

**LICENSE AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND
MANHATTAN BEACH BOTANICAL GARDEN**

THIS AGREEMENT is made and entered into on this 10th day of January 15, 2019, by and between the City of Manhattan Beach, a municipal corporation ("CITY") and the Manhattan Beach Botanical Garden, a California non-profit corporation ("MBBG").

RECITALS

A. CITY is the lessee of certain real property commonly known as Polliwog Park located at 1601 Manhattan Beach Boulevard ("Polliwog Park") pursuant to an agreement between the City of Manhattan Beach and the Manhattan Beach Unified School District ("Use Agreement");

B. The Use Agreement allows CITY to license portion of Polliwog Park for educational and recreational activities;

C. MBBG has an interest to continue its development, operation and maintenance of a botanical garden at Polliwog Park;

D. CITY and MBBG are desirous of entering into a license agreement to allow MBBG's activities as a botanical garden to continue at Polliwog Park as long as MBBG accepts responsibility for maintaining the property;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and undertakings contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. License.

A. CITY hereby grants to MBBG for the term of this Agreement a non-exclusive and revocable license to use a 2/3 of an acre portion of the west side of Polliwog Park as is more particularly described on Exhibit A attached hereto and incorporated herein (the "Property") solely for use as a botanical garden to be known as the "Manhattan Beach Botanical Garden." Except as otherwise provided herein, no other use of the Property is permitted. CITY further grants to MBBG the right of ingress and egress onto the Property and the right to plant and cultivate whatever plant life MBBG chooses and the ability to hold special events on the Property, including fund raising events and the collection of donations, subject to the CITY'S rules, regulations and ordinances pertaining to such activities at Polliwog Park.

B. MBBG warrants that it has inspected the Property and accepts the use of the Property under this Agreement "as is" without any warranties, express or implied. CITY makes no representations, covenants, warranties or promises that the Property is fit for any particular purpose or use, including the use for which this license is made and MBBG is not relying on any such representation, covenant, warranty or promise.

2. Term.

The term of this license is for a period of approximately seven years beginning on the date of execution and terminating on January 31, 2026 or until this Agreement is terminated by the parties. Either party may terminate this Agreement at any time, with or without cause, upon 90 days written notice to the other.

3. Limitations of Rights.

A. This Agreement and the rights granted to MBBG hereunder are personal to MBBG and MBBG shall not assign or transfer (whether voluntarily or involuntarily) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of CITY, which may be withheld in CITY'S sole discretion. Any attempted act in violation of the foregoing shall be void and without effect and give CITY the right to immediately terminate this Agreement.

B. This Agreement does not constitute a sale, lease or any transaction other than a license and MBBG shall not acquire any rights whatsoever based upon the uses permitted herein excepting those rights specifically delineated herein.

C. MBBG shall have no right to use the Property in any way except as specifically set forth herein. If MBBG fails to make such use of the Property as a botanical garden, as determined by CITY in its sole discretion, CITY has the right to immediately terminate this Agreement.

D. CITY retains full possession of the Property and MBBG shall not acquire any interest temporary, permanent, irrevocable, possessory or otherwise by reason of this Agreement, or by exercise of the permission given herein. MBBG will make no claim to any such interest. Any violation of this provision provides CITY with the right to immediately terminate this Agreement.

4. Obligations of MBBG.

A. General Maintenance of Botanical Garden. MBBG shall conduct the following maintenance activities at the Property:

(1) MBBG shall be responsible for the maintenance of the botanical garden at the Property. Maintenance activities and tasks shall include but is not limited to maintaining all plant material (including trees), maintaining compost piles, maintaining the irrigation system in a good and workman like manner, conducting weed abatement and pest management.

(2) MBBG may occasionally hire landscape professionals to assist with maintenance activities if the work is beyond the scope of MBBG's volunteers. MBBG shall ensure that said landscape professionals maintains insurance which complies with the provisions of this Agreement, names the City of Manhattan Beach as an additional insured on said polic(ies) and executes an indemnification in favor of CITY in the form provided to MBBG by the CITY.

(3) MBBG shall be responsible for litter abatement, cleaning of walkways and reporting graffiti and vandalism to the Manhattan Beach Public Works Department (310-802-5303) within 24 hours from discovery.

(4) The cost of all maintenance of the Property as set forth herein shall be borne solely by MBBG. CITY will communicate in writing any concerns regarding Property maintenance to the MBBG Maintenance Director or the MBBG President. MBBG shall address these concerns within 15 working days unless the concern is emergency in nature, in which case MBBG shall take immediate action. If MBBG fails or refuses to comply with this provision, CITY has the right to enter the Property and commence and/or complete the work to remedy the concern and MBBG shall be liable to CITY for any and all costs and expenses incurred by CITY in connection with such work.

B. Property Repairs and Financial Responsibility

(1) MBBG shall keep the Property and any improvements thereon in good condition and repair and shall repair all occurrences of minor vandalism at the Property at its sole cost and expense. If there is any other damage at the Property that is not considered minor by MBBG, MBBG shall discuss the remedy with the Director of Public Works prior to any repair. Notwithstanding any provision of this Agreement, CITY's financial responsibility is limited to the repair of fences and utility service lines, including all underground irrigation lines for Polliwog Park.

(2) MBBG shall use reasonable care to avoid damaging the Property or any adjacent property owned by CITY as a result of MBBG's activities on the Property. MBBG shall repair, promptly upon detection, at MBBG's sole cost and expense, the Property or any adjacent property owned by CITY, and any damage specifically caused, directly or indirectly, by MBBG or any agent, employee, volunteer, licensee, or invitee of MBBG ("MBBG Representatives") to such Property or adjacent CITY property. MBBG is not, however, obligated to repair any damage which is not caused by the actions of MBBG or any MBBG Representatives.

C. Operation of the Manhattan Beach Botanical Garden.

(1) The botanical garden maintained by MBBG on the Property shall be open to the public. Hours of operation of the botanical garden shall be subject to the approval of the Director of Parks and Recreation or his or her designee. Any change in hours of operation shall require the consent of CITY through the Director of Parks and Recreation.

(2) Street parking will continue to be used for parking during normal hours of operation.

(3) Special events may be held at the Property, provided that: (1) MBBG complies with any rules, regulations and ordinances pertaining to such activities; and (2) MBBG

obtains the prior approval of the Director of Parks and Recreation or his or her designee, who may impose conditions on the conduct of any such event.

(4) MBBG may construct improvements such as walkways and planters on the Property at its own expense with the prior approval of the Director of Parks and Recreation or his or her designee. Improvements shall be constructed to CITY's standards for like improvements as directed by CITY's Director of Public Works. Any improvements are deemed property of MBBG during the term of this Agreement and MBBG shall be responsible for maintenance and repair thereof.

(5) On termination of this Agreement, MBBG shall have the right to remove any improvements in a manner acceptable to the Director of Parks and Recreation or his or her designee. Any improvements not removed by MBBG within 30 days shall become the property of CITY.

(6) CITY shall continue to provide and maintain water and power to the Property at no cost to MBBG. CITY will continue to maintain and have jurisdiction over the utility shed located on the southwest corner of the Property and CITY has the right to enter the Property at any time without permission of MBBG to access the utility shed and conduct activities related thereto.

(7) Any pesticide or herbicide applications and disposals will be made in accordance with all federal, state, county and local laws. MBBG will dispose of all pesticides, herbicides and any other toxic substances declared to be either a health or environmental hazard, as well as all materials contaminated by such substances, including but not limited to, containers, clothing and equipment, in the manner prescribed by law.

(8) MBBG shall not engage in, or permit any other party to engage in, any activity on the Property that violates federal, state or local laws, rules or regulations pertaining to hazardous, toxic or infectious materials and/or waste. MBBG shall indemnify and hold CITY, its directors, officers, agents and employees, its successors and assigns (collectively, "CITY Representatives"), harmless from any and all claims, loss, damage, actions, causes of action, expenses and/or liability arising from leaks of, spills of, and/or contamination by or from hazardous materials as defined by applicable laws or regulations, which may occur during and after the Agreement term, and are attributable to the actions of, or failure to act by, MBBG or any MBBG Representatives.

5. Insurance.

A. Minimum Scope and Limits of Insurance. MBBG shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If MBBG is a limited liability company, the commercial general liability coverage shall be amended so that MBBG and its

managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

(2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$300,000.00 per accident for bodily injury and property damage. If MBBG does not use any owned, non-owned or hired vehicles during its use of the Property pursuant to this Agreement, MBBG shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.(1) of this Section.

(3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If MBBG has no employees during its use of the Property pursuant to this Agreement, workers' compensation policy is not required, but MBBG shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming CITY and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to CITY. Any insurance or self-insurance maintained by CITY, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of MBBG's insurance and shall not contribute with it.

E. MBBG's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit MBBG and CITY's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. MBBG hereby waives all rights of subrogation against CITY.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY. At CITY's option, MBBG shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or MBBG shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. MBBG shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to CITY. If any insurance policy required under this Section is canceled or reduced in coverage or limits,

MBBG shall, within two business days of notice from the insurer, phone, fax or notify CITY via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. CITY Remedy for Noncompliance. If MBBG does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of MBBG's policies do not comply with the requirements under this Section, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may, but has no duty to, take out the necessary insurance and pay, at MBBG's expense, the premium thereon. MBBG shall promptly reimburse CITY for any premium paid by CITY or CITY may withhold amounts sufficient to pay the premiums from payments due to MBBG.

I. Evidence of Insurance. Prior to any use of the Property pursuant to this Agreement, MBBG shall furnish CITY's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to CITY's approval. MBBG may provide complete, certified copies of all required insurance policies to CITY. MBBG shall maintain current endorsements on file with CITY's Risk Manager. MBBG shall provide proof to CITY's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. MBBG shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by MBBG shall not be construed as a limitation of MBBG's liability or as full performance of MBBG's duty to indemnify CITY under Section 7 of this Agreement.

K. Subcontractor Insurance Requirements. MBBG shall require each of its subcontractors that use the Property pursuant to this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

6. Taxes.

MBBG acknowledges that its rights under this Agreement may constitute a taxable interest under California law. MBBG hereby agrees to be responsible for payment in full of any property or other taxes in connection with the activities and operation of the Property, which may be assessed against the interests granted hereunder and hereby indemnifies and releases CITY from any obligation or liability for such taxes. MBBG's failure to promptly pay any such taxes prior to their due date shall be considered a material breach of this Agreement and grounds for termination thereof upon forty-eight hours notice.

7. Indemnification.

MBBG agrees to indemnify, defend, and hold harmless CITY and its elective or appointed officials, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees and costs arising out of, or in any way connected with performance of, this Agreement by MBBG, MBBG's agents, officers, employees, subcontractors, volunteers, or independent contractor(s) hired by MBBG. This

indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable; such policy limits do not act as a limitation upon the amount of indemnification to be provided by MBBG. The obligations of this Section shall survive the termination of this Agreement.

8. Miscellaneous Provisions.

A. All notices required under this Agreement shall be served by placing said notice, postage prepaid, in the United States mail and addressed as follows:

MBBG as follows:

Manhattan Beach Botanical Garden Board of Directors
P. O. Box 1156, Manhattan Beach, CA 90267-1156
Phone: (310) 546-1354

CITY as follows:

Mark Leyman, Director of Parks and Recreation
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

(with a copy to): City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Any notices, demands and written communications by mail shall be conclusively deemed to have been received by the addressee on the day received if by personal delivery or two days after the deposit thereof in the United States mail, postage prepaid.

B. This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by CITY and MBBG.

C. 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 County of Los Angeles.

D. Invalidity of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

E. 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. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

F. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

City of Manhattan Beach

ML

Bruce Moe, City Manager

ATTEST:

Liza Tamura, City Clerk

APPROVED AS TO FORM:

Quinn M. Barrow

Quinn M. Barrow, City Attorney

Manhattan Beach Botanical Garden,
A California Non-Profit Corporation

By *[Signature]*

By *[Signature]*

Exhibit A - Manhattan Beach Botanical Garden





City of Manhattan Beach

Human Resources

Phone: (310) 802-5250

FAX: (310) 802-5251

WORKERS' COMPENSATION STATEMENT

FY 2018-2019

July 1, 2018 to June 30, 2019

(For Contractor or Vendor not Subject to California Workers' Compensation Laws)

I, Roy GONZALEZ, certify that in the performance of my agreement with the City of Manhattan Beach, shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of California.

I agree that should I become subject to the Workers' Compensation Laws of California during the term of the agreement, I will notify the City of Manhattan Beach and I will comply with those laws immediately.

| VENDOR USE ONLY: | |
|----------------------------------|------------------|
| Name as it Appears on Contract | Vendor Number |
| MANHATTAN BEACH BOTANICAL GARDEN | |
| Signatory's Printed Name | Telephone Number |
| ROY GONZALEZ, TREASURER | 310 433-0943 |
| Signature | Date Signed |
| | 10/2/18 |

| REVIEWED BY: | |
|---|-------------|
| Risk Management Division Representative | Date Signed |
| | 10/13/18 |

Client#: 29523

MANHA1

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/31/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|--|--|---|--|
| PRODUCER Arroyo Insurance Services Carr Beedle Hastings & Dennis 225 E. Santa Clara St., #120 Arcadia, CA 91006 | | CONTACT NAME: Kathleen Grisanti PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: kathleen@arroyoins.com | |
| INSURED Manhattan Beach Botanical Garden P. O. Box 1156 Manhattan Beach, CA 90267 | | INSURER(S) AFFORDING COVERAGE INSURER A : The Hartford Insurance INSURER B : INSURER C : INSURER D : INSURER E : INSURER F : | |
| | | NAIC # | |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDITIONAL INSURER | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--------------------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | X | 72SBANU5860 | 06/12/2018 | 06/12/2019 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$ |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | X | 72SBANU5860 | 06/12/2018 | 06/12/2019 | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ | | | | | \$ \$ \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | | | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Additional Insured in favor of Certificate Holder with respects to General Liability.

CERTIFICATE HOLDER

CANCELLATION

City of Manhattan Beach
 Attn: Risk Manager
 1400 Highland Avenue
 Manhattan Beach, CA 90266

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

James T. Armitage

POLICY NUMBER: 72 SBA NU5860



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - MANAGER/LESSOR

**CITY OF MANHATTAN BEACH
1400 HIGHLAND AVE
MANHATTAN BEACH, CA 90266**