

**CITY OF COSTA MESA
FACILITY USE LICENSE AGREEMENT
WITH
CENTRO EVANGELISTICO VIDA NUEVA**

THIS FACILITY USE LICENSE AGREEMENT (“Agreement”) is made and entered into this 1st day of January, 2019 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“Licensor” or “City”), and CENTRO EVANGELISTICO VIDA NUEVA, a California nonprofit corporation (“Licensee”).

WITNESSETH:

WHEREAS, Licensor is the owner of real property located at 695 West 19th Street, Costa Mesa, California and all appurtenances thereon known as the Costa Mesa Senior Center (“Property”); and

WHEREAS, Licensee desires to use a portion of the Property as outlined herein and Licensor is agreeable to such use pursuant to certain terms and obligations; 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.

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

Licensor grants to Licensee a license (the “License”) to occupy and use the following portions of the Property (the “Licensed Areas”) on Mondays and Thursdays from 7:00 p.m. to 10:00 p.m. and on Sundays from 5:00 p.m. to 9:00 p.m. (each use referred to herein as a “License Period” and collectively referred to as the “License Schedule”), unless the License Period falls on a federal holiday, subject to terms and conditions set forth herein:

- Grand Hall 1 (Thursdays and Sundays)
- Grand Hall 2 (Mondays)
- Meeting Room 101 (Mondays, Thursdays and Sundays)
- Meeting Room 102 (Mondays, Thursdays and Sundays)

City has sole discretion to determine how to use and arrange of the remainder of the Property, including outdoor spaces. Licensee understands and agrees that the patio area of the Property is only available for use for City programming. Licensee and its guests and invitees shall not access or use the patio area.

Notwithstanding the License Schedule set forth herein, City may cancel or modify Licensee’s use on any License Period by providing at least seven (7) days written notice to Licensee of such cancellation or modification. However, if a License Period falls on a federal holiday, Licensee’s use shall be deemed canceled on such date without any obligation of City to provide notice of the same. Licensee shall not receive a refund of the License Fee or any portion thereof in the event of a cancellation or modification.

2.0. LIMITED USE OF LICENSED AREAS

Licensee's use of the Property shall be limited to use of the Licensed Areas for the exclusive purpose of Licensee's worship gatherings and related activities only. Licensee shall not use the Licensed Areas for any other purpose or business without first obtaining Licensor's written consent.

3.0. FEES

3.1. License Fee. Licensee shall pay Licensor Six Hundred Twenty-Five Dollars (\$625.00) per week ("License Fee") for use of the Licensed Areas. Licensee shall pay the License Fees to Licensor at Licensee's address provided herein on a monthly basis no later than the 25th day of the month preceding each month of this Agreement ("Due Date"). If the Due Date falls on a holiday or weekend, then Licensee shall pay the License Fees no later than the previous business day. If the License Fees are not paid when due, delinquent payments shall bear interest at the rate of ten percent (10%) per annum from the Due Date until paid.

3.2. Security Deposit. As security for the faithful performance of Licensee's obligations under this Agreement, Licensee shall provide to Licensor a security deposit in the amount of Two Thousand Dollars (\$2,000.00) ("Security Deposit") to be held by Licensor during the term of this Agreement. The Security Deposit may be used by Licensor to apply to any delinquent amounts owed to Licensor hereunder, or to pay the expense of repairs, additional cleaning, and maintenance related to the Property as a result of Licensee's use of the Licensed Areas. In the event a deduction is made, Licensor will provide notice to Licensee of the deduction and the amount required to restore the balance. Licensee agrees to pay to Licensor such amount as required to restore the Security Deposit to a balance of Two Thousand Dollars (\$2,000.00) within two (2) weeks of receipt of the notice of deduction from Licensor. Licensee hereby waives any rights it may have under the provisions of California Civil Code § 1950.7.

3.3. First Month's Fees and Security Deposit. Licensee shall pay the Security Deposit and first month's License Fees immediately upon execution of this Agreement.

4.0. TERM

This Agreement shall commence on the Effective Date and continue for a period of six (6) months, ending on June 30, 2019, unless previously terminated as provided herein. This Agreement may be extended by three (3) additional six (6) month periods upon mutual written agreement of the parties.

5.0. USE REGULATIONS

Licensee shall:

- (a) At least twelve (12) business days prior to the commencement of each month of this Agreement, provide to City in writing via e-mail any requests for changes to its License Schedule or furniture layouts for the upcoming month. All requests are subject to City approval, which shall be at City's sole discretion.
- (b) If Licensee desires to utilize the Licensed Areas for a special event for which outside equipment or services will be utilized by Licensee, Licensee shall submit a written request via e-mail to the City's staff liaison at least fourteen (14) business days prior to such desired event. All requests are subject to City approval, which shall be at City's sole discretion. If City approves such special event, City may impose any requirements it deems appropriate for such event, including but not

limited to additional insurance requirements or use of pre-approved vendors.

- (c) Provide adult supervision in all Licensed Areas.
- (d) Be solely responsible for monitoring and supervising all individuals that enter the Licensed Areas in connection with Licensee's use of the Licensed Areas, including but not limited to ensuring that all of Licensee's guests and invitees exit the Licensed Areas at the conclusion of each License Period. The City will not provide such supervision. However, City may remove or eject any individual associated with Licensee or Licensee's use whose conduct is disorderly, disruptive, or in violation of any law.
- (e) If Licensee will be utilizing any City furniture for any form of arts and crafts, Licensee shall cover such furniture prior to such use and shall ensure the furniture is protected from spills or damages from such use.
- (f) Remove all personal property at the conclusion of each License Period.
- (g) Enforce all City policies and rules pertaining to the general code of conduct while at the Property.
- (h) 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 Areas.
- (i) Leave the Property in the condition it was provided to Licensee at the inception of Licensee's program each License Period.
- (j) Promptly notify the City of needed repairs and/or dangerous conditions in the Property.
- (k) Keep all food and beverages, with the exception of water, within the Grand Hall.
- (l) Comply with all reasonable requests made by City.

6.0. CITY'S DUTIES AND RESPONSIBILITIES

City agrees to:

- (a) Maintain the Licensed Areas in a safe and clean condition.
- (b) Provide unlocked restroom facilities during the License Periods.
- (c) Perform any needed maintenance and repairs of the Licensed Areas.
- (d) Provide a staff person to oversee the Property during the License Periods.
- (e) Provide Licensee with at least thirty (30) calendar days advance notice of closure of the Property, unless such closure is due to unanticipated emergency or causes beyond Licensor's control.

7.0. ACCEPTANCE OF LICENSED AREAS

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 and agrees to use the Property in its current "as-is" condition, without any obligation of Licensor to perform or pay for any improvement thereto.

8.0. ALTERATIONS, ADDITIONS, IMPROVEMENTS

Licensor reserves the right to alter, change, or work on the Licensed Areas during the term of this Agreement, provided that such modifications do not materially impair or affect Licensee's use of the Licensed Areas as contemplated herein. Any such modification shall not affect in any way Licensee's obligation to pay the License Fee.

Licensee shall not make any permanent alterations, additions, or improvements to the Licensed Areas. Licensee shall not change, alter, or otherwise cause the existing physical contours, features, and improvements of the Property, including but not limited to furniture arrangements, to be altered without prior approval from the Licensor.

9.0. UTILITIES AND TAXES

Licensor shall pay all fees and charges for utilities on the Licensed Areas and all real property taxes and assessments levied or assessed against the Licensed Areas during the term.

Notwithstanding the foregoing, 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.

10.0. 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 Areas.

11.0. INSURANCE

11.1. 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 Licensed Areas-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 One Million Dollars (\$1,000,000.00), 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.

11.2. 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 the Licensee pursuant to its contract with the City; products and completed operations of the Licensee; Licensed Areas owned, occupied or used by the Licensee.”

- (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: “The Licensee’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) The 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.

11.3. 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.

11.4. 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 Licensed Areas. The certificates of insurance shall be attached hereto as Exhibit “A” and incorporated herein by this reference.

12.0. INDEMNIFICATION AND RELEASE

12.1. Indemnification. Licensee agrees to defend, indemnify, and hold free and harmless Licensor, 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 Licensed Areas and Property by, or the acts, errors or omissions of, Licensee, its officers, agents, 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.

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 the 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 Licensed Areas 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.

12.2. Release. Licensee hereby waives, releases, and discharges Indemnitees from any and all claims for damages and/or liability, including, without limitation, personal injury, death, or property damage, including liability arising out of the negligence of Indemnitees, which arise out of or are incurred in connection with the use of the Licensed Areas and Property by Licensee or in connection with this Agreement. This release and waiver extends to all claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown.

13.0. REVOCATION; TERMINATION

13.1. Revocation. Licensor may revoke this License this Agreement at any time by delivering a written revocation notice to Licensee. Such revocation shall be effective thirty (30) days from the date specified in the notice.

13.2. Termination for Convenience. Either party may terminate this Agreement at any time by providing thirty (30) days' written notice to the other party.

13.3. Termination for Default. Each of the following shall constitute a "Licensee Event of Default":

- (a) The failure of Licensee to pay the Security Deposit, the License Fee, or any other amount due and owing under this Agreement within five (5) days after delivery of a written demand to Licensee.
- (b) The failure of Licensee to maintain the insurance required by this Agreement.
- (c) Licensee becomes insolvent, makes a transfer in fraud of creditors or makes assignment for the benefit of creditors, or files a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or under any similar law or statute of the United States or is adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder.
- (d) A receiver or trustee is appointed for all or substantially all of the assets of Licensee, and Licensee does not have such appointment discharged within thirty (30) days after Licensee receives written notice of such appointment.
- (e) Breach of this Agreement, or the failure by Licensee to perform Licensee's obligations set forth herein.

Upon the occurrence of a Licensee Event of Default, Licensor may exercise any or all of the following remedies: (1) immediately terminate this Agreement and Licensee's right to use the Licensed Areas, and, as part of Licensor's damages hereunder, retain the Security Deposit and recover from Licensee the remaining balance of the License Fees and all other costs and expenses incurred by Licensor in connection with this Agreement, and (2) obtain any relief available at law or in equity including, without limitation, monetary damages, declaratory relief, temporary restraining order, injunction and/or any other equitable relief. All of the remedies available to Licensor hereunder shall be cumulative and may be exercised separately or concurrently. Licensor's election to exercise one or more remedies shall not preclude Licensor's concurrent or subsequent exercise of other remedies.

Upon termination of this Agreement, Licensee shall immediately discontinue all activities at the Property.

14.0. NOTICES

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 United States Mail as reflected by the official U.S. postmark if such communication is sent through regular U.S. mail. Either party may change its address by giving notice in writing to the other party.

IF TO LICENSEE:

Centro Evangelistico Vida Nueva
665 Park Ave. #20
Costa Mesa, CA 92627
Attn: Juan Padilla

IF TO LICENSOR:

City of Costa Mesa
Parks and Community Services Department
P.O. Box 1200
Costa Mesa, CA 92628
Attn: Marianna Pena

15.0. FORCE MAJEURE

In the event of damage or destruction of the Licensed Areas 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 Licensor of its obligations under this Agreement impossible, this Agreement shall be null and void and Licensor 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, Licensor shall have the right in its discretion to suspend or terminate any use by Licensee of the Licensed Areas, to cause the Licensed Areas to be vacated, or to take such action for such duration as Licensor in its sole discretion deems necessary or appropriate.

16.0. ASSIGNMENT AND SUBLETTING

Licensee shall not assign this License or Agreement or sublet the Property or any part thereof without the prior written consent of Licensor.

17.0. COMPLIANCE WITH ALL LAWS

Licensee shall comply with all applicable laws and regulations in using the Property.

18.0. 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.

19.0. 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.

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.

LICENSEE



Signature
Juan V. Padilla

Name and Title
pastor.

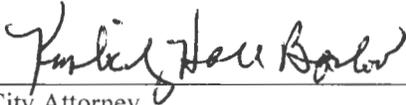
Date: 12-04-2018

CITY OF COSTA MESA



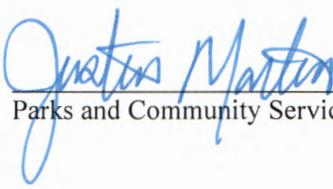
Acting City Manager
Date: 1/7/19

APPROVED AS TO FORM:



City Attorney
Date: 1/4/19

DEPARTMENTAL APPROVAL:



Parks and Community Services Director
Date: 12/14/18

EXHIBIT A
CERTIFICATES OF INSURANCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED DESIGNATED PERSON OR ORGANIZATION
FOR SPECIFIC ACTIVITY**

This endorsement modifies insurance provided under the General Liability Coverage Part.

The following is added to the General Liability Additional Provisions Form.

Additional Insured Person(s) or Organization(s):		
Name: The City of Costa Mesa & its elected officers, & appointed boards, officers, agents and employees		
Address: Senior Center 695 W 19th Street Costa Mesa CA 92627-2715		
City	State	Zip
Activity: Evidence of insurance for use of facilities located at: 695 W 19TH ST, COSTA MESA, CA, 92627. The City of Costa Mesa & its elected officers, & appointed boards, officers, agents and employees are named additional insured but only with respects to the premises leased to the Named Insured, subject to policy terms, conditions and exclusions. Policy#0200455-02-910374		
Date(s): Effective: 06/24/2016-06/24/2019		

A. ADDITIONAL INSURED DESIGNATED PERSON OR ORGANIZATION FOR SPECIFIC ACTIVITY

1. Paragraph C., Who is An Insured, is amended to include the person(s) or organization(s) shown above, but only with respect to "bodily injury," "property damage," "personal injury," and "advertising injury" liability, and only with respect to operations of the Named Insured that are directly related to the activity shown above during the dates shown above.