

## **MEMORANDUM OF UNDERSTANDING**

### **AUTHORIZING USE OF THE ROUNDHOUSE FOR FUNDRAISING EVENTS**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into on this \_\_\_\_\_, 2020, by and between the City of Manhattan Beach, a California municipal corporation (“CITY”) and Oceanographic Teaching Stations, Inc., a nonprofit corporation incorporated under the laws of the State of California (“OTS”) with respect to the following facts:

- A. CITY and OTS have entered into that certain Contract Agreement dated December 4, 2018 (“Contract Agreement”), regarding the use of the Roundhouse located at the end of the Manhattan State Beach Pier; and
- B. Pursuant to Section 2.D of the Contract Agreement, OTS may plan, organize, and implement fundraising programs to acquire contributions to support the educational activities of OTS; and
- C. OTS seeks to license third parties to use the Roundhouse for various events, and to generate revenue from such events to support the educational activities of OTS; and
- D. Pursuant to Section 8 of the Contract Agreement, alcohol is prohibited on the Pier or inside the Roundhouse, but this restriction may be waived by the City Council for special events held within the Roundhouse, on a case-by-case basis, in the sole discretion of CITY; and
- E. OTS has requested that the City Council waive the alcohol prohibition, subject to the terms and conditions of this MOU; and
- F. CITY and OTS wish to enter into this MOU, setting forth the parameters for a six-month pilot program under which OTS may authorize third parties to use the Roundhouse for certain events, including the serving of alcohol at those events, for purposes of generating revenue for OTS.

In consideration of the mutual promises set forth below, CITY and OTS agree as follows:

#### **1. CONTRACT AGREEMENT TO CONTROL**

- A. This MOU is subject to the Contract Agreement. All defined terms herein, as indicated by initial capitalization, shall have the means ascribed in the Contract Agreement unless otherwise indicated.
- B. The use of the Roundhouse pursuant to this Agreement is subject to all requirements of the Contract Agreement, including but not limited to the Insurance and Indemnity provisions in Section 20 of the Contract Agreement.

- C. OTS acknowledges and agrees that the Indemnity in Section 20.E of the Contract Agreement applies to all activities of OTS and its agents, officers, employees, or subcontractors pursuant to this MOU, including all acts or failures to act of any party that enters into a license agreement with OTS pursuant to Section 3.

2. TERM

The initial term of this MOU shall be six months, ending on \_\_\_\_\_, 2020, unless earlier terminated pursuant to Section 7. Any extension of the term requires the consent of the City Council, which the City Council may grant or deny in its sole discretion.

3. USE RESTRICTIONS

OTS may authorize use of the Roundhouse by third parties for certain events (“Authorized Events”), for purposes of generating revenue to fund OTS programs, subject to the requirements of this Section.

- A. **License Agreement:** OTS shall enter into a license agreement with the event sponsor. The license agreement shall include at a minimum:

1. a provision requiring compliance with the requirements of this MOU;
2. a provision requiring compliance with all applicable laws and regulations, including all rules, orders, regulations or requirements of CITY’s Police and Fire Departments;
3. a provision requiring the payment of a fee or fees for use of the facility and the provision of any services provided by OTS, in the amount(s) determined by OTS;
4. notwithstanding paragraphs B and C of Section 1, if the license agreement contains an indemnity in favor of OTS, the indemnity shall also name CITY and State and their officers, employees, and/or agents as indemnified parties;
5. notwithstanding paragraphs B and C of Section 1, if the license agreement requires insurance policies, such insurance policies shall contain an endorsement naming State and CITY, and their officers, employees, agents and volunteers as additional insureds; and
6. any other provisions deemed appropriate by OTS.

- B. **Permissible Events; Authorized Events:** Permissible events include birthday parties, neighborhood dinners, appreciation events, speakers/lectures, and corporate gatherings. For purposes of this MOU, an “Authorized Event” shall be one of the foregoing events for which OTS has entered into a license agreement with a third party pursuant to paragraph A of this Section.

- C. **Advance Notice:** OTS shall provide at least three business days advance notice to CITY of each Authorized Event, via email, to the following individuals: City Manager (bmoe@citymb.info), Parks and Recreation Director (mleyman@citymb.info), Community Development Director (ctai@citymb.info), Police Lt. ([aharrod@citymb.info](mailto:aharrod@citymb.info)). The advance notice shall be accompanied by an application in the form attached hereto as **Exhibit A**.
- D. **City Permit(s):** Upon receipt of an advance notice and completed application, CITY shall approve the Roundhouse Fundraising Event Permit, provided that the proposed event complies with the terms and conditions of this MOU.
- E. **Hours for events:** All such events shall occur between the hours of 6:00 pm and 10:30 pm during the winter period (November to April), and between the hours of 8:00 pm and 10:30 pm for summer events (May- October).
- F. **Maximum Occupancy for Events:** 40
- G. **Security:** At least one security officer shall be on duty at the Roundhouse for events of twenty or more people. Each such security guard shall at a minimum:
  - (i) possess a valid and current security guard registration card, with photo identification, as issued pursuant to the State of California, Department of Consumer Affairs, Bureau of Security and Investigative Services;
  - (ii) possess at least twelve (12) months experience as a security guard or security officer; and
  - (iii) have the ability to fluently speak and write English.The security guard shall be unarmed. OTS shall ensure that each such security guard or officer gives undivided attention to their duties and given responsibilities.
- H. **Pier Access:** No event may block public access to any part of the Pier at any time without prior written approval from CITY.
- I. **Additional Restrictions on Use:** OTS shall cause all Authorized Events to comply with the following restrictions on use: (i) no disruption to public use of the pier; (ii) no driving on the pier; (iii) no smoking; (iv) no gasoline, acetylene or other combustibles; (v) no cooking (other than sterno heating); (vi) no animals; (vii) nothing may be attached or taped to the walls or the display tanks; (viii) no access to the office or lab areas; (ix) no use of plastic straws or bags; (x) no tents or pop-ups on the pier; and (xi) no feeding of the fish and other sea specimens.
- J. **CITY Events:** OTS acknowledges that, per Section 7.H of the Contract Agreement, CITY shall have the right to use the Roundhouse up to ten times per year for special functions. All such CITY events shall take precedence over any Authorized Events.

#### 4. ALCOHOL

- A. OTS may permit the serving of alcohol at Authorized Events, if OTS maintains in force the liquor liability insurance specified in Paragraph B. OTS shall not permit any

alcoholic beverages to be sold during any Authorized Event, and shall cause all such events to comply with the requirements of Business and Professions Code Section 23399.1.

B. Prior to any event where alcohol is served, OTS or the event sponsor shall have procured, through its general liability policy or through a separate policy, liquor liability insurance with a limit of no less than \$1,000,000 per occurrence, and CITY's Risk Manager shall have approved the evidence of such insurance. The policy of liquor liability insurance must comply with all requirements of Paragraphs B, C and D of Section 20 of the Contract Agreement.

## 5. REVENUE; CONTRIBUTION TO PIER IMPROVEMENT FUND

A. OTS shall pay to CITY a sum equal to 15% of the aggregate amount of all License Fees received by OTS from the use of the Roundhouse for Authorized Events ("Pier Improvement Fund Contribution"). License Fees shall mean all revenue received by OTS for any such event, including any license fee, rental fee, or other fee or charge, but shall not include any service fees charged by OTS as reimbursement for expenses incurred or advanced by OTS in connection with the Authorized Event.

B. OTS shall pay the Pier Improvement Fund Contribution to CITY quarterly. The first payment is due \_\_\_\_\_ [insert date (3 months + 15 days after date of agmt)]; the second payment is due \_\_\_\_\_ [insert date 180 + 15 days after date of agmt]. Each such payment shall be accompanied by an accounting form, in a format acceptable to CITY's Finance Director, that sets forth the Gross Receipts from Authorized Events occurring during the preceding three calendar months. The accounting form shall be signed by an officer of OTS, and shall include the following statement: "I hereby certify under penalty of perjury that the above information is correct and the Pier Improvement Fund Contribution calculations are true to the best of my knowledge".

## 6. FINANCIAL RECORDS

A. OTS shall maintain financial records for the use of the Roundhouse as authorized by this MOU, which shall be kept in accordance with State and federal law, and in keeping with good business practices. OTS shall separately account for all revenue derived from use of the Roundhouse pursuant to this MOU.

B. OTS shall make financial records for the operation available for the inspection by CITY at any reasonable time. CITY may, on reasonable notice, audit the financial records.

C. OTS may expend the excess revenue over costs derived from Authorized Events only for the purpose of accomplishing the educational activities of OTS and for the purpose of carrying out the terms of this MOU.

## 7. TERMINATION OF MOU

- A. CITY reserves the unqualified right to terminate this MOU, should such termination be required by the State, whether pursuant to the Operating Agreement (including termination of the Operating Agreement) or otherwise. Subject to applicable legal restrictions, CITY shall endeavor to provide OTS reasonable notice of any action by the State that would require CITY to terminate this MOU, and the effective date of such termination.
- B. This MOU shall automatically terminate upon the expiration or earlier termination of the Contract Agreement.
- C. CITY further may terminate this MOU for a failure by OTS to remit the Pier Improvement Fund Contribution and required accounting form pursuant to Section 5, upon giving OTS 10 days' written notice of intent to terminate if any and all breaches identified in the notice are not cured. Termination shall be effective at the end of that period if the identified breaches have not been cured.
- D. CITY further may terminate this MOU for material breach by OTS of any of the non-monetary provisions hereof, upon giving OTS 30 days' written notice of intent to terminate if any and all breaches identified in the notice are not cured. Termination shall be effective at the end of that period if the identified breaches have not been cured, provided that, if OTS provides documentation to CITY demonstrating that it has initiated in good faith action to cure the identified breaches during the 30-day period and the identified breaches cannot reasonably be cured within 30 days, then OTS shall have an additional 30 days to cure such breaches.
- E. CITY further may terminate this MOU should OTS serve alcohol, or permit the serving of alcohol at the Roundhouse without compliance with the requirements of Section 4. Termination shall be effective 10 days after written notice of termination from CITY.

8. WAIVER

Waiver of a breach of this MOU by either party shall not be construed as a waiver of any subsequent breach of the same or any other provision.

9. AMENDMENTS

No amendment or modification of this MOU shall have an effect whatsoever, unless the same is in writing and signed by each of the parties hereto.

10. MOU ASSIGNMENT

OTS shall not assign its rights under this MOU or any interest herein, or any part thereof, to any party.

11. NOTICES

Any notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

OTS

Oceanographic Teaching Stations, Inc.  
P.O. Box 1  
Manhattan Beach, California 90266

CITY

City Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266

<p>City of Manhattan Beach, a California municipal corporation</p> <p>By: _____ Title: _____</p> <p>ATTEST:</p> <p>_____ Liza Tamura, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____ Quinn M. Barrow, City Attorney</p>	<p>Oceanographic Teaching Stations, Inc., a California nonprofit corporation</p> <p>By: _____ Title: President</p>
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## EXHIBIT A

### ROUNDHOUSE FUNDRAISING EVENT PERMIT



City of Manhattan Beach

EVENT DATE:

### **ROUNDHOUSE FUNDRAISING EVENT PERMIT**

#### EVENT INFORMATION

EVENT TITLE: \_\_\_\_\_

Sponsoring Organization: \_\_\_\_\_

Phone: \_\_\_\_\_

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

Time: \_\_\_\_\_

Event Description: \_\_\_\_\_

Names and Titles of any invited speakers or special guests: \_\_\_\_\_

Number of attendees: \_\_\_\_\_

☐ Amplified Sound (requires separate permit)

☐ Live Music (requires separate permit)

☐ Alcohol

☐ Signs

Security Company: (1 guard required if over 20 guests) \_\_\_\_\_

Security Contact Phone: \_\_\_\_\_

#### REQUIRED: ON-SITE CONTACT PERSON ON THE DAY OF THE EVENT

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

Cell: \_\_\_\_\_

Roundhouse representative \_\_\_\_\_

Signature \_\_\_\_\_

Hours for events: 6:00pm-10:30pm for Winter events; 8:00pm-10:30pm for Summer events

Maximum occupancy for Events: 40

Restrictions on use: No disruption to public use of the pier; no driving on the pier; no smoking; no gasoline, acetylene or other combustibles; no cooking (other than sterno heating), no animals, no use of plastic straws or bags

The event organizer/sponsor shall indemnify, defend and hold harmless, the City of Manhattan Beach, its elected officials, officers, agents and employees, from and against any liability and expense, including attorneys fees and court costs and claims for damages of any nature whatsoever, including, but not limited to, bodily or personal injury, death or property damage arising from any negligent or intentional act or omission by permittee or event organizer/sponsor, its subcontractors, officers, agents, employees and authorized street vendors, in the conduct of the event.

#### DO NOT WRITE BELOW—CITY USE ONLY

CLEARANCES				REQUIRED PERMITS/INSPECTIONS			
DEPARTMENT	REQ	CLEARED BY	DATE	PERMIT/INSPECTION TYPE	REQ	CLEARED BY	DATE
Alcoholic Beverage Control				Electrical			
Community Development				Building/Structural			
Fire Department				Occupancy			
Police Department				Amplified Sound			
Risk Management							

04/2020