

**CITY OF COSTA MESA
LICENSE AGREEMENT
WITH
COSTA MESA-NEWPORT HARBOR LIONS CLUB**

THIS LICENSE AGREEMENT (“Agreement”) is made and entered into this 4th day of April, 2023 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City” or “Licensor”), and COSTA MESA-NEWPORT HARBOR LIONS CLUB, a California nonprofit corporation (“Licensee”).

WITNESSETH:

WHEREAS, City is the owner of the real property located at 570 W. 18th Street, Costa Mesa, California and all appurtenances thereon known as the Lions Park Campus (“Property”); and

WHEREAS, since 1946, Licensee has held an annual Fish Fry event (“Fish Fry”) in the City as a fundraising event to support community organizations; and

WHEREAS, Licensee uses proceeds from the Fish Fry to support local schools, charities and non-profit organizations; and

WHEREAS, the Fish Fry adds community value by creating an event that attracts thousands of attendees each year; and

WHEREAS, Licensee used City’s Lions Park to host the Fish Fry until 2012; and

WHEREAS, since 2012, Licensee has held the Fish Fry in Fairview Park; and

WHEREAS, the California Department of Fish and Wildlife has recommended that the Fish Fry be moved from Fairview Park; and

WHEREAS, City and Licensee now desire to have the Fish Fry held at the Property, commencing in 2023; and

WHEREAS, the Licensor and Licensee desire to execute this Agreement to set forth their rights, obligations, and liabilities relating to Licensee’s use of the Property; and

WHEREAS, the City and Licensee agree that this Agreement and the Fish Fry serve the public purpose and benefit of creating an event for the community, promoting community stewardship, and providing financial support to schools, charities and non-profit organizations located and active within the City of Costa Mesa.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. GRANT OF LICENSE

Commencing April 4, 2023, Licensor grants to Licensee a non-exclusive license (the “License”) to use a portion of the Property, as delineated in Exhibit “A,” attached hereto and incorporated herein (the “Licensed Area”) on the last full weekend of June each year. The Licensee may utilize the Licensed Area on the preceding Wednesday and Thursday to allow for event preparation for the carnival. Licensor may grant access to Licensed

Area prior to the preceding Wednesday on a case by case basis.

2.0. LIMITED USE OF LICENSED AREA

Licensee's use of the Property shall be limited to use of the Licensed Area for the exclusive purpose of hosting the Fish Fry event only. Such event may include carnival rides, bingo, a car show, vendors, entertainment, and parades. Licensee shall not use the Licensed Area for any other purpose or business without first obtaining Licensor's written consent.

3.0. LICENSE FEE

In exchange for Licensee's organization and hosting of the Fish Fry event, City grants the License to Licensee for no fee.

4.0. TERM AND TERMINATION

4.1. Term. The performance of this Agreement shall commence on January 1, 2020 and continue for a period of ten (10) years, ending on December 31, 2030, unless previously terminated as provided herein. This Agreement shall automatically extend for one (1) additional ten (10) year period, unless either party, at least thirty (30) days prior to the expiration of the term, provides written notice to the other party indicating that it does not desire to extend the term.

4.2. Termination. Either party may terminate this Agreement by providing six (6) months' written notice to the other party, either by certified mail or personal delivery.

5.0. LICENSEE'S DUTIES AND RESPONSIBILITIES

Licensee shall:

- (a) Be responsible for all aspects of the Fish Fry event.
- (b) Submit a Special Event Permit application for each year's Fish Fry in accordance with Section 9-208 of the Costa Mesa Municipal Code.
- (c) Provide to City, at no cost, the use of one (1) booth space at each year's Fish Fry, to be used at the City's discretion.
- (d) Obtain at least sixty (60) days' advance written approval from City of the layout for the Fish Fry, including but not limited to placement of booths, stage, dance floor, and carnival rides. Licensee shall arrange the event in accordance with the approved layout. Licensee shall not change the layout without City's written approval.
- (e) Provide twenty-four (24) hour security services at the Licensed Area during each License Period. The number of security guards required to provide such services shall be as directed by City.
- (f) Remove all personal property at the conclusion of each License Period.
- (g) Leave the Licensed Area in the condition it was provided to Licensee at the inception of each License Period and each day thereof.

- (h) Enforce all City policies and rules pertaining to the general code of conduct while at the Property.
- (i) Comply with, and require its guests and invitees to comply with, any and all City rules, regulations, and guidelines applicable to use of the Licensed Area.
- (j) Promptly notify the City of needed repairs and/or dangerous conditions in the Licensed Area.
- (k) Comply with all reasonable requests made by City.
- (l) Food preparation at the Costa Mesa Senior Center must be done in full compliance of all applicable local, state, and federal laws and regulations and proof of compliance shall be provided to the City prior to the facility's use. The kitchen must be cleaned and odor free by the conclusion of the event.

6.0. CITY'S DUTIES AND RESPONSIBILITIES

City agrees to:

- (a) Provide a staff person to oversee the Property during the License Periods.
- (b) Provide staff members to assist with event production and management, as directed by the City's Parks and Community Services Director.
- (c) Provide marketing and promotional support in connection with each Fish Fry.
- (d) Waive the Special Events Permit Fee for each Fish Fry.
- (e) Waive the costs of providing special event Police Department services for each Fish Fry.
- (f) Contribute to each year's Fish Fry as an official Three Day Event Sponsor, or similar level of sponsor if the sponsor levels change, of the event, in an amount to be determined by the City. Notwithstanding the foregoing, City's annual sponsorship contribution shall not exceed Five Thousand Dollars (\$5,000.00).
- (g) Permit Licensee to use: **1)** the refrigeration units located in City facilities adjacent to the Licensed Area if such units are not being utilized for a separate event; and **2)** the kitchen and the Grand Hall at the Costa Mesa Senior Center for food preparation prior to the event if such units are not being utilized for a separate event.
- (h) Maintain the Licensed Area in a safe and clean condition.
- (i) Perform any needed maintenance and repairs of the Licensed Area.
- (j) Provide Licensee with notice as soon as practical of the unavailability of the Licensed Area, unless such unavailability is due to unanticipated emergency or causes beyond Licensor's control. In the event the Licensed Area becomes unavailable, City will attempt to provide Licensee with an alternative location for the Fish Fry.
- (k) Allow Licensee to host an annual golf tournament at one of the two public golf courses located at the Costa Mesa Country Club as a fundraiser to benefit the Fish Fry. The City will waive

green fees and other related fees for such tournament. The terms and conditions of Licensee's use shall subject to written agreement of the parties.

7.0. SIGNS

Licensee shall coordinate with City regarding the placement of advertisements relating to the Fish Fry on City property.

8.0. ENTRY BY CITY AND PUBLIC

The Fish Fry shall be open to the public at no charge. City and the general public shall have unrestricted access to the Licensed Area at all times during Licensee's use.

9.0. ACCEPTANCE OF LICENSED AREA

Licensor makes no warranty or representation of any kind whatsoever regarding the condition of the Licensed Area or its fitness for Licensee's use, or any use. Licensee accepts and agrees to use the Licensed Area in its current "as-is" condition, without any obligation of Licensor to perform or pay for any improvement thereto.

10.0. ALTERATIONS, ADDITIONS, IMPROVEMENTS

Licensor reserves the right to alter, change, or work on the Licensed Area during the term of this Agreement.

Licensee shall not make any alterations, additions, or improvements to the Licensed Area or Property without prior written approval from Licensor.

11.0. UTILITIES AND TAXES

11.1. Utilities. Licensor shall provide power and water to the Property and pay all fees and charges in connection therewith.

11.2. Taxes. Licensee shall pay all taxes which may be levied or assessed as a result of this Agreement or Licensee's use of the Property. Although it is not anticipated that this License will create a possessory interest in the Property, Licensee understands that a possessory interest may be created and vested in Licensee as a result of this Agreement and that such interest may be subject to property taxation. Licensee understands that Licensee may be subject to the payment of property taxes levied on such possessory interest. If property taxes are levied due to a possessory interest, Licensee shall pay such taxes.

12.0. NO INTEREST IN PROPERTY

Licensee understands and agrees that this is a license agreement, not a lease agreement. No tenancy is established by this Agreement and Licensee shall have no interest in the Property as a result of this Agreement or Licensee's use of the Licensed Area.

13.0. INSURANCE

13.1. Minimum Scope and Limits of Insurance. Licensee shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

13.2. Endorsements. The commercial general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: “The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Costa Mesa-Newport Harbor Lions Club pursuant to its contract with the City; products and completed operations of Costa Mesa-Newport Harbor Lions Club; premises owned, occupied or used by Costa Mesa-Newport Harbor Lions Club.”
- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “Costa Mesa-Newport Harbor Lions Club’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) Licensee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

13.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

13.4. Certificates of Insurance. Licensee shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to using the Property.

14.0. INDEMNIFICATION AND RELEASE

14.1. Licensee agrees to defend, indemnify, and hold free and harmless City, its elected officials, officers, agents, volunteers and employees (“Indemnitees”), at Licensee’s sole expense, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature arising out of this Agreement or the use or occupancy of the Property by, or the acts, errors or omissions of, Licensee, its officers, agents, members, volunteers, employees, occupants, invitees, visitors, guests, or other users, and/or authorized

subcontractors. Notwithstanding the foregoing, Licensee shall not be responsible for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of the Indemnitees.

14.2. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Licensee, its officers, agents, volunteers, employees, occupants, invitees, visitors, guests, or other users and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions, or misconduct of Licensee, its officers, agents, volunteers, employees, invitees, visitors, guests, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the Indemnitees based upon Licensee's use or occupancy of the Property pursuant to this Agreement, whether or not Licensee, its officers, agents, volunteers, employees, invitees, visitors, guests, and/or authorized subcontractors are asserted to be liable.

14.3. Licensee hereby releases Indemnitees from any claims, demands, obligations, liabilities, damages, injuries, breaches of duty, causes of action, losses, costs and expenses, including, without limitation, attorneys' fees, whether known or unknown, which arise out of or are incurred in connection with the use of the Property by Licensee, including, without limitation, any damage or injury to Licensee or to its property arising out of or in connection with this Agreement.

15.0. GENERAL PROVISIONS

15.1. Entire Agreement. 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. This Agreement may be modified only in writing and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

15.2. Notices. Except as set forth herein, any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail. Either party may change its address by giving notice in writing to the other party.

IF TO LICENSEE:

Costa Mesa-Newport Harbor Lions Club
P.O. Box 10628
Costa Mesa, CA 92627
Attn: President

IF TO CITY:

City of Costa Mesa
Parks and Community Services Department
77 Fair Drive
Costa Mesa, CA 92626
Attn: Jason Minter

15.3. Assignment and Subletting. Licensee shall not assign this Agreement or license or sublet the Property or any part thereof without the prior written consent of City.

15.4. 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. 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.

15.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this

Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

15.6. Public Records Act Disclosure. Licensee has been advised and is aware that this Agreement and all reports, documents, information and data furnished or prepared by Licensee pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in California Government Code section 6254.7, and of which Licensee informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

15.7. Force Majeure. In the event of damage or destruction of the Property by any act of God, fire, national or local calamity, strike, labor dispute, civil disturbance, accident, epidemic, act or regulation of any public authority, interruption in or delay of transportation services, or any event of any other kind or character whatsoever, whether similar or dissimilar to the foregoing events, which shall render the practicable fulfillment by City of its obligations under this Agreement impossible, this Agreement shall be null and void and City shall be released of all responsibility hereunder and shall not be held responsible by Licensee for any resulting damage. In the event of any such occurrence or threat thereof, City shall have the right in its discretion to suspend or terminate any use by Licensee of the Property, to cause the Property to be vacated, or to take such action for such duration as City in its sole discretion deems necessary or appropriate.

15.8. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Licensee and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

15.9. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

15.10. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

15.11. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

15.12. 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.

15.13. 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.

15.14. 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.

15.15. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

COSTA MESA-NEWPORT HARBOR LIONS CLUB

Signature

Date: _____

Name and Title

CITY OF COSTA MESA

John Stephens
Mayor

Date: _____

ATTEST:

Brenda Green
City Clerk

Date: _____

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

DEPARTMENTAL APPROVAL:

Lori Ann Farrell Harrison
City Manager

Date: _____

Jason Minter
Parks and Community Services Director

Date: _____

EXHIBIT A

DESCRIPTION OF LICENSED AREA

License Agreement – Costa Mesa Newport Harbor Lions Club

Fish Fry Layout at Lions Park – effective 2023

