

AGREEMENT BETWEEN THE CITY OF HERMOSA BEACH AND THE ROTARY CLUB OF HERMOSA BEACH FOR USE OF THE CORNER OF 11TH STREET AND VALLEY DRIVE FOR THE FRIDAY FARMERS MARKET

This Agreement for use of the corner of 11th Street and Valley Drive described in Exhibit A (hereinafter called "Agreement") for a farmers market (herein called "Event") is made the 25th day of June, 2022 by and between the City of Hermosa Beach, a municipal corporation (hereinafter called "CITY") and the Rotary Club of Hermosa Beach, a California nonprofit public benefit corporation (hereinafter called "ROTARY").

RECITALS

- A. ROTARY has requested and CITY is willing to make the corner of 11th Street and Valley Drive (hereinafter called "Site", as depicted on Exhibit A, "Site Map"), available to ROTARY for its weekly Event pursuant to the terms and conditions of this Agreement.
- B. CITY desires a commitment from ROTARY regarding its use of the Site for the benefit of the residents.
- C. ROTARY desires a commitment from CITY to secure the Site for the Event for the term of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and contained herein, the parties agree as follows:

I. TERM AND PAYMENT

- a. The Term of this Agreement shall be for three years commencing on June 25, 2022 and terminating on June 27, 2025 unless earlier terminated as provided herein.
- b. ROTARY agrees to pay CITY applicable fees for its use of the Site. Fees are to be as established in the CITY's annual Master Fee Schedule. Applicable fees may include:
 - i. Costs associated with adequate trash removal and/or "clean-up" deficiency work;
 - ii. Costs related to CITY services or personnel required for the Event, including an annual Amplified Sound Permit fee; and
 - iii. Event co-sponsor fee(s).
 - 1. All Event co-sponsors must be approved by the City.
- c. Either the CITY or ROTARY may terminate this Agreement at any time upon giving thirty (30) days written notice to the other party as outlined in Section XIV(b).
- d. The proceeds generated from the Event shall not be used for political campaign purposes, whether in connection with candidates for political office or ballot measures.

II. THE EVENT

- a. The Event may be produced each Friday during the term of this agreement.
- b. The Event shall take place in the locations depicted in Exhibit A. Use of additional location(s) may be approved as mutually agreed upon between the CITY and ROTARY.
- c. The Event shall consist of vendor booths with a market composition of:
 - a. Sixty percent (60%) of vendors that are farmers as well as purveyors of prepackaged food. The market shall maintain a minimum of 6 farmers at all times with exceptions for inclement weather and natural disasters; and
 - b. Forty percent (40%) of vendors shall provide hot food and meals or be artisans selling home-crafted wares.
- d. Farmers shall be considered California producers of fresh fruit, nuts, vegetables, flowers, honey, eggs, nursery stock, plants and livestock products including fish and shellfish produced under controlled conditions in waters or ponds located in California.
- e. In cases where the market composition is not achievable due to inclement weather or natural disasters, ROTARY shall make a good faith effort to adhere to them as much as possible.
- f. Should the vendor composition of the market be out of compliance and, in those cases, not associated with inclement weather or a natural disaster, ROTARY will have 30 days to rectify to the satisfaction of the CITY. Failure to do so will result in termination of this Agreement.
- g. The Event may include live acoustic or amplified music during market hours between 12:00 PM to 4:00 PM on each Event day. Amplifiers must be pointed south so as to limit noise impacts to the surrounding residential property. A stage and/or generator is not permitted, unless otherwise approved by the CITY and the Los Angeles County Fire Department.

II. ROTARY RESPONSIBILITIES

- a. ROTARY shall maintain its status as a non-profit organization throughout the term of this Agreement.
- b. ROTARY shall manage the Event, including coordination of set up/tear down between the hours of 9:00 AM and 5:00 PM on each Event day.
- c. A designated event representative, subject to approval by the City, shall remain on-site during the entire Event. The event representative shall be responsible for managing the vendors, assuring that vendors remove all trash and that the Site is clean and free of equipment, waste or debris at the conclusion of each Event.
- d. ROTARY shall be solely responsible for rectifying any outstanding "clean-up" deficiency as may be determined at the sole discretion of the CITY.

- e. ROTARY shall manage the placement of booths and shall have the authority to remove unauthorized booths, furniture and other objects that interfere with the conduct of the Event.
- f. ROTARY shall provide, at its own expense, all necessary funds, staff, equipment and materials necessary to adequately produce and promote the Event.
- g. ROTARY shall provide a designated representative to consult as necessary with the CITY designee regarding all facets of the Event.
- h. ROTARY shall provide adequate access to the Event for people with disabilities in a manner that is satisfactory to the CITY and keep all pedestrian aisles and pathways clear and unobstructed.
- i. ROTARY shall be responsible for securing all necessary permits and licenses, as determined by the CITY.
- j. ROTARY shall prohibit the sale of alcoholic and tobacco products at the Event.
- k. ROTARY has read, understands, and accepts responsibility for ensuring Implementation of the City's Ban on Certain Polystyrene Products, Single-Use Plastic Products, and Single-Use Products in Section 8.64.030 and 8.64.050 of the Municipal Code, which reads as follows:
 - i. 8.64.030(D). No person shall use or distribute polystyrene food service ware at city-sponsored events, city-managed concessions and city meetings open to the public. This subsection shall apply to the function organizers, agents of the organizers, city contractors, food providers, beverage providers or nonprofit vendors and any other person that enters into an agreement with one or more of the function sponsors to sell or distribute prepared food or raw food or beverages or otherwise provide a service related to the function.
 - a.) Biodegradable food service containers shall be used by vendors.
 - ii. 8.64.050(A) Prohibition of Plastic Straws, Stirrers, and Utensils. Food providers and beverage providers and nonprofit vendors shall not use or distribute plastic beverage straws, plastic stirrers or plastic utensils, whether for use on site, to go, or delivery. Disposable straws, stirrers, and utensils must be nonplastic, made from nonplastic materials, such as paper, pasta, sugar cane, wood, or bamboo.
 - a.) Vendors are prohibited from using plastic bags to deliver, provide or hand merchandise to customers.
- l. ROTARY is permitted access to the kitchen area at the Community Services Department building for use of the sink and storage space on each Event day between 9:00am and 5:00pm. ROTARY is permitted to use this area for storage of non-food items and will not block any exits or entrances. ROTARY agrees to remove all trash from the kitchen area on each Event day and ensure that this area is clean.

III. **CITY RESPONSIBILITIES**

- a. CITY shall permit ROTARY to conduct the event as described in Section II.
- b. CITY shall provide ROTARY a designated liaison from the CITY to serve as the assigned contact regarding the operation of activities on the Site. All decisions of a CITY designee shall be final with respect to any issues that involve compliance with this Agreement as well as any issues that directly and/or adversely impact the community. Said CITY designee shall consult with the designated event representative of ROTARY and it shall be the goal of both parties to reach mutual agreement on matters of Event operation.
- c. CITY shall provide ROTARY any CITY services required for the Event (e.g., police, fire, building inspection, etc.) as deemed necessary by the respective City Manager, Police Chief, or Community Resources Manager.
- d. CITY shall coordinate and provide necessary CITY permits.
- e. CITY shall make any necessary contacts on behalf of ROTARY with the Los Angeles County Department of Beaches and Harbors.
- f. The CITY agrees to provide ROTARY with access to the kitchen area at the Community Services Department building for use of the sink and storage space on each Event day between 9:00am and 5:00pm.

VI. ADVERTISING & SPONSOR BANNERS

- a. ROTARY is permitted to install and maintain a banner advertising the Event on the fence surrounding the basketball court located at Clark Field.
- a. CITY reserves the right to relocate or remove banners if they are found to be inappropriate or pose a safety issue. CITY will notify ROTARY before relocating or removing banners unless a safety concern warrants immediate action.
- b. All signs, props, product facsimiles, etc. desired by ROTARY to identify the Event shall be approved as to location and content by CITY. CITY will not unnecessarily deny said approval and will not curtail certain constitutional rights of ROTARY.

X. INSURANCE

- a. ROTARY shall provide the CITY a Certificate of Insurance providing personal injury and property damage liability insurance naming CITY, the County of Los Angeles, its officers, employees, volunteers and agents as additional insured with a minimum coverage of **two million dollars (\$2,000,000) combined single limit coverage**. Insurance is to be placed with insurers with a current AM Best's rating of no less than A: VII. Said insurance shall not be canceled or altered without thirty (30) days' notice in writing to CITY.
- b. ROTARY insurers shall be primarily responsible for all liability resulting from or arising out of the performance of the contract, and CITY and their insurers shall not be required to contribute.

- c. For insurance purposes, the Site shall be defined to include all areas occupied or affected by the Event, as depicted on Exhibit A ("Site Map").

XI. INDEMNITY AND ASSUMPTION OF RISK

- a. ROTARY shall hold harmless, defend and indemnify the CITY, its officers, employees and volunteers from and against any and all liability, loss, damage expense, and costs (including without limitation costs and fees of litigation), of every nature arising out of or in connection with ROTARY's farmers market and performance of the league hereunder or its failure to comply with any of its obligations contained in this Agreement except such loss or damage which was caused by the sole negligence or willful misconduct of the CITY. The CITY shall indemnify ROTARY from and against any and all liability, loss, damage, expense, and costs (including without limitation costs and fees of litigation), of every nature arising out of or in connection with the sole negligence or willful misconduct of the CITY.
- b. By signing this agreement, ROTARY acknowledges the contagious nature of COVID-19 and voluntarily assume the risk that Event staff and customers may be exposed to or infected by COVID-19 by using the Site, and that such exposure or infection may result in personal injury, illness, permanent disability, and death. ROTARY understands that the risk of becoming exposed to or infected by COVID-19 at the Site may result from the actions, omissions, or negligence of Event staff and customers, including, but not limited to, City of Hermosa Beach employees, officials and agents.
- c. ROTARY assumes all risks of damages and injury to Event staff and customers arising out of or attributable to its use of the Site during the COVID-19 pandemic. ROTARY hereby releases and discharges the City of Hermosa Beach and its officers, employees and agents, from any and all claims for losses, injuries, damages or liabilities, including personal injury and injury to personal property arising out of or attributable to its use of the Site during the COVID-19 pandemic, and ROTARY expressly releases the City of Hermosa Beach and its officers, employees and agents from and against any and all claims or liability arising from their negligence. ROTARY voluntarily agrees to assume all of the foregoing risks and accepts sole responsibility for any injury to Event staff and customers including, but not limited to, personal injury, disability, and death, illness, damage, loss, claim, liability, or expense, of any kind, that may be experienced or incurred in connection with use of the facilities described in Exhibit A. ROTARY hereby releases, covenants not to sue, discharges, and holds harmless the City of Hermosa Beach, its employees, officers, and agents, of and from all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. ROTARY understands and agrees that this release includes any claims based on the actions, omissions, or negligence of the City of Hermosa Beach, its employees, officers and agents, whether a COVID-19 infection occurs before, during, or after use of the Site.

XII. INDEPENDENT CONTRACTOR

- a. CITY and ROTARY shall each be and act as independent contractors and under no circumstances shall this agreement be construed as one of agency or partnership between CITY and ROTARY. Each party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other party in any way other than as authorized by this Agreement. Nothing in this Agreement shall be construed to create a joint venture between the

parties hereto or to obligate either party for debts or obligations incurred by the other party in the performance of this Agreement.

XIII. COMPLIANCE WITH THE LAW

- a. Should it be determined that this Agreement or any provision hereof violates any federal, state, or local law or regulation, then the parties shall promptly modify this Agreement to the extent necessary to bring about compliance with such law and/or regulation; provided, however, that if such modification would cause this Agreement to fail in its essential purpose or purposes, it shall be deemed cancelled by mutual agreement of the parties and neither party shall have any further obligations or liabilities with respect to this Agreement.

XIV. RESERVATION OF RIGHTS BY CITY

- a. CITY reserves the right in its sole discretion at any time or times to close and suspend the use of the Site subject to this Agreement for any duration in order to protect public health and safety. Any such closure will not constitute a breach or a default of this Agreement. CITY shall have no liability whatever to ROTARY for the effect of such suspension and closure of the Site, nor shall CITY have any responsibility to provide ROTARY with substitute location(s). ROTARY's rights under this Agreement are subject and subordinate to CITY's police and emergency powers in addition to CITY's rights to manage its municipal facilities and its contractual rights as described in this Agreement.
- b. Notwithstanding any other provision of this lease both parties reserve the right to terminate the Agreement at any time and without cause upon giving thirty (30) days written notice to the other party.

XV. ENTIRE AGREEMENT

- a. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior understandings or agreements in regard hereto. This Agreement cannot be altered or modified except by an agreement in writing signed by both parties.

CITY OF HERMOSA BEACH



Michael Detoy, Mayor



Suja Lowenthal, City Manager

ATTEST



Myra Maravilla, City Clerk

APPROVED AS TO FORM



Michael Jenkins, City Attorney

HERMOSA BEACH ROTARY CLUB



Dean Nota, President

EXHIBIT A – Site Map

