



MONTEREY CONFERENCE CENTER

FACILITY LICENSE AGREEMENT
ONE PORTOLA PLAZA
MONTEREY, CA 93940

The CITY OF MONTEREY, a municipal corporation, hereinafter referred to as "City", and Kiwanis International hereinafter referred to as "Client", City and Licensee agree as follows:

- 1. FACILITY USE. In consideration of the rents and charges hereinafter provided, the mutual agreements contained herein, and subject to the terms and conditions hereinafter stated, City hereby grants to Client the right to exclusively use and occupy the Center areas specified below for the uses indicated, and on the dates and the times listed below.
a. Permitted use: Meetings/Exhibits
b. First Option: Space is being held on a tentative basis until Wednesday, August 26, 2020.
c. Center Space to be subject to this Agreement:

Table with 8 columns: Date, Start Time, End Time, Function, Room, Setup, Agr, Room Rental. Rows include dates from Feb 26, 2021 to Feb 27, 2021, with functions like A/V Set Up, Registration, and Meeting, and room rentals such as \$1,598.00 and \$3,195.00\*.

\*Non-Profit rates have been extended for this program. 50% Off Rental for A/V Set Up day

Groups receive 10% discount off room rental for Food and Beverage spend above \$5,000 per room per day where the Food and Beverage is served. Food and Beverage served in Lobby spaces for reception and breaks will also apply towards Steinbeck Ballroom rental as a special concession for 2021 program.

All applicable discounts will be applied at the conclusion of the program.

Client's right to use Center space includes only the space designated, plus access to said space and use of common facilities, such as lounge areas and rest rooms. Client acknowledges that others may be using the Center and will not commit, nor permit to be committed, any act which interferes with the right of use of others.

Client understands and agrees that this Agreement is a license for use of the specified Center space and common facilities, and an agreement for services, and that it is not and does not constitute a lease or other rental agreement that would confer on Client any rights as a tenant under California landlord-tenant laws, including any rights to prior notice or cure under such laws, and Client's right to occupy and use the specified Center areas, common areas, and services may be terminated in accordance with the terms set forth in this Agreement.

- 2. RENT, DEPOSIT, PAYMENT, CANCELLATION AND REFUNDS. The Client agrees to pay to City the facility rental fees as indicated in the above schedule of events, subject to any adjustments otherwise provided for in this Agreement.
a. DEPOSIT AND PAYMENT: Client shall pay \$3,195.00, as advance deposit at the time this Agreement is executed. The remainder of the facility rental fee and any supplementary charges shall be paid within 30 days after the event. If this Agreement is executed within 30 days of the event, one hundred percent (100%) of the rent shall be submitted as a deposit. City is authorized to apply said deposit against damages to the structure or damages for cancellation of the event as set forth herein.
i. Any invoiced fees and charges are due and payable by Client within thirty (30) days from the date of City's invoice, and shall be deemed delinquent if not received by City on or before such date.
ii. In the event that City does not receive payment of fees and charges, or any portion thereof, within five (5) calendar days of the due date, Client agrees to pay 1% interest per month (12% per annum) on any outstanding balances from the due date until the date that full payment is received.
b. CANCELLATION AND REFUNDS: The CITY has agreed to commit the space as outlined above to Client. CITY will hold this space in reserve exclusively for Client during the times specified on a definite basis. If this definite space is released or goes unused, Client will pay CITY the space rental fees provided in this Agreement without consideration of any discounts/waivers of such fees that may have been available to Client if the space had not been canceled or unused as liquidated damages according to the following sliding scale:

- i. Upon execution of the CENTER facility rental agreement to 180 days prior to contract start date: Any space released from the definite space commitment not resold by the CITY, Client will pay the CITY 50% of expected space rental fees within 30 days after event is completed or after cancellation, if entire program is cancelled.
      - ii. From 179 days to 90 days prior to contract start date: Any space released from the definite space commitment not resold by the CITY, Client will pay CITY 75% of expected space rental fees within 30 days after program is completed or after cancellation, if entire program is canceled.
      - iii. From 89 days to contract start date: Any space released from the definite space commitment not resold by the City, Client will pay City 100% of expected space rental fees within 30 days after program is completed or after cancellation, if entire program is cancelled.
      - iv. No refund will be made when the scheduled event is cancelled by the General Manager for noncompliance with the rules and regulations governing the management of the Center. If said rent is not paid on or before the time specified herein, this license shall be void automatically and without notice.
    - c. SCHEDULE OF ADDITIONAL CHARGES:
      - i. Client acknowledges that it may require additional equipment and services, which may include, but are not limited to: internet, electrical, security, rigging, signage and branding, drayage, and audiovisual services, to be furnished by City in connection with Client's use of the Center. Rates for City-provided equipment and service details are located in the Event Planner Guide.
      - ii. A fee of \$.05 per square foot per room per hour, or part thereof, for hours extending beyond the scheduled rental hours (Section 1(c)) will apply. Extending beyond the period of occupancy is at the discretion of the General Manager or designee.
3. **INDEMNIFICATION.** RENTER agrees to indemnify, defend and hold CITY, its agents, officers, employees and contractors harmless from and against any and all costs, expenses or liability incurred as a result of any claim, suit lien, or other legal proceeding resulting from RENTER's use of the CENTER, except ***those claims or legal proceedings arising out of the negligence or willful misconduct of the CITY, its officers or employees.*** It is understood the CITY is indemnified from its officers, agents and employees own acts of passive negligence that solely or contributorily cause CITY's liability, but is not indemnified for its own acts of active negligence or willful misconduct that may solely or contributorily cause any such liability under this agreement. ***In the event of any such indemnification claims, City shall a) promptly notify RENTER; b) at RENTER's expense, reasonably cooperate with RENTER in the defense of such claim; and c) not settle any such claims without RENTER's written consent, which shall not be unreasonably withheld or delayed.***
4. **INSURANCE.** Without altering or limiting Client's duty to indemnify, Client shall obtain, and maintain in force during the entire period of this Agreement, the following insurance and under the following terms:
  - a. Primary General Liability Insurance, or Commercial General Liability Insurance, including coverage for operations, contractual liability, personal injury liability, products/completed operations liability, broad-form property damage, and independent contractors liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limit, written on an occurrence form.
  - b. Workers' Compensation Insurance as required by California statutes, and Employee's Liability Coverage of not less than One Million Dollars (\$1,000,000.00).
  - c. Each insurance policy required by this Agreement, excepting policies for workers' compensation, shall contain an additional insured endorsement naming the City of Monterey, its employees, officers, and agents, as additionally insured and an endorsement waiving any subrogation rights against the City.
  - d. Client shall deliver to the City, at least 30 days prior to the start of the event or at the time of the execution of this Agreement if less than 30 days remains until the date of the event, a Certificate of Insurance evidencing the existence of the above-required insurance and endorsements. **FAILURE TO PROVIDE THE REQUIRED INSURANCE MAY RESULT IN CANCELLATION OF THIS AGREEMENT.** Client will notify the City immediately, in writing, if insurance is canceled or changed before the event date and after the City has received evidence of insurance.
  - e. Acceptance by City of an insurance certificate that does not comply with this Agreement, absent written authorization by City, shall not constitute a waiver of the insurance requirements under this Agreement.
5. **POLICIES, RULES, AND REGULATIONS.** By executing this Agreement, Client acknowledges that Client has received a copy of Center's Event Planner Guide (hereinafter called "Guide") from the City and that the Guide is hereby specifically referred to and by such reference made a part of this Agreement. Client shall abide by all terms and conditions contained in the Guide and any modifications of the Guide to which the Client receives written notice.

6. **NOTICES.** Any notices to be given by the terms of this Agreement may be given to a party personally or by depositing such notice in the U.S. mail, postage prepaid, return receipt requested and addressed as follows:

For the CITY: General Manager  
Monterey Conference Center  
City of Monterey  
One Portola Plaza  
Monterey, CA 93940

7. **FOOD AND BEVERAGE SERVICE.** All food and beverages prepared, sold, or consumed at the Center must be supplied by the City's exclusive caterers. Food and beverage services are subject to a separate agreement with the Center's exclusive caterers.

8. **OTHER VENDOR SERVICES.** Client must utilize the Center's exclusive vendors where the City has exclusive contracts for services at the Center. Refer to Exhibit 2, Event Planner Guide, for exclusive vendor services. If any additional services not provided by the City or its exclusive vendors are required by the Client, Client shall make contractual agreements for said services and shall be solely responsible for performance under that agreement, including payment of parties thereto. City reserves the right to require either the Client or the contractor, or both, to provide City with adequate insurance, bonds, or other assurances that may be required, to insure that no damage is done to the structure and that all rules, regulations, and laws applicable to the work are followed.

9. **RIGHT OF ENTRY; EJECTION OF DISORDERLY PERSONS; SECURITY.**

- a. Right of Entry by City: City reserves the right of entry to any and all areas of Center by its agents and employees, to ensure compliance with this Agreement and any laws, rules, or regulations. This right includes the right to enter locked storage areas and inspect goods, merchandise, or other contents therein.
- b. Right to Eject: City reserves the right to refuse entrance to, or remove and eject from the Center, any person associated with Client or present at Client's event whose conduct is objectionable, disorderly, disruptive, or in violation of any law. The indemnification provisions of this Agreement shall apply to any claim or cause of action arising from such ejection.
- c. Security: City requires one security guard on duty during Client move-in and move-out (guard must be in place 30-minutes prior to posted move-in time and during entire move-out time). City will provide this service at Client's expense. This guard is exclusively for traffic control in the loading area. Client may be required to contract for event security staffing within the licensed Center space (see Section 1(c)). All security or staffing contractors hired by Client for event-related security must be approved by City in advance of providing services within the Center. City shall have the sole right to determine the minimum level of all security required for Client's event. All security and staffing plans must be submitted to the City at least thirty (30) days in advance of the event for approval. If Client is aware of specific threats made regarding Client's event at the Center, Client shall immediately inform the Center's General Manager.

10. **CLIENT'S OBLIGATIONS.**

- a. Compliance with Laws: Client, its officers, agents, employees, and invitees, shall comply with all applicable rules within the Center and all other applicable laws, ordinances, and regulations. Additionally, Client shall secure or cause to be secured all necessary federal, state and local permits and any others rights or entitlements necessary for the event and shall file written proof of said permit or entitlement at least 10 days prior to the event. Client shall be solely responsible for ascertaining the permits required, for paying all fees and charges in connection therewith, and shall hold the City harmless, defend, and indemnify against any claim or judgment for failure to secure said permit, license, or other entitlement.
- b. Defacement of Facility: Damages: Client, its agents, employees, contractors, exhibitors, or invitees shall not injure, mar, or in any manner deface the premises or any furniture, fixtures, or equipment therein, and shall not cause or permit anything to be done whereby the said premises, furniture, fixtures, or equipment are injured, marred, or defaced. Client will not drive, or permit to be driven, nails, hooks, tacks, staples, or screws into any part of the building, furniture, fixtures or equipment therein, and will not make or allow to be made any alterations of any kind to said building, furniture, fixtures or equipment. Client shall pay the actual costs to replace, repair, and/or restore, in City's discretion, any part of the Center's building, furniture, fixtures, or equipment (excepting normal wear and tear) that was defaced or damaged by Client, its agents, employees, contractors, exhibitors, or invitees. Payment shall be made within thirty (30) days of written demand by City.
- c. Non-Discrimination: Client agrees that, in connection with its event and its use of the Center, neither Client, nor its agents, employees, contractors, or exhibitors shall discriminate against any person with respect

to employment, contracting, admission, nor services or privileges offered to attendees of Client's event, in violation of federal, state, or local laws.

- d. Payment of Taxes: Client acknowledges and understands that state and/or local taxing authorities may impose a tax or other assessment on Client's use of the Center (a possessory use tax) and that Client shall be solely liable for payment of this, and any other taxes levied on its use of the Center.

#### **11. BROADCASTING AND PHOTOGRAPHY.**

- a. Broadcast, Recording and Television Rights: The City will not pay any expenses pertaining to the broadcasting, televising, or reproduction of any event.
- b. Photography: City retains the right to photograph any and all events for its own purposes.

**12. FORCE MAJEURE.** Either party may terminate or suspend its obligations (other than obligation to make payments for services rendered pursuant to this Agreement) under this Agreement if such obligations are delayed or prevented as a result of fire, flood, earthquakes and other natural catastrophes, war, riot, strikes, civil disorder, mechanical or utility failure, act of terrorism, curtailment of transportation facilities, or other emergencies, or any law, ordinance, rule or regulation which becomes effective after the date of this Agreement, provided and to the extent such occurrence is beyond the reasonable control of the party whose performance is affected. In such event, the affected party shall not be liable to the other for delay or failure to perform its obligations.

**13. BREACH OF CONTRACT.** In the event of a breach by Client of the terms of this Agreement, City shall have the right to proceed with the following options:

- a. In the event of a non-material breach occurring thirty (30) or more days prior to the commencement of the Client's event, City shall provide Client with a written notice of default specifying in detail the nature of the alleged breach and specifying fourteen (14) days within which to cure the default. If the breach occurs less than thirty (30) days prior to the commencement of Client's event, City shall immediately provide Client with written notice of default and provide Client with an opportunity to cure within a reasonable period of time. If the default is not cured within that time, City may immediately terminate this Agreement or take other action as is reasonable necessary under the circumstances.
- b. In the event of a material breach (defined as any substantive change in the nature of Client's event or a failure to provide City with required insurance documentation or deposits due), occurring thirty (30) or more days prior to the commencement of the event, City shall provide Client with a written notice of default specifying a minimum of fourteen (14) days within which to cure the default. If the breach occurs less than thirty (30) days prior to commencement of the event, City shall immediately provide Client with written notice of default and provide Client with an opportunity to cure within a reasonable period of time. If the default is not cured within that time, or if the breach involves public safety or immediate damage to the Center or its equipment, City may immediately terminate this Agreement or take other action as is reasonably necessary under the circumstances.

**14. LIMIT OF CITY'S LIABILITY.** Client agrees and acknowledges that City's liability for any termination, interruption, or other impairment of the event for any reason (including, without limitation, City's passive or active negligence), other than City's willful misconduct or unlawful acts shall be limited to the fees and charges paid by Client to the City for use of the Center for such event; and not include any lost revenue, incidental or consequential damages, or other claims, known or unknown, arising from such termination, interruption, or other impairment of the event.

#### **15. GENERAL PROVISIONS.**

- a. Validity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.
- b. Assignment: Client shall not assign this Agreement or any interest herein or permit the use of the Center by any other party, except that Client shall have the right to permit its exhibitors to use the Licensed Areas in conjunction with Client's event.
- c. Applicable Law, Venue, and Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Monterey. Any action by a party to this Agreement to enforce or interpret the terms hereof must be maintained in the Monterey County Superior Court or the Federal District Court for the Northern District of California. Client consents to the foregoing.
- d. Abandoned Equipment and Lost or Misplaced Articles: Any equipment or personal property belonging to Client or its agents, employees, contractors, invitees, patrons, and/or guests, which remains in the Center or the Licensed Areas after the event, shall be deemed abandoned and may be disposed of by

City at Client's sole expense. City shall assume no responsibility for losses caused by theft, disappearance, or abandonment of equipment or personal property.

- e. Americans with Disabilities Act (ADA): City acknowledges and agrees that it is responsible for complying with the AD requirements for permanent building access accommodations such as, but not limited to, permanently installed wheelchair ramps, elevator standards, permanent seating accessibility, door width standards, and restroom accessibility. Client acknowledges it is responsible for complying with ADA non-permanent accessibility requirements such as, but not limited to, accessibility of non-permanent seating and auxiliary aids for the visually impaired, hearing impaired, and mobility impaired.
- f. Integration: Client's acceptance of this signed Agreement for the use of the Center shall constitute its sole and complete agreement with the City. No prior oral or written understanding, except as expressly provided herein, will be of any force or effect with respect to those matters covered herein. This Agreement may only be modified or amended in writing signed by both parties.
- g. Counterparts; Facsimile or Scanned Signatures: This Agreement may be signed in counterparts, and the counterparts taken together shall be deemed an original executed Agreement. A signature may be delivered to the parties by fax or scanned and e-mailed document, and such fax or scanned signature shall be accepted and effective as an original signature.

IN WITNESS WHEREOF, this agreement is executed by the parties hereto on \_\_\_\_\_  
Date

FOR THE CITY OF MONTEREY:

FOR THE CLIENT:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Doug Phillips  
General Manager



MONTEREY CONFERENCE CENTER

<b>Payable to:</b> <b>CITY OF MONTEREY</b> <b>MONTEREY CONFERENCE CENTER</b> One Portola Plaza, Monterey, CA 93940 Phone: (831) 646-3770 / (831) 646-3388 Fax: (831) 646-3777	<b>INVOICE</b> Date: August 3, 2020
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<b>To</b> Kiwanis International 3636 Woodview Trace, Indianapolis IN, 46268	Booking: 0000013902
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SALESPERSON	PROGRAM DATES	PAYMENT TERMS	DUE DATE
Tonya Hufford, CMP	February 24 – February 28, 2021	Per Contract	Wednesday, August 26, 2020

DESCRIPTION	LINE TOTAL
Deposit Due Per Contract	\$3,195.00
<b>TOTAL</b>	<b>\$3,195.00</b>

**PLEASE MAKE YOUR CHECK PAYABLE TO:**  
**Monterey Conference Center**  
**One Portola Plaza**  
**Monterey CA, 93940**

FOR QUESTIONS ABOUT THIS INVOICE CALL (831) 646-3388

For Billing Use Only		
PC7010	MCC Room Rental	Sales & Events