

NON-EXCLUSIVE LICENSE AGREEMENT

THIS NON-EXCLUSIVE LICENSE AGREEMENT (“License”) effective as of the date executed by both parties below is entered into by the CITY OF BEAUMONT, a municipal corporation (“Licensor”), and The Boys and Girls Club of the San Gorgonio Pass (“Licensee”).

RECITALS:

- A. Licensee seeks to operate and maintain a daycare center (“Facility”) on property (“Property”) owned by Licensor located at 1310 East Oak Valley Parkway, Beaumont, CA, Assessor’s Parcel Number 408-100-022, in the City of BEAUMONT.
- B. The Property Licensed for use by the Licensee is described in further detail in “**Exhibit A**,” and the location of the Facility on the Property is as depicted in the diagram attached as “**Exhibit B**.”
- C. Licensor desires to provide daycare services to members of the public providing essential services as defined by state authorities to address the hardships imposed as a result of the COVID-19 pandemic subject to the terms and conditions hereinafter set forth, and believes there is a public benefit to the use of the City’s property in this location and for this particular temporary use.

THE PARTIES AGREE AS FOLLOWS:

1. THE PARTIES AND REQUIRED NOTICES

- A. The parties to this License, and their designated representatives, are as follows:

Licensor:

CITY OF BEAUMONT
Beaumont Civic Center
550 E. Sixth St.
Beaumont, CA 92223
Designated Representative: City Manager
Phone: 951 769 8520

Licensee:

BOYS AND GIRLS CLUB OF THE SAN GORGONIO PASS
PO Box 655
Beaumont, CA 92223

- B. Any notice required to be given under the provisions of this License must be in writing and may be delivered personally, by overnight delivery service, or by certified or registered mail with postage prepaid and return receipt requested, addressed to the other party as set forth above in paragraph A.

C. Should either Party change any element of the contact information in this agreement, that Party shall notify the other Party of such change in writing within seven (7) calendar days following such change.

2. PROPERTY AND FACILITIES

A. The interests in Licensor's property, both real and personal, that are subject to this License consist only of the non-exclusive, temporary and revocable right to occupy and use Licensor's real property in the City of Beaumont, California. No further lease, tenancy or right of any kind to use, possess, occupy, expand, or construct on Licensor's real or personal property is conveyed or implied.

B. Licensee's use is strictly limited to the size as outlined in **Exhibit "B"**. The Facility must be maintained, and operated in compliance with all applicable licenses, permits, ordinances, laws and regulations, including but not limited to the BEAUMONT Municipal Code provisions relating to encroachment permits, and all building and health codes.

C. Licensee shall be responsible for any and all costs associated with Licensee's use of the Property, including utilities, alarm service, and broadband (Internet) service. All invoices shall be paid within 15 days of being presented to Licensee.

D. Licensor makes no warranty or representation of any kind whatsoever regarding the condition of the Property or its fitness for Licensee's use, or any use. Licensee accepts this License of the Property in an "as is, where is" condition and has been advised to inspect the Property.

E. Licensee expressly acknowledges that the License conveyed herein is non-exclusive and temporary, subject to revocation for the reasons specified herein, or no reason, that Licensee has acquired no recognizable property interest in Licensor's Property, that Licensee's use of the Property is entirely at Licensee's own risk.

3. LICENSEE'S USE OF THE PROPERTY

A. Licensee is authorized to use the Property only for the daycare service in the area as described and depicted herein. Licensee's use of the Property must comply with all conditions imposed by Licensor's City Manager, or his designee, or City Council, and with all ordinances, laws, and regulations of any governmental entity having jurisdiction to regulate the use.

B. As required by applicable law, Licensee shall apply for, obtain and maintain continuously in effect all licenses, permits, and approvals required by all governmental agencies for Licensee's intended use of the Property as a daycare center. Licensor shall, at no expense to Licensor, cooperate with Licensee in providing such information concerning this License as may reasonably be requested in Licensee's efforts to obtain the required licenses, permits, and approvals.

C. Licensee shall not in any way impede or interfere with the use of the Property by Licensor or Licensor's employees, agents or contractors. Licensee shall not allow the use of any portion of the Property which, in Licensor's sole but reasonable opinion, will result in interference with Licensor's operations of, or which may cause a nuisance or interfere with, other uses upon adjacent property of Licensor.

D. All of Licensee's employees and volunteers shall have the training, education and licensure required and customarily required for similar day care facilities. Licensee shall require that all employees, volunteers and others be subject to background checks, clearances and emergency and safety training applicable to working with children. All allegations or complaints of inappropriate conduct shall be rigorously investigated and acted on accordance with legal standards and best practices in the childcare profession. Any employee or volunteer who acts or who has acted inappropriately when interacting with children will be immediately dismissed. Licensor may, but has no duty to, require that any employee or volunteer be no longer granted access to the Property for any reason or no reason. Failure to comply with any request to remove an employee or volunteer shall be grounds for immediate termination of this License.

4. TERM

A. This License shall commence upon approval by the City Council and execution by both parties ("Commencement Date") and remain in effect until June 30, 2020, thereafter it may be extended in writing by the City Manager for additional terms of one calendar month each not to extend past September 30, 2020. Any extension past September 30, 2020 shall require approval by the City Council at a duly held meeting.

5. MAINTENANCE OF LICENSEE'S FACILITIES

A. During the term of this License, Licensee shall, at its sole cost and expense, maintain the Property and the Facility in clean, good condition and repair, ordinary wear and tear excepted, and in compliance with all applicable laws, rules, ordinances, orders, and regulations of (i) federal, state, county and municipal governmental agencies having jurisdiction, and their respective departments, bureaus, and officials; and (ii) all insurance companies or risk pools insuring all or part of the Property, or the improvements thereon, or both. In particular Licensee shall strictly adhere to all laws, executive orders and other policies and regulations of any kind imposed in connection with the COVID-19 crisis. Failure to strictly and continuously comply with COVID-19 requirements shall be grounds for immediate termination of this License.

B. Licensor agrees to provide general landscape maintenance services to the property, at no cost to Licensee, during the term of this non-exclusive license agreement.

C. Licensee shall keep the Property free from all liens and stop notices or obligations incurred by or at the request of Licensee. If any lien or stop notice is filed against the Property as a result of the acts or omissions of Licensee, or Licensee's employees, agents, or contractors, Licensee shall discharge, bond, or otherwise secure the same to Licensor's reasonable satisfaction within 30 days after Licensee has notice that the lien or stop notice has been filed. If Licensee fails to commence steps to discharge, bond or secure any lien or stop notice within such 30 day period, then, in addition to any other right or remedy, Licensor may, at its election, upon 30 days' prior written notice to Licensee, discharge the lien or stop notice by either paying the amount claimed to be due, or obtaining the discharge by deposit with a court or a title company, or by bonding. Licensee shall pay on demand any amount so paid by Licensor to discharge or satisfy any lien or stop notice, and all reasonable attorneys' fees and other legal expenses of Licensor incurred in defending any action or in obtaining the discharge of such lien, together with all reasonable disbursements.

6. INTERFERENCE

A. Licensee shall not use the Property in any manner that materially interferes with the Licensor's use of the Property and/or nearby real property, or with lessees, invitees, and licensees of Licensor use of nearby properties.

B. Licensor shall in no way bear any liability or responsibility, financially or otherwise, for any damage, interruption, disruption, discontinuance or other interference with Licensee's use of the Licensee's Facility, or for any damage to or discontinuance of the use of the Facility, whatever the cause, or for any incidental or consequential monetary damages whatsoever.

7. REVOCATION OF LICENSE

A. Licensee acknowledges and agrees that this License is temporary and may be revoked by Licensor at any time for any reason or no reason. In the case of any revocation by Licensor, termination as provided herein, Licensee shall vacate the Property and remove all personal property within five (5) days of any such revocation, termination or expiration.

B. If all or any portion of the Property occupied by Licensee's Facility is temporarily required for Licensor's public purposes in Licensor's sole discretion, Licensee shall immediately vacate the Property.

C. This License is personal to Licensee and does not run with the land. If Licensee closes, terminates or otherwise transfers control of the entity or daycare operation associated with this License as of the Commencement Date to any other person or entity, this License shall terminate unless Licensor, in its sole discretion, first approves a written amendment of this License or a new License for the Property. Licensor is under no obligation whatsoever to transfer the License to any other Licensee.

D. Any violation of any term or condition of this License by Licensee or its agents, employees, contractors or invitees shall be deemed an event of default by Licensee and Licensor may terminate this License. If any such default is not completely cured by Licensee within three calendar days following the sending of written notice to Licensee from Licensor, this License shall terminate.

E. In the event of a termination, expiration, failure to renew, revocation or removal of the Facility for any reason, Licensee shall not be entitled to any relocation assistance payments under California Government Code Sections 7260 et seq. or under federal law (42 U.S.C.A. 4601 et seq.), or any severance or "good-will" damages, or damages or compensation of any nature or amount. Licensee agrees Licensee shall not file or pursue any claim for relocation assistance payments under these or similar statutes, or damages, or reimbursement of expenses of any kind.

8. INDEMNIFICATION

To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold Licensor, its officers, agents, employees and attorneys, harmless from and against any and all claims, actions, damages, liability and expense (including reasonable attorney's fees, costs and disbursements) in connection with this License including without limitation, loss of life, personal injury, or damage to property, attributable to or arising out of: (i) the Facility or equipment that Licensee maintains on the Property and Licensee's business; (ii) the acts or omissions of Licensee's employees, volunteers, customers, agents, guests, program participants or invitees; (iii) any occurrence in, upon or at the Property, to the extent caused by the unlawful, negligent, reckless or willful misconduct of Licensee, or its employees, volunteers, customers, program participants, invitees, agents, guests

or contractors; (iv) any occurrence occasioned by the violation of any law, regulation or ordinance by Licensee or its employees, volunteers, customers, program participants, invitees, agents, guests, or contractors; or (v) Licensee's default under this License. If any claim or action is filed that names Licensor, its agents, officers, employees, contractors, consultants or any of Licensor's indemnified parties as specified herein, Licensor shall, at its sole discretion, be entitled to choose counsel. The provisions of this Section 9 will survive the expiration or termination of this License with respect to any claim, damage, personal injury, or death that occurs before such expiration or termination.

9. INSURANCE REQUIREMENTS FOR LICENSEE

A. Licensee shall procure and maintain continuously throughout the duration of the License insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Licensee's operation and use of the Property. The cost of such insurance shall be borne by the Licensee.

B. Minimum Scope of Insurance.

1. Coverage shall be at least as broad as:

- a. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- b. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Licensees with employees).

C. Minimum Limits of Insurance

1. Licensee shall maintain limits no less than:

- a. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be at least twice the required occurrence limit.
- b. Employer's Liability: At least \$1,000,000 per accident for bodily injury or disease.
- c. Property Insurance: Full replacement cost with no coinsurance penalty provision.

D. Deductibles

1. Any deductibles or self-insured retentions must be declared to and approved by the Licensor. At the option of the Licensor, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Licensor, its trustees, officers, employees and volunteers.

E. Other Insurance Provisions

1. The general liability policy is to contain, or be endorsed to contain, the following provisions:

- a. The City of BEAUMONT, its officers, employees, agents, attorneys and volunteers are to be named as additional insureds with respect to liability arising out of ownership, maintenance or use of that part of the Property subject to this License. Additional Insured status shall be evidenced by

a Certificate of Insurance and appropriate endorsements of requested by City, copies of which are attached hereto as **Exhibit "C"**. Under no circumstance will Licensee enter the Property prior to the acceptance of the Certificate of Insurance attached hereto as **Exhibit "C"** by City.

b. The Licensee's insurance coverage shall be primary insurance as respects the Licensor, its officers, employees, agents, attorneys and volunteers. Any insurance or self-insurance maintained by the Licensor shall be excess of the Licensee's insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Licensor. Prior to any such cancellation, Licensee shall procure new insurance at its sole expense, to prohibit any gap in coverage.

F. Acceptability of Insurers

1. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

G. Verification of Coverage

1. Licensee shall furnish the Licensor with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Licensor or on other than the Licensor's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Licensor before the Commencement Date. The Licensor reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

10. DEFAULT BY LICENSEE

The occurrence of any one or more of the following events constitutes an event of default and breach of this License by Licensee: (i) The abandonment (as defined by the BEAUMONT Municipal Code) of the use of the Property by Licensee; (ii) The failure by Licensee to make any payment required to be made by Licensee hereunder, as and when due, where that failure continues for a period of three (3) business days after written notice is sent by Licensor to Licensee; (iii) The failure by Licensee to observe or perform any of the covenants, conditions or provisions of this License to be observed or performed by the Licensee; (iv) the making by Licensee of any general assignment or general arrangement for the benefit of creditors; or unless prohibited by Bankruptcy Law or other paramount law, the filing by or against Licensee of a petition to have Licensee adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Licensee, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Licensee's assets located at the Property or of Licensee's interest in this License, where possession is not restored to Licensee within 30 days; or the attachment, execution or other judicial seizure of substantially all of Licensee's assets located at the Property or of Licensee's interest in this License, where that seizure is not discharged within thirty (30) days.

11. PROHIBITED USES

A. This License is granted only for the purpose of operating a day care center for essential workers only. Without affecting the foregoing sentence, the following activities are expressly prohibited on the Property:

1. Unlawful use or storage of any hazardous substance or hazardous chemical, 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 or state law, or any pesticide, petroleum product, or fuel; except materials that are packaged and purchased for consumer use in containers not exceeding one gallon, or fuel in a vehicle fuel tank. Use of pesticides must be minimized and may be applied only by authorized personnel and in accordance with all applicable laws, regulations, and label instructions. All aerial applications are prohibited. Back-up generators, and the storage of fuel for those generators, shall only be allowed if specifically authorized in this License.

12. WAIVER

Failure on the part of either party to enforce any provision of this License may not be construed as a waiver of the right to compel enforcement of that provision, or any other provision.

13. LICENSOR'S CONSENT OR APPROVAL

Neither Licensor's execution of this License nor any consent or approval given by Licensor under this License in its capacity as Licensor will waive, abridge, impair, or otherwise affect Licensor's powers and duties as a governmental entity. Any requirements under this License that Licensee obtain consents or approvals of Licensor are in addition to and not in lieu of any requirements of law that Lessee obtain approvals or permits. However, Licensor will use its best efforts to coordinate its procedures for giving contractual and governmental approvals so that Licensee's requests and applications are not unreasonably denied or delayed.

14. PARTIAL INVALIDITY

Any provision of this License that may be determined to be invalid, void, or illegal will in no way affect, impair or invalidate any other provisions of the License, and those other provisions will remain in full force and effect.

15. ENTIRE AGREEMENT

This License constitutes the entire agreement between the parties relating to its subject matter. There are no representations, agreements, or understandings, whether oral or written, between the parties relating to the subject matter of this License that are not fully expressed in this License. This License is deemed to be equally drafted by both parties.

16. MODIFICATION

A. Except as provided in paragraph B below, this License may be modified only by writing signed by both parties.

B. This License is subject to such changes or modifications as may be required by any state or federal regulatory agency in the exercise of its lawful jurisdiction.

17. GOVERNING LAW AND ATTORNEYS FEES

A. Any disputes regarding this License will be resolved according to the laws of the State of California. This License is entered into and to be performed in Riverside County, California and legal proceedings will be initiated in the courts of the County of Riverside, State of California, irrespective of any other possible jurisdictional venues.

B. The prevailing party in any action brought to enforce the terms of this License, or in any action arising out of this License, may recover from the other party the costs and attorney's fees incurred in that action.

18. NO ASSIGNMENT WITHOUT CONSENT

This Agreement is personal to Licensee. Except as provided herein, Licensee may not, without Licensor's prior written consent, which consent may be withheld in Licensor's sole and absolute discretion, assign or otherwise transfer this License or Licensee's interest in the Property or any part thereof. Licensor is under no obligation to approve any transfer or assignment of this License.

19. FURTHER DOCUMENTS

From and after the effective date of this License, each of the parties will promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, all instruments or documents that may reasonably be requested by the other party to carry out the purpose and intent of this License.

20. AUTHORITY

Licensor and Licensee each represent that the persons executing this License on their behalf have full power and authority to execute this License, and that each entity executing this License is duly authorized to enter into this License.

21. EFFECTIVE DATE OF THE LICENSE

This License is effective as of May 6, 2020. Two (2) fully executed counterparts will be transmitted by the Licensor to the Licensee.

TO EFFECTUATE THIS LICENSE, the parties have caused this License Agreement to be executed by their duly authorized representatives as of the dates set forth below their respective signatures.

CITY:

CITY OF BEAUMONT

By: 

Todd Parton, City Manager

Date: 5/10/2020

LICENSEE:

THE BOYS AND GIRLS CLUB OF SAN GORGONIO PASS

By: 

Print Name: Amy Herr

Title: CEO

EXHIBIT "A"

Legal Description
APN No. 408-100-022

LOT 44 OF TRACT MAP NUMBER 34862, AS SHOWN ON FILE IN BOOK 423, PAGES 94 THROUGH 107, INCLUSIVE OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, CONTAINING 2.62 ACRES, MORE OR LESS.

EXHIBIT "B"



EXHIBIT "C"

Certificates of Insurance