

**FACILITY LICENSE AGREEMENT
BETWEEN
THE CITY OF RIALTO
AND
National Council of Negro Women Bethune Center**

This **FACILITY LICENSE AGREEMENT** (herein “Agreement”) is made and entered into this 27th day of September, 2022, by and between the City of Rialto, a municipal corporation and California general law city (“**City**”), and the National Council of Negro Women Bethune Center, a California community based Non-Profit Organization (“**Licensee**”). City and Licensee are sometimes individually referred to as “Party” or collectively as “Parties”.

RECITALS

- A. The City owns the real property and improvements located at the Grace Vargas Senior Center at 1411 S. Riverside Ave, Rialto CA 92376 (“**Property**”) and as depicted on **Exhibit A**. Licensee will have the following spaces allocated to their organization along with noting their hours of operation:
- Licensee hours of operation are Monday-Friday 9am-4pm
 - 3 Office Spaces (Citrus A, Citrus B, Citrus C)
 - 1 large office space
 - Space outside the large office space
 - The dance room (one time per month to host monthly board meetings)
 - Board meetings are held the 4th Monday of the month and if there is a holiday on the fourth Monday, then meetings will be held the third or fifth Monday of the month.
 - Rialto City Park space to host job fairs (1 time a month).
 - Request to use additional spaces for special activities require advance written requests to the City.
 - Licensee will coordinate with City staff to schedule events outside of normal programming to eliminate conflicts with the Senior Center program offerings or scheduled rentals. Licensee events to be coordinated include the diaper drives, etc.
- B. The Parties wish to enter into this Agreement to memorialize the agreements between the City and Licensee regarding Licensee’s use of the Property.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Licensing of Property.

City hereby grants to Licensee a nonexclusive license to use a portion of the Property as set forth in Recital A of this Agreement.

2. Term: Termination:

2.1 Term.

The term of the Agreement shall commence on October 1, 2022, and end June 30, 2023, unless terminated earlier pursuant to the terms of this agreement. Licensee may request up to two (2) one-year extensions to the term of this Agreement. The request must be received by the City not less than 30 days prior to the expiration of the term, or any extension thereof. The request for extension may be approved by the City Manager, or his or her designee, in writing, in his or her sole and complete discretion.

2.2 Termination.

Each party reserves the right to terminate the Agreement without cause upon providing thirty (30) days written notice to the other party.

2.3 Surrender of Property:

On the termination date or the end of any extension or renewal of this Agreement, Licensee shall promptly surrender and deliver the assigned use of the portion of the Property (as defined in Recital A) to City in as good of a condition as it was as of the date of first occupancy under this Agreement; reasonable wear and tear excepted.

3. Use of Property:

3.1 Permitted Use. Licensee shall use the assigned portions of the Property (as defined in Recital A) for the purpose of providing San Bernardino County and Rialto youth preemployment skills, academic enrichment, job search assistance and job development ("Permitted Use"). Licensee shall comply with all applicable federal, state, and local laws in its use of the assigned portions of the Property for the Permitted Use.

- 3.2 City retains the right to enter and use the assigned portions of the Property, provided the City gives Licensee one-week advance notice of such use. Licensee shall be responsible for securing its personal property during times when the City is utilizing the assigned portions of the Property. The City shall not be responsible or liable to Licensee for the loss of damage to any personal property owned by Licensee and kept at the Property unless such loss or damages is the result of the City's sole negligence or willful misconduct.
- 3.3 Restrictions on Use. Licensee shall use and maintain the assigned portions of the Property in a clean, orderly, and safe manner.
- 3.4 Interference with Exits, Licensee shall not in any way interfere with exits and exit signs, including attaching anything to panic hardware. All exit signs and exit paths shall be kept clear and illuminated.
- 3.5 "Good Neighbor" Provision. Licensee shall not interfere with the City's use of the entirety of the Property, and shall endeavor to maintain good relations with the City and any other licensees or tenants of City assigned to use portions of the Property. Licensee shall use reasonable efforts to mitigate the effects on such properties from parking, lights, and sound incurred in its use of the Property.

4. **Obligations of the City:**

The City agrees to provide the following for the ongoing maintenance and operation of the Property:

- (a) Payment of utilities relating to the operation of the Property, including electricity and water.
- (b) Maintenance of the Property including, but not limited to, plumbing, electrical, exterior painting and repairs, roofing, HVAC, interior, and alarm systems.
- (c) Maintenance of the landscaping and the parking lot.
- (d) Cleaning of the Property area.
- (e) Janitorial service and supplies every Friday for restrooms on the Property.

5. **Obligations of Licensee:**

Licensee agrees to pay the City a license fee of Five Hundred Dollars (\$500) per year. The license fee shall be prorated to Three Hundred Seventy Five Dollars (\$375) for the term commencing on October 1, 2022, through June 30, 2023. The license fee shall be paid to the City within 30 days of the commencement date of this Agreement, and by June

1 annually during any extend term(s) of this Agreement. In the event of the termination of this Agreement prior to the expiration of any given term, the City shall issue a prorated refund for any prepaid license fees based on the termination date.

6. Tenant Improvements: Additions: Alterations:

Any improvements Licensee wishes to construct or install on the Property must be approved in writing by the City prior to the beginning of such construction or installation. Licensee shall take reasonable steps to ensure that the Property is not damaged by Licensee, or any person affiliated with Licensee.

7. Maintenance: Repairs and Utilities:

- 7.1 Payment of Costs. City shall provide and pay for the routine costs of maintenance and utilities. "Maintenance and Utilities" includes (a) routine maintenance of City-owned equipment and facilities and repair of said equipment or facilities for normal wear and tear, (b) utilities, including deposits and monthly charges for gas, electricity, and water; (c) routine landscaping costs, (d) routine charges for maintenance and repair of parking lots and accessory structures, including but not limited to paving and painting; and (e) routine charges for maintenance and repair of HVAC systems.
- 7.2 Duty to Report Damage and Maintenance Requests. Licensee shall, as soon as practical, report all damage to the Property and/or City equipment or facilities to City. Licensee shall also request routine maintenance and repairs. City shall respond to routine maintenance or repair requests by Licensee which do not involve a bona fide safety hazard within five (5) working days. City shall provide immediate emergency maintenance and service on an on-call basis.
- 7.3 Duty to Maintain Interior. Except for damage caused by the negligence of City or normal wear, Licensee will keep and maintain the interior of the assigned portions of the Property in good condition and repair, including but not limited to the walls, structural elements, light and sound systems, paint, carpets, flooring, plumbing, and electrical components of the building.
- 7.4 Capital Repairs. City shall be responsible for charges for major capital repairs, including roof replacement to Property.
- 7.5 Waiver of Civil Code Sections 1941 and 1942. In light of the provisions of paragraph 11.2 above, Licensee waives the provisions of California Civil Code sections 1941 and 1942, and any other law that would require City to maintain Property in a tenantable condition or would provide Licensee with the right to make repairs and deduct the cost of those repairs from the rent.

8. Signs

Licensee shall not place, maintain, nor permit on any door, wall, or window of Property, any sign, or other advertising, without the express written consent of City. If City consents to placement of such items, Licensee will have priority regarding signage and agrees to maintain said item in good appearance and repair at all times, and to comply with City's direction as to time limits for display of such items. City has the right to, without damage or liability, remove and/or destroy such item in its discretion.

9. Assignment and Subletting:

Licensee shall not assign their rights or obligations under this Agreement, or any part thereof, without the prior written consent of City to such assignment. City's consent to one assignment shall not be deemed consent to any subsequent assignments. The City reserves the right to subcontract AND/OR sublease the Property to outside parties for any purposes stated or implied as deemed by City designee.

10. Non-Discrimination: Non-Violation.

During the performance of this Agreement, Licensee, in carrying out its responsibilities, shall not discriminate against any person(s), member(s), participant(s), student(s) or any person affiliated with Licensee on the basis of race, color, national origin, religion, sex, gender, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, reprisal or retaliation for prior civil rights activity.

11. Abandonment.

Should the Licensee abandon, be dispossessed, surrender or otherwise vacate Property, the City at City's option, may immediately terminate this Agreement and enter Property and remove all persons and property.

12. Site Walkthrough and Rules of Conduct.

The City and Licensee agree to participate in a collaborative meeting, annually, to facilitate terms and conditions established in this Agreement. City and Licensee will participate in a walkthrough of the Property in order to identify the condition of the Property and improvements and any necessary repairs to be made. The parties agree to meet and confer in good faith to resolve any issues to both parties satisfaction. However, the City reserves the right to make decisions which are in the best interest of the City and its constituents.

13. Damage to or Destruction of Property.

If any portion of premises, fixtures, equipment or facilities are damaged or destroyed by Licensee due in part or whole to the negligence of Licensee, or if such damage is incurred during Licensee's use of Property and/or arising from Licensee's use of Property due in part or whole to the negligence of Licensee, the damage shall be repaired, replaced or

restored at City's discretion, and Licensee shall be responsible for its proportionate share of the full cost and expenses of repairs, replacement or restoration based on its comparative fault, including but not limited to cost of any janitorial, cleaning or other services.

14. Exemption from Liability.

Licensee agrees to indemnify, defend, and hold harmless City, its officers, agents, and employees from and against any and all claims, costs, suits, liability, and damages, including attorneys' fees, arising out of or in any way related to Licensee's use of the Property.

15. Hazardous Materials.

Licensee shall not keep or maintain any Hazardous Substance, other than ordinary cleaning supplies, small quantities of latex paint and waste, on or in Property without City's prior written approval. Licensee shall promptly give notice to City of any Hazardous Substance dispersal or spill, or Hazardous Materials claim, of which it is aware. Licensee shall indemnify and hold City harmless from any and all claims, costs, damages, penalties, or liabilities arising out of the Licensee's use or release of any hazardous substance at, in or on Property.

16. Inspection.

City may enter Property at all reasonable times to inspect, maintain and repair the property.

17. Liens.

Licensee shall keep Property free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by or for Licensee; and Licensee agrees to defend City at its sole cost and expense against any and all lawsuits arising from such lien upon receipt of notice of opportunity to defend from City.

18. Insurance.

For purposes of this Paragraph, the following definition applies: City of Rialto includes the duly elected or appointed officers, agents, employees and volunteers of the City of Rialto, individually or collectively.

- 18.1 Comprehensive General Liability. In furtherance of its obligations pursuant to this Agreement, Licensee agrees to obtain and maintain during the term of this Agreement comprehensive general liability protecting Licensee in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, including bodily injury and property damage, as a combined single limit or equivalent. Such insurance shall name the City of Rialto, as defined above, as an additional insured by endorsement to the insurance policy. Coverage shall be in accordance with the limits specified above and the provisions

indicated herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance that may be carried by City and shall state that the insurer waives the right of subrogation against City and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers. Such insurance shall not be canceled or materially altered to reduce coverage without giving City at least thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of Licensee and Licensee's insurer to notify City of such change or cancellation.

- 18.2 Workers Compensation Insurance. If and to the extent Licensee has individuals which may be subject to workers' compensation law, it agrees to obtain and maintain Statutory Workers Compensation and employer's liability in an amount not less than One Million Dollars (\$1,000,000) and furnish City with a certificate showing proof of such coverage.
- 18.3 Certificates of Insurance with Endorsements. Licensee shall file the required original Certificate of Insurance with endorsements with the City Attorney of the City of Rialto prior to any use of Property. The Certificates shall be subject to City's approval and shall clearly state:
- (a) Policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; show title and producer; policy expiration date; and specific coverage amounts; and
 - (b) That thirty (30) days' cancellation notice is required, unqualified as to the acceptance of liability for failure to notify City; and
- 18.4 Deductibles, Self-Insured Retentions, and Proof of Insurance. Prior to commencing any use of Property, deductibles, and self-insured retentions acceptable to City must be stated on Certificates of Insurance, and the Certificate of Insurance must be approved by City.
- 18.5 Absence of Insurance. The absence of in-force insurance or reduction below limits as specified in this article shall cause revocation of permission to use Property; any delays or expenses caused due to change of insurance shall be considered Licensee's delay and shall not affect City.
- 18.6 Insurance Companies. Insurance provided pursuant to this contract must be from insurance companies admitted in California and rated at least A: VII in the latest Best's Insurance Guide; or such other insurance companies as are acceptable to City in its sole and unfettered discretion.

19. Time of Essence.

Time is of the essence in the performance of this Agreement by Licensee and the

20. Breach and Remedies.

In the event Licensee breaches the terms of this Agreement, the City may immediately terminate this Agreement upon written notice.

21. Force Majeure.

In the event and to the extent that the performance of any of the covenants of this agreement shall be prevented by an act of God, the acts or regulations of public authorities other than acts or regulations of City, labor unions, labor difficulties, strikes, civil tumults, war, epidemic, pandemic, or any other cause beyond the parties' reasonable control, the parties will be relieved of their obligations under this Agreement; provided that an extension of time for any such cause shall be for the period of the enforced delay equal to the number of days during which a party's performance was delayed and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other party within twenty (20) days of knowledge of the commencement of the cause.

22. Notices.

All notices shall be in writing, personally delivered or mailed via first class mail to the below listed mailing address. These addresses also shall be used for delivery of service of process:

CITY: City Manager
 City of Rialto
 150 S. Palm Ave.
 Rialto, CA 92376

Copy to: Burke, Williams & Sorensen, LLP
 1770 Iowa Avenue, Suite 240
 Riverside, CA 92507-2479
 Attention: Eric Vail, Esq.

Licensee: NCNW, Bethune Center
 1411 S. Riverside Ave.
 Rialto, CA 92376

23. Entire Agreement.

This Agreement represents the entire and integrate Agreement between City and Licensee and supersedes any prior negotiations, representations, or Agreements, either written or oral.

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event it becomes necessary for either party to resort to the court system to enforce any of the obligations pursuant to this Agreement, the parties hereto agree that the proper venue for all court proceedings shall be San Bernardino Superior Court.

25. Severability.

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision so interpreted, and all remaining provisions shall remain enforceable.

26. No Third Party Beneficiaries.

This Agreement is for the benefit of City and Licensee, and is not intended to, and does not, create any rights, responsibilities or obligations on behalf of third parties.

27. Authority to Execute.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, and (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement.

SIGNATURES ON NEXT PAGE

CITY OF RIALTO

**NATIONAL COUNCIL OF NEGRO
WOMEN BETHUNE CENTER**

By: _____
 Marcus Fuller
 City Manager

By: _____
 Name: _____
 Title: _____

Attest:

By: _____
 Barbara McGee
 City Clerk

Approved as to Form:

By: _____
 Eric Vail
 City Attorney

EMERGENCY EXIT PLAN
RIALTO SENIOR CENTER

