

ACCESS AND CONSTRUCTION LICENSE AGREEMENT

THIS ACCESS AND CONSTRUCTION LICENSE AGREEMENT (the “**Agreement**”) is made and entered into as of _____, 2017 (“**Effective Date**”), by and between **THE CITY OF CATHEDRAL CITY**, a municipal corporation (“**City**” or “**Licensor**”), and **CITY URBAN REVITALIZATION CORPORATION**, a California non-profit public benefit corporation (“**CURC**” or “**Licensee**”).

RECITALS

A. City and CURC entered into that certain Lease-Back Agreement dated December 15, 2016 (the “**Lease-Back Agreement**”).

B. City is the owner of that certain real property located at 68752 Buddy Rogers Drive, Cathedral City, California, more particularly described as Assessor Parcel Numbers 687-181-009 and 687-181-011 (the “**Property**”).

C. As part of the transaction agreed to by City and CURC under the Lease-Back Agreement, City and CURC agreed that CURC would, at its sole cost and expense, design, develop and construct a replacement fire station (the “**Replacement Facility**”) on the Property.

D. CURC will enter into a construction agreement (the “**Construction Agreement**”) that will govern the terms and conditions of the development of the Property and the construction of the Replacement Facility and all related improvements and facilities on the Property (collectively, the “**Work**”).

E. In order to facilitate the development of the Property, and the construction and completion of the Work, City desires to grant to CURC and its agents, consultants, engineers, surveyors, representatives, employees, contractors and architects, and each of their respective officers, directors, agents, employees, representatives, and designees (collectively, the “**Licensee Parties**”) a non-exclusive, temporary license (the “**License**”) to enter upon the Property to undertake certain investigations and tests, and certain development and construction activities, at CURC’s direction and sole cost and expense, including without limitation, the following: (i) inspections and tests CURC deems appropriate in connection with the Work, including surveys, engineering inspections, test borings, soil tests, percolation tests, site evaluations and such other evaluations, inspections and tests as CURC reasonably desires; (ii) tests to determine the presence or absence of hazardous wastes, asbestos, radon and other similar materials and substances; (iii) inspections to determine compliance of the Property with all applicable laws, rules, codes and regulations; and (iv) certain grading, landscaping, and improvements that may be required or reasonably necessary for the Work, including without limitation, (a) grading and excavation, (b) export, import, balancing and stockpiling of soils, (c) staging and/or storage of construction equipment, trailers, supplies and materials, (d) posting of signs, (e) construction and installation of temporary and permanent curb, gutter and streets and related improvements, (f) construction of installation of temporary and permanent wet and dry utilities and related facilities (above and below ground), and (g) all other aspects of the construction of the Replacement Facility itself and all related improvements and facilities, all subject to the terms

and conditions of this Agreement. Notwithstanding the foregoing, CURC shall not conduct any intrusive or destructive tests on the Property without City's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

F. CURC and Griffin Structures, Inc. ("Property Manager") have entered into that certain "Agreement for Project and Construction Management and Related Owner Representation Services" ("PM Agreement") by which CURC retained the Project Manager to manage the design, construction and other aspects of the Work, as more specifically set forth in the PM Agreement. Among other things, the Project Manager will assist CURC in preparing the Construction Agreement. The Project Manager will also oversee the activities of the "Project Team" (as defined in the PM Agreement). The Project Team will include representatives of the Project Manager, CURC, the City, the Architect, and the Replacement Facility contractor, among others.

G. City desires to grant, and CURC desires to accept, a non-exclusive, temporary license to CURC to enter upon the Property for the purposes set forth in Recital E (and other related activities incidental thereto).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, the Lease-Back Agreement and the Construction Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License. From and after the date hereof and continuing until CURC has completed the Work and all related and applicable work and activities hereunder and a Certificate of Occupancy has been issued by the City, CURC and the Licensee Parties shall have the non-exclusive right and license to enter upon the Property for the purposes set forth in Recital E (and other related activities incidental thereto); provided that in conducting all such activities, CURC obtains and maintains the insurance requirements set forth in Section 3, and otherwise complies with all terms and conditions under this Agreement. All costs and expenses of the Work and the activities described in Recital E shall be borne solely by CURC.

2. Limitations on CURC's Exercise of License Rights. In connection with any exercise of rights under this Agreement by CURC, the following shall apply:

(a) Use of Property and Operating Rules and Regulations. During such times as CURC is exercising its License rights under this Agreement, it shall keep all portions of the Property neat and clean and free of construction debris. At all times during performance of the Work and other work and activities permitted hereunder, CURC shall comply with all operating rules and regulations, if any, reasonably established by City.

(b) Compliance with Laws. CURC shall comply in all respects with all federal, state and local statutes, ordinances, rules and regulations of all governmental agencies and authorities (collectively, "**Laws**") relating to its operations and exercise of rights under this Agreement and the performance of the Work. All contractors and subcontractors employed or contracted with by CURC shall be properly licensed and approved in writing or in advance by City. All work performed by or for CURC shall be performed (i) in accordance with the Approved Plans

(defined below); (ii) lien-free and in a good and workmanlike manner, using prime materials (but not of lesser quality than currently exists); and (iii) in compliance with all Laws.

(c) Notice and Approval of Plans. Neither CURC nor any of the Licensee Parties shall perform any Work or any other work or activities permitted hereunder on the Property unless and until (i) City shall have approved in writing CURC's detailed plans, specifications, and working drawings for such Work and/or activities, (upon City's approval or deemed approval, the "**Approved Plans**"), and all contractors who shall perform such Work and other work and activities shall be duly licensed and approved by City, which approval shall not be unreasonably withheld, delayed or conditioned; (ii) CURC shall have obtained all required governmental approvals and permits for the Work and other work and activities reflected on the Approved Plans; and (iii) copies of all required governmental approvals and permits shall have been delivered to City, along with evidence of all required insurance from CURC and all contractors and subcontractors who shall be accessing the Property. Notwithstanding the foregoing, City's approval rights set forth herein are for City's benefit only, and no such approval shall be deemed to an endorsement of CURC's plans in any manner.

(d) Lien Free. CURC shall keep the Property free and clear of all encumbrances, mechanics' liens, stop notices, demands and claims arising from the Work and all other work or activities on the Property done by or for CURC, the Licensee Parties, or for persons claiming though or under CURC and/or the Licensee Parties, and CURC shall indemnify and save City, and all of its elected and appointed officers, officials, employees, agents, consultants and contractors free and harmless from and against any claims arising from or relating to the same. If CURC fails to remove or satisfy any such encumbrance, mechanics' lien, stop notice or claim in connection with the foregoing within ten (10) business days after receiving written notice by City, City shall have the right (but not the obligation), in addition to any other rights or remedies of City, to use whatever means in its discretion it may deem appropriate to cause said encumbrance, claim, stop notice, or lien to be rescinded, discharged, compromised, dismissed or removed, including, without limitation, posting a bond. Any such sums paid by City, including attorneys' fees and bond premiums, shall be immediately due and payable to City by CURC. CURC shall immediately give City notice of any encumbrance, claim, demand, stop notice or lien made or filed against the Property and/or any action affecting title to the Property. City shall have the right to post and keep posted at the Property notices of non-responsibility or other notices that City may deem to be proper for the protection of City's interest in the Property.

(e) Limitations on Disturbance. CURC, when exercising the License rights granted hereunder, shall: (i) do the Work and all other work and activities permitted hereunder promptly and (ii) except as otherwise expressly provided in the approved Plans; (iii) except for changes expressly shown on the Approved Plans, fully restore any affected sidewalks, pavement, landscaping and similar improvements, and the surface of the land and the surrounding vegetation, to their original condition (to the extent practicable) as soon as possible upon completion of the Work and all other work and activities on the Property permitted hereunder; and (iv) except as provided in the Approved Plans, not install any utility facility or equipment on the Property.

(f) City Review of Construction Agreement. Prior to entering into the Construction Agreement, CURC will provide a copy of the Construction Agreement to City for its review and

approval, which approval shall not be unreasonably withheld, delayed or conditioned and , which City must provide within ten (10) days following its receipt of the Construction Agreement, . CURC will name City as an intended third party beneficiary of CURC's rights and remedies, but not its obligations, under the Construction Agreement.

(g) Completion. Upon substantial completion of any phase of the Work on the Property, City and CURC shall perform a walk-through inspection of the Property to create a punch-list of any corrective work, which corrective work shall be performed by CURC, at CURC's sole cost and expense within thirty (30) days after the walk-through.

(h) Damage or Destruction. Any damage resulting from the exercise of the License rights under this Agreement shall be promptly repaired and the Property shall be restored by CURC, at CURC's sole cost and expense. Any such damage not repaired within thirty (30) days after written notice from City may be repaired by City, and CURC shall reimburse City for such costs within ten (10) days after CURC's receipt of City's demand.

3. Insurance.

(a) CURC shall obtain and maintain, through Public Entity Risk Management Authority ("PERMA") or otherwise, and shall cause all of the Licensee Parties (with the exception of CURC's employees) to obtain and maintain in full force and effect during the term of this Agreement (i) a commercial general liability insurance policy, including blanket contractual and completed operations coverage, written on an "occurrence" basis, with a combined single limit of \$2,000,000 per occurrence of bodily injury, including death, and property damage, and an annual aggregate of \$5,000,000; (ii) Automobile liability insurance with a limit of \$2,000,000 combined single limit per accident for bodily injury and property damage; and (iii) Workers' compensation with a limit of not less than the applicable statutory limit; and employer's liability insurance with limits of not less than \$1,000,000. The general liability policies of CURC and the Licensee Parties shall be endorsed as needed to confirm there is no insured versus insured exclusion as to coverage for City and CURC. It is the parties' intent that the Licensee Parties' contractual liability insurance provides coverage to the maximum extent possible of its indemnification obligations under this Agreement. Each of these insurance policies shall be endorsed to include CURC and the City and all of their respective elected and appointed officers, officials, employees, agents, consultants, and contractors as additional insureds and shall provide that City will receive at least thirty (30) days' prior written notice of any cancellation or material change in such insurance policy. The general liability policies of CURC and the Licensee Parties shall be endorsed as needed to provide that the insurance afforded by those policies to the additional insureds is primary and that all insurance carried by City is strictly excess and secondary and shall not contribute with the liability insurance of CURC and the Licensee Parties. Additionally, CURC shall obtain and cause the Licensee Parties to obtain a waiver of subrogation from their insurer on the policies listed above.

(b) During performance of the Work and all other work or activities permitted under this Agreement, CURC shall require the Licensee Parties (with the exception of CURC's employees) to procure, Builder's Risk insurance on an "All Risk" basis (including collapse) on a completed value (non-reporting) form for full replacement value covering all work incorporated in the Work. CURC shall also maintain and cause the Licensee Parties to maintain any other

form or forms of insurance as City may reasonably require from time to time.:-

(c) CURC shall require the Licensee Parties (with the exception of CURC's employees) to furnish to CURC and the City, prior to entry on the Property, and for the duration of this Agreement thereafter, current certificates of insurance, including endorsements for additional insured, waiver of subrogation, primary and non-contribution, insured vs. insured and primary and non-contributing, confirming insurance coverage for CURC and the Licensee Parties as specified herein is in full force and effect.

(d) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for CURC or any of the Licensee Parties, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve CURC from any obligations under this Agreement.

(e) CURC shall, at its sole expense, maintain in full force and effect the liability insurance coverages required under this Agreement, and shall maintain City and all of its elected and appointed officers, officials, employees, agents, consultants, and contractors as additional insureds, for a period of no less than two (2) years after expiration or earlier termination of this Agreement.:-

4. Indemnity Regarding the Activities of CURC and all of the Licensee Parties.
CURC shall indemnify, protect, hold harmless and defend the City and all of its elected and appointed officers, officials, employees, agents, consultants, and contractors from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) to the extent caused by the actions or omissions of CURC or any of the Licensee Parties, except to the extent arising out of the negligence or willful misconduct of City, or any of its agents, representatives, employees, consultants, contractors or subcontractors. CURC shall require each of the Licensee Parties to indemnify, protect, hold harmless and defend CURC and the City and all of their respective, employees, agents, consultants, and contractors from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) to the extent caused by the actions or omissions of CURC or any of the Licensee Parties, except to the extent arising out of the negligence or willful misconduct of the City, or any of its agents, representatives, employees, consultants, contractors or subcontractors. City shall indemnify, protect, hold harmless and defend CURC and all of its officers, employees, agents, consultants, and contractors from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) to the extent caused by the actions or omissions of City, except to the extent arising out of the negligence or willful misconduct of CURC, or any of the Licensee Parties, or any of their respective agents, representatives, employees, consultants, contractors or subcontractors.

The covenants and conditions of this Section 4 shall survive the expiration or earlier termination of this Agreement until all claims, damages and obligations within the scope of this Section 4 are fully, finally, and absolutely resolved or barred by the applicable statutes of

limitations.

5. Damage or Destruction. During the term of this Agreement City shall not be liable for loss of use or other damage of any nature arising out of loss, destruction or damage to the Property or the Work, by fire, explosion, windstorms, water or any other casualty or by acts of third parties. In the event the Work or any part thereof is damaged or destroyed by the elements or any other cause during such times, CURC shall repair, rebuild, or restore it in accordance with the Approved Plans. The provisions of this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. Default.

(a) Any one or more of the following events shall constitute a default (“**Default**”) by CURC under this Agreement: (i) the failure by CURC to pay any sum due to City within ten (10) days after City provides written notice thereof to CURC; (ii) the failure of CURC to observe or perform any non-monetary obligations under this Agreement within fifteen (15) days from its receipt of written notice of breach (provided that the time period shall be twenty-four (24) hours if the failure results in an imminent and material threat to persons, or property, or the public); (iii) prosecution of any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign relating to bankruptcy, insolvency, reorganization or relief with respect to CURC, or seeking reorganization, arrangement, adjustment, winding-up liquidation, dissolution, composition, assignment for the benefit of creditors, or other relief with respect to CURC or CURC’s debts; or (iv) the making by CURC of an assignment or any other arrangement for the general benefit of creditors under any state statute.

(b) In the event of a Default, in addition to and without limiting all of City’s rights at law or in equity, City shall be entitled at City’s option to terminate this Agreement immediately notice and to remove and store any and all of equipment, personal property located on the Property at CURC’s cost and expense. In the event that City should, as a result of the Default in the performance by CURC of its obligations hereunder, incur any costs or expenses on behalf of CURC or in connection with CURC’s obligations hereunder, such sums shall be immediately due to City upon rendering of an invoice to CURC as an additional fee hereunder.

(c) No Default by CURC shall relieve CURC of CURC’s obligations or liabilities hereunder, all of which shall survive such Default and the termination of this Agreement.

(d) All of the rights, powers, and remedies of City provided for in this Agreement and now or hereafter existing at law or in equity, or by statute or otherwise, shall be deemed to be separate, distinct, cumulative, and concurrent. No one or more of such rights, powers, or remedies, nor any mention or reference to any one or more of them in this Agreement, shall be deemed to be in the exclusion of, or a waiver of, any other rights, powers, or remedies provided for in this Agreement, or now or hereafter existing at law or in equity, or by statute or otherwise. The exercise or enforcement by City of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise or enforcement by City of any or all of such other rights, powers, or remedies.

7. Assignment. CURC may not assign, transfer, or otherwise encumber its interest in

this Agreement during the term of this Agreement without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any assignment which is not consented to by City or permitted by this Section 7 shall terminate this Agreement and the License granted herein, effective immediately and without further action by City.

8. Termination. The License granted to CURC hereunder shall automatically terminate and thereafter be of no further force or effect upon the earlier of (i) forty-eight (48) months following the Effective Date hereof, and (ii) the date upon which the Work is finally completed; provided, however, City may agree to extend such License in City's sole discretion.

9. Notices. All notices required hereunder shall be in writing, and shall be delivered in the manner specified in the Lease-Back Agreement.

10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

11. Binding on Successors. The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

12. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of California.

13. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

14. Entire Agreement. All exhibits referred to herein are attached hereto and incorporated herein by this reference. This Agreement, the Lease-Back Agreement and the Construction Agreement contain the entire agreement and understanding of the parties with respect to the subject matter hereof and cannot be amended or modified except by a written agreement, executed by each of the parties hereto. The terms and provisions of this Agreement and the terms and provisions of the Lease-Back Agreement and the Construction Agreement shall be read together as a single, integrated document. However, in the event of a conflict between the terms and provisions of this Agreement with regard to the License granted hereunder, and the terms and provisions of the Lease-Back Agreement or the Construction Agreement, the terms and provisions of this Agreement shall prevail.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

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

“CURC”

**CITY URBAN REVITALIZATION
CORPORATION,**

a California non-profit public benefit corporation

By: _____
Name: _____
Title: _____

“CITY”

THE CITY OF CATHEDRAL CITY,
a municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

Tracey R. Martinez, CMC
Deputy City Clerk
City of Cathedral City

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP

By: _____
Eric S. Vail
City Attorney