representatives of such Party.
16. Notice. Where notice to either Party is required by the terms of this Agreement, such notice shall be delivered by first class mail, postage prepaid to the following address and by electronic transmission to the e-mail addresses set forth below, or to such other addresses of which either Party may inform the other from time to time.

Licensor: Successor Agency to the Palm Desert Redevelopment Agency
73510 Fred Waring Drive
Palm Desert, CA 92260
Attention: Executive Director

Licensee: City of Palm Desert
73510 Fred Waring Drive
Palm Desert, CA 92260
Attention: City Manager

17. Waiver. A Party’s waiver of any term, condition, breach or default of this Agreement shall not be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.
18. Successors. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective heirs, successors and/or assigns.

19. Governing Law. This Agreement, and the rights and duties of the Parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California.
20. Choice of Forum. The Parties hereby agree that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Riverside at a place to be determined by the rules of the forum.
21. Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement and understanding between the Parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).
22. Amendment. This Agreement may only be changed by written amendment signed by the Parties, subject to any requisite authorization by Licensor's Board of Directors and by Licensee's City Council. Any oral representations or modifications concerning this Agreement shall be of no force or effect.
23. Severability. If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.
24. Attorneys' Fees. In the event that either Party shall institute proceedings to compel performance of or to recover damages for any breach of any provision of this Agreement, the prevailing party shall be entitled to recover all its costs of suit, including reasonable attorneys' fees.

[Signatures appear on following page.]

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

SELLER:

SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY, a California public entity

Date: _____

By: _____

Its: _____

ATTEST:

APPROVED AS TO FORM:

BUYER:

CITY OF PALM DESERT, a charter city

Date: _____

By: _____

Its: _____

ATTEST:

Anthony J. Meijia
City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney

Exhibit A

Legal Description of Property

APN: 620-400-025

All that certain real property in the City of Palm Desert, County of Riverside, State of California, described as follows:

Lot 2 of Tract Map No. 29528, in the City of Palm Desert, County of Riverside, State of California, as shown by map on file in Book 311 of maps, Pages 40 through 42, inclusive, Official Records of Riverside County.