

CITY OF FULLERTON
TEMPORARY USE AGREEMENT WITH NORTH ORANGE COUNTY COMMUNITY
COLLEGE DISTRICT FOR LEMON/WHITING AVENUE PARKING STRUCTURE

THIS TEMPORARY USE AGREEMENT (this “Agreement”) is made and entered into this ~~4~~th day of March 2025 (“Effective Date”), by and between the CITY OF FULLERTON, a California municipal corporation (hereinafter referred to as “Grantor”), North Orange County Community College District., a California Community College District (hereinafter referred to as “Grantee”) for the use of parking at 230 E Chapman Ave (033-013-24) and 400 N Pomona Ave (033-013-23), collectively referred to as the “Lemon/Whiting Avenue Parking Structure” (the “Structure”

WITNESSETH:

WHEREAS, the City of Fullerton ("City") seeks to work in partnership with the North Orange County Community College District (NOCCCD), specifically Fullerton College by entering into this license agreement for Fullerton College to use up to 210 parking spaces in a designated portion of the Structure controlled by the City of Fullerton as the Grantor;

WHEREAS, Grantor and Grantee recognize Fullerton College’s important role as a community institution and partner in the community and consent to the use of the designated parking area as provided;

WHEREAS, Grantor and Grantee each hereby represent that they have the authority and rights necessary to enter into this Agreement and grant the use of the Premises as described herein;

WHEREAS, no official or employee of the Grantee has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in furtherance of the mutual promises, covenants, and agreements herein, the parties agree as follows:

1. USE OF THE PREMISES

1.1 Permitted Use.

Subject to the terms of this Agreement, commencing on the Effective Date and continuing until the Termination Date as defined herein, Grantors grant to Grantee a temporary, exclusive right to utilize up to a maximum of 210 parking spaces, solely for the purpose of parking motor vehicles used or operated by Fullerton College staff, student, or other Fullerton College sanctioned visitors (the “Invitees.”) Grantors reserve the right, in its sole and absolute discretion, to delineate the specific parking spots in the Structure that will be used for this purpose (the “Premises”). Grantee shall notify Grantor in writing of the specific number of spots to be reserved for use by the Invitees. Furthermore, Grantee shall be solely responsible to issue a placard or display signs (“Placard”), in a design agreed upon by both parties. The Placard shall be prominently displayed in the vehicle at all times. Additionally, the Grantee may be required to install and maintain a physical parking sign indicating it is reserved for the Invitees, subject to the approval of the Public Works Department. Any vehicle parked within the Premises without an appropriate Placard or not in a designated stall

with the proper sign shall be subject to enforcement by the Fullerton Police Department up to and including ticketing, fines, or towing.

1.2 Restrictions.

Grantee shall not construct any permanent improvements on the Premises or use the Premises for any purposes other than the Permitted Use set forth in Paragraph 1.1 without prior written consent from the Grantors, which consent may be withheld at their sole discretion.

1.3 Non-Exclusivity.

This right to utilize the Premises: (i) shall not be construed as a lease, easement, or any other encumbrance against the Premises; (ii) does not confer upon Grantee any interest in the Premises or real property rights whatsoever except as set forth in this Agreement; and (iii) is non-exclusive as to all portions of the Structure outside of the Premises. Grantor reserves the right to simultaneously utilize and allow others to utilize the portions of the Structure not expressly designated herein as the Premises.

1.4 Term of Use.

The term of this Agreement ("Term") shall commence on the Effective Date and continue for one (1) year, unless terminated earlier as provided herein. Grantee acknowledges that the Term is subject to periodic review by Grantor, and Grantor reserves the right to adjust terms or impose reasonable additional requirements at any time with thirty (30) days' written notice to Grantee, as long as such additional requirements do not materially alter or impact the Grantee's use of the Premises pursuant to this Agreement.

2. COMPENSATION AND COST

2.1 One-Time Compensation.

Grantee shall pay Grantor within 30 days of the execution of this Agreement, a payment in the amount of (1) twenty-four-thousand-dollars, \$24,000 for 200 spaces, or (2) one-hundred-twenty-dollars per parking spot reserved, whichever is greater, for the use of the facility through the Term. Failure to timely remit payment shall render this Agreement null and void, and Grantor shall be entitled to seek reimbursement for any costs incurred because of such failure. In the event Grantee requests more spaces at any time during the Term of this Agreement, payment for the increased parking spots shall be delivered to Grantor within 30 days of such request.

2.2 Costs

Grantee shall be solely responsible to pay all costs required to create and install signs identifying the Premises and notifying the public of the reservation for use by the Invitees, sufficient to allow the enforcement of the restrictions contained herein by the Fullerton Police Department.

3. PROPERTY CONDITION

3.1 As-Is Condition.

Grantee accepts the Premises on an "as-is, where-is" basis (with all faults and in its existing condition) in the broadest sense of the term. Grantee agrees to maintain the Premises in good, clean condition and not commit or permit to be committed any waste of the Premises. Upon the

expiration or termination of this Agreement, the Grantee shall return the parking area to the Grantor in the same condition as it was at the commencement of the Agreement, normal wear and tear excepted, and excepting other conditions caused by Grantor. The Grantee agrees not to leave the parking area in a worse condition than when the license was granted and shall, at their own expense, repair or restore any unauthorized alterations, damage, or changes made during the term of the license and not caused by the Grantor prior to vacating the premises.

3.2 Assumption of Risk.

The Grantee acknowledges that the Grantor make no warranties or representations regarding the safety or suitability of the Premises for the Permitted Use set forth in Paragraph 1.1 of this Agreement. The Grantee expressly assumes all risks related to the use of the Premises by Grantee and the Invitees, and the Grantor shall not be liable for any loss or damage to the property of the Grantee or the Invitee's on the Premises, except to the extent such loss or damage is caused by the sole or active negligence or willful misconduct of the Grantor.

4. INSURANCE

4.1 Insurance Requirements.

Grantee shall procure and maintain comprehensive general liability insurance with a limit of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate. This policy shall name the City of Fullerton as an additional insured and City of Fullerton as a certificate holder.

4.2 Certificate of Insurance.

The Grantee shall provide the Grantors with a certificate of insurance evidencing such coverage prior to any use of the Premises.

5. INDEMNIFICATION

5.1 City's Indemnification.

The Grantee agrees to indemnify, defend, and hold harmless the Grantors from any claims, damages, or liabilities to the extent caused by the Grantee's, or its agents', employees', or Invitees' use of the Structure, except for those resulting from the sole or active negligence or willful misconduct of the Grantor.

6. TERMINATION

6.1 Termination Rights.

Grantor may terminate this Agreement for any reason upon thirty (30) days' prior written notice to Grantee. In the event of termination, Grantee shall cease use of the Premises and remove any personal property within a reasonable period of time. Any personal property not removed within 60 days of termination shall be deemed abandoned. Grantor shall not be liable for any damages or costs incurred by Grantee including but not limited to property or equipment because of such termination unless caused by the sole or active negligence or willful misconduct of Grantor. In the event Grantor exercises a right to terminate prior to expiration of the Term, Grantor shall prorate the compensation received pursuant to Section 2.1 of this Agreement and shall reimburse to Grantee a prorata share of the compensation received calculated upon 365 days and the number of days remaining in the Term from the date Grantee ceases to use the Premises or the date of Termination, whichever is latest.

7. GENERAL PROVISIONS

7.1 Entire Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings regarding its subject matter. Any additional terms or conditions not included herein shall not be enforceable unless agreed to in writing by both parties.

7.2 Notices.

Any notices required or permitted under this Agreement shall be in writing and delivered to the addresses specified below by one of the following methods: (i) personal delivery, (ii) United States Postal Service certified mail, return receipt requested, or (iii) email, provided that a confirmation of receipt is obtained.

IF TO GRANTEE:

328 E Commonwealth Avenue
Fullerton, CA 92832

IF TO GRANTOR:
Sunayana Thomas, Director of Community
& Economic Development
City of Fullerton
303 W Commonwealth Ave
Fullerton, CA 92832

7.3 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.4 Amendments.

This Agreement may only be amended by a written document executed by both parties and approved by the governing Board of each party. Grantor reserves the right to require additional terms or conditions for any amendments requested by Grantee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“Grantee”

North Orange County Community
College District, INC

By: _____

Name and Title:

“Grantor”

THE CITY OF FULLERTON
a municipal corporation

By: _____

Name and Title:

Eric Levitt
City Manager

APPROVED AS TO FORM:

By: _____

Name and Title:

Baron J. Bettenhausen
Assistant City Attorney