

**AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND THE
HOMETOWN FAIR ASSOCIATION, INC.**

The agreement is made on the _____ day of _____, 2013, by and between the CITY OF MANHATTAN BEACH ("CITY"), a municipal corporation organized under the laws of the State of California with its principal offices at 1400 Highland Avenue, Manhattan Beach, California 90266, and the HOMETOWN FAIR ASSOCIATION, INC. ("HTF"), a non-profit California Corporation, Post Office Box 3068, Manhattan Beach, California 90266.

RECITALS

- A. HTF is the organizer and promoter of the Hometown Fair (the "Event") held annually in October in the City of Manhattan Beach and conducted on City property. The Event is described in the attached Special Event Application, attached hereto as Exhibit A;
- B. CITY has determined that its support for the Event will result in favorable public response;
- C. CITY support will provide for greater safety for all Event participants and the general public;
- D. CITY wishes to allow the Event to be conducted on City property under the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto agree as follows:

1. THE EVENT.

- A. Beginning in 2014 and each year thereafter, HTF shall submit a Special Event Application to CITY at least 30 days prior to that year's Event, indicating the dates of that year's Event and other information required by CITY. Historically, HTF conducts the Event at Live Oak Park, Joslyn Center, Dorsey Field, Veterans Parkway and Valley Drive from 15th Street to Blanche in Manhattan Beach, California, during the first weekend in October.
- B. The Event will begin at 10:00 a.m. on Saturday and conclude at 6:00 p.m. on Sunday during the Event weekend.
- C. Clean-up activity shall cease on Sunday by 10:00 p.m. and resume on Monday at 7:30 a.m., as needed.

2. CITY RESPONSIBILITIES.

CITY shall:

- A. Coordinate City services and functions with the HTF City Services Coordinator appointed by the HTF Board of Directors.
- B. Appoint a City representative to be the liaison to the HTF Board of Directors.
- C. Waive 75 percent of the City's permit and application fees and fees for labor and materials.
- D. Provide electrical and water service.
- E. Provide one qualified Public Works Department staff member capable of dealing with general maintenance matters, trash service, water service and electrical service, except with respect to private electrical booths, for the following hours: Friday 2:00 p.m. to 8:00 p.m.; Saturday 8:00 a.m. to 5:00 p.m.; and Sunday 8:00 a.m. to 2:00 p.m.
- F. Provide use of Manhattan Beach Parkway parking lots #7 and #8 adjacent to Manhattan Beach Boulevard, the parking lot between Joslyn Community Center and the Post Office, and the upper city hall parking lot on 15th Street.
- G. Make available the following CITY building and parks facilities during the times approved by CITY's Director of Parks and Recreation for the conduct of the Fair as described in Section 1A. Exclusive use of the Joslyn Center, Scout House, Rec Hall and Manhattan Beach Parkway and the furniture and equipment in the area of Live Oak Park. Use of such facilities is subject to approval and direction of the Director of Parks and Recreation. HTF shall be responsible for returning all furniture and equipment to original locations in the same or comparable condition as before the Event.
- H. CITY shall not be responsible for any costs or expenses not listed in this section 2, including those incurred by HTF, unless otherwise authorized in writing by the City Manager.
- I. CITY will close Valley Drive and associated property between 15th Street and Blanche Road & Pacific Avenue to allow HTF to use such property as part of the Event's fairgrounds from 9:00 a.m. on Friday through 10:00 p.m. on Sunday. Such hours may be amended if approved in writing by the City Manager.
- J. CITY will close 15th Street between Valley and Highland on Saturday from 7 a.m. to 6 p.m. and on Sunday from 10:00 a.m. to 6:00 p.m. for safety

purposes only. Such hours may be amended if approved in writing by the City Manager. No events are to be placed in the area except for the display of antique cars to be located in front of the post office.

3. HTF RESPONSIBILITIES.

HTF shall:

- A. Arrange, conduct and administer the Event for the citizens of Manhattan Beach.
- B. Designate one individual to serve as City Services Coordinator to interface with the City's designated liaison and support staff.
- C. Reimburse the CITY for labor and material costs for all work performed, including overtime of personnel, by CITY in connection with the Event, upon receipt of invoices from the CITY's Finance Department, pursuant to Section 8.C.
- D. Reimburse the CITY for set-up, actual event hours worked, and cleanup by the CITY employee identified in Section 2.E of this Agreement at the fully burdened hourly rate specified by the City Manager. It shall be HTF's responsibility to arrange for any on-call response capability beyond the hours of coverage set forth in Section 2 of this Agreement.
- E. Provide sole responsibility for the operation and maintenance of private electrical booths.

4. INSURANCE.

- A. HTF shall not commence activities under this Agreement until it has obtained CITY's prior approval of all required insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, HTF must have and maintain in place all of the insurance coverages. HTF's insurance shall comply with all items specified by this Agreement. All commercially operated rides and activities shall be subject to all of the insurance requirements and HTF shall be responsible to obtain evidence of insurance from each operator of same and provide it to CITY before the ride or activity commences.
- B. All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.
- C. HTF shall maintain the types of coverages and limits indicated below:

(1) **COMMERCIAL GENERAL LIABILITY INSURANCE** – a policy for occurrence coverage, including all coverages provided by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than two million dollars (\$2,000,000) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide CITY with 30 days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an “other insurance” clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. HTF shall provide CITY with an executed endorsement form acceptable to CITY.

(2) Additionally, HTF shall provide to CITY evidence of a separate Liquor Liability insurance policy with minimum limits of \$1,000,000 per occurrence for each of the following: (i) the beer garden area and (ii) the wine garden area.

(3) HTF shall provide to CITY evidence of **COMMERCIAL AUTO LIABILITY INSURANCE** – a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the CITY. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide CITY with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such “other insurance” clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. HTF shall provide CITY with an executed endorsement form acceptable to CITY.

- E. All Certificates and Endorsement forms are due to the Risk Manager at least 30 days prior to the Event, except for third party vendors, whose forms are due 7 days prior to the Event.
- F. The procuring of such required policies of insurance shall not be construed to limit HTF’s liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. If HTF does not deposit copies of acceptable insurance

policies with CITY incorporating such changes within 10 days of receipt of such notice, HTF shall be deemed in default hereunder.

G. Any deductibles or self-insured retentions must be declared to and approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to be paid by HTF); or

(2) HTF shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

H. HTF shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than 15 days prior to the expiration date of any policy of insurance required by this Agreement, HTF shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to CITY.

I. Upon the recommendation of the CITY's Risk Manager, CITY may increase the insurance limits required by this Section 4 and HTF shall obtain insurance in the amount required by CITY.

5. INDEMNIFICATION.

A. HTF shall defend, indemnify, and hold CITY, and its elected officials, officers, agents and employees free and harmless from all claims for damage to persons or property by reason of the acts, omissions or negligence of the HTF, HTF's employees, agents, volunteers, guests, or invitees in connection with this Agreement, except for such loss, damage, liability and claims arising due to the sole negligence or willful misconduct of City, as determined by final arbitration or court decision or by the agreement of the parties. HTF shall defend CITY, with counsel of CITY's choice, at HTF's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against CITY. HTF shall reimburse CITY for any and all legal expenses and costs incurred by CITY in connection therewith or in enforcing the indemnity herein provided. In the event that HTF insurance proceeds are used to settle any claim, such settlement shall be subject to HTF's consent, which shall not be unreasonably withheld. HTF's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by HTF or CITY. All

duties of HTF under this Section shall survive termination of this Agreement.

- B. CITY shall defend, indemnify, and hold HTF, and its officials, officers, agents and employees free and harmless from all claims for damage to persons or property by reason of the acts, omissions or negligence of the CITY, CITY's employees, agents, or volunteers in connection with this Agreement, except for such loss, damage, liability and claims arising due to the sole negligence or willful misconduct of HTF, as determined by final arbitration or court decision or by the agreement of the parties. CITY shall defend HTF, with counsel of HTF's choice, at CITY's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against HTF. In the event that CITY insurance proceeds are used to settle any claim, such settlement shall be subject to CITY's consent, which shall not be unreasonably withheld. CITY shall reimburse HTF for any and all legal expenses and costs incurred by HTF in connection therewith or in enforcing the indemnity herein provided. All duties of CITY under this Section shall survive termination of this Agreement.
- C. The CITY hereby releases, waives, discharges and agrees not to sue any individual member of the Hometown Fair Board of Directors (in his/her official and personal capacity) from any liability, claims, costs, expenses, attorneys' fees, demands, actions and causes of action whatsoever arising out of or related to any damage, or injury including death, that may result from this Agreement and the events held hereunder, except for such loss, damage, liability and claims arising due to the sole negligence or willful misconduct of such individual, as determined by final arbitration or court decision or by the agreement of the parties.

6. BEER & WINE GARDENS.

The Beer and Wine gardens shall be contained in separate facilities within Event space.

- A. HTF shall obtain, or ensure obtainment by beer garden and wine garden permittees, a license for consumption of beer and wine from the Alcoholic Beverage Control Board ("ABC").
- B. HTF shall enclose the beer garden with a double fence with a 3' foot separation between each fence. Fencing must be approved by CITY's Police Department Special Event Coordinator.
- C. Sale and dispensing of beer and wine to be limited to Saturday and Sunday, for adults only (21 years old), and strictly enforced as follows:
 - 1. Beer and wine ticket sales in the beer garden to start at 10:00 a.m. on Saturday and Sunday. Beer and wine ticket sales in the beer garden to cease at 5:00 p.m. on Saturday and Sunday. Dispensing of beer and

wine to cease at 5:30 p.m. on Saturday and Sunday. The beer garden will be closed at 6:00 p.m. on Saturday and Sunday. Wine ticket sales in the wine garden to start at 11:00 a.m. on Saturday and Sunday. Wine ticket sales in the wine garden shall cease at 5:00 p.m. on Saturday and Sunday. Dispensing of wine shall cease at 5:30 p.m. on Saturday and Sunday. The wine garden will be closed at 6:00 p.m. on Saturday and Sunday.

2. HTF to provide at least four (4) volunteers to adequately monitor each of the entrances and exits of the beer and wine gardens to prevent minors from entering; to prevent beer and wine from being taken from the beer and wine gardens; and to control the maximum occupant capacity of the gardens as set by the Fire Marshal.

3. All alcohol to be possessed and consumed only within the confines of the individual beer and wine gardens.

4. Adequate uniformed private security shall be hired to provide security during nighttime hours of closure.

D. HTF shall comply with the following conditions as to the operation of the wine garden:

1. The wine garden shall be limited to the Live Oak basketball courts. HTF shall submit a detailed site plan to the building department in order to establish an occupancy load for the wine garden area.

2. Security staff members shall use a hand-held counting device to assist with limiting the number of patrons inside the wine garden.

3. The on-duty wine garden coordinator, all wine garden volunteers and all security staff members will wear an approved t-shirt or apron to assist with identification.

4. A two-day temporary ABC license must be obtained at least five days prior to the Event; a copy of this license must be posted in the immediate area of wine dispensing.

5. Identification will be checked prior to a patron entering the wine garden; no one under 21 will be allowed inside the wine garden; no sales to minors will be allowed.

6. No removal of open alcohol will be permitted from the wine garden.

7. No tickets will be sold or alcohol served to an intoxicated person.

8. No alcoholic beverage will be allowed to be brought into the wine garden.

9. No more than two full glasses should be served to a patron at one time.

10. No more than five tickets should be sold to a patron at one time.

7. ADDITIONAL CONDITIONS OF EVENT OPERATION.

As additional conditions hereunder, HTF shall:

- A. Obtain permits, as required, from CITY and other agencies, including the Los Angeles County Health Department, for use of the property.
- B. Use its best efforts to allocate space to Manhattan Beach residents and/or Manhattan Beach businesses and/or non-profit organizations on a first priority basis. With the exception of booths for businesses that are known to operate year round, business license fees will be waived. Inform and distribute to exhibitors State Board of Equalization requirements for temporary sales locations.
- C. Insure that no event shall be presented that shall allow or require the participants to disrobe or appear partially clothed.
- D. Request specific CITY labor through the City Manager's office during normal working hours. All work performed specifically for the HTF shall be considered a reimbursable cost to be paid to CITY, as indicated in 3.C, above.
- E. Send requests to borrow CITY equipment to the City Manager, who will coordinate availability.
- F. Send requests for Police and Fire support to the City Manager, who will coordinate supportive forces with the respective Chiefs. Police escort to the bank with beer and wine garden revenues will be at the Police Department's convenience and accordingly, requests should be made sufficiently ahead of the time desired. The Fire Department shall inspect all booths for fire hazards.
- G. Submit requests for hanging banners to the Parks and Recreation Department with appropriate fees. All insurance requirements shall be met.
- H. Obtain prior Risk Manager approval for all mechanical rides to be included in the Event.
- I. Be responsible for cleaning sites utilized and restoring them (both grounds and buildings) to their original condition.
- J. File a financial statement with the City Council annually.

- K. Provide the Parks and Recreation Department, Police Department, and the Risk Manager, at least 5 days prior to the Event, with a list specifying each booth and activity planned for the Event and its planned location so that any problems may be identified and provisions made to eliminate or prevent them.
- L. Provide the Parks and Recreation, Police, and Fire Departments and the Risk Manager, at least 5 days prior to the Event, with a map or diagram of the fairgrounds showing locations of all booths, fair activities and a time schedule for all events, entertainment, etc.
- M. Provide the Parks and Recreation, Police, Finance, and Fire Departments and the Risk Manager, at least 5 days prior to the Event, with a list of all booths, their locations and the names of the organization or person operating each booth.
- N. Insure that, if used, the Scout House will be thoroughly cleaned and repaired during the week immediately following the Event (including stripping, waxing and polishing of all floors).
- O. Insure that all food booths adhere to Fire Department guidelines, including successful completion of a Fire Department Life Safety Inspection. HTF shall be responsible for the cost of inspection.

8. DEPOSIT FOR CITY CHARGES.

- A. All amounts due to the CITY for charges will be due and payable within 30 days of invoicing by the CITY Finance Department.
- B. A 5% charge will be assessed for all late payments after 30 days.

9. TERM AND TERMINATION.

The term of this agreement shall be for 10 years from the date of execution. Each party may terminate this Agreement, with or without cause, upon 90 days' written notice to the other party.

10. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.

No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

11. NON-DISCRIMINATION.

HTF covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

12. INDEPENDENT CONTRACTOR.

It is agreed that HTF shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY's employees.

13. COMPLIANCE WITH LAW.

HTF shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

14. MODIFICATION.

This Agreement may be modified, at any time, only by a written agreement executed by CITY and HTF.

15. CALIFORNIA LAW.

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

16. INTERPRETATION.

This Agreement shall be interpreted as though prepared by both parties.

17. PRESERVATION OF AGREEMENT.

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

18. ENTIRE AGREEMENT.

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding.

19. ATTORNEYS' FEES.

If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.

20. EXHIBITS; PRECEDENCE.

All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, this agreement has been duly executed in duplicate originals on the date first above written.

CITY OF MANHATTAN BEACH

HOMETOWN FAIR ASSOCIATION, INC.

David N. Carmany
City Manager



Stephen Johnson
President

APPROVED AS TO CONTENT:



Mark Leyman
Director of Parks and Recreation

ATTEST:

Liza Tamura
City Clerk

APPROVED AS TO FORM:



Quinn M. Barrow
City Attorney

EXHIBIT A
SPECIAL EVENT APPLICATION