

FACILITY USE AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #: 2857

FACILITY USE AGREEMENT BETWEEN THE CITY OF MENLO PARK AND Q2 KICKS INC. DBA KUK SOOL WON™ OF MENLO PARK

This Facility Use Agreement ("Agreement") is made and entered into at Menlo Park California, this 1/29/2020, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and Q2 KICKS INC. (DBA KUK SOOL WON™ OF MENLO PARK), hereinafter referred to as "PROVIDER" and collectively referred to herein as "PARTIES".

WHEREAS, PROVIDER desires to conduct a martial arts program for the benefit of the public at the Arrillaga Recreation Center ("Center"), which is owned by the CITY, and the CITY desires for PROVIDER to conduct a martial arts program at the Center on the terms and conditions set forth below.

NOW, THEREFORE, the PARTIES agree as follows:

1. PREMISES

The premises are located at 700 Alma Street, Menlo Park, California on the City's Civic Center campus at Burgess Park and includes seven rooms, two outdoor patios, and public restrooms. The premises ("Premises") include only those rooms that the PROVIDER uses for the provision of its martial arts program. Center staff will make the final determination regarding room assignments depending upon availability. Under no circumstance, unless additional fees are negotiated, will the entire Center be available as a part of this Agreement. Pursuant to this Agreement and with the exception of City-observed holidays, the CITY agrees to reserve the Sequoia Room for classes on the following days/times from January 2, 2020 through December 20, 2020:

- A. Monday/Wednesday from 2 p.m. – 9 p.m.
- B. Tuesday/Thursday from 2 p.m. – 9 p.m.
- C. Friday from 1 p.m. – 9 p.m.
- D. Saturday from 8 a.m. – 12:45 p.m.

PROVIDER may request use of additional rooms at the Center for special events, community-based workshops, tournament practice, testing and other program related functions; however, such reservations will be subject to City staff approval contingent upon availability. Priority is given to City meetings, functions, maintenance, and contracted programs and classes, after which additional room reservations requested by PROVIDER will be considered. Pursuant to this Agreement, the CITY may allocate up to an additional 45 hours per month of room usage, not to be carried over from month to month. Reservation requests exceeding the allotted 45 hours/month will be billed at a rate of \$25 per hour, per room.

2. TERM

The term of this Agreement shall be for a period one (1) year ("Term") commencing on January 1, 2020 ("Commencement Date") and ending one (1) year from the Commencement Date. Agreement will be evaluated and renewed on an annual basis.

3. RENT

PROVIDER will remit monthly rent ("Rent") in the amount of \$4,230.96 to the CITY for use of the Premises on the fifteenth day of each month. Rent is inclusive of a \$25 fee for use of 25 square feet in the Sequoia room closet. Each year thereafter, the Rent shall increase pursuant to the Consumer Price Index ("CPI") for all Urban Consumers (All Items) in the San Francisco-Oakland-San Jose Area (U.S. Department of Labor, Bureau of Labor Statistics), with a minimum increase of two percent (2%) and a maximum increase of five percent (5%) per annum.

Throughout the Term, PROVIDER shall pay to the CITY within fifteen (15) days of receipt of written invoice submitted to PROVIDER by City, in addition to the Rent, and as additional rent ("Additional Rent") the following:

- A. Student Fees: \$2 per student assessed each month based on enrollment numbers furnished by PROVIDER.
- B. Birthday PARTIES: PROVIDER will be charged \$25 per hour for each birthday party. Birthday party reservations will include either use of the Sequoia Room or two smaller rooms dependent upon availability up to one month in advance. Room use for birthday PARTIES will not be counted toward the 45 hours mentioned in Section 1 above.

Any payment due by the PROVIDER not received by CITY within fifteen (15) days of the due date shall be subject to a late payment penalty of five percent (5%) of the amount due.

4. ADVERTISEMENT

PROVIDER will remit annual advertisement fees ("Advertisement Fees") in the amount of \$1,240 to the CITY for annual advertisements to be paid in installments of \$124 per month over the course of 10 months. Advertisement Fees are inclusive of four full page ads over the course of three seasonal activity guide publications and two monthly TV ads to be displayed on the TV at the Center. Any additional advertisements can be purchased at a rate of \$250 per full page activity guide ad and \$10 per monthly TV ad.

5. SECURITY DEPOSIT

PROVIDER will deposit with the CITY \$2,000 as a security deposit ("Security Deposit"). The CITY may use, apply or retain any portion of the Security Deposit for the payment of any Rent in default, or for the payment of any other sum incurred for any loss or damage as a result of PROVIDER's use of the Premises. The full amount of the security deposit must remain on file with the CITY during the Term of this Agreement. If CITY applies all or any portion of the Security Deposit, PROVIDER shall, within ten (10) days after written notice by CITY, deposit additional funds with the CITY in an amount sufficient to restore the Security Deposit to its full original amount. The Security Deposit need not be retained in a segregated account. No interest shall accrue or be payable to PROVIDER with respect to the Security Deposit. If PROVIDER timely performs all of PROVIDER's obligations under this Agreement, the Security Deposit, or so much thereof as remains, shall be returned to PROVIDER within thirty (30) days after the expiration of the Term.

6. USE OF PREMISES

Subject to the terms of this Agreement, PROVIDER shall have restricted use of the Premises for the purposes of conducting martial arts programs including classes, workshops, and camps. All room reservation requests must be submitted in writing via formal room reservation documents. All use of facility rooms and space must be documented and, therefore, last minute requests for use of space may be denied. The CITY reserves the right to deny a request for room usage at any time. This Agreement includes room usage for classes as outlined in Exhibit A.

7. PROGRAM FEES

The program fees charged by PROVIDER shall be as follows:

- A. The fees charged by the PROVIDER for programs shall be comparable to rates and fees charged by other similar PROVIDERS in surrounding communities.
- B. At the discretion of the City's Community Services Director, PROVIDER may elect not to impose a surcharge to non-resident participants/users.
- C. Review of the program fees shall be included in the annual report to the CITY.

8. PROGRAM ADMINISTRATION

PROVIDER shall have a method for the public to register, pay, and receive adequate customer service in an easy and effective manner. PROVIDER shall maintain adequate administrative staff and assistance to support all hours of operation. Policies and procedures for handling registration, refunds, and complaints are required. PROVIDER shall furnish sufficient communication and marketing in order to inform the public of the programs and services. PROVIDER shall maintain a customer database and appropriate records retention. The CITY will provide reasonable marketing space in the tri-annual activity guide for PROVIDER to promote their programs at the Premises. PROVIDER shall be responsible for meeting the deadlines and providing accurate and sufficient information to City staff.

PROVIDER shall take appropriate steps to maintain a high level of customer service and overall satisfaction at all times. Additionally, PROVIDER shall prepare an annual report no later than January 30 following each year of the Agreement and submit it to City staff. The annual report should include the following items:

- A. Total program hours by program area;
- B. Participation statistics by program area including resident and non-resident percentages;
- C. Customer satisfaction survey results;
- D. Fees by program area and fee comparison to other competitors in the region;
- E. Risk management documentation; and
- F. Training certifications listed by staff members.

The PROVIDER shall maintain reasonable evidence and documentation of these statistics and results and have these records accessible to the CITY at any time following fourteen (14) days written notice.

In the event of a third party dispute or conflict arising out of or related to this Agreement, the CITY will use best efforts to notify and discuss the issue with PROVIDER before engaging in any dialogue with the third party involved.

9. COMPLIANCE WITH LAWS AND REGULATIONS

The PROVIDER shall comply with all city, county, state, and federal laws and regulations related to program operations. These regulators and laws include but are not limited to:

- A. City of Menlo Park
- B. Menlo Park Fire Department
- C. San Mateo County Health Department
- D. California Department of Health Services
- E. California Department of Labor
- F. Occupational Safety and Health Administration (OHSA)
- G. Emergency Medical Services Authority (EMSA)
- H. Consumer Product Safety Commission & Virginia Graeme Baker Act
- I. Americans with Disabilities Act
- J. California Department of Fair Employment and Housing

10. HEALTH AND SAFETY

The PROVIDER is required to maintain health and safety standards in a reasonable and acceptable manner for the Premises, participants, and its employees in compliance with CITY standards and the other regulatory agencies listed above.

The PROVIDER is responsible for keeping up to date with all changes, additions, or amendments to the laws, regulations and codes related to operations and programs.

11. RISK MANAGEMENT

The PROVIDER shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence by the PROVIDER.

12. EMERGENCY ACTION PLAN AND PROCEDURES

The PROVIDER shall create and maintain all emergency action plan and procedures for the Premises. An emergency action plan is required under Title 29 of Federal Regulations Sections 1910.38/.120/.156, and Title 8 California Code of Regulations, Sections 3220 and 3221. The emergency action plan covers all employees and non-employees who may be exposed to hazards arising from emergency situations. It must contain information for all of the PROVIDER's employees, including administration and line level employees using the plan in order to reduce the severity of emergency situations and minimize the risk to life and property.

13. INSURANCE

PROVIDER shall acquire and maintain Commercial General Liability insurance relating the PROVIDER's use of the Premises. PROVIDER will furnish CITY with certificates and copies of information or declaration pages of the insurance required. PROVIDER would need to provide the CITY with thirty (30) days notice of any changes, cancellation, or non-renewals. PROVIDER's insurance coverage shall be primary insurance with respect to CITY, its Council, Boards, Commissions, agents, officers, volunteers or employees, and any insurance or self-insurance maintained by CITY, for themselves, and their Council, Boards, Commissions, agents, officers, volunteers or employees shall be in excess of PROVIDER's insurance and not contributory with it.

Insurance Category

Minimum Limits

Commercial General Liability

One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and premises damages. Must include all areas in Insurance Service Office (ISO) Form No. CG 00 01 (including Products and Completed Operations if food is served or for repairs done by the tenant, Contractual Liability, Broad form property damage, Participants and spectators coverage, and Personal and Advertising injury liability)

If PROVIDER fails to maintain the insurance coverage required herein, then CITY will have the option to terminate this Agreement.

14. INSPECTIONS AND AUDITS

The CITY reserves the right to conduct periodic and regular site inspections and operational audits.

- A. Safety: The PROVIDER will be required to comply with the CITY's safety program guidelines and protocol.
- B. Financial Review/Audit: PROVIDER shall provide complete financials for all programs operated out of the Premises prepared in accordance with generally accepted accounting principles to City staff. The purpose for such review shall be for the negotiation of rent for an extended term and/or for purposes of negotiating a new Agreement. In complying with this Paragraph 13.b, PROVIDER shall not be required to disclose any private or confidential information, including the identities of specific customers or any other personal information regarding customers which are otherwise protected from disclosure in violation of third party rights to privacy.

15. CITY ACCESS

Upon prior written notice to PROVIDER, CITY shall have the right to restrict access to the Premises or any part thereof solely for certain municipal purposes which may include the performance of necessary maintenance and repairs of any and all structures or public improvements, heretofore or hereafter installed and/or constructed in or upon the Premises, the inspection of the Premises, or the use, maintenance, repair of adjoining areas; provided, as to maintenance or repair of the Premises.

16. IMPROVEMENTS

PROVIDER shall not make, nor cause to be made, nor allow to be made, alterations or improvements to the Premises not hereinabove specified (including installation of any fixture affixed to the Premises), without the prior written consent of CITY, not to be unreasonably delayed or withheld. All improvements or alterations constructed or installed shall be removed and the Premises restored to substantially the same condition existing prior to such construction or installation, upon the termination of this Agreement, unless the prior written approval of CITY is secured, allowing such improvements or alterations to remain in place, in which case, title thereto shall vest in CITY. All improvements undertaken pursuant to this Agreement will be at PROVIDER's sole expense and PROVIDER will be responsible for the use and maintenance of the improvements.

17. INDEMNIFICATION

PROVIDER will defend, indemnify and hold CITY, its Council, Commissions, agents, officers, volunteers or employees harmless from any damage or injury to any person, or any property, from any cause of action arising at any time from the use of the Premises by PROVIDER, and PROVIDER's invitees, program participants, and visitors, or from the failure of PROVIDER to keep the Premises in good condition and repair, including all claims arising out of the negligence of PROVIDER, but excluding any damage or injury caused by the willful misconduct or negligence of City or its employees, agents or contractors. CITY will defend, indemnify and hold PROVIDER, its members, agents, officers, volunteers or employees harmless from any damage or injury to any person, or any property, from any cause of action arising at any time from the willful misconduct or negligence of CITY or its employees, agents or contractors.

Each party's indemnification obligation set forth above will include any and all costs, expenses, attorney's fees and liability incurred by any indemnified party or person in defending against such claims, whether the same proceed to judgment or not. Each party will, at its own expense and upon written request by a party to be indemnified as provided hereinabove, defend any such suit or action brought against the party to be indemnified, its Council, Commissions, members, agents, officers, volunteers or employees (as applicable). This Section will survive the expiration or termination of this Agreement.

18. ATTORNEY'S FEES


In any legal action brought by either party to enforce the terms of this Agreement, the prevailing party is entitled to all costs incurred in connection with such an action, including reasonable attorneys' fees.

19. ARBITRATION

Any dispute regarding the breach of this Agreement shall be decided by binding arbitration pursuant to the rules of the American Arbitration Association, and not by court action, except as otherwise provided in this Section or as allowed by California law for judicial review of arbitration proceedings. Judgment on the arbitration award may be entered in any court having jurisdiction. The PARTIES may conduct discovery in accordance with California Code of Civil Procedure. This provision shall not prohibit the PARTIES from filing a judicial action to enable the recording of a notice of pending action for order of attachment, receivership, injunction, or other provisional remedy. Venue for the resolution of any such dispute or disputes shall be in San Mateo County, California.

BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTER INCLUDED IN THE ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

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PROVIDER

DocuSigned by:

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CITY

20. VENUE

PROVIDER agrees and hereby stipulates that the proper venue and jurisdiction for resolution of any disputes between the PARTIES arising out of this Agreement is San Mateo County, California.

21. ASSIGNMENT AND NON-TRANSFERABILITY

PROVIDER understands and acknowledges that assignment of this Agreement is absolutely prohibited without the written consent of CITY, and any attempt to do so without CITY's written consent may result in termination of the Agreement at the will of CITY.

22. LIENS AND ENCUMBRANCES

PROVIDER shall have no authority to do anything that may result in a lien or encumbrance against the Premises. Without limiting the foregoing, however, PROVIDER agrees to pay promptly all costs associated with the activities associated with this Agreement and not to cause, lease, or suffer any lien or encumbrance to be asserted against the Premises. In the event that PROVIDER causes, leases, or suffers any lien or encumbrance to be asserted against the Premises related to activities associated with this Agreement, PROVIDER, at its sole cost and expense, shall promptly cause such lien or encumbrance to be removed.

23. TERMINATION OF AGREEMENT

- A. Default. CITY or PROVIDER shall have the right to terminate this Agreement by written notice to the other party for any default or breach of any term or condition of this Agreement by the other party; provided, however, the non-defaulting and non-breaching party must first deliver written notice to the other party of any such default or breach, and if such breach or default exists for more than thirty (30) days after the delivery of such notice without being cured, the non-defaulting and non-breaching party may elect to terminate this Agreement by giving written notice of such termination to the defaulting party. Termination shall be effective on the date specified in the notice, which date shall not be less than thirty (30) days nor more than one hundred eighty (180) days following such notice. In addition to termination, the non-defaulting and non-breaching party shall be entitled to pursue any and all other remedies provided by law.
- B. CITY Dissatisfaction. If CITY and/or Menlo Park community believes PROVIDER has not satisfied community needs with respect to public access, service and program quality, and public safety, CITY may deliver written notice to Tenant of such dissatisfaction and the PARTIES shall meet and confer within fifteen (15) days of PROVIDER's receipt of such notice. If the matter is not resolved to the City Manager's satisfaction, CITY may terminate this Agreement by giving written notice of such termination to PROVIDER. Termination shall be effective not less than ninety (90) days after the date of such notice.
- C. PROVIDER's Option. PROVIDER may terminate the Agreement at PROVIDER's option upon the occurrence of any of the following:
- Upon the death the current owner, chief instructor or program director of PROVIDER (currently Kristin Quintana and Richard Quintana).; or
 - Upon the chief instructor and/or program director (currently Kristin Quintana and Richard Quintana), or either of them, for which disability prevents either of them from working full time as PROVIDERs at PROVIDER's business for a continuous period of 60 consecutive days; or

Upon showing of a financial hardship which reasonably prevents PROVIDER from continuing operations, in which case not less than six months' written notice of termination shall be given by PROVIDER to CITY. Termination shall be effective not less than ninety (90) days after the date of any such notice. In the event PROVIDER does not elect to terminate the Agreement as permitted herein, the Agreement shall remain in full force and effect for the remainder of the Term, unless subsequently terminated for another cause or event as specified herein.

24. CONDITION OF PREMISES UPON TERMINATION

Upon the effective termination of the Agreement, PROVIDER shall restore the Premises to its condition prior to the execution of this Agreement, remove all personal property, including furniture, furnishings, vehicles, and equipment, belonging to PROVIDER or PROVIDER's employees, invitees, and agents. Should PROVIDER fail to perform those obligations by the effective termination date, the PARTIES agree to the following:

- A. Such remaining property shall be deemed abandoned and PROVIDER waives all provisions for disposition of abandoned personal property required by California law including but not limited to California Code of Civil Procedure Section 1980 et. seq. (requiring notice for reclaiming abandoned property and public sale for disposition).
- B. CITY has the right to take action to remove PROVIDER's personal property. Should City exercise this right, PROVIDER shall be liable to CITY for:
- the actual cost of this removal, demonstrated by valid receipts and invoices;
 - a fifteen percent (15%) overhead to CITY for reasonable costs in contracting and supervising the removal work; and
 - any attorneys' fees incurred by CITY to remove PROVIDER from the Property after termination, if necessary. Invoices must be paid within ten (10) days of submission of invoice to PROVIDER. If not paid within this time, then interest will be charged at ten percent (10%) or the maximum extent allowed by law, whichever is less.

25. COMPLETE AGREEMENT

This Agreement contains the entire agreement between the PARTIES with respect to the matters set forth herein, and supersedes all prior or contemporaneous agreements (whether oral or written) between the PARTIES with respect to the matters set forth herein.

26. AMENDMENT

This Agreement may be amended only by a written instrument executed by the PARTIES.

27. AUTHORITY

The individuals executing this Agreement on behalf of PROVIDER represent and warrant that they have the legal power, right and actual authority to bind PROVIDER to the terms and conditions of this Agreement.

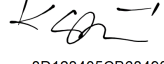
28. NO WAIVER

Waiver by either party of a breach of any covenant of this Agreement will not be construed to be a continuing waiver of any subsequent breach. CITY's receipt of rent with knowledge of PROVIDER's violation of a covenant does not waive CITY's right to enforce any covenant of this Agreement. No waiver by either party of a provision of this Agreement will be considered to have been made unless expressed in writing and signed by all PARTIES.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the PARTIES have executed this Agreement by their officers therein duly authorized as of the date and year first written above.

FOR FIRST PARTY:

DocuSigned by:

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Signature

Kristin Quintana

Printed name

Tax ID

Tax ID#

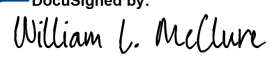
1/15/2020

Date

President

Title

APPROVED AS TO FORM:

DocuSigned by:

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William L. McClure, City Attorney

1/29/2020

Date

FOR CITY OF MENLO PARK:

DocuSigned by:

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Starla Jerome-Robinson, City Manager

1/29/2020

Date

ATTEST:

DocuSigned by:

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Judi A. Herren, City Clerk


1/29/2020

Date

GUARANTY

KRISTIN QUINTANA hereby unconditionally personally guarantees all of the obligations arising or accruing during the term of the Agreement and/or arising out of PROVIDER's operation of the Premises. CITY is not responsible to enforce the terms of the Agreement upon Q2 KICKS INC., or to first institute suit, or to pursue or exhaust its remedies against Q2 KICKS INC. DBA KUK SOOL WON™ OF MENLO PARK, KRISTIN QUINTANA shall, without demand, pay CITY 's reasonable attorneys' fees and all costs and expenses incurred by CITY in enforcing the terms of the Agreement and/or this Guaranty.

This Guaranty shall inure to the benefit of CITY, its successors and assigns, and this Guaranty shall bind KRISTIN QUINTANA, her legal representatives, and assigns.

DocuSigned by:

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KRISTIN QUINTANA