

**LICENSE AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND  
DOWNTOWN MANHATTAN BEACH BUSINESS & PROFESSIONAL ASSOCIATION  
FOR THE USE OF CITY PROPERTY FOR A FARMERS MARKET**

THIS AGREEMENT is made and entered into on February 4, 2020 (“Effective Date”) by and between the City of Manhattan Beach, a municipal corporation (“City”) and Downtown Manhattan Beach Business & Professional Association, a California nonprofit corporation (“DMBBPA” or “Licensee”). City and DMBBPA are collectively referred to herein as the “Parties”.

**RECITALS**

A. DMBBPA desires to use the City property described in Section 1 for a weekly Farmers Market.

B. City desires to allow Licensee to use the City property pursuant to the terms stated in this Agreement.

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

**Section 1. Premises.** City hereby grants Licensee a nonexclusive license to use a portion of 13th Street between Morningside Drive and Valley Drive, as well as the Metlox Plaza area, as depicted on **Exhibit B** (“Premises”) for the purposes stated in this Agreement. The Premises consist of approximately 25,000 square feet. City also grants Licensee a nonexclusive license to use the parking spaces along 13th Street West of Morningside Drive and along Morningside Drive South of 13th Street, as depicted on **Exhibit B** (“Additional Parking Spaces”). The Premises and the Additional Parking Spaces include a total of 37 metered parking spaces and 10 non-metered parking spaces.

**Section 2. Term of Agreement.** The term of this Agreement shall be for a period of five (5) years, commencing on July 1, 2019. Licensee may request an extension of up the five (5) years, which the City Council may approve or deny in its sole discretion. In the event any such extension is approved, City reserves the right to increase the fees set forth in Section 3.

**Section 3. Compensation.**

(a) As full compensation for the use of 37 metered parking spaces, DMBBPA will pay City \$14,918.40 per year, billed monthly at \$1,243.20 per month. The Parties acknowledge that this fee is based on the current per hour rate for street meters (\$1.75) using an average occupancy of 60% for the hours occupied beginning from set-up to tear-down (currently 9:00 a.m.- 5:00 p.m.) for 48 weeks per year (Excludes Holiday Meter Bagging period).

(b) DMBBPA will pay City approximately \$2,332.20 per year, billed monthly at \$194.35 per month, for police department staff time utilized to place the decoy vehicle barriers at the intersections of 13th Street and Valley Drive and 13th Street and Morningside Drive. This fee is calculated based on an estimate of approximately 30 minutes per week at the current fully burdened rate of \$89.69. Recovery of Staff Time and vehicle use will not be billed for dates the market is not in operation.

(c) DMBBPA will be invoiced and pay City for the State required annual operational permit issued by the Manhattan Beach Fire Department at the rate listed in City's approved User Fee Schedule (currently \$300). Manhattan Beach Fire Department will conduct a second annual inspection, at no cost, to ensure continued adherence to Fire regulations.

(d) DMBBPA will pay City for an annual Business License in accordance with the stipulations and rates listed in the annual Manhattan Beach Business License Tax Rates Schedule for the then current licensing period (March 1<sup>st</sup> thru February 28<sup>th</sup>). This business license will be all inclusive for the market and participating farmers, vendors, and entertainment.

(e) All rates and fees set forth in this Section 3 are subject to adjustment according to the prevailing rate schedule for each fee type.

#### **Section 4. Method of Payment.**

(a) Invoices. City will invoice DMBBPA on the 1<sup>st</sup> of each month for the monthly payments due pursuant to paragraphs A and B of Section 3. The initial invoice will include fees for use beginning July 1, 2019. City will discount the invoice amount for parking meter fees by 50% in the event a Market day does not occur due to holiday, weather, or other factor beyond DMBBPA control. Annually, City will invoice DMBBPA for the operational permit pursuant to paragraph C of Section 3. DMBBPA shall pay all Business License fees and taxes directly to City, in accordance with City's standard procedures for Business License payments.

(b) Payment. DMBBPA shall pay all invoice amounts within 30 calendar days of the invoice date. A penalty of 5% may be added to past due invoices.

#### **Section 5. Use of Premises.**

(b) Licensee shall use the Premises only for the purpose of a weekly Farmers Market, including parking by vendors. Licensee shall use the Additional Parking Spaces only for parking by Market vendors. Vendor parking on the Eastside of Morningside Drive may be used to stack vehicles, provided the larger box or cube trucks are parked closest to the curb and smaller vehicles are on the outside (see Exhibit B). For purposes of this Agreement, "Farmers Market" and "Market" shall mean an outdoor market place where local farmers and other vendors sell fruits and vegetables, cheese, bakery products, and other food stuffs directly to consumers.

(c) Licensee shall operate the Farmers Market between the hours of 11:00 a.m. and 4:00 p.m. every Tuesday. Set-up to begin no earlier than 9:00 a.m. and tear-down

to be completed by 5:00 p.m. Any modifications to the location or layout of the Farmers Market mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

(d) Licensee shall not damage the Premises. Licensee shall maintain the Premises in a good, safe, neat, and sanitary condition to the satisfaction of City.

(e) Licensee shall provide all necessary equipment in good working condition.

(f) Licensee shall not use the Premises for any immoral or unlawful purpose, and shall comply with all local, State, and federal laws and regulations.

(g) City reserves the right to use the Premises for any City purpose, upon 21 days advance notice. In the event of receiving such notice from City, Licensee shall cancel the Market for the requested day(s). There will be no charges to Licensee for days impacted.

#### **Section 6. Party Representatives**

For the purposes of this Agreement, the City Representative shall be the City Manager, or his or her designee (the "City Representative"). For the purposes of this Agreement, the DMBBPA Representative shall be the Chairperson of the association, or his or her designee (the "DMBBPA Representative"). The DMBBPA Representative shall directly manage the terms and services under this Agreement. DMBBPA shall notify City (in accordance with Section 13) within 10 calendar days of any change of the designated DMBBPA Representative.

#### **Section 7. Licensee Responsibilities.**

(a) Scope of Services. DMBBPA shall operate the Farmers Market in compliance with all applicable State and local laws and regulations, and in compliance with the Scope of Services attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services. Any changes mutually agreed upon by the Parties shall be incorporated by written amendments to this Agreement.

(b) Permits and Licenses. DMBBPA shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the operation of the Farmers Market.

(c) Compliance with City Directives. DMBBPA shall comply with all directives of the City Representative and City law enforcement personnel regarding operation of the Market, especially in all matters pertaining to public safety and liability. City designee(s) such as, community service officer or code enforcement officer may periodically walkthrough the market to verify compliance and will consult with DMBBPA representative on any concerns as much as reasonably possible if circumstances will affect the Market. Vendors not in compliance with City directives, or stipulations within this agreement, including parking, may be asked to suspend operations for up to 30 days.

(d) Advertising & Promotion. DMBBPA shall promote the Market at no expense to City, and shall provide all necessary funds, staff, equipment, and materials necessary for that purpose.

(e) Accessibility. DMBBPA shall provide adequate access to the Market for people with disabilities in a manner that is satisfactory to City and keep all pedestrian aisles and pathways clear.

(f) Local Municipal Code Compliance. DMBBPA shall read, understand and accept responsibility for ensuring all Market vendors comply with current regulations enacted by City including, but not limited to the following provisions of the Municipal Code: Smoking prohibition (Section 4.116.030), and Chapters 5.80 & 5.88 concerning Polystyrene, Plastic Bags, Single-Use Plastics and Balloons.

(g) City Sustainability Goals. Throughout the term of this Agreement, DMBBPA shall make good faith efforts to operate the Market in a manner consistent with City's environmental sustainability goals. Licensee acknowledges having reviewed City's sustainability workplan, which can be found at <https://www.citymb.info/departments/environmental-sustainability>. DMBBPA shall make good faith efforts to cause Market vendors to participate in the Market in a manner consistent with City's environmental sustainability goals.

**Section 8.** City Services. City shall provide at no cost to DMBBPA any additional services not listed in Section 3 but deemed necessary by the City Representative. Service may include, but are not limited to: police, fire, inspection services, traffic control, parking permits for reserved parking areas, and parking enforcement as needed.

**Section 9.** Insurance.

(a) Licensee shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 for each occurrence with a \$4,000,000 annual aggregate, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Licensee. The CGL policy shall be sufficiently broad to respond to the duties and obligations undertaken by DMBBPA in this Agreement, including coverage for Market vendors.

(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 \$2,000,000.00 per accident for bodily injury and property damage. If DMBBPA does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, DMBBPA 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 DMBBPA has no employees while performing Services under this Agreement, workers' compensation policy is not required, but DMBBPA 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 DMBBPA's insurance and shall not contribute with it.

(e) DMBBPA's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit DMBBPA and DMBBPA's employees, agents or subcontractors or market vendors from waiving the right of subrogation prior to a loss. DMBBPA hereby waives all rights of subrogation against City.

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

(i) Cancellations or Modifications to Coverage. DMBBPA 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, DMBBPA 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.

(j) City Remedy for Noncompliance. If DMBBPA 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 DMBBPA'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 DMBBPA's expense, the premium thereon. DMBBPA shall promptly reimburse City for any premium paid by City.

(k) **Evidence of Insurance.** DMBBPA 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 prior to the effective date of this Agreement. The endorsements are subject to City's approval. DMBBPA may provide complete, certified copies of all required insurance policies to City. DMBBPA shall maintain current endorsements on file with City's Risk Manager. DMBBPA 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. DMBBPA shall furnish such proof at least two weeks prior to the expiration of the coverages.

(l) **Indemnity Requirements not Limiting.** Procurement of insurance by DMBBPA shall not be construed as a limitation of DMBBPA's liability or as full performance of DMBBPA's duty to indemnify City under Section 11 of this Agreement.

(m) **Broader Coverage/Higher Limits.** If DMBBPA maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by DMBBPA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

(n) **Subcontractor Insurance Requirements.** DMBBPA shall require each of its subcontractors under this Agreement to maintain insurance coverage that meets all of the requirements of this Section. Subcontractors shall maintain Comprehensive General Liability Insurance with minimum limits of \$1,000,000 for each occurrence, \$2,000,000 annual aggregate.

**Section 10. Indemnification.** Concurrently herewith, Licensee shall execute the Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution in the form attached hereto as **Exhibit C**.

**Section 11. Termination.**

(a) Either Party may terminate this Agreement for any reason or for no reason upon 60 calendar days' written notice to the other Party.

(b) In the event of termination or cancellation of this Agreement by either Party, Licensee agrees to cease use of the Premises within 60 calendar days of receipt of such notice.

**Section 12. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by

courier service during DMBBPA's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: Revenue Services Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5555  
Email: revenue@citymb.info

If to DMBBPA:

Attn: Jill Lamkin, Executive Director  
DMBBP Association  
P.O. Box 3298  
Manhattan Beach, California 90266  
Telephone: (310) 379-9901  
Email: jill@downtownmanhattanbeach.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5061  
Email: qbarrow@rwglaw.com

**Section 13. Assignment.** This Agreement shall not be assigned, in whole or in part, by Licensee without the prior written approval of City. Any attempt by Licensee to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

**Section 14. 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.

**Section 15. Entire Agreement; Amendment.** This Agreement represents the entire integrated agreement between City and Licensee, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Licensee.

**Section 16. Governing Law and Venue.** The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Any action commenced related to or concerning this Agreement shall be filed in the appropriate court in Los Angeles County.

**Section 17. City Not Obligated to Third Parties.** City shall not be obligated or liable under this Agreement to any party other than Licensee.

**Section 18. Severability.** Invalidation 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.

EXECUTED on the date first written above in Manhattan Beach, California.

CITY OF MANHATTAN BEACH

LICENSEE

\_\_\_\_\_  
Bruce Moe, City Manager

By: \_\_\_\_\_

ATTEST:

Its: \_\_\_\_\_

\_\_\_\_\_  
Liza Tamura, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Quinn M. Barrow, City Attorney

APPROVED AS TO FISCAL  
CONTENT:

\_\_\_\_\_  
Steve S. Charelian, Finance Director



## **EXHIBIT A SCOPE OF SERVICES**

- Prepare Market Rules and ensure each farmer, vendor, exhibitor and entertainment acknowledge, understand and comply with the rules.
- Solicit and establish operating agreements with farmer and specialty vendors, including minimum insurance requirements.
- Maintain all paperwork for Agricultural Department and Health Department regarding certifications and all permits required by Federal, State and local agencies. Each vendor will conspicuously display their current Health Permit.
- Coordinate with Farmers Market vendors and City for the set up and tear down of the event each week.
- DMBBPA's Market manager shall remain on-site throughout the duration of the market, 9:00AM – 5:00PM, or until the street has been cleared of all vendors, equipment and vehicles associated with the market.
- Provide Farmers Market staff, or volunteers, to assure the safe operation of the market.
- Determine the placement of booths and shall have authority to remove unauthorized booths, furniture and other objects that interfere with the conduct of the event.
- Provide daily management of the market and ensure adherence to all City of Manhattan Beach regulations, including but not limited to, parking, traffic, non-solicitation, noise levels, health and environmental sustainability.
- Secure farmers and specialty vendors, insuring that the selected vendors are not in direct competition with local Downtown Manhattan Beach eateries and businesses. The overall mix of vendors should remain near the goals of 40% Farmers & Ranchers, 40% specialty "packaged" goods and 20% prepared food. There are currently 16 Farmers & Ranchers, 19 packaged food vendors and 14 prepared food vendors at the Market. In order to comply with the percentages listed above, there should be no more than 10 prepared food vendors 20 packaged food vendors and 20 Farmers & Ranchers. Create marketing and social media exposure for the Market.

**EXHIBIT B  
FARMERS MARKET DEPICTION**



## EXHIBIT C

### INDEMNIFICATION AND HOLD HARMLESS AGREEMENT AND WAIVER OF SUBROGATION AND CONTRIBUTION

Contract/Agreement/License/Permit No. or description: License Agreement for a Farmers Market (the "License Agreement")

Indemnitor(s) (list all names): Downtown Manhattan Beach Business & Professional Association, a California nonprofit corporation dba Manhattan Beach Certified Farmers Market

A. Indemnity. To the fullest extent permitted by law, Indemnitor shall defend, indemnify, and hold City, and its elected officials, officers, agents and employees free and harmless from any claim, liability or financial loss (including, without limitation, attorneys' fees and costs), injuries to property or persons (including without limitation, attorneys' fees and costs) arising out of any acts or omissions of Indemnitor, its officials, officers, employees, agents, subcontractors, or Market vendors in connection with the performance of the License Agreement or the use of the Premises or the Additional Parking Spaces (as those terms are defined in the License Agreement), except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of City, as determined by court decision or by the agreement of the parties. Indemnitor shall defend City, with counsel of City's choice, at Indemnitor's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Indemnitor shall reimburse City for any and all legal expenses and costs incurred by City in connection therewith or in enforcing the indemnity herein provided. Indemnitor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Indemnitor or City. All duties of Indemnitor under this Section shall survive termination of this Agreement.

B. Inapplicability of Insurance Coverages. This indemnity is effective without reference to the existence or applicability of any insurance coverages that may have been required under the License Agreement or any additional insured endorsements which may extend to Indemnitees. City agrees to promptly inform Indemnitor in writing of any claim that City believes to be subject to this Indemnification and Hold Harmless Agreement and Waiver of Subrogation and Contribution.

C. Waiver of Subrogation and Contribution. Indemnitor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor.

“Indemnitor”

“City”

Name: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_