

**LEASE AGREEMENT
BETWEEN
CITY OF FULLERTON
AND
CSU FULLERTON AUXILIARY SERVICES CORPORATION
FOR
RICHMAN NEIGHBORHOOD CENTER**

THIS LEASE AGREEMENT ("Agreement" or "Lease") is entered by and between the CITY OF FULLERTON, a municipal corporation ("City" or "Lessor") and CSU FULLERTON AUXILIARY SERVICES CORPORATION, a California non-profit corporation, on behalf of CALIFORNIA STATE UNIVERSITY, FULLERTON ("Lessee"). City and Lessee may be referred to individually as a "party" or collectively as the "parties".

WHEREAS, the City is the owner of that certain parcel of real property located at 320 W. Elm Ave., in the City of Fullerton, County of Orange, State of California, known as Richman Park (the "Property"); and

WHEREAS, the Property includes two facilities identified as the Don Castro Center and the Richman Center that are approximately 3,600 square feet in size and collectively known as the Richman Neighborhood Center ("Richman Center"); and

WHEREAS, the City and California State University, Fullerton entered into a Memorandum of Understanding for the Richman Neighborhood Center CSUF Center for Healthy Neighborhoods dated January 27, 2016 ("MOU"); and

WHEREAS, the City desires to allow the Richman Center to be used for civic, social and/or cultural uses of benefit to the residents of the City and surrounding communities; and

WHEREAS, the City now desires to enter into this Agreement with Lessee to enable Lessee to use the Richman Center for the purpose and activities described in Section 2 below, subject to all of the terms and conditions set forth herein; and

WHEREAS, upon execution of this Agreement between the Parties, the previous MOU between the City and CSUF is void.

NOW, THEREFORE, in consideration of the promises and the respective and mutual Agreements contained herein, said parties hereby agree as follows:

1.0 PREMISES

- A. Premises. City hereby leases to Lessee the Richman Center which is more specifically depicted in Exhibit "A," attached hereto and incorporated herein (the "Premises").

B. Acceptance of Premises. Lessee acknowledges that Lessee has inspected and accepts the Premises in its present condition, where-is, as-is, and as suitable for, the Permitted Use defined herein, and for Lessee's intended operations in the Premises. Lessee agrees that the Premises and existing improvements are in good and satisfactory condition as of when possession was taken. Lessee further acknowledges that no representations as to the condition or repair of the Premises nor promises to alter, remodel or improve the Premises have been made by City or any agents of City unless such are expressly set forth in this Lease. If for any reason City cannot deliver possession of the Premises to Lessee within thirty (30) days of the execution of this Lease, City shall not be subject to any liability therefor, nor shall City be in default hereunder nor shall such failure affect the validity of this Lease, and Lessee agrees to accept possession of the Premises at such time as possession is provided, which date shall then be deemed the Lease Commencement Date.

C. Use of the Property. Lessee shall not use any portion of the Property other than the Premises without prior written approval from the City. Lessee acknowledges that the Property is open to the general public and agrees that Lessee's use of the Premises shall not interfere with the general public's use of the Property. To use any portion of the Property other than the Premises for an event, Lessee shall obtain a Parks & Recreation rental permit at least thirty (30) days prior to the event. City agrees to waive hourly rental fees, and amplified music fees for Lessee's events. Lessee agrees to pay all other event-related fees, including, but not limited to, security guard fee, and power washing fee.

D. Annual Fundraiser. City further agrees that Lessee may reserve the Fullerton Community Center Grand Hall once a year, any day Monday through Thursday, so long as that day has not already been reserved, for purposes of fundraising. Lessee shall not be required to pay the rental permit fee. However, Lessee understands and agrees that payment of the direct costs of the rental, including, but not limited to, staffing and security fees, will apply as a condition of the rental permit. All funds raised at this annual fundraising event shall belong to Lessee.

2.0 USE OF PREMISES

A. Permitted Use. Lessee is authorized to use the Premises to provide social and health services, instruction and activities related to the teaching, research, and service mission of CSUF and the College of Health and Human development ("Permitted Use"). Lessee shall not use the Premises for any other purpose without City's prior written consent. Lessee shall not use the Premises or any portion thereof for any illegal or unlawful purposes and will not cause or permit a nuisance to be created or maintained therein.

B. Conditions of Use. For and during the term of this Lease, and any extension thereof, Lessee's use of the Premises shall be subject to, and Lessee shall comply with and cause Lessee's employees, agents, invitees and guests to comply with, the following conditions, covenants and restrictions.

1. Except as otherwise provided in this Lease, the Premises shall be used only for the purposes specified in Section 2.0(A), above, and the Premises shall not be used for any other use or purpose whatsoever, without the prior written consent of City.
2. Lessee shall not cause, permit or suffer any "hazardous material," "hazardous waste" or "hazardous chemicals", as those terms are used in CERCLA (42 U.S.C. § 9601(14)) or SARA (42 U.S.C. § 110211(e)) or any similar Federal, State, or local law, statute, ordinance, regulation or order, or otherwise determined by City, to be brought upon, left, used or abandoned on the Premises.
3. Lessee shall not use the Premises for any religious activities, including, but not limited to, religious services, religious programs or promoting any institution of religion.

Lessee shall not erect, install or maintain any sign or display upon or in front of the Premises or at the Property without prior written approval from City, which approval shall not be unreasonably withheld. All signage shall comply with all applicable laws and zoning and site plan requirements.

3.0 RENT

In exchange for Lessee's use of the Premises to provide social service, youth and education programs to the community, Lessee shall pay the City rent in the amount of \$4,800.00 per month ("Rent"). Payment of Rent is due upon execution of this Agreement and on each anniversary of the Lease Commencement Date while this Agreement remains in effect. Rent for any period during the Lease Term which is for less than one month shall be a pro rata portion of the monthly rate.

3.1 Rent Adjustment

The first (1st) anniversary of the Commencement Date and each anniversary during the Lease Term shall be referred to herein as an "Adjustment Date." The rent shall be increased on each subsequent Adjustment Date by three percent (3%).

3.2 Tenant Improvement Allowance

Tenant Improvement in lieu of Rent. As part of the lease consideration, City agrees to provide Lessee with a Tenant Improvement Allowance of \$296,280.00 in total, which must be used to fund necessary tenant improvements to the lease premises so that it is ADA compliant, which is more specifically depicted in Exhibit "B". This allowance shall be applied as a credit against future monthly payments over the lease term, with the exact amount deducted from each rent payment until fully utilized. No Tenant Improvement Allowance will be permitted if the construction or submittal of the building plans for the Tenant Improvements occur twelve (12) months subsequent to the Effective Date of the Lease. In the event a need for additional improvements is identified by City, in its sole and absolute discretion, subsequent to the execution of this Agreement, the City may increase the Tenant Improvement Allowance by written notice to Lessee. The written notice shall identify the purpose of the increase. Lessee may only apply a credit for the purpose stated herein or in the notice of increase.

4.0 FIRST YEAR EVALUATION; BIANNUAL MEETINGS

- A. First Year Evaluation. City and Lessee shall meet, no later than April 1, 2026, to discuss and evaluate Lessee's programs, fees, attendance, schedules, community relations and compliance with this agreement. Either party may terminate this Agreement within thirty (30) days of such meeting in accordance with Section 6.0 (A)(1) of this Agreement.
- B. Biannual Meeting. City and Lessee shall meet at lease two (2) times per year, to discuss and evaluate Lessee's programs, fees, attendance, schedules, community relations and compliance to this Agreement.

5.0 TERM; OPTION TO EXTEND TERM

- A. Term. The term of this Lease shall be for an initial period of five (5) years, commencing on January 1, 2026 ("Lease Commencement Date")
- B. Option to Extend Term. Upon mutual written agreement of City and Lessee, this Lease may be extended for two (2) five (5) year periods (each an "Extension Term"). The City Manager or the Director of Parks and Recreation are each expressly authorized to extend the term of this Lease on behalf of the City, provided that each such extension is in writing and is signed by the City Manager or Director of Parks and Recreation and the Lessee. This Lease and the Lessee's rights hereunder may not be extended beyond the Initial Term unless such extension is set forth in writing and signed by both City and the Lessee.

6.0 TERMINATION OF LEASE; ABANDONMENT

A. Grounds for Termination. This Lease may be terminated as follows:

1. By City, with or without cause, or for any reason, including, but not limited to, if and when City determines that the public interest, health, safety or welfare require such termination, at any time, by giving Lessee ninety (90) days written notice of termination.
2. By Lessee, at any time by giving written notice to the City at least ninety (90) days prior to said termination date.
3. By either party due to the other party's default in accordance with the provisions of Section 28 hereof.
4. By either party, upon sixty (60) days prior written notice to the other party, if the other party makes any assignment for the benefit of creditors or files any petition under the Bankruptcy Code of the United States or any state or has any such petition filed against it.

B. Abandonment. If Lessee at any time abandons the use of the Premises, or any part thereof, or fails at any time for a continuous period of sixty (60) days to use the same for the purposes contemplated herein, then this Agreement shall terminate, and in addition to any other rights or remedies, City shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement. City, at its option, may remove any improvements remaining on the abandoned property, at Lessee's expense. Notwithstanding the foregoing, City and Lessee acknowledge that any government-mandated closure of the Premises will not be considered abandonment for purposes of this Section.

7.0 UTILITIES

Lessee shall be responsible for and pay, prior to the delinquency date, all charges for all utilities supplied to the Premises, including, but not limited to, water, sewer, trash, electricity and gas.

8.0 MAINTENANCE AND JANITORIAL SERVICES

A. Lessee's Responsibilities. Lessee shall provide, at its own cost and expense, except as otherwise provided in this Lease or as otherwise directed by City: (1) Any and all necessary repair and maintenance of all equipment and personal property within the Premises; (2) maintaining the Premises in a safe, clean, and sanitary condition and free of trash and debris in compliance with all applicable laws; (3) the cleaning and refinishing of interior surfaces and repair of all

damage caused by Lessee's or its agents', employees', or invitees' use and/or misuse of the Premises.

B. City's Responsibilities. (1) City shall provide, at its sole cost and expense, except as otherwise provided in this Lease, any and all necessary capital repairs for the Premises, including, but not limited to, the repair, maintenance and replacement of the structural portions of the Premises and all Premises systems including the HVAC system, the plumbing, electrical and mechanical systems, security systems, fire/life safety system, roof, windows, pest control, all exterior paint and flooring and paving. City, as its sole expense, agrees to replace the systems and items listed in this Section within the Richman Premises in accordance with the City's established replacement schedule. (2) City will provide custodial maintenance for the Richman Center three days per week. Including janitorial supplies and janitorial services. (3) any and all necessary general repair and general maintenance to the Premises. The Lessee shall inform the Parks and Recreation department in writing of any need for facility maintenance repairs.

9.0 ALTERATIONS AND IMPROVEMENTS

A. Prior Consent for Improvements. Lessee shall not make any alteration of or improvement to the Premises without the prior written approval of City. In the event that Lessee desires to make any alteration, improvement, addition or utility installation in or about the Premises, including, but not limited to bringing the Premises into compliance with ADA requirements, Lessee shall present such request in writing to City, together with detailed plans of the proposed alteration or improvement; and Lessee shall not commence such alteration or improvement unless and until City has granted approval thereto in writing. Lessee shall ensure that its contractors work closely with the City in constructing any improvements to the Premises. Notwithstanding the foregoing, Lessee may install fixtures, partitions, counters, shelving, and equipment as deemed necessary or appropriate by Lessee. Any such fixtures, partitions, counters, shelving, or equipment attached to or placed upon the Premises by Lessee shall be considered as personal property of Lessee, which shall have the right and obligation to remove same upon the expiration or termination of this Lease.

B. License, Approvals and Permits. In the event that City grants written approval to any requested alteration of or improvement to the Premises, such approval shall be deemed conditioned upon Lessee acquiring all governmental licenses, approvals and permits required therefor, and such alteration or improvement shall be constructed in strict conformance with the plans approved therefor by City. Once approved by City, no changes or alterations shall be made to the plans without the prior written approval by City.

- C. Improvements at Lessee's Sole Cost and Expense. In the event that City grants written approval to any requested alteration of or improvement to the Premises, Lessee shall construct such alteration or improvement at Lessee's sole cost and expense.
- D. Conditions of City's Approval. City may impose any conditions it deems necessary or appropriate, in its discretion, in connection with the approval of any alterations or improvements requested by Lessee. City may also impose rules and regulations for contractors and subcontractors performing any approved alterations or improvements. Lessee shall cause all improvements to be accomplished in a first-class, good and workmanlike manner by qualified and licensed contractors and subcontractors.
- E. Compliance with Applicable Laws. Lessee shall comply with all applicable laws in connection with any alteration or improvement approved by City, including, but not limited to, California labor laws, including, but not limited to, prevailing wage laws.
- F. Contractor Indemnification and Insurance. Lessee shall require that its contractors and any subcontractors that perform work at the Premises on Lessee's behalf maintain the same level of general liability, automobile liability, and workers' compensation insurance policies as Lessee is required to maintain pursuant to this Lease. Lessee shall require that such contractors and subcontractors name the City of Fullerton and its officials, officers, employees, agents and volunteers as additional insureds on their general liability policies.
- G. Ownership of Improvements. All alterations and improvements constructed or placed within the Premises by Lessee shall, upon the completion of construction, installation or placement within the Premises, be free and clear of all liens, claims and liability for payment for labor and material. Unless otherwise authorized by the City or otherwise agreed to in writing by the parties, such improvements shall be removed from the Premises at the expiration or termination of this Lease and the Premises shall be restored to the condition that existed prior to the alterations or improvements being constructed at Lessee's sole cost and expense.

10.0 LESSEE PROPERTY

All trade fixtures, inventory, telecommunications equipment, and all personal property placed in or about the Premises by, at the direction of or with the consent (express or implied) of the City, its employees, agents, licensees or invitees, shall be at the sole risk of the Lessee, and City shall not be liable for any loss of or damage to said property resulting from any cause whatsoever unless such loss or damage is the result of City's negligence or misconduct.

11.0 GRAFFITI REMOVAL

City will be responsible for graffiti removal on the Premises during the Initial Term and Extension Term. Lessee shall notify City of any graffiti on the Premises.

12.0 QUARTERLY INSPECTIONS

City may conduct quarterly inspections of the Premises and perform any maintenance or repairs deemed appropriate or necessary following such inspections or may direct Lessee to perform any interior or exterior maintenance or repairs following such inspections if City determines, in its sole discretion, that such work is necessary to protect the Premises or to provide a clean, attractive and well-maintained Premises. Lessee shall perform such maintenance and/or repairs within thirty (30) calendar days of receipt of notification from City of same.

13.0 CITY'S RIGHT OF ENTRY AND ACCESS TO THE PREMISES

City shall have the right to enter the Premises at any time, with or without notice to Lessee, provided that City shall endeavor to provide reasonable notice prior to such entry. City and Lessee shall each have full access to the entire Premises.

14.0 SECURITY MEASURES

Lessee acknowledges that City makes no representation or warranty, express or implied, regarding the security of the Premises or the need for or propriety of any security measures at the Premises. Lessee further acknowledges that City shall have no obligation whatsoever to provide guard service or any other security measures. Lessee expressly assumes all responsibility for the protection and security of the Premises, Lessee, Lessee's officers, employees, agents and invitees, and Lessee's property within the Premises from any and all acts of any third party. Notwithstanding the foregoing, Lessee acknowledges that the City has installed a Boyd & Associates security system at the Premises and Lessee agrees to establish an account at Lessee's expense with Boyd & Associates for such security system.

15.0 INSURANCE

Lessee shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to the Premises which may arise from or in connection with the Lessee's operations, occupancy of and use of the Premises. Lessee shall provide current evidence of the required insurance in a form acceptable to the City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this Section shall be construed as limiting in any way, the indemnification obligations set forth in this Agreement or the extent to which Lessee may be held responsible for payments of damages to persons or Premises.

A. Minimum Scope and Limits of Insurance.

1. Commercial General Liability Insurance. Lessee shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01 on an "occurrence basis", including products and completed operations, property damage, bodily injury and personal advertising injury with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.
2. Business Automobile Liability Insurance. Lessee shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than

\$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

3. Workers' Compensation and Employers' Liability Insurance. Lessee shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

B. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the City.

C. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

1. Commercial General Liability and Business Automobile Liability

The City, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of Lessee's operation, occupancy, maintenance or use of the Premises; or with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Lessee.

2. Commercial General Liability and Business Automobile Liability

This insurance shall be primary insurance as respects the City, its officers, employees and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance of self-insurance maintained by the City, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.

3. Workers' Compensation and Employers' Liability Insurance.

Insurer shall waive their right of subrogation against City, its officers, employees, and volunteers.

4. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice has been given to the City.

D. Acceptability of Insurers. All required insurance shall be placed with insurers with current A.M Best's ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the City, insurance provided by non-admitted or surplus carriers with a minimum Best's rating of no less than A- Class X may be accepted if Lessee evidences the requisite need to the sole satisfaction of the City.

E. Verification of Coverage. Upon written request by City, Lessee shall furnish City with certificates of insurance which bear signatures of authorized agents and which reflect insurers names, policy numbers, coverage, limits, deductibles and self-insured retentions, as well as certified copies of all policy endorsements required herein. The City reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. City's Right to Review Insurance Requirements. Lessee acknowledges and agrees that City may review the insurance requirements set forth herein every five (5) years while this Agreement is in the effect and may increase such requirements based on City's then-current requirements.

16.0 INDEMNIFICATION

Lessee shall indemnify, defend, and hold harmless the City, and its elected and appointed officials, officers, employees, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorneys' fees and costs of litigation ("claims"), arising out of Lessee's occupancy and/or use of the Premises and/or performance under this Agreement, except for such loss or damage arising out of the sole active negligence or misconduct of the City. If Lessee's indemnity obligations arise and in the event the City Indemnitees are made a party to an action, lawsuit, or other adversarial proceeding arising from Lessee's occupation and/or use of the Premises, Lessee shall provide a defense to the City Indemnitees or, at the City's option, reimburse the City Indemnitees for their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Lessee, its officers, employees, agents, volunteers or subcontractors, but shall be required whenever any claim, demand, suit, action or proceeding of any kind or nature asserts liability against the City Indemnitees, related to Lessee's occupancy and/or use of the Premises and/or performance of this Agreement, whether or not Lessee, its officers, employees, agents, volunteers or subcontractors are specifically named or otherwise asserted to be liable.

17.0 HAZARDOUS MATERIALS

As used herein the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity,

including without limitation, City acting in its governmental capacity, the State of California or the United States Government.

- A. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises, except as may be specifically authorized by City in writing. Any such authorization by City shall not alter or reduce Lessee's obligations under this Section, including but not limited to its duty to indemnify and defend City, for any contaminations which may occur as a result of Lessee's use of the authorized material.
- B. If Lessee breaches the obligations stated herein, or if contamination of the Premises by Hazardous Materials otherwise occurs for which Lessee is legally liable to City for damage resulting therefrom, then Lessee shall indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises, damages arising from any adverse impact on marketing of space in the Premises or portion of any building of which the Premises is a part, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert witness fees) which arise during or after the term as a result of such contamination.

This indemnification includes without limitation, costs incurred by City in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any federal, state or legal governmental entity because of Hazardous Material being present in the soil or ground water or under the Premises. Lessee shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the Premises to its condition prior to the introduction of such Hazardous Material by Lessee, provided Lessee shall first have obtained City's approval and the approval of any necessary governmental entities.

C. Pre-Existing Contamination

City hereby agrees to indemnify, defend and hold Lessee harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, known or unknown, arising from any pre-existing soil contamination or other pre-existence of any Hazardous Material on the Premises prior to the date Lessee originally began to occupy the Premises, including but not limited to any sums paid in settlement of claims, attorneys' fees, consultant fees and expert witness fees which arise during or after the Agreement term and arising solely from such pre-existing contamination, if any.

18.0 ASSIGNMENT AND SUBLetting

Lessee shall not assign this Lease or sublet the Premises or any portion thereof, or permit any other organization, entity or person to operate programming at the Premises, without the prior written consent of the City. Any attempted assignment or subletting without the City's prior written consent shall be null and void and confer no right, title, or interest in or to this Agreement, and shall be cause for immediate termination of this Agreement.

19.0 SURRENDER OF PREMISES

At the expiration or early termination of this Lease, Lessee shall surrender and deliver the Premises to City broom clean and in good condition and order, in at least the same condition as when the same was delivered to Lessee, ordinary wear and tear excepted. Unless otherwise agreed to in writing between City and Lessee, Lessee shall remove all personal property installed by Lessee, including such as may have been temporarily attached to the Premises, provided all damage to the Premises resulting from the removal of such items is properly repaired. If said removal results in injury to or defacement of the Premises, Lessee shall immediately repair the Premises at its expense. If upon expiration or earlier termination of this Lease, or following demand by City for possession of the Premises, Lessee has not fulfilled its obligation with respect to repairs and cleanup of the Premises or any other Lessee obligations as set forth in this Lease, then City shall have the right to perform any such obligations as it deems necessary at Lessee's sole cost and expense, and any time required by City to complete such obligations shall be considered a period of holding over and the terms of this Section shall apply. The provisions of this Section shall survive any expiration or earlier termination of this Lease.

20.0 HOLDING OVER

In the event Lessee shall continue in possession of the Premises after the expiration or earlier termination of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease. Lessee shall also indemnify, defend, and hold City harmless from any loss, liability or cost, including consequential and incidental damages and reasonable attorneys' fees, incurred by City resulting from delay by Lessee in surrendering the Premises, including, without limitation, any claims made by the succeeding tenant founded on such delay. Acceptance of rent by City following expiration or earlier termination of this Lease or following demand by City for possession of the Premises, shall not constitute a renewal of this Lease, and nothing contained in this Section shall waive City's right of reentry or any other right.

21.0 DISPOSITION OF ABANDONED PROPERTY

If Lessee abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property left on the Premises for fifteen (15) or more days after such event shall at City's option, be deemed to have been abandoned and transferred to City. City shall have the right to remove and dispose of any and all such property without liability therefor to Lessee or Lessee's employees, agents, or invitees, and City shall have no duty to account for such property. Lessee agrees to reimburse City

for any and all costs associated with City transferring or disposing of Lessee's personal property pursuant to this Section.

22.0 TAXES

Lessee shall pay all taxes which may be levied or assessed as a result of this Lease or Lessee's use of the Premises. Lessee understands that a possessory interest may be created and vested in Lessee as a result of this Lease and that such interest may be subject to property taxation. Lessee understands that Lessee may be subject to the payment of property taxes levied on such possessory interest. If property taxes are levied due to a possessory interest, Lessee shall pay such taxes.

23.0 LIENS

Lessee shall maintain the Premises free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Premises. Lessee shall further defend, indemnify, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all such claims, obligations, liabilities, liens, encumbrances and charges.

24.0 DESTRUCTION OR DAMAGE TO PREMISES

A. Definitions.

1. "Partial Destruction" of the Premises shall mean damage or destruction to the Premises, for which the repair cost is less than twenty-five percent (25%) of the then replacement cost of the Premises, excluding the value of the land.
2. "Total Destruction" of the Premises shall mean damage or destruction to the Premises, for which the repair cost is twenty-five percent (25%) or more of the then replacement cost of the Premises, excluding the value of the land.

B. Partial Destruction. In the event of a Partial Destruction of the Premises, City shall immediately pursue completion of all repairs necessary to restore the Premises to the condition which existed immediately prior to said Partial Destruction. Said restoration work (including any demolition required) shall be completed by City, at City's sole cost, within ninety (90) days of the occurrence of said Partial Destruction or within an extended time frame as may be mutually agreed. Lessee shall reimburse City for costs to repair the Premises for damage or destruction caused by Lessee or Lessee's employees, agents or invitees. The Partial Destruction of the Premises shall in no way render this Lease null and void.

- C. Total Destruction. In the event of Total Destruction of the Premises or the Premises being legally declared unsafe or unfit for occupancy, this Lease shall terminate and be rendered null and void. Lessee shall reimburse City for costs to repair the Premises for damage or destruction caused by Lessee or Lessee's employees, agents or invitees.
- D. Alterations and Improvements; Lessee's Personal Property. In the event of any damage or destruction of the Premises, under no circumstances shall City be required to rebuild, repair or replace any part of any alterations or improvements which may have been placed on or about the Premises or paid for by Lessee, or to repair any injury or damage to, or make any repairs to or replacements of, Lessee's personal property, except to the extent such damage or destruction was caused by City's negligence or misconduct.

25.0 SUBORDINATION; DISCLAIMER OF INTERESTS

- A. Subordination. This Lease shall be and is hereby declared to be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or the land upon which the Premises is situated, or both; and (b) any mortgage or deed of trust which may now exist or be placed upon the Premises and/or the land upon which the Premises is situated, or said ground leases or underlying leases, or City's interest or estate on any of said items which is specified as security. Notwithstanding the foregoing, City shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases of any such liens to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Lessee shall, notwithstanding any subordination, attorn to and become the Lessee of the successor in interest to City provided that Lessee shall not be disturbed in its possession under this Lease by such successor in interest so long as Lessee is not in default under this Lease. Within ten (10) days after request by City, Lessee shall execute and deliver any additional documents evidencing Lessee's attornment or the subordination of this Lease with respect to any such ground leases or underlying leases or any such mortgage or deed of trust, in the form requested by City or by any ground landlord, mortgagee, or beneficiary under a deed of trust, subject to such nondisturbance requirement. If requested in writing by Lessee, City shall use commercially reasonable efforts to obtain a subordination, nondisturbance and attornment agreement for the benefit of Lessee reflecting the foregoing from any ground landlord, mortgagee or beneficiary, at Lessee's expense, subject to such other terms and conditions as the ground landlord, mortgagee or beneficiary may require.

26.0 SALE OF PREMISES BY CITY

City reserves the right to sell, transfer or otherwise dispose of the Premises, or any portion thereof, at any time, without consent of Lessee and without notice to Lessee. In the event of such sale, transfer or disposition, and notwithstanding any other provision of this Lease, this Lease shall, upon the close of escrow or the conveyance of title, terminate as to the portions of the Premises sold, transferred or disposed of.

27.0 CONDEMNATION

If the Premises or any portion thereof is taken for any public or quasi-public purpose by any lawful government power or authority, or by exercise of the right of appropriation, condemnation or eminent domain, or is sold to prevent such taking, then this Lease shall terminate as of the date when possession is taken by the condemning authority and all rent due shall be paid to City as of said date.

Lessee shall have the right at its sole cost and expense to assert a separate claim or join in City's claim in any condemnation proceedings for its personal property, its improvements, loss of value in its leasehold estate, moving expenses or any other claims it may have. Lessee shall be entitled to and shall receive that portion of any award or payment made which is attributable solely to its claim, and City shall be entitled to and shall receive that portion of any award of payment made which is attributable solely to the land and improvements erected thereon.

28.0 COMPLIANCE WITH ALL LAWS

Lessee shall keep itself fully informed of all existing and future state and federal laws and all county and City ordinances and regulations which in any manner affect the activities of Lessee under this Lease, or the possession or use of the Premises by Lessee, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Lessee shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall defend and indemnify City, and its respective officials, officers, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree by Lessee or its employees, agents or designees.

29.0 NONDISCRIMINATION

Neither party shall deny benefits to, harass, discriminate, or allow harassment or discrimination of, any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall either party discriminate unlawfully, harass, or allow harassment or discrimination against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

30.0 DEFAULT AND REMEDIES

In the event there is a default by one party with respect to any of the provisions of this Agreement or any obligations under it, the non-defaulting party may give the defaulting party written notice of such default. After receipt of such written notice, the defaulting party shall have thirty (30) days in which to cure such default, provided the defaulting party shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the defaulting party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.

If the defaulting party does not provide evidence to the non-defaulting party of the complete cure of the default within the applicable cure period, the non-defaulting party may immediately terminate this Agreement, or, at the non-defaulting party's sole option, the non-defaulting party may correct any such default by performance of any act, including payment of money, and invoice the defaulting party for the cost thereof plus reasonable administrative costs. If the non-defaulting party elects such option, the defaulting party shall pay the invoice for such costs within thirty (30) days. In addition to the foregoing, the non-defaulting party pursue any other remedies available at law or in equity.

31.0 DISPUTE RESOLUTION AND ATTORNEYS' FEES

In the event a dispute arises between the parties, the parties agree to participate in good faith mediation. Each party shall equally share in the cost of the mediation. If mediation between the parties does not result in a mutually satisfying settlement within ninety (90) days after submission to mediation, then each party will have the right to enforce the obligations of this Agreement. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California. Each party shall bear its own costs, expenses, and attorneys' fees in any legal action relating to this Agreement.

32.0 PUBLIC RECORDS

Any and all written information submitted to and/or obtained by City from Lessee or any other person or entity having to do with or related to this Agreement and/or the Premises, either pursuant to this Agreement or otherwise, may be subject to disclosure pursuant to the California Public Records Act (Government Code § 6250 et seq.) as now in force or hereafter amended, or any act in substitution thereof, or otherwise made available to the public. Lessee hereby waives, for itself, its agents, employees, subcontractors and any person claiming by, through or under Lessee, any right or claim that such information is not a public record or that the same is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

33.0 RELATIONSHIP OF THE PARTIES

The relationship of the parties hereto is and shall at all times remain that of Lessor and Lessee. It is expressly understood and agreed that by executing this Agreement and allowing Lessee to take possession of the Premises, City does not in any way or for any purpose become a partner of Lessee, or otherwise establish a joint venture between City and Lessee.

34.0 NOTICES

All written notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be deemed received upon personal delivery or seventy-two (72) hours after deposit in the United States mail.

If to City: City Manager
City of Fullerton
303 W. Commonwealth Ave.
Fullerton, CA 92832

With a Copy to: Parks and Recreation
Attn: Deputy Director
303 W. Commonwealth Ave.
Fullerton, CA 92832

If to Lessee: CSU Fullerton Auxiliary Services Corporation
Attn: Executive Director
1121 N. State College Blvd.
Fullerton, CA 92831

35.0 GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws.

36.0 WAIVER

The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

37.0 SEVERABILITY

If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

38.0 CONSTRUCTION

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

39.0 DRAFTING

Each party acknowledges that it has had an adequate opportunity to review each and every provision in this Agreement and to submit the same to legal counsel and any other consultants for review and comment and that the parties jointly drafted this Agreement. No provision of this Agreement shall be construed more strictly against one party than the other party by reason that one or the other party proposed, drafted or modified such provision or any other existing or proposed provision.

40.0 SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto.

41.0 CITY APPROVALS AND ACTIONS THROUGH THE DEPUTY DIRECTOR OF PARKS AND RECREATION

The Deputy Director of Parks and Recreation, or his/her designee, shall represent the City in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the Deputy Director of Parks and Recreation, or his/her designee, is authorized to act, unless this Agreement specifically provides otherwise or the context should otherwise require. The Deputy Director of Parks and Recreation shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of City so long as such actions do not materially or substantively change the uses of the Premises permitted under this Agreement or cause the City to incur costs. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council or the City Manager.

42.0 ENTIRE AGREEMENT; AMENDMENTS

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations including the MOU with California State University of Fullerton dated January 27, 2016. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement. This Agreement may be modified only in writing and signed by the parties in interest at the time of such modification.

43.0 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

44.0 AUTHORITY OF LESSEE

Each individual executing this Agreement on behalf of Lessee represents and warrants that the individual is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY OF FULLERTON
Municipal Corporation

Eddie Manfro
Interim City Manager

CSU Fullerton Auxiliary Services
Corporation

Charles D. Kissel
Executive Director



17 nov 25

ATTEST

Lucinda Williams, City Clerk

APPROVED AS TO FORM

Richard D. Jones, City Attorney

EXHIBIT A
DESCRIPTION OF PREMISES

